

WILFRED CHIPFUMO

versus

LOREEN MASHANGWA

and

VANDAI NGORIMA

and

THE OFFICER IN CHARGE, ZIMBABWE REPUBLIC POLICE, SHURUGWI (N.O.)

and

THE PROVINCIAL MINING DIRECTOR, MIDLANDS PROVINCE (N.O.)

and

THE MINISTER OF MINES AND MINING DEVELOPMENT (N.O.)

and

THE MINISTER OF LANDS, AGRICULTURE, WATER, CLIMATE AND RURAL
RESETTLEMENT (N.O.)

HIGH COURT OF ZIMBABWE

WAMAMBO J

MASVINGO, 22 October 2020, 12 November 2020, 30 November 2020, 7 January 2021 and
15th January, 2021

Urgent Chamber Application

O. Mafa, for the applicant

W.T. Davira, for the 1st and 2nd respondents

T. Undenge, for the 4th to 6th respondents

WAMAMBO J. This application came by way of a chamber application.

Applicant holds an offer letter wherein he was offered Stand 47 in Mont Dor South Farm, Shurugwi measuring 4 hectares. The offer letter is dated 9 February 2010. According to the founding affidavit the following transpired.

On 28 September, 2020 1st and 2nd respondents obtained a provisional order which on the pertinent portion reads as follows:-

*“That the 1st and 2nd respondent, their associates and/or business partners be and are hereby interdicted, barred and restrained from continuing with mining operations at **Eagle’s Friend Registration Number 31393** and on **Derino 20 Registration Number 15077 BM** both located at **Montdor Farm, Shurugwi.**”*

The above order was granted under HC 255/20 and in default of appearance of the applicant in this matter who was the 1st respondent and one Augustine Njovo who was the 2nd respondent. 1st and 2nd respondents apparently under cover of the above order proceeded to applicant’s homestead with a gang armed with machetes and chased applicant from his homestead claiming that his homestead was within their mine. The gang was claiming that they had a High Court order in their favour allowing them to mine within applicant’s homestead. The gang destroyed crops and a fence and threatened to kill applicant if he did not leave his homestead.

Applicant seeks that 1st and 2nd respondents be barred from evicting him from his home and to cease carrying out mining activities at the same homestead.

1st and 2nd respondents filed opposing papers. They deny taking part in any violent action as alleged by applicant. They also filed a letter written by the Provincial Mining Director for Midlands Province dated 5 April, 2019. The letter refers to a complaint raised by 1st respondent and instructs applicant to stop mining activities at the above mentioned location.

1st and 2nd respondent are married customarily.

When this matter initially came up for hearing it was agreed that a ground verification report from the relevant Ministries would go a long way in resolving the dispute. Due to some

error a report was compiled by 5th respondent's officials to the exclusion of the 6th respondent Ministry.

The report penned by a Survey technician, Chief Surveyor and Deputy Provincial Mining Director made the following observations:

- “3.1. *Four boundary points were picked for Eagle's Friend Mine Reg. No. 31393 and there were no beacons or temporary beacons observed on the ground to mark the points of the mining location.*
- 3.2. *The farmer's boundaries are not fenced but recognized from the head by the owner.*
- 3.3. *Eagle's Friend Mine ground position does not match its docket position.*
- 3.4. *Eagle's Friend Mine Reg. No. 31393 was registered on the 18th of March, 2020”*

The conclusive remarks of the report are that the registration certificate of Eagle's Friend Mine No. 31393 should be cancelled in terms of section 50 of the Mines and Minerals Act [Chapter 21:05] as it was registered on ground not open to prospecting and pegging in terms of section 31 of the said Mines and Mineral Act.

It took effort and some time before the 4th to 6th respondents' legal practitioner filed a report this time under the signatures of the Lands Officer and Chairperson District Land Committee (DLC).

This time around it appears the participants were broader in number and postings. The report reflects that present were 2 members of the District Lands Committee, 2 members of the farm Committee representatives, 2 members of the Ministry of Mines and Mining Development, Gweru, the applicant and 2nd respondent.

The report is quite lengthy. It however points out to a number of errors inaccuracies and anomalies. Amongst other observations made are the following. Although applicant's offer letter document reflects that his farm is in Mont Dor South that is incorrect as it is in Selukwe Peak Farm. The farm was demarcated using old methods.

The future issuance of a uniform Land Settlement Permit by Government will include thorough survey checks and will clarify and correct location details.

In the last paragraph the report reads as follows:-

“Farmers to remain farmers if interested in mining they should apply for change of use and mining rights from the Ministry of Mines. No mining activity without authority or permission from the Ministry of Mines.”

It was my impression that the parties were working very hard behind the scenes to resolve the dispute.

The ground verification exercise was meant to resolve the dispute as it involved not only an array of participants but senior representatives of the relevant Ministries.

The applicant is not at the farm where he is by force. He was properly allocated the farm as evidenced by the offer letter. The mistakes on the names are not of his making. The fact that the land reform exercise at those early stages may have faced some challenges is again not his invention. If he was allocated agricultural land where there is a mine, that is again not his fault. If he wants to be a miner as per the report he should go through the legal processes. As for now he deserves protection from invasion into his farm. The relevant Ministries should be vigilant and particular and create more common ground than expanding and creating disputes. In this case it's a dispute between a farmer and a miner.

To that end I am of the view that applicant has established that he has a *prima facie* right to the land he occupies by virtue of an offer letter. He stands to suffer irreparable harm in many ways if his homestead fences are destroyed through mining operations. It would appear that the relevant Ministry officials actually created the dispute. For purposes of the order sought I am convinced applicant has made his case.

To that end I order that the order be granted as per the draft order subject to the deletion of paragraph (c) and the deletion of **Stand 47, Mont Dor South Farm, Shurugwi** wherever it appears in the draft order to be substituted with **Stand 47 Selukwe Peak Farm**.

Mapfumo, Mavese and Associates, applicant's legal practitioners
Gundu, Dube and Pamacheche, 1st and 2nd respondent's legal practitioners
Civil Division of the Attorney General's Office, 4th to 6th respondents' legal practitioners