

**BILBOES HOLDING (PVT) LIMITED**

**APPLICANT**

**Versus**

**MLAUZI SYNDICATE**

**1ST RESPONDENT**

**CONTINUE MLAUZI**

**2<sup>ND</sup> RESPONDENT**

**SEBENZILE MLAUZI**

**3<sup>RD</sup> RESPONDENT**

**THE MINING COMMISSIONER N.O**

**4<sup>TH</sup> RESPONDENT**

**THE SHERIFF OF THE HIGH COURT N.O**

**5<sup>TH</sup> RESPONDENT**

IN THE HIGH COURT OF ZIMBABWE  
DUBE J  
BULAWAYO 28 FEBRUARY AND 12 MARCH 2025

**Application for Contempt of Court**

*Mr J. Tshuma* for the Applicant  
*Mr L. Chimire* for the 1<sup>st</sup>- 3<sup>rd</sup> Respondents  
*Ms M.M Takaedza* for the 4<sup>th</sup> Respondent

Introduction.

**DUBE J:** This is an application for contempt of court. The 3<sup>rd</sup> Respondent did not file any Notice of Opposition. 5<sup>th</sup> Respondent being cited *nominee officio* also did not file any opposition, meaning they choose to abide by the outcome whichever way. The 4<sup>th</sup> Respondent filed a consent to the prayer being sought by the Applicant. The following facts became common cause viz:

1. 1<sup>st</sup> Respondent is a mining syndicate consisting of two individuals i.e 2<sup>nd</sup> and 3<sup>rd</sup> respondents.

2. Applicant is the lawful owner of mining claims known as Calcite 22 to 25 in the District of Bubi and are registered under the Applicant a private limited company since May 1986.
3. 1<sup>st</sup> Respondent whose alter ego is the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents registered mining claims under registration No. 46920 and known as Calcite South Mine.
4. Applicant queried such registration claiming that it was located within its existing claims.
5. 4<sup>th</sup> Respondent investigated the dispute and found in favour of the Applicant to the detriment of 1<sup>st</sup> and by inclusion 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.
6. This led to cancellation of 1<sup>st</sup> Respondent (and by inclusion 2<sup>nd</sup> and 3<sup>rd</sup> Respondents') registration certificate.
7. 1<sup>st</sup> Respondent appealed to the Minister of Mines and Mining Development without success.
8. 1<sup>st</sup> Respondent instituted summons before this court under HC187/19 seeking a declarator, with Applicant filing a counter claim.
9. The result still did not favour the 1<sup>st</sup> (and by inclusion the 2<sup>nd</sup> and 3<sup>rd</sup>) Respondents.
10. The 1<sup>st</sup> Respondent appealed to the Supreme Court under SCB 39/22 still without joy.
11. The 1<sup>st</sup> respondent attempted to seek condonation and extension of time to file yet another shot at the appeal under SCB 20/23. Yet again 1<sup>st</sup> Respondent met no joy.
12. This effort by 1<sup>st</sup> Respondent to legally hold onto title to Calcite South mine spanned almost 10 years still without joy.
13. 1<sup>st</sup> Respondent, being personified by 2<sup>nd</sup> and 3<sup>rd</sup> Respondent were aware of all these resultant court orders. Counsel for 2<sup>nd</sup> and 3<sup>rd</sup> Respondents correctly abandoned its claim that they are not bound by these as they were not personally cited.

1<sup>st</sup> Respondent did not oppose this application. The claim being that it complied with the orders of court. 2<sup>nd</sup> Respondent could not pick his colours. After admitting that by being the personification of the 1<sup>st</sup> respondent he is deemed aware and bound by the conduct of first respondent and the court orders against it, he half heartedly sought to seek condonation and or sympathy of the court for being ignorant of the law and the legal implications thereof. On the one hand he seemed to be suggesting that the violator is one Violet Mlauzi a wife to one of the Respondents. He somehow seemed to say "prove its me" who is contemptuous. On the extreme

he argued that his matter is still alive as he has a letter pending before the Permanent Secretary of Mines and Mining Development to determine if there was an over peg. He also stuck to his guns that there is still need for a “proper survey” to establish the correct boundaries.

What exercised the mind of the court is, what exactly is the defence of the 2<sup>nd</sup> Respondent. His defences are mutually destructive. For example, if he admits that there are extant court orders from 4<sup>th</sup> Respondent right up to the supreme court, which he is aware of, how can he still hold hope over a letter pending before the permanent secretary. In fact, how can that be if he holds no valid registration certificate to mine anywhere? If he is peacefully and lawfully mining elsewhere, why does he not simply say that once and for all? If he is not the one in contemptuous occupation of Applicant’s mine, why does he still hold hope over a fresh survey over the same property. Why is he still contesting the over pegging decision relating to his now non-existent Calcite South Mine?

3<sup>rd</sup> Respondent for his part did not file any opposing papers. His Counsel does not say why. Does it mean he has no valid opposition to make? Does it mean he concedes to the factual allegations made and consents to judgment? His silence is conspicuous. He is the second personification of 1<sup>st</sup> Respondent, who has been engaged in a bitter contest with the Applicant for the past 10 years or so. In any event he is barred by operation of law. He is liable and exposed to any order this court may make.

In the present matter and quite disturbingly and according to the Applicant, an unknown person called their manager and purported to represent the 1<sup>st</sup> -3<sup>rd</sup> Respondents. The said person stated in unequivocal terms that despite the court orders in existence, they (the Respondents) were coming to mine at the disputed claims. The reason this person gives is “we believe we have a right to do so”.

True to such threats indeed individuals purporting to be the 1<sup>st</sup> Respondent or persons claiming through it attended at the former Calcite South Mine and started mining. Counsel for the 1<sup>st</sup> to 3<sup>rd</sup> respondents proffers a puzzling defence to say the least. He on the one hand states that 1<sup>st</sup> Respondent as syndicate did not file any opposing papers because they complied with the

orders by voluntarily moving out after being served with a writ of ejectment. He on behalf of 2<sup>nd</sup> Respondent says “prove its 1<sup>st</sup> or at least 2<sup>nd</sup> Respondent”. He says he represents 3<sup>rd</sup> Respondents, who has not filed any opposing papers. Counsel for the 1<sup>st</sup> to 3<sup>rd</sup> Respondent, then proffers a name of Violet Mlauzi as the speaker of the threats to forcefully occupy the disputed claims against court orders. He however says she is not cited in the present proceedings; therefore, she is not a party thereto. He argues that 2<sup>nd</sup> respondent can not be liable for her conduct. Mind you the order prayed for is against the 1<sup>st</sup> to 3<sup>rd</sup> Respondents and “all those who claim through them”

Could it be a coincidence that under case number HB 79/22 a Mrs Mlauzi was actively involved, is she the bearer of the names Violet Mlauzi? For whatever her role, can she be acting on a frolic of her own separate for the other Mlauzis i.e 2<sup>nd</sup> and 3<sup>rd</sup> Respondents? I do not believe so. Quite to the contrary she is part of “those claiming through them”. Her actions bind the syndicate and indeed its constituent members.

#### The Law Relevant to Contempt of Court.

In the matter of *Simba Mukambirwa and 7 Others v The Gospel of God Church International* 1932 SC 8-2014 Gowora JA held as follows:

“The crime of contempt of court is committed intentionally and in relation to administration of justice in the courts. This was captured in lucid terms by Ziyambi JA in *Moyo v Macheka* SC 55/05 at p 7 of the cyclostyled judgment, quoting with approval Goldin J in *Haddow v Haddow* 1974 (1) RLR 5 at 8 A-C thus;

“the object of proceedings for contempt is to punish disobedience so as to enforce an order of court and in particular an order ad factum *praestandum*, that is to say, orders to do or abstain from doing a particular act. Failure to comply with such order may render the other party without a suitable or any remedy, and at the same time constitute disrespect for the court which granted the order.”

There is reference to further case law ie *Whata v Whata* 1994(2) ZLR 277 (S) and *Sheetlite Mining Company Ltd v Mahachi* 1998 (1) ZLR 173 (H) to the effect that;

“Before holding a party to be in contempt of a court order, a court must be satisfied that there is a court order which is extant, that the order has been served on the individuals concerned and that the individuals in question know what it requires them to do or not do, that knowing what the order dictates, the individuals concerned deliberately and consciously disobeyed the order.”

It is held further that;

“in addition to the above the court must be satisfied that, not only was the order not complied with but also that the non-compliance on the part of the defaulting party was wilful and *mala fide*.”

#### The Law Juxtaposed with The Facts

In the present case both counsels agree on what the law is regarding an interrogation into contemptuous conduct. No doubt there are extant court orders of the 4<sup>th</sup> Respondent, this court and the Supreme Court. Surely from this dispute spanning over nearly 10 years, at all material times the 1<sup>st</sup> - 3<sup>rd</sup> respondents, being actively involved, are aware of all the extant court orders. They know what is expected of them. With that knowledge they deliberately and consciously continue to disobey the court orders. Above all, their conduct, as demonstrated by the conduct of their functionary, one Violet Mlauzi’s actions, is wilful and actuated by *mala fides*.

The 1<sup>st</sup> Respondent and indeed those who personify it has acted with the greatest disdain to the administration of justice. There is need to restore the name, repute, integrity and authority of the courts to which the 1<sup>st</sup> to 3<sup>rd</sup> Respondents are intolerably holding in defiance and ridicule. (see *Madzimbamuto v Musamadiya* ZWHHC 235 of 2024). Having said that I find no good cause to show the court’s displeasure than to sanction the offending parties as prayed for.

In the foregoing I make the following disposition.

Disposition

1. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents be and are hereby held to be in contempt of the Court orders of this Honourable Court being H.C. 187/19 dated the 17th day of March 2022 and SCB 20/23 dated the 10th day of May 2023, respectively.
2. The Court hereby imposes a fine of USD\$ 5 000.00 on the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.
3. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents be and are hereby sentenced to 12 (twelve) months imprisonment suspended for five years on the condition that the 2nd and 3rd Respondents cease any further activities being carried out in the mining claims Calcite 22 to 25 in the District of Bubi registered under Applicant within forty-eight (48) hours of the granting of this order.
4. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, jointly and severally, the one paying the others to be absolved, pay costs of suit on an attorney-client scale.

*Webb,Low & Barry incorporating Ben Baron & Partners Applicant's legal practitioners  
Masamvu & Da Silva- Gustavo Law Chambers 1<sup>st</sup> -3<sup>rd</sup> Respondent's legal practitioners  
Attorney General's office, Civil Division 4<sup>th</sup> Respondent's legal practitioners*