

**ZONDO SYNDICATE**

**Versus**

**PROVINCIAL MINING DIRECTOR  
MATABELELAND NORTH PROVINCE**

**And**

**SECRETARY FOR MINES & MINING DEVELOPMENT**

**And**

**FUNDISI PARK (PVT) LTD**

IN THE HIGH COURT OF ZIMBABWE  
MAKONESE J  
BULAWAYO 4 & 28 JULY 2022

**Opposed Application**

*T. Tavengwa* for the applicant  
*Advocate K. I. Phulu* for 3rd respondent

**MAKONESE J:** This is an application for review instituted in terms of Rule 62 of the High Court Rules, 2021. The applicant is a mining syndicate with mining rights over a mining location known as Fundisi ‘H’ Mining Block.

The order sought is in the following terms:

- “1. The decision by 1<sup>st</sup> and /or 2<sup>nd</sup> respondent to suspend mining operations at Fundisi ‘H’ mining claim against the applicant on 20<sup>th</sup> September 2021 be and is hereby set aside for want of compliance with section 354 (2) of the Mines and Minerals Act, section 3(2) of the Administrative Justice Act and sections 68 (1) and 69 of the Constitution of Zimbabwe.
2. For the avoidance of doubt, pursuant to the provisions of section 354 (7) of the Mines and Minerals Act the decision of 1<sup>st</sup> and/or 2<sup>nd</sup> respondent as against applicant dated 28 September 2021 be and is hereby discharged/set aside.
3. Respondent to bear the costs of suit.”

On 30<sup>th</sup> November 2021 3<sup>rd</sup> respondent duly filed its notice of opposition. 3<sup>rd</sup> respondent was then being represented by Messrs Mashayamombe and Company Attorneys. It would appear that after the applicant filed and served an answering affidavit, these parties

entered into negotiations regarding a possible settlement in an endeavor to resolve the matter. It is pertinent to note that on the 13<sup>th</sup> January 2022, Messrs Mashayamombe and Attorneys renounced agency in the matter. In the same notice, the legal practitioners indicated that 3<sup>rd</sup> respondent's last known address was Messrs Mathonsi-Ncube Law Chambers, legal practitioners operating in Bulawayo. On the 26<sup>th</sup> January 2022, Messrs Mashayamombe and Company Attorneys, without assuming agency purported to file 3<sup>rd</sup> respondent's heads of argument. Rule 59 (21) of the High Court Rules, 2021 provides that:

“Heads of argument referred to in sub-rule (20) shall be filed by the respondent's legal practitioners not more than ten days after heads of argument of the applicant or excipients, as the case may be, were delivered by the respondent ...”

In this matter the heads of argument were not filed by 3<sup>rd</sup> respondent's legal practitioners of record. The heads of argument were filed by the erstwhile legal practitioners of the 3<sup>rd</sup> respondent, who it could be argued were on a frolic of their own. Their filing of the heads of argument is therefore a nullity. To buttress this point on 7<sup>th</sup> March 2022 Messrs Ncube and Partners, 3<sup>rd</sup> respondent's current legal practitioners of record filed a notice of assumption of agency in this matter. The notice was served on the applicant's legal practitioners on the 8<sup>th</sup> of March 2022. On 30<sup>th</sup> March 2022 the parties filed a Deed of Settlement which is before the court. At the hearing of this matter, *Advocate Phulu* appearing for the 3<sup>rd</sup> respondent indicated that the Deed of Settlement was not consummated because the applicant had not complied with certain obligations.

*Mr T. Tavengwa*, appearing for the applicant argued that the matter was not properly before the court. At the time the 2<sup>nd</sup> respondent filed heads of argument they were not being represented by Messrs Mashayamombe and Company Attorneys. The legal practitioners had no mandate to purport to represent the 3<sup>rd</sup> respondent. In any event, no application was made for condonation for the non-compliance with the rules. The 3<sup>rd</sup> respondent acted as if the heads were filed in accordance with the rules. I appreciate that *Advocate Phulu* had just taken instructions on the matter and did not anticipate the issues raised by applicant's legal practitioner. In the case of *Haishid v Masomela and Ors* HH-255-22, the court held that Rule 6 of the repealed rules enjoined a legal practitioner who had renounced agency to give reasonable notice to his client, the registrar and other parties to the proceedings.

In this matter it is clear that there are no heads of argument properly filed for the 3<sup>rd</sup> respondent. Whatever Messrs Mashayamombe & Company Attorneys purported to do in the matter after they renounced agency is of no force and effect. If they intended to resume agency they should have filed an appropriate notice of assumption of agency in terms of the rules. I have to agree with *Mr Tavengwa*, that there are no heads of argument for the 3<sup>rd</sup> respondent properly filed of record. The heads of argument purportedly filed on behalf of 3<sup>rd</sup> respondent are hereby expunged from the record for non-compliance with the rules of this court.

For these reasons, and accordingly, the following order is made:

1. The application be and is hereby granted.
2. The decision by 1<sup>st</sup> and /or 2<sup>nd</sup> respondent to suspend mining operations at Fundisi ‘H’ mining claim against the applicant on 20<sup>th</sup> September 2021 be and is hereby set aside for want of compliance with section 354 (2) of the Mines and Minerals Act, section 3(2) of the Administrative Justice Act and sections 68 (1) and 69 of the Constitution of Zimbabwe.
3. For the avoidance of doubt, pursuant to the provisions of section 354 (7) of the Mines and Minerals Act the decision of 1<sup>st</sup> and/or 2<sup>nd</sup> respondent as against applicant dated 28 September 2021 be and is hereby discharged and set aside.
4. The 3<sup>rd</sup> respondent to pay the costs of suit.

*Mutuso, Taruvinga & Mhiribidi*, applicant’s legal practitioners