

CARSLONE ENTERPRISES P/L

Versus

WILSON SVOVA

HIGH COURT OF ZIMBABWE

MATHONSI J

BULAWAYO 24 FEBRUARY AND 3 MARCH 2011

Mr Ncube, for the Applicant

Mr Dube, for the Respondent

OPPOSED APPLICATION

MATHONSI J: The applicant, a subsidiary of the Reserve Bank of Zimbabwe, set up a diamond mining plant at Kleimport Farm near Gweru. The plant itself is located on claims known as 20 and 21 at the farm. The applicant has been mining at the site and processing the diamonds at the plant in question for 3 years.

It is alleged that the Respondent, who is a member of Shuma Mining Syndicate, started intruding at the processing plant belonging to the applicant sometime in May 2010. He is accused of forcibly taking away the applicant's stock book and forcibly gaining entry into the plant. He announced to the employees that he had taken over the mining operation of the applicant and got the employees to sign new employment contracts to the effect that they are now employed by Shuma Mining Syndicate of Gweru.

It has not been disputed that Kleimport Farm on which the diamond plant is located was previously owned by one Magiel Casper Jovner but was gazetted for compulsory acquisition by the responsible Minister and it is now state land. Respondent has not denied intruding at the diamond plant but has instead sought to argue extraneously that the farm belongs to Jovner and that the applicant is mining without the approval of the said Jovner who has since entered into a tribute agreement with Shuma Mining Syndicate. In Respondent's view, this entitles him to move into the property.

In addition to that, Respondent maintains that the Applicant is winding up operations and as such the Governor of Midlands Province has allocated the mining claims occupied by the applicant to Shuma Mining Syndicate and Women in Mining. He has not submitted any document, let alone evidence to substantiate that claim. Only an agreement entered into between one Magiel Casper Jovner and Shuma Mining Syndicate has been produced. The said Jovner has also deposed to a supporting affidavit claiming to be the owner of the farm and the mining claims over it and alleging that the applicant is in illegal occupation of the property.

The applicant seeks to interdict the Respondent from entering its diamond processing plant and from coming within 100m of the plant because the Respondent is interfering with its operations. It obtained interim relief on 2 July 2010 interdicting the Respondent from entering the processing plant at Kleimport farm.

The requirements for an interlocutory interdict were set out in *Bozimo Trade & Development Co (Pvt) Ltd v First Merchant Bank of Zimbabwe Ltd & Others* 2 000 (1) ZLR 1 (H) where Chatikobo J stated at page 9 E-G:

“ One must then recall the traditional requirements for an interlocutory interdict. They were originally set out in *Setlogelo v Setlogelo* 1914 A 221 and have been repeated in numerous subsequent cases. Stegmann J repeats them in *Knox d’ Arcy Supra* at 593 C-D. What the applicant needs to establish is:

- (a) a *prima facie* right, even if it is open to doubt.
- (b) an infringement of such right by the respondent or a well grounded apprehension of such an infringement;
- (c) a well-grounded apprehension of irreparable harm to the applicant, if the interlocutory interdict should not be granted and if he should ultimately succeed in establishing his right finally;
- (d) the absence of any other satisfactory remedy; and
- (e) that the balance of convenience favours the granting of an interlocutory interdict.”

In *casu* I accept that the applicant has shown a *prima facie* right over the diamond plant at Kleimport farm. Not only did it set up the plant it has been mining and operating from there for the past 3 years. The right to mine there may be in doubt but that does not disentitle the applicant to peaceful and undisturbed possession.

I agree with Mr Ncube who appeared for the Applicant that the Respondent has transgressed and / or vilified the *status quo* by constantly forcing himself onto the plant claiming ownership of same and even attempting to take over the applicant’s employees. Whatever right the respondent may perceive he has, he cannot resort to self-help by forcing the applicant out of the mining plant. That amounts to an infringement of the applicant’s rights.

It is apparent that irreparable harm will result if the Respondent is allowed to do as he pleases. The applicant’s operations will be disturbed and as it is in a situation where the respondent also claims to employ the same people that the applicant has deployed at the plant, only chaos will ensure. There can be no other remedy except to prevent the respondent from continuing with his unwarranted misadventures at the plant.

In any event, the respondent and his syndicate have never conducted mining activities at that site. They have not invested anything and all they want is to take over what has been

set up by the applicant. The Court will be failing in its duty if that kind of anarchy is allowed to perpetuate. If any claim to the property exists, the respondent should follow due process. Meanwhile the balance of convenience favours the granting of the interdict.

Mr Dube, for the respondent argued that preventing the applicant from coming within 100m of the plant would infringe upon his other rights to neighbouring claims. This argument is not contained in the opposing affidavit and no supporting diagram showing how such infringement would occur has been submitted. It seems to me reasonable to direct the respondent to keep a safe distance from the plant and 100m is safe indeed.

In the result the provisional order issued on 2 July 2010 is confirmed in the following terms;

1. The Respondent, his agents and anyone acting on his instructions be and are hereby permanently interdicted from entering the Applicant's diamond processing plant at Kleimport farm Gweru or coming within 100 metres of the said plant.
2. The Respondent shall bear the costs of this application.

Garikayi & Company, Applicant's Legal Practitioners c/o James Moyo-Majwabu & Nyoni
Gundu & Dube, Respondent's Legal Practitioners c/o Kossam Ncube & Partners