

TOVERENGWA MAREGA
versus
THE OFFICER IN CHARGE HARARE CENTRAL PRISON
(CHIEF SUPERINTENDANT C. MUSONZA)
and
THE COMMISSIONER GENERAL OF PRISONS & CORRECTIONAL SERVICES

HIGH COURT OF ZIMBABWE
TAGU J
HARARE, 24, 30, 31 December 2015 and 13 January 2016

Urgent Chamber Application

Mr *T. Takaindisa*, for applicant
Mr *L.T. Muradzikwa*, for respondents

TAGU J: The applicant, a non-commissioned rank member of the Prison Services, appeared before a disciplinary committee on 6 November 2015 at Harare Central Prisons facing a series of misconducts. He was convicted and ordered to pay a fine of US\$ 50.00 and was further given a severe reprimand. However, the second respondent who is the Commissioner of Prisons substituted the decision of the disciplinary committee with that of a dismissal on 10 December 2015. On 15 December 2015 the applicant was notified of his discharge from the Zimbabwe Prisons and Correctional Services in terms of their disciplinary code. Dissatisfied with the dismissal and on 17 December 2015 the applicant filed his Notice of Appeal to the Public Service Commission. Meanwhile, on 21 December 2015 the first respondent who is the officer in charge at Harare Central Prisons told the applicant to vacate his accommodation at Number C6 Mupfure Flat, Old Prison Camp, Harare, which was his workplace accommodation within 48 hours failure of which the first respondent would forcibly evict the applicant. The notice to vacate staff accommodation within 48 hours precipitated this application where the applicant is now seeking the following relief:

“TERMS OF THE FINAL ORDER SOUGHT

1. The respondents are interdicted from evicting the applicant from No. C6 Mupfure Flat, Old Prison Camp, Harare, until his appeal to the Public Service Commission is finalised.
2. The respondents are barred from harassing and threatening the applicant and his family with whatever manner of threats.
3. The respondents are ordered to pay costs of suit on a client- attorney scale.

INTERIM RELIEF GRANTED

Pending the confirmation of the provisional order, an interim relief granted on the following terms;

1. The eviction of the Applicant from No. C6 Mupfure Flats, Old Prison Camp, Harare be and is hereby stayed.”

In his founding affidavit the applicant submitted that the intended eviction is illegal in that (1) it is to be done without a court order contrary to the provisions of s 74 of the Constitution of Zimbabwe;

- (2) the dispute with his employer is still on going and it will be improper for the respondent to evict him before that dispute is finalised, and
- (3) the eviction is contrary to the Rent Regulations which require certain procedures to be complied with before a person is evicted from one’s accommodation.

The respondents opposed the application on the basis that the applicant cannot seek recourse from s 74 of the Constitution because the accommodation in dispute is a ZPCS institutional house. The applicant was only allocated the house to use while working as a Prison Officer. Considering that he has been dismissed from the ZPCS the benefits of occupying the house in dispute falls away in terms of s 9 (2) of Prisons (Staff) (General) Regulations 1968. Hence he cannot take such accommodation as his home in terms of section 74 of the Constitution. Further, they argued that s 9 (2) of Prisons (Staff) General Regulations 1968 empowers the Commissioner General of ZPCS to withdraw any accommodation issued to a member who ceases to be a member of ZPCS. Section 22 (3) of Prisons (Staff) (Discipline) Regulation 1984 and s 9 (2) of Prisons (Staff) unequivocally authorises them to dismiss a member even if an appeal to Public Service Commission is pending. Lastly, they argued that the applicant was not leasing the house in dispute hence he cannot seek recourse from Rent Regulations.

Section 74 of the Constitution of Zimbabwe says:

“74 Freedom from arbitrary eviction

No person may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances”

The above section envisages a situation where a person can only be evicted with an order of court. In *casu*, the respondents argued that they did not act arbitrarily because the applicant was given written notice after invoking s 22 (3) of the Prisons (Staff) Regulations 1984 and s 9 (2) of Prisons (Staff) Regulations 1968. Section 22 (3) of the Prisons (Staff) Regulations 1984 say:

“Any punishment confirmed by the Commissioner in terms of this section shall have immediate effect notwithstanding the fact that an appeal may subsequently lie to the Public Service Commission.”

I agree with the respondents that the appeal noted by the applicant does not suspend the order made by the Commissioner of Prisons. To that extent the applicant remains dismissed from the service until the Public Service Commission decides his appeal. The Commissioner’s order has immediate effect. The applicant therefore has to comply with the order of the Commissioner.

However, s 9 (2) of the Prisons (Staff) (General) Regulations 1968 deal with the vacation of staff quarters. It says:

“Vacation of quarters

9. (1).....

(2) If a member ceases to be a member or is suspended from office or dies and he or, as the case may be, his dependants are occupying quarters he or his dependents shall vacate such quarters when ordered to do so by the Director in writing.”

In the present case the Officer- In- Charge of Harare Central Prisons Chief Superintendent C Musonza, on behalf of the Director wrote a letter to the applicant notifying him to vacate the quarters with immediate effect. The letter read as follows:

“TO (Former Prison Officer) MR Marega

RE: VACATION OF QUARTERS

1.....

2. Please note on 15 December 2015 you were advised of your dismissal from the service and a copy of such a letter was handed over to you.
3. in addition you were also advised to vacate the Quarters with immediate effect in accordance with our regulations as read with circular 11/88 from the Commissioner General of Prisons.

4. Be advised that your prolong stay in our Prison Quarters is no longer tolerated hence this letter to vacate immediately.
5. Failure to vacate Quarters soonest will call for unspecified action without warning, so be a gentleman of principle who fights his war from outside.
6. Remember to hand over your service uniforms and service I.D. card.”

It is this notice to vacate quarters with immediate effect that prompted the applicant to file this urgent application. As I stated above the mere notice of appeal to the Public Service Commission does not in terms of the Prison regulations suspend the order of the Commissioner. However, what has to be decided is whether these regulations super cede the constitution and whether the Rent Regulations are applicable to the applicant.

Section 74 of the Constitution of Zimbabwe envisages a situation where one cannot be arbitrarily evicted from or have his or her home demolished without a court order. In the present case the applicant was tried by a disciplinary committee and was convicted. The punishment was confirmed by the Commissioner and the applicant has been dismissed from the Prison Service. He is no longer a member of the Prison Service though he has appealed to the Public Service Commission. His eviction from the quarters is not arbitrary since the respondents complied with the regulations. In particular the applicant was staying in a government flat by virtue of his employment. The flat is strictly speaking not his home. It is a government house. In my view the applicant cannot rely on s 74 of the Constitution because the home or house he is being advised to vacate is not his. Had it been his home then a court order would ordinarily be required before he is evicted or the house demolished. Given the fact that the applicant has been fired from his employment the employer has no obligation to secure alternative accommodation for a former employee. What the Director is expected to do is to simply give notice to a former member to vacate. I agree with the counsel for the respondents that to allow applicant to continue residing in a government house until a court order is obtained would set a bad precedent since any member who ceases to be a member of the Prison Service would resist vacating government accommodation once they cease to be government employees. Therefore s 74 of the Constitution does not apply to the applicant.

Do the Rent Regulations apply to the applicant? The Rent regulations, 2007, specifically state situations where they apply. In the present case the applicant was not a tenant who was paying rentals to the government. He was staying freely in the reserved flats for members of the force. Section 2 of the Rent Regulations 2007 provide as follows:

“(2) These regulations shall not apply to –

(a) the letting of a dwelling by the State or a Local authority.

(b) the letting of a dwelling by any authority, board, commission, council or other like body, having corporate personality and established for public purposes directly by an Act of Parliament.”

In my view the Rent Regulations specifically exclude dwellings let out by the State, Local authority, board, council, or commission from the application of the regulations. In the present case the flat in question is let out to the applicant and other members of the Prison Service by a commission. To that extent the applicant cannot rely on the Rent Regulations to cling to the house in question.

However, a look at the provisions of s 9 (2) of the Prisons (Staff) (General) Regulations 1968 leaves a lot to be desired. The regulations empower the Director to order a member or former member to vacate the quarters in writing. The Regulations do not stipulate the time frame within which a member is supposed to vacate. It is of general application and leaves the Director to stipulate whatever conditions and time frames he deems fit. In the present case the applicant was advised to vacate the quarters with immediate effect. I agree to some extent with the counsel for the respondents that this flat is within a cordoned area and reserved for members only and for security reasons must be accessed by authorised personnel only since it is close to where prisoners are housed. The applicant has ceased to be a Prison Officer by virtue of his dismissal. The counsel for the respondents conceded that in situations where a member resigns, goes on pension, is fired or a spouse dies the member or surviving spouse in normal situations is given about 3 months to vacate after looking for alternative accommodation would be reasonable, asked the court to extent the time within which the applicant has to vacate the quarters.

In my view, it would be too harsh to expect the member to vacate with immediate effect. The member has to be given reasonable period within which to look for alternative accommodation. In the circumstances the notice given to the applicant should have given him reasonable time within which to vacate. The application will only succeed to the extent that the applicant must have been given reasonable period within which to vacate. On compassionate grounds I will extent the period within which the applicant has to vacate the quarters. For avoidance of doubt the applicant is not entitled to remain in the quarters until the appeal by the Public Service Commission has been finalised. I will grant the order as

varied below. I am empowered to amend a draft order in terms of Order 32 r 246 (2) of the High Court Rules, 1971. The rule reads as follows:

“(2) Where in an application for a provisional order the judge is satisfied that the papers establish a prima facie case he shall grant a provisional order **either in terms of the draft or as varied**” (my emphasis).

In the result I make the following order:

TERMS OF THE FINAL ORDER

1. The Respondents are interdicted from dismissing the applicant from the Prison Service and Correctional Services until his appeal to the Public Service Commission is finalised.
2. The respondents are ordered to pay costs of suit on a client – attorney scale.

INTERIM RELIEF GRANTED

Pending the confirmation of the provisional order, an interim relief is granted on the following terms;

1. The eviction of the Applicant from No. C6 Mupfure Flats, Old Prison Camp, Harare be and is hereby stayed for 3 months from the date of service of this order.
2. The Applicant’s legal practitioners are authorised to serve this order.

Mugiya & Associates, applicant’ legal practitioners
Civil Division of the Attorney-General’s Office, respondents’ legal practitioners