JOEL MTETWA
and
PATRICK MATEU
and
EDMORE KAUTEKO
versus
TIMESITE MINING (Pvt) Ltd
and
TIME OF HOPE MINING SYNDICATE

HIGH COURT OF ZIMBABWE
WAMAMBO J
HARARE, 9, 15, 17 and 27 January 2025

Urgent Court Application

Z Kajokoto, for the applicants
T J Madotsa, for the 1st respondents
M Kuwana, for the 2nd respondent

WAMAMBO J: This matter was placed before me as an urgent chamber application.

The applicants seek an order as couched below:-

"TERMS OF THE FINAL RELIEF

That you show cause to this Honourable Court why a final order should not be made in the following terms:

1. The Provisional order be and is hereby confirmed.
2. The respondent shall pay applicants' cost of suit on the legal practitioner and client scale.

IT IS HEREBY ORDERED THAT;

TERMS OF THE INTERIM RELIEF GRANTED

Pending the determination of this matter on the return date the applicant is granted the following relief:-

1. The application be and is hereby granted.
2. The applicants be and is hereby restored to their possession of their portion of Kimberly F Mine and the shafts thereof located in and owned by Time of Hope Mining Syndicate GARATI area BINDURA.

3. The respondents and all those acting through them currently in occupation of the said mining area and portion of Kimberly F Mine and the shafts thereof be and are hereby ordered to vacate the said mining shafts upon service of this order on them and any of their representative.
4. The first respondent to fill up the trench escavated around Kimberly F and remove all the boundary fence elected (sic) and allow free access to the applicants ad(sic) their employees.
5. The Sheriff of the High Court with the assistance of the Zimbabwe Republic Police Bindura be and is hereby empowered and directed to evict and remove all the occupants of the two mining shafts forthwith and give vacant possession of the said shafts to the applicant.
6. The respondent to pay costs on an Attorney and client scale.

SERVICE OF THE PROVISIONAL ORDER

1. The applicant/applicants legal practitioner and or employees be and are hereby permitted to serve copies of this provisional order on the respondents and all those acting through it currently in occupation of the mineral shafts or their Legal Practitioners/Employees."

I will note in passing that the draft order contained a number of grammatical and typographic errors. Considering that the draft order contains the relief as proposed by the applicants, a lot more care and focus should go into its formulation.

The basis upon which the application is mounted is as summarized below:

The applicants are minority shareholders in the second respondent through a joint mining venture. The joint mining venture provides that applicants would take over mining operations. Applicants invested over US$100 000 in operational costs and machinery hiring and acquisition resulting in the commencement of operations.

On 24 and 27 December 2024 first respondent with the assistance of ZRP Support Unit Bindura chased away applicants from the mining site. On 29 December 2024 first respondent erected a boundary fence. It is applicants' understanding that one of their colleagues Regionald Ngulube devised a plan to dislodge the applicants through teaming up with first respondent, a partner of second respondent in the dispossession.

Applicants submitted that they were in effective peaceful and undisturbed possession of the mining shafts in issue since August 2024. Further that respondents took the law into their own hands by despoiling the applicants without a court order.

The respondents filed opposition papers and in oral submissions stood their ground in opposing the application.

First respondent raised points *in limine* namely, the lack of urgency, lack of locus standi, of the applicants and what is termed illegality.

Second respondents also raised points *in limine*. The lack of urgency and lack of *locus standi* are also raised, along with defective relief.

I will presently deal with the points *in limine*.

Urgency

First respondent submits that the dispute between the parties dates back to June 2024. Reference is made to a letter by the Ministry of Mines and Mining Development dated 28 June 2024. The said letter is addressed to the first respondent and addresses the dispute between first and second respondents.

It is not addressed or copied to the applicants. The applicants are not even mentioned in the said letter. I find the issue of the letter of 28 June 2014 irrelevant to the urgency or otherwise of this application.

The founding affidavit is preceded by the certificate of urgency. The certificate of urgency is signed on 29 December 2024 while the founding affidavit is signed on 30 December 2014. Respondents argue that a defective certificate of urgency can not pass an opinion on the urgency of the matter. Reference here was made *inter alia* to the case of *Condurago Investments (Private) Limited* t/a *Mbada Diamonds* v *Mutual Finance Finance (Private)* HH 630/15 where BHUNU J (as he then was) traversed the importance and relevance of a valid certificate of urgency. Reference was made to Rule 244 of the High Court, Rules 1971 (which were current at the time of that judgment) and *inter alia* the cases of *Morgan Tsvangirai v Chair Person of the Electoral Commission* EC 6/13 *General Transport & Engineering (Pvt) Ltd & Ors* v *Zimbank Corp (Pvt) Ltd* 1988(2) ZLR 301.

In the *Condurago Investments t/a Mbada Investments* v *Mutual Finance (Pvt) Ltd* case (supra) the Learned Judge at p 4 said:

"As we have already seen in this case a vital essential element for a valid certificate of urgency is missing in that the certificate of urgency was prepared without recourse to a valid founding affidavit as it predated the affidavit. That being the case the certifying lawyer could not have properly applied his mind to the facts arising from a non existent founding affidavit. For that reason alone I come to the conclusion that the urgent chamber application is fatally defective for want of an essential element of such an application. The urgent chamber application is therefore unsustainable."

In the instant case the certificate of urgency was executed on 29 December 2024 and reflects that the deponent thereto had read the founding affidavit. The founding affidavit however was executed on 30 December 2024. The deponent of the certificate of urgency could therefore not have read the founding affidavit on 29 December 2024 because there was none. The founding affidavit was only in existence after its execution on 30 December 2024.

By parity of reasoning resonating with that in the *Condurago Investments t/a Mbada Investments* v *Mutual Finance (Pvt) Ltd* case (supra) I find that the urgent chamber application is fatally defective for lack of an essential element of such an application. With this finding I will not delve into the rest of the points *in limine*.

It is ordered as follows:-

The application be and is hereby dismissed with costs.

Kajokoto and Company, applicants' legal practitioners
Madotsa and Partners, first respondents' legal practitioners
Sadowera and Kuwana, second respondents' legal practitioners