

ROBERT KAGANDI
and
DENIES MUZUNZE N.O
(In his capacity as the Executor Dative of Estate late EPHRAIM TICHAONA MUZUNZE)
and
THE MASTER OF THE HIGH COURT MASVINGO N.O
and
MARSHALL MUZIRA N.O
and
THE MINISTER OF MINES AND MINING DEVELOPMENT
and
THE CHIEF MINING COMMISSIONER N.O
and
THE SECRETARY MINES AND MINING DEVELOPMENT N.O

HIGH COURT OF ZIMBABWE
WAMAMBO J
MASVINGO, 01 November, 2021 and 14 February, 2022

Opposed Application

T.L Mapuranga with T. Chakabuda, for applicant
C Ndlovu , for 1st respondent.
T. Undenge for 3rd respondent

WAMAMBO J: The applicant seeks relief couched as follows:

“IT IS DECLARED AND ORDERED THAT;

1. The applicant Robert Kagandi is a registered joint holder of mining rights, title and interests in the mining location which constitutes Coronation 2 Mine, Masvingo (registration number 5244) by virtue of being a member of Enfield Syndicate.
2. The applicant, Robert Kagandi has legal rights to conduct mining operations within the mining location named Coronation 2 Mine (registration number 5244) situated partly on Bruceham Farm (6 hectares) partly on Victoria Park Farm (1 hectare) approximately 137 metres Norton of Coronation School and approximately 500 metres North East of trig Beacon 475/T Re. Pegs 4697 and 4718 Masvingo under the auspices of Enfield Syndicate.
3. The first respondent pays costs of suit on a higher scale between legal practitioner and client.”

This matter concerns a mine called Enfield Coronation 2 as more fully appears in the draft order quoted in full above.

The applicant seeks a declaratur. Applicant avers as follows:

He is a member of a mining syndicate called Enfield Syndicate. He entered into a partnership agreement, resulting in the formation of Enfield Syndicate. He is thus a joint holder

of rights in the mining location, called Coronation 2 Mine with registration number 5244. At the back of the certificate of registration of Enfield Syndicate the Ministry of Mines and Mining Development endorsed the fact that he is a joint holder of Coronation 2 Mine. The same endorsement is also reflected on the registration cards, held at the Masvingo Provincial Mines and Mining Development Ministry offices.

Annexure RK6 a letter penned by the third respondent reflects that applicant is a joint member of Enfield Syndicate, together with the late Ephraim Tichaona Muzunze. He once sold his rights and interests to the mining location to one Sarah Mutema. He has since revoked the said agreement with Sarah Mutema. This is reflected in RK7. RK7 is not directly relevant to the resolution of this case considering the findings I made in *Sarah Mutema v Denies Muzunze* HMA 18/20. At most I find that it is a neutral document.

He is currently conducting mining operations at Coronation 2 Mine, Masvingo. The first respondent after the demise of Ephraim Tichaona Muzunze has listed the whole of Coronation 2 Mine Registration number 5244 as belonging to the estate of Ephraim Tichaona Muzunze in an inventory of the late Ephraim Tichaona Muzunze DR number 219/17. The first respondent mistakenly believes that the late Ephraim Tichaona Muzunze was the sole member of Enfield Syndicate.

The first respondent is opposed to the application. The second respondent's report reflects the following:

Information on record regarding DRMS 219/17 is that the late Ephraim Tichaona Muzunze owned among other assets a gold claim as stated on the preliminary inventory among. At an edict meeting held on 27 September 2017 first respondent was appointed as the executor of his father's estate. Parties in attendance at the said edict meeting submitted that deceased had a gold mine. The second respondent goes further to state as follows:

"My previous report under case HC 222/18 advised that the executor is yet to file an executor's inventory which has to specify the percentage of gold claim owed by the deceased and proof thereof. The administration of this Estate has been suspended pending the outcome of this court case, it is yet to be finalised".....

The third respondent's position is reflected as follows:

"Please be advised that the third respondent is not opposed to the relief being sought and will abide by the court's decision. The records reflect the applicant as a member of Enfield Mining Syndicate."

The fourth to sixth respondents' position is worded exactly as the third respondent's response above.

The first respondent in his opposing affidavit avers as follows. He categorically denies that the applicant is a member of Enfield Syndicate and a joint holder of mining rights, title and interests in Coronation 2 Mine.

At all material times Coronation 2 has been under the sole control of the late Ephraim Tichaona Muzunze. The applicant has no leg to stand on in his bid to be declared a joint holder of mining rights, title and interest in Coronation 2 Mine.

There is no partnership agreement between the late Ephraim Tichaona Muzunze and the applicant. Neither is there proof in the form of certificates of transferor and transferee which resulted in the formation of Enfield Syndicate.

The applicant should have produced a certificate of registration after transfer reflecting that after the initial registration of Coronation 2 rights were transferred to the applicant.

The certificate of registration RK1 is irregular and fraudulent as it should be in the name of Ephraim Tichaona Muzunze and not Enfield Syndicate.

The certificate of registration and certificate of registration after transfer are two separate documents which fall under different provisions of the Mines and Minerals Act [*Chapter 21:05*].

The endorsement at the back of RK1 reflecting the names of Ephraim Tichawona Muzunze and Robert Kangandi leaves a lot to be desired as the said endorsement is not even dated.

RK1 to RK5 are documents that speak to Coronation 2 Mine belonging to Ephraim Tichaona Muzunze.

A declaratory is based upon Section 14 of the High Court Act [*Chapter 7:06*] which reads as follows:

“14 High Court may determine future or contingent rights.
The High Court may, in its discretion at the instance of any interested person inquire into and determine any existing, future or contingent right or obligation notwithstanding that such person cannot claim any relief consequential upon such determination.”

The applicant has primarily based his application on official documents emanating from the Ministry of Mines and Mining Development (the Ministry) namely RK1, RK2, RK3, RK4, (RK5 appears to be a duplication of RK 4) and RK6.

The first respondent has on the other side produced no document to buttress his stance. He relies more on an interpretation of provisions of the Mines and Minerals Act [*Chapter 21:05*]. More specifically s 275 thereof. Further he attacks RK1 (the certificate of registration) He also avers that the non-existence of a Syndicate Agreement speaks to the absence of a

syndicate formed between the applicant and Ephraim Tichaona Muzunze. In this regard, he refers to a matter I dealt with *Sarah Mutema v Denies Muzunze and Ors* HMA 15/20 at page 7. That matter is related to this matter. He picks at remarks made therein pointing out that in that case there was no syndicate agreement. The circumstances of that case differ from this case. The fact that there was no syndicate agreement filed was not the decisive factor in that case. Further in place of a syndicate agreement, in this case there is documentary evidence from the relevant Ministry pointing out, to a syndicate having been formed. In the *Sarah Mutema v Denies Muzunze Case* (supra), this aspect was missing. The applicant in this matter was the fourth respondent in that case. The endorsement portion of the Registration Certificate wherein the names of Ephraim Tichawona and the applicant's appear was not produced under HMA 15/20. It appears to be common cause that Ephraim Tichawona therein endorsed is the same person as Ephraim Tichaona Muzunze, first respondent's father.

It is important to have a closer examination of s 275 of the Mines and Minerals Act [*Chapter 21:05*] relied upon by the first respondent.

Section 275 of the Mines and Minerals Act [*Chapter 21:05*] runs to 13 subsections relating to registration of transfer of mining locations and transfer duty payable. Notably the first respondent's counsel refers generally to s 275 of the said Act.

It was not submitted before me that the third to sixth respondents were required to produce all of the documents enumerated in s 275 of the Mines and Minerals Act. The relevant documents produced however reflect the following:

Enfield Syndicate is the registered holder of Coronation 2 gold dump claims. The members of the Syndicate endorsed at the back of the certificate of registration registered under no 5244 are Ephraim Tichawona and applicant.

RK2 reflects under transfer as follows: T 7146 of Enfield Syndicate.

RK3 reflects under transfer as follows "T 7146 Enfield Syndicate w. e. f. 10. 3. 97"

RK4 among other things has the endorsement of Ephraim Tichaona and the applicant. The third respondent in RK6 confirms that the requisite procedures were followed regarding the transfer of ownership of Coronation 2 from Ephraim Tichaona Muzunze to Enfield Syndicate. In RK6 third responded reiterates that Enfield Syndicate was registered under the names of Ephraim Tichaona Muzunze and the applicant.

Effectively the third responded is in support of the granting of the declarator as alluded to before. I have closely considered the confirmation and support to the application afforded by second to sixth respondent and the reasons given. I have also considered the provisions of

the Mines and Minerals Act [*Chapter 21:05*] and find nothing amiss in the transfer of the mining claim at the centre of this application to Enfield Syndicate.

I have found no reason to second guess the genuineness of RK1 the certificate of registration issued by officials of the Ministry of Mines and Mining Development.

I am cognisant of the fact that officials of the relevant Ministry have buttressed the position of the applicant as being a joint member of Enfield Syndicate. Documentation in support of this position also form part of the record.

In the circumstances I am convinced that the fact that applicant is a member of Enfield Syndicate has been proven on, a balance of probabilities.

I am not convinced that the fact that the endorsement of the members of the Syndicate at the back of RK1 is not dated renders it a false endorsement. I am buttressed by the support afforded by RK 2, RK3 and RK 4.

In the circumstances I find for applicant. I am however not convinced that costs should be granted on an attorney client scale.

There are a number of cases that have been brought to my attention involving the parties herein and others, relating to Coronation 2 Mine. I find that first respondent is genuinely keen to have the position of Coronation 2 Mine clarified. I am not convinced that applicant has made out a case for costs on a higher scale

To that end I order as follows:

1. The applicant Robert Kagandi is a registered joint holder of mining rights, title and interests in the mining location which constitutes Coronation 2 Mine, Masvingo (registration number 5244) by virtue of being a member of Enfield Syndicate.
2. The applicant Robert Kagandi has legal rights to conduct mining operations within the mining location named Coronation 2 Mine (registration number 5244) situated partly on Bruceham Farm (6 hectares) partly on Victoria Park Farm (1 hectare) approximately 137 metres north of Coronation School and approximately 500metres East of trig Beacon 475/7 Re Pegs 4697 and 4718 Masvingo under the auspices of Enfield Syndicate.
3. The first respondent pays costs of suit.

Rubaya and Chatambudza, applicant's legal practitioners

Ndlovu and Hwacha, first respondent's legal practitioners

Civil Division, of the *Attorney General's Office* third to sixth respondents, legal practitioners