

SAFARAZ AHMED KHAN

ABDUR RAZZAK KHAN

MUNEER AHMED KHAN

and

RAGIN KASSIM

CHIPO MACHONA

BRADFIX INCORPORATED (PVT) LTD

REGISTRAR OF COMPANIES N.O

MINISTER OF MINES AND MINING DEVELOPMENT N.O

HIGH COURT OF ZIMBABWE

WAMAMBO J

MASVINGO, 29 March 2021, 1 April 2021, 8 April &
23 April 2021

Urgent Chamber application

M.H Chitsanga and H. Chitima for the applicants

R.S Makausi for the 1st and 2nd respondents

No appearance for the 3rd and 4th respondents

T. Undenge for the 5th respondent

WAMAMBO J: The 3 applicants through an urgent chamber application seek interim relief for all mining operations at Golden Hill Mine Mashava to be suspended barred or prohibited. Further that in pursuance of the above that applicants are authorised to hire and deploy at the said mine security guards to ensure compliance with the order suspending barring or suspending mining operations at the said mine.

In the founding affidavit: it is averred as follows: -

The applicants are directors and shareholders of 3rd respondent. They are all nationals of Botswana who came to invest in Zimbabwe. They are in Zimbabwe on business visas. First and second respondents are also directors and shareholders of 3rd respondent. The two are married. 3rd respondent is a company incorporated in accordance with Zimbabwean laws. 4th and 5th respondent are cited in their official capacities.

In 2013 applicants who are members of the same family went into talks with 1st respondent who was then the registered holder of five gold claims in Golden Hill Mine namely Blocks 8469,8470,8471,8472 and 8473. A company (3rd respondent) was then registered as vehicle to undertake the mining business. Applicants turned the once dormant mine into a thriving business enterprise and have injected US \$ 795 000 into the said mining project.

In terms of the agreement signed between the applicants and 1st respondent, 1st respondent was obliged to transfer all 5 mining claims under Golden Hill Mine to 3rd respondent upon the project commencing but 1st respondent deliberately left out transferring block 8470 the claim wherein most of the investment was sunk.

Applicants claim that 1st respondent took advantage of the COVID 19 pandemic and the fact that applicants are based in Botswana and as such were not hands on the operations of the mine.

It is averred that 1st and 2nd respondents now employ new security guards at the mine who are denying the applicants access to the mine. Further that 1st and 2nd respondent are not availing reports or updates to 3rd respondents board about operations at the mine. 1st and 2nd respondent also not disclosing the amount of gold they sold to Fidelity Printers.

A lot more is alleged as frustrating moves and endeavours by the 1st and 2nd respondents to the prejudice of applicants.

1st and 2nd respondents are opposed to the application 5th respondent opted to abide by the decision of the Court. 1st and 2nd respondents however raise a number of points in *limine*. I will proceed to deal with these presently two points in *limine* are raised. It is averred that the application is not urgent and that the relief sought is incompetent.

Mr Makausi for 1st and 2nd respondents had the following submissions to make:

The matter is not urgent as applicants seek to interdict 1st respondent from carrying out operations on his block where he has exclusive rights to. It is submitted that it has been 6 years since the issue of the transfer of Block 8470, surfaced. There has not been an application filed seeking an interdict to stop 1st respondent operating on the contentious block 8470. It was submitted that the complaints raised are urged on events that occurred from April 2020 to March 2021 some 11 months ago. It is further submitted that the COVID 19 pandemic did not and could not stop applicants from approaching the courts as courts were open to hearing urgent applications even doing the Covid 19 restrictions.

There are other means like skype, and teleconferencing which could have been employed to engage and instruct legal practitioner to act on applicants' behalf.

On applicants' behalf Mr Chitima argued that the matter is extremely urgent. He was of the view that all requirements to be met in an urgent matter were satisfied. It was also argued that once applicants became aware of the dire situation at the Mine they took action. It was also argued that block 8470 is but just one of the blocks wherein the applicants and 1st respondent had an agreement over.

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

"What constitutes urgency is not only 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 a deliberate or careless abstention from action until the deadline draws near is not the type of urgency contemplated by the rules."

In the instant case it is clear that the relief sought is hinged on the allegations that 1st and 2nd respondents have been making unilateral decisions in the running of the mining enterprise. The interim relief seeks in the main to stop operations at the Mine.

The certificate of urgency does not disclose the date when the cause of action arose.

It is alleged therein that applicants only discovered the alleged prejudicial manner in which the company was being run upon arrival in Zimbabwe. The date of arrival is not mentioned. In the founding affidavit no date is also mentioned when the cause of action arose.

The emergence of the COVID 19 pandemic is blamed for the delay of the application being filed. Much as the COVID 19 pandemic has negatively affected virtually everyone, in terms of filing urgent application's that door has always been open.

The applicants seem to have sat on their laurels, leaving the 1st and 2nd respondents to run the mining operations. While there appears same controversy and emphasis on block no 8470 that issue may if necessary be resolved in another manner.

I find that applicants did not act when the need to act arose. They effectively waited for the day of reckoning. The applicants did not need to be physically in Zimbabwe to know, enquire or pursue the fact that they were not apprised in full of the Mine's operations.

I find that there is thus no urgency in this matter that qualifies it to jump the queue above other matters.

Given the finding on urgency I will thus not proceed to deal with the second point in *limine* raised. To that end I order as follows;

The matter is not urgent and is removed from the roll of urgent matters.

Mutandiro Chitsanga & Chitima, applicants' legal practitioners
Saratoga Makausi, 1st and 2nd respondent's legal practitioners
Civil Division of the Attorney General's office, 5th respondents' legal practitioners