

DIRECTOR GENERAL OF THE ENVIRONMENTAL
MANAGEMENT AGENCY
and
ANGEL HILL MINING (Pvt) Ltd

HIGH COURT OF ZIMBABWE
CHITAPI J:
Harare, 20 March 2025

Opposed Court Application

F Chinwawadzimba, for the applicant
G R J Sithole, for the respondent

CHITAPI J: At the end of hearing of this application on 12 December, 2024 I issued an order as follows

“IT IS ORDERED THAT

1. The respondent is ordered to halt and cease all mining activities along Angwa River until the respondent has obtained the requisite environmental impact certificate and the go ahead to mine in the area by the applicant.
2. Nor order as to costs.

A request that I provide reasons for the order which I made has been received. The following are the reasons for judgment.

The applicant is Environmental Management Agency (EMA). EMA is a statutory body created by EMA Act, [*Chapter 20:27*].

The applicant is Angel Hill Mining Company (Private) Limited a duly incorporated company and registered company in accordance with the laws of Zimbabwe of Harare.

The applicant filed this application for a prohibitory interdict to be issued against the respondent as a final order. The applicant in its draft order prayed as follows:

“IT IS HEREBY ORDERED THAT:

1. The Respondent and any person claiming occupation on its authority or instructions are hereby interdicted from conducting any mining activities or operations along Angwa River.
2. The respondent to pay costs of suit.”

The order I issued qualified the draft order in that I directed that the respondent could only mine in the area concerned if it first obtained the requisite environmental impact certificate and clearance by the applicant to mine. The court in terms of rule 59 (27)(b) may in application proceedings grant an order that varies the order prayed for. The sub rule aforesaid provides as follows:

“59 (27) At the conclusion of the hearing or thereafter, the court

(a) may refuse the application: or

(b) may grant the order applied for including a provisional order, or any variation of such order or provisional order whether or not general or other relief has been asked for and may make such order as to costs as it considers fit.”

It was in the light of the powers given to the court by the above rule that I granted a varied order which the justice of the case dictated.

The applicant’s case on the founding affidavit was straightforward. It averred that its problem with the respondent was that the respondent was engaged in alluvial mining and desilting along Angwa River without an environmental impact assessment certificate (EMA certificate). The parties have had a history of court cases concerning their relationship vis-à-vis the applicant exercising its administrative statutory functions and the respondent asserting its rights to carry out mining activities in or around the areas in issue. The applicant related to court orders granted against it and noted that it was bound to the orders which I shall relate to. Its position is that the court order have had their time effect and can no longer be used as giving the respondent an open check to carry out mining and desilting activities without an EMA certificate.

The applicant averred that ZHOU J in a default judgment dated 29 May 2019 confirmed as a final a provisional order of this court issued on 12 April 2019 as follows in an application brought by the respondent against the applicant herein and others

“IT IS ORDERED THAT

1. The provisional order that was granted by this Honourable Court on the 12th day of April, 2019 be and is hereby confirmed.
2. The decision by the first, second, third and fourth respondent of refusing to issue a sand extraction permit and all necessary documents that may be required for the applicant to start its Alluvial Mining along Angwa Rivers be and is hereby set aside.
3. The first second third and fourth respondents be and are hereby interdicted from declaring the Sand Extraction permit that was issued by the fourth respondent on the 15th of March 2019 null and void
4. The first, second, third and fourth respondent be and are hereby ordered to issue to the applicant a Sand Extraction Permit and all other necessary documents that may be required for the applicant to start Alluvial mining along Angwa Rivers within 48 hours of granting this order
5. In the event of failure by the first, second, third and fourth respondents to comply, this order shall take the place of the second extraction permit and all other necessary documents required for the applicant to start its alluvial Mining along Angwa River.

6. The first to forth respondents shall pay costs of suit on an attorney client scale.”

As evident from the court order the respondent company was licensed to carry out its operations as far as the requirement for an EMA license is required by the court which ordered that the license be issued by the applicant failing which the license be deemed issued.

The applicant filed an application for a rescission of the default judgment. The matter was dealt with by MUZOFA J in case No HC2090/21. The learned judge issued a written judgment HH706/21. In that judgment, she dealt with two related applications though separately filed. The one was for condonation of late filing of rescission of the default judgment by ZHOU J and the second was the rescission of the judgment itself. It is convenient to repeat what the learned judge stated in giving a background of the facts. She stated as follows on page 2 of the cyclostyled judgment:

“The applicant averred that it issued a sand extraction permit with special conditions to the first respondent on 23 April 2019. The permit was to expire on 30 September 2019. In January 2021 the first respondent started preparations for alluvial mining along Angwa River. The applicant issued an environment stop order to stop the first respondent from mining. The first respondent approached the court again on an urgent basis under HC577/21 for the suspension of the environmental stop order this time the application was opposed by the applicants. Despite opposition, the Provisional Order was granted. It is yet to be heard for confirmation. The effect of the order was to suspended the environmental stop order issued by the applicants and the fine levied against the first respondent. The court ordered the continuation of the mining activities. When the first respondent waved the court order under HC 2989/19 as its authority to mine, it dawned on the applicants that the first respondent could continue mining in perpetuity without restraint based on the court order. Thus, the applicants filed the two applications to have the default order set aside.”

In her Ladyship’s judgment MUNOZOFA J found that the applicant had part complied with the order of ZHOU J by issuing a sand extraction licence/permit but had not done so in respect of the alluvial mining permit which became deemed issued by reason of the court order. Notably her ladyship stated as follows at p 5 of the judgement.

“In my view, the issue is not the court order. The court order granted the first respondent the right to start its mining activities. This was in May 2019. All the necessary documents required for such mining were subsumed in the court order including EIA at the commencement of the mining. The applicant cannot cry foul after two years. In terms of s 101 of the Environment Management Act [*Chapter 20:27*] an E/A is valid for two years. Within the two years from the date of the default order the first respondents’ mining activities were validated by the court order. The applicant prematurely and the first respondent rightfully waved the court order to justify its operations when the environmental stop order was issued. The basis of the complaint is baseless”

The condonation application was therefore dismissed and the rescission of judgement application was consequently removed from the roll. An appeal noted against the judgment of her ladyship in case No SC 07/22 was dismissed on 9 June 2022. The respondents remained licenced in accordance with findings of MUZOFA J. The licence deemed issued by the court had a two years life span from the date of the order of ZHOU J which was 29 May 2019. From May/June. From May/June 2021, the licence deemed issued by the court would no longer have effect. Indeed, the learned judge stated in her judgment at as follows:

“The applicant’s recourse as the superintendent of all projects can only apply at the lapse of two years from the date of the court order.”

The applicant in this application averred that the respondent was carrying out alluvial mining activities without an EMA certificate. The respondent averred that it disagreed with the applicants interpretation that the court deemed issued licence had expired and that in their understanding it would expire in June 2024. It appeared to me that the issue to determine was whether or not the respondent was still protected by the court order of ZHOU J or if not whether it had an E/A licence.

At the hearing of the matter I asked counsel to address the court on that issue. Both counsel stood by their filed papers. Counsel for the respondent could not advance any argument to support the contention that the ZHOU J order still protected the respondent. It is clear that the effect of the order had lapsed after two years and even with the appeal process being taken into account. It was clear that the law required that there be an E/A licence issued for operations of the respondents to be carried out legally. Counsel for the respondent submitted that the only issue was whether there was no other alternative remedy available to the applicant to resort to than a stoppage of mining as sought in order. The respondent did not suggest an alternative remedy. Whether or not the applicant may allow mining by the respondent without the licence in the interim is a matter for the applicant and respondent to interrogate and agree on. Parties submitted many other issues on police reports and other engagements which the court took note of. The issue still remained whether the respondent is licenced by EMA to carry out the mining activities.

In my view the applicant was entitled to the interdict which it seeks because as it is the respondents operations are being conducted outside the law. The respondents did not plead that there was a lawful way by which its operations could continue without the blessing of the applicant through issue of an EIA permit or licence. The court cannot allow the continuation of an illegality if such illegality has been established. The respondents averred that there was interference from

other persons mining illegally in the area. The issue however, is not whether other persons are breaking the law. The issue is whether or not the applicant as a target has an EMA certificate which is a requisite for continued lawful alluvial mining. The applicant did not produce such licence even at the hearing. It was therefore proper to interdict the respondent to stop mining operations and obtain the EMA certificate first then legally mine thereafter.

The order as amended was therefore made by the court.

CHITAPI J:.....

Dube Manikai & Hwacha, applicants' legal practitioners

Sithole Legal Counsel, respondents' legal practitioners