

**WOMEN IN MINING (GWERU DIVISION)
MATCSS SYNDICATE**

APPLICANT

Versus

SAMUEL MAGEJA

1ST RESPONDENT

And

NORMAN CHIVU

2ND RESPONDENT

And

TOZIVEPI EZRA SHUMBA

3RD RESPONDENT

And

MIGIEL CASPER JOVNER

4TH RESPONDENT

And

MINING COMMISSIONER (GWERU)

5TH RESPONDENT

IN THE HIGH COURT OF ZIMBABWE
CHEDA AJ
BULAWAYO 20 FEBRUARY & 14 MARCH 2013

Advocate T. Cherry for the applicant
B. Dube for the respondents

Opposed Application

CHEDA AJ: This matter is a result of some misunderstanding and should not have come to court. The misunderstanding seems to be a result of lack of clarity in the pleadings of the parties.

The applicant applied for, and obtained a provisional order against the respondent, to interdict them from entering applicant's diamond processing plant at Kleinpoort Farm in the Gweru District, including erecting structures, fences, hedges, wires, walls in and around the plant's boundaries, and to remove structures, fences, wires, walls, hedges or any encumbrances or boundaries in the applicant's diamond plant, failure of which the Deputy Sheriff was directed to remove and or demolish same at respondents' cost.

The application for confirmation of the provisional order was opposed. At the hearing of the application Mr Cherry, for the applicant conceded that the application documents were not

elegantly drafted and it was not clear if the applicant sought a spoliation order or not, but the facts seemed to support an application for that. Applicants submitted that their plant was no longer accessible. Mr Cherry was of the view that there were disputes of fact in the matter and it should be referred to trial.

The respondents pointed out that the issue was an attempt to interdict respondents from interfering with the plant or entering it or getting within 100 meters of it. The 4th respondent conceded that they have nothing to do with the diamond processing plant and have no objection to an order being made to stop interfering with the plant, but was objecting to being ordered to keep 100 meters away from the plant because, the plant is in his farm, and the plant is actually surrounded by a fence. The 4th respondent keeps out of the fence and does not enter the fence. He does not interfere with the plant as there is a gate on the fence of the plant, and he has no intention to use the plant.

It also emerged that after the provisional order was granted the Deputy Sheriff went and removed the fence surrounding the plant, a clear misunderstanding of the provisional order and the interim relief obtained.

The 4th respondent contended that to order him to keep 100 meters away from the perimeter fence would be too restrictive, for him on his own property. After hearing both sides and the concessions made I formed the view that the application was based on a failure by the parties to discuss the matter in detail before rushing to approach the court.

I also formed the opinion that in view of the concessions made there were no issues to refer to trial. The rest of the submissions made fall away and there is no need to deal with them any further.

It also appears to me that had the parties made the matter clear in the papers right from the start they could have settled without coming to court.

In view of the above, I do not consider it appropriate to award costs to either party.

I therefore order as follows:

1. The provisional order sought is discharge.
2. The 1st to 4th respondents, their agents, principals, servants, proxies and nominees are hereby permanently interdicted from entering the applicant's diamond processing plant at Kleinpoort Farm, Gweru, or removing the fence surrounding it, or interfering with the applicant's access to the plant.
3. Each party is to pay its own costs.

Moyo & Nyoni, applicant's legal practitioners

Gundu & Dube, respondent's legal practitioners