

CONSTABLE CHADENGA
versus
CHIEF SUPERINTENDENT HAMBIRA
and
COMMISSIONER GENERAL OF POLICE
and
POLICE SERVICE COMMISSION

HIGH COURT OF ZIMBABWE
TAKUVA J
HARARE; 26 February & 16 April 2025

Chamber Application For Stay of Execution.

K Maodzwa, F Chaipa, for the Applicant
N L Mabasa, Mr Mkadla, for the Respondents

TAKUVA J:

Introduction

This is an urgent chamber application for stay of execution.

Background Facts

On 16 January 2024 the applicant in this matter was under the Police Act, convicted and sentenced to 14 days imprisonment by the first respondent. He went on to appeal against this conviction which appeal was however dismissed by the second respondent. Following these events, applicant proceeded to apply for review in this court, challenging the decisions of both the first and second respondents filed under case HCH 2377/24. The court noted that this application was filed out of time after which the applicant attempted to rectify through an application for condonation under case HCH 682/25. The matter is still awaiting finalisation. The reason for this current application before this court is the applicant's concern over the fact that he has been served with an order to appear before a board of suitability by the first respondent. First respondent intends to dismiss the applicant from the police service in terms of s 50 of the Police Act. It is applicant's view that this is being done without regard to the two applications before this court that are still pending with the main matter challenging the

conviction itself. These are the proceedings that the applicant intends to stay and they were set for the 19th of February 2025.

On the day of hearing the applicant raised points *in limine* challenging this application with this court proceeding to reserve the judgement on those points. The court will therefore proceed to address these preliminary points.

Preliminary Points raised

Mr *Maodzwa*, counsel for the Applicant, on the day of hearing raised 2 points *in limine* which the court will deal with separately.

Firstly, the applicant challenges the validity of the notices of opposition filed by the respondents. Applicant claims that the format that the respondents used does not comply with r 59(7) of the High Court Rules of Zimbabwe [2021] since respondents did not use form 24 prescribed. It is on this basis that the applicant insists that its application should be treated as an unopposed matter since the notices of opposition ought to be expunged from the record.

In *Sifara v Jemwa and Anor* HH 28/24 at p5 para 2 BHACHI-MUZAWAZI J stated that:

“Rules of the court are for standardisation. They are procedural law and must be adhered to. However, they cannot enslave the court. There is room for flexibility for the sake of justice, expediency and finality to litigation.”

The failure of the respondents to use the actual form prescribed by the rules does not render the proceedings fatal. DUBE J emphasised this point in *Munyorovi v Sakonda* HH467/2021 wherein she commented that the rules are made for the court and not the court for the rules. The Registrar approved of these said notices of opposition and it is the court’s view that they were properly filed. The respondents made clear in their opposition what position they were taking and their failure to use the actual form cannot render this application unopposed. This point therefore is dismissed for lack of merit.

Secondly, counsel for the applicant argued that first respondent’s opposing affidavit was not properly commissioned but rather a piece of signed paper was attached to it. Applicant argues that since this piece of paper is an attachment, it does not form part of the affidavit and subsequently the affidavit is not commissioned. Respondents however, explained to the court that the reason why this came to be as there was a duplication of the last pages of the opposing affidavits which was corrected by attaching the signed copy. Rule 7 (a) of the High Court Rules of Zimbabwe [2021] Rule 7(a) states,

“The court or a judge may, in relation to any particular case before it or him, as the case may be- (a) direct, authorize or condone a departure from any provision of these rules, including an extension of any period specified therein, where it or he, as the case may be, is satisfied that the departure is required in the interests of justice.”

Rules are indeed essential for orderly conduct but they should not be applied rigidly to the detriment of substantive justice. In this case the court finds nothing that can halt the proceedings in this matter and therefore the second point *in limine* raised by the applicant is also dismissed

Conclusion

I find that it is desirable to hear all the parties in this matter on the merits.

In the result,

It is ordered that;

1. The preliminary points in this matter be and are hereby dismissed.
2. Matter shall be set down for hearing on merits.
3. Costs are in the cause.

TAKUVA J:.....

Mugiya Law Chambers, applicant’s legal practitioners
Civil Division of the Attorney General, respondent’s legal practitioners