

EX-CONSTABLE MASVINGISE F 081488Y
and
EX-CONSTABLE RASHAI K 081695Y
and
EX-CONSTABLE JARI
versus
THE TRIAL OFFICER (SUPERINTENDENT MTETWA)
and
THE COMMISSIONER GENERAL OF POLICE
and
THE CHAIRMAN OF POLICE SERVICE COMMISSION

HIGH COURT OF ZINBABWE
TAGU J
HARARE, 3 February & 22 March 2017

Opposed application

A Mugiya, for applicants
S Chafungamoyo, for respondents

TAGU J: The three applicants are ex-constables in the Zimbabwe Republic Police. On 2 May 2014 the three applicants were charged for contravening para 27 of the schedule to the Police Act [*Chapter 11:10*], “acting in an unbecoming manner or disorderly manner or any manner prejudicial to good order or discipline or reasonably likely to bring discredit to the Police Force”. They were convicted and sentenced to ten (10) days imprisonment at the detention barracks by the first respondent. The three applicants appealed against their conviction and sentence to the second respondent in terms of s 34 (7) as read together with s 11 of the Trials and Boards Regulations 1967. The second respondent dismissed their appeal in September 2014. On 12 September 2014 they appealed further to the Police Service Commission in terms of s 51 of the Police Act. The Police Service Commission then subsequently discharged all the three applicants from the service. They have now approached this Honourable Court with this application for review. The application for review was filed out of time, however, this court granted them condonation for late filing of the review in case HC 8934/15.

They are now seeking an order that-

- “1. The proceedings against the Applicants held by the 1st Respondent be and are hereby declared a nullity.
2. The 2nd Respondent be and is hereby ordered to reinstate the Applicants into the police force within 7 days from the date of this order.
3. The Respondents to pay costs of suit.”

The basis of the application as per their founding affidavit is that the record of proceedings is in shambles and it cannot be followed with certainty. They attached a copy of the record of proceedings. They further submitted that the Trial Officer failed to give reasons for the judgment of the applicants' convictions and the Trial Officer only sought to justify the applicants' conviction after he had pronounced them guilty. They went on to state that the Trial Officer's record of proceedings demonstrated that there were no reasons for sentence. The sentence was just plucked from the air. Hence it was grossly irregular for the Trial Officer to just pass a sentence without giving any reason for the sentence and how he arrived at the sentence. Lastly, they submitted that there is no nexus or any link whatsoever between the applicants and the offence so charged. It was therefore irregular for the first respondent to convict them. This clearly showed bias on the part of the first respondent towards the applicants.

The respondents opposed the application. The first respondent in his opposing affidavit submitted that the record of proceedings attached can be clearly followed as the trial officer's court is required to be as near as possible to the trials in the Criminal Courts. He further submitted that it does not mean that the procedure in the Single Officer's Court and the record of proceedings included should be as exactly as in the Criminal Courts but should try to be as near as possible. He maintained that the reasons for judgment were given and the fact that pronouncement of the verdict of guilty first cannot be a fatal irregularity to vitiate the proceedings. As regards the assessment of sentence he said he was guided by the statutory provisions and his sentence did not exceed his penal jurisdiction. Lastly he maintained that there was a nexus between the offence and the applicants. He said the state witnesses were consistent throughout the trial and they remained unshaken during cross examination. On the issue of bias he said it was an after -thought since it was not brought to his attention before for the court to make a determination on the issue of recusal. He prayed that the application be dismissed with costs.

I indeed read the record of proceedings attached to the application. The court noted that the applicants were represented by a legal practitioner throughout the proceedings. It is the same record of proceedings that was used by the respondents in confirming the

convictions and sentence. It was the same record that was used by the third respondent in dismissing the applicants from the Police Service Commission. It must be noted that the trial officer was not a trained magistrate but a fellow police officer. In my view he cannot be expected to handle the matter in the same manner a trained magistrate can do. What was done *in casu* was as near as possible to what a magistrate does in court. In my view there was sufficient compliance with the procedures such that the record cannot be said to be in shambles. The rules of natural justice were followed. As regards the pronouncement of verdicts, it is indeed true that the trial officer firstly announced that all the three applicants were guilty on page 52 of the record. But he did not end there, he then went on to give his reasons why he found the applicants guilty from pp 53-55. It was not an issue of the reasons being given later after being requested for. What is different from the normal procedure is that full reasons and analysis is made first before pronouncing the verdicts. The trial officer *in casu* did that in reverse. In my view this does not vitiate the proceedings to such an extent of declaring them a nullity. After delivering his reasons the trial officer asked for mitigations which were done on p 56 of the record. The trial officer then went on to say-

“The court will put into consideration your mitigation but since the offence was committed in connivance the court will pass down a uniform sentence.”

He then proceeded to sentence each applicant to ten (10) days in Chikurubi detention Barracks. While the reasons were brief it will be misleading to say no reasons for the sentence were given and that the sentence was plucked from the air. The conviction and sentence cannot for these reasons be quashed. In my view there was real and substantial justice done in this case. The application for review will therefore be dismissed.

In the result it is ordered that-

1. The application is dismissed.
2. The applicants to pay costs.

Mugiya & Macharaga law chambers, applicants' legal practitioners
Civil Division of the Attorney –General, respondents' legal practitioners