

CHAD CECIL MUPANDANYAMA
and
SWIFTEAGLE INVESTMENT BUSINESS
CONSULTANCY (PRIVATE) LIMITED
versus
ELIAZEL MUSHIRINGI
and
TARIRAI DAVID MUNANGAGWA
and
RUAN MEATS ENTERPRISES (PRIVATE) LIMITED
and
WOZHERI STONE CRUSHERS (PRIVATE) LIMITED
and
REGISTRAR OF COMPANIES N.O
And
THE PROVINCIAL MINING DIRECTOR MIDLANDS PROVINCE
and
THE MINISTER OF MINES AND MINERAL DEVELOPMENT

HIGH COURT OF ZIMBABWE
MANZUNZU J
HARARE, 11, 15, 18 November 2022 & 5 April 2023

CIVIL TRIAL

R Mabwe with J Sande, for the 1st and 2nd Plaintiffs
V Makuku, for the 1st Defendant.
M Chipetiwa, for 2nd, 3rd and 4th Defendants

MANZUNZU J

A. INTRODUCTION

The resolution of this matter has been made simple because the 1st defendant fully supports the plaintiff's claims and the 2nd defendant to a large extent conceded that the plaintiffs' claim can succeed subject to the recovery of his expenses. The dispute between the parties was brought about by the greediness of the 1st defendant as shall be shown later in the evidence.

The plaintiffs issued summons which were later amended praying for the following declaratory and consequential relief:

1. The 1st defendant's conduct of registering 4th defendant using forged documentation be declared fraudulent and consequently all actions flowing there from be declared a nullity, in particular: -
 - a) That the registration of Wozheri Stone Crushers (Private) Limited by the 5th respondent on the 29 November 2017 be declared null and void and consequently set aside.
 - b) The memorandum of agreement entered in between the 1st defendant and the 2nd defendant on 28 November 2017 be declared null and void and of no force.
 - c) Transfer of the mining claims, Jilikin 25 registration number 12641 BM from the 1st plaintiff to the 4th defendant and registered with the 6th defendant be declared null and void and of no force.
 - d) The Joint Venture agreement entered into between the 2nd defendant representing the 4th defendant and 3rd defendant being represented by Junhua Ruan in March 2020 be declared null and void and of no force.
 - e) That the 1st plaintiff be declared the owner of the mining claims under the name Jilikin 25 registration number 12641 BM registered under the Ministry of Mines and Minerals Development.
2. That the 1st to the 4th defendants together with their subtenants, assignees, invitees, members and all persons claiming occupation through them should within 10 days of service of this court order vacate from the mining claim known as Jilikin 25.
3. The 1st and 2nd defendants pay costs of suit on a higher scale of legal practitioner and client.

B. PLEADINGS

In support of the relief sought 1st plaintiff, Chad Cecil Mupandanyama (Chad) pleaded that he is a registered owner of block 16 Quartz mining claims called Jilikin 25 registration number 12641BM since 2005. On 7 January 2016 Chad then entered into a tribute agreement with the 1st defendant, Eliazel Mushiringi (Eliazel) for Eliazel to develop, extract, mill and treat ore from the mine and to dispose of the products for own account. On 18 March 2016 Eliazel had a subsequent agreement with 2nd plaintiff, Swifteagle Investments Business Consultancy (Private) Limited (Swifteagle) to finance the mining project.

It is further pleaded that, Chad, Eliazel and Swifteagles agreed to float a company by the name Wozheri Stone Crushers Pvt Ltd as a special purpose vehicle for the mining activities.

Eliazel was given the task for the formation of the company. On 21 November 2017 it is alleged Eliazel unlawfully and wrongfully misrepresented to Chad that the form Chad was signing was in furtherance of creating Wozheri when in actual fact it was a form authorizing transfer of Chad's mining rights from Jilikin 25.

On 27 November 2017, Chad, Eliazel and Swifteagles signed a resolution that;

- Mining claims owned by Chad in Jilikin 25 would be transferred to Wozheri
- Allotment of shares in Wozheri be 32,5% for Chad, 32.5% for Swifteagle and 35% for Eliazel.
- An investor who signed a commitment fee of US\$500 000.00 would get 60% shares.

Eliazel was again tasked with the responsibility to look for investors. Eliazel introduced 2nd defendant, Tarirai David Munangagwa (Tarirai) as a mining consultant who could find investors in Wozheri. To that end Tarirai's benefit would be a 5% share from Eliazel's shares.

Chad further pleaded that Eliazel acted outside the mandate given and deceitfully acted with the connivance of Tarirai when they forged Chad's signature on the memorandum and articles of association of a fraudulently procured company in the name Wozheri Stone Crushers Pvt Ltd whose shareholding was set at:

- Chad Cecil Mupandanyama 100 shares
- Eliazel Mushiringi 300 shares
- Tarirai D Munangagwa 1200 shares

Chad and Swifteagles deny sanctioning the registration of 4th defendant, neither did they participate in the appointment of its directors nor share allotments. Contrary to the resolution of 27 November 2017, Eliazel had purportedly entered into another agreement with Tarirai to say Tarirai would inject financial capital in the mine and also purchase a rock plant.

Eliazel and Tarirai are accused of fraudulently transferring Chad's mining claims under Jilikin 25 to 4th defendant using a transfer form obtained from Chad through misrepresentation by Eliazel on 21 November 2017.

In March 2020, Tarirai entered into a joint venture agreement (JVA) with 3rd defendant, Ruan Meats Enterprises (Private) Limited (Ruan) for the mining and exploitation of Jilikin 25.

Chad finally pleaded that Ruan and Tararai were in unlawful occupation of Jilikin 25 and have refused to vacate despite demand.

The 1st, 2nd, 3rd and 4th defendants entered appearance to defend the claim.

In the plea, Eliazel did not put up any meaningful defence apart from denying any misrepresentation as he believed the transfer form was to be used when the intended company came into being. He pleaded mistake in signing some of the key documents like the memorandum and articles of association. In other instances, he entered into unauthorized agreements with the belief they would be ratified by Chad and Swifteagles. It is also said, “*The 1st defendant unknowingly and mistakenly assisted transfer of the mine to the 4th defendant...*”

Tarirai, Ruan and Wozheri pleaded that Chad lawfully transferred the mining claim to Wozheri. On the various issues raised by the plaintiffs, the 2nd to 4th defendants put the plaintiff to the strictest proof of their allegations. This is understandably so because some of the issues are not within the purview of the 2nd to 4th defendants because these are events which involved the plaintiffs and Eliazel.

C. ISSUES

At the pre-trial conference the parties agreed the following issues for trial:

1. Whether the inception and registration of the 4th defendant by the 1st and 2nd defendants was done legally, properly in compliance with the law?
2. If answer to 1 is in the affirmative, whether the subsequent shareholding of the 4th defendant company was done in compliance with the requisite legal and contractual formalities.
3. If the answers to 2 is in the affirmative, whether the joint venture entered into between 3rd and 4th defendants was so entered in compliance with the law and whether it is valid and binding?

4. Whether the 3rd defendant should be evicted from the mining claim known as Jilikin 25 registration number 12641BM?

D. THE EVIDENCE

The plaintiffs relied on the evidence of two witnesses, Chad Cecil Mupandanyama being the 1st plaintiff and Alecs Mawere (Alecs) a mining consultant with Swifteagles.

Chad's evidence was long and detailed. Despite his claim of an advanced age, his evidence showed a vivid recollection of events in a coherent and logical form. He testified that he is the owner of mining rights in a mining claim Jilikin 25, registration number 12641BM. To that end he produced the prospecting licence and the registration certificate which were admitted by consent of the other parties and marked exhibits P1 and P2 respectively. On realizing challenges posed by his advanced age, he asked Eliazel, his relative, to assist him in running the mine. The two drew and signed a tribute agreement on 7 January 2016 with Chad as the grantor and Eliazel as tributor. The agreement was to run for the period of 16 January 2016 to 15 January 2019. Clause 8 of the tribute agreement prohibited the tributor to assign any of his rights under the agreement without written consent of the grantor.

Chad further said, on the basis of the tribute agreement and with his consent, Eliazel and Swifteagle (represented by Alecs Mawere) entered into a mining agreement on 18 March 2016 to cover the period 18 March 2016 to 19 March 2036. In a document under the heading, "consent resolution", Chad gave his blessing of the agreement to the Provincial Mining Director.

The witness said he had further discussions with Alecs and Eliazel on how to explore the minerals at Jilikin 25. They agreed to float a company initially by the name Ultretch Trading Pvt Ltd with an agreed shareholding of 32,5% for Chad, 32,5% for Mawere and 35% for Eliazel. In September 2017 the three resolved to change the name of the company to Wozheri Stone Crushers Pvt Ltd. The change of name was influenced by the local traditional leadership. On 27 November 2017, in line with the intended change of name, Chad, Alecs and Eliazel (the trio) passed a resolution in which they agreed on the shareholding (as above) in the new company to be Wozheri Stone Crushers.

It was also agreed that Eliazel will give 5% of his shares to Tarirai as gratis and that 60% shareholding was to go to an investor who pays a commitment fee of US\$500 000. Tarirai had a task to look for such an investor. Parties also agreed that Chad's mining rights will be transferred to Wozheri.

Unbeknown to Chad, as they passed resolutions on their future plans on 27 November 2017, Eliazel and Tarirai had already signed memorandum and articles of association of Wozheri on 23 November 2017. These two documents were produced as exhibits P10 and P 11. Chad denied the signatures appearing on those two documents was his. In fact no witness could say it was Chad who signed. The signature was certainly forged. The documents omitted Alecs Mawere as one of the shareholders and directors.

It was Chad's evidence that he was unaware of the certificate of incorporation of Wozheri Stone Crushers (Private) Limited dated 29 November 2017. He was also not aware of the CR14 form in which he is included as one of the directors together with Tarirai and Eliazel. He denied that Tarirai was ever intended to be a director. He said he was unaware of the Joint Venture agreement over Jilikin 25 signed between Eliazel and Tarirai on 28 November 2017 a day before the incorporation of Wozheri. He was also not aware of another Joint Venure Agreement over Jilikin 25 between Tarirai and Ruan in March 2020.

Overally, Chad's evidence confirmed what was said in his pleadings. In essence he maintained that Wozheri Stone Crushers Pvt Ltd was deceitfully registered by Eliazel and Tarirai without his consent against what was agreed by him, Alecs and Eliazel in respect to its shareholding and directorship. He denied signing any of the documents which gave birth to Wozheri which is not the Wozheri the trio intended.

Chad's evidence was tested on cross examination by the 2nd to 4th defendants. It remained lucid and credible. On the other hand, Eliazel did not ask a single question in cross examination reminiscent of a defendant who fully agrees with the plaintiff's narration of events.

Alecs Mawere's evidence corroborated that of Chad. He is a director with Swifteagles. He confirmed the various agreements he had with Chad and Eliazel. He said Eliazel acted outside

his mandate when he entered into agreements with Tarirai. The formation of Wozheri was outside their agreement of 27 November 2017. He further said Eliazel at no time did he say had signed memorandum and articles of association with Tarirai on 23 November 2017, neither did he say Wozheri was incorporated with Tarirai as director.

This witness too proved to be truthful and Eliazel could not challenge his evidence. Cross examination by the other defendants did not shake his evidence.

Eliazel gave evidence in his own case. He was more of a witness for the plaintiffs. He corroborated the evidence of Chad and Alecs in all material respects. He conceded that; the formation of Wozheri was not done per the trio's agreement of 27 November 2017, that Chad did not sign the memorandum and articles of association which documents carried a forged signature, that Tarirai would come in as someone who would source for investors and not as a shareholder or director, that the formation of Wozheri Stone Crushers Pvt Ltd was irregular. Eliazel also admitted that he could not lawfully enter into agreements as he did with Tarirai. The witness also said was not aware of the agreement between Tarirai and Ruan and his wish was that Ruan be evicted from Jilikin 25.

One may want to know how and why Eliazel went on a frolic of his own. His evidence demonstrates his greediness, lack of honesty and foresight. There is no doubt that Chad trusted Eliazel until all hell broke loose.

Eliazel said he knew Tarirai within the mining circles and on the basis of tribute rights he said Tarirai promised could secure some investors for him. On 22 November 2017 Tarirai (*Tari* as he would prefer calling him in his evidence) invited him to Harare. When he met him in Harare he said Tarirai broke good news to him that he had found some investors for the mining of quarry at Jilikin 25. Tarirai then told him not to waste time but to go around town looking for a 4-wheel drive vehicle for himself to use at the mine. He said he has never been so excited in his life. There is no doubt this was the point when the spirit of Judas Iscariot visited him. Eliazel then started acting contrary to the agreements he had with Chad and Alecs. He went around town looking for the best vehicle of his choice as he proclaimed to himself that the issue of his poverty was over.

He said Tarirai promised him heavens on earth as they moved around Harare and was taken to an office of a director one Mashanda of the would-be investor who asked him to sign an

agreement with Tarirai. In the excitement Eliazel said he promised the investor 60% shareholding and kept 40% to himself. He then went to see Titus Nyanhanga (Titus) the one assisting him to do a change of name for the company. On 23 November 2017 he was asked to sign two documents by Titus for which he did without putting any thought to them as he was blinded by the fact of him suddenly becoming rich.

On 27 November 2017 the trio passed a resolution of the shareholding and directorship of the new company contrary to what Eliazel had signed for with Titus. He took the resolution to Titus with the instruction that he corrects what he earlier on signed for. At this point the excitement had toned down because the promised motor vehicle never came to be. He said Titus developed cold feet as he expressed the fear of correcting any documents. He left the matter with Titus with the hope that he would assist in the correction of the documents. He realized that the memorandum and articles and CR14 form did not contain the information as he instructed Titus. He signed the documents without averting his mind to the contents. Although he can read, he said he was semi-literate when it comes to the English language.

The last part of Eliazel's evidence was that he does not dispute the relief sought by the plaintiffs which is also his wish.

Tarirai gave evidence in support of his defence. According to his plea, the mining claim belongs to 4th defendant following a transfer by Chad. The witness is not privy to the agreements between Chad, Swifteagles, Alecs and Eliazel. Tarirai said he wanted to invest in Jilikin 25 through a company known as Geiger. He then entered into agreement with Eliazel as financier of the mining in which he will get a profit share of 60% while Eliazel was to get 40%. He said Eliazel facilitated the setting up of the company Wozheri with the assistance of Titus. He signed the constitutive documents of the company at Titus's office. While Tarirai's evidence was long it fell short of addressing issues at hand. This is because he was not privy to the arrangement of the trio from which lawful acts could be drawn.

At one point Tarirai learnt his name was removed from directorship. As a result, he reported Chad, Eliazel and Alecs to the Police with the result that they were arrested and prosecuted. The result was inevitable, they were acquitted. He said he regarded Eliazel as Chad's agent. Some of Tarirai's evidence was far-fetched as he alleged the present claim was meant to

counter the criminal report. In fact, the matter was in all its aspects a civil matter with no criminality in it.

Tarirai said he acted as he did because he had put all the trust in Eliazel who he believed acted with Chad's authority. He came out clear in his evidence that he will not hold on to Jilikin 25 rather it be returned to Chad but wants the refund of what he contributed. He acknowledged Mawere was also a victim. He said the area where Ruan was operatin was outside Jilikin 25.

Anesu Rejoice Kondo's evidence for Ruan played no significant role in the resolution of the dispute. In fact, it carried no probative value on the registration of Wozheri. He confirmed that there was an interdict and later contempt of court proceedings against Ruan. He confirmed that Chad had indicated to him that the formation of Wozheri had issues. He further said the area where Ruan was mining was outside Jilikin 25.

ANALYSIS OF EVIDENCE

The evidence in this case, in its final analysis, shows that the issues for determination are resolved through evidence which is common cause.

In an 18 page written heads the 2nd to 4th defendants strenuously argued that the plaintiffs' claim be dismissed with costs on a higher scale. I disagree with that because the evidence shows to the contrary.

It is common cause that the Wozheri incorporated on 29 November 2017 is not the one intended and agreed upon by the trio. Their Wozheri was supposed to be born out of change of name from Ultretch Pvt Ltd. The intended Wozheri was supposed to have the following shareholding, 32,5% for Chad, 32.5% for Swifteagles and 35% for Eliazel. The shareholders for the Wozheri in place are, Chad Cecil Mupandanyama 100 shares, Eliazel Mushiringi 300 shares and Tarirai D Munangagwa 1200 shares. The trio intended the directors to be Chad, Eliazel and Alecs yet Wozheri has the following as directors, Chad, Eliazel and Tarirai.

It is common cause that Chad and Alecs did not participate in the formation of Wozheri which is now in dispute. While Chad is said to have participated in the memorandum and articles of association, he denies any involvement. In fact, it came out clear that someone forged his signature. Whoever did that must have had a motive for it. It is obvious the memo and articles

were kept away from Chad because it had information contrary to the trio's agreement. It introduced Tarirai as a shareholder something which was never intended by Chad. Titus Manhanga, the originator of these documents, was never called by the defendants to explain the circumstances surrounding the formation of Wozheri.

The golden question is what is the effect of submitting the documents with Chad's forged signature? The plaintiffs took the position that such documents are a nullity and have the effect of nullifying the registration of Wozheri and any subsequent acts associated with Wozheri. The 2nd to 4th defendants took a different view.

Mr Chipetiwa representing 2nd to 4th defendants argued that failure by Chad to sign the constitutive documents does not render the registration of Wozheri a nullity. In support of this position, he referred to section 23 of the repealed Companies Act, Chapter 23:04 which provides that; "***Conclusiveness of certificate of incorporation.*** *A certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of this Act, in respect of registration and of matters precedent and incidental thereto, have been complied with, and that the association is a company authorized to be registered under this Act.*"

It is further argued that there is presumption on the regularity of Government documents; case of *Mhandu v Mushore and Ors HH 80/11* was cited as authority. What counsel omitted to state is that the presumption is rebuttable as correctly stated in the Mhandu case (supra) where the court stated; "*There is a presumption of validity of a government document regular on its face until it is lawfully invalidated. Thus the applicant's offer letter must be deemed valid until it is shown otherwise.*"

Counsel further submitted that there is no precedent to declare a company a nullity. Precedent or no precedent counsel had a duty to assist the court in the application of the law.

The other leg of the argument which I did not find persuasive is that it is the practice of secretariat companies to sign constitutive documents on behalf of the subscribers. That can very well be so, but the question is, does that comply with the law.

For the first time in the heads the defence of estoppel is raised. It was never pleaded. I will avoid riding on it at the expense of the plaintiffs.

There was also an attack of the resolution document dated 27 November 2017 on the basis that it was titled Shareholder/Board resolution when in fact no company existed. Whatever the trio called this document, the fact remains it was an agreement between them. I am not persuaded that it has no probative value, in fact it has, as shown by the evidence of Chad, Alecs and Eliazel.

Another surprise from Mr Chipetiwa is that he says the 2nd plaintiff was a misjoinder. Certainly, the alleged misjoinder should have been attacked at the right time and not at the end of the trial.

Ms Mabwe for the plaintiffs also relied on some sections of the repealed Companies Act. Section 7 of the said Act which provides that;

“Mode of forming company. Any one or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company either—
(a) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them, in this Act termed a company limited by shares; or
(b) if a licence is granted in terms of section twenty-six, a company having no share capital but having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up, in this Act termed a company limited by guarantee.”

The other section relied upon is section 8 which reads in part;

8 Memorandum of company

(1) In the case of a company limited—

(a) by shares, the memorandum shall be in the English language and must state —

(i) the name of the company which shall, unless a licence has been granted under section twenty-six, have “Limited” as the last word and shall also have included therein— which the company proposes to be registered and the division thereof into shares of a fixed amount;

(b) by guarantee, the memorandum shall be in the English language and must state - ..

(3) Each subscriber to the memorandum of a company limited by shares must in his own handwriting state in words opposite to his name the number of shares he takes:

Provided that where the subscriber is—

(a) a company, association, syndicate or other corporate body, a director of the company or the authorised representative of any other corporate body; or

(b) a partnership, one of the partners; or

(c) a minor, the guardian; as the case may be, shall indicate in their handwriting the number of shares taken.” (emphasis is mine)

It was argued that Chad did not, as required by statute, in his own handwriting state the number of shares he was taking. Plaintiffs further relied on section 14 in respect to the signing of a memorandum. It reads;

Signing of memorandum, the memorandum shall be printed and shall be signed and dated, in the presence of at least one attesting witness, by each subscriber and opposite every such signature of a

subscriber or a witness there shall be written in legible characters his full name, occupation, and full residential or business address:

Provided that where the subscriber is—

(a) a company, association, syndicate or other corporate body, a director of the company or the authorised representative of any other corporate body; or

(b) a partnership, one of the partners; or

(c) a minor, the guardian; as the case may be, shall sign the memorandum.”

Chad did not sign the memorandum, its common cause. Subscribers were to sign articles per section 17 which says;

“Articles prescribing regulations for companies *Articles of association signed by the subscribers to the memorandum of a company and prescribing its regulations may be registered with such memorandum.”*

Further on articles, section 19 was relied upon. It says;

“Form and signature of articles *Articles shall be in the English language, shall be printed and shall—*

(a) be divided into paragraphs numbered consecutively; and

(b) be signed and dated by each subscriber to the memorandum in the presence of at least one attesting witness and opposite every such signature of a subscriber or a witness there shall be written in legible characters his full name, occupation and full residential or business address.” (emphasis is mine)

It is on the basis of these statutory provisions that it was argued the documents are a nullity and *void ab origine* and nothing valid can flow from them. For this proposition was cited the case of *McFoy v United Africa Co. Ltd* {1961} 3 All ER 1169 (PC) 1172 where Lord Denning stated: “*You cannot put something on nothing and expect it to stay there.*”

It is trite that a thing done contrary to the direct prohibition of the law is void. see *Simplex PTY Ltd v Van der Merwe & Ors* 1996 (1) SA 111 @ 113E

The formation of Wozheri was tainted with illegality. I agree with plaintiffs’ submissions that the registration of Wozheri by Eliazel and Tarirai was done illegally, improperly and without complying with the law. Under cross examination Tarirai admitted that if Chad’s signature was forged then the company was not properly registered.

On the nullification or otherwise of the transfer of Jilikin 25 to Wozheri, the 2nd to 4th defendants argued that Eliazel was an accredited agent for Jilikin 25 and Chad is bound by actions of the accredited agent. This new relationship between Chad and Eliazel is not supported by evidence. Eliazel was a tributor whose rights and obligations were embodied in

a written contract. Clause 8 of the tribute agreement between Chad and Eliazel signed on 7 January 2016 reads as follows;

“Tributor shall not be entitled to subject or assign his rights or any part of them under this agreement without the previous written consent of the grantor having first been obtained and any such agreement shall be lodged with the Mining Commissioner.”

Eliazel was not Chad’s agent as contemplated by the law of agency under common law.

While Chad accepted that he signed transfer documents on 21 November 2017 he said it was through fraudulent misrepresentation by Eliazel. He believed the transfer documents were for the Wozheri which was to be incorporated as contemplated by the trio. Eliazel did not contest that evidence. Eliazel admitted he misled Chad. Therefore, Chad had no intention to transfer his claim to the Wozheri incorporated by Eliazel and Tarirai.

Because Chad signed the transfer document, the 2nd to 4th defendants said he was bound by the actions of Eliazel. There is no legal basis for that proposition especially when Chad explained the circumstances surrounding the signing. The question is, did Chad consent to transfer his claims to the Wozheri which is now in dispute? Certainly not – evidence bears testimony to this. There was fraudulent misrepresentation by Eliazel which vitiates consent. Transfer cannot stand on account of fraud, (See *Nedbank Ltd v Mendelow and Ano* 2013 (6) 130.) and even more so to a non- existing entity. In any event there was no ratification of a pre-incorporation contract as required by section 47 of the Companies Act.

Eliazel admitted that he entered into a joint venture agreement over Jilikin 25 with Tarirai on 28 November 2017 without authority from Chad. The purported agreement is admitted is a nullity.

The joint venture agreement between Tarirai and Ruan cannot stand. It is also a nullity because it is something which is built on a nullity.

The plaintiffs also seek the eviction of the 1st to 4th defendants from Jilikin 25. The law in relation to a *rei vindicatio* was enunciated in *Chetty v Naidoo* 1974 (3) SA 13, where the court remarked as follows;

“The owner may claim his property wherever found, from who-so ever is holding it. It is inherent in the nature of ownership that possession of the rei should normally be with the owner and it follows that no

other person may withhold it from the owner unless he is vested with some right enforceable against the owner (e.g. a right of retention or a contractual right). The owner, in instituting a rei vindicatio, need, therefore, do no more than allege and prove that he is the owner and that the defendant is holding the res, the onus being on the defendant to allege and establish any right to continue to hold against the owner” See also Stanbic Finance Zimbabwe v Chivhunga 1999 (1) ZLR 262 (HC). Hwange Colliery Company v Tendai Savanhu, HH 395/13.”

It requires a litigant who brings a *rei vindicatio* to satisfy the following requirements,

- 1) that she/he is the owner of the property
- 2) that the property is possessed by the possessor
- 3) she/he is being deprived of the property without his consent.

Once an owner has proved that she/he is the owner of the property held by a respondent, the onus shifts onto the possessor to show an entitlement to continue holding onto the property.

It cannot be disputed that Chad Cecil Mupandanyama is the owner of the mining claim Jilikin 25 registration number 12641BM. Ruan denies possession and said it is mining in a different location. In other words, it denies occupation. Many factors militate against that position. In case number HC 2651/21 during contempt of court proceedings Ruan raised similar allegations that it was mining in a different location from Jilikin 25. The claim was dismissed in that case and it remains extant. The joint venture agreement which Ruan signed with Wozheri specifically identifies Jilikin 25 as the mining location. Ruan did not plead to the defence we hear now in the evidence. Wozheri through the evidence of Tarirai says Ruan is not in occupation yet the purported agreements it signed with Eliazel and Ruan all concern Jilikin 25. In fact, Ruan draws its authority to occupy and mine at Jilkin 25 through Wozheri.

While the 2nd to 4th defendants argued that a consequential relief in a declaration of rights is unsustainable at law they did not cite any authority apart from referring to section 14 of the High Court Act without further elaboration.

As regards the issue of costs, the plaintiffs did not motivate why the same should be a higher scale.

DISPOSITION

IT IS ORDERED THAT:

1. The 1st defendant's (Eliazel Mushiringi) conduct of registering Wozheri Stone Crushers Pvt. Ltd. using forged documentation be and is hereby declared fraudulent and all actions flowing therefrom are declared a nullity.

2. The registration of Wozheri Stone Crushers (Private) Limited by the Registrar of Companies on the 29 November 2017 under certificate of incorporation number 8640/2017 be and is hereby declared null and void and consequently set aside.
3. The memorandum of agreement entered in between the 1st defendant (Eliazel Mushiringi) and the 2nd defendant (Tarirai David Munangagwa) on 28 November 2017 be and is hereby declared null and void and of no force.
4. Transfer of the mining claims, Jilikin 25 registration number 12641 BM from the 1st plaintiff (Chad Cecil Mupandanyama) to the 4th defendant (Wozheri Stone Crushers Pvt Ltd) and registered with the 6th defendant (The Provincial Mining Director) be and is hereby declared null and void and of no force.
5. The Joint Venture agreement entered into between the 4th defendant (Wozheri Stone Crushers Pvt Ltd) and 3rd defendant (Ruan Meats Enterprises Pvt Ltd) in March 2020 be and is hereby declared null and void and of no force.
6. The 1st plaintiff (Chad Cecil Mupandanyama) be and is hereby declared the owner of the mining claims under the name Jilikin 25 registration number 12641 BM registered under the Ministry of Mines and Minerals Development.
7. The 3rd defendant, Ruan Meats Enterprises Pvt Ltd together with their subtenants, assignees, invitees, members and all persons claiming occupation through them should within 10 days of service of this court order vacate from the mining claim known as Jilikin 25.
8. The 1st to 4th defendants shall pay costs of suit.

Tarugarira Sande Attorneys, 1st and 2nd plaintiffs' legal practitioners
Makuku Law Firm, 1st defendant's legal practitioners
Maringe and Kwaramba, 2nd, 3rd, and 4th defendants' legal practitioners