

BVM CANNAAN MINING SYNDICATE

Versus

PASTAR MAGWERA

And

**THE PROVINCIAL MINING DIRECTOR
GWERU (N.O) & ANOTHER**

And

**THE OFFICER IN CHARGE-CID BORDER
CONTROL AND MINERALS UNIT GWERU (N.O)**

IN THE HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 6 MARCH AND 4 JUNE 2020

Urgent Chamber Application

B Balamanja, for the applicant
Advocate L Nkomo, for the 1st respondent

MOYO J: Applicant filed this application seeking the following interim relief:-

“That pending the determination of this matter, applicant be granted the following relief:

- 1) The letter of suspension of mining operations by the 2nd respondent dated 3 February 2020 be and is hereby set aside.
- 2) That 1st and 2nd respondents and all those claiming through them be and are hereby interdicted from interfering with applicant’s mining operations at Two Ladies North 1 Mine.
- 3) That should 1st respondent and all those acting through him fail to comply with paragraph 1 above, 2nd respondent be and is hereby ordered to enforce compliance by the 1st respondent and all those acting through him.
- 4) That should 1st respondent and all those claiming through him fail to comply with paragraph 1 above, 3rd respondent be and is hereby ordered to assist the

applicant by causing the arrest of the 1st respondent and all those acting through him for contempt of court.”

The facts of this matter are that applicant, a mining syndicate is allegedly a registered owner of a mining block namely Two Ladies North 1 Mine. The 1st respondent is a villager who allegedly owns the piece of land where the mining block is located. Applicant alleges that 1st respondent was allocated the piece of land after applicant had already been granted mining rights over the same area and had already commenced mining activities. Applicant alleges that 1st respondent was given due notice in terms of the relevant legislation. Applicant alleges that the village head gave them consent to proceed with their mining activities after consulting other villagers. Applicant further states that sometime during mid 2019, 1st respondent came and has been behaving suspiciously showing intention of either disturbing applicant’s mining operations or showing interest in the mining activities. That on 20 November 2019, applicant’s representative was tipped that 1st respondent has been constructing a room barely 500 meters from applicant’s mine. When approached, 1st respondent became abusive, violent and arrogant. Following the dispute between the parties, applicant was invited on 3 February 2020 to the 2nd respondent’s office for an interview. There were several other villagers at 2nd respondent’s offices causing applicant to be unhappy with the set up and 2nd respondent was told about that issue. Later on 14 February 2020, applicant was served with a letter from 2nd respondent suspending applicant’s mining operations on the basis of a complaint applicant was unaware of. 2nd respondent ordered both parties to cease mining activities pending resolution of the dispute but however, 1st respondent did not abide by 2nd respondent’s directive as he still conducts illegal mining activities on the mine to date.

1st respondent’s case is that the application is fatally defective as the form used is not in terms of the rules. 1st respondent also alleges that there are material disputes of fact in relation to 1st respondent’s ownership of the homestead. 1st respondent also alleges that the mining claims granted to applicant contravene the provisions of the Mines and Minerals Act as it prohibits prospecting on land within 450 meters from the site of a principal homestead and that applicant needs written consent from the owner which he has not provided to this court. 1st respondent also alleges that he was not allocated the land in 2019 as alleged by the applicant but that he was allocated the land way back in 2010.

At the hearing of the matter, applicant's counsel applied for condonation of the failure to adhere to the rules of this court with regard to the form used in the application. 1st respondent's counsel argued however, that whatever the facts are, this court cannot interfere with a matter that the 2nd respondent, the entity authorized to deal with such disputes is currently seized with unless through the appropriate platforms like a review. 1st respondent's counsel also argued that the interim relief sought is incompetent, as it seeks to set aside, the efforts by the 2nd respondent to suspend mining operations and investigate the matter, and yet the matter is not brought to this court on review.

I agree with the 1st respondent's counsel's contentions for the following reasons:-

- 1) The 2nd respondent is the entity mandated by law to handle such disputes. It is not competent therefore for this court to interfere with the incomplete proceedings by the 2nd respondent except on an appropriate platform like that of review.
- 2) It would also be incompetent for this court to set aside the decision of the 2nd respondent to suspend mining activities pending the resolution of the dispute, yet this court is not clothed with review powers in this instance as it is not sitting as a review court, neither did applicant bring the matter as a review .

For this reason alone, this court cannot usurp the powers of the 2nd respondent as applicant wants it to do, neither can this court grant interim relief where the 2nd respondent has already done so and is seized with the matter. In fact it is a blatant error to ignore the decision of the 2nd respondent and to seek to review it on an urgent basis. It is unheard of. The application in itself is therefore doomed to fail on the basis that the relief sought is untenable and the attack on the 2nd respondent has been brought on the wrong platform. There are also material dispute of facts with regard to the ownership of the homestead and the applicant's rights to mine on the land *visa vis* such ownership.

1st respondent's counsel also submitted that the *locus standi* of the applicant has not been properly pleaded. Applicant's counsel did not argue against this fact but submitted that the syndicate does have a constitution but that it was not part of the papers.

This application is badly drawn, without much thought and consideration of all the issues relevant thereto. It can only fail. Applicant has hopelessly failed to make a case for the relief sought.

It is for these reasons that the application is dismissed with costs.

Hlabano Law Chambers, applicant's legal practitioners
Mutatu and Partners c/o Mutatu, Masamvu & Da Silva-Gustavo Law Chambers, 1st
respondent's legal practitioners