

WAR VETERANS PRESSURE GROUP ASSOCIATION
As represented by its Chairperson Stanley Mudau
versus
MINISTER FOR VETERANS OF THE LIBERATION
STRUGGLE AFFAIRS, NO.
and
MINISTER FOR FINANCE ECONOMIC PLANNING
AND DEVELOPMENT, NO.
and
PUBLIC SERVICE COMMISSION, NO.

HIGH COURT OF ZIMBABWE
TAKUVA J
HARARE; 4 July 2024 and 11 February 2025

Opposed Application

P Muzvazvu, for the applicant
T M Kanengoni, for the 1st respondent
P Chibanda, for the 2nd and 3rd respondents

TAKUVA J: This is an application for a declaratur wherein the specific relief is;

“1. That a declaratory order be and is hereby granted that a claim for entitlement to enjoyment and protection against a continued infringement of a fundamental right does not prescribe, hence the applicant association’s qualifying membership do remain each entitled, respectively, to full payment of any arrear monthly s 3 and 4(1) of the WAR VETERANS (Pension Scheme) Regs, SI 280/97, being the war veterans suitable welfare pension, occasioned them over the years, as guaranteed for under s 84(1)(a) of the Constitution and saved under s 27(4), (5), (6) and (7) of the Veterans of the Liberation Struggle Act [*Chapter 17:12*];

2. That consequential relief, being a compelling order, be and is hereby granted applicant ordering the first, second and third respondent jointly and severally the one complying for the others to be absolved to pay each respective member of the applicant association who is lawfully registered and qualifying in terms of SI 3 and 4(1) of the War Veterans (Pension Scheme) Regs, SI 280/1997, their respectively calculated, as at 31 July 2022, USD 364 791.58 and ZWL 137 138.13 total arrear monthly war veteran suitable welfare pension.

3. That there is no order as to costs.”

Following a series of disputes over the alleged under payment of applicant's members their statutorily entitled minimum monthly pension, the applicant has filed this application. The applicant relies on SI 280/1997 and MANGOTA J's judgment in *War veterans Pressure Group & Ors v Minister of Defence, NO & 2 Ors* HH 226-20.

The applicant has approached this court under S 85(1) of the Constitution against the State. Applicant allege the State has infringed and is continuing to infringe its members' fundamental war veteran's pension rights and entitlement protected by s 84(1) (a) of the Constitution and s 27 of the War Veterans of the Liberation Struggle Act [*Chapter 17:12*].

I should point out from the outset that when the application was filed initially on 29 August 2022, the parties were cited as:

WAR VETERANS PRESSURE GROUP ASSOCIATION
versus
MINISTER FOR DEFENCE AND WAR VETERANS AFFAIRS N.O
and
MINISTER FOR FINANCE, ECONOMIC DEVELOPMENT NO
and
PUBLIC SERVICE COMMISSION

The first respondent was cited in her official capacity as the "government Minister responsible and accountable to the State and the nation for all issues relating to war veterans ..."

The application was opposed by the first and second respondents on 12 and 13 September 2022 respectively. The third respondent filed its Notice of Opposition on 22 September 2022. On 29 January 2024 the applicant filed what it termed a NOTICE OF WITHDRAWAL OF APPLICATION AGAINST THE SECOND RESPONDENT (MINISTER OF DEFENCE).

In that notice it cited the parties as;

WAR VETERNAS PRESSURE GROUP ASSOCIATION ...APPLICANT
versus
MINISTER FOR VETERANS OF THE NATIONAL LIBERATION
STRUGGLE NO
and
MINISTER FOR DEFENCE NO
and
MINISTER FOR FINANCE, ECONOMIC PLANNING AND DEVELOPMENT
and
PUBLIC SERVICE COMMISSION NO

The notice reads:

“Take notice that the applicant hereby withdraws this application as against the second respondent only and tenders him /his wasted costs.

Further Take Notice that the reason for withdrawal is that following the recent reassignment of cabinet portfolios by the President of Zimbabwe, any order that the applicant could obtain as against the second respondent would be brutmen (sic) fulmen as she is no longer responsible for the affairs of the Veterans of the National Liberation Struggle, the subject of this application.”

Applicant also filed the following notice on 5 December 2023:

“NOTICE OF JOINING AND SUBSEQUENT SUBSTITUTION OF THE MINISTER FOR VETERNAS OF THE LIBERATION STRUGGLE AFFAIRS FOR THE 1ST RESPONDENT PARTY TO THESE PROCEEDINGS.

Take NOTICE that following the recent change of Cabinet status of the first respondent. Minister here to, through removal of the “WAR VETERANS AFFAIRS” aspect from her Defence and War Veterans Cabinet Portfolio and the creation there after of the separate and responsible cabinet portfolio for WAR VETERANS Affairs called MINISTRY FOR VETERANS OF THE LIBERATION STRUGGLE AFFAIRS, the applicant here by joins the MINISTER FOR WAR VETERANS OF THE LIBERATION STRUGGLE AFFAIRS NO to this application and further substitutes him as the first respondent party to these proceedings with the previous first respondent MINISTER FOR DEFENCE hence forth being now cited as the second respondent and similarly there after the current second and third respondents shall be cited as the third and fourth respondents, respectively, and the proceedings shall henceforth so continue against the Minister for Veterans of the LIBERATION STRUGGLE AFFAIRS, NO, as if he had been party from their commencement.

Applicant went on to state that the citation of the parties to the proceedings shall hereinafter appear as follows;

WAR VETERANS PRESSURE GROUP ASSOCIATION
versus
MINISTER FOR VETERANS OF THE LIBERATION STRUGGLE AFFAIRS NO
and
MINISTER FOR DEFENCE NO
and
MINISTER FOR FINANCE, ECONOMIC PLANNING AND
DEVELOPMENT NO
and
PUBLIC SERVICE COMMISSION

Further, TAKE NOTICE accompanying this notice for the now first respondent are copies of all documents previously filed and served in the proceedings.”

This is the notice that attracted strong criticism from the first, second and third respondents.

The main submission is that the notice is a nullity in that it conflates two rules namely; Rule 32(7)(8) of the High Court Rules 2021 and r 32/12 of the same rules.

Rule 32(7) provides “No proceedings shall terminate solely as a result of the death, marriage or other change of status of any person, unless the proceedings are thereby extinguished.

(8) If as a result of an event referred to in subrule (7), it is necessary or desirable to join or substitute a person as a party to any proceedings, any party to the proceedings may, by notice served on that person and all other parties and filed with the registrar, join or substitute that person as a party to the proceedings, and thereupon, subject to subrule (10) the proceedings shall continue with the person so joined or substituted, as the case may be, as if he or she had been a party from their commencement...”

On the other hand, Rule 32(12) provides *inter alia* that;

“(12) At any stage of the proceedings in any cause or matter the court may on such terms as it thinks just and either on its own initiative or an application.

(a)...

(b) order any person who ought to have been joined as a party or whose presence before the court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon to be added as a party.....”

There is a substantive difference between these two rules. The difference is that in terms of Rule 32(8), substitution can occur once a party serves a notice on another party without obtaining a court order. Whereas r 32(12) requires a court application and court order. Also, in terms of subrule (12) the party so joined must file fresh papers unlike in subrule (8).

Respondents contended that conflating the two rules can not produce the result that the applicant wants. The decision to cite the MINISTER OF DEFENCE as second respondent as one of the parties and the subsequent withdrawal of that party adds to the confusion in applicant’s “NOTICE”. I believe the withdrawal was motivated by the realization of their error to cite the two Ministers.

While I agree with Respondents that to some extent the two cited rules have been conflated, I disagree that the result is a nullity. In my view, the error is not one of substance. It is clear from the notice that the Applicant’s intention was to substitute one Minister for the other. The notice satisfies all the requisites of a substitution. It appears that in the desire to achieve an overkill, the applicant engaged in clumsy and sloppy drafting of the “notice.” Certainly, what the Applicant did is not the best way to go about effecting a notice of “Substitution.”

For these reasons I find that the notice to substitute was properly done. Accordingly, the point *in limine* raised by first, second and third respondents is dismissed for lack of merit.

Kanoti and Partners, applicants legal practitioners

Nyika Kanengoni and Partners, first respondents legal practitioners

Civil Division of the Attorney General, second respondents legal practitioners