

HB 81/19  
HC 894/19  
X REF C 1038/19

**PIONEER MINING & PROSPECTING (PVT) LTD**

**Versus**

**FARAYI NGULUBE N.O.**

**And**

**VANELE MOYO**

**And**

**JAMES NGOMA  
(BOTH KNOWN AS MPUMELELO MINING SYNDICATE)**

IN THE HIGH COURT OF ZIMBABWE  
MAKONESE J  
BULAWAYO 14 & 30 MAY 2019

**Urgent Chamber Application**

*S. Nkomo* for applicant  
*P. Taruberekera* for 1<sup>st</sup> respondent  
*V. Majoko* for 2<sup>nd</sup> & 3<sup>rd</sup> respondents

**MAKONESE J:** This is an urgent chamber application filed on the 8<sup>th</sup> May 2019 seeking the following interim relief:

**“Interim relief**

1. That the 1<sup>st</sup> respondent’s decision of the 20<sup>9</sup><sup>th</sup> April 2019 be and is hereby stayed pending determination of the application for review filed under case number HC 1038/19.
2. For the avoidance of doubt 2<sup>nd</sup> and 3<sup>rd</sup> respondents, their agents or assignees be and are hereby ordered not to carry out mining activities in the disputed production shaft.
3. Applicant be and is hereby allowed to carry out its mining activities on Jessie’s Luck B Mine, outside the disputed area.”

Applicant seeks final relief in the following terms;

**Final Relief Sought**

- “1. The respondents and their agents or assignees be and are hereby ordered to abide by the decision of the court in the application for review filed by the applicant under case number HC 1038/19 wherein applicants seek review of 1<sup>st</sup> respondent’s decision.
2. Respondents to bear costs of suit on an attorney-client scale.”

The application is opposed by the respondents and various points *in limine* were raised. After hearing argument on the preliminary issues I reserved judgment. It was my view, that if these issues were resolved they would be dispositive of the matter.

**Urgency**

The respondents contend that this matter is not urgent at all, by any stretch of imagination. In judging whether an application is urgent one has to consider that which is claimed to be the cause for urgency. The court must in this regard examine the cause of the urgency and the relief sought. This application was filed in court on the 8<sup>th</sup> May 2019, but was served on the respondents on 15<sup>th</sup> May 2019. I observe that from the record I gave directions on the 9<sup>th</sup> May 2019 for the matter to be set down for hearing. I indicated that the respondents were to be served with a copy of the urgent chamber application. The applicant does not explain why there was a delay in serving the process on the respondents.

The applicant essentially seeks in its draft order that mining operations be stopped pending the final determination of the application for review filed under case number HC 1038/19. That application is not before me and therefore I shall not delve into the merits or demerits of the review application, currently pending.

It is trite law that a matter is urgent if at the time the need to act arises, the matter simply cannot wait. The question to be asked in this matter is when the need to act arose. On the facts as presented by the applicant one has to ascertain when applicant became aware or should have been aware that there where mining operations on a shaft it claims to be within its claims. The respondents allege that they have been mining in the disputed area since 2009, a period in excess

of 10 years. This is disputed by the applicant. The applicant's agent, Mr Muyambo is further alleged to have been mining in close proximity to the disputed shafts for a long time. It is contended by the respondents that the applicant's agent has been conducting mining operations in the same area for the past 10 years. A further argument raised by the respondents is that the applicant has not been candid with the court and has not disclosed, as it ought to have done, that it did not protect its claims in the Hope Fountain area for over 10 years. Applicant only paid inspection fees for its claims in January 2019 after several years of neglect.

It is common cause that mining rights are derived in terms of the Mines and Minerals Act (Chapter 21:05). In terms of section 197 and 198 of the Act mining rights are preserved by the payment of inspection fees. Inspection certificates are issued every 12 months. The office of the 1<sup>st</sup> respondent is empowered to collect such inspection fees.

For a period in excess of 10 years the applicant neither worked its claims nor had inspection fees paid in respect of the disputed claims. Urgency which arises from a deliberate or careless absenteeism from action is not the urgency contemplated by the Rules of this court. It has been established in a number of cases of this court and the Supreme Court that the law is for the vigilant and not the sluggard.

In this urgent application I note that the applicant seeks the remedy of an interdict even without laying the foundation for the grant of an interdict. I shall, however not delve into that aspect as I have to be convinced that the matter is indeed urgent. In *Musunga v Utete & Anor* HH -90-03 at page 2 of the cyclostyled judgment MAKARAU J (as she then was) had this to say on the question of urgency:

*"It is trite that no litigant is entitled as of right to have is/her matter heard urgently ... The test for urgency as provided under the rules is that the matter must be so urgent that the risk of irreparable harm ... So great that this matter must proceed within the normal time frame provided for in the rules. To assist the court in assessing the urgency of the matter legal practitioners, as officers of the court, are required to give their honest opinion on why they consider the matter urgent. ..."*

HB 81/19  
HC 894/19  
X REF C 1038/19

See also *Kuvarega v Registrar General & Anor* 1998 (1) ZLR 188 HC and *Granspeak Investments (Pvt) Ltd v Delta Operation (Pvt) Ltd & Anor* 2011 (2) ZLR 551.

In this matter the applicant has not set out any basis for the matter to be treated on an urgent. The fact that an application for review has been filed does not itself create the sort of urgency contemplated in the rules of this court.

I find it unnecessary to deal with the rest of the preliminary issues raised and find that the application is indeed not urgent.

In the result, the following order is made:

1. The matter is not urgent.
2. The matter is removed from the roll of urgent matters.
3. The applicant shall bear the costs of suit on the ordinary scale.

*Messrs Mathonsi Ncube Law Chambers*, applicant's legal practitioners  
*Civil Division of the Attorney-General's Office*, 1<sup>st</sup> respondent's legal practitioners  
*Messrs Majoko & Majoko*, 2<sup>nd</sup> & 3<sup>rd</sup> respondents' legal practitioners