RIOZIM LIMITED
and
SENGWA COLLIERY (PRIVATE) LIMITED
Versus
LABENMON INVESTMENTS (PRIVATE) LIMITED
and
THE MINISTER OF MINES AND MINERAL DEVELOPMENT
and
THE PROVINCIAL MINING DIRECTOR (MATABELELAND NORTH)

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 20 September & 4 October 2023

Urgent Chamber Application

T S Manjengwa, for the applicant
F Murisi, for the first respondent
C Chitekuteku, for the second third respondents

ZHOU J: This is an urgent chamber application for an order interdicting the first respondent from carrying out any exploration and or mining operations including excavating, extracting and carting away coal or any other mineral from the Reserved area 1035 (RA1035) measuring 56 203 hectares and the area covered by Special Grant 849 in the Bulawayo mining district. On the return date the applicants seek an order declaring that the first respondent has no right to prospect and peg in the area referred to above and for first respondent and all persons claiming occupation through it to be ordered to vacate the area. The applicants claim costs on the attorney client scale.

The first respondent opposes the application. The second and third respondents advised through counsel that they do not oppose the application. The facts, which are common cause, are as follows: The first applicant is the holder of a right of first option in respect of the reserved area in dispute. The reservation was registered, Reserved Area 1035 (RA 1035) covering 56 203 hectares under General Notice 791 of 1982. On 23 September 1988 a Special Grant No. 849 was

issued in favour of the first applicant over the area known as Sengwa Coal field. The area covered by the Special Grant was subsequently extended by the relevant authorities as was the period of the Special Grant. It is not in dispute that the first applicant with the approval, of the relevant authorities ceded to the second applicant its right in respect of the special Grant No 849. The first applicant was alerted to the presence of persons carrying on mining operations at the disputed location. The operations were being carried out under the aspices of the first respondent. The first respondent states, and it has not been disputed, that it was mining on the authority y of Registration Certificates issued to it by the relevant authorities. There is a dispute as to the mineral that the first respondent was (or is) extracting from the disputed area.

In addition to contesting the application; on the merits the first respondent has raised points *in limine.* l heard arguments in respect of both the objections *in limime and* the merits and advised that my decision on the points *in limine* would inform how I would proceed in respect of the merits. It is proper to consider the question of urgency first as a finding that the matter is not urgent entails that the court will not relate to any of the other issues raised in opposition.

A matter is urgent if it cannot wait to be dealt with as an ordinary court application, see *Dilwin Investments (Pvt) Ltd t/a Fomscaff* v J*opa Engineering* Company (Pvt) Ltd HH 116- 98, AT P.1 *Pickening* v *Zimbabwe Newspapers* (1980) Ltd 1991(1) ZLR 71 (H) at 93 E. The first respondent's objection to the urgent hearing of the matter is that the applicants became aware by 25 July 2023 that there were mining operations taking place at the site. Thus, according to the first respondent, the need to act arose them.

It is true that on 25 July 2023 the first applicant wrote to the third respondent complaining of illegal mining activities at the area in dispute. However, the applicants continued to engage the third respondent over the alleged unlawful activities culminating in the prohibition issued on 6 September 2023 for the first respondent to cease the mining activities pending a possible cancellation of its papers. Thus the need to act for the purposes of the instant application did not arise in July 2023. The applicants did act for the purposes of enforcing the domestic remedies provided by law through the letter of July 2023. What triggered the instant application were the alleged mining operations which continued after the prohibition order was issued. That was only discovered during the investigation carried out between 8 and 11

September 2023.The need to act only arose then. For the above reasons, he objection to the urgent hearing of the matter connot be sustained and is dismissed.

The second objection is to the resolution attached to the founding affidavit. First respondent states that the resolution does not state when the meeting of the directors authorizing the proceedings was held. The objection is predicated upon the mistaken view that every proceeding requires a resolution to be attached to it if a company institutes it. That of course is not correct. It is only when the authority to institute the proceedings is challenged on valid legal grounds that such a resolution is necessary. Also, what is attached to the papers is merely an extract from the minutes of the meeting. The extract is not a copy of the full minutes of the meeting. There is no prescribed form for such an extract. On the face of it the document records the requisite authority. The first respondent has not adduced evidence to prove that the contents thereof did not emanate from a meeting of the applicant's board of directors. The objection is accordingly dismissed.

The third objection is that there is no separate resolution pertaining to the second respondent. The deponent to the founding affidavit states that the second applicant is a wholly owned subsidiary of the first applicant. For the reason given above that not every case requires a resolution to be attached, the objection is meritless. The deponent avers knowledge of the facts stated in the affidavit. He can therefore competently make factual averments upon which the second applicant is entitled to rely especially given its relationship with the first applicant. The onus is on the first respondent to prove that the first respondent has not authorized the proceeding which onus has not been discharged. The objection must therefore fail.

The first respondent's fourth objection is that there was an alternative remedy to approaching the court, in that the applicant could have approached the Minister to seek the same relief that is being sought *in casu*. The issue of an alternative remedy is one that pertains the merits of the application as it is relevant as a requirement for the granting of an interdict. To the extent that what was intended was to say that there is a domestic remedy then that objection cannot stand for two reasons. Firstly, what trigged the application was the alleged disregard of a prohibition order granted pursuant to the provisions the applicable law. In other words the allegation is that the first respondent has disobeyed a prohibition order issued in terms of the

available domestic remedy. Secondly, the availability of a domestic remedy is not an absolute bar against seeking relief from the court because the court has a discretion as to whether or not to entertain proceedings instituted before exhausting domestics remedies. *In casu as* noted the first respondent is being accused of disregarding the prohibition order that was issued pursuant to the invocation of a domestic remedy. On account of the foregoing reasons the objection is dismissed.

The objection that the relief sought is incompetent is misconceived. The papers reveal that the applicants complaint is that the first respondent is conducting unlawful mining activities at an area over which the applicant has right and in respect of which it has an extant prohibition order against it. If the application succeeds the first respondent can competently be evicted from the area and a declaration is indeed sustainable.

The sixth objection is that the applicants have no *locus standi* to institute the application because the area in question belongs to the Minister of Mines. The applicants have rights over the area which the Minister has already recognized as evidenced by the issuing of the prohibition order. Ownership of the area is not the only legal right that is recognized for the purposed of founding *locus standi*. For these reasons the objection is dismissed.

The seventh objection is that the the deponent's affidavit is based on hearsay evidence. It is not clear which portions of the affidavit are said to be based on hearsay evidence. The deponent has stated that he is the first applicant's Exploration Surveyor. There is no suggestion that in that capacity he has no personal knowledge of the title of the applicants to the disputed area. He states in para 2 of the founding affidavit that unless otherwise stated he has personal knowledge of the facts averred. In respect of the activities of the first respondent at the area, the deponent relied on the report of the investigation. After all the first respondent confirms its presence at the area. The objection that the application is based on hearsay is therefore dismissed.

The Merits

The applicant has proved its title to the area as it has the first option and a special grant in its favour. The prima facie right to the place is therefore established. The right has not been extinguished by the exercise thereof as alleged by the first respondent.

First respondent makes the startling submission that its certificates authorise it to mine Graphite rather than coal which is what the applicants are entitled to mine. The right applies and attaches to the area and not to the mineral. It is not open to the first respondent to carry on mining activities on the land over which applicants have rights even through the mineral that it seeks to mine is different from that which the applicants are mining.

In all the circumstances, I find that the applicant has established its case and is entitled to relief.

In the result, the provisional order is granted interms of the draft there of subject to correction of paragraph 1 under the terms of the final order sought so that it refers to the first respondent rather than the second respondent, and the deletion of para 2 under interim relief granted and the correction of he section relating to service.

Wintertons, legal practitioners for the applicant
Murisi& Associates,legal practitioners for the first respondent