REPORTABLE **(42)**

(1) PETER VALENTINE (2) ALLEN SIBANDA
v
(1) BLOOMING LILLY INVESTMENTS (PRIVATE) LIMITED

(2) THE PROVINCIAL MINING DIRECTION MIDLANDS PROVINCE (3) THE MINISTER OF MINES AND MINERAL DEVELOPMENT

SUPREME COURT OF ZIMBABWE
MAVANGIRA JA, UCHENA JA & MUSAKWA JA
HARARE: 20 SEPTEMBER 2022 & 23 MAY 2023

T. Magwaliba, for the appellants

S. M .Hashiti, for the first respondent

No appearance for the second and third respondents

UCHENA JA:

(1) This is an appeal against the whole judgment of the High Court, granting a spoliation order in terms of which the appellants were ordered to restore possession of Danga 16442, Oceana 5545, Reedbuck 2 5535BM, Reedbuck 1 55 35BM and Lucky 8260 BM mining claims (hereinafter referred to as "the mining claims") to the first respondent and finding the first appellant guilty of contempt of court.

FACTUAL BACKGROUND

(2) The facts on which the court *a quo* granted the spoliation and contempt of court orders are as follows.

(3) The first appellant (Peter Valentine) and Tapiwa Gurupira, a director and owner of the entire shareholding in the first respondent have been having disputes concerning the ownership and possession of the above-mentioned mining claims. They litigated in the High Court over the ownership and or control of the (five) 5 mining claims by the first respondent.

(4) On 24 March 2022 with the authority of the first appellant, the second appellant (Allen Sibanda) invaded the first respondent's 5 mining claims. The first appellant claimed that he was authorised to do so by the order of the High Court under HC 3419/20. The first respondent filed an urgent application before the court *a quo* seeking an order for a *mandament van spolie* against the appellants. It sought the restoration of its access to, possession and occupation of the (five) 5 mining claims located in Shurugwi District in the Midlands Province.

(5) In its founding affidavit, deposed to by Tapiwa Gurupira, the first respondent submitted that it is the registered owner of the (five) 5 mining claims which the appellants invaded on 24 March 2022. It stated that the second appellant sent his people to forcefully take over the (five) 5 mining claims from it and ordered its workers to leave the claims.

(6) He alleged that they came with all sorts of fighting tools and took possession of the 5 mining claims. The first respondent's employees' attempt to resist the taking over of the

mines was subdued by threats of violence and the death of a resident of the area who was found hanging on a tree in what appeared to them to be a murder disguised as suicide.

(7) The first appellants' challenge to Gurupira's ownership of the first respondent was resolved in HC 119/18 in which the High Court ordered as follows:

> "1 .A final interdict is granted barring first, second and third respondents, their employees, assigns, associates, affiliates and any other persons acting under their authority, from entering all mining locations owned by first applicant which are namely: Impaluli 4 Mine, Shurugwi, Danga 3 Mine Shurugwi, Sheba 2 Mine Shurugwi, Jasper 4 Mine Shurugwi, Paradox Mine Shurugwi, Matebele Mine Shurugwi, Lucerne Mine Shurugwi. Johanna's Luck Mine Shurugwi, Lucrative Mine Shurugwi, Ocean Mine Shurugwi, Reedbuck 1 Mine Shurugwi, Reedbuck 2 Mine Shurugwi, Lucky Mine Shurugwi, Cav Mine Shurugwi.
> 2. First respondent's appointment as an accredited agent of the first applicant be and is hereby declared null and void of all force and effect and is hereby set aside.
> 3. Fourth respondent be and is hereby ordered to restore second applicant as an accredited agent in respect of the mines named in para 1 of this order.
> 4. First, second and third respondents shall pay costs of this application on the higher scale of legal practitioner and client."

(8) The first appellant was the first respondent in HC 119/18 against whom the final interdict was granted and whose accredited agency over the first respondent was set aside. Tapiwa Gurupira was the second applicant whose accredited agency over the mines named in para 1 was restored by para 3 of HC 119/18. After the granting of the orders in HC 119/18 the first appellant did not enter the mining claims mentioned in para 1 of HC 119/18 nor cause any one to do so.

(9) In HC 308/20 the first respondent and a company called Reytalon at the instance of the first appellant applied for the nullification of Tapiwa Gurupira's acquisition of 100 per cent of the first respondent's shares. The application was dismissed by the High Court in HH–1–21.

(10) The first respondent submitted that pursuant to the order granted by the High Court in HC 119/18 it had been in peaceful and undisturbed possession of its mining claims until 24 March 2022 when the second appellant under the first appellant's authority invaded the mining claims and chased away its employees. The appellants demanded that the first respondent's workers vacate the mines and proceeded to take them over.

(11) Tapiwa Gurupira reported the invasions to the police which referred him to the Provincial Mining Director. The Provincial Mining Director on 4 April 2022 wrote a letter instructing the Police to help the first respondent to regain possession of the mining claims. However, on 6 April 2022 the Provincial Mining Director withdrew the letter of support. This prompted the first respondent to immediately apply for a spoliation order against the appellants and a contempt of court order against the first appellant.

(12) The first respondent contended that the court orders in HC 119/18 and HC 308/20 are still extant and as such the first appellant by defying the order in HC 119/18 is in contempt of court. The first respondent, sought an order for the restoration of the status *quo ante.* It also sought an order for contempt of court against the first appellant.

(13) On the other hand, the appellants opposed the application and raised preliminary points to the effect that the matter was not urgent since the first respondent had not approached the court immediately after 24 March 2022 when the alleged invasions occurred. The appellants also challenged Tapiwa Gurupira's authority to act on behalf of the first

respondent and argued that he was misrepresenting himself before the court since there was no valid resolution before the court. They also contended that Tapiwa Gurupira had dirty hands because he had not complied with an extant order of the High Court in HC 4092/20 directing him to serve the first respondent's shareholders and directors in Israel.

(14) On the merits, the appellants argued that the mining claims in question had been forfeited for non-payment of inspection fees and the first appellant, as one of the directors of the first respondent, proceeded to pay the inspection fees. He therefore contended that he did not commit acts of spoliation as he was in lawful occupation of the mining claims. The first appellant submitted that he is the rightful owner of the mining claims since he paid the inspection fees and as such his possession of the mining claims could not be faulted. The appellants also argued that they had not invaded the mining claims as there had been a voluntary surrender by the first respondents' employees. They, therefore, sought the dismissal of the first respondent's application.

(15) The court *a quo* held that the matter was urgent since the first respondent had acted when the need to act arose, on 6 April 2022, when the Provincial Mining Director withdrew his letter of support to the Police, leaving the first respondent with no other option besides having to apply for a spoliation order against the appellants and contempt of court order against the first appellant. It found that the first respondent treated the matter with the urgency it deserved and filed the application after exhausting alternative remedies. The court further held that Tapiwa Gurupira had the requisite authority to represent the first

respondent as evidenced by the resolution filed on record and the previous court orders between the same parties which conferred him with the necessary authority.

(16) On the issue of dirty hands, the court *a quo* found that an application for a spoliation order cannot be challenged on the basis of the dirty hands doctrine.

(17) On the merits the court *a quo* held that the application for a spoliation order had been proved as the appellants had not denied invading and taking over the first respondent's mining claims. It held that the appellant's taking-over of the mining claims, and demand that the first respondent's workers leave the claims constituted spoliation. It also held that the fact that the appellants were armed vitiated consent and was a clear act of spoliation.

(18) In respect of the appellants' reliance on the High Court's order in HC 3419/20 the court *a quo* held that the order that the appellants sought to rely on did not give them any right to occupy the mining claims without relying on a warrant of execution and in any event the order did not allow them to illegally occupy the (five) 5 mines. It only ordered the Provincial Mining Director and the Minister of Mines to allow the first appellant to resume mining at the Impaluli claim. That order could only be executed through due process in respect of the Impaluli claim. No similar order was made in respect of the (five) 5 claims the appellants invaded. HC 3419/20 only ordered the Provincial Director of Mines and the Minister of Mines to allow the first appellant to pay inspection fees for the mines they invaded.

(19) The court *a quo* held that the first respondent had proved that it was in peaceful and undisturbed possession of the mining claims when the appellants despoiled it. The court further found that the first appellant was in contempt of court for failing to obey an extant court order in HC 119/18.

(20) It therefore granted a spoliation order against the appellants and a contempt of court order against the first appellant. It is against these orders that the appellants appealed to this Court. The appeal is premised on the following grounds of appeal: -

> "1. The High Court grossly erred in finding that the application before it was urgent in the face of evidence showing that the first respondent had not acted when the need to act arose on the 16th of March 2022.
> 2. The High Court further grossly erred in finding that Tapiwa Gurupira had the authority to represent the first respondent and institute proceedings on its behalf when he had placed before the court an invalid instrument of authority, a resolution bearing a date which had not yet arrived as the date of a meeting authorising him to act on its behalf.
> 3. The High Court further grossly erred in failing to find that the founding affidavit of Tapiwa Gurupira in para 11 contained an alteration which rendered it invalid.
> 4. The High Court further grossly erred in finding that the first respondent was in peaceful and undisturbed possession of the mines in issue in the face of evidence showing that Chamunorwa Daniel Gozhora was in possession of Lucky Mine as an independent actor and with his own assets and equipment and in the absence of any evidence of the possession of any other mine.
> 5. The High Court further grossly erred in failing to find that there was a peaceful handover by the said Chamunorwa Daniel Gozhora of Lucky Mine to the second appellant and therefore there was no justification for the grant of a spoliation order.
> 6. The High Court further grossly erred in failing to find that the appellants, acting in accordance with a court order in case number HC 3419/20 had renewed the mining certificates in respect of the relevant mines and therefore were in peaceful and undisturbed possession of the mines.
> 7. The High Court further grossly erred in finding that the first appellant had been served or was otherwise aware of the terms of the court order in case number HC 119/18 and therefore that a requirement for contempt of court had been established.
> 8. The High Court further grossly erred in finding that the first appellant had

> intentionally acted in any manner as to violate the terms of an extant court order when he had not presented himself at any of the mines and it had not been established that any other person had acted on his behalf."

SUBMISSIONS BEFORE THIS COURT.

(21) Mr *Magwaliba* for the appellant submitted that the court *a quo* misdirected itself in holding that the matter was urgent and that Tapiwa Gurupira had authority to represent the first respondent. He asserted that the resolution submitted on behalf of the first respondent was forged as it had a future date which meant that it was passed after the proceedings had already been instituted. He submitted that Tapiwa Gurupira, being one of the directors of the first respondent, could not have given himself the authority to represent the first respondent and as such he was not properly before the court.

(22) On the merits he argued that the first respondent was not in peaceful and undisturbed possession of the property in question given the fact that Tapiwa Gurupira was not in possession of the mines in issue since he was not physically present at any of the mines. He further contended that the takeover was not forceful since the first respondent's manager negotiated with the persons taking over the mines. Mr *Magwaliba* submitted that there was no act of spoliation and there was therefore no justification for the orders granted by the court *a quo*.

(23) Per *contra*, Mr *Hashiti* for the first respondent argued that the first respondent had been in peaceful and undisturbed possession of the (five) 5 mining claims pursuant to the extant court order which clearly stipulated that the first respondent was the owner of the mining

claims. He further submitted that to prove its peaceful possession, the first respondent had renewed its mining certificates over the mining claims and the appellants unlawfully dispossessed it of the claims.

(24) Although the appeal is premised on eight grounds, only four issues arise for determination. These are:

1. Whether or not the court *a quo* correctly found that the application was urgent.
2. Whether or not the court *a quo* correctly found that Tapiwa Gurupira had authority to represent the first respondent and that his founding affidavit was valid.
3. Whether or not the court *a quo* erred in granting the first respondent a spoliation order.
4. Whether the court *a quo* correctly found that the first appellant was in contempt of court.

(25) I now turn to deal with each of these issues taking into consideration the submissions made by counsel for the parties.

WHETHER OR NOT THE APPLICATION WAS URGENT

(26) The appellant's counsel raised the issue of urgency on appeal in spite of this Court's decision in *C.G.D Chiwenga v M Mubaiwa* SC 86/20 where this Court held that the hearing of a matter on an urgent basis is not appealable as it does not affect the correctness of a judgment arrived at after a litigant is allowed to be heard ahead of other litigants. At p 10 of the cyclostyled judgment the court said:

> "Looked at differently, an order granting the urgent hearing of a matter is generally not appealable. This is for the simple reason that the order has no bearing on the merits of the application or judgment. This is akin to a bank customer who is rightly or wrongly allowed to jump the queue. His or her transaction cannot be impugned or rendered unlawful solely on the basis that he or she has jumped the queue. By the same token a correct judgment cannot be impugned or rendered incorrect by the mere fact that the matter was improperly heard as an urgent application.
>
> In *Nyakutombwa Mugabe Legal Counsel v Mutasa & Ors*[1] this Court held that a finding of urgency by a court on its own cannot constitute a substantive ground of appeal. Thus the appeal against urgency was ill conceived and misplaced.
>
> The court therefore finds no merit in the appellants' complaint that the matter was improperly heard as an urgent matter."

(27) I therefore need not determine this issue as it is a mere complaint which should not have been raised as a ground of appeal.

WHETHER OR NOT THE COURT A *QUO* CORRECTLY FOUND THAT TAPIWA GURUPIRA HAD AUTHORITY TO REPRESENT THE FIRST RESPONDENT AND THAT HIS FOUNDING AFFIDAVIT WAS VALID.

(28) The need for any person representing a company to have the company's authority to do so was dealt with by this Court in *Madzivire & Ors* v *Zvarivadza & Ors* 2006 (1) ZLR 514 (S) where it was held that a company, being a separate legal *persona* from its directors, cannot be represented in a legal suit by a person who has not been authorised to do so. At p 516 B-E CHEDA JA, delivering the judgment of the court said:

> "It is clear from the above that a company, being a separate legal *persona* from its directors, cannot be represented in a legal suit by a person who has not been authorised to do so. This is a well-established legal principle, which the courts cannot ignore. It does not depend on the pleadings by either party."

[1] SC 28/18 at p 8

(29) In the case of *Cuthbert Elkana Dube* v *Premier Service Medical Aid and Another* SC 73/19, at para. 38 of the cyclostyled judgment it was held that:

> "The above remarks are clear and unequivocal. A person who represents a legal entity, when challenged, must show that he is duly authorized to represent the entity. His mere claim that by virtue of the position he holds in such an entity he is duly authorized to represent the entity is not sufficient. He must produce a resolution of the board of that entity which confirms that the board is indeed aware of the proceedings and that it has given such a person the authority to act in the stead of the entity. I stress that the need to produce such authority is only necessary in those cases where the authority of the deponent is put in issue. This represents the current status of the law in this country."

(30) Therefore, a company resolution is required for two reasons, first, to prove that the entity is aware of the legal proceedings and has authorised them and, secondly, that the person representing it has been clothed with the requisite authority to represent it in the proceedings.

(31) In *casu*, the resolution presented on behalf of the first respondent satisfied both requirements of a valid resolution. The resolution in question proves that the first respondent was aware of the legal proceedings and it authorized Tapiwa Gurupira to represent it. It is also common cause that the first appellant and Tapiwa Gurupira have been involved in various litigation relating to these mining claims and he has always represented the first respondent. I see no basis why his authority to represent the first respondent can be validly challenged at this stage. The fact that the resolution has a date after the litigation had been instituted is an obvious error. It was filed on 6 April 2022 together with the respondent's founding affidavit and other pleadings proving that it was

generated before the pleadings were filed. It is illogical to argue that it was made thereafter when it is clear that it was in existence when the respondents' pleadings were filed on 6 April 2022.

(32) Mr *Hashiti* for the first respondent correctly submitted that the ownership by the first respondent of the mining claims in issue, had been subject to litigation between the same parties and the court found that Tapiwa Gurupira was the owner of 100 per cent shares of the first respondent. He contended that Tapiwa Gurupira's authority to represent the first respondent was further established by an extant order of the court *a quo* in HC 119/18. The court *a quo* cannot therefore be faulted for holding that Tapiwa Gurupira had the requisite authority to represent the first respondent. There was a valid resolution authorising him to do so coupled with extant court orders wherein it was clear that he represented the first respondent and was its approved credited agent.

(33) The appellants' challenge on the validity of the first respondent's founding affidavit on the allegation that its para 11 (f) was tipexed was dismissed by the court *a quo* on the basis that the first respondent's founding affidavit did not have para 11 (f) and that it did not see any tipexed part of para 11. After examining para 11 I agree with the court *a quo* that it does not have sub para (f) and has no tipexed part. The court *a quo* therefore correctly found that the founding affidavit was valid.

(34) I find that the application brought before the court *a quo* was authorised by the first respondent and that its founding affidavit was valid.

WHETHER OR NOT THE COURT *A QUO* ERRED IN GRANTING THE FIRST RESPONDENT A SPOLIATION ORDER.

(35) The rationale for granting a spoliation order has been set out in various decisions of the courts in this jurisdiction. In *Chisveto* v *Minister of Local Goverrnment and Town Planning* 1984 (1) ZLR 248 at 250F REYNOLDS J quoted with approval the remarks of INNES CJ in *Nino Bonino* v *De Lange* 1906 TS120 at p 122 that:

> "It is a fundamental principle that no man is allowed to take the law into his own hands; no one is permitted to dispossess another forcibly or wrongfully and against his consent of the possession of property, whether movable or immovable. If he does so, the Court will summarily restore the *status quo ante*, and will do that as a preliminary to any inquiry or investigation into the merits of the dispute".

(36) Put simply, it matters not who actually owned the mining claims, or what the dispute between the parties was, as long as the first respondent had peaceful and undisturbed possession, which in fact is not disputed, and was wrongfully dispossessed, spoliation is established. The alleged lawfulness of possession by the appellants does not determine whether or not the respondents were despoiled, therefore Mr *Magwaliba's* argument that the first respondent did not have possession of the mining claims because it did not have a valid mining certificate has no merit at all. See *Minister of Mines and Mining Development & Ors* v *Grandwell Holdings & Ors* SC 34/18 where this Court held that issues of rights are irrelevant in spoliation proceedings and proceeded to quote with approval from the case of *Yeko* v *Oana* 1973 (4) SA 735 (AD) at 739G where it was stated that:

> "The fundamental principle of the remedy is that no one is allowed to take the law into his own hands. All that the spoliatus has to prove, is possession of a kind which warrants the protection accorded by the remedy, and that he was unlawfully ousted."

(37) In determining whether or not the court *a quo* erred by granting the spoliation order, the decision of this Court in the case of *Botha & Anor* v *Barrett* 1996 (2) ZLR 73 (S) is instructive. GUBBAY CJ at 79D-E said:

> "It is clear law that in order to obtain a spoliation order two allegations must be made and proved. These are:
>
> That the applicant was in peaceful and undisturbed possession of the property; and, that the respondent deprived him of the possession forcibly or wrongfully against his consent."

In *Streamsleigh Investments (Pvt) Ltd v Autoband (Pvt) Ltd* SC 30/12 this Court held as follows:

> "It has been stated in numerous authorities that before an order for *mandament van spolie* may be issued an applicant must establish that he was in peaceful and undisturbed possession and <u>was deprived illicitly</u>. In *Scoop Industries (Pty) Ltd* v *Longlaagte Estate & GM Co Ltd* (In Vol Liq) 1948 (1) SA 91 (W) LUCAS A.J said at pp 98-99
> "Two factors are requisite to found a claim for an order for restitution on allegation of spoliation. The first is that the applicant was in possession and the second that he has been wrongfully deprived of that possession against his wish. It has been laid down that there must be clear proof of possession and <u>illicit deprivation</u> before the order is granted." (emphasis added)

(38) The determinant factors are that the deprivation should be done unlawfully and that the applicant was in peaceful possession. The party seeking spoliation must establish that possession was not only physical but that it was accompanied by *animus*, the intention to secure a benefit. In *Rex* v *Kasamula* 1945 TPD 252, the court held that:

> "The ordinary meaning of possess is physical detention or control plus the intention to exercise control for one's own purpose or benefit."

(39) In this case, the evidence established that the first respondent was in peaceful and undisturbed possession of the mining claims at the time the appellants dispossessed it by chasing away its workers and taking them over. The first respondent was in peaceful occupation of the mining claims since the issuance of the High Court's order in HC 119/18, until 24 March 2022 when the appellants invaded the mines. There can be no doubt, therefore, that it was in peaceful and undisturbed possession at the time the appellants invaded and took over the mining claims. An invasion and taking over of a property that one has been interdicted from entering is clearly unlawful.

(40) It was also argued for the appellants that there was no spoliation because the first respondent did not possess the mining claims. In that same vein, it was also contended that there was a voluntary surrender by the first respondent's workers and as such there was no act of spoliation. The court *a quo* in determining this issue held that the first respondent could not surrender that which it did not possess. It therefore found that the first respondent had been in peaceful and undisturbed possession of the mining claims. The findings of the court *a quo* in this regard are unassailable.

(41) There is an extant court order in HC 119/18 which bars the appellants from entering the mining claims in question yet they chose to be in contempt of that court order and despoiled the first respondent.

(42) That order effectively barred the appellants from entering the mining claims in question. The appellants, however, in clear defiance of a lawful court order seek to justify their invasion of the mining claims in terms of an order granted under HC 3419/20 which does not confer any rights on both appellants to enter, occupy or work the five mining claims. The order issued by MUSITHU J in HC 3419/20 reads:

> "1. The forfeiture of **Impaluli 4** registration number 11727 BM located in Shurugwi be and is hereby set aside.
> 2. First and second respondents and all their assignees, agents be and are hereby ordered to allow first applicant to pay for the inspection fees **and allow resumption of mining operations on the claim above by the first applicant.**
> 3 First and second respondents and all their assignees, agents be and are hereby ordered **to allow first and second applicants to pay inspection fees in respect of the following claims; Danga number 16442, Ocean 5545 BM, Reedbuck 1 5535 BM, Lucky 8260 BM. IXL 16153**
> 4 There shall be no order as to costs" (emphasis added)

(43) The order was granted on 20 November 2020 yet the appellants did not take occupation of the mines upon issuance of that order because it clearly did not confer them with any rights to do so. They only invaded the mining claims on 24 March 2022, which clearly proves that they waited for over a year before seeking to purport to enforce that order. Even if the order in HC 3419/20 had authorized the appellants to resume mining on the five claims which it did not, they could only do so after following due process in executing the court order. The appellants forcefully invaded the mines and chased away the first respondents' employees which amounts to a clear act of spoliation. There is no doubt in my mind that these facts show that the first respondent was removed from the mining claims without its consent. The removal is also unlawful as it was carried out without due process.

(44) The court *a quo*, therefore, correctly found that the first respondent was unlawfully despoiled. The factors which must be proved in order to grant spoliatory relief were established. The court *a quo* correctly granted the order as prayed for by the first respondents.

WHETHER THE COURT *A QUO* CORRECTLY FOUND THAT THE FIRST APPELLANT WAS IN CONTEMPT OF COURT.

(45) In finding the first appellant guilty of contempt of court, the court *a quo* said:

> "That Peter was alive not only to the existence but also to the meaning and import of HC 119/18 requires no debate. He referred to it in the founding affidavit which he deposed to for and on behalf of Blooming. Reference is made in the mentioned regard to HC 4092/20. If he was not alive to it, he would not have made any reference to it at all. In any event, I have already made a finding which is to the effect that he did not challenge para 15 of the founding affidavit where Tapiwa and Blooming specifically refer to allegations of contempt of court against him. Further, the fact that he did not invade, personally or through others, the five mining locations for a period of four years shows that he remained afraid of interfering with the order which the court issued against him in HC 119/18."

(46) The court *a quo*'s reasoning sets out the factors on which contempt of court is established namely:

1. That an order was granted against the party alleged to be in contempt.
2. That the party in contempt was aware of the court's order barring him from acting in the manner in which he acted or from doing what he did.
3. That he has intentionally disobeyed the court's order or neglected to comply with its terms.

These requirements were discussed in the cases of *Uncedo Taxi Service Association v Mtetwa & ors* 1999 (2) SA 495 E; and C*onsolidated Fish Distributors (Pvt) Ltd v Zive & Ors* 1968 (2) SA 517 (C).

(47) The fact that the first appellant referred to HC 119/18 means he was aware of its orders against him. The fact that he did not act against HC 119/18's orders for four years proves he was aware of it and complied with it until 24 March 2022. That he did not immediately act in terms of HC 3419/20 proves he remained aware that HC 119/18 was extant and had to be obeyed. His opting to invade through others also proves he was afraid to personally act against the court's order in HC 119/18. He however miscalculated his move as the order directed him not to act through "any other persons acting under his authority". His opting to act through Allen Sibanda whom he authorised to invade the mining claims is proof that he was intentionally in contempt of court.

DISPOSITION

(48) I am satisfied that the appeal has no merit and must be dismissed. In regard to costs there is no reason why they should not follow the result. It is accordingly ordered as follows:

The appeal be and is hereby dismissed with costs.

MAVANGIRA JA: I agree

MUSAKWA JA: I agree

Musoni Masarire Law Chambers, appellant's legal practitioners

Mushoriwa Pasi Corporate Attorneys, 1st respondent'*s* legal practitioners