

DR LUDWIG SONDASHI v THE ATTORNEY-GENERAL

Supreme Court
Sakala, Chirwa and Chibesakunda, JJ
20th June, 2000 and 24th August, 2000
(SCZ Judgment No. 27 of 2000)

Flynote

Administrative Law - Discretion - principle for exercise.
Administrative law - Judicial review - When resort to judicial review is permitted.

Headnote

By originating summons the appellant, Dr. Sondashi; applied to the High Court to seek a declaration that the decision by the Minister of Home Affairs rejecting his application to operate a firearms dealers business at Stand No. 942 Solwezi, North Western Province, was contrary to Sections 26(2) and 27(3) of the Firearms Act, Cap 110, of the Laws of Zambia and thus null and void. The High Court rejected the application of the appellant on the ground that Section 12(7) had ousted the Jurisdiction of the Court as it provided that the minister's decision is not challengeable in any court of law. The appellant appealed.

Held:

(i) In terms of Section 26(2) of the Firearms Act, Cap 110, of the Laws of Zambia, the Registrar of Firearms has powers vested in him to either register an applicant or refuse to register an applicant without giving any reason for such refusal. However, the proviso to Section 26(2) aforesaid circumscribes the discretion of the Registrar.

(ii) Where the legislature has decided that certain matters should be solely for the executive, the court has no role to play as such issues contain no legal issues to be resolved.

(iii) It is a requirement in Judicial review that all available remedies must be exhausted before applying for prerogative writs.

Legislation referred to:

Firearms Act, Cap 110, Sections 12(7), 24, 26(2), 27(2) and (3).

Cases referred to:

1. *Anisminic v Foreign Compensation Commission* [1969]1 ALL ER, 208; [1969] 2 AC. 147.
2. *Zandamela v Management Committee of the Local Authorities Superannuation Fund* (1978) Z.R 144.

Appellant appeared in person.
S W Chirambo, Principal State Advocate, for the respondent.

Judgment

CHIBESAKUNDA JS, delivered the judgment of Court.

By originating summons the appellant, Dr Sondashi; applied to the High Court to seek a declaration that the decision by the Minister of Home Affairs rejecting his application to obtain a licence to operate a firearms dealers business at Stand No. 942, Solwezi, North Western, was contrary to Sections 26(2) and 27(3) of the Firearms Act, Cap 110, of the Laws of Zambia and thus null and void. The High Court rejected his application on the ground that Section 12(7) had ousted the jurisdiction of the Court as it provided that the Minister's decision is not challengeable in any court of law. This prompted the appeal before us.

The brief facts on which there was common ground are that sometime in June 1997, the appellant, who is a member of Parliament for Solwezi, went to the Registrar of Firearms in Lusaka and made his intentions known that he intended to apply for a firearms dealers licence to operate a business at Stand No. 942, Solwezi. The Registrar of Firearms, Mr Chibanga, advised him the procedure to be followed. That meant he had to construct a strong room first under supervision of the District Officer in Charge of Zambia Police, then invite the Police to look at it and if it passed the test, then the applicant would apply to the Registrar of Firearms for a licence with the recommendations from the District Officer in Charge of Zambia Police in Solwezi attaching the application. The appellant thereafter went ahead and constructed a strong room under the guidance of the Police in Charge at Solwezi. On 8th August 1997, upon further advice of the Registrar he informed the Police in Charge of the completion and asked him to inspect the premises as per his advice. The said premises and strong room were inspected by the Police Officer in Charge who found the premises suitable for the intended firearm business and thus on 20th August 1997, the Officer in Charge in his letter which was produced before the court recommended the premises to the Registrar of Firearms. On the 17th of April 1998, the Registrar of Firearms replied to the appellant rejecting the application on the grounds that there were too many firearms dealers in the country and that the appellant was wrongly advised to construct a strong room before applying for a licence. Upon receiving this letter the appellant then personally saw the Registrar of Firearms who informed him that the decision to refuse his application was dictated to him by the Inspector-General of Police. Thereafter, the appellant on 15th May 1998, appealed to the Minister of Home Affairs as per provisions in the Act. The Minister of Home Affairs on 7th September 1998, replied to that appeal rejecting the appeal on the grounds that the security situation in the neighbouring Angola and the Democratic Republic of Congo (DRC) was volatile and that this was in accordance with the United Nations (UN) Regulations of 22nd September 1997. These United Nations Regulations were to the effect of requesting governments in Southern Africa to put up measures stopping proliferation of arms, a concern expressed by United Nations. This is the decision the appellant was challenging before the High Court, which decision the High Court refused to disturb on the grounds as we have already stated that jurisdiction had been ousted by Section 12 (7) of Cap 110. Although the court had accepted the appellant's arguments that the Registrar General of the Firearms had failed to exercise his discretion as he ought to have done under the Act, the Registrar had divested himself of his discretionary powers as stipulated in the Act even after the appellant had validly legally applied for a firearm dealers licence.

Now before us the appellant who appeared in person arguing on two grounds argued:—

1. that the Minister of Home Affairs' decision was unlawful because according to him the grounds used by the Minister to reject the application were outside the ambit of Sections 26(2) and 27(3) of Cap 110 and as such the Minister's decision must be regarded as null and void. He argued that in his view, on the strict interpretation, Section 26(2) and 27(3) the assessment is confined to the applicant's capacity or otherwise to handle that sort of business not the security circumstances prevailing in a given district or country. He submitted that Sections 26(2) and 27(3) is meant to cover situations like where the applicant is mentally unstable or incapable for any reason of dealing in arms deal business, not circumstance of political situations in Angola and/or the Democratic Republic of Congo.

2. that the reference by the Honourable Minister to the UN regulations to limit the proliferation of arms in this part of Africa cannot be one of the considerations under Sections 26(2) and 27(3) of Cap 110 because according to him if this were so then that consideration should apply to all other applicants regardless of which part of the country. He mentioned to us that places like Solwezi the instances of breaking into premises or strong room would be much more rare than in Lusaka and a town like Mansa which is as near as Solwezi to the Democratic Republic of Congo. He cited the cases of *Anisminic Limited v Foreign Compensation Commission*(1), and distinguished it with the current case in that, in that case there was no appeal. But in the current case there was an appeal. He made references to the case cited by the respondent, *Zandamela v Management Committee of the Local Authorities Superannuation Fund* (2), and argued that he is not asking this court to attack the existence of the ouster clause but rather to accept his argument that the Minister's decision was without legal support and therefore null and void and should not be left undisturbed.

Mr. Chirambo, Principal State Advocate, arguing in response has submitted that the learned trial Judge was correct in accepting the existence of an ouster clause. It is further his argument, however, that the Hon. Minister's decision was within the ambit of the law. In Sections 26(2) and 27(3) of Cap 110, according to him, the Minister in deciding whether or not to grant the appeal, had to take into account the prevailing security situation of this country and that of the neighbouring countries. As such he was right to make reference to the existence of the civil wars in Angola and the Democratic Republic of Congo and also to the United Nations' concerns. He argued that the decision was not mala fide. It was made in good faith. These were the arguments before us.

We have seriously looked at the record and the arguments advanced by both sides. Firstly, we have no difficulties in endorsing the learned trial Judge's remarks about the role of the Registrar in the whole process of obtaining licences from the Registrar of Firearms. We agree that the Registrar of Firearms had a duty to hear the application, weigh the merits of the appellant's application even if the policy of the government is that there are already too many arms' dealers. According to Section 26(2) of Cap 110:-

"An application for registration as a firearms dealer shall be made in the prescribed form to the Registrar who may register the applicant or refuse to register him without assigning any reason for such refusal: Provided that an applicant shall not be registered -

- (i) *if a disqualification order against him under section thirty-three is in force; or*
- (ii) *unless the Registrar is satisfied that the applicant is conversant with the provisions of this Act; or*
- (iii) *if the Registrar is satisfied that for the applicant to carry on the business of a firearms dealer would endanger the public safety or the peace."*

We need to point out to the fact that under Subsection 2 of Section 26, quoted supra, the Registrar of Firearms has powers vested in him to either register the applicant or refuse to register the applicant without giving any reasons for such refusal. In the provisos cited above, he has no discretion in rejecting the application if conditions stipulated are not complied with. In other words, the proviso in (i) to (iii) are complimentary to the main Sub 2, of Section 26. We are therefore satisfied that even though the Registrar made reference to the Inspector General as having instructed him to reject the application by the appellant, he exercised his powers vested in him and held that there were too many firearm dealers in the country.

Secondly, as pointed out by the learned trial Judge, it is a requirement in judicial review that all available remedies must be exhausted before applying for prerogative writs. In this case, the appellant did follow that procedure. This is how he appealed to the Minister and that is how the ouster clause came in. Section 12(7) of the Firearms Act says:-

“The decision of the Minister on an appeal in terms of this section shall be final and shall not be questioned in any proceedings.”

That section was correctly interpreted by the learned trial Judge as protecting the decision of a Minister from being challenged in any proceeding which includes any court proceedings. The clause completely ousters the jurisdiction of any court including this court. The appellant has tried to persuade us to hold that the interpretation of Sections 26(2) and 27(2) by the Minister was wrong in that it included the consideration of the security of Zambia against the background of the volatile situation in neighbouring countries. We are in difficulties in accepting that interpretation as Section 27(2) does not state that the Officer in Charge of a Police or indeed the Minister under Section 24 to 27 can only confine his reasons for rejecting an application to those cited in the Act. We, as a court, accept that where the legislature has decided that certain matters should be solely placed in the jurisdiction of the executive, the court has no role to play as such issues contain no legal issues to be resolved. Further, the question of security is entirely for the executive to decide upon. Courts are not in a position to know and adjudicate on such issues. We therefore agree with the learned trial Judge that the relief sought by the appellant could not be granted by the High Court. The appeal therefore is dismissed. We order that the costs for appeal be borne by each party.

Appeal dismissed