

JONA NDALAMA

VERSUS

COMMISSIONER GENERAL OF POLICE

AND

CHIEF SUPERINTENDENT SIGAUKE

AND

CO-MINISTER OF HOME AFFAIRS

IN THE HIGH COURT OF ZIMBABWE

MOYO J

BULAWAYO 1 NOVEMBER 2013 AND 6 FEBRUARY 2014

Applicant in person

W. Marecha for the respondents

Opposed matter

MOYO J: This is an application for condonation for the late noting of an appeal against the decision of the Commissioner General of Police (the 1st Respondent herein). The Respondents could not be heard in court although present as no heads of argument had been filed by the Respondents. The Applicant was convicted in terms of the Police Act [Chapter 11:10] and was sentenced to pay a fine of \$10-00 by a single officer. He appealed to the Commissioner General of Police in terms of the Police Act and his appeal was dismissed. He filed an application for review in HB 153/11 and the application was dismissed by NDOU J (as he then was). The Applicant then noted an appeal which is now out of time hence the need to apply for condonation.

The problem that faces the applicant herein is the propriety of the appeal itself. Section 34 (1) of the High Court Act [Chapter 7:06] provides that:-

“The High Court shall have jurisdiction to hear and determine an appeal in any criminal case from the judgment of any court or tribunal from which, in terms of any enactment, an appeal lies to the High Court.”

There is however no provision in the Police Act [Chapter 11:10] that stipulates that an appeal against the decision of a single officer or of the Commissioner General lies with the High Court.

In terms of Section 51 of the Police Act [Chapter 11:10],

“A member who is aggrieved by any order in terms of section 48 or 50 may appeal to the Police Service Commission against the order within the time and the manner prescribed, and the order shall not be executed until the decision of the Commission has been given.”

The Police Act [Chapter 11:10] does not therefore provide for appeals to the High Court and the High Court clearly in terms of Section 34(1) alluded to herein has no jurisdiction to hear Applicant’s appeal. In considering whether an application for condonation for the late noting of an appeal should be granted or not the court has to make the following considerations:-

- (a) whether the Applicant has a reasonable explanation for failure to note the appeal on time, and,
- (b) whether there are prospects of success on the merits (that is, on the appeal itself).

Refer to *Fuyana v Moyo* SC 236/00. The fact that there is no provision in the Police Act [Chapter 11:10] for an appeal to this court in the manner that Applicant seeks to proceed, is in itself a pointer to the lack of merit in the appeal noted by the Applicant. It therefore follows that the appeal is devoid of merit and has no prospects of success at all. Accordingly therefore, this application can not succeed.

I accordingly dismiss the application with no order as to costs as none were applied for.

Civil Division, Attorney General’s office, respondents’ legal practitioners