

**JIN YANG AFRICA (PRIVATE) LIMITED**

**Versus**

**ANGELA CHANDAENGERWA (N.O)**  
**(In her capacity as the Executrix Dative for Estate Late**  
**George Makurira)**

**And**

**THE PROVINCIAL MINING DIRECTOR, MIDLANDS**

**And**

**THE MINISTER OF MINES AND MINING**  
**DEVELOPMENT (N.O)**

IN THE HIGH COURT OF ZIMBABWE  
MAKONESE J  
BULAWAYO 6 AUGUST AND 6 SEPTEMBER 2021

**Urgent Chamber Application**

*C. Makwara with R. Sithombe*, for the applicant  
*J. Madotsa*, for the 1<sup>st</sup> respondent

**MAKONESE J:** This is an urgent chamber application framed by the applicant as an urgent chamber application for a temporary interdict and consequential relief on the return date. The draft order is for the following relief:-

**“TERMS OF INTERIM RELIEF**

Pending the finalisation of this matter, the applicant is granted the following interim relief:-

- (a) That the first respondent and all those claiming occupation through her be and are hereby interdicted from conducting any mining operations and/or collecting any mining ores from Bonsor SW mine and/or Olympia 7 mine forthwith.
- (b) The second and third respondents be and are hereby ordered to enlist the services of the Chief Mining Surveyor and for the Chief Government Engineer, and/or their lawful assigns, to go to a ground verification exercise and define the rights of both the applicant and first respondent with regards their mining claims being Bonsor N, Bonsor SW, Bonsor S and Olympia 7 mine *vis-à-vis* their respective locations. Thereafter, they will have to compile a detailed report

of their findings. This should be done within seven (7) days of the granting of this order.

- (c) The second respondent is hereby ordered to then file the detailed report with this court within three (3) days of receiving the report in (b) above.
- (d) Thereafter, parties will come back to the court for a decision to be made with regards the alleged encroachment.
- (e) costs of this order to be in the main cause.

#### **TERMS OF FINAL ORDER SOUGHT**

- (a) That the provisional order be and is hereby confirmed.
- (b) That the first respondent be and is hereby found to have encroached into applicant's mining claim.
- (c) That the first respondent's registration certificate in respect to Olympia 7 mine, registration number 24678 be and is hereby cancelled.
- (d) The first respondent and all those claiming occupation through her, be and are hereby permanently interdicted from accessing, entering into, conducting any mining activities within/ and or interfere in any way with applicant's mining claims without applicant's authority.
- (e) That the respondent be ordered to pay costs of suit on an attorney and client scale if opposed to the granting of the order."

This application is opposed by the 1<sup>st</sup> respondent.

#### **FACTUAL BACKGROUND**

The applicant and the 1<sup>st</sup> respondent have filed numerous applications in this court relating to the same dispute. Essentially applicant and 1<sup>st</sup> respondent own mining claims adjacent to each other. Applicant owns Bonsor South and Bonsor South West mines. 1<sup>st</sup> respondent is the holder of mining claims known as Olympia 7 mine. This mining dispute has been raging since September 2015. Recent disputes have led to applications been brought to this court from June 2020. On 22<sup>nd</sup> June 2020 applicant filed an urgent chamber application under case number HC 961/2020. An order by consent was entered on the 7<sup>th</sup> July 2020. On 18<sup>th</sup> August 2020 applicant filed yet another urgent application under case number HC 1355/20. On 8<sup>th</sup> September 2020 a provisional order was granted in favour of the applicant interdicting 1<sup>st</sup> respondent from conducting mining operations at Bonsor South and Bonsor South West mine. It is apparent from a perusal of the record in these proceedings that no attempt was made

to have the provisional order confirmed. The dispute between the parties continued to rage on with accusations and counter- allegations of encroachment by the parties. On 17<sup>th</sup> September 2020, applicant filed yet another urgent chamber application under case number HC 1599/20. This court made yet another order on 8<sup>th</sup> October 2020 under HB 218-20. The same issues were ventilated by this court. The order of the court is still extant and has not been set aside. At some stage the Provincial Mining Director who is cited as 2<sup>nd</sup> respondent ordered and directed that the parties should confine themselves to their mining claims and boundaries. The problem was not resolved.

In this matter the same dispute has been brought to court, albeit with a new set of circumstances as perceived by the applicant, to warrant the intervention of the court on an urgent basis.

#### **WHETHER THE MATTER IS URGENT**

Before dealing with the merits of the application, this court must determine, whether there is any merit in the preliminary point raised by the 1<sup>st</sup> respondent. In essence, 1<sup>st</sup> respondent contends that this application is not urgent at all and should be removed from the roll of urgent matters. In order to ascertain whether the matter is urgent, the court must determine, firstly, when the applicant became aware of the facts that gave rise to the need to act. Secondly, the court must determine when the need to act arose relative to the facts and circumstances of this matter. Applicant avers that the need to act arose on 30<sup>th</sup> July 2021 when 1<sup>st</sup> respondent resumed mining operations on the disputed claim. This factual averment is denied by the 1<sup>st</sup> respondent who contends that operations commenced in January 2021 after obtaining judgment in this court on 17<sup>th</sup> December 2020.

As regards applicant's averment that chaos at the mining location ensued when applicant attempted to prevent mining activities, 1<sup>st</sup> respondent states that this occurred in January 2021. 1<sup>st</sup> respondent avers that if applicant intended to institute legal proceedings on an urgent basis, this should have been done way back in January 2021. At the hearing of this matter, I enquired from the parties' legal practitioners whether any effort had been made to resolve the dispute prior to these proceedings. The legal practitioners confirmed that discussions had been ongoing but that there was no genuine commitment by one of the parties

to a resolution of the dispute. The impression one gleans from the founding affidavit of the applicant is that this dispute is being litigated on the same facts over and over. The relief being sought by the applicant has been sought before. The provisional orders that have been granted have not been confirmed.

This court is alive to the fact that gold is a finite resource and that there is need for the rights of the contesting parties to be settled and resolved with finality. The history of the dispute dates back to the year 2015. The parties have been in this court with the same facts and the same dispute on numerous occasions. The applicant has not established the urgency that is contemplated by the rules. A matter is urgent when the party invoking urgency takes action when the need to act arises. In this matter it seems to me that the urgency alleged by the applicant has been contrived. The relief sought by the applicant in this matter substantially mirrors the relief granted to it under HC 663/20. As I have pointed out, the provisional orders granted have not been set down for confirmation. Applicant may not pursue the same issue and the same relief over and over again. This is not the kind of urgency that warrants this court to drop everything else to deal with the application. See: *Kuvarega v Registrar General & Anor* 1998 (1) ZLR 188 (H) and *Gumbo v Porticullis (Pvt) Ltd t/a Financial Clearing Bureau* SC 28-14. I conclude that the preliminary point raised by the 1<sup>st</sup> respondent has merit. The matter is not urgent at all.

### **DISPOSITION**

I observe that the issues raised by the parties must be resolved by way of court application. The applicant has not set out sufficient facts to establish urgency. There is no need in my view, to deal with the merits.

In the result, and accordingly, the application is dismissed with costs.

*Mutatu & Mandipa Legal Practice c/o Mutatu, Masamvu & Da Silva-Gustavo*, applicant's legal practioners  
*Madotsa & Partners c/o Mutuso, Taruvinga & Mhiribidi Attorneys*, 1<sup>st</sup> respondent's legal practitioners