SIMBARASHE CHESTER MATSVIMBO
versus
CENTRAL INTELLIGENCE ORGANISATION
and
THE DIRECTOR GENERAL OF INTELLIGENCE SERVICES (N.O.)
and
THE MINISTER OF STATE SECURITY

HIGH COURT OF ZIMBABWE
MUCHAWA J
HARARE, 26 March & 27 May 2024

Opposed Matter: Application for Review

Mr *T Mutonhori*, for the applicant
Ms *N L Mabasa*, for the first, second & third respondents

MUCHAWA J: This is a court application for review in terms of s 26 of the High Court Act [Chapter 7:06]. The draft order of the applicant is to the following effect:

> "IT IS ORDERED THAT: -
>
> 1. The disciplinary proceedings against the applicant on 15 September 2022 be and are hereby quashed.
> 2. The decision of the first respondent demoting the applicant from the position of senior intelligence officer to assistant senior intelligence officer be and is hereby set aside.
> 3. The applicant be and is hereby restored and reinstated to his grade/ position as senior intelligence officer with full pay and benefits with effect from the 15 September 2021.
> 4. Costs of suit at the scale of attorney/client."

Background Facts

The applicant was employed by the first respondent a State Intelligence Service which is established in terms of the Constitution of Zimbabwe under s 224 (1) as read with the Prime Ministerial Directives on State Security and Intelligence, of 31 October 1963 and 24 June 1980.

Second and third respondents are cited in their official capacities as the Director General of Intelligence Services and Minister for State Security.

The employment relationship between the applicant and first respondent commenced on 17 February 2007 in the position of Senior Security Officer.

On 18 May 2021, the applicant and a co- worker Patrick Badza were arrested on allegations of extortion as defined in s 134 (1)(a) of the Criminal Law (Codification & Reform)

Act [Chapter 9:23]. The facts giving rise to the allegations were that, the applicant and Patrick Bodza had attempted to extort and/or demanded US $ 9900.00 from Live Touch Mine Managing Director, Kyle Donayehaun Wang on the pretext that they could facilitate the processing of temporary employment permits of thirty- three of Mr Wang's Chinese counterparts.

Upon being arrested, the two were placed on remand on 20 May 2021 and were denied bail. They remained there and were only granted bail some months later, albeit separately.

Upon his release in July 2021 the applicant says he reported at work and was advised that he had been suspended with effect from 28 May 2021. He was further advised that a disciplinary hearing would be conducted in due course. Such hearing was only conducted on 15 September 2022. The applicant was demoted from the rank of Senior Intelligence Officer to Assistant Senior Intelligence Officer with effect from the date of the approval of the recommendations. He was also transferred from the Foreign Recruitment Committee to any other Division at the discretion of the Director Counter Intelligence Additionally he was to be refunded the salary and allowances he lost during the period 22 August 2021 to 6 January 2022.

Disgruntled by how the disciplinary proceedings were conducted, the applicant has filed this application for review. The grounds on which he relies on are put as follows:

1. The first respondent's decision to institute and conduct disciplinary proceedings against the applicant sixteen months after his suspension is grossly outrageous in its defiance of procedure, such that no reasonable administrative body having applied its mind to the circumstances of the case would have so acted.
2. The first respondent suspended the applicant whilst he was detained at Harare Remand Prison, and in the process divested him of the right to be informed of the nature of the allegations upon which such suspension was premised and also to be accorded an opportunity to make representations in response.
3. The first respondent conducted a hearing which was anchored on a lapsed suspension order, thus rendering the proceedings a nullity. The applicant ought to have been reinstated forthwith.
4. The Chairman of the disciplinary committee did not keep an accurate record of the Substance of the evidence led at the hearing more so in that,

(a) The supposed record of proceedings attached hereto is a third-party paraphrasing of what is alleged to have been said.

(b) The discourse in respect of the request to have legal representation by the applicant is obliterated.

5. Hitherto, the first respondent has not advised the applicant of the outcome of the proceedings notwithstanding the hearing having been conducted 9 months ago.
6. Bias and partiality on the first respondent in that his counterpart, one Patrick Badza, who faced similar allegations was reinstated to his position without any loss of benefits and similar entitlements.

The relief sought is that:

1. The disciplinary proceedings against the applicant on the 15 September 2022 be and are hereby quashed.
2. The decision of the first respondent demoting the applicant from the position of Senior Intelligence Officer to Assistant Senior Intelligence Officer be and is hereby set aside.
3. The applicant be and is hereby restored and reinstated to his grade/ position as Senior Intelligence Officer with full pay and benefits with effect from 15 September 2021.
4. The respondents pay costs of suit at the scale of Attorney/ Client.

At the hearing of this matter, the parties did not make any oral submissions and opted to have the matter determined on the papers after supplying a complete record of proceedings. I now have the complete record of proceedings and proceed to make my ruling on the different issues raised which I address in turn below.

Point *in Limine*

The applicant raised the point that there is no proper opposition before the court as the deponent to the opposing affidavit is not duly authorized to so depose. The deponent is one Patrick Ronald Mutasa and is alleged not to have substantiated his authority. Resultantly, it is argued that it is not known who exactly he is. The case of *Cuthbert Elkana Dube* v *Premier Service Medical Aid* SC 73/19 was referred to in support of the averment that a person who represents a legal entity must show that he is duly authorized to represent the entity. His mere claim that he holds such a position in the entity and is therefore duly authorized was said to be insufficient. It was held in that case that such person must produce a resolution of the board of the entity which confirms that the board is aware of the proceedings, and it has authorized the deponent to act in its stead. Other cases referred to are *Beach Consultancy (Private) Limited* v *Obert Makanya & Anor* HC 6557/21 & *Madzivire & Ors* v *Zvarivadza & Ors* 2006 (1) ZLR 514 (S).

On the other hand, it was argued that the first respondent is not a company but a government department. A company resolution is said to be required as proof authorizing the deponent to proceedings where a company is involved and not in the present matter. It is argued that it is common cause that in government institutions and departments certain officials are given authority to act through delegation by virtue of their offices to remove bureaucracy and facilitate the smooth flow of work.

Mr Mutasa who at the outset mentioned who he is, in what capacity he was deposing to the affidavit, the fact that he was authorized by the first, second and third respondents to depose to affidavit, is said to have authority.

Further it is explained that the Director Administration in the Central Intelligence Organisation is the chief administrator who is responsible for all the administrative processes on behalf of the organization. In that regard, he is said to be properly authorized to depose to the affidavit.

The case of *Masango* v *Masango* HH 139/16 was referred to, to argue that in a case such as this one must state who he is, what his relationship to the legal entity is and that he has been authorized to depose to the affidavit on its behalf.

R 58 (4) (a) is adverted to as providing that an affidavit to be filed with a written application shall be made by the applicant or respondent as may be, or by a person who can swear to the facts or averments set out therein. It is argued that Mr Mutasa as the Director of Administration and the one responsible for all administrative process is fully knowledgeable of all the facts and averments he makes, and he can swear positively to them. See also the case of *Minister of Defence, Security and War Veterans Affairs N.O.* v *Manyeruke* HH 389/21.

A further point is made that the applicant did not challenge the capacity of Mr Mutasa to depose to the opposing affidavit in the answering affidavit and only did so in the heads of argument. It is argued that this is not correct at law.

It is trite that a point of law can be raised at any time. It cannot be fatal to the application that this point was first raised in its heads of argument.

The deciding factor and what distinguishes this case, is that the applicant relies on authorities which speak to companies and not government departments. There can be no doubt that Mr Mutasa is authorized to depose to the opposing affidavit by virtue of his position as Deputy Director General Administration in the Central Intelligence Organisation, It is my finding that the opposing affidavit is properly before the Court.

Whether the disciplinary hearing was conducted within the time frame stipulated in the relevant Code of Conduct

It is the applicant's submission that according to s 38 and 41 of the Code of Conduct for the Department of State for National Security, a disciplinary hearing ought to be conducted within fourteen days of the imposition of a suspension order. These provisions are alleged to be peremptory, but these were disregarded, and the disciplinary hearing only happened after one year and four months.

It is contended that noncompliance with a peremptory provision of the Code of Conduct renders any subsequent action done thereafter, a nullity. In support of this argument, the court was referred the case of *Standard Bank Ltd* v *Van Rhyn* 1925 AD 266 and the text Wiechers, *Administrative Law*, 1985 at p 198-199.

Per *contra*, it is submitted, for the respondents that s 38 and 41 of the Code of Conduct, do not stipulate a time frame within which disciplinary proceedings should be conducted and completed following the imposition of a suspension order.

S 39 (2) of the Code of Conduct is said to only provide that disciplinary proceeding should be instituted within fourteen days of a suspension order. It is argued that this does not mean that such disciplinary proceedings should therefore be completed within a fourteen-day period, once instituted.

The Code of Conduct is alleged not to provide any time limits within which an allegation of misconduct must be determined. It is however conceded that in terms of the Constitution of Zimbabwe, 2013, every person has a right to a fair, speedy, and public hearing within the reasonable time.

In casu, it is contended, it was impractically possible to institute disciplinary proceedings during the time the applicant was in custody as that would have deprived him of an opportunity to be heard and to respond to the allegations against him. It is argued that in the circumstances the time when the disciplinary proceedings were instituted was not grossly unreasonable as these were instituted immediately following his release from custody.

Contrary to the above averment, the applicant avers that he was in detention from 18 May 2021 to 23 July 2021. He questions why the respondents have not explained the delay from July 2021 to 15 September 2022 when the hearing was eventually held.

S 38 of the Code of Conduct provides for the procedure to be followed before and immediately following allegations of misconduct. In subsection 1 it is provided as follows:

"Where a report is received by a disciplinary authority to the effect that a member is suspected of having committed an act of misconduct, the disciplinary authority shall cause to be conducted, such investigations as may be necessary to assess the alleged act of misconduct."

In terms of subsection 2, the disciplinary authority is obliged to inform the member, in writing, of the nature of allegations against him and call upon him to submit a written response to the allegations within fourteen days. Subsection 3(a) then provides that within fourteen days of receiving the member's reply, or if none is availed, it shall refer the matter to a disciplinary committee for hearing.

S39 gives the disciplinary authority or the Director Administration the option to impose a suspension order where a member is facing allegations of misconduct or is subject to criminal proceedings where their continued reporting at work would not be conducive, would seriously impair the proper functioning of the Department or result in financial or other prejudice or hinder investigations *inter alia.* In terms of S 39 (2) (b) where a suspension order has been imposed, then disciplinary proceedings shall be commenced, not later than fourteen days thereafter unless there is an extension of the period of suspension for a further fourteen days, in writing.

S 41(1) provides that within fourteen days of receiving the documents from the disciplinary authority, the disciplinary committee shall give not less than fourteen days' notice to the member concerned of the time, date and place of the hearing of the allegation of misconduct against him.

In this case I was not favoured with the suspension order served upon the applicant whilst he was in custody to ascertain the date on which it was issued out and how long it would run. It is however common cause that the applicant was in custody from 18 May 2021 to 23 July 2021. The convening order for the hearing was only served on the applicant on 22 August 2022. Whilst I understand that this could not have been done before the 23 July 2021, as he was incarcerated, there is no explanation for the inaction from 23 July 2021 to 22 August 2022.

A perusal of the Code of Conduct shows that the intention is to have the disciplinary proceedings commenced as soon as reasonably possible within a period of two months. The first thing is to inform a member, in writing of the allegations against him and call upon him to submit a written response within fourteen days. After a further fourteen days the disciplinary authority refers the matter to a disciplinary committee for hearing. The committee itself has another fourteen days to convene the hearing by advising the member about the details of the hearing and it should give the member at least fourteen days' notice.

If the suspension route is preferred, then disciplinary proceedings should be commenced within fourteen days of the lapsing of such suspension order.

Other than the convening order, the record does not have proof of an initial written notification of the allegations against the applicant or the suspension order.

There does not seem to be a timeframe on when disciplinary proceedings should be concluded. A delay of more than a year in commencing disciplinary proceedings cannot by any imagination be reasonable given the indicative timeframes. It is therefore my finding that the disciplinary hearing was not conducted within the time frames stipulated in the Code of Conduct.

The Supreme Court has long settled that an employer's failure to adhere to timelines in disciplinary matters does not have the effect of nullifying the proceedings.

In *Stella Nhari v Zimbabwe Allied Banking Group* SC 51/13, it was held that a delay alone cannot justify reinstatement and that delay merely gives the aggrieved party the right to the remedy of a mandamus to enforce due compliance with any time limits.

In the matter of *Mombeshora v Institute of Administration and Commerce (Zimbabwe)* SC 72/17 it was held as follows:

"------it is clear that, where disciplinary proceedings are conducted out of time, the delay does not nullify such proceedings, nor does it stop the proceedings from ever being held."

It is my conclusion therefore that though there was a delay in the matter at hand, it does not nullify the disciplinary proceedings.

Whether the applicant was duly advised of the nature of the allegations upon which the suspension was premised and whether he got an opportunity to make representations in response.

The applicant says that he learnt of his suspension when he reported for duty after being granted bail. This was done orally. He claims too that he was not invited to make a written response to the allegation.

The respondents did not refute these averments. I have already canvassed this issue and indicated that there is no suspension order on record. There are no written allegations of misconduct from the disciplinary authority. There is no response on record to the allegations by the applicant. However, the minutes reflect that his written response was part of the documentary evidence. All there is, is the convening order advising of the details of the hearing.

It is my finding therefore that the applicant was not duly advised of the nature of the allegation upon which the suspension was premised or the intended disciplinary proceedings

at the outset before the convening order. The applicant did not therefore get an opportunity to make representations in response before the convening order.

Whether the lapse of the suspension order rendered the disciplinary hearing proceedings a nullity

It is the applicant's submission that his hearing was anchored on a lapsed suspension order, and this renders the hearing a nullity. It is stated that he was suspended initially whilst in police custody though he never saw the written suspension order. He claims to have been orally advised of the suspension soon after 23 July 2021 when he reported for work. Since the convening order was issued a year later, it is argued that the suspension had lapsed.

The respondents submitted that the Code of Conduct prescribes different procedures for preferring charges against a member and suspension from duty. It is contended that it is quite competent for a disciplinary authority to prefer misconduct charges without simultaneously suspending a member from work. It is therefore optional to impose suspension given the circumstances of each case.

The position of the law is explained to mean that where a suspension expires, only the suspension falls away and not the charge that may give rise to the suspension. The case of *Shumbayaonda* v *Minister of Justice Legal and Parliamentary Affairs* SC 11/14 was relied on.

I agree with the respondents. As per *Shumbayaonda supra* I hold as follows:

> "…… a suspension is not a prerequisite to the holding of disciplinary proceedings and that a disciplinary hearing does not have to take place during the period of suspension. I further accept the respondent's submission that a suspension has expired cannot prevent the holding of disciplinary proceedings."

I therefore find no merit in this ground.

Whether the Chairman of the Disciplinary Committee kept an accurate record of the substance of the evidence led at the hearing

It is submitted by the applicant that s 41 (5) of the Code of Conduct enjoins the Chairman of the disciplinary committee to avail a record of the evidence led at the hearing. It is argued that this was not done as the record is a paraphrasing of what witness are thought to have said. It is pointed out that the testimony of the applicant is completely missing as is his cross examination of the witnesses. In short, the record is said to be shambolic as it even misses the portion about the legal representation of the applicant and his request for a postponement.

The case of *S v Liberty Musiiwa* HH 52/20 was adverted to emphasize the need for a proper record of proceedings.

The respondents submitted that a correct and proper record of proceedings was compiled in accordance with the way this is normally done within the organization. It is argued that there is no missing information and all what transpired was recorded and forms part of the record. Such record of proceedings is said to have been availed to the applicant.

S 41(5) provides as follows:

> "The chairman of the disciplinary committee shall keep or cause to be kept an accurate record of the substance of the evidence led at the hearing"

This provision does not fall squarely within that of a Magistrates Court. The case of *S v Liberty Musiiwa supra* related to proceedings of a magistrates court and CHITAPI J observed as follow:

> "Since the Magistrates Court is a court of record, the record of proceedings especially where the proceedings are not on tape should show the details of what transpired and been said by the court the accused and vice versa."

S 41 (5) means that the chairman must keep the essence or essential nature of the evidence led at the hearing. It does not have to be verbatim.

The case of *Chataira* v *Zimbabwe Electricity Supply Authority* SC 83/ 01 is instructive. Therein it was stated that the requirement of a fair hearing does not mean that employers must handle disciplinary proceedings according to the rigorous standards of a court of law.

A perusal of the disciplinary hearing minutes reflects the composition of the committee, the charge put against the applicant, the facts giving rise to these, the date of the hearing, and the documentary evidence considered. The preliminary issues relating to legal representation are set out. It is recorded that the applicant pleaded not guilty and his defence outline is set out. The questions put to the applicant by the board are set out. The testimony of the witness Kyle Dongchain Wang is detailed as is that of Smart Marlon Mandofa who investigated the allegations against the applicant and his colleague Badza. In this are summaries of what came through under cross examination. The findings of the committee are also set out clearly, submissions in mitigation and recommendations.

It is my finding that the substance of the evidence led at the hearing is properly captured. The desire to subject the chairman of the disciplinary hearing committee to the same rigorous standards of a court of law is not acceptable in disciplinary hearings whose committees are constituted by lay persons and not legal practitioners.

Whether the applicant has been advised of the outcome of the disciplinary proceedings

It is the applicant's contention that he was never informed of the verdict contrary to the peremptory provision in s 42(3) of the Code of Conduct. He believes this was calculated to prevent him from acting against the outcome of the hearing. The applicant says that he started noticing a deduction in his salary and learnt later that it was implementation of the verdict and penalty of the disciplinary committee. It is argued that this is a statutory infraction which must be turned aside.

This respondent averred that the practice and tradition of the organization was followed and the applicant was informed of the outcome through the Director of the branch he is now working under and a copy was forwarded to him. The claim that he was not informed nor served is rebutted.

Section 42 (3) (b) provides as follows:

> "where the disciplinary authority determines that a member is guilty of misconduct, the disciplinary authority shall-
> (a)----------
> (b) notify the member in writing of its determination and the penalty imposed upon the member; and ……."

On record, at p 58 is a written communication dated 8 November 2022 directed to the Director Counterintelligence whose subject matter is "Disciplinary Hearing Results: Senior Intelligence Officer, (SIO) Chester Simbarashe Matsvimbo"

A letter on record from the applicant's legal practitioner shows that they requested the minutes of the disciplinary hearing and the outcome of the hearing on 9 February 2022. This implies that the applicant was not notified timeously in writing of the outcome and only got this information upon request. This should not be so.

The only prejudice the applicant has pointed to is the attempt to bar him from challenging the outcome. This seems to have been overcome as the applicant is already before this court. The respondents, should however, devise a timely communication method which allows a member to sign in acknowledgment of receipt.

It is my considered view that this infraction does not, in the circumstances have any weight to cause the court to set aside the findings of the disciplinary committee.

Whether there was bias on the part of the disciplinary committee

This issue is not addressed in the applicant's heads of argument. In the founding affidavit it is started that the conduct of the first respondent in treating two similar cases differently wherein he was demoted yet his colleague was reinstated demonstrates partiality. It is argued that this runs foul of the constitutional requirement that administrative conduct must

be proportionate, impartial and both procedurally and substantively fair. It is prayed that the disciplinary outcome be set aside.

In their notice of opposition, the respondents point out that the applicant is being unreasonable as two separate proceedings were conducted for the two. In the circumstances the court is said to be unaware of the factors which were considered in coming up with the different decisions in the two matters.

The applicant's argument which raises the parity principle has been put to rest in a long line of cases by the Supreme Court. *In Lancashire Steel (Private) limited* v *Mandevana* & *Ors* SC 29/95 the court stated that

> "Arguments may be addressed ad misericordiam as to how unfair it is that the four respondents out of a number of forty workers who participated in the unlawful job action should have been selected for punishment, but such arguments cannot absolve them of their breach of their statutory duty not to participate in such action. It is not uncommon for the alleged ringleaders in any unlawful gathering or action to be singled out for punishment. If they are guilty, it is not in law relevant that others may be guilty."

In *Zimbabwe Banking Corporation Limited* v *Saidi Mbalaka* SC 55/15 the above case was cited with approval. The court then observed that the employer is reposed with a discretion in discipling an employee for an alleged misconduct. It was noted:

> "This does put to rest the argument about perceived selective punishment and victimization. The respondent should face the consequences of his actions and cannot be allowed to hedge behind others."

The above cases do put to rest the applicant's argument of partiality and bias of the disciplinary committee. If he was found guilty, it was up to the committee to exercise its discretion and impose an appropriate penalty. As there were two separate hearings the other committee also exercised its discretion after assessing the factors of the matter.

Whether the applicant was deprived of the right to legal representation

The applicant avers that on the day of the hearing, he brought his legal practitioner of choice who was denied audience because his practicing certificate had not yet been processed. He states that upon the departure of the legal practitioner, he pleaded for a postponement of the matter, but this was denied. The capturing of the minutes is said to be incomplete as the request for a postponement is not captured.

Resultantly the hearing proceeded without any legal representation for the applicant. The applicant argues that it does not make sense that it is recorded that he consented to proceeding without a legal practitioner when he had gone to the trouble of securing one.

It is contended that the applicant's right to choose and be represented by a legal practitioner even before a tribunal or forum as enshrined in s 69 (4) of the Constitution of Zimbabwe, were infringed.

The respondents concede to the provisions in s 69 (4) of the Constitution. They however deny that the applicant was denied this right. The convening order is pointed to as providing a section where a member indicates if he will be legally represented at the hearing.

It is contended that it is a trite position that a legal practitioner should produce a practicing certificate in order to have audience when representing a client.

The version of events from the respondents is that upon the departure of the applicant's legal practitioner, his views were sought regarding the way forward and he opted to proceed as a self-actor. It is contended therefore that the applicant was never denied the right o legal representation.

This is what is recorded in the minutes of the hearing.

> "The Chairperson asked Matsvimbo to introduce his legal counsel to the Board. Matsvimbo introduced his defence counsel as Tafadzwa Mutonhori of Pundu and Company Legal Practitioners. Prior to the proceedings the chairperson asked Mutonhori to avail his Practising Certificate as a proof that he is indeed a lawyer registered by the Law Society of Zimbabwe Mutonhori failed to produce the practicing certificate and was asked to recuse himself from the proceedings. Thereafter Matsvimbo agreed to proceed without his legal representative."

The minutes are clear that the applicant was availed the opportunity to be legally represented. His chosen legal practitioner did not have a valid practicing certificate as required by s 8 (1) as read with (2) of the Legal Practitioners Act [Chapter 27:07].

Section 8(1) provides that subject to this Act, a registered legal practitioner who is in possession of a valid practicing certificate issued to him may practice the profession of law.

S 8 (2) provides that

"Without derogation from the generality of subsection (1) but subject to this Act-

(a) A registered legal practitioner who is in possession of a valid practicing certificate issued to him shall have the right of audience in any court in which persons are entitled by law to legal representation."

The hearing had been convened. Upon the departure of applicant's legal practitioner, it was up to the committee on how to proceed. They say they enquired of the applicant and he agreed to proceed as a self-actor. He says he requested a postponement which was denied.

I am inclined to believe what the minutes reflect. Even if I was, for a moment to believe the applicant's version, an application for a postponement is not granted upon mere asking. In *Mazibuko* v *The Commissioner of Police & Anor* HB 94/06, it was held that:

> "The granting of such an application is in the nature of an indulgence and it lies entirely in the court's discretion to grant or refuse the application."

It is my finding that the facts do not reflect that the applicant was denied the right to legal representation.

Disposal

There are several procedural irregularities which I have found in these proceedings. Even the internal communication on the outcome notes that such technicalities may taint an otherwise proper hearing.

Fortunately for the respondents, there is a long line of cases determined by the Supreme Court which have settled that a technicality cannot be allowed to nullify proceedings, which according to the record reflect that a fair hearing was held. See *Sadziwani* v *Natpak* (Private) Limited SC 6/17 *Merchant Bank of Central Africa* v Jams Dube Sc 6/04 and *Air Zimbabwe (Private) Limited* v *Chiku Mnensa & Anor* SC 89/04.

CHIDYAUSIKU C J held as follows in *Air Zimbabwe (Private) Limited* v *Chiku Mnensa* Supra.

> "A person guilty of misconduct should not escape the consequences of his misdeeds simply because of a failure to conduct disciplinary proceedings properly by another employee. He should escape such consequences because he is innocent."

In casu the applicant was charged of contravening para7 and 13 of the First Schedule of the Code of Conduct. These provide for:

> "Unbecoming or indecorous behaviour at any time or place in any manner or circumstances likely to bring the Department or part thereof into disrespect or disrepute."

> "Any act involving corruption or dishonesty, including any contravention of the Prevention of Corruption Act [*Chapter 9:16*].

The findings of the committee were that the applicant who was a member of the FRC committee and was aware of the TEP application by Live Touch Mine had shared this information with Patrick Badza. The two were found to have connived to extort WANG from Live Touch Mine. The two were arrested by ZACC officers who had been tipped by Wang at Garfunkels Restaurant where they were set up. This was said to have been the second meeting after an earlier one at Holiday Inn. It was concluded that, on a balance of probabilities, the duo had acted in common purpose to solicit for a bribe, after hearing evidence.

The technicalities raised by the applicant cannot make him escape. It is settled law in labour matters that merits alone are the deciding factors. Technicalities may exist as *in casu* but may not render the disciplinary proceedings null and void, as I have demonstrated for each issue, above.

The respondents have prayed for dismissal of this application, with costs. Costs follow the cause.

Accordingly, this application for review is dismissed with costs.

Mutonhori Attorneys, applicant's legal practitioners
Civil Division of the Attorney Generals Office, respondent's legal practitioners