

CORRECT DUBE T/A BRIGHT MINING SYNDICATE
versus
SIMBARASHE GERALD MASHIRI

HIGH COURT OF ZIMBABWE
COMMERCIAL DIVISION
MANZUNZU J
HARARE, 12 February 2024 & 12 February 2025

CIVIL TRIAL

S Bhebhe with *N Chidembo*, for the Plaintiff
T Nyahuma, for the Defendant

MANZUNZU J

INTRODUCTION:

The only issue which stands for determination for now is whether the plaintiff is a legal persona and whether the plaintiff has *locus standi* in *judicio*. The plaintiff sued the defendant seeking recovery of US\$60 500 being the sale proceeds of gold bullion. The defendant has denied liability and also challenged the plaintiff's legal persona and *locus standi*.

BACKGROUND

- (1) In 2011 the late Saniet Mashiri and plaintiff (Correct Dube) entered into a partnership that formed Bright Mining Syndicate (the Syndicate), to register mining claims, carry out prospecting, and mining thereon on Subdisvison 2 Verblyden of Dunphalile in Zvimba District of Mashonaland West.
- (2) The defendant is the son to the late Saniet Mashiri who died in 2016.
- (3) The Syndicate became the registered holder of a block consisting of 10 (Ten) Gold Reef claims named Victory 286.
- (4) Sometime in 2021, the Syndicate extracted 1.1 kilograms of Gold Bullion from its mining operations with a value of US\$55.00 per gramme.
- (5) The Gold Bullion was kept in the Defendant's custody and possession (in his capacity as a representative of one of the Syndicate Partners), for onward transmission of the sale proceeds to the Syndicate.
- (6) Defendant however failed to account the sale proceeds to the Syndicate.
- (7) The defendant was then charged and convicted of theft of trust property by the Magistrates Court.

PRELIMINARY POINTS RAISED:

The preliminary point raised was whether or not the Plaintiff has *locus standi*. Both parties did not dispute that Correct Dube has the legal capacity to sue and be sued. However, it is disputed that the plaintiff has the *locus standi* to bring the claim in his name and the name of the Syndicate. There is an attack on how the plaintiff is cited which has been described by the defendant as a “legal impossibility”.

LEGAL PERSONA/CITATION OF THE PLAINTIFF

As already stated, Correct Dube has the legal capacity to sue or be sued. A Mining Syndicate has the legal capacity to sue or be sued. This is by virtue of rule 11 (1) of the High Court Rules, 2021 which defines the word “association” to include a syndicate and the word “an associate” to mean a member of the association. Rule 11 (2) says, “... an association may sue or be sued in its name.” This means a Mining Syndicate can sue or be sued in its own name.

Furthermore, an associate may sue and be sued in the name of their association; see... *Roselex Mining Syndicate v Mr D Gavi The Registered Holder of Confidence 12 Mine 7957 and 5 Others* HH680/20. See also rule 11 (14) (a) of the High Court Rules.

In casu, plaintiff is Correct Dube t/a Bright Mining Syndicate.

It is important to examine the status of Bright Mining Syndicate when these proceedings were commenced. The Syndicate was created in 2011 by two members, Correct Dube and Saniet Mashiri. It came as a result of a partnership between the two members. The law stipulates that unless there is an agreement to the contrary, a partnership dissolves at the death of one of its members. Therefore, Bright Mining Syndicate ceased to exist when Saniet Mashiri died in 2016.

Correct Dube did not treat Bright Mining Syndicate as having ceased to exist. This is so when one glances through the pleadings i.e the summons, the declaration and the summary of evidence. In the summons the plaintiff says,

“Payment of the sum of US\$60,500.00 (Sixty Thousand Five Hundred United States Dollars), being the value of the Gold Bullion proceeds due to the Syndicate and unlawfully converted by the Defendant to his own use.” In the declaration the plaintiff says;

“The Plaintiff is CORRECT DUBE T/A BRIGHT MINING SYNDICATE, an adult male and a syndicate partner in Bright Mining Syndicate,...”

In the summary of evidence the plaintiff says; “Plaintiff shall adduce evidence in person and will state as follows: 1.1 He is a syndicate partner in Bright Mining Syndicate (“the Syndicate”).”

The facts of the matter are clear to say Correct Dube sued the defendant to recover a debt due to Bright Mining Syndicate, his trade name. When Saniet Mashiri died in 2016 Bright Mining Syndicate lost its status as a legal persona but Correct Dube continued to run business under the style Bright Mining Syndicate.

Is it permissible for Correct Dube to sue as Correct Dube t/a Bright Mining Syndicate? The Defendant has advanced the contention that there is no legal person called “Correct Dube T/A Bright

Mining Syndicate”. The Defendant’s objection, therefore, relates, primarily, to the issue of citation. In my view, the allegation by the defendant, that this conjoined citation is a legal impossibility is without merit. The defendant is fully aware as to who has brought this claim against him. Correct Dube is free to trade in the name of a dissolved partnership. There is a valid plaintiff in the name Correct Dube trading as Bright Mining Syndicate. The challenge on the citation of the plaintiff must fail.

LOCUS STANDI

In *Makarudze & Anor v Bungu & Ors* 2015 (1) ZLR 15 (H) the court discusses the issue of *locus standi* in detail. It is referred to one’s right, ability, or capacity to bring legal proceedings in a court of law. One must justify such right by showing that one has a direct and substantial interest in the subject matter and outcome of the litigation. The element of a direct and substantial interest is also discussed and it is stipulated that a party has to show that it has a direct and substantial interest in the subject matter and outcome of the application.

In *Chipfumbu v Zimbabwe Music Rights Association and 2 Others* HH 583/23, the court held that the term *locus standi* is in two contexts; the first being the capacity to litigate and the second refers to the interest that a party has in the relief or the right to claim the relief.

In *Sibanda and Others v Apostolic Faith Mission*, SC 49/18 the court had this to say; “It is trite that *locus standi* is the capacity of a party to bring a matter before a court of law. The law is clear on the point that to establish *locus standi*, a party must show a direct and substantial interest in the matter. See *United Watch & Diamond Company (Pty) Ltd & Ors v Disa Hotels Ltd & Anor* 1972 (4) SA 409 (c) at 415 A-C and *Matambanadzo v Goven* SC 23/04.”

The defendant contends that Correct Dube did not bring a claim in his own name because the ground from which the gold in question was extracted belong to the Syndicate. Contrary, Correct Dube brought this claim in his own name. This is so because the defendant has already said the Syndicate ceased to exist in 2016. In the meantime Correct Dube continued to run business trading in the name of a defunct Syndicate. He certainly is running business through a trade name. This is illustrated in the summons thus; “The Plaintiff is CORRECT DUBE T/A BRIGHT MINING SYNDICATE, an adult male and a syndicate partner in Bright Mining Syndicate...” Correct Dube is identified in his personal capacity and, further, as a constituent member of Bright Mining Syndicate. He is evidently before the Court. I agree with the plaintiff that the ground from which the gold in question was won does not “belong” to the Syndicate as the Syndicate only has rights to mine over the land by virtue of Certificate of Registration.

The pleadings by the plaintiff are clear that Correct Dube has shown direct and substantial interest in the subject matter, hence has *locus standi*. The preliminary point must fail with costs.

DISPOSITION

The preliminary point raised by the defendant challenging the *locus standi* of the plaintiff be and is hereby dismissed with costs.

Kantor and Immerman, plaintiff's legal practitioners
Nyahuma's Law, defendant's legal practitioners