

REPORTABLE (20)

EX TEMPORE

(1) TAURAI MUKUZUNGA (2) MARGARET MUKUZUNGA (3)
SOLOMON MUKUZUNGA

v

(1) MUSASIYANE MASHONGANYIKA (2) MINING
COMMISSIONER MASHONALAND EAST N.O (3) MINISTER
OF MINES AND MINING DEVELOPMENT N.O (4) LYDIA
MUKUZUNGA

**SUPREME COURT OF ZIMBABWE
HARARE: 19 FEBRUARY 2025**

K. Gama, for the applicants

E. Ngwerewe, for the first respondent

**Judgment No. SC 20/25
Chamber Application No. SC 76/25**

1

IN CHAMBERS

MATHONSI JA:

1. This is an application for condonation and extension of time within which to appeal made in terms of r 43 of the Supreme Court Rules, 2018. It is opposed only by the first respondent who has taken a meritless point *in limine* that the application is fatally defective for failure to furnish the record of proceedings in the High Court.
2. Rule 43 (1) only requires that the application for condonation be accompanied by a copy of the judgment *a quo*. It does not require the record of proceedings to be attached. The preliminary point is accordingly dismissed.

3. Not to be outdone, the applicants also took a point *in limine* on the filing of the opposing affidavit. It was submitted on their behalf that the person who commissioned the founding affidavit appended the rubber stamp of a headmaster of a school and not that of a commissioner of oaths and as such there is no valid opposition to the application. I must state that the name of the commissioner of oaths is appended together with his designation as such. In light of the fact that it cannot be conclusively said that he is not a commissioner of oaths, there is no basis for finding that the affidavit is invalid. The point *in limine* is also dismissed.
4. The facts of the matter are briefly that the first respondent registered mining claims known as Umbrella 77A under registration number 42054 on 17 February 2012. The registration was later challenged resulting in the then Provincial Mining Director (PMD,) who is now late, giving notice on 16 October 2017 and then cancelling the certificate of registration on the basis that when the first respondent pegged the claims the area was not open for prospecting.
5. The cancellation of the certificate by the PMD was a juristic act which rendered that office *functus officio*. That notwithstanding, at the instance of the first respondent, the successor in title, that is, the new PMD, set aside the cancellation and allowed the first respondent to revive the mining claims. Up to now the first respondent holds title to the claims.
6. Armed with that, the first respondent approached the High Court seeking to interdict the applicants, who claim to be conducting mining activities at the location through Mukuzunga Mining Syndicate, from doing so.

7. Although the application was opposed by the applicants, who also unsuccessfully made an application for joinder of the Syndicate, DEMBURE J granted the final interdict after finding that the first respondent had established a clear right to the mining location given that he has an extant registration certificate.
8. The applicants were aggrieved and noted an appeal to the Supreme Court on 3 October 2024 under SC 593/24. The appeal was struck off the roll on 31 January 2025 on the basis that it was defective, ostensibly because the fourth respondent was cited as an appellant instead of a respondent. The fourth respondent had nothing to appeal against given that the impugned judgment was in her favour.
9. Three (3) days after the striking off, the applicants filed this application for condonation and extension of time within which to appeal. In my view, the delay is not inordinate and a satisfactory explanation for failure to act timeously has been given. Nothing more needs to be said about that.
10. Regarding prospects of success on appeal the, crux of the applicants' case is the first respondent does not have a clear right to the mining location given that the circumstances under which the cancelled certificate of registration was revived by the same authority which cancelled it in the first place yielded an invalidity.
11. I am aware that the existence of an extant registration certificate would ordinarily point to a clear right to the mining location. However, whether such certificate is untainted by invalidity, is something that I am not prepared to determine sitting as a single judge.

12. What cannot be disputed is that the PMD cancelled the certificate. The question whether the same office could reverse that cancellation deserves the attention of the full court. The first respondent's argument that the PMD had no jurisdiction to cancel the certificate is now a redherring given this Court's pronouncement in the case of *Stonezim Granite (Pvt) Ltd v The Provincial Mining Director Mashonaland East & Anor* SC 1/24.
13. This Court is not in the habit of contradicting itself. That issue has been determined.
14. For the foregoing reasons, I come to the conclusion that there is an arguable case on appeal. The application ought to succeed and the indulgence of condonation and extension of time within which to appeal afforded. Accordingly, I make the following order:

“IT IS ORDERED THAT:

1. The application for condonation for non-compliance with r 37 (3) as read with r 38 (1) (a) of the Supreme Court Rules, 2018 be and is hereby granted.
2. The application for extension of time within which to file and serve a notice of appeal in terms of the Rules is granted.
3. The applicants are granted leave to file their notice of appeal within five (5) days of the date of this order.
4. There is no order for costs.” _____

Gama & Partners, applicants' legal practitioners

Chatsanga & Partners, 1st respondent's legal practitioners