

CEPHAS MABHUNDU
and
KIRION JURU
and
TAUYA MATORO
versus
EDSON GODZA

HIGH COURT OF ZIMBABWE
WAMAMBO J
MASVINGO, 19 October, 21 October and 28 October 2021

N. Mugiya, for the applicants
C. Ndlovu, for the respondent

URGENT CHAMBER APPLICATION

WAMAMBO J: This is an Urgent Chamber Application wherein the appellants seek an order in the following terms:-

- “1. *The effects of the order of this court in HC 306/20 granted on the 28th of May, 2021 be and is hereby suspended pending the finalisation of an application for rescission in HC 144/21.*
2. *Costs shall be in the cause*”.

The applicants are members of a mining syndicate styled Juru Mining Syndicate. On 28 May 2021 an order in default was issued by this court in favour of the respondent under HC 306/20. The applicants have since applied for rescission of that judgment under HC 144/21 which application is still pending.

Respondent also filed an application for an interdict under HC 08/20 which application by order of this court was stayed pending the outcome of the rescission application under HC

144/21. This application has been prompted by the following events according to the founding affidavit filed by the first applicant:-

On 8 October, 2021 respondent went to 1st applicant's homestead and blocked his fields by fencing then claiming that his block included first applicant's field and that he was entitled to "shut out" first applicant from his traditional fields and homestead. In effect respondent evicted first applicant and his family inclusive of the 2nd and 3rd applicants who are 1st applicant's cousin who reside with him. Respondent claimed entitlement to evict the applicants by virtue of the default order issued in HC 306/20.

The respondent has resumed mining activities and blasts rocks which activity is dangerous as the rocks hit the remaining portion of applicants homestead.

First applicant maintains the position, that the application for rescission is central to the resolution of the dispute. Further that he is entitled to reside at his homestead and carry out farming activities.

In oral submissions *Mr Mugiya* made the following submissions;

The application is to ensure the due process of law and ensure that applicants won't be further prejudiced. Further that the conduct of the respondent effectively seeks to undermine the rescission application.

Respondent filed a notice of opposition wherein he makes the following averments;

The application for a compelling order is inconsistent with the relief sought. The Provincial Mining Director has already complied with the order granted under HC 306/20. The applicants do not intend to prosecute the application for rescission because after they received respondent's notice of opposition on 14 June, 2021 they filed their answering affidavit on 30 June, 2021 and thereafter did not bother to file heads of argument or set the matter down for hearing. Effectively that applicants are clogging the court role with unnecessary applications.

Respondent insists he is carrying out legal mining, operations and should so continue. He also avers that he has not fenced applicants homestead nor has he evicted applicants from his homestead. Further that the applicants homestead or fields are not near his mine. That the responsible authority did not apply for a rescission of the default judgment because the issue of the encroachment of Chisarasara One has been resolved.

Clearly disputes between the parties need resolution. This can clearly be seen from the applications before this court involving the same parties.

Three separate references files involving essentially the same parties have been appended to this urgent application upon my request. These files are HC 306/20, HC 144/21 and HC 08/21.

Mr Mugiya proposed that in order to comprehensively and substantially solve the dispute between the parties there is need for the intervention of the Provincial Mining Director. He proposed that the Provincial Mining Director should conduct an inspection in loco and compile a report addressing the issues raised by the parties. Thereafter in the face of the said report this court can then make a determination with full information at hand.

I appreciate that there is need for an efficacious and practical approach to the dispute between the applicants and the respondent. The parties may have orders in their favour in different matters before this court but in practical terms there is need for the disputes to be resolved in a manner that will clarify the respective parties' positions.

Applications involving disputes of miner versus miner and miner versus farmer have become common.

Unfortunately, in some cases the input of the Provincial Mining Director is either unclear or non-committal. The Provincial Mining Director however has all tools and resources at his disposal to assist the court. He can proceed to assess the dispute armed with the coordinates of the mining certificates of registrations and liaison with other relevant institutions. A comprehensive practical report can be availed to the court which report will also encompass the parties' respective inputs. In the circumstances of a thorough assessment taking the above into consideration may well result in the parties coming to an agreement and resolving the issues.

I have pondered over the proposed order. I have also examined the default order closely. It is not very clear whether or not the whole order has so far been fulfilled. I note that there is a rescission application which is pending. I find in the circumstances that an order for the Provincial Mining Director to investigate the full circumstances surrounding the mining dispute and thereafter to file a concise and comprehensive report may assist in the resolution of this matter.

Also see *Tawanda Muchenurwa v Double M. Prospects and 2 Others* HB 147/21.

To that end I order as follows:-

1. The Provincial Mining Director, Midlands is to investigate the circumstances surrounding the mining dispute between the parties as regards the parties' respective boundaries and thereafter file a comprehensive report with the Registrar of this court to guide the court in coming up with a decision in this matter on or before 19 November, 2021.

Mugiya and Muvhami Law Chambers, applicants' legal practitioners
Ndlovu and Hwacha Legal Practitioners, respondent's legal practitioners