

ZEPLIN RESOURCES (PVT) LTD  
versus  
OFFICER COMMANDING, ZRP MIDLANDS  
and  
OFFICER IN CHARGE ZRP MVUMA  
and  
PROVINCIAL MINING DIRECTOR, MIDLANDS

HIGH COURT OF ZIMBABWE  
FOROMA J  
HARARE, 28 June and 15 September 2022

### **Urgent Chamber Application**

*S Nkomo* with *B Ngwenya*, for the applicant  
*D Jaricha*, for the 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> respondent

FOROMA J: This is an urgent chamber application in terms of which applicant seeks the following relief in the provisional order sought:

A. Interim Relief Granted:

- (1) 1<sup>st</sup> and 2<sup>nd</sup> respondents be and are hereby ordered to act on 2<sup>nd</sup> respondent's directive of the 28<sup>th</sup> January 2022 and also to take all measures necessary to stop all illegal mining activities on appellant's mining claim being SC 6856 Mvuma.
- (2) 3<sup>rd</sup> respondent be and is hereby directed to show 1<sup>st</sup> and 2<sup>nd</sup> respondents the boundaries of applicant's mining claim.

B. Terms of Final Order sought:

- (1) The 1<sup>st</sup> and 2<sup>nd</sup> respondents be and are hereby ordered to protect applicant's mining operations on SC 6856 Mvuma from any illegal and unlawful interference.
- (2) No order as to costs.

Applicant's claim is based on the 3<sup>rd</sup> respondent's letter to the Officer-In-Charge Mvuma (the 2<sup>nd</sup> respondent herein) dated 28 January 2022 whose contents read as follows:

“**Attention**: Officer-In-Charge (Mvuma)

Re: **Illegal Mining Activities by George Matsikidze**

We write to advise that George Matsikidze has no current mining titles and cannot undertake mining activities over the disputed area in Mvuma. Mr Matsikidze must either voluntarily vacate the mining area or be evicted from the mine.

This message has been communicated by the Acting Permanent Secretary Dr Engineer Manyuchi to his legal practitioners Chipadza Law Chambers on 24 January 2023.

We therefore are seeking his removal from the mining area if he does not voluntarily vacate the mine with immediate effect.

Yours sincerely

T. Ndhlovu  
Provincial Mining Director  
Midlands Province  
for **SECRETARY FOR MINES AND MINING DEVELOPMENT**

Mr *Jaricha* who appeared at the hearing on behalf of the three respondents advised the court that the third respondent had no objection to the relief applicant was seeking and would abide the order of the court. He, however, indicated that 1<sup>st</sup> and 2<sup>nd</sup> respondents opposed the application and raised two points *in limine* in opposition to applicant's application namely (i) that the matter was not urgent and (ii) that the applicant's application should be dismissed on account of material non-disclosures which material non-disclosures were fatal to the application.

The two preliminary objections were abandoned and withdrawn mid-stream and the respondents consented to the matter being determined on the merits.

In support of the applicant's application, Mr *Nkomo* argued that applicant was despoiled by Mr Matsikidze. He further argued that applicant had through them (his legal practitioners) approached the Provincial Mining Director for intervention in order to have Matsikidze removed from the mining claim since applicant had had its Special Grant Licence renewed on the 26 April 2022. In response the Provincial Mining Director (3<sup>rd</sup> respondent) advised applicant that he had already directed that Mr Matsikidze be ejected from the mine and brought applicant's attention to letter dated 28 January 2022 aforesaid. Consequently, applicant's legal practitioners approached first and second respondent with a request that they enforce the Provincial Mining Director's directive per letter dated 28 January 2022. The first and second respondent objected to their involvement in the absence of a court order. As applicant's counsel considered that the police had a duty in terms of s 358 of the Mines and Minerals Act to enforce

orders of the Mining Commissioners Court, it was considered prudent to approach the High Court for an order compelling the 1<sup>st</sup> and 2<sup>nd</sup> respondents to comply with the 3<sup>rd</sup> respondent's directions in the letter dated 28 January 2022 aforesaid. Applicant's application was opposed by 1<sup>st</sup> and 2<sup>nd</sup> respondents' Mr *Jaricha* on behalf of the respondents raised four arguments in amplification of respondent's opposition on the merits. Firstly, it was argued that the applicant's attempt to enforce the contents of letter dated 28 January 2022 aforesaid was ill-advised as the said letter was written at a time before the applicant's application for renewal of the Special Grant had been granted thus the said letter could not have conferred any rights to applicant against Mr Matsikidze in regard to occupation of the mining claim in question.

Secondly the letter dated 28 January 2022 was vague in that it did not specify by reference to a particular mining claim or geographical location of the alleged mine allegedly occupied by Matsikidze from which the said Matsikidze had to be ejected by the police thus making it difficult for the police to execute the directions in letter dated 28 January 2022 even if they had been inclined to co-operate.

Thirdly the applicant's complaint being that it had been despoiled by Matsikidze, its remedy did not lie in the enforcement of letter dated 28 January 2022 as its remedy was be an application for a *mandamen van spolie*. However, as Matsikidze had not been joined in the current proceedings, applicant could not begin to raise the issue of spoliation.

Fourthly in paragraph 2 of the interim relief sought to be granted per the provisional order the applicant sought an order that the third respondent be directed to show first and second respondents the boundaries of applicant's mining claim which was itself a clear indication that letter dated 28 January 2022 was not capable of implementation as there was a potential boundary dispute on whether Matsikidze was on a disputed mining claim or not – hence the need for a court order.

A close analysis of the applicant's application reveals that the applicant's application was not properly considered. Applicant avers that it was despoiled by Matsikidze post the renewal of its Special Grant Licence. Instead of applying for an order *mandamen van spolie* applicant opted to enforce a directive in the third respondent's letter dated 28 January 2022 whose terms are too vague to be enforceable. At law applicant had no rights arising from letter dated 28 January 2022 as at the time of writing the said letter, applicant had not yet been granted the Special Grant licence. Applicant's remedy does not lie in applicant seeking to compel the police to implement the directives of the 3<sup>rd</sup> respondent contained in the letter of 28 January 2022 which only 3<sup>rd</sup> respondent could lawfully do. At best applicant could only insist on third

respondent ensuring that Matsikidze had been ejected and not seek to step into third respondent's shoes for purposes of getting Matsikidze ejected pursuant to the directions of letter dated 28 January 2022.

I do not find the applicant's interpretation of s 358 of the Mining and Mineral Act to be correct in the circumstances since the 3<sup>rd</sup> respondent's letter dated 28 January 2022 had not been written for the benefit of applicant at the time as applicant's application for a renewal of the Special Grant licence had not yet been determined. It was therefore incorrect for applicant's legal practitioners in their letter dated 16 May 2022 to 1<sup>st</sup> respondent to have required 1<sup>st</sup> respondent to proceed to applicant's mining claim for purposes of stopping the alleged illegal mining activities without a court order as letter dated 28 January 2022 had not been written to 1<sup>st</sup> respondent by 3<sup>rd</sup> respondent on applicant's behalf.

In the circumstances, the 1<sup>st</sup> and 2<sup>nd</sup> respondents' refusal to implement the applicant's demand that they eject Matsikidze from the Mine where he was conducting some mining based as it was on the letter dated 28 January 2022 and without a court order in favour of applicant was justified.

I accordingly find that applicant has not established a *prima facie* case justifying the grant of relief in terms of the provisional order.

The application is accordingly dismissed with costs.

*Mathonsi Ncube Law Chambers*, applicant's legal practitioners  
*Civil Division of the Attorney-General's Office*, respondents' legal practitioners