

STONEFIELDS MINING (PVT) LTD
versus
MIKE MUDIMBU
and
E. KAHONDE N.O

HIGH COURT OF ZIMBABWE
MUREMBA J
HARARE, 21 January 2016 and 17 February 2016

Opposed Application

T Marume, for the applicant
TK Mudzimbasekwa, for the first respondent

MUREMBA J: This is an application for confirmation of the provisional order which was granted by this court on 30 August 2013 which was to the following effect,

“Pending the determination of this matter the applicant is granted the following relief:

2 Interim relief

That pending the return day, it is hereby ordered:

- 2.1 the first respondent be and is hereby ordered to stop mining operations in claim number 37488BM and claim number 422013 until a Surveyor General demarcates the boundaries of the two claims in question.
- 2.2 the second respondent be and is hereby ordered to instruct a surveyor to demarcate the boundaries of claim number 37488BM and 42203.
- 2.3 costs be in the cause”

The final order that the applicant is now seeking is as follows:-

“Terms of the final order sought

That you show cause why an order in the following terms should not be granted:

- 2.1 The first respondent be and is hereby ordered to restore the *status quo ante* in claim 37488BM with immediate effect.

- 2.2 The first respondent be and is hereby prohibited from trespassing, entering and or interfering with applicant's operations on claim 37488BM.
- 2.3 the first and second respondent be and are hereby ordered to pay costs of suit on an attorney client scale."

From the founding affidavit which gave rise to the granting of the provisional order what is apparent is that Brighton Mavhiya is the director of the applicant and in that capacity he deposed to the founding affidavit. He stated that he is the alter ego of the applicant. He stated that Arcadia Mine registration number 37488 is a mining claim which is registered in the applicant's name. It is common cause that the mining claim is situated in Lonely Farm, Acturus. Lonely Farm is the property of the first respondent who also owns a mining claim called Arcadia claim registration number 42203. The first respondent's mining claim is also situated in Lonely Farm, adjacent to the applicant's mining claim. The two mining claims share boundaries.

The applicant approached this court on 27 August 2013 alleging that the first respondent had encroached into its mining claim. It therefore wanted a spoliation order which was granted on an interim basis. It is apparent from the provisional order that was granted that the first respondent was ordered to stop mining operations on the two mining claims (i.e. both his and that of the applicant) until a surveyor general had demarcated the boundaries of the two claims. In that interim order the court ordered the second respondent to instruct a surveyor to demarcate the boundaries of the two mining claims. The second respondent was the Acting Mining Commissioner at the material time.

After this court had issued the provisional order, the Acting Provincial Mining Director of Mashonaland East Mr. R. M Mtemah on 28 August 2014, wrote a letter which is now part of the record explaining the boundary dispute. This letter is addressed to the officer in charge of Minerals Unit, Harare. Its reference is worded as follows. "Ref: Mining Dispute: Mudimbu vs Mavhia and Mujuru Mining Syndicate-Dispute Resolution" It is on the basis of this letter that the applicant now seeks the confirmation of the provisional order. However, despite the contents of the letter the first respondent continued to oppose the application for confirmation of the provisional order. Its basis for opposing confirmation is that, that letter does not relate to a dispute concerning the applicant's mining claim, but to a claim owned by Mavhia and Mujuru Mining Syndicate.

In that letter it is said that on 27 August 2014, the office of the Provincial Mining Director for Mashonaland East held a meeting in the presence of Brighton Mavhiya, the applicant's director and the first respondent. The meeting was for resolving the dispute between the parties. After hearing the two parties, the Acting Provincial Mining Director decided in favour of Mavhia and Mujuru Mining Syndicate in respect of Arcadia mining claim number 37488BM. The findings were that the first respondent's mine which was later registered on 1 March 2012 after the applicant's mine had been registered on 25 September 2009 had been partly over pegged into mining location number 37488BM.

In deciding in favour of Mavhia and Mujuru Mining Syndicate, the Acting Provincial Mining Director stated that he invoked s 177 (3) of the Mines and Minerals Act [*Chapter 21:05*] which reads,

“(3) Priority of acquisition of title to any mining location, reef or deposit, if such title has been duly maintained, shall in every case determine the rights as between the various peggers of mining locations, reefs or deposits as aforesaid and in all cases of dispute the rule shall be followed that, in the event of the rights of any subsequent pegger conflicting with the rights of a prior pegger, then, to the extent to which such rights conflict, the rights of any subsequent pegger shall be subordinated to those of the prior pegger, (my emphasis) and all certificates of registration shall be deemed to be issued subject to the above conditions.”

The Acting Provincial Mining Director was asking the officer in charge of the Minerals Unit to ensure that Mavhia and Mujuru Mining Syndicate is not disturbed from enjoying its legitimate mining rights on its mining location 37488BM. By copy of the letter, the first respondent was ordered to move from the applicant's mining area which he had encroached into and desist from operating on any area within the boundaries of mining location 37488BM. Mr *Marume* for the applicant submitted that Mavhia and Mujuru Mining Syndicate and the applicant are one and the same. He said that, that was clear from the name of the mine which is Arcadia and the mining location number which is 37488BM. I am in agreement with him. The defence by the first respondent that this letter does not relate to the applicant's claim is without substance at all given that as demonstrated the location number and name of the mining claim are the same.

The foregoing letter clearly shows that the first respondent had indeed encroached into the applicant's mining claim when the provisional order was granted by this court. The applicant had not consented to such encroachment. Under such circumstances the applicant is entitled to an order restoring the *status quo ante* in respect of its mining location number 37488BM as it meets

the requirements of such a relief which are that (a) the applicant was in peaceful and undisturbed possession of the mining claim, and (b) that the first respondent deprived it of the possession forcibly or wrongfully against its consent¹.

The final order is therefore, granted as prayed for.

Matsikidze & Mucheche, applicant's legal practitioners
Mushangwe & Company, first respondent's legal practitioners

¹ *Chikafu v Dodhill (Pvt) Ltd and Ors* SC 28/09