

DEBSHAN (PRIVATE) LIMITED  
**versus**  
THE PROVINCIAL MINING DIRECTOR,  
MATABELELAND SOUTH PROVINCE  
and  
THE PROVINCIAL MINING DIRECTOR,  
MATABELELAND NORTH PROVINCE  
and  
THE MINISTER OF MINES & MININNG  
DEVELOPMENT  
and  
THE SECRETARY FOR MINING AND MINING  
DEVELOPMENT

HIGH COURT OF ZIMBABWE  
MATHONSI J  
BULAWAYO 17 JANUARY 2017 AND 26 JANUARY 2017

### **Opposed Application**

*K Manika* for the applicant  
*Ms R. Hove* for the respondents

**MATHONSI J:** The applicant is an incorporation which owns Shangani Ranch located in Insiza District in Matabeleland South where it is engaged in cattle ranching and wildlife safari operations. That vast expanse of land has been the target of many people desirous to conduct mining activities given that it has mineral deposits coveted by many.

In this application the applicant seeks a declaratur against the mining authorities that it has cited that any mining licences, permits or certificates that they issue to prospective miners targeting the farm without the prior issuance of an Environmental Impact Assessment Certificate are null and void and of no force and effect. The applicant also seeks an order preventing the Provincial Mining Directors for Matabeleland South and North from issuing mining licences, permits or certificates in respect of any mining claim situated on Shangani Ranch (the farm) without an Environmental Impact Assessment Certificate issued in terms of s97 of the Environmental Management Act [Chapter 20:27].

In its founding affidavit, deposed to by its General Manager Colin Richard Edwards, the applicant states that it is a cattle rancher and wildlife safari operator at the farm where it rears about 4200 beef cattle and keeps 4000 wild animals. It employs 120 employees for the purpose of its operations which operations contribute significantly to the economy of the country as regards the beef and tourism industries. Any unlawful or illegal activities at the farm adversely affects the applicant's operations.

Illegal and unplanned activities at the farm have a negative impact in that they pose a real risk of fire outbreaks which destroy vast grazing areas for livestock and wildlife. Poaching and killing of livestock by those coming onto the farm ostensibly for mining purposes is a real problem. Uncontrolled mining activities like prospecting, excavations and unprotected mine shafts pose physical danger to the applicant's personnel, clients, visitors, cattle and wildlife, apart from degradation and damage to the environment.

Edwards states that since about February 2013 there has been several incursions onto the farm by various groups of people intending to carry out mining activities on the strength of certificates, permits and licences issued by the first and second respondents, the Provincial Mining Directors for Matabeleland South and North respectively. In all situations the respondents would have issued certificates, permits or licences without the prior issue to those people, of an Environmental Impact Assessment Certificate by the Environmental Management Agency in terms of s100 as read with s97 of the Environmental Management Act [Chapter 20:27]. The grant of such a certificate is a pre-requisite for the issuance of a mining certificate, permit or licence.

As a result of the respondent's conduct, the applicant has been constrained to engage in costly litigation against those coming to the farm to conduct mining activities without the requisite certificates but having been issued with permits or licences by the respondents. The applicant makes reference to four such cases namely HC 595/13; HC 772/13; HC 1619/15 and HC 33/16. In all those cases it has had to obtain interdicts to award off mining operators coming with authority from the first and second respondents.

The applicant has therefore now had enough. It would like an order to be issued against the respondents to respect the provisions of the Environmental Management Act [Chapter 20:27]

and not to issue certificates, permits or licences for mining purposes at the farm without compliance with the Act.

The first and second respondents have opposed the application. The basis for their opposition is that an Environmental Impact Assessment Certificate is not a pre-requisite for the issuance of a mining certificate. As far as they are concerned an applicant for a registration certificate is only required to comply with s45 (2) of the Mines and Minerals Act [Chapter 21:05].

In other words, such an applicant must lodge with the Mining Commissioner the prospecting licence and a power of attorney or other document by virtue of which the mining block was located, a copy of the prospecting notice, a plan, a certificate stating that the facts are correct and the consent of the owner where the claim is pegged on some ground for which such consent is required. The respondents maintain that the Environmental Impact Assessment Certificate is only required by the miner for commencement of operations and not before.

Curiously the respondents stated in opposition that this court should allow them to send their inspectors to the farm to assess the issue of dangers being posed by the miners they have licenced to operate at the farm without impact certificates. They would like an opportunity to do that because miners should not “be allowed to carry out their mining activities posing dangers to the applicant’s cattle ranching and wildlife safari operations.

It is indeed a question of trying to close the gate after the horse has bolted.

*Mr Manika* who appeared for the applicant submitted that the relief that the applicant seeks is a declaratory order. As the applicant has shown that it is an interested person having a direct and substantial interest in the subject matter of the suit which could be prejudicially affected by the judgment of the court, it is its ranching and wildlife operations that are affected by the respondents’ conduct, the applicant has established the requirements for the grant of a declaratur. This is particularly so as this is a matter wherein the court should exercise its discretion in favour of the applicant.

*Ms Hove* for the respondents was of a different view. She submitted that the respondents are only required to have regard to the provisions of s45 (2) of the Mines and Minerals Act [Chapter 21:05] before issuing a certificate or licence. The provisions of s97 (2) of the Environmental Management Act [Chapter 20:27] are only relevant to the commencement of

operations. She did not explain how this could be so where a miner has already been granted a licence to operate or to prospect entitling such miner to undertake the activity.

The remedy which the applicant seeks is one provided for in s14 of the High Court Act [Chapter 7:06]. The section provides that this court may, at the instance of any interested party, inquire into and determine any existing, future or contingent right or obligation. It has been stated, in interpreting that provision, that it is a condition precedent to the grant of a declaratory order that the applicant must have a direct and substantial interest in the subject matter of the suit which could be prejudicially affected by the judgment of the court. See *Munn Publishing (Pvt) Ltd v ZBC* 1994 (1) ZLR 337 (S) 343G; 344 A –E;

As the court will not decide abstract, academic or hypothetical questions unrelated to such an interest, the interest must relate to an existing, future or contingent right. See *Anglo-Transvaal Collieries Ltd v SA Mutual Life Assurance Soc* 1977 (3) SA 631 (T) 635 G-H; *Munn Publishing (Pvt) Ltd v ZBC, supra*. The other requirement for a declaratory order is that the court must decide whether or not the case in question is one in which it should properly exercise its discretion as provided for in s14. The court's discretion will be exercised where, despite the fact that no consequential relief is sought, justice or convenience demands that a declaration be made as to the existence of or the nature of a legal right claimed by the applicant or the existence of a legal obligation due by the respondent. See *Adbro Investment Co Ltd v Minister of the Interior and Others* 1961 (3) SA 283 (T) 285 B – C; *Johnsen v AFC* 1995 (1) ZLR 65 (H).

In my view, to the extent that the applicant complains that the manner in which the first and second respondents have been issuing out certificates, permits and licences to prospective miners targeting its farm like confetti at a wedding resulting in those given certificates, permits and licences using them to invade the farm, there can be no doubt that the applicant has an interest in that exercise. Whether those respondents are discharging their duties lawfully is therefore a matter affecting the applicant's rights and interests.

Section 14 reposes upon this court the discretion to inquire into and determine such rights and obligations, the obligation of the first and second respondents being to abide by the law when issuing mining certificates, permits or licences. I am satisfied that this is an appropriate matter for the exercise of the court's discretion as provided for in s14 of the Act.

I now turn to examine the relevant provisions of the Environmental Management Act [Chapter 20:27]. The scope of that Act and its application *viz-a-viz* other laws can be found in s3 which provides:

- “(1) Except where it is expressly provided to the contrary, this Act shall be construed as being in addition to and not in substitution for any other law which is not in conflict or inconsistent with this Act.
- (2) If any other law is in conflict with this Act, this Act shall prevail.”

The basic rule of statutory interpretation counsels that words of a statute must be given their grammatical and ordinary meaning unless that would lead to an absurdity. I can do no better than refer to the pronouncement of McNALLY JA in *Chegutu Municipality v Manyora* 1996 (1) ZLR 262 (S) 264 D-E:

“There is no magic about interpretation. Words must be taken in their context. The grammatical and ordinary sense of the words is to be adhered to, as LORD WENSLEYDALE said in *Grey v Pearson* (1857) 10 ER 1216 at 1234, ‘unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified so as to avoid that absurdity and inconsistency, but no further.’”

See also *Madoda v Tanganda Tea Company Ltd* 1999 (1) ZLR 374 (S); *S v Nottingham Estates (Pvt) Ltd* 1995 (1) ZLR 253 (S).

In my view there is no absurdity in s3 of the Environmental Management Act. It makes it clear that its provisions are to be taken as additional to any other existing law which is not in conflict with it and where that law is in conflict with its provisions, it is the Act which shall prevail. Accordingly whatever procedure for the grant of mining certificates, permits or licences set out in s45 (2) of the Mines and Minerals Act [Chapter 21:05] is supplemented by the provisions of the Environmental Management Act [Chapter 20:27].

If the procedure contained in s45 (2) of the Mines and Minerals Act had been in conflict with the former, which happily it is not, still the former Act would override it to the extent of that conflict. Clearly therefore the first and second respondents are bound by whatever additional requirements for the issuance of mining certificates, permits or licences as are introduced by the Environmental Management Act.

The question which then arises is whether the first and second respondents have complied with that Act in the manner they have been issuing authority to individuals intent on carrying out mining activities at Shangani Ranch. In terms of s97 (1):

“The projects listed in the First Schedule are projects which must not be implemented unless in each case, subject to this Part—

- (a) the Director-General has issued a certificate in respect of the project in terms of section one hundred, following the submission of an environmental impact assessment report in terms of section ninety-nine, and;
- (b) the certificate remains valid; and
- (c) any conditions imposed by the Director-General in regard to the issue of the certificate are complied with.”

Section 99 sets out what should be contained in the environmental impact assessment report including whether the environment is likely to be affected by the proposed project.

Section 100 provides for consideration of an environmental impact assessment report and the issuance of a certificate.

I must add that projects that require environmental impact assessment listed in the First Schedule applicable to s97 include item 7:

“Mining and quarrying—

- (a) Mineral prospecting;
- (b) Mineral mining;
- (c) Ore processing and concentrating;
- (d) Quarrying.”

*Ms Hove* was therefore wrong to say that the environmental impact assessment certificate is not a pre-requisite for the grant of a prospecting licence or indeed a mining licence. The foregoing provisions clearly make it a requirement which the first and second respondents are enjoined to enforce. They cannot limit the scope of an application made to them in terms of the Mines and Minerals Act to the provisions of that Act only. The other Act has added the pre-requisite of an environmental impact assessment certificate before mineral prospecting, mineral mining, ore processing and concentrating and indeed quarrying can be undertaken.

The applicant has made out a case for the relief that it seeks. It is a matter in which a declaratur should be granted.

In the result, it is ordered that;

1. The 1<sup>st</sup> and the 2<sup>nd</sup> respondents, their agents, appointees or any persons acting in their place and stead shall not issue any mining licence, prospecting licence, permit or certificate in terms of the Mines and Minerals Act [Chapter 21;)5] relating to any mining claim situate on Shangani Ranch, Insiza District, Matabeleland South Province, unless an Environmental Impact Assessment Certificate in respect of such claim has first been issued by the Environmental Management Agency in terms of s97 of the environmental management Act [Chapter 20:27].
2. Any mining licences, permits or certificates to be issued in respect of such claims by the 1<sup>st</sup> and 2<sup>nd</sup> respondents without an Environmental Impact Assessment Certificate having first been issued shall be null and void and of no force and effect.
3. There is no order as to costs.

*Jumo Mashoko and Partners*, applicant's legal practitioners  
*Civil Division, Attorney General's Office*, respondents' legal practitioners