

TEBEKWE SANDS (PVT) LTD

Versus

MATOVU INVESTMENT (PVT) LTD
(represented by Smelly Dube)

And

OFFICER COMMANDING MIDLANDS PROVINCE N.O

And

PROVINCIAL MINING DIRECTOR MIDLANDS PROVINCE N.O

IN THE HIGH COURT OF ZIMBABWE
BERE J
BULAWAYO 3 & 9 JUNE 2016

Urgent Chamber Application

Miss R. Chimango for the applicant
Advocate L. Nkomo for 1st respondent
L Musika for 2nd and 3rd respondents

BERE J: This matter must be determined on the preliminary points raised because the issues raised are in my view decisive.

The peremptory provisions of Order 43 Rule 388 of High Court Rules, 1971 are very clear on the form a contempt application must take. It can never be by way of an urgent chamber application unless it falls within the exceptions laid down in Order 32 R 226 (2) of the same Rules. No effort was made in this application to justify a departure from the Rules.

Secondly and more importantly it is trite that once an appeal is filed, the decision of the court a quo is suspended unless the successful party in the court a quo is granted special leave to execute pending appeal. This has not been done in this case. If there is any criticism to be said about the appeal, that must be said at an appropriate forum. No leave to execute having been applied this application for contempt was hastily done without giving it much thought.

In coming to this conclusion I remain conscious of the issues which were raised in the main urgent application which I determined in case number HC 718/16 and the respective positions taken by the parties in that matter. The now applicant claimed to have been despoilt and the 1st respondent represented by Smelly Dube pleaded innocence and claimed that her company was a victim of the forced closure of the applicant company because she was a co-shareholder of that company. The third and fourth respondents equally pleaded innocence in that matter. I expect all the parties in this matter to respect their respective positions in case number HC 718/16 and respect the closure of the mine and the non-exploitation of the resources therein until the appeal is heard and determined or until the applicant in this matter and the 1st respondent conduct a round table conference to resolve their differences which seem to have been fuelled by outside forces much to the two parties' detriment. Once the parties are able to find common ground they can then start exploiting the resources in terms of their partnership or shareholders' agreement.

I must emphasize that the dismissal of this application for contempt is not a ticket for either of the parties to go back on sight and continue to exploit the mineral resources unlawfully. That temptation remains potentially contemptuous of the order made by the court. The appeal as I understand it is challenging the giving back of the mine to the applicant but not supporting that the gold resources be exploited in violation of the law.

I have agonised on the issue of costs. Because I am aware of the background of this case and fully appreciate from the filed papers why the applicant has lodged this application for contempt though it has unprocedurally done so. I am not persuaded that the costs should be punitive but rather that they be on the ordinary scale.

Consequently the application for contempt of court is dismissed with costs.

Mugwagwa & Partners applicant's legal practitioners
Garikayi & Company, 1st respondent's legal practitioners
Prosecutor General's Office, Civil Division, 2nd and 3rd respondents' legal practitioners