

FLATTER BANDA
versus
THE COMMISSIONER GENERAL OF POLICE
and
THE BOARD PRESIDENT
CHIEF SUPERINTENDENT NYAUMWE

HIGH COURT OF ZIMBABWE
TAGU J
HARARE, 18 July & 03 October 2018

Opposed Application

H Marava, for applicant
KT Mukanganisi, for respondents

TAGU J: This is a court application for review of proceedings conducted by the second respondent at Southerton District Headquarters on the 3rd of January 2018. The basis of the application is that the proceedings were irregular and the respondent failed to provide the record of proceedings. Further it was submitted that the record that was produced did not capture the proceedings properly. The other ground was that the applicant was denied legal representation at the hearing. Lastly it was contended that the applicant applied to have the matter postponed so that she could look for alternative legal representation but that application was denied on the basis that the trial officer had been given a deadline on which the matter was supposed to be finalized.

In her founding affidavit the applicant submitted that on the 21st of December 2017 she was served to appear before a suitability board chaired by the second respondent. She chose to be legally represented at her own expense. However, on the day of the hearing her lawyer of choice Mr *Chigoro* was unavailable as his law firm was closed for the festive season. She then sought postponement of the enquiry through a letter dated the 10th of January 2018 to allow her to secure the services of her lawyer but this was turned down. On the day of the hearing she again raised the

same request which was again turned down. She then asked to have the matter stood down so that she could prepare for the hearing but again that request was turned down.

The applicant now wants the proceedings against her to be quashed and set aside because her constitutional rights were violated.

The respondents in their opposing affidavits denied that the applicant ever made an application for the postponement of the hearing. They averred that the applicant actually stated that she was going to conduct her own case as her lawyer had failed to turn up. Further they denied that the applicant asked for the matter to be stood down. It was their submission that if she had asked for postponement and or for the matter to be stood down they had no reason to deny her the requests. As to the fact that they denied her requests on the basis that they had a deadline to meet, they vehemently denied that and submitted that the applicant could have gotten sight of the deadline which was on the Convening Order that was served on her before the hearing. They said the deadlines were not cast in stone and they could have granted extensions if she had asked for the same. As for the letter dated the 2nd of January 2018 in which she purported to have asked for postponement, they submitted that they were equally surprised to see a copy of the letter and they averred that this letter was a fraudulent document and could have been authored as this application was being filed since there is no proof of who was served or even a date stamp from the office acknowledging its receipt. The letter is even not signed by the applicant herself or by her legal practitioners other than that her force number is not endorsed at the bottom of her typed name.

To support their stories the respondents filed a typed copy of the record of proceedings as well as a photocopy of the long hand notes showing what transpired on the day of the hearing.

Despite being served with a copy of the Notice of Opposition the applicant did not bother to file an Answering affidavit rebutting the averments made by the respondents.

The court indeed had sight of the record of proceedings. Nowhere did the applicant make an application to have the matter postponed nor be stood down. The record clearly showed that the applicant actually elected to conduct her own case since her lawyer had failed to turn up. The relevant entry by the Board President reads as follows-

“Member confirms that she was going to conduct her own case/proceedings since her Lawyer had failed to turn up”

Further down the record of proceedings it is recorded as follows-

“Member confirms that she does not have issues/complaints on the composition of the Board” and “Member confirms that she appreciates the mandate or purpose of the Board.”

In my view if the applicant had issues or complaints that is the stage she should have asked for postponement or to have the matter stood down. More importantly she confirmed appreciating the purpose and mandate of the Board. She cannot be heard now to say she was not prepared and did not know what was going on.

As to the way the proceedings were recorded it must be appreciated that the Board President is not a trained Magistrate but the proceedings of the hearing are in accordance with real and substantial justice and cannot be set aside. I found no merit in the application and it is hereby dismissed.

IT IS ORDERED THAT

1. The application is hereby dismissed with costs.

Magoge, Mtetwa law chambers, applicant's legal practitioners
Civil Division of the Attorney General, respondents' legal practitioners