

ROSELEX MINING SYNDICATE
versus
MR D GAVI THE REGISTERED HOLDER OF CONFIDENCE 12 MINE 7957
and
MINISTER OF MINES AND MINING DEVELOPMENT
and
DETECTIVE INSPECTOR WONDERFUL CHAPARIRA
and
SGT VINCENT PEPUKE
and
ZIMBABWE REPUBLIC POLICE
and
COMMISSIONER GENERAL – ZIMBABWE REPUBLIC POLICE

HIGH COURT OF ZIMBABWE
ZHIOU J
HARARE, 16 October 2020

Urgent Chamber Application

F.F. Hwenhira, for the applicant
B Maruva, for the 1st respondent
T Nyamukapa, for the 2nd – 6th respondents

ZHOU J: This is an application for a *mandament van spolie*. The application is opposed by the first respondent. The second respondent has advised that he elects to abide by the decision of this court. The third to sixth respondents have not contested the relief being sought.

The background facts to the dispute are as follows. There is a dispute which is pending between the applicant and the first respondent over the area described in the papers as Belingwe IA Mine, Mberengwa Game Reserve. The Provincial Mining Director for the Midlands Province in which the mine is located made a determination. The applicant is contesting that determination.

It is common cause that on 8 October 2020 the first respondent accompanied by some police officers went to the mine. The applicant's security officers who were guarding the mine vacated the mine as a consequence of that visit. Applicant's case is that the first

respondent thereafter took occupation of the mine. These are the facts on which the *mandament* is being sought.

Apart from opposing the application on the merits the first respondent objected *in limine* to the determination of the merits on two grounds. These will be considered first.

The first ground of objection pertains to the legal status of the applicant and its competence to sue, the allegation being that by reason of not being a legal *persona* the applicant has no capacity to sue. The respondents concern in this respect is excusable given the manner in which the status of the applicant is presented in the founding affidavit and is cited in all the papers. While the applicant is cited as a syndicate, the founding affidavit in para 3 avers that it is “a company duly incorporated in terms of our laws.” The deponent then attaches a certificate of incorporation and a Form CR14 in respect of Roselex Mining (Pvt) Ltd. This is clearly a different entity. The matter is further obfuscated by the attachment of a resolution by the Board of Directors of Roselex Mining Syndicate (Pvt) Ltd. In all these documents the spellings vary. The court cannot but emphasize the need for lawyers to apply their mind to papers presented to them by clients before they prepare court papers. The approach in this case shows inattention which is potentially prejudicial to the client. Be that as it may, the deficiencies raised do not take away the entitlement of a syndicate to be cited in its name. Rule 8 provides that “associates may sue or be sued in the name of their association.” The definition of association in r 7 includes a syndicate. The documents attached show that the applicant as described herein is the entity in whose name the disputed mine was registered, see Annexure “C” to the founding affidavit and the various letters – annexures G. et seq., pp 22 – 32 of the applicant’s papers. For this reason, I see no reason why the applicant’s name cannot be cited as described. The objection is therefore dismissed.

The second ground of objection pertaining to the authority from Roselex Mining (Pvt) Ltd also fails because the Syndicate, not being a juristic *persona*, requires no resolution. This is so because in essence it is the associates suing in its name.

On the merits, the requirements for a *mandament van spolie* are settled. The applicant must allege and prove that

- (a) he was in peaceful and undisturbed possession of the property, and
- (b) that the respondent deprived him of such possession wrongfully and without his consent.

Despite spirited attempts to deny that the applicant was in peaceful possession of the property, the first respondent contradicts himself by acknowledging the presence of the

applicant's security personnel at the disputed site on 8 October 2020. The presence of these security officers constitutes the applicant's fact of occupation of the property. They were guarding the site as agents of the applicant, hence the applicant was in possession of the mine.

The applicant's security personnel only vacated the property when the first respondent accompanied by police officers came to the property. There was a futile attempt by Mr Maruva for the first respondent to suggest that the security officers voluntarily vacated the mine. That assertion is contradicted by the conduct of the applicant in approaching this court on the following day. In any event, the consent which was required for the first respondent to be on the property lawfully is that of the applicant. First respondent has not shown that such consent was ever given. His presence on the property is an act of self-help. The act of self-help cannot be legalised by the use of members of the Zimbabwe Republic Police to take occupation of the mine. On these facts it is clear that the applicant was deprived of occupation of the mine wrongfully without his consent.

The fact that the first respondent has a determination by the Provincial Mining Director in his favour pertains to the merits of his title to the mine. That fact is irrelevant in considering an application for a spoliation order. The principle which underpins the *mandament van spolie* is encapsulated in the maxim *spoliatus ante omnia restituendus est* which means that the status quo ante or before the act of spoliation must be restored before the merits of the title can be considered.

In all the circumstances of the case, the applicant is entitled to the relief sought.

In the result, the provisional order is granted in terms of the draft order.

B Chipadza Law Chambers, applicant's legal practitioners

Zuze Law Chambers, 1st respondent's legal practitioners

Civil Division of the Attorney General's Office, 2nd – 6th respondents' legal practitioners