

BIG VALLEY MASTERS (PVT) LTD

Versus

ESTATE LATE AYILANDE SAKALA

And

MINISTER OF MINES AND MINING DEVELOPMENT (NO)

And

OFFICER COMMANDING Z.R.P. MIDLANDS PROVINCE (NO)

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 9 & 29 AUGUST 2019

Urgent Chamber Application

C. Chigomere for the applicant
V. Maswaya for 1st respondent
L. Dube for 2nd 3rd respondents

MAKONESE J: This is an urgent chamber application for an interdict. The relief sought by the applicant is couched in the following terms:

“Interim relief sought

- (a) That the 1st respondent, his assignees or employees be and are hereby interdicted from carrying out any mining activities on Don Juan 46 situate in Zhombe Communal Lands, Zhombe, Kwekwe.
- (b) The Sheriff of Zimbabwe by the powers vested in his office with the assistance of members of the Zimbabwe Republic Police be authorized to enforce clauses of the order in the event of non-compliance with the court order.

Terms of final order sought

- (a) That the 1st respondent and their agents, assignees or employees be and are hereby interdicted from carrying out mining activities at Don Juan 46 Zhombe Communal Lands, Kwekwe pending the finalisation of the applicant’s appeal to the 2nd respondent.

(b) That the 1st respondent be and is hereby ordered to pay the costs of suit on an attorney and client scale.”

The application is opposed by the 1st respondent. 1st respondent raised several preliminary points which I shall proceed to consider before dealing with the merits of the application.

Urgency

It is contended by 1st respondent that the matter is not urgent. The 1st respondent moved onto the mining claims on the 3rd of May 2019 following a determination by the Provincial Mining Director, Midlands. The applicant only filed this application on the 5th of August, 2019, more than two months after the need to act arose.

Further, the 1st respondent avers that the urgency relied upon by the applicant was self created. On this ground alone, it is argued that the court must decline to entertain this application. The applicants’ version is that there is a pending dispute pertaining to the registration of a claim known as Don Juan 46 of Zhombe Communal Lands, Zhombe, Kwekwe between the applicant and 1st respondent. The dispute was referred to the Provincial Mining Director, Midlands Province for a determination. On the 24th October 2018, the Provincial Mining Director heard the parties and delivered a determination on the 24th May 2018 in favour of 1st respondent. Applicant noted an appeal against the ruling with the Minister of Mines and Mining development. In the notice of appeal the respondent is cited as Aliyande Sakala. Applicant contends that despite 1st respondent having knowledge of the appeal, 1st respondent had descended on the mining claims and commenced mining activities. The applicant avers that 1st respondent’s representatives invaded the mining claims on the 23rd of July 2019. This fact is denied by the 1st respondent who insists the occupation was taken on 3rd May 2019. The applicant failed to produce any evidence to establish that the claims were invaded on 23rd of July 2019. It is an established principle of our law that he who asserts must prove the fact averred. I observe however, that from papers filed by the applicant, the determination by the Provincial Mining Director was handed down on the 23rd of May 2019. It is convenient to set out the

findings by the Provincial Mining Director that are pertinent to this dispute. The findings are in the following terms:

“...Determination

In view of the above findings and observations, the Provincial Dispute Resolution Committee which set on 23rd of May 2019, resolved as follows:-

1. *Big Valley Masters Private Limited of Don Juan 46 registration number 29470 over pegs Ariyande Sakala of Don Juan 13 and 14, registration numbers 23082/3GR (Reference subsection 6, 7 & 8 above)*
 2. *Ariyenda Sakala of Don Juan 13 and 14, registration numbers 23082/3GR is the prior pegger while Don Juan 46 registration number 29470 is the subsequent pegger in terms of the provisions of the Mines and Minerals Act (Chapter 21:05) section 177. Therefore, Don Juan 46 registration number 29470 GR should be cancelled in terms of section 50 (1) of the Mines and Minerals Act.*
1. *Coordinates obtained from survey can be given to disputes upon written request.*
 2. *Big Valley Masters (Pvt) Ltd had the right to appeal to the Minister of Mines and Mining Development against cancellation of certificate of registration Don Juan 46 registration number 29470 GR within 30 days from the date of posting of the cancellation notice by this office.”*

The purported notice of appeal was filed at the Ministry of Mines and Mining Development on 24th June 2019. The notice of appeal was not served on the 1st respondent, neither was it filed with the Minister of Mines and mining Development. The notice of appeal is clearly a nullity as it was issued with the wrong office and never served on the 1st respondent. The Provincial Mining Director against whom the appeal was noted has not been cited in the appeal.

The basis of the perceived urgency is the occupation of the disputed mining claims by 1st respondent. As indicated there is some dispute as to when the 1st respondent took over occupation of the claims. 1st respondent was adamant that upon the handing down of the determination by the Provincial Mining Director on the 24th of May 2019, they proceeded to occupy the claims on the 30th of May 2019. It seems to me that the filing of this urgent chamber application on the 5th August 2019 arose out of contrived urgency by the applicant. The

purported notice of appeal was lodged and not served on the respondents on 24th June 2019. The applicant did not treat the matter with the urgency it deserves in the first place. The requirements for urgency are now well settled in our law. See *Kuvarega v Registrar General & Another* 1988 (1) ZLR 188. Where a party takes a casual approach towards a matter he deems urgent, it would be correct to conclude that such a party has no right to be heard on an urgent basis. On this basis alone, this court concludes that no basis has been established by the applicant to show that the matter should be treated as urgent. Having come to that conclusion there would be no need to consider the rest of the preliminary issues as well as the merits.

In the result, and for the foregoing reasons, the following order is made:

1. The matter is not urgent.
2. The matter is removed from the roll of urgent matters.
3. The applicant shall bear the costs of suit.

Mutatu & Partners, applicant's legal practitioners
Chitsa & Masvaya Law Chambers, 1st respondent's legal practitioners
Attorney General's Office, Civil Division, 2nd and 3rd respondents' legal practitioners