

PANSIKWE MINERALS CO-OPERATIVE

Versus

FOREMAN MAZITHULELA HLABANGANA

And

CONSOLIDATED PRE-CO-OPERATIVE

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 24 MAY AND 3 JUNE 2010

S Nkiwane, for applicant
R Ndlovu, for the respondents

Urgent Chamber Application

NDOU J: The applicant seeks a provisional order in the following terms:

“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. That the respondents, their servants, agents, assigns or successors, in title be and are hereby permanently restrained from interfering in any way with applicant’s mining and other operations at Norma V 2-4 and Panganai 7 and 8 mining claims.
2. That the respondents and all such persons keep a distance of half a kilometre from such mining claim.
3. That the respondents jointly and severally, the one paying the other to be absolved, pay the costs of this application.

Interim relief granted

Pending determination of this matter, the applicant in [sic] granted the following relief –

That paragraphs 1 and 2 of the terms of the final order sought operate as an interim interdict restraining the respondents as there set out, that is to say, from interfering in any way with applicant’s mining and other operations at Norma V 2-4 and Panganai 7 and 8 mining claim, and that they keep a distance of half a kilometer from the said claims.”

The respondents have filed a notice of opposition and opposing papers. They also filed a counter-application. The respondents also raised some points *in limine*. In light of the concession made by the applicant to limit the interdict to Norma V 2-4-, the points *in limine* that had some merit fall away. The applicant also raised points *in limine* in respect of the counter application, but in view of the decision I make in this provisional matter, I will not deal with them.

As alluded to above, the applicant has conceded that there are problems as regards Panganai 7 and 8 mining claims. This concession is rightly made as the applicant's name does not appear as the purchaser of these claims in the agreement of sale forming the basis of the claim. The same cannot be said of Norma V 2-4 mining claims. In the latter, it is clear that the applicant purchased them. A dispute arose between the applicant and the 1st respondent. The boundary dispute was correctly referred to the Mining Commissioner, Bulawayo for resolution. A Mr Nyoni from the Mining Commissioner's office attended to the dispute and visited the area. Mr Nyoni's determination was that the 1st respondent was working "outside his Panganai claims but inside one of Norma V 2-4 claims belonging to the applicant." The Mining Commissioner informed the parties about this determination in writing. The Mining Commissioner also advised the Zimbabwe Republic Police, Filabusi, to assist the applicant to remove the 1st respondent and his employees from Norma V 2-4. What I discern from the 1st respondent's opposing papers and counter application is that the 1st respondent does not dispute that Norma V 2-4 belongs to the applicant. Equally, 1st respondent does not lay any claim to Norma V 2-4. The respondents are claiming Norma 2C and 2D. In particular, the respondents dispute that the area determined by the Mining Commissioner to be part of Norma V 2-4 (i.e the area where the respondents have their workers carrying out mining operations) is indeed so, they allege that it is part of their Norma 2C. They in essence are challenging the above-mentioned findings of Mr Nyoni of the Mining Commissioner's office. The applicant's case is that this area is part of Norma V 2-4 and hence the protection that is sought *in casu*. As alluded to the applicant is supported by the statutory authority in charge of such mining claims. The respondents are not happy with the determination of the Mining Commissioner but they have not yet sought a review of this decision of the Mining Commissioner. I do not see how they can, in the circumstances, legally resist the interdict sought by the applicant. The applicant has established as least a prima facie right which requires legal protection in respect of Norma V 2-4 mining claims. The respondents are entitled to remedies enshrined in the Mines and Minerals Act [Chapter 21:05] to challenge the determination by the Mining Commissioner. They have not utilized these remedies, they have shown their displeasure by writing letters of complaints through their legal practitioners.

Letters of complaint are not sufficient, respondent must formally challenge the Mining Commissioner's boundary determination.

Accordingly, I grant the interim relief in terms of the amended provisional order.

S S Mladzi & Partners, applicant's legal practitioners
R Ndlovu & Co, respondents' legal practitioners