

FUNGAI BANGIDZA

And

TILFURY ZIMBABWE (PVT) LTD

Versus

ANFREW KUNAKA

And

KUDAKWASHE GOVO

And

**THE PROVINCIAL MINING DIRECTOR
(MIDLANDS NO)**

And

**MINISTER OF MINES AND MINING
DEVELOPMENT (NO)**

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 16 & 20 JANUARY 2020

Urgent Chamber Application

MAKONESE J: The applicants filed an application with this court seeking an order on an urgent basis seeking the following relief:

“Interim relief

Pending the confirmation or discharge of the order, applicants are granted the following interim relief:

- (i) That the certificate of registration issued in favour of 1st and 2nd respondents under the name AGKK Mining Syndicate registration number 31283 be and is hereby suspended in its operation and effectiveness pending the finalisation of the matter.

- (ii) That the 1st and 2nd respondents, their assignees, agents, workers or representatives either personally or under the name AGKK be and are hereby interdicted from interfering with mine operations of the 1st and 2nd applicants at their mining claims known as Glen Arroch 80, 81, 82 and 83 as lawfully registered.
- (iii) That the 2nd and 4th respondents be and are hereby interdicted from aiding the 1st and 2nd respondents in acting illegally in respect of the mining operations of the applicants on the mining areas stated in clause 2 above.”

In the final relief the order sought is in the following terms:

- “i. That the certificate of registration issued by the 3rd respondent in favour of AGKK Mining Syndicate under registration number 31283 remains suspended pending the determination of the following cases, HC 1707/18 and HC 1824/19.
- ii. That the 1st and 2nd respondents be and are hereby permanently interdicted from interfering with mining operations of the applicants at their Arroch 80, 81, 82 and 83 whatsoever, directly or indirectly.
- iii. That the respondents be and are hereby ordered to pay costs of suit on an attorney and client scale.”

I granted the interim relief on the 20th September 2019. I have been asked to furnish reasons for granting this order. These are my reasons.

The applicants hold certificates of registration in respect of mining claims under Glen Arroch 80, 81 and 83. Applicants have been carrying out mining operations at the mining location for some time. Disputes have arisen between the applicants and Damafalls (Pvt) Ltd. The dispute was brought to this court under case number HC 1707/18. The matter was heard and after full argument, the judge dealing with the matter reserved judgment. The matter is therefore still pending in this court. The 3rd respondent in this present application attempted to issue a certificate of registration to an entity known as AGKK over the same mining location, whilst the dispute remained unresolved and pending. The applicants approached this court on an urgent basis and sought and obtained an interdict against the 3rd respondent. In an apparent show of defiance 3rd respondent issued a certificate of registration in favour of AGKK in spite of the existence of and extant order of this court under case number HC 1821/19. In that matter this court ordered that whilst the matter remained pending the 3rd respondent could not issue a certificate of registration to a third party. This order was served on the respondents and the parties were expected to comply with the orders of this court. The legality of the certificate of registration issued to AGKK is being

challenged and an allegation has been made that the certificate was issued irregularly and fraudulently. The conduct of the respondents is clearly contemptuous of this court and its processes. It is the duty of this court to ensure that its processes are complied with. The integrity of the court and its orders must be maintained and observed.

The requirements for the granting of an interim interdict are well settled in our law. These are:

- (a) the existence of a right which, though *prima facie* established, is open to some doubt;
- (b) a well-grounded application of irreparable harm;
- (c) the absence of any other remedy;
- (d) the balance of convenience favours the applicant..

The principle was well set out in the case of *ZESA Staff Pension Fund v Mushambadzi* SC-57-02. The expression “*prima facie established though open to some doubt*” relates to the existence of a right shown on the papers. As regards proof of a well grounded apprehension of irreparable harm, and there being no adequate remedy, the court must exercise its discretion, such discretion to be exercised judiciously upon consideration of the facts on record and placed before the court. The balance of convenience refers to the prejudice likely to be suffered by an applicant if the interim order is not granted.

See also *Eriksen Motors (Welkom Ltd) v Protea Motors & Anor* 1973 (3) SA 685 (A) and *Flame Liliy Investment Company (Pvt) Ltd v Zimbabwe Salvage (Pvt) Ltd & Anor* 1980 ZLR 378.

In the circumstances of this case, there is no dispute that the 3rd respondent ignored an extant order of this court and proceeded to issue a certificate of registration over claims that are being contested in court. The matter is pending and final judgment has not been delivered. The consequence of allowing the respondents to treat court orders with disdain and contempt is to render the court powerless against clear acts of illegality. It is for this reason that I granted the interim relief on an urgent and *ex parte* basis. This order granted by this court does not have final

effect. The respondents could and may file papers in opposition and justify their basis for refusing to obey extant orders of this court.

In the result, and for the foregoing, reasons, I granted the interim order sought as prayed in the draft order.

Mutatu, Masamvu & Gustavo Law Chambers, applicant's legal practitioners
Sibanda & Partners, respondent's legal practitioners