

PETER NHERERA
and
DOUGLAS SARAOGA
and
LOVEMORE SARAOGA
and
TAWANDA DHLIWAYO
versus
TAFADZWA MUKAZI
and
STEPHEN MUKAZI
and
BLESSING MUKAZI
and
THE PROVINCIAL MINING DIRECTOR MIDLANDS N.O

HIGH COURT OF ZIMBABWE
WAMAMBO J
MASVINGO, 20 August 2021 and 9 September 2021

URGENT CHAMBER APPLICATION

V Masvaya, for the appellants
P Marova, for the 1st to 3rd respondents
T Undenge, for the 4th respondent

WAMAMBO J: This is an urgent chamber application wherein the applicants seek an order in the following terms:

“TERMS OF THE FINAL ORDER SOUGHT:

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

1. That the 1st to 3rd respondents be and are hereby interdicted from asserting any rights in respect of Gazemba III, Registration no 25685 or any of applicants’ mining claims unless they produce legal documents from the office of the 4th respondent or unless they are authorised by an order of a court of competent jurisdiction.
2. That the 1st to 3rd respondents be and are hereby ordered not to interfere directly or indirectly with the mining operations of the applicants’ and their employees through the use of violence.

3. That the 1st to 3rd respondents be and are hereby ordered to bear the costs of the application at attorney – client scale.

INTERIM RELIEF GRANTED

Pending the determination of this matter the applicants are hereby granted the following relief:

1. That the 1st to 3rd respondents, their employees, agents or assignees be and are hereby interdicted from invading or accessing Gazemba III, Registration No 25686, its surface and underground workings.
2. The 1st to 3rd respondents, their employees or assignees and all those claiming authority through them be and are hereby ordered not to behave in any violent manner towards either the applicants or their employees.
3. The 4th respondent is hereby ordered to ensure compliance with this order by the 1st to third respondents and where necessary enlist the services of the Zimbabwe Republic Police to enforce such compliance.

SERVICE OF THE PROVISIONAL ORDER

That the applicant’s legal practitioners be and are hereby granted leave to serve this order, together with any annexures, upon all the respondents or any responsible person at the addresses of service of the respondents.”

The four applicants are members of Four Brothers Mining Syndicate. The first to third respondents who chose not to file any papers are however opposed to the application. The fourth respondent is not opposed to the granting of the application. The applicants sketch the background to the matter as follows:

Applicants are registered holders of mining blocks in Copperqueen area, Gokwe. They mention a number of mining blocks which are registered in the Four Brothers Syndicate names. However for purposes of the application the mining block which is at the centre of the dispute is Gazemba III Registration no 25685. First to third respondents are alleged to have invaded the mining block in a violent manner accompanied by illegal gold miners armed with machetes. Threats were allegedly issued by the group. It is this action by the first to third respondents which has resulted in this application. It is alleged by applicant that first to third respondents were apparently pegging their mine. Mr *Marava* for first to third respondents however submitted as follows:

There is no proof that his clients invaded applicants’ mining claim there is no police report the applicants had alternative remedies which they chose not to pursue.

The applicants in response to first to third respondents’ actions wrote to the fourth respondent. Annexure “F” refers. It is a letter dated 17 August 2021 wherein applicants

outline their complaints against first to third respondents. According to applicants fourth respondent took no action after receipt of the abovementioned letter of complaint.

The letter addressed to fourth respondent reflects that applicants took some steps to resolve the dispute. That they may not have approached the police is of no moment.

The applicants have established a *prima facie* right in that they bear a certificate of registration attached to the application, an inspection certificate and proof of payments from Fidelity Printers and Refineries. The above reflects that the applicants have rights at law to protect and indeed are producing and ferrying their produce to the authorised agent.

The fact that the applicants are declaring their produce to the Fidelity Printers and Refineries reflects that they are carrying out legitimate mining business. The alleged disturbances by first to third respondents can only infringe on their operations and indeed they may suffer irreparable prejudice. The first to third respondents have no title to the mining claim. They are alleged to be acting in a violent manner on mining premises where they have no right to be. The balance of convenience favours the applicants in the circumstances.

The fourth respondent was informed of the disturbances but that seems not to have had any impact. Indeed fourth respondents is not opposed to the application. I find in the circumstances that applicants have proven that they deserve the relief they seek.

Mr *Masvaya*, was however reasonable enough to concede that the third paragraph of the interim relief should be expunged.

To that end the application is granted as per the draft order albeit with the deletion of para 3 of the interim relief as proposed.

Chitsa & Masvaya Law Chambers, applicants' legal practitioners
Marufu, Misi Law Chambers, 1st to 3rd respondents' legal practitioners
Civil Division of the Attorney General's Office, 4th respondent's legal practitioners

