

SIDE ELECTRICAL (PRIVATE) LIMITED
versus
MINISTER OF MINES & MINING DEVELOPMENT N.O.

HIGH COURT OF ZIMBABWE
MHURI J
HARARE, 14 July & 7 September 2022

Application for Review

Advocate Kachambwa, for the applicant
Mr D Machingauta, for the respondent

MHURI J: This application is premised on the following grounds, that:

1. Respondent's decision to cancel applicant's certificates of registration number 46035 to 36038 commonly known as Botha Mine 1 to 4 is procedurally unfair in that respondent did not provide reasons for his decision to cancel the certificates.
2. Respondent's decision to cancel the certificates is vitiated by gross irregularity in the proceedings in that applicant was not informed of the outcome of the survey process done on 28 May 2021, and was not given an opportunity to be heard on such outcome. The survey process was important and was used to inform the respondent's decision to confirm the cancellation of the certificates.
3. Respondent's decision to cancel the certificates amounts to gross irregularity in the decision in that there is no reasonable foundation to the decision to cancel the certificates.
4. Respondent's decision to cancel the certificates amounts to gross irregularity in that this decision is irrational and grossly unreasonable that no reasonable person applying his mind to the facts before him would have come to that conclusion.

Based on these grounds, applicant prays that the application for review be granted, respondent's decision dated 7 June 2021 cancelling applicant's certificates of registration numbers 46035-46038 known as Botha 1 to 4 be set aside and that respondent pays costs of suit. Respondent is averse to the granting of the application.

The undisputed factual background is that applicant is a registered owner of gold mining claims commonly known as Botha 1, 2, 3 and 4 under registration numbers 46035 to 46038.

The registration was done on 22 July 2016 as the certificates show. Prior to July 2016, the claims were registered for nickel and by May 2016 were converted to gold claims. Since 2016, the office of the Mining Commissioner have been conducting inspections of the said claims.

During the period 21 – 24 May 2019 officials from respondent’s office held a survey meeting and conducted a site inspection for purposes of identifying beacons and boundaries of the claims in relation to key infrastructure in the area.

By a letter dated 28 June 2019 respondent’s Provincial Mining Director, notified applicant of the intention to cancel applicant’s certificates of registration in respect of Botha 1 to 4, numbers 46035 to 46038.

The letter reads as follows:

“Following the operation conducted on 21 December 2018 to rid the Katsiyatota area of illegal miners on which your mining locations Botha 1 to 4 (registration numbers 46035 to 46038) were also being affected by illegal mining activities, your mining operations were also suspended by the Ministry on the same day owing to a number of breaches (Ref: M CENTRAL/Z/620/628/18). In order to finalise the process of restoration of sanity in the Katsiyatota area affected by continued illegal mining activities affecting key infrastructure in the area; a survey was conducted on 21 – 22 May 2019 to establish boundaries of existing mining titles in relation to key infrastructure in the area.

The 21 – 22 May 2019 survey found out that your blocks of mining claims Botha 1 to Botha 4 (registration numbers 46035 to 46038) were registered encompassing Downridge Primary School and railway infrastructure and also encroaching other private premises within the surveyed limits of Bindura town, violating s 31(c) of the Mines and Minerals Act [*Chapter 21:05*]. The area is within the surveyed limits of the Bindura town and the Bindura Town Council did not consent to application for pegging of the Blocks. Provisions of the Act relating to the method of pegging your blocks of mining claims were not substantially complied with.

Your blocks of mining claims were therefore registered in error and as such the certificates of Registration for the four blocks of mining claims should be cancelled in terms of s 50(a) and (b) of the Mines and Minerals Act [*Chapter 21:05*].

We hereby notify you of our intention to cancel the Certificates of Registration for your blocks of gold mining claims Botha 1 to 4 (registration numbers 46035 to 46038).

You may, any time before 28 July 2019, appeal in writing to the Minister against the cancellation.

.....

Attached hereto is the survey diagram showing the position of your blocks of mining claims in relation to existing infrastructure and other mining titles.”

As advised in the above letter, applicant duly appealed to the Minister on 26 July 2019. Its grounds of appeal were:

1. The appellant’s blocks of mining claims do not encompass Dawnridge primary School, railway infrastructure and “other private premises” within the surveyed limits of Bindura Town referred to in the Notice, hence there is no violation of s 31(c) of the Mines and Minerals Act.
2. In any case, the application for registration of the said claims had clear coordinates which placed Dawnridge Primary School, the Railway infrastructure and all private premises outside the boundaries of the blocks of claims.
3. Bindura Town Council consented to the application for pegging of the said blocks of mining claims.
4. The blocks of mining claims were not registered in error.
5. In any case, the provisions of the Mines and Minerals Act relating to the method of pegging of blocks of mining claims were substantially complied with.

Applicant’s prayer was to have the Notice cancelled or alternatively that the necessary adjustments be made placing the boundaries of the blocks of the claims within the confines of the law.

In a letter dated 27 November 2020 the Secretary for Mines and Mining Development advised applicant that the Disputes Appeals Committee had sat and deliberated on its matter but was still awaiting the survey diagram, survey report and claims map from the Provincial Mining Director Mashonaland Central for it to conclude the matter. In response applicant advised that the survey report and claims map had already been furnished by the Provincial Mining Director who, as regards the survey diagram needed permission to send a surveyor on site to prepare the diagram.

On 7 June 2021 respondent responded to applicant’s appeal. The response reads:

“RE: APPEAL AGAINST THE CANCELLATION OF CERTIFICATES OF
REGISTRATION FOR BOTHA 1 TO 4 REGISTRATION NUMBERS
46035-8: MASHONALAND CENTRAL

After having received an appeal in this matter in terms of section 50 of the Mines and Minerals Act [*Chapter 21:05*] and taking into consideration all the relevant facts, I as the

Honourable Minister of Mines and Mining Development have made the following decision:

1. The decision made by the Provincial Mining Director to cancel the Certification of Registration for Side Electrical (Pvt) Ltd Botha 1 to 4 Registration Numbers 46035-8 on the basis that it was pegged on ground that was not open to prospecting and pegging in terms of s 31(c) and s 50(a) and (b) of the Mines and Minerals Act is hereby upheld.

The certificates of Registration for Side Electrical (Pvt) Ltd Botha 1 to 4 Registration Numbers 46035 to 46038 is therefore cancelled.”

The Administrative Justice Act [*Chapter 10:28*] under s 3 provides the duty of administrative authority. It provides:

- “1. An administrative authority which has the responsibility or power to take any administrative action which may affect the rights, interests or legitimate expectations of any person shall-
 - (a) act lawfully, reasonably and in a fair manner; and
 - (b) act within the relevant period specified by law; and
 - (c) where it has taken the action, supply written reasons therefore within the relevant period specified by law.....”

The law is therefore clear that where, an administrative authority makes a decision that affects the rights of another person, it is obligated to give reasons. See the case of :

MARUMAHOKO
versus
CHAIRMAN OF THE PUBLIC SERVICE COMMISSION & ANOR
1991 (1) ZLR 27 (H)

which clearly stated the position that public officials have an overriding duty to act justly, fairly and in accordance with their statute and where they have a power to make discretionary decisions affecting others, they have an obligation to state the reasons for their decisions.

See also s 68 of the Constitution of Zimbabwe RIGHT TO ADMINISTRATIVE JUSTICE subsections (1) and (2) which read:

- “1. Every person has a right to administrative conduct that is lawful, prompt, efficient, reasonable proportionate and both substantively and procedurally fair.
2. Any person whose right, freedom, interest or legitimate expectation has been adversely affected by administrative conduct has the right to be given promptly and in writing the reasons for the conduct.”

Applicant’s argument is that respondent did not give reasons for his decision. He merely stated the ground for cancellation which is s 31(1)(c) of the Mines and Minerals Act. He should

have further provided the reason for his belief that facts existed justifying the application of s 31(1)(c).

Section 31(1)(c) provides:

- “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.”

A reading of the respondent’s decision shows that he confirmed the Provincial Mining Director’s (PMD) decision on reasons stated in the notice to cancel by the PMD. He stated in his letter that the decision by the PMD to cancel the certificates of registration on the basis that it was pegged on ground that was not open to prospecting and pegging in terms of s 31(c) and s 50(a) and (b) is upheld. The reasons why the land in question was held not to be open for prospecting and pegging are, as can be gleaned from the PMD’s letter, that the blocks of the mining claims were registered encompassing Dawnridge Primary School, railway infrastructure and encroaching other private premises, within the surveyed limits of Bindura Town and that Bindura Town Council did not consent to the application for pegging and finally that the provisions of the Act relating to the method of pegging the blocks of mining claims were not substantially complied with.

According to the PMD’s letter, the survey conducted during the period 21 – 22 May 2019, which applicant acknowledges, was for purposes of identifying and establishing boundaries of existing mining titles in relation to any infrastructure in the area. Applicant was present during this survey.

Considering the aforementioned, I am satisfied that the reasons for the cancellation of the certificates were given. Applicant’s first ground therefore fails.

Applicant also averred that its right to be heard was flouted in that it was not given an opportunity to make adequate representations on the survey diagram. As stated earlier, applicant was upon invitation present when a survey was being conducted. This survey was for proposes of identifying its beacons and boundaries in relation to other key infrastructure. According to paragraph 28 of the founding affidavit, applicant was actively involved in the exercise by pointing out the boundaries. The PMD’s letter notifying cancellation states in the last paragraph:

“attached hereto is the survey diagram showing the position of your blocks of mining claims in relation to existing infrastructure and other mining titles.”

Applicant averred that this diagram was not attached to the letter, a point accepted by respondent. I agree with respondent’s submission that applicant ought to have requested the survey diagram since the letter made reference to it. In my view the attachment of the survey diagram to the letter means that the survey diagram was considered in coming up with the decision to cancel the registration. Was the PMD obliged to avail the survey diagram to applicant before it determined the matter? As submitted by respondent, there was no such obligation. Both parties, duly represented by their officials conducted a survey, where applicant made its own indications and respondent’s officials were to come up with the findings after a diagram had been made. This is what happened *in casu*.

The PMD’s letter notifying the cancellation of the certificates states the basis upon which the decision to cancel was founded upon. The record shows that applicant for some time had problems with illegal miners and complaints had been raised with respondent’s officials who sought the assistance of other departments in particular the Police to curb this problem.

Paragraph one of the PMD’s letter reads:

“Following the operation conducted on 21 December 2018 to rid the Katsiyatota area of illegal miners on which your mining locations Botha 1 to 4 (registration numbers 46035 to 46038) were also being affected by illegal mining activities, your mining operations were also suspended by the Ministry on the same day owing to a number of breaches (Ref: M Central/Z/620/628/18) (emphasis added).

In order to finalise the process of restoration of sanity in the Katsiyatota area affected by continued illegal mining activities affecting key infrastructure in the area, a survey was conducted on 21 – 22 May 2019 to establish boundaries of existing mining titles in relation to key infrastructure in the area.”

It is clear from the above that, the illegal mining activities, the breaches that led to applicant’s suspension were the foundation of the process that led to a survey being conducted which survey revealed the breaches that led to the cancellation of the certificates.

On the facts placed before him, was respondent’s decision irrational and grossly unreasonable as to warrant this court’s intervention? I associate myself with the remarks made in the case:

AFFRETAIR (PVT) LTD & ANOR
versus
MK AIRLINES (PVT) LTD 1996 (2) ZLR 15 (S)

to the effect that the reviewing court's duty is not to usurp the administrative authority's functions. The court can not interfere with the administrative authority's decision simply because it does not approve of it. *In casu*, respondent exercised its discretion and on the facts placed before it, cancelled applicant's certificates. The PMD's decision as alluded to earlier was based on the survey that was done which survey was conducted as a result of complaints about illegal mining activities and breaches by applicant. It is the findings from the current survey which revealed the breaches that led to the cancellation. In my view, the decision was neither irrational nor grossly unreasonable considering the damage as submitted by respondent which is caused to the infrastructure and the expense of repair.

In the result, in the application for review cannot succeed. It is ordered that it be and is hereby dismissed with costs.

Dube-Banda, Nzarayapenga and Partners, applicant's legal practitioners
Civil Division of the Attorney General Office, respondent's legal practitioners