

**James Mataga
Versus
The Commissioner Of Prisons
And
The Director (Salaries Services Bureau)**

HIGH COURT OF ZIMBABWE
KARWI J,
HARARE, 19 November and 17 December, 2003

Mr *P Kwenda* for applicant
Mr *Y Dondo* for respondent

Opposed Application

KARWI J: The applicant in this matter was employed as a prison warder by the 2nd respondent and was dismissed from employment on the grounds that he had deserted the prison department. Earlier on the applicant had been charged by the Police for having allegedly forged a hospital sick card and stolen a tablet of soap. The matter involving his unlawful dismissal came up before this Court in Case No 16100/99 and was decided in the applicant's favour, as his dismissal was declared to be null and void.

The applicant alleges that he has now been dismissed again on the same grounds and he alleges that he has not been heard. He has submitted that the dismissal is based on the same theft allegations which formed the subject matter of Case No. HC 16100/99. He says he has not been served with a letter of dismissal despite several requests. He does not know the purported date of his alleged dismissal.

In his Heads of Argument, the 2nd respondent submits that in the case at hand the applicant was given an opportunity to make representations which he failed to do. It is further submitted that he was dismissed because he admitted to theft and paid a deposit fine. In the earlier matter, he was dismissed for desertion. Nothing can be further from the truth. A close perusal of papers filed in Case No HC 16100/95 together with the judgment of this Court shows clearly that both the alleged theft and

the payment of a fine and the issue of desertion were raised as grounds for the alleged dismissal. Both issues were considered by this Court before the applicant's dismissal was set aside. The same grounds cannot be raised again in an attempt to dismiss the applicant.

Furthermore, the procedure adopted by the 2nd respondent in an attempt to dismiss the applicant again is still flawed. Clearly he has not been given an opportunity to be heard. Rules of natural justice require that he should be heard. There was no hearing conducted. A notice to the applicant to make written submissions cannot constitute a hearing.

Applicant also submits that he has not been advised of his dismissal. He says he does not know of the date of his dismissal. This was not challenged by the 2nd respondent. 2nd respondent indeed conceded that this was the case, save for an opportunity offered to applicant to make representations.

In the premises, I find that the applicant's dismissal was unlawful. The dismissal is therefore set aside.

The respondents are ordered to re-instate the applicant forthwith without loss of benefits. Alternatively respondents are ordered to pay damages in lieu of reinstatement, which damages shall be agreed upon by the parties. Parties shall revert back to this Court for quantification of damages, in the event of failure to agree on the quantum of damages.

Tinarwo & Company, legal practitioners for applicant