

LUCKMORE SHOKO

versus

DOHWE 2015 MINE

and

DANISA MOYO

and

OFFICER IN CHARGE, MINERALS FLORA AND FAUNA UNIT, ZVISHAVANE

and

THE PROVINCIAL MINING DIRECTOR, MIDLANDS

HIGH COURT OF ZIMBABWE

WAMAMBO J

MASVINGO, 14 January 2021 and 27th January, 2021

Urgent Chamber Application

N. Maguranyanga, for the applicant

C. Ndlovu, for the 1st and 2nd respondents

No appearance, for the 3rd and 4th respondents

WAMAMBO J. The applicant seeks the following relief:-

TERMS OF THE FINAL ORDER SOUGHT

That you show cause to this Honourable Court why a final order should not be confirmed in the following terms:

1. *The provisional order granted on theday of be and is hereby confirmed.*
2. *That the 1st and 2nd respondent be and hereby declared illegal miners within the coordinates, **A 0792091/7731340 – B 0792090/7731138 – C 0791944/7731090 – D 0791730/7731340** cited in the attached Annexure ‘A’.*
3. *The 1st and 2nd respondents be and hereby evicted from a mine situated within the coordinates **A 0792091/7731340 – B 0792090/7731138 – C 0791944/7731090 – D 0791730/7731340** within 48 hours of this order.*
4. *The 1st and 2nd respondents or any person acting on the 1st and 2nd respondent’s behalf for the purpose of furthering the interest of the 1st and 2nd respondents be and hereby ordered to refrain from in any way interfering the applicant’s possession or occupation of a mine situated within the coordinates, **A 0792091/7731340 – B 0792090/7731138 – C 0791944/7731090 – D 0791730/7731340** in the attached Annexure ‘A’ and shall be so interdicted and/or restrained from any such future interference save (sic) may be authorised by a binding and operational order of a competent court.*
5. *The 1st and 2nd respondents to pay costs at an attorney – client scale.*

INTERIM RELIEF GRANTED

That pending the determination of this matter, the Applicant is granted the following relief:-

1. *The applicant seeks to have the 1st and 2nd respondents and all those acting on respondent’s behest be and is hereby interdicted from conducting any mining activities at a mine situated within the coordinates **A 0792091/7731340 – B 0792090/7731138 – C 0791944/7731090 – D 0791730/7731340** cited in the attached Annexure ‘A’ pending determination of this application.*
2. *Should the 1st and 2nd respondents and all those acting through him fail to comply with paragraph 1 above, the 3rd respondent be and is hereby empowered to arrest them before a criminal court for contempt of court.*

A perusal of the draft order reflects a number of glaring mistakes and grammatical errors notably at paragraph 4 of the final order sought wherein even the applicant inserted the word (sic) in the paragraph. It means applicant’s legal practitioners’ noted that there was an omission which they should have addressed but proceeded to place (sic) instead. Paragraph 1 of the interim relief sought is also couched incorrectly in a number of ways.

There is also the constant reference to Annexure “A” which is unnecessary in the circumstances. The coordinates should properly and fully be cited in the draft order.

The background of the matter according to the founding affidavit is as follows:-

On 16 November 2020 applicant applied for a special grant to 4th respondent for a mine situated in Mberengwa under the coordinates cited in the draft order. Payments for processing the application were made. The application sought was granted by 4th respondent but the certificate has not yet been issued. A dispute arose between applicant and T and T Mining Syndicate and 4th respondent ordered that all mining activities should cease. Apparently this dispute was resolved. Applicant received a letter dated 21 December, 2020 which letter stipulated that Decent Moyo (deceased is) the registered owner of 1st respondent.

4th respondent’s letter dated 21 December, 2020 Annexure “E” reflects that 1st respondent does not fall within the same coordinates as applicant’s mine. Applicant upon noting the discrepancies wrote to 3rd respondent requesting him to direct 2nd respondent to cease operations. There has been no response to this request.

The 1st and 2nd respondents are opposed to the application.

They however raised a number of points *in limine* namely urgency, lack of capacity and cause of action.

On urgency 1st and 2nd respondents submit that 1st respondent applied for registration in 2015 and the application was granted on 20 November 2020. Mining operations commenced. Why didn’t applicant make his application then? Further that the mine on the stated coordinates does not belong to applicant. Thus so it is argued applicant cannot create urgency over nothing.

Applicant on the other hand is of the firm view that the matter is urgent. His argument is as follows:-

Applicant made an application for a special grant on 16 November 2020. When the pegging was conducted there were no mining activities by 1st and 2nd respondents on the mine. Applicant did not know of 1st respondent until he received a letter Annexure ‘E’ on 7 January 2021, which letter indicated 1st respondent as the prior pegger. Applicant swiftly wrote to the 3rd respondent and thereafter this application was launched on 12 January, 2021.

I pondered over the issue of urgency. The issue of whether this is a matter whereby I should drop every other work and attend to this application was high on my mind.

The issue of urgency is dealt with in a plethora of cases.

In *Econet Wireless (Pvt) Ltd. v Trustco Mobile (Proprietary Ltd) (2) Trust Group International (Proprietary) Ltd* SC 43/13 GARWE JA at page 14 said

“The position is now settled that what constitutes urgency is not only the imminent arrival of reckoning but also if at the time the need to act arises, the matter cannot wait. Urgency which stems from a deliberate or careless abstention from action until the deadline draws near is not the type of urgency contemplated by the Rules.”

Annexure “D” and “E” authored by 4th respondent reflect that applicant is an applicant who has no registered mine at the location in dispute. One of the reasons given to support urgency is that applicant has entered into an agreement with another company which might withdraw from the agreement if 1st and 2nd respondents persist with their illegal mining at the dispute mine. The responsible authority has it in writing that not only is applicant barred from mining at the dispute mine but that he is not even a registered miner at that location.

To borrow from *Mr Ndlovu* counsel for the 1st and 2nd respondents *“He cannot create urgency over nothing”*.

I have also considered the other reasons given in the certificate of urgency which do not appear to add to the reason above.

Applicant cannot base urgency on an agreement he made with a company that he does not mention nor attach documents to support the same.

The other submissions merely illustrate that if the other parties are not stopped from mining applicant will lose out financially. Which leads me to the submission made by 1st and 2nd respondents that not only were they the prior peggers but they have been carrying out mining operations since 20 November 2020 but 1st and 2nd respondents did not intervene then, only to intervene in January 2021. Although applicant resists this submission I consider it favourably not only because it was feebly resisted but that Annexures “D” and “E” reflects that applicant has no mining rights.

Applicant had a dispute with T & T Mining Syndicate which was referred to 4th respondent. Why did he choose not to refer 1st and 2nd respondents to 4th respondent as well?

I find that 1st and 2nd respondents were carrying out mining activities at the disputed area as early as November 2020 and applicant only made this application on 12 January 2021. I

consider this a considerable delay which points in the direction that applicants did not act when the need to act arose. I find that this matter is not urgent.

To that end I will desist from considering the other points *in limine* raised.

In the circumstances I make the following order:-

1. The matter is not urgent and is removed from the roll of urgent matters.
2. The applicant shall pay costs of this application.

Mutendi, Mudisi and Shumba, applicant's legal practitioners
Ndlovu and Hwacha, first and second respondents' legal practitioners.