NORMAN CHIMUSORO
versus
BAIMAZHENG INVESTMENTS (PRIVATE) LIMITED
and
ZHENG ZIM INVESTMENTS PRIVATE LIMITED
and
SHIJUN ZHENG
and
XIAOHENG LI
and
PROVINCIAL MINING DORECTOR FOR MASHONALAND WEST

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 15 June 2020

Urgent Chamber Application

I Mataka , for the applicant
Mrs R Zimvumi, for the 1st – 4th respondents

ZHOU J: This is an urgent chamber application for an interdict barring the first to fourth respondents from extracting and selling gold or gold sands and removing machinery from the mine described in the papers as Calton 45 Mine in Chegutu. Applicant also wants the court to order that he be given access to the said Calton 45 Mine for the purpose of inspecting and ascertaining the extent of the mining activities which have been carried on at the mine by the first to fourth respondents. The application is opposed by the first to fourth respondents who, in addition to contesting the matter on the merits, have objected in *limine* to its hearing on an urgent basis. The question of whether the matter is urgent must therefore be determined first.

The facts which are material to the determination of the issue of urgency are as follows: Applicant and third respondent had an agreement in terms of which both became shareholders and directors of the first respondent. There is a suggestion that there are also other shareholders who have not been cited in *casu* but that is not material at this juncture. The applicant was removed from his shareholding and directorship in 2018. An order of this court granted in Case No. HC 10389/18, which has since been rescinded, confirmed the termination of the agreement and

revocation of the applicant's shareholding. On his own evidence the applicant was barred from setting foot at the mine in question in April 2019. Even after he obtained an order in HC 2026/19 which set aside the order in HC 10389/18 the applicant did not go to the disputed mine. The order in HC 2026/19 was granted on 6 November 2019. More than 3 months later on 24 February 2020 the applicant and his legal practitioners presented themselves at the offices of the fifth respondent in connection with the mine. By letter dated 3 March 2020 the fifth respondent informed the applicant and his legal practitioners that mining operations were continuing at the mine and that the only time that operations had been suspended was during the period April 2019 to May 2019. That stoppage was unconnected to the dispute in *casu*. On 12 March 2020 the fifth respondent, apparently in response to a letter from the applicant wrote to the applicant advising that he could not stop mining activities because the mine was the subject of a dispute before the High Court. Armed with these two letters from the fifth respondent which he says he only collected on 3 June 2020, the applicant instituted the instant application.

A matter is urgent if it cannot wait to be dealt with as an ordinary court application. This court has held that what constitutes urgency is not the imminent arrival of the day of reckoning. A party who seeks relief on an urgent basis is seeking the preferential treatment of jumping the long queue of pending matters. For this reason, urgency which is self-created or stems from deliberate inaction until the arrival of the day of reckoning is not the urgency which is envisaged by the rules of court. Where a party fails to act expeditiously after the need to act arose they must not seek relief through an urgent chamber application, but if they choose to do so, they must give a convincing explanation about their procrastination.

In this case, even giving the applicant the benefit of the doubt, the need to act arose in April 2019 when the applicant became aware of his purported removal from directorship and shareholding in the first respondent. Nothing stopped him from approaching this court seeking this very same relief even as he was seeking the rescission of the judgment in HC 10389/18. He did not act then. Even after that order had been rescinded on 6 November 2019, the applicant took no action to seek the interdict being sought now. Not only did he not act then, he took more than three months only to approach the fifth respondent on 24 February 2020. The delay of more than 3 months has not been explained. Nothing is also said about why the applicant only sought to approach the fifth respondent on 3 June 2020, more than 3 months later, to collect the letters dated

3 March 2020 and 12 March 2020. His claim that he was prevented from approaching the fifth respondent earlier by the lockdown is clearly false because the lockdown connected to the Covid -19 pandemic only commenced on 30 March 2020. By collecting the letters on 3 June 2020 the applicant was creating urgency for himself. Self-created urgency is not a basis upon which this court can be invited to deal with the application on an urgent basis.

From the above, the court finds that this application does not qualify to be heard on an urgent basis.

In the result, IT IS ORDERED THAT:

1. The matter be and is hereby struck off the of urgent matters
2. Applicant shall pay the costs.

Chambati Mataka & Makonese, applicant's legal practitioners
Ruth Zimvumi Legal Practice, 1st – 5th respondent's legal practitioners