

Assistant Inspector Mhonda 058118M

1st Applicant

and

Assistant Inspector Guvheya 062053L

2nd Applicant

and

Assistant Inspector Zvarimwa

3rd Applicant

and

Sergeant Nyambo 075311J

4th Applicant

and

Constable Marava 070266A

5th Applicant

and

Constable Hlahla 071251W

6th Applicant

and

Constable Guvamombe 992820B

7th Applicant

and

Constable Makuvaza 079427H

8th Applicant

and

Constable Mutize 073947B

9th Applicant

and

Constable Tivapasi 081391S

10th Applicant

and

Constable Timoti 067636S

11th Applicant

and

Constable Sibanda 077794H 12th Applicant

and

Constable Mudanga 992275J 13th Applicant

and

Constable Chakanyuka 088273Y 14th Applicant

and

Constable Tsikai 067241M 15th Applicant

and

Constable Kusemwaenda 986867F 16th Applicant

and

Constable Ndlela 086639X 17th Applicant

Versus

The Trial Officer N.O. (Chief Superintendent A. KAVHAI) 1st Respondent

and

Commissioner General of Police 2nd Respondent

and

POLICE SERVICE COMMISSION 3rd Respondent

HIGH COURT OF ZIMBABWE

CIVIL DIVISION

CHIRAWU-MUGOMBA J

HARARE 2 and 17th June 2025

OPPOSED COURT APPLICATION FOR REVIEW

N. Mugiya, for the applicants

No appearance for the respondents

CHIRAWU-MUGOMBA J: This matter was placed before me as one for review in terms of R62 of the High Court Rules, 2021. *In casu*, the applicants seek an order to set aside their sentence and conviction by the 1st respondent and their acquittal on charges preferred against them. At the hearing, there was no appearance for the respondents. Efforts were made to ascertain what the challenge was and it appeared that no one was sure of who was handling the matter on the part of the respondents' legal practitioners. Counsel for the respondents Ms N L Mabasa, logged into the session 15 minutes after court had already started and was allowed to stay to observe the proceedings. The applicants were charged with contravening paragraph 35 of the Schedule to the Police Act, and on the 1st of March 2024, the 1st respondent convicted all the applicants. The charge was couched as follows:-

"Acting in an unbecoming or disorderly manner or in any manner prejudicial to good order or discipline or reasonably likely to bring discredit to the Police Service".

The applicants were ordered to pay a fine of US\$15.00. They appealed to the 2nd respondent in terms of section 34(7) of the Police Act. The appeal was dismissed on the 1st of July 2024, and the applicants were served with the appeal judgment on the 18th of July 2024.

At the hearing, the court engaged Mr *Mugiya* on the time frame within which the review application was filed. He submitted that the review was filed on time because section 14 of the Police (Trials and Board of Inquiry) Regulations, 1965, provides that the time for review started running on the day the judgment is read to the applicants on command and not the day the judgment is stamped.

However, the applicants filed their application for review beyond the time limit stipulated by section 62(4) of the High Court Rules, 2021 which reads as follows,

"(4) Any proceedings by way of review shall be instituted within eight weeks of the termination of the suit, action or proceedings in which the irregularity or illegality complained of is alleged to have occurred: Provided that the court may for good cause shown extend the time."

The application for review was filed on the 20th of September after the eight weeks that are prescribed by the rules had lapsed. An application in terms of rule 62(4) of the rules of this Court must be filed and served within eight weeks. Given that the date of the judgment being reviewed is the 1st of July 2024, even if it was the day the applicants state they received the judgment, which is 18 July 2024, the eight weeks *dies induciae* within which the review had to have been filed and served began to run on the 2nd of July and lapsed on the 2nd of September 2024. The respondents did not raise this issue.

In, *Shoko & Ors v Minister of Local Government, Public Works, Urban Development* HH 12-07, the late filing of the application for review was raised *mero motu* by the court. MAKARAU JP(as she then was) stated as follows,

"The issue that has exercised my mind in this matter is whether the court can *mero motu* grant extension of the time within which an application for review may be filed. It is common cause that the court may extend this period on application and upon good cause being shown.¹ The issue before me is whether the court upon noticing that the application has not been brought within the time limited in the rules, can extend the period *mero motu* and proceed to deal with the merits of the matter. I think not. In my view, "good cause shown" as stated in rule 259 means good cause shown by the applicant either in a written application or verbally or with the consent of the opposing party. It cannot mean good cause as seen by the court *mero motu*."

The court also considered whether the provisions of rule 4C of the High Court Rules of 1971, now rule 7 of the High Court Rules, 2021, could be resorted to. The court held that:

"The court can *mero motu* grant extension of the time within which an application for review may be filed. It is common cause that the court may extend this period on application and upon good cause being shown. The issue before the court would be whether the court upon noticing that the application has not been brought within the limited in the rules, can extend the period *mero motu* and proceed to deal with the merits of the matter. I think not. In my view, "good cause shown" as stated in rule 259 means good cause shown by the applicant either in a written application or verbally or with the consent of the opposing party."

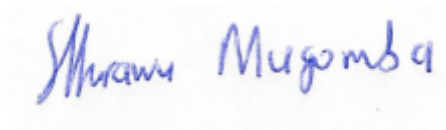
In *casu*, no application for condonation or for a departure from the rules was made. As a matter of fact, Mr Mugiya sought to mislead the court by submitting that section 14 of the Police (Trials and Boards of Inquiry) Regulations has provisions for the reckoning of time.

The court is thus faced with an application made out of time, with no condonation sought. In the *Shoko* matter, the court concluded that the application for review was not properly before it and proceeded to dismiss it. I will follow the same course and dismiss this application with no order as to costs.

¹ Under the then Rule 259 of the High Court Rules 1971, now R 62

DISPOSITION

1. The application be and is hereby dismissed
2. There will be no order as to costs

A handwritten signature in blue ink, reading "Shrawu Mugomba". The signature is written in a cursive, flowing style.

Mugiya Law Chambers, applicants' legal practitioners
Civil Division of the Attorney-Generals Office, Respondents' legal practitioners