

PAARI MINING SYNDICATE
and
TWIN CASTLE RESOURCES (PVT) LTD

HIGH COURT OF ZIMBABWE
MUZENDA J
MUTARE, 19 August 2021

URGENT CHAMBER APPLICATION

V. Chinzamba, for the applicant
G. Chihuta with N. P. Chinzou, for the respondent

MUZENDA J: This is an urgent chamber application where applicant seeks the following relief.

“INTERIM RELIEF/ PROVISIONAL ORDER GRANTED

Pending finalisation of the urgent chamber application for interim relief:

IT IS HEREBY ORDERED THAT:

1. That all forms of mining activities by the respondent and all those claiming title through it be and are hereby suspended.

TERMS OF FINAL ORDER SOUGHT

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

1. The respondent and all those claiming title through it be and are hereby interdicted from carrying out any form of mining activities on shaft “A” pending the finalisation of HC 264/19.
2. The respondent shall pay costs of suit on a high scale of attorney-client scale if it opposes this application.”

The application is opposed.

Background.

On 15 February 2021 the Provincial Mining Director for Manicaland, acting on behalf of the Secretary for Mines and Mining Development indicated to cancellation of applicant’s certificates of registrations under G5383; G5384; G5386 and G5387 within 30 days after the receipt of the letter. The basis of the cancellations was that applicant had pegged and lodged its applications for registration on an area which was no longer open to pegging and

prospecting since the area had already been pegged prior by respondent. Respondent had lodged its applications on 5 February 2019 and certificates issued. Applicant lodged its papers on 24 May 2019 almost three months after respondent had lodged its papers for registration.

In terms of section 50 (2) of the Act, applicant noted an appeal to the Minister on 16 March 2021. Meanwhile respondent had filed an urgent chamber application at Harare under case No. 129/21 during the month of February and March 2021 a provisional order was granted in favour of the respondent by TSANGA J interdicting applicant from mining, extracting or processing any mineral ore or carrying out any other form of mining. Applicant was also ordered to desist from denying respondent's employing entry into the site and not to interfere with applicant's mining activities within snipe B46 Mine. In the event of an appeal against the determination by the Provincial Mining Director to the Minister, the Court ordered that both parties stop mining at the disputed mining location pending the finalisation of the appeal but each party was to secure the mining location through the services of three guards from a registered private security company pending such appeal. The applicant noted an appeal against the order under HC 129/21 to the Supreme Court in SC 28/21. Having received the appeal respondent filed an application for leave to execute pending appeal under HC 847/21 and TSANGA J issued another provisional order granting the leave to execute basically ordering both parties to stop mining operations at the disputed mining area pending determination of the appeal before the Minister. On 26 July 2021 the Minister dismissed applicant's appeal and effectively cancelled certificates of registration for applicant. On 5 August 2021 the Provincial Mining Director for Manicaland informed applicant about the cancellation and informed all interested parties. After respondent received the notice of the applicant's appeal's dismissal it proceeded to the mining location and reoccupied, took over the control of all security items on site.

Applicant's syndicate was advised about the developments and it then filed the urgent chamber application alleging that the action of the respondent amounts to eviction of the applicant outside the law. Applicant contends that the respondent, in order to remove it from the mining location, must obtain a court order. To the applicant the Minister is not a court and never issued an eviction order in principle the respondent resorted to self-help, the applicant contends.

The respondent in opposing the matter raises two preliminary points: the first point in *limine* is that the applicant suffers from dirty hands, applicant deliberately chose to cite a

wrong address for the respondent in order to snatch a judgement in default of respondent. Respondent also impugns applicant's lack of honesty in not bringing all facts to the attention of the court especially relating to the applications and appeals involving the parties as well the lack of footing by the applicant given the cancellation of the certificates of registration. The second preliminary point was that the matter was not urgent. Applicant did not in its papers indicate the date when the need to act arose as well as the source of applicants right. To the respondent the duty to act arose on 19 July 2021 when applicant despoil the respondent which led to the respondent lodging its complaint with the Provincial Mining Director. On the merits respondent submitted that applicant had failed to meet the pre-requisites for an application of this nature.

When the matter was brought to me on 30 July 2021 I indicated that it was not urgent. On 4 August 2021 applicant's legal practitioners wrote to the deputy registrar seeking my audience on the issue of urgency. I directed that the matter be set for 19 August 2021 taking into account that respondent's legal practitioners were based in Harare. On the date of setdown the applicant indicated that given the content of the respondent's opposing papers it was withdrawing the urgent chamber application. The respondent asked for costs on a punitive scale of legal practitioner – client scale. It was the respondent's submission that right from the outset applicant should not have brought the urgent application for there was no basis for such. The applicant's representative made arrangements with Messrs Wintertons undertaking to vacate the mining site but chose not to inform its current lawyers who represent it in this matter. The respondent had been put out of pocket by paying legal practitioners to prepare opposing papers as well as travelling all the way from Harare to attend the matter. The applicant in turn submitted that although respondent is entitled to costs they ought to be at an ordinary party and party than punitive. In any case, applicant added, the respondent should have come to court since it was opposing the application.

Having looked at the arguments of both parties in this matter the conduct of the applicant leaves a lot to be desired and expected of a litigant. Applicant was fully aware of the content of judgments from TSANGA J on the matter and the content. Respondent acted in light of such judgements and peacefully reoccupied the mining site. Applicant's legal practitioners chose not to share notes on what was going on and only chose to withdraw the matter when documents and correspondences were availed by the respondent. I am satisfied that the respondent's claim for punitive costs is sound and it succeeds.

The following order is returned.

It is ordered that:

- (a) The urgent chamber application is withdrawn at the instance of the applicant.
- (b) Applicant to pay respondent's costs on legal practitioner – client scale.

Messrs *Mugadza Chinzamba* and Partners, applicant's legal practitioners
Messrs *Gumbo and Associates*, respondent legal practitioners