

UBUTH BETHU (PVT) LTD

Versus

TOTAMALE (PVT) LTD

IN THE HIGH COURT OF ZIMBABWE
NDOU J
BULAWAYO 12 & 15 NOVEMBER 2012

Ms N. Ndlovu for the applicant
T. Muganyi for the respondent

Judgment

NDOU J: The applicant seeks a provisional order for release of equipment listed in annexure “AA” which it had invested into the mining partnership with the respondent. The applicant for reasons stated in the founding affidavit, decided to terminate the partnership agreement. The partnership agreement has a clause governing its termination i.e. clause 5.1 which reads – “it is recorded that the partnership may be terminated without cause, by either party upon written notice, which notice shall be delivered by hand.”

What can be gleaned from the founding affidavit is that the applicant exercised its right of termination enshrined in clause 5.1 and the respondent has refused or neglected to release equipment. In terms of clause 5.2 each party is to retain what it brought into the partnership venture. The applicant brought the equipment listed under annexure “AA” and respondent the mining claim. I am satisfied that the appellant has made out a case for the release of the equipment by the respondent and its retention by a third party until the parties argue their respective cases on the return date. The respondent will not suffer much prejudice as the party who brought this equipment into the partnership is the applicant. This is common cause in terms of the agreement. In any event, the respondent does not, in its opposing papers, indicate what prejudice it will suffer if the interim relief is granted.

The balance of convenience favours the granting of the order pending the finalization of the matter but I do not think a case has been made for contempt of court. The court should not easily imprison litigants in the civil disputes. I do not think that the papers make a case for the deprivation of the liberty of the persons stated in the draft order. I am satisfied the papers only make out a good case for recovery of the equipment by the Deputy Sheriff with the assistance of the police if need be. The property should be kept by the Deputy Sheriff pending the return date. The parties, may, on their own make alternative storage arrangements if they wish to cut costs.

Accordingly, the provisional order is granted in terms of the amended draft.

Advocate S K M Sibanda & Partners, applicant's legal practitioners
Dube-Banda, Nzarayapenga & Partners, respondent's legal practitioners