

CONSTABLE MAMHINGA P. 061311R
versus
THE BOARD PRESIDENT
(CHIEF SUPERINTENDENT KUNENE)
and
THE COMMISSIONER GENERAL OF POLICE

HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 4 JULY 2017 AND 3 AUGUST 2017

Opposed Matter

R Ndou for the applicant
L Msika for the respondents

MOYO J: This is an application for the review of the decision of the Board of Suitability to discharge applicant from the police force.

The grounds for the review of the decision are that the second respondent did not comply with the provisions of section 50 as read with section 48 of the Police Act [Chapter 11:10] and that therefore the entire proceedings must be declared a nullity. The basis of the application is that the board proceeded to discharge applicant from the organization when applicant had raised points *in limine*, instead of first respondent dealing with the points *in limine*.

At the hearing of the application I dismissed it and stated that my reasons would follow, here are the reasons, it appears at the sitting of the Board, applicant's lawyer sought to frustrate the board from sitting by raising points *in limine* that the Board is illegally convened. Applicant's lawyer cited uncoded rules. The Board of suitability in my view is convened by the Commissioner in terms of section 50 of the Police Act (*supra*) which merely reads:

“50 (1) A board of enquiry consisting of not less than three officers of such rank not being below that of superintendent, as may be considered necessary by the commissioner, may be convened by the commissioner to inquire into the suitability or fitness of a regular force member to remain in the regular force or to retain his rank or seniority or salary---.”

From this section it would appear the Commissioner General has the power to enquire into the suitability of any member in the police force and that the Act does not say this enquiry must be preceded by certain circumstances as the lawyer of the applicant sought to argue before the Board. It would appear applicant's counsel, instead of presenting relevant facts to the Board, he wanted to frustrate the very sitting of the board. He now wanted a situation where the Board would be called at applicant's convenience and understanding. Section 50 (1) does not provide thus, it merely gives the Commissioner General unfettered power to convene the Board and enquire into the Suitability of the applicant.

The uncoded rules and circulars that applicant seeks to rely on are subordinate to the Act which is an enactment, they therefore cannot be seen to curtail the powers that the Commissioner General has in terms of an Act of Parliament. Again, the applicant cannot appear before a board to enquire into his suitability and decide to dwell on matters that are not before the Board or that do not address the issue that the board seeks to enquire into and then come here and say he was not heard. He was given an opportunity to be heard and he decided to address that which was not relevant before the Board and the Board correctly exercised its mandate to discharge him from the police force.

The applicant in my view was given an opportunity to place before the board data that would incline the Board to find in favour of his suitability to remain in the police force. The board, made an enquiry in terms of section 50 (1) of the Police Act and found otherwise. The Board then made recommendations to the commissioner to discharge him and there is nothing unprocedural therein in my view. More so applicant does not challenge the summary of the history of his career as a police officer which chronicles some criminal charges that the applicant once faced and particularly the one wherein he admitted guilt to driving without due care and attention and to driving without a licence. Applicant does not in his papers, substantively claim that he has a clean service record making the decision by the Board to make a recommendation to the commissioner to discharge him an unreasonable one.

It is for these reasons that I held the view that there is no substance in the application being made by the applicant and I accordingly dismissed it with each party paying its costs as submitted by the respondent's Counsel.

I accordingly dismissed the application with either party paying its own costs as that was the order sought by the respondents.

Mugiya & Macharaga Law Chambers, applicant's legal practitioners
Civil Division, Attorney General's Office respondents' legal practitioners