

**TEBEKWE SANDS & MATOVU INVESTMENTS
JOINT VENTURE****Versus****MIKE G. HUGHES**IN THE HIGH COURT OF ZIMBABWE
TAKUVA J
BULAWAYO 2 FEBRUARY & 31 MARCH 2016**Urgent Chamber Application***H. Garikayi* for the applicant*Ms R. Chimango* for the respondent

TAKUVA J: This is an urgent chamber application in which the applicant prayed for the following interim relief:

- “(a) Pending finalisation of this matter, the respondent be and is hereby interdicted from interfering with the day to day operations of Tebekwe Mine as the mine manager or any position whatsoever without the express approval of the Joint Venture Board of Directors.”

The facts are as follows:

Tebekwe Sands (Pvt) Ltd and Matovu Investments (Pvt) Ltd are partners in an agreement where Ngezi Mining Company (Pvt) Ltd, a subsidiary of SMM Holdings as the registered holder of certain mining claims in the Midlands Province, agreed to tribute the mining location to the tributor namely Tebekwe (Pvt) Ltd and Matovu (Pvt) Ltd. The tribute agreement was entered into between the Grantor and the Tributor on 28 December 2015. The tributor as a joint venture started mining Tebekwe Mine in Shurugwi. Disputes arose over the manner in which mining operations were conducted. This led to an inspection of the mine by an inspectorate team from the Ministry of Mines on 31st March 2015. The inspection culminated in a report dated 1 April 2015 being compiled by the acting Provincial Mining Director wherein certain breaches of mining regulations were noted. Operations were then suspended pending compliance.

The report also mentions the following observation:

“Noted also was that Tebekwe Mine is being run under a joint venture between Matovu Investments and Tebekwe Sands but the management structures are different and labour returns and production returns are not being submitted under one management structure. This office would like the management structure at Tebekwe Mine to be clear cut so that conflict of interest among the joint venture partnership can be resolved in amicably (*sic*). There appears to be two separate structures at the mine at the moment.” (my emphasis)

It is common cause that Tebekwe Sands (Pvt) Ltd and Matovu Investments (Pvt) Ltd have different directors. The applicant *in casu* is indicated as Tebekwe Sands and Matovu Investments Joint Venture (represented by Smelly Dube). Smelly Dube is a director of Matovu Investments. She is neither a director nor shareholder in Tebekwe Sands (Pvt) Ltd). However, in her founding affidavit she swore as follows;

“1. I am a partner of the Joint Venture the applicant in the current proceedings. I am authorized to depose to this affidavit by virtue of a board resolution dated the 2nd January 2016 attached hereto annexure ‘A’.”

Annexure ‘A’ is headed “Resolutions of the Board of Directors of Matovu Investments and Tebekwe Sands Joint Venture. This annexure was signed by S. Dube, C. Meya and R.B. Chiwara who are directors of Matovu Investments (Pvt) Ltd in a board meeting. This meeting was not attended by any of the directors of Tebekwe (Pvt) Ltd. This fact is indisputable. Quite clearly, the resolutions of the board of directors of Matovu Investments (Pvt) Ltd in the absence of directors of Tebekwe Sands (Pvt) Ltd cannot by any stretch of imagination be said to be resolutions of the board of directors of the two companies i.e. the joint venture.

What is baffling is why Smelly Dube refers to this resolution as the product of the “Board of the Joint Venture”. One wonders whether this is said out of sheer ignorance or out of lack of candour or as a deliberate ploy to trick or mislead the court. Be that as it may, the legal position is that Smelly Dube has no *locus standi* to represent the joint venture in legal proceedings. For her to be clothed with such authority, the resolution must be that of the board of directors of the joint venture. There is no such resolution. The legal ramifications are that there is no applicant

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before the court as a result of this defective resolution. See *Stewart Scott Kennedy v Mazongororo Syringes (Pvt) Ltd* 1996 (2) ZLR 565 (S)

In the result the application is dismissed with costs.

Garikayi & Company c/o Moyo & Nyoni, applicant's legal practitioners
Mugwagwa & Partners, respondent's legal practitioners