FOURTEEN KARATE MINING SYNDICATE
versus
KORZIM STRATEGIC MINERALS (PVT) LTD
and
MINISTER OF MINES AND MINING DEVELOPMENT N.O
and
PROVINCIAL MINING DIRECTOR MASHONALAND CENTRAL, BINDURA
and
KINGSTON NYAMAKURA
and
SHERIFF OF HIGH COURT N.O

HIGH COURT OF ZIMBABWE
CHIKOWERO J
HARARE 9 and 16 AUGUST 2024

Urgent Chamber Application

A Y Saunyama for the, applicant
B Mlauzi for the, 1st respondent
F Chimunoko for the, 2nd and 3rd respondents

CHIKOWERO J:

[1] I will refer to the parties as Fourteen Kararte, Korzim, the Minister, the Provincial Mining Director, Kingston and the Sheriff respectively.

[2] On 26 July 2024 under case number HCH 2530/24 (the main matter) this Court granted an order in favour of Korzim against the Minister, the Provincial Mining Director and Kingston. Paragraph 6 of that order reads as follows:

> "6. The Sheriff of the High Court with the assistance of ZRP be and are hereby ordered to evict third respondent and anyone occupying applicant's New Brixton claims 100, 101, 102, and 103 held under mining certificates 39187, 39188 and 39190."

The party referred to as the third respondent in the quoted paragraph is Kingston.

[3] On 1 August 2024 Korzim issued a warrant of ejectment against Kingston and all those claiming through him from New Brixton Farm claims 100,101,102, and 103.

[4] Having become aware of the existence of the order and that the ejectment was scheduled for 8 August 2024, Fourteen Karate, on 6 August 2024, instituted two Court proceedings. The first was a Court application for rescission of the order granted in the main matter on the basis that it was erroneously granted in the absence of Fourteen Karate, which claims that it is affected by that order. In other words, the application for rescission of the court order in question is founded on R 29(1) (a) of the High Court Rules, 2021. I understood Ms *Saunyama,* for the applicant, to say that it shall be contended at the hearing of the application for rescission that Fourteen Karate is claiming occupation of mining claim situate at New Brixton through Kingstone and ought to have been cited as a respondent before the Court determined the main matter.

[5] Still on 6 August 2024, Fourteen Karate filed the present urgent chamber application for stay of execution pending determination of its application for rescission of judgment.

[8] In urging me to relate to the matter on an urgent basis I was told that the applicant stands to suffer irreparable harm should the Sheriff proceed to evict it on 8 August 2024 before the hearing of the application for rescission of judgment because any order which this Court may thereafter render in that application would be *in brutum fulmen.*

[9] To her credit, Ms Saunyama brought to my attention a development which Fourteen Karate was not aware of at the time that it filed the application the subject of this judgment. It is on the same day (6 August 2024) Kingston filed in the Supreme Court, under case number SC 583/24, an appeal against the whole judgment in the main matter. Copy of the Notice of Appeal was placed before me. The noting of the appeal and its pendency are common cause.

[10] The noting of the appeal suspends the operation of the judgment on which the warrant of ejectment is predicated. In *Kyriakos* & *Kyriakos* v *Chasi* & ors 2003 (2) ZLR 399 (H) this court, per NDOU J said at 401C-D:

> "The noting of the appeal by the first 64 respondents automatically suspends the execution of the judgment appealed against unless this court directs otherwise. In fact the operation of an order such as an interim or final interdict, is suspended by the noting of the appeal, not merely the process of execution: *Zaduck* v *Zaduck* (2) 1965 RLR 635G; 1966 (1) SA 550 (SR); South Cape Corporation (Pty) Ltd v *Engineering Management* Service (Pty) ltd 1977(3) SA 534 (A); *DU Randt* v *DU Randt*1992 (3) SA 281 (E) and *Masukume* v *Mbona* & *Anor* HB 46/03."

[11] The noting of the appeal by Kingston automatically suspends the operation of the judgment in the main matter. As I write this judgment Kingston cannot be evicted. Similarly, those claiming

through him, Fourteen Karate included, cannot be evicted. Fourteen Karate's basis for claiming that this matter is urgent no longer exist.

[12] In light of the principles expressed in *Nyamweda* v *Georgias* 1988 (2) ZLR 422 (S) I had sought the parties views on whether Fourteen Karate should be considering to be joined in the appeal pending before the Supreme Court rather than persisting with the present application. Because the matter is in any event not urgent, it is no longer necessary, for purposes of this application, to decide whether Fourteen Karate's remedy lies in this Court or in the Supreme Court. The noting of the appeal has afforded the remedy desired and in the process rendered the matter not urgent.

[13] As for costs, I share Ms *Saunyama's* view that Mr *Mlauzi,* who prepared Korzim's opposing affidavit, put disparaging and insulting language into the mouth of the deponent. I express my strong disapproval of the numerous offensive and contemptuous statements made of fourteen Karate in the opposing affidavit. I do this by denying the successful litigant its costs of suit. The language employed by it has no place in litigation. For example, Fourteen Karate was repeatedly labelled "a thief" and the contents of its founding affidavit "hogwash." See *Mushayakarara* & Anor v *Chivinge* 1998 (2) ZLR 500 (S).

[14] In the result, **IT IS ORDERED THAT**:

1. The matter be and is removed from the roll.
2. Each party shall bear its own costs.

Mudimu Law Chambers, applicant's legal practitioners
MC Mukome Legal Practitioners, first respondent's legal practitioners
Legal Advisor: Ministry of Mines & Mining Development, second and third respondents' legal practitioners