

MIXNOTE INVESTMENTS (PVT) LTD

Versus

PROVINCIAL MINING DIRECTOR

And

EVANS MAJOLA

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 16 & 20 MAY 2019

Chamber Application

MAKONESE J: The application was filed in terms of section 4 of the Administrative Justice Act (Chapter 10:28). The 1st respondent is an administrative authority with powers exercised in terms of the Mines and Minerals Act (Chapter 21:05.).

The order sought by the applicant is in the following terms:

“It is ordered that

1. 1st respondent’s letter dated 25 April 2019 and its directions therein, be and is hereby revoked, for failure to comply with proper Administrative Justice.
2. There be no order as to costs.”

It will be noted that the application did not seek any substantive relief against the respondents, save for the order sought.

Factual background

The applicant and 2nd respondent are involved in a mining dispute, more particularly a boundary dispute over mining claims. On the 12th December 2018 the parties attended a hearing before the 1st respondent. The parties were served with a written invitation to attend a hearing at Gwanda. Further, the parties were required to avail maps, inspection certificates and relevant

documents related to the mining claims. On 25th April 2019 without any prior warning or notice the 1st respondent addressed a letter to the applicant and 2nd respondent in the following terms:

“Re: Stoppage of Mining Operations on Sally Mines 5 Reg Number GA 2020 and Etrick Mine Reg Number 1190 pending finalisation of the dispute

Reference is made to the above subject.

This office received a complaint from Ms Majola alleging that Mr John Chaya is mining within the disputed area before the finalisation of the dispute resolution process.

This office therefore is directing that no mining operations should be done by both parties within the disputed area until the dispute is finalised.

By copy of this letter, the ZRP, MFFU is requested to make sure that the disputants abide by this directive.

T. Makuza
Provincial Mining Director”

Before this letter was addressed to the parties, it had been resolved by 1st respondent that a surveyor would be appointed to survey the boundaries of the mining claims. The parties and applicants continued undisturbed with their mining activities. The issue of the stoppage of mining activities was never raised at the hearing at Gwanda.

The 1st respondent decided to take unilateral action to order a stoppage of mining activities. In my view the parties to this dispute were not afforded the right to be heard. It is a trite principle of our law that before anyone’s rights are violated or tempered with, he ought to be accorded the right to be heard before a competent court or tribunal. This, accords with the principle of the *audi alteram partem*. In recent times, before parties are properly investigated and concluded disputes are “heard” and substantive decisions are made by Provincial Mining Director. It is my view that such approach violates section 3 of the Administrative Justice Act in that all parties to any mining dispute must be and ought to be given an opportunity to make proper representations before mining operations are stopped. No cogent reasons were given by the 1st respondent why operations had to be stopped. No time frames were stipulated. Mining

disputes must be determined as swiftly as possible and it is the function of 1st respondent to grant its decision on reasonable grounds.

It is the view of this court that 1st respondent's discretionary power was improperly exercised.

It is for these reasons that I granted the order as prayed for in the draft order with no order as to costs.

Joel Pincus, Konson & Wolhuter, applicant's legal practitioners
Malinga & Mpofu Legal Practitioners, 2nd respondent's legal practitioners