

PATRICIA GURIRA, (EXECUTOR DATIVE ESTATE LATE  
CHARLES CHAIPACHIYI MUKUNGURUTSE GURIRA DR NO. 1997/21 N.O.)  
versus  
TAURAI MUKAKI  
and  
FORTUNE MINE SYNDICATE  
and  
MINISTER OF PRIMARY AND SECONDARY EDUCATION N.O.  
and  
MINISTER OF LANDS, AGRICULTURE, WATER AND RURAL RESETTLEMENT N.O.  
and  
MINISTER OF MINES AND MINERAL DEVELOPMENT N.O.

HIGH COURT OF ZIMBABWE  
TAGU J  
HARARE, 7, 12 & 27 JULY 2022

### **Urgent Chamber Application**

*C Chabvepi*, for the applicant  
*A Masango*, for 1<sup>st</sup> and 2<sup>nd</sup> respondents  
No appearance for 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents

**TAGU J:** This application seeks the Urgent intervention of this Honourable Court to stop the clear violation of the law with impunity, and the continued violation of property rights, being perpetrated against the applicant by the first and second respondents and those claiming through them.

The undisputed facts are that the applicant is the owner and beneficiary of a farm named M.E.D. Farm situated at Shamva and held under a Deed of Transfer. It is not in dispute that the applicant representing the estate of the late Charles Chaipachinyi Mukungurutse Gurira (the deceased) who died on 13 January 2021, is the surviving spouse to Charles Chaipachinyi Mukungurutse Gurira and also an Executrix Dative to the deceased estate having been appointed so by the Master of the High Court on 1 December 2021 DR NO. 1997/21. It is further not disputed that the applicant purchased the said Farm in 1981 from a private individual before the Land

Reform processes came into effect, and it remained a private property until the death of the deceased. It was never Gazetted for purposes of Land Reform. It is again not in dispute that for years the first respondent was an employee of the Deceased and Mrs Patricia Gurira at the farm on which he was carrying out duties in line with the farm's activities. Further undisputed facts are that prior to the demise of deceased, first respondent fraudulently sought to peg gold mining claims on the plaintiff's property resulting in his conviction for forgery and fraud of documents consenting to and authorizing him to register the current claim upon which the first and second respondents currently operate. The last undisputed facts are that the first and second respondents, despite the fraud have been mining at the applicant's privately owned farm over a protracted period of time.

What jolted the applicant to file the present application for a temporary interdict is that of late the first and second respondents have indicated an intention to build a school on the applicant's privately owned farm. In furtherance of their intention the first and second respondents begun clearing some 15 or so hectares of land. These events of wanton disregard, violations and abuse of applicant's property and rights have now started unfolding and imminently so resulting in applicant visiting the offices of Mines and Mining Development at Bindura and the Lands office at Shamva on 14 June 2022 raising the issue as to how the first and second respondents could have been authorized to set a school in applicant's farm. Further shocks came out to the effect that the first respondent is purporting to build an entity called "FORTUNE MINE PRIMARY SCHOOL" and had on 7 June 2022 made and lodged an application to the fourth respondent at the Land Management and Administration Department for change of land use from mining to construction of a primary school. Fearing that the Farm would be changed from agricultural to a Primary school, that there is untold abuse of law and barbaric conduct perpetrated by respondents, and applicant's peace and operations are being gravely disturbed by respondents acts which might continue to the prejudice of applicant's rights, applicant approached this court for an interim interdict after confronting the first respondent who flatly refused to stop his actions on the applicant's farm.

The applicant is now seeking the following Provisional Order:

**"1. TERMS OF THE FINAL ORDER SOUGHT**

That you should show cause to this Honourable Court why a final order should not be made in following terms:-

- (i) That the applicant or its assignees, beneficiaries or successors be and are hereby declared to be the only entities authorized to carry out agricultural related activities or any other activities they may wish to carry lawfully at M.E.D Farm.
- (ii) The first and second respondents terminate any temporary structures, buildings or setting up operations they carried out for the purpose of building the said Fortune School at applicant's M.E.D Shamva farm.
- (iii) That first and second respondents pay costs of suit on an attorney–client scale, jointly and severally the one paying the other to be absolved.

**2. INTERIM RELIEF GRANTED**

Pending argument and finalization of this application the applicants are granted the following interim relief:

- (i) The first and second respondents, their agents, employees, proxies or any person(s) acting on their instructions and any other person claiming occupation or title through them be and are hereby forthwith interdicted from taking any steps towards constructing, preparing for or setting up a School at Applicant's farm being M.E.D Farm in Shamva.
- (ii) The third respondent be and is hereby interdicted from issuing any authorization to the respondents to set up or operate a school at applicant's farm being M.E.D on the first and second respondents' recent notification to the third respondent until finalization of this matter and of an application for a Declaratur to be filed by the applicants within 10 days of this order being granted.
- (iii) The fourth respondent be and is hereby interdicted from issuing any authorization to the respondents for change of land use on applicant's farm or any authorization based on their current request until finalization of this matter and an application for a declaratur to be filed by the applicant within 10 days of this order being granted.
- (iv) The Officer in Charge at Shamva Police Station and his Assistants be and are hereby directed to arrest the first respondent and any one claiming through him and the second respondent if they carry out any activities for and in the purpose of the said Fortune Mine School including but not limited to land preparation, construction, teaching or enrolling students in violation of this order."

**SERVICE**

A Copy of this application together with the Provisional Order shall be served upon respondents at their addresses of service by the applicant's legal practitioners or the Sheriff of Zimbabwe with the Assistance of the Zimbabwe Republic Police in the event that assistance is so required upon being granted."

The first and second respondents apart from opposing the application raised a point *in limine* that the matter is not urgent on account of the fact that the matter has been overtaken by events as what the applicant is seeking to achieve through the interim relief has already happened. It was said the certificate of urgency does not contain the name of the respondent and does not state when the need to at arose, as such the application must be struck off the roll of urgent matters.

The point *in limine* was opposed by the applicant who submitted that the founding affidavit filed of record shows when the need to act arose and the dates when applicant became aware of the respondents wanting to build a school and the steps applicant took before approaching the

court. The court was referred to the case of *Patson Moyo v Freda Rebecca Gold Mine Limited and 11 Ors* HH 280/16 on what the court may take into account in determining if the matter is urgent or not.

In the case of *Kuvarega v Registrar General & Anor* 1998 (1) ZLR 188 (H) at 193F-G, CHATIKOBO J said:

“What constitutes urgency is not the imminent arrival of the day of reckoning; a matter is urgent, if at the time the need to act arises, the matter cannot wait. Urgency which stems from deliberate or careless abstention from action until the deadline draws near is not the type of urgency contemplated by the rules. It necessarily follows that the certificate of urgency or the supporting affidavit must always contain an explanation of the non-timeous action if there has been any delay.”

*In casu* the applicant explained that she was aware that the Respondents were carrying out mining activities in her farm but that did not bother her as she agreed that a holder of mining certificate has greater rights than a holder of an offer letter or Title Deeds for agricultural purposes provided that the miner observes the rules stipulated in the Mines and Minerals Act [*Chapter 21: 05*]. The fact that respondents are mining in her farm is not the reason why she approached the court. She approached this court for an interdict when she noted recent events which occurred just before 14 June 2022 when respondents indicated their intention to further change the land use of their farm from agricultural to building a Primary School in their privately owned piece of land. They said the basis of approaching the court on an urgent basis has been stated and the actions taken before approaching the court.

I further agree with the submissions made by the counsel for the applicant that the court can rely on facts stated in the founding affidavit to determine whether the matter is urgent or not. I indeed read the opinion of ZHOU J, in *Patson Moyo v Freda Rebecca Gold Mine Limited* (supra), at p 3 of the cyclostyled judgment where the Judge said:

“The court can readily assess for itself by reference to the affidavits and annexures filed whether a matter is urgent without being impeded by the absence of a certificate of urgency which is essentially an opinion of the legal practitioner which is not necessarily binding upon the court.”

I totally agree with the views of ZHOU J regarding the issue of certificate of urgency and the fact that the court can rely on founding affidavit as well as annexure in determining whether matter is urgent or not. In the present case the applicant stated in the founding affidavit what prompted them to act and when the need to act arose by referring the court to the events that took

place on or about the 14<sup>th</sup> of June 2022. At the time the court received the record and having had sight of the certificate of urgency, the founding affidavit and the attached Annexures, was of the prima facie view that the matter was urgent and still believes that the matter has to be heard on an urgent basis. The point *in limine* is dismissed.

This application seeks the urgent intervention of this Honourable Court to stop the clear violation of the law with impunity, and the continued violation of property rights being perpetrated against the applicant by the first and second respondents and those claiming through them. The requisites for an interim interdict are trite and I need not labour on citing the various authorities. Serve to say here are they:

- (a) *Prima facie* right, even if it is open to some doubt,
- (b) A well-grounded apprehension of irreparable harm if the relief is not granted,
- (c) That the balance of convenience favours the granting of an interim interdict, and that there is no other satisfactory remedy.

Mrs Patricia Gurira is a seventy year old female adult widowed by the late C. Mukungurutse Gurira in whose name the plaintiff's farm is registered under Title Deed and in whose estate the property currently belongs. The farm is known as M.E.D. Farm Shamva and is private land held by the estate under Deed of Transfer. The first and second respondents conceded that the plaintiff's farm is in the names of the late Charles Chaipachiyi Mukungurutse Gurira. However, they admitted that they are mining on the portion of the farm in question since they have permits to mine on the said farm. Specifically they said they are holders of a permit to carry out mining activities on two blocks of mine and have valid certificates of registration for the claim under registration number 46201, 42415 and 494 on an area extending to 30 hectares. They therefore disputed that they are mining on applicant's portion but on the 15 hectares they reserved for mining, and the school in question to be built on the remainder of their portion.

It is therefore clear that the applicant has real rights over the farm in question. The rights are not open to doubt. The applicant managed to establish the first prerequisite for the grant of an interim interdict. As to who owns what piece of the farm as claimed by respondents is an issue to be determined on the return date when respondents are expected to produce their offer letters apart from the mining permits.

On irreparable harm, it is clear that where a massive structure like the building of classrooms, staff offices and quarters are concerned a lot of natural items on the farm are likely to be destroyed. The applicant said the first and second respondents started clearing some 15 or so hectares of land. These events of wanton disregard, violations and abuse of applicant's private property and rights have now started unfolding and will continue to unfold. The respondents admitted that some temporary structures have been built by them and that the application has been overtaken by events in that temporary structures have been put up and children have been enrolled. My concern is that M.E.D. Farm is a privately owned farm dealing in agricultural activities. The respondents may have mining permits to mine on M.E.D. Farm, but it is unclear how they then sought change of land use belonging to private individuals. There is therefore a well-grounded apprehension of irreparable harm if the relief sought is not granted. The balance of convenience favours the granting of an interim interdict.

A reading of the applicant's founding affidavit reveals that there is no other satisfactory remedy. Applicant approached the Ministry of Mines and Mining Development Office at Bindura and the Lands office at Shamva only to discover shocking information that first respondent purported to be an entity called "FORTUNE MINE PRIMARY SCHOOL" and had on 7 June 2022 made application to the fourth respondent for change of land use. Further applicant got confirmation that third respondent was not objecting to the establishment of a school at the applicant's farm. She finally confronted first and second respondents who vowed not to stop at anything and continue violating ownership rights without remorse. Applicant therefore, exhausted all domestic remedies available without success hence approached this court for relief.

In the present circumstances all the requisites for the grant of an interim relief have been satisfied. In granting the interim relief the court will take into account the allegations that what the applicant is seeking to interdict has been overtaken by events. The court will grant an order that is appropriate. Rule 60 (9) of the High Court Rules 2021 provides:

"Where in an application for a provisional order the judge is satisfied that the papers establish a *prima facie* case he or she shall grant a provisional order either in terms of the draft filed or as varied."

The court is therefore empowered to vary the draft order. The minor variation will not prejudice the respondents but done to avoid the court granting an order that is a *brutum fulmen*.

**IT IS ORDERED THAT:**

**1. TERMS OF THE FINAL ORDER SOUGHT**

That you should show cause to this Honourable Court why a final order should not be made in following terms:

- (i) That the applicant or its assignees, beneficiaries or successors be and are hereby declared to be the only entities authorized to carry out agricultural related activities or any other activities they may wish to carry lawfully at M.E.D. Farm.
- (ii) The first and second respondents terminate any temporary structures, buildings or setting up operations they carried out for the purposes of building the said Fortune School at applicant's M.E.D. Farm Shamva.
- (iii) That first and second respondents pay costs of suit on an attorney – client scale, jointly and severally the one paying the other to be absolved.

**2. INTERIM RELIEF GRANTED**

Pending argument and finalization of this application the applicants are granted the following interim relief:

- (i) The first and second respondents, their agents, employees, proxies or any person(s) acting on their instructions and any other person claiming occupation or title through them be and are hereby forthwith interdicted from taking any steps towards constructing, preparing for or setting up a school at applicant's farm being M.E.D. Farm in Shamva.
- (ii) The third respondent be and is hereby interdicted from issuing any authorization to the respondents to set up or operate a school at applicant's farm being M.E.D. Farm until finalization of this matter and of an application for a Declaratiur to be filed by the applicant within 10 days of this order being granted, and if the authorization has already been issued by the third respondent to first and second respondents, the operation of the same be and is hereby suspended until the finalization of this matter.
- (iii) The fourth respondent be and is hereby interdicted from issuing any authorization to the respondents for change of land use on applicant's farm or any authorization based on their request until finalization of this matter and an application for a Declaratur to be filed by the applicant within 10 days of this order granted, and if the said

- authorization has been granted by fourth respondent to the respondents, the operation of the same is suspended forthwith until the finalization of this matter.
- (iv) The Officer in Charge at Shamva Police Station and his Assistant be and are hereby directed to arrest the first respondent and anyone claiming through him and the second respondent if they carry out any activities for and in the purpose of the said Fortune Mine School including but not limited to land preparation, construction, teaching or enrolling students in violation of this order.

**SERVICE**

A copy of this application together with the Provisional Order shall be served upon the respondents at their addresses of service by the applicant's legal practitioners or the Sheriff of Zimbabwe with the assistance of the Zimbabwe Republic Police in the event that their assistance is so required and granted.

TAGU J:.....

*Counsel at Centuria, applicant's legal practitioners*  
*Muronda Malinga Masango Legal Practice, for first and second respondents*