

JAMES NYAMAREBVU
versus
LITTEN CHIKOWORE
and
AARON CHIKOWORE
and
TAWANDA MAKAMURE
and
JOSEPH SIYABEKA
and
GIFT JAKARASI
and
OFFICER COMMANDING ZIMBABWE
REPUBLIC POLICE (CHINHOYI)
and
MESSENGER OF COURT KADOMA

HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 30 OCTOBER 2015 AND 11 FEBRUARY 2016

Opposed Matter

M. Masiye-Moyo for the applicant
A. Madzima for the 1st -5th respondents

MOYO J: The applicant in this matter seeks confirmation of a provisional order granted by this court on 16 March 2015. Applicant seeks confirmation of the interdict on the basis that he is the holder of mining claims namely Haggis 25 registered number 1021 BM situated in Kadoma district. Applicant has provided the requisite documents as proof of his ownership and thus entitlement to the mine (page 13 of the bundle of documents). I have not dealt with the issue of whether or not the respondents are in contempt of the provisional order as they refute that and it becomes difficult for the court to resolve that factual issue on the basis of the papers before me. I thus decided that that issue cannot be resolved on paper. I then went on to deal with the merits.

Further, following the dispute between applicant and the respondents the mining commissioner carried out some investigations and through a letter dated 30 January 2015, they confirmed that the area of dispute is in fact owned by the applicant and that applicant can continue mining without any problems. Respondents confirm in their opposing papers that indeed they have interfered with applicant's mining activities through stopping him (paragraph 6.4.6) of the opposing affidavit states thus:

“It was only then that I told the applicant that as I am the owner of the farm and EMA tickets are being issued in my name, he should stop the operations until he complies with the legal requirements.”

Further paragraph 7.4 of respondent's opposing affidavit states thus:

“Applicant has no clear right to work on the claims. Firstly the certificate of registration being relied upon is challenged and the dispute is pending finalization ----.”

R. Chikowore's letter dated 12 February 2015 page 54 of the bundle of documents confirms that there has been a melee between the two parties. He complains in the letter addressed to the secretary for mines and mining development, that a Mr Mhlanga has set the parties on a collision course culminating in physical fights and court battles.

Whilst respondents have vehemently disputed disturbing applicant's peaceful and undisturbed possession of his mining claims, the correspondence attached to and from the mining commissioner's office as well as that of Regis Chikowore who is said to be a brother to first respondent, together with respondent's opposing affidavit as quoted herein, all point towards a clear factual conclusion that respondents have fought with the applicant over his mining claim with the latter seeking the intervention of the mining commissioner.

After intervening, the mining commissioner then made a finding that in fact the area of dispute belongs to applicant. Respondents then sought to challenge that by writing to the secretary for mines. They also challenge the title of applicant to the mining claim but applicant has produced a certificate of registration, which except nullified through due process, is valid and is therefore proof of applicant's title.

The requirements for a final interdict as sought by applicant are as follows.

- (a) A clear right which must be established on a balance of probabilities.
- (b) Irreparable injury actually committed or reasonably apprehended.

(c) The absence of a similar protection by any other remedy.

Refer to the case of *Zesa Staff Pension Fund v Mushambadzi* SC 57/02. The applicant has shown his entitlement to the mine through the certificate of registration attached to his papers. Also, there is the mining commissioner's correspondence to that effect. He has also shown that there is reasonable harm suffered by him in the circumstances.

In fact with regard to this first respondent's opposing affidavit as well as the letter to the secretary of mines dated 12 February 2015, do confirm that circumstances that breach one's peace have indeed occurred between applicant and the respondents.

Applicant has shown that he has no other remedy, for whilst the mining commissioner found in his favour, he has no enforcement mechanisms. Neither do the police seem to have come to applicant's assistance. The sixth respondent was served with this application and is aware of the allegations made against his office of failure to assist applicant. No response was made and this court has to accept applicant's averments as they are as sixth respondent did not seek to challenge same, meaning same are true. Applicant has satisfied the requirements for a final interdict in my view.

With costs I am of the view that this is a matter wherein the punitive costs sought by applicant are warranted for the respondent's conduct is unacceptable especially where a certificate of registration is available in applicant's name as well as the mining commissioner's findings which are in favour of the applicant. Respondents seem to want to challenge everything irregardless of whether there is a basis for doing so or not. Even if respondents are of the view that the title held by applicant is questionable, they should have left him in peaceful and undisturbed possession of the mine, and then launch their challenges peacefully through the appropriate authorities. It is for this reason that I will uphold applicant's claim for punitive costs as respondents conduct warrant same.

I accordingly confirm the provisional order with costs at a higher scale as awarded against first to fifth respondents.

Masiye-Moyo and Associates, applicant's legal practitioners
Mutatu & Partners 1st -5th respondent's legal practitioners