EX-CONSTABLE CHARITY MUDZVOVA
versus
THE COMMISSIONER GENERAL OF POLICE
and
THE POLICE SERVICE COMMISSION

HIGH COURT OF ZIMBABWE
MANGOTA J
HARARE, 8 October, 2019 & 4 December, 2019

Opposed Application

N Mugiya, for the applicant
Ms M Chiba, for the 1st & 2nd respondents

MANGOTA J: The applicant, who is an ex-member of the police force, is a frequent visitor to the court. She applied for a spoliatory order under HC 3161/18. She applied for a declaratur under HC 3163/18. She applied for a review under HC 852/19. She filed the three applications on 17 August 2018, 14 September 2018 and 25 June, 2019 respectively. Her complaint in respect of the first two applications centres on the decision which the respondents who are senior members of the police force took when they allegedly despoiled her of her property and/or discharged her from the police service. She predicates her current application for review on the ground which reads:

> "1. The respondents' decision to discharge the applicant from police service is gross (sic) irregular for the following reasons:
>
> (a) It is improper for the first respondent to discharge the applicant from the police service <u>without giving her reasons for her discharge</u>.
>
> (b) The first respondent refused to give the applicant <u>confirmation of her discharge</u> contrary to law.
>
> (c) The applicant was discharged because her child fell sick and she was admitted in hospital with her child" (emphasis added)

The relief which the applicant seeks is to the effect that her discharge from the police service should be held to be irregular and should therefore be set aside. She moves me to order the respondents to reinstate her into the police service. She prays that the reinstatement be with effect

from the date of termination of her contract of employment and that it be without loss of salary and benefits.

The applicant's narration of events in respect of HC 852/19 is that in February 2017 her son, one Bilverty Mudzvova, fell seriously ill. He, she says, was admitted at Parirenyatwa Hospital. She alleges that, because he was breastfeeding, she sought and was granted, permission by her immediate superior - i.e officer in charge, Featherstone Police Station - to remain with him in hospital. She avers that, on her son's discharge from hospital, she returned to her place of work where she was told that she had been discharged from work on the grounds that she had deserted the police service. This, according to her, took her by surprise because her immediate superior was aware of her circumstances. She alleges that she discovered that her officer-in-charge had auctioned her property as well as despoiled her of her clothes and those of her son. She states that she was advised to go to Police General Headquarters to get the reasons for her discharge as well as the respondents' reasons for having auctioned her property. She makes reference to HC 3163/18 which I heard and dismissed on 27 November 2018. She alleges that the dismissal of HC 3163/18 prompted her to write to the first respondent on 29 November, 2018. She states that the first respondent's failure to respond precipitated this application. She insists that the respondents acted unlawfully when they terminated her contract of employment without just cause and refused to furnish her with the reasons for their conduct. They, she alleges, violated s 68 of the Constitution of Zimbabwe.

The first respondent opposes the application. The second respondent did not file any notice of opposition. I assume that it intends to abide by my decision.

The first respondent raises one preliminary matter after which he proceeds to address the merits of the application. He states, *in limine,* that the application is hopelessly out of time. He insists that the same violates peremptory provisions of order 33 r 259 of the rules of court. His statement is that the applicant was discharged from the police service on 6 February, 2017. He observes that she is reviewing his decision after the lapse of the period which is in excess of two years. He insists that the application which is not condoned is improperly before me. He moves me to dismiss the same. He states, on the merits, that the applicant raised the allegations which she is raising *in casu* in HC 3161/18. He avers that he responded to the allegations and attached annexures which contained the reasons for her discharge from the police service. He insists that

she is aware of his response. He alleges that the radio signal advised the applicant that she was discharged for reasons of desertion. He moves me to dismiss the application with costs.

The applicant has an amazing attribute of being resourceful. She picked on one of the many reasons which I gave in my *ex-tempore* judgment wherein I dismissed her application for a declaratur and uses the same as a basis of filing this application under Part V of the High Court Act [*Chapter 7:06*]. The reason which she picked upon was that she had not shown that she had been discharged from the police service.

In an effort to give a semblance of the current application being in compliance with r 259 of the High Court Rules 1971, she wrote a letter to the first respondent on 29 November, 2018. She requested, in the letter, reasons for her discharge from the police service. She gave him seven (7) days within which he had to respond failing which she would review his decision to discharge her from the police service as she is doing.

It is the claim of the applicant that the review, calculated from the period of seven (7) days which she stipulated in the letter, is compliant with r 259 of the rules of court. This in my view, is a very serious abuse of the court and its process.

The applicant knew, when she filed HC 852/19, that she could not review the decision of the respondents. Her knowledge in the mentioned regard is clear from a reading of the notice of opposition which the respondents filed under HC 3161/18. It is in the mentioned notice that the respondents included documentary evidence which advised the applicant of the reasons for her discharge from the police service. The evidence shows that she was discharged from work for desertion.

The respondents attached to their notice of opposition under HC 3161/18 proceedings of The Board of Inquiry which the first respondent convened on 10 March, 2017. It was convened in terms of s 72 (1) of the Police Act as read with s 13 (1) (b) of the Police (Trials and Boards of Inquiry) Regulations, 1965. Its findings and recommendations were attached to the notice of opposition under HC 3161/18. Also attached to the same is the radio signal which the applicant, in a misleading effort, purported to request from the first respondent on 29 November 2018.

The notice of opposition which contains the reasons for the applicant's discharge was filed on 24 April 2018. The applicant's answering affidavit to the same was filed on 11 July 2018. It

follows, from the foregoing, that the applicant was aware of the respondents' reasons for her discharge during the period which extends from 24 April, to 11 July, 2018.

The letter which the applicant addressed to the first respondent on 29 November 2018 serves little, if any, purpose. She was aware of the reasons for her discharge when she wrote it. Her aim and object were to mislead me into believing that the respondents did not furnish her with the reasons for her discharge from the police service. Indeed, her intention resonates well with her first ground of review wherein she states:

> "(a) It is improper for the first respondent to discharge the applicant from the police service without giving her reasons for her discharge." (emphasis added)

It is with some disquiet that I make the observation that the applicant's avowed intention was to withhold from me the information which she knew from as far back as July 2018. Her reason for lying under oath as she did is not difficult to discern. She lied with a view to ensuring that I would assist her in her cause to be reinstated into the police service. What she did not, however, realise is that lies, once discovered as happened *in casu*, would never persuade me to sing in the corner of a lying litigant.

It requires little emphasis to state that a litigant who gives false evidence will have his story discarded and adverse inferences drawn against him as if he has not given any evidence at all: *Leather Trading Zimbabwe (Pvt) Ltd* v *Smith* HH 131/03. If a litigant lies about a particular incident, the court may infer that there is something about which he wishes to hide [L H Hoffaman and D J Zeffert *South African Law of Evidence*, 3 ed p 472).]

People who tell lies under oath, and they are many, waste the time of the court and that of their adversary. They make a nonsense of the oath which they take. They leave the court in a quandary as to which of their statements it should believe and which of the same it should not. The best is to disbelieve them all because why should they lie when they state under oath that what they are telling is the truth, the whole truth and nothing but the truth and they even appeal to a deity to help them in their lies.

It is a fact that the applicant was aware of the respondents' reasons for her discharge from the police service in July 2018. She filed this application on 6 February 2019. The same, as the first respondent states, violates r 259 of the High Court Rules, 1971. The rule is peremptory. It admits of no discretion on the part of applicant. Her application is totally defective. A *fortiori* when

she did not apply for condemnation and her application remains uncondoned for having been filed outside the time which the rules of court prescribe.

The length of the time that the applicant allegedly remained with her child in hospital varies from one case to the other. In HC 316/18, she states that she was in hospital for four (4) weeks. In HC 3163/18, she alleges that she was in hospital for five (5) weeks. In HC 852/19, she claims that she remained in hospital for over six (6) months. Once cannot, as it were, separate the sheep from the goats under the stated set of circumstances, if a comparison may be favoured.

It is pertinent to observe that both HC 3161/18 and HC 3163/18 were filed on the same day. They were filed on 9 April, 2018. The little variance in the duration of the alleged stay of the applicant at the hospital should, in my view, be understood in the stated context. That context is miles away from the duration of the alleged stay of the applicant at hospital as narrated by her in the application - HC 852/19 - which she filed on 6 February, 2019. She could not maintain the same lie as she did in the first two applications which she filed concurrently when her effort to maintain consistency in the lie which she was telling was very much alive in her mind.The effort to remain consistent in the lie faded away by the passage of time. She could not, in other words, remain consistent in an application which she filed some ten (10) months after the event.

One finds it hard, if not impossible, to accept that the applicant had taken her sick child to hospital as she is persuading me to believe. She produces no evidence of her admission at the hospital. Production of such evidence would have assisted her to prove her case on a balance of probabilities.

The applicant's statement of taking her sick child to hospital creates a material dispute of fact when the same is read together with the allegations of the respondents which are to the effect that she deserted work. Production of the child's admission into, and discharge from, the hospital could easily have resolved her case. She does not say why she cannot produce that vital evidence which would have tipped the scales in her favour.

I mention, in passing, that a founding affidavit which requires substantiation which the applicant can give but fails to give falls short of being satisfactory. That is so because the affidavit which is in the form of an unsubstantiated statement convinces no one let alone the court. The task of an applicant who relies upon an unsupported affidavit which, with due diligence, could have been supported becomes formidable. A *fortiori* where the respondent's opposing papers do, as in

casu, give a completely different set of circumstances from those of the applicant. That is so because the position which the respondent takes introduces into the application some material dispute of fact which, as is known, cannot be resolved on the papers.

The applicant's narrative of events suffers what l observed and stated in the foregoing paragraph. Her case remains unresolvable on the mentioned score in addition to the lies which she told as well as the fatal defect which remains characteristic of her case. The application is, in the result, dismissed with costs.

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