

G & G PRESERVES (PVT) LTD
versus
THEMBA SIBANDA
and
BIT RESOURCES PBC QUARRY MINE
and
MINISTRY OF MINES AND MINING
DEVELOPMENT MATEBELELAND NORTH
and
PROVINCIAL MINING DIRECTOR
MATEBELELAND NORTH
and
UMGUZA RURAL DISTRICT COUNCIL
and
ENVIRONMENTAL IMPACT AGENCY
and
ZIMBABWE REPUBLIC POLICE

HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 27 MARCH 2016 AND 13 APRIL 2017

Urgent Application

N Sandi for the applicant
P Mvundla for the 1st and 2nd respondents
R Hove for the 3rd, 4th, and 7th respondents
No appearance for the 5th & 6th respondents

MOYO J: This is an application wherein the applicant seeks interim relief couched in the following manner:

- “1) That 1st and 2nd respondents be and are hereby interdicted from carrying out any mining activity on the property known as the remaining extent of Lot B Lower Rangemore.
- 2) The 1st and 2nd respondents and any persons or entities claiming through them be and are hereby directed and ordered to vacate the remaining extent of Lot B Lower Rangemore within 48 hours of service of this order, failing which the sixth respondent is directed to assist the sheriff of Zimbabwe to remove the 1st and 2nd respondents from applicant’s property.

- 3) 4th and 5th respondents be and are hereby interdicted from issuing any mining claims in relation to property known as the remaining extent of Lot B Lower Rangemore”

Applicant states in the founding affidavit paragraph 3 that it seeks is a prohibitory interdict.

The basis of the application is contained in paragraphs 4 and 5 of the founding affidavit, which read as follows:

- “4) Sometime in January 2017, it come to applicant’s attention that 3rd, 4th, 5th and 6th respondents had issued 1st and 2nd respondents what applicant believes to be a mining claim on the belief that applicant’s property was vacant land with no ownership (*sic*)---.
- 5) Letters were written to 5th and 6th respondents dated 2 January 2017 and 15 February 2017 respectively in which it was made clear, by applicant that Lot B of Lower Rangemore was owned by the applicant who holds title to the land, and that no enquiry was made in terms of seeking permission to mine on the property.”

Paragraph 6 goes on to state that verbal assurances were received from Umguza Rural District Council from one Mrs Maphosa that the rangers would be sent to the property to remove the miners. We are not told when this happened but one would want to believe that this was soon after the letters had been written. Paragraph 7 of the founding affidavit then states the following:

“On the 13th of March 2017, applicant carried out a site visit and it came to its attention that the rangers were not sent out as stated by fifth respondent and the miners were still on site.”

The respondents raised three points *in limine*, one of which is that there is no urgency at all in this matter, as applicant became aware of the subject matter of the complaint on 2 January 2017 and only approached this court on 14 March 2017. Respondent argues that the matter should not be treated as urgent as a result of applicant’s inaction between January 2017 and March 2017. From the applicant’s founding affidavit it is clear that the action complained of, began before January 2017 as on 2 January 2017 applicant wrote to the fifth respondent that:

“This letter serves to let you know that we found a company setting up a quarry mine on our property without our knowledge and consent.”

This letter shows that prior to 2 January 2017, applicant found the respondent or their representatives “setting up a quarry mine” on applicant's piece of land.

In the founding affidavit we are not told of what transpired between 2 January 2017 and 15 February 2017 when an identical letter was also written to fifth respondent. We are not told again in the founding affidavit what transpired after this second letter was written and sent. We are then told that applicant then communicated with Mrs Maphosa a representative of 5th respondent, who then made certain assurances. We are however not told again, when this was. We are then told that on 13 March 2017, during a site visit applicant then realized that the miners were still on site. (My emphasis). In paragraph 8 we are told that the respondents have since begun to mine on the property.

This court needs to examine whether the facts of this matter, pass the test in so far as the rules governing urgent matters are concerned. In the case of *Kuvarega v Registrar General* 1998 (1) ZLR 188 (HC), the position regarding the undesirability of delaying to launch urgent applications was aptly put at page 193. This is what the learned judge stated therein:

“What constitutes urgency is not only the imminent arrival of the day of reckoning, a matter is urgent if, at the time the need to act arises, the matter cannot wait. Urgency which stems from a deliberate or careless abstention from action until the deadline draws near is not the type of urgency contemplated by the rules. It necessarily follows that the certificate of urgency or the supporting affidavit must always contain an explanation of the non-timeous action if there has been a delay ---.”

The certificate of urgency in this matter states that:

“In or about January 2017, the applicant became aware of the illegal occupants, and went on to notify Umguza Rural District Council and on 15 February notified the Environmental Impact Assessment Department.”

The applicant obviously could see or discern that there was nothing fruitful coming out of its lobbying of fifth and sixth respondents. Applicant had a duty to ensure that these two authorities acted within a reasonable period and following their inaction to approach this court on the grounds of urgency. From 2 January 2017, applicant's land was illegally occupied per applicant's own letter to fifth respondent. It had found a company illegally setting up a mine on its land and wrote a letter on 2 January 2017, sat back waited for action, nothing happened,

causing it to write another letter on 15 February 2017, this is more than a month from the discovery of the unlawful occupiers. Applicant sat back again and only made a phone call to Mrs Maphosa. Applicant only did a site visit on 13 March 2017, when they found that respondents had since started the mining operations. Obviously applicant must have realized that if respondents had set up a mine in January 2017, mining operations would follow. Applicant for more than two months did nothing, it then seeks to come to this court and jump the queue on the basis of urgency. This cannot be allowed as the forum for urgent applications was designed to service only those matters that cannot wait.

A matter cannot wait from the beginning of January to mid March to be prosecuted only for it to come to court on the basis of urgency. An urgent matter cannot wait, simple, and a matter that can wait for two and a half months before being prosecuted cannot be brought to court on the basis of urgency otherwise the whole meaning and purpose of urgency will be distorted so much so that this court would be inundated with matters clothed with false and self-created urgency yet the parties thereto did not see it fit to act within the reasonable parameters of the rules governing urgency. We cannot suddenly treat an issue that started in January with utmost urgency and put everything aside so as to attend to a cause of action which started more than two months ago. A matter that was not urgent in January certainly cannot be urgent in March. It is for these reasons that this matter should fail on this basis alone. It is also for these reasons that I will not consider the other points *in limine* as I find it unnecessary to do so.

The application is accordingly dismissed with costs.

Mutuso, Taruvinga & Mhiribidi, 1st & 2nd respondents' legal practitioners
Mathonsi Ncube Law Chambers, applicant's legal practitioners