

CONFIDENCE MINING PRIVATE LIMITED
versus
TIANBOA MINERAL INDUSTRY PRIVATE LIMITED
and
THE MINISTER, MINISTRY OF MINES, AND MINING DEVELOPMENT N.O
and
THE OFFICER IN CHARGE, ZIMBABWE REPUBLIC POLICE MAZOWE N.O
and
THE ZIMBWE REPUBLIC POLICE COMMISSIONER GENERAL N.O

HIGH COURT OF ZIMBABWE
MUNANGATI-MANONGWA J
HARARE, 13 December 2018

Urgent Chamber Application

Ms M Dunatuna, for the applicant
A Borerwe, for the respondent

MUNANGATI-MANONGWA J: Having deemed the application urgent, I proceeded to hear submissions on merit. The facts of the matter are:

Applicant had a special grant to carry out prospecting operations in June 2016 which expired 12 months later in July 2017. Renewal was denied. Applicant claims to have installed a gold mill at the farm. It discontinued mining operations and claims to have remained in peaceful possession of the mill. Apparently the respondent has first mining rights in the very area the gold mill is located.

The applicant purports that it was disposed of the gold mill. However of note are the following averments in its founding affidavit:

“14. On or around the 3rd December 2018, the 1st respondent came with the Police Office under the command of the 3rd Respondent and a gang of people and they started threatening the Applicant that they want to dispossess them of the gold mill. Applicant advised them that they were lawfully entitled to the gold mill.”

It states that there were threats to dispossess and the same issue of threats is repeated in paragraph 15.

The applicant further states that respondent brought a letter which purported to give them authority to evict applicants. The subsequent paragraph shows that no dispossession took place. There is a bold averment that the first respondent with the assistance of the police disturbed the applicant's peaceful possession of the gold mill. No details are provided as to how that was done. It was only in submissions that Ms *Dunatuna* referred to the removal of security personnel manning the mill. If indeed such dispossession had occurred surely such important information would have been supplied. The outlined action of the first respondent points to threats and not dispossession.

The first respondent argues that acting in terms of s 381 of the Mines and Minerals Act the respondents wanted to serve an order from the Mining Commission for the applicants to vacate. Apparently on record there is a letter from the Provincial Mining Director requesting the Provincial Co-ordinator Minerals Flora and Fauna Unit to assist the first respondent with the removal of illegal occupants from the mining claims.

The first respondent admits to the respondent visiting the farm but alleges that it was to serve an order. It is clear that both parties are not being honest with the court. The first respondent went with the intention to evict but met resistance as annexure "E" to the opposition affidavit shows. It states that the team met resistance from Confidence Mining Private Limited security guards. Thus dispossession did not take place.

For the applicant to come to court and allege dispossession it is being dishonest. Applicant could simply have relied on threats rather than hoodwink the court.

Conversely even if it could be remotely accepted that the applicants were despoiled, the applicants' representative advised the court that they restored themselves to the mill. The courts will not entertain claims which are tainted with dishonesty and as BARTLETT J stated in *Deputy Sheriff, Harare v Mahleza and Anor* 1997 (2) ZLR 425 (HC) @ 426B.

"People are not allowed to come to court seeking the court's assistance if they are guilty of a lack of probity or honesty in respect of the circumstance which cause them to seek relief from the Court. It is called, in time honoured legal parlance, the need to have clean hands. It is a basic principle that litigants should come to court without dirty hands. If a litigant with unclean hands is allowed to seek a court's assistance, the court risks compromising its integrity and becoming a party to unclean hand transaction."

The applicant in approaching the court has not been candid and the court finds that the applicant was not despoiled hence there is nothing to restore to the applicant. Incidentally, a

litigant who takes the law into their hands cannot expect the courts to come to their aid when they have no respect for the law.

Finally the court notes that there is an invisible thread running through this case which points to a history between the parties which neither of them has been willing to bring out. It is however imperative that the court emphasises that if the first respondent is to act and pursue the applicant, it must do so within the confines of the law. Equally the applicant can only be entertained by the courts when it presents to court a truthful version of events leading to a cause of action and not pull over on the eyes of the very court it expects to assist it. Certainly that will not augur.

Accordingly the application is dismissed with costs.

Chivoredzingirai Group of Lawyers, Applicant's legal practitioners
Ngwerume Attorneys, 1st respondent's legal practitioners