EX-CONSTABLE SHAMUYARIRA
versus
THE CHAIRMAN OF THE POLICE SERVICE COMMISSION
and
THE COMMISSIONER GENERAL POLICE
and
THE MINISTER OF HOME AFFAIRS

HIGH COURT OF ZIMBABWE
MANZUNZU J
HARARE, 16 March & 15 September 2021

COURT APPLICATION

N Mugiya, for the applicant
M Chiba, for the 1st and 2nd respondents

MANZUNZU J: In this court application the court has been called upon to decide a point *in limine* on whether the two grounds for review raised by the applicant are valid grounds and if not whether the application should be treated as fatally defective. The applicant seeks an order in the following terms;

"IT IS ORDERED THAT:

1. The 2nd respondent's failure to reinstate the applicant into the Police Service after she appealed in terms of section 51 of the Police Act is declared wrongful and unlawful.
2. The 1st respondent's failure to give the applicant written reasons for the dismissal of her appeal in terms of section 51 of the Police Act is held to be unlawful and wrongful.
3. The dismissal of the applicant from the Police Service by the respondents is not in accordance with the law and is therefore set aside.
4. The respondents are ordered to reinstate the applicant into the Police Service forthwith.
5. The respondents are ordered to pay costs of suit on a punitive scale."

The brief background to the matter is that the applicant who was a Police constable then was on 4 June 2015 charged and convicted for contravening paragraph 27 of the schedule to the Police Act, Chapter 11:10 as read with s 29 of the said Act. She was discharged from the Police Service on 17 December 2015. She appealed against her discharge. On 6 June 2016 her appeal was dismissed.

The applicant now seeks a review of the decision to discharge her from the Police Service and the subsequent dismissal of the appeal. The following were raised as grounds for review;

> "1. The discharge of the applicant from Zimbabwe Republic Police and subsequent dismissal of the applicant's appeal by the respondents is a result of gross miscarriage of justice and denial of the due process of law.
> 2. The applicant was not furnished with proper written reasons why the respondents have decided to take such drastic measure as contemplated in section 68 (2) of the Constitution."

The second respondent raised a point *in limine* in the notice of opposition in that applicant has failed to comply with r 226 (i)(a) of the High Court Rules in that she failed to serve the first respondent with this application. The preliminary point was abandoned at the hearing with the first and second respondents raising a new point *in limine* alleging that the application was fatally defective for non-compliance with Order 33 r 257 in that the first ground for review was not precise and specific and that the second ground was not a ground for review at all. Consequently, it was argued that there was no proper application before the court because the non-compliance goes to the root of the application and must be dismissed with costs.

Mr *Mugiya* for the applicant took a different view as he maintained that the grounds for review were proper. He argued the first ground relates to gross miscarriage of justice and the second ground is clear, simply put is, "I was not given reasons for my discharge". He further argued the 2 grounds for review were clear and concise and complied with s 27 (1) (c) of the High Court Act.

The issue therefore is whether the 2 grounds for review by the applicant constitute proper grounds for review.

This court apart from its inherent powers under the common law derives its right to review decisions of inferior bodies from s 26 of the High Court Act [*Chapter 7:06*] which provides that;

> "Subject to this Act and any other law, the High Court shall have power, jurisdiction and authority to review all proceedings and decisions of all inferior courts of justice, tribunals and administrative authorities within Zimbabwe."

Section 27 of the Act further states that;

> "(1) Subject to this Act and any other law, the grounds on which any proceedings or decision may be brought on review before the High Court shall be—
> (*a*) absence of jurisdiction on the part of the court, tribunal or authority concerned;
> (*b*) interest in the cause, bias, malice or corruption on the part of the person presiding over the court or tribunal concerned or on the part of the authority concerned, as the case may be;
> (*c*) gross irregularity in the proceedings or the decision.
> (2) Nothing in subsection (1) shall affect any other law relating to the review of proceedings or decisions of inferior courts, tribunals or authorities."

An application for review shall be by way of a court application as in the present case; see r 256. Rule 257 deals with the contents of notice of motion in the following words;

> "The court application shall state shortly and clearly the grounds upon which the applicant seeks to have the proceedings set aside or corrected and the exact relief prayed for."

Rules 256 and 257 create three requirements for the applicant seeking a review. The first, the relief sought must be by way of court application. The second requirement is that the grounds for review must shortly and clearly be stated. Thirdly, the grounds must appear on the face of the application and not stealthily sit in the founding affidavit, see *Gonye* versus *Mtombeni N.O & Ors*, HH 356/17. The first and third requirements are not contested.

The second requirement is that the grounds must not only be short but clear. I have no doubt that the applicant's grounds are short. When is a ground for review said to be clear? In my view the ground must from its reading portray an obvious meaning, devoid of ambiguity, easily understood from the plain language used and free from confusion. This however is not a licence for an applicant to then bring into play any ground which is not recognizable at law. Section 27 of the Act, cited *supra*, has set parameters in peremptory terms by the use of the word "shall" on what can be raised as grounds for review. While the applicant has not followed the exact wording of the Act, the grounds for review are shortly and clearly stated. The application cannot be said to be fatally defective as to warrant the same being struck off the roll.

Disposition

1. The point *in limine* raised by the 1st and 2nd respondents be and is hereby dismissed.
2. Costs shall be in the cause.

Mugiya and Macharaga Law Chambers, applicant's legal practitioners
Civil Division of the Attorney General, 1st and 2nd respondents' legal practitioners