

Judgment No. HB 85/11

Case No. HC 2319/10

X REF HC 2079/10

**SISA MPUNZI (NEE MOYO)**

**Versus**

**DUBUZA RATION MPUNZI**

**And**

**REBECCA MOYO**

IN THE HIGH COURT OF ZIMBABWE

NDOU J

BULAWAYO 10 NOVEMBER 2010 AND 23 JUNE 2011

*N. Mlala* for applicant

*C P Moyo* for 1<sup>st</sup> respondent

Urgent Chamber Application

**NDOU J:** The applicant is 1<sup>st</sup> respondent's wife. The applicant seeks an order in the following terms:

**"Terms of the final order sought**

That the provisional order granted by this honourable court be confirmed in the following manner.

1. The proceeds of the mine at Inyathi be and are hereby shared equally amongst the applicant and 1<sup>st</sup> respondent after all the expenses have been paid.
2. The 1<sup>st</sup> respondent be and is hereby ordered to pay costs of suit on an attorney-client scale.

**Interim relief granted**

Pending the finalization of the matter under HC 2079/10, the applicant be granted the following relief:

1. The 1<sup>st</sup> respondent is interdicted from barring the applicant to work at the mine in Inyathi.
2. The 1<sup>st</sup> respondent is ordered to pay all the money realized from the mine at every sale of gold before paying for the expenses in trust either at Cheda and Partners or Messrs Moyo and Nyoni Legal Practitioners, and the money be shared equally

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between the applicant and the 1<sup>st</sup> respondent after the expenses incurred have been paid.

3. If the 1<sup>st</sup> respondent does not comply with paragraph (1) and (2) he is interdicted from working and collecting any revenue at the mine in Inyathi, the applicant is to collect all the revenue until the 1<sup>st</sup> respondent complies with paragraph (1) and (2) of this order.
4. The 2<sup>nd</sup> respondent be and is hereby interdicted from the operations of the mine in whatever manner, including setting her fast [sic] on the mine at Inyathi until the finalization of the matter under HC 2079/10."

The salient facts of this matter are the following. The applicant and 1<sup>st</sup> respondent are married to each other in terms of the Marriages Act [Chapter 5:11]. 1<sup>st</sup> respondent has issued out summons for divorce under case number HC 2079/10. There are two children of the marriage born 12 June 1999 and 11 July 2004 respectively. The 1<sup>st</sup> respondent acquired the mining business in 1994 long before he met the applicant. The 1<sup>st</sup> respondent started living with the applicant in 1998. The mine is registered in the name of the 1<sup>st</sup> respondent. The 2<sup>nd</sup> respondent is employed as a manageress at the mine. The applicant's case is that 2<sup>nd</sup> respondent is the source of her marital problems as she happens to be in a love relationship with the 1<sup>st</sup> respondent. This explains why 2<sup>nd</sup> respondent was cited in these proceedings. Applicant made allegations that 1<sup>st</sup> respondent has become so irresponsible to the extent that he failed to maintain her and the two children. She averred that their eldest son was expelled from boarding school on account of 1<sup>st</sup> respondent's failure to pay fees. The 1<sup>st</sup> respondent has stated that this averment is false as the boy was still at school and he produced documentary proof showing that he in fact paid fees in full for the boy. The applicant further misled the court by averring that the children were both in boarding school yet the younger child does not even attend school. He goes to crèche. The 1<sup>st</sup> respondent gives the applicant a portion of the mine's production of gold and retains the remainder. The proceeds from the gold is supposed to go towards the maintenance of the applicant and 1<sup>st</sup> respondent. The applicant appears to be seeking maintenance through an interim interdict. The applicant is misguided in her approach. She should approach the maintenance court for proper remedy. She has made false averments on the plight of the children to win the court's sympathy. On the basis of such falsehoods the application should fail – *Venter vs Van Groan* 1929 TPD 435 and *Graspeak Investments P/L vs Delta Corporation P/L & Anor* 2001 (2) ZLR 551 (H) at 555.

Further, the applicant has premised her application on the basis that she is in some partnership with the 1<sup>st</sup> respondent. From the evidence in the paper there is no such partnership. As far as the position of the 2<sup>nd</sup> respondent is concerned, the effect of the remedy sought is to suspend the 2<sup>nd</sup> respondent from her duties without following the relevant necessary provisions of the Labour Act.

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The applicant has used the above-mentioned falsehoods and misrepresentations about the plight of the children to portray a desperate and urgent situation. From the foregoing, therefore, the applicant is devoid of merit. I accordingly dismiss it with costs.

*Cheda & Partners*, applicant's legal practitioners

*Moyo & Nyoni*, 1<sup>st</sup> respondent's legal practitioners