

KANJEE INVESTMENTS (PRIVATE) LTD
and
18 OTHERS

versus

VALMAN MINING SYNDICATE
LAZERPO MINING SYNDICATE
THOMAS MUKWINDIDZA
ZIMYDH (PRIVATE) LIMITED
ELEPHANT TUNNELERS (PRIVATE) LTD
PROVINCIAL MINING DIRECTOR
MASHONALAND EAST MINING DISTRICT N.O.

1st Respondent
2nd Respondent
3rd Respondent
4th Respondent
5th Respondent
6th Respondent

HIGH COURT OF ZIMBABWE
MHURI J
HARARE, 15 February 2022 and 11 May 2022

Opposed Matter

Mr BK Mataruka, for the applicants
Ms L Makumbe, for the 3rd respondent
No appearance for the 6th respondent

MHURI J: This application proceeded against third and sixth respondents only as the first, second, fourth and fifth respondents' matters were finalised earlier, the fifth respondent's having been withdrawn by applicant.

The application was for the cancellation of the respondents' mining claims registered within the boundaries of Valleydale and Cromlet Townships and the eviction of the respondent, their assignees, invitees and all those claiming occupation through land covered by their mining claims and falling within the boundaries of Cromlet and Valleydale Townships and further within 50 metres radius (paragraph 3 of the founding affidavit).

As per the founding affidavit deposed to by one Bhikhubhai Kanjee which was supported by the other 18 applicants, the claim against third respondent is that the operations by the respondent are within a property owned by the third respondent's family or related parties. The same operations are within 90 and 450 metre radius of the properties of some of the applicants, the same having been registered by sixth respondent without the consent of the applicants. Such

registration of the claim was unlawful and as such the claims must be cancelled. To support their case, applicants attached a google map showing the 450 metre boundaries and the mining operations which are within the 450 metre radii of the private property.

The relief which applicants are seeking against third respondent is:-

- a) an order directing sixth respondent to carry out a survey of all mining claims registered within the boundaries of Valleydale and Cromlet Townships and within a 50 metre radius thereof and proceed to cancel such claims in terms of s 50 of the Mines and Minerals Act [*Chapter 21:05*].
- b) that all mining claims issued by sixth respondent to third respondent in respect of land falling within the jurisdiction of Valleydale Township be cancelled.
- c) that the third respondent and his assignees, invitees and all those claiming occupation through him be barred from carrying out any mining operations within the said Valleydale Township and within a 50 metre radius thereof.
- d) that third respondent meets costs of the application on a legal practitioner and client scale.

Third respondent is opposed to the granting of the application. In his notice of opposition, he raises a preliminary point to the effect that the application is improperly before the court. In essence he is raising the issue of jurisdiction. Another point raised in the oral submissions is the presence of material disputes of facts.

Respondent's submission in respect of jurisdiction is that this court lacks jurisdiction to deal with this matter as the matter falls under the purview of s 32 of the Mines and Minerals Act [*Chapter 21:05*], the Act. The dispute is between landowner and prospector and pertains to whether the land is open to prospecting or not as such it is to be referred to the Administrative Court for a decision and not the High Court.

It was further submitted that in as much as s 345 of the Act confers jurisdiction on the High Court it has its own limitations, s 32 being such limitation as it confers jurisdiction to the Administrative Court.

On material dispute of facts, the third respondent's submission was that in terms of s 50 of the Act, it is the Mining Commissioner who is seized with the duty to cancel any mining claims. There is a material dispute of fact on the boundaries in respect of privately owned land and the

alleged townships. The issue of boundaries has remained unresolved to date and several letters were written by applicants to the sixth respondent and nothing was done hence the reason why applicant is seeking in paragraph 1 of the Draft Order that sixth respondent carry out a survey.

Further, it was submitted that third respondent is prospecting in his own land and has not infringed any of the applicants' rights and does not need to seek consent. Third respondent is challenging the google map attached by applicants, hence a survey by sixth respondent is important. Another dispute of fact is on the townships, in that Cromlet and Valleydale have not been accorded township status as yet in terms of s 5 of the Act. These cannot be resolved on the papers.

On the basis of these two points *in limine* third respondent prayed that the application be dismissed.

Sixth respondent is opposed to the granting of applicants' application against third respondent. Tendai Kashiri, the Acting Provincial Mining Director Mashonaland East, deposed an affidavit on behalf of sixth respondent to the effect that third respondent does not hold mining rights, he has submitted an application for registration which is pending before their offices. As third respondent does not hold any mining rights he ought not to be conducting any mining activities. It was his averment that it is not true for the applicants to allege that the issue has not been swiftly attended to by his office. There are proper procedures to be followed where cancellation is warranted. Section 50 of the Act has been followed and there is no justification to usurp the legal requirements for cancellation for the sake of expediency. Due process has to be followed which ends up with the gazetting of the cancellation.

On the basis of the above, sixth respondent prayed that the application be dismissed.

The first point to be determined by this court is whether the High Court has jurisdiction to entertain this matter.

Section 32 of the Act relied upon by third respondent provides as follows:-

“DISPUTES BETWEEN LANDOWNERS AND PROSPECTORS

If any dispute arises between the holder of a prospecting licence or a special grant to prospect or an exclusive prospecting order and a land owner or occupier of land as to whether land is open to prospecting or not, the matter shall be referred to the administrative court for decision”.

In casu, third respondent is a holder of a prospecting licence in respect of Stand 6 Valleydale Township of Valleydale of Cromlet. The property, as per the Deed of Transfer is registered in the name of Kenneth Mukwindidza (third respondent's father). All this is not disputed.

Section 345 of the Act provides:-

“JURISDICTION OF HIGH COURT AND MINING COMMISSIONERS

- (1) Except where otherwise provided in this Act, or except both complainant and defendant have agreed in writing that the complaint or dispute shall be investigated and decided by the mining commissioner in the first instance, the High Court shall have and exercise original jurisdiction in every civil matter, complaint or dispute arising under this Act

My understanding of s 32 of the Act is that this section relates to a dispute between third respondent, who is the holder of a prospecting licence and some of the applicants, being landowners of land which is within 450 metres radius of Number 6 Valleydale Township of Valleydale of Cromlet. The dispute is whether the land (No. 6) is open to prospecting or not. The section is clear and unambiguous and does not lead to any absurdity in my view. That being the case, in terms of the said section, in the event of such a dispute, the matter has to be referred to the Administrative Court for a decision. This section puts a limitation to the High Court jurisdiction conferred on it by s 345 of the Act. See the words, “Except where otherwise provided in this Act,” at the beginning of s 345. Applicants other issue with regards to third respondent's prospecting licence is that the land (No. 6) is within the confines of Valleydale Township and therefore in terms of s 31(1)(c) of the Act, it is not open to prospecting.

Section 31(1)(c) reads as follows:-

- (1) “save as provided in parts V and VII, no person shall be entitled to exercise any of his rights under any prospecting licence or any special grant to carry out prospecting operations or any exclusive prospecting order –
 - (a)
 - (b)
 - (c) within the surveyed limits of any city, town, township or village or upon a belt fifty metres in width outside such limits.
 - (d)
 - (e)
 - (f)
 - (g)
 - (h)

This therefore goes to support my understanding of s 32 of the Act to the effect that the dispute between the applicants and third respondent falls squarely under the ambit of s 32. To that end therefore, I find that this application is not properly before this court as the original jurisdiction conferred on the High Court by s 345 of the Act is ousted by s 32. The matter falls under the purview of the Administrative Court and ought to have been referred thereto.

Consequently the application and the relief sought by applicants cannot be granted as the point *in limine* on this court's jurisdiction was well taken and I uphold it. In view of this finding, it is unnecessary for me to deal with other point *in limine* and the merits of the case.

In the result, it is ordered that the application be and is hereby struck off. Applicants to bear the costs on an ordinary scale as submitted by third respondent.

Gill, Godlonton & Gerrans, applicants' legal practitioners
Kadzere, Hungwe & Mandevere, third respondent's legal practitioners