TAWANDA TSATSA
versus
SUPERINTENDENT MPANDE
and
CHIEF SUPERINTENDENT TEMBO
and
THE COMMISSIONER GENERAL OF POLICE

HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 11 JULY 2016 AND 28 JULY 2016

Opposed Matter

Applicant in person
L Musika for the respondent

MOYO J: This is an application for the review of the first respondent's decision following proceedings by a single officer against applicant in terms of the Police Act [Chapter 11:10].

The relief sought as given in the court application is as follows:

1) That the trial proceedings conducted by the first respondent and subsequent conviction and sentence be set aside.

2) The 3rd respondent's decision to convene a Board of Inquiry against, applicant acting on Board of Inquiry/Suitability recommendations made by 1st and 2nd respondents be set aside.

3) The 1st and 2nd respondents are interdicted from conducting any future trial or Board that involves applicant.

The grounds for review are given as follows:

"1) The trial proceedings conducted by the first respondent were highly irregular and did not strictly follow the principles of natural justice.

2) The conduct exhibited by the trial officer throughout the trial gives a reasonable apprehension that he was biased.
3) The 1st respondent refused with no reasonable cause (*sic*) did not grant me *(sic)* the right to change my initial plea of guilty to that of not guilty even though I had lawfully applied in court to withdraw my plea (*sic*) to that of Not guilty----.
4) The 3rd respondent's decision to convene the Board of Inquiry and appoint the 2nd respondent as the board president is *ultra vires* the provisions of section 50(1) of the Police Act *(supra).*
5) That the appellant's legitimate expectation to be heard was further violated when the trial officer failed to transmit his record to the Commissioner General.
6) That the respondents are using the Police trial and Boards of Inquiry/Suitability as arms in their acts of victimizing the applicant."

I will hasten to point out the fact that I have struggled to understand the applicant's case. The record of proceedings annexed to the application, show that the applicant was charged with contravening paragraph 20 of the Schedule to the Police Act [Chapter 11:10] as read with section 34 of the same Act that is to say "Releasing any person in custody without proper authority."

The applicant was tried in terms of the Police Act and he pleaded guilty and even confirmed that he formulated the opinion that the complainant wanted the accused detained for selfish gain according to him so he held the view that the accused should be released but that there was no one available at the station since the officer-in-charge was at the shopping centre. That he did not think that this could be a big issue with the officer-in-charge and that he was apologetic about all he did.

From the record of proceedings he was offered the right to be legally represented, to which he answered that he would conduct his own case. He admitted to having been served with the charge sheet. He admitted to having been given enough time to file his defence.

It was also asked if he had complaints against the trial officer to which he answered in the negative.

It was further asked if he wished to appeal after being convicted to which he answered that he had no appeal to make as he was satisfied. It would appear, from the wording of the application and the relief sought that the applicant's main problem is the convening of the board of suitability and nothing else.

The application for review is not only badly drawn, but has absolutely no merit as exhibited by the record of proceedings annexed to the application. The applicant tried to change his submissions so much so that it was his case that the record of proceedings did not depict a true picture of what had transpired at the trial but that we were hearing for the first time. The record of proceedings having been filed with this court on 2 December 2014. In paragraph 12 of his founding affidavit, the applicant admits that he failed to locate the duty sergeant, Seargent Sebata, and also failed to reach him on his mobile phone.

It is clear from applicant's own case, that he did release a person from custody without the requisite authority. One wonders what applicant then wants this court to do. This court can only interfere on proven and acceptable grounds for the review of the single trial officer's decision, and for the court to do so, applicant has the onus to show that indeed the alleged grounds for review are present and that the relief sought is competent.

I cannot set aside a decision on non-existent grounds, neither can I grant incompetent relief, like for instance applicant want s me to grant him an interdict against the respondents conducting any future trial or the sitting of any board.

Such relief is incompetent as what is being sought to be reviewed here is the single trial officer's decision.

The application is badly drafted, it is bad at law, has no clear grounds for review, and it also includes incompetent relief. The applicant has also failed to show the court any sustainable basis upon which the court can interfere with the trial officer's decision. This is so, far by his own admission, he did release a person from custody without the requisite authority.

The application is accordingly dismissed with costs.

Civil Division, Attorney General's Office, respondents' legal practitioners