CONSTABLE CHIRIMINGA
and
CONSTABLE SABURINYU
and
CONSTABLE CHITETE
versus
THE TRIAL OFFICER
and
THE COMMISSIONER GENERAL OF POLICE

HIGH COURT OF ZIMBABWE
MANZUNZU J
HARARE, 7 & 20 June 2019

Court Application

N. Mugiya, for applicants
K. Chimiti, for the respondents

MANZUNZU J: This is a court application in which the applicants seek an order in the following terms:

> "IT IS ORDERED THAT
> 1. The 2nd Respondent be and is hereby ordered to reinstate the Applicants into the police service without loss of salary and benefits from the date of discharge and cessation of salaries and benefits.
> 2. The Respondents are barred from pursuing any further prosecution in relation to the obtaining allegations.
> 3. The 1st and 2nd Respondents are ordered to pay costs of suit on a client- attorney scale."

The application is opposed by the respondents.

The applicants according to their papers filed a court application for a compelling order. The applicants were quite brief in their founding affidavit. They start with the order which they obtained on 14 November 2018 in HC 7941/13. That order in which the parties are the same with the present application reads:

> "IT IS ORDERED THAT:
> 1. The respondents' refusal to accept the applicants' appeal in terms of s 34 of the Police Act is declared to be wrongful and unlawful.
> 2. The respondents are directed to accept the applicants' notice of appeal and determine it in accordance with the law.
> 3. The respondents shall pay the costs of suit."

The applicants allege that the respondents have not complied with the order of 14 November 2018. From this order they draw the inference that it has the effect of confirming them to be members of the Police service. They want this Court to order their reinstatement because their appeal suspends the decision of the trial officer and the subsequent decision to discharge them. They alleged unlawfulness of their discharge.

The respondent admits that they did not comply with the order of the court. The reason for non-compliance, they said was because the applicant did not play their part of filing their grounds of appeal. In other words they are saying there is no appeal placed before them for them to accept. The respondents challenged the relief sought by the applicants as one not arising from the order of the court.

In their answering affidavits the applicants said, in answer to the fact that they did not file appeal papers for the respondents to comply with the court order, respondents already have the appeal papers which were attached and formed the basis of the application in HC 7941/13. In this simple case, I was at pains to follow the logic of Mr *Mugiya's* submissions for the applicants. He started with an application that the respondents were barred for having filed their opposing papers out of time. This was before he corrected himself and withdrew the preliminary point.

Mr *Mugiya* argued that the discharge of the applicants was unlawful based on the order in HC 7941/13. He said because there was an appeal pending the applicants were entitled to be reinstated. He however withdrew para 2 of the draft order. He said respondents were in contempt of court hence had come to court with dirty hands.

Mr *Chimiti* who represented the respondents took a different view. He argued that failure by the respondents to comply with court order was because the applicants did not file their appeals with the respondents. He said the court order did not contemplate that the appeals filed in support of the application would be treated as appeals filed with the respondents.

The question goes back to the interpretation of the court order of 14 November 2018. Its a simple order whose meaning should not create confusion.

Paragraph 1 of the order declares the act of refusing to accept the appeal by the respondents as unlawful. What this means is that the applicants must have attempted to file their appeals with the respondents and the respondents refused to accept. What that means is that applicants did not succeed in filing the appeals. This is why they sought the said relief from court.

Paragraph 2 of the order reads, "The respondents are directed to accept the applicants' notice of appeal and determine in accordance with the law." (my emphasis)

It is clear from a reading of this that the respondent had not accepted the appeal papers at the time the order was made. One would then expect that after this order was made the applicants will go to the respondents and say, "we have come to file our appeal which you ought to accept in compliance with the order of the court." That was not done. The applicants are saying they indirectly filed the notice of appeal when they attached the same to their application. Yes that was the notice of appeal as an attachment to support their application but that cannot be treated as having filed the notice of appeal with the respondents. The attached notice of appeal to the application was not serving as a filing of a notice of appeal but were documents to support the application. In other words one was saying "look, court those are the notice of appeal rejected by the respondents."

That is not how an appeal is filed. I agree with Mr *Chimiti* that applicants did not file any appeal and there is no appeal pending as the applicants want this court to believe. I did not find any connection between an application for a compelling order and the relief sought for reinstatement. Not only is there no connection but there is no legal basis for it.

This application has no merit at all and its persistence must be met with punitive costs.

Consequently,

IT IS ORDERED

The application is dismissed with costs on a client-legal practitioner scale.

Mugiya and Macharaga Law Chambers, applicants' legal practitioners
Civil Division of the Attorney General's Office, respondents' legal practitioners