

WANG LEI
Versus
DAVIDSON GOREMUSANDU
And
THE PROVINCIAL MINING DIRECTOR
(MASHONALAND WEST) N.O
And
THE MINISTER OF MINES AND
MINING DEVELOPMENT N.O
And
THE MINISTER OF LANDS, AGRICULTURE AND
FISHERIES, WATER AND RURAL DEVELOPMENT N.O

HIGH COURT OF ZIMBABWE
BACHI-MZAWAZI J
CHINHOYI, 27 February - 6March 2024

Opposed Application

T. Kadhau, for Applicant
S. Guwuriro, for the 1st Respondent
No appearance, for 2nd to 4th Respondents

BACHI-MZAWAZI J: Applicant has some mining rights in farm number 41 Vuti Karoi, literally, owned by virtue of an offer letter by the first respondent. Inherent in such scenarios is discord and conflict. The second to fourth respondents are cited in their official capacities in their respective portfolios. The second to third respondents are responsible for the issuance and resolutions of disputes of mines and minerals against the underpinnings of the Mining and Minerals Act [*Chapter 21:05*].

As such, sometime in October 2023 applicant uncontestedly obtained a provisional interdict against the first respondent. It was premised on the fact that his registered mineral rights were being trampled by the offer letter holder of the farm where his mining interests lay. He now seeks the confirmation of that provisional default order. This time around it is heavily contested. The basis of the contestation is that it is alleged that the applicant's so called rights are marred with illegality so much that they cannot qualify as clear rights.

In their opposing papers and submissions, the first respondent through their legal representative challenge the residence status of the applicant against the backdrop of s20 of the Mines and Minerals Act Chapter 21:05. They argue that, the applicant ought to have

registered himself as a citizen in order to qualify under the section. Before that they had initially challenged the permanent residence status of the applicant. They further, advert that there are disputes of facts that need to be resolved by the second to third respondents in respect to boundary disputes, reserved area special grant, the allocation of 150 hectares instead of 10 hectares and prohibited pegging within the residential areas amongst other violations of the provisions of Mines and Minerals Act.

Over and above that, they argue that the interests being contested by the applicant are not in his personal name but that of a company known as Florecube Mining Private Limited which is restricted to Mutoko Mining interests. In support of their averments, the respondents relied on the cases of *MDCT-2 and Ors v Timveous and Ors SC9/22* which outlines the requirements of a final interdict. In addition, the case of *Mawere v Registrar General and Ors CC2 24/15* on citizenship. The case of *Muzanenhamo v Officer in Charge Law and Order and Ors SC3/13* was also cited in lieu of their point on material dispute of facts, amongst several others.

Without further ado, on analysis, it is apparent on record, that the applicants have managed to establish a clear right. Annexures “A” and “C” are clear evidence to that effect. Annexure “C” is the prospecting licence and a precursor to Annexure “A” which is a Mining Registration Certificate over a 149 Tungsten mining claims block named Kasiga A1 at Kasiga Hills, measuring approximately 1,0km North East of contour 760 Hurungwe. These documents unquestionably, legally give the applicant rights to mine. They are official documents whose presumption of validity operates in their favour until proven otherwise. See *Mhandu v Mushore & Ors (HC 2853 of 2011) [2017] ZWHHC 80* and *Chamisa v Mnangagwa & 24 Ors (CC242 of 2018) [2018]*.

Contrary to the submissions made by the first respondents ‘counsel Mr. Guwuriro, there is proof on record that the applicant though a Chinese national was granted permanent residency by the relevant authorities in this country. Ms T. Kadhau attached the applicant’s passport endorsed with the permanent resident status.

As accurately pointed by Mr. Guwuriro, there is nothing that indicates that he then proceeded to register as a citizen of this country or that he intended to do so. Nonetheless, there is no issue of dual citizenship that has been made subject of this case. There is a marked distinction between the granting of permanent residency and the subsequent registration of citizenship in a given country. A person can have permanent residency and still opt to retain

their original citizenship. The case of *Mutumwa Mawere v Registrar General and Ors* above cited by the respondents speaks to dual citizenship and renouncement of one in order to qualify for the other. The decision in that case denounced discrimination on dual citizenship amongst other factors in line with the new constitutional provisions to that effect. See *Shaw and Anor v Registrar General of Citizenship and Ors HH 250-22*.

In view of the aforesaid s20 of the Mines and Minerals Act recognises a person with permanent residence as one of those legible for registering prospecting licences. It does not make reference to citizenship which then entails the acquisition of national identity documents. The respondents' argument that the applicant breached the terms of s20 does not therefore hold water.

The issue of unresolved disputes which vests in the domain of the second to third respondents cannot be termed material disputes for the purpose of this application. The respondent still has to initiate appropriate actions for the resolution of those domestic remedies whose recourse lies with the said respondents. This application is restricted to the confirmation of the provisional interdict and the requirements of a final interdict.

As set out in the case of *MDCT-2 & Ors v Timveous & Ors* above, the essential elements of a final interdict are outlined as a clear right, irreparable actually committed or reasonably approached harm and the absence of an alternative remedy.

A finding has already been made that the applicant has a clear right over the mining claims in question. It is evident that the first respondent is interfering with these mining operations. The fact that the first respondent has even gone to the extent of obtaining competing mineral mining rights over the other 150 hectares of the property and all the dust that has been raised in respect to triable issues all lead to the conclusion that there is reasonable apprehension of harm.

The collision course of their two worlds calls for the confirmation of the final interdict. Ms Kadhau for the applicant has demonstrated that given the above friction there seem to be no alternative remedy. Nevertheless, it is the manner in which the final relief sought is couched that is worrisome.

The order sought is framed as follows;

Firstly, the interim relief which was granted reads as follows:

It be and is hereby ordered that pending the confirmation or discharge of the Provisional Order

1. The 1st Respondent, his agents, employees, and or assignees be and are hereby interdicted.
 - 1.1. Interfering with, or disrupting the Applicant or Applicant's agents and mining operations at the applicant's mining claim named Kasiga 171 on Kasiga Hills approximately 1,0km North East of contour 760 Hurungwe.
 - 1.2. Removing or processing any Tungsten ore from or carrying out any mining or other activity that interfered with the Applicant's use, access, and occupation of a mining claim.
2. Cost shall be in the cause

The final relief sought reads:

That you show cause why a final order should not be made in the following terms;

1. The provisional order be confirmed into a final order.
2. The Applicant has exclusive rights over a mining claim known as Kasiga A1 on Kasiga Hills approximately 1,0km North East of Contour 760 Hurungwe.
3. That 1st Respondent has no mining rights over Kasiga Hills approximately 1,0km North East of Contour 760 Hurungwe.
4. The 1st Respondent and anyone claiming occupation through him vacate the mining claim forthwith.
5. The 1st Respondent pays cost of suit at an attorney and client scale.

Whilst the court is of the view that it can confirm the order barring the first respondent from interfering, disturbing or interrupting with the mining operations of the applicant at Kasiga A1 Kasiga Hills it cannot order the first respondent to vacate his property, as he is a valid offer letter holder.

The court can neither usurp the functions of the second to third respondents by declaring exclusive rights of those mining claims to applicant. This is the terrain of the said respondents who have the prerogative to confirm or revoke such rights in terms of the governing Act. There is no justification in higher costs as each party has the right to argue its matter in court.

Accordingly, it is ordered that;

1. A final interdict barring the first respondent from interfering, disrupting and disturbing all the mining operations and activities of the applicant in his 149 Tungsten Mining block at Kasiga A1, Kasiga Hills is hereby granted.
2. Each party to pay its own costs.

T. Kadhau Law Chambers for the Applicant.

Guwuriro and Associates for the 1st Respondent.