

GEORGE PEDZISAI FICHANI  
versus  
DULLY HUNI  
and  
WELLINGTON MASEKO  
and  
PROVINCIAL MINING DIRECTOR  
and  
OFFICER COMMANDING BORDER CONTROL AND MINERALS UNIT  
and  
MUMS GOLD (PVT) LTD

HIGH COURT OF ZIMBABWE  
MANZUNZU J  
HARARE, 27 September 2018

**Urgent application**

*T. Bare*, for the applicant  
*B.T. Munjere*, for the 1<sup>st</sup> respondent  
*M. Machingura*, for the 2<sup>nd</sup> respondent  
*M. Gezera*, for the 3<sup>rd</sup> & 4<sup>th</sup> respondents

MANZUNZU J: This is a matter in which the applicant filed an application on urgency seeking the following relief in the form of a provisional order:

“TERMS OF FINAL ORDER SOUGHT

That you show cause to this Honourable Court why a final order should not be made in the following terms.

1. That the 1<sup>st</sup> and 2<sup>nd</sup> respondents be and are hereby barred either in themselves or through their agents from removing gold pregnant sands from Gazemba 105-108 mine pending the finalisation of Case No. HC 2666/18 (XRef HC 7729/17).
2. The respondents shall bear the costs of this application on the scale of legal practitioner and client jointly and severally the one paying the other to be absolved.

INTERIM RELIEF GRANTED

Pending the finalisation of this matter, the applicant is granted the following relief:-

1. The 1<sup>st</sup> and 2<sup>nd</sup> respondents be are hereby ordered and directed to fully account for all the leached sands and to facilitate the remittance of the gold produced by the leaching process to Fidelity Printers and Refiners (Pvt) Ltd where the same shall be held pending the

conclusion of the dispute between the parties, and doing so within twenty four (24) hours of this order being granted thereafter to desist from leaching any sands delivered from Gazemba 105-108 mines.

2. The 3<sup>rd</sup> and 4<sup>th</sup> respondents be and are hereby directed to:-
  - (i) Make sure that a correct and accurate record of all the sands removed from Gazemba 105-108 mine is produced by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents.
  - (ii) Ensure that all gold recovered from the leaching of sands collected from Gazemba 105-108 mines is accounted for and remitted to Fidelity Printers and Refiners (Pvt) and a proper record kept pending finalisation of the dispute.
  - (iii) Supervise the return of all unleached and leached sands by the 1<sup>st</sup> and 2<sup>nd</sup> respondents from Mum's Gold Milling Plant to Gazemba 105-108 mines FORTHWITH.
  
3. The applicant's legal practitioners are authorised to serve this order upon the respondents."

After hearing counsels on the issue of urgency I handed down an *ex tempore* judgment and issued an order in the following terms:

"IT IS ORDERED THAT:

1. The matter is not urgent.
2. The matter is dismissed with costs."

The applicant has requested the written reason for this ruling. These are they:

There has been a number of litigation involving the applicant and the first respondent in both the High Court Harare and Bulawayo and the Magistrate's Court. Their source of dispute relate to a mine known as Gazemba 105-108 situate in Gokwe.

On 4 July 2009 the applicant and the first respondent entered into a mine swap agreement in which the applicant agreed to transfer gold blocks known as Gazemba 105-108 to the first respondent. The intention of these two parties was clearly captured in their joint letter of 16 May 2012 to the Mining Commissioner. I reproduce the contents of the letter hereunder.

"RE: MINE SWOOP AGREEMENT ENTERED AND SIGNED ON 4<sup>TH</sup> JULY 2009

We have agreed to transfer gold blocks from George Pedzisai Fichani to Dully Huni namely:

Gazemba 105 Reg No 25669  
Gazemba 106 Reg No 25670  
Gazemba 107 Reg No 26571  
Gazemba 108 Reg No 25672

We have agreed to transfer 1x Nickel Block. Three (3) gold blocks from Mr Dully Huni to George Pedzisai Fichani namely:

Perseverance BM Reg 1039B  
Libra 39 Reg No. 5326  
Railway 28 Reg No. 5013



2017 following an Order by High Court Bulawayo on 2 August 2017. The applicant knew all along that first respondent had acquired mining rights over the claims. The present application was filed on 2 July 2018 because, according to the founding affidavit, the first and second respondents had started removing the sands some few days after the 21<sup>st</sup> June 2018. But was it not inevitable that such an act would occur given that it's part of the mining process. Why would applicant wait for the day of reckoning when he should have brought this application the moment he learnt that ownership had passed to the first respondent. There is no explanation why the application had to delay until 2 July 2018. The duty to act arose when applicant learnt of the transfer of ownership. Applicant did not act. He cannot jump the queue merely because he feels he is likely to suffer irreparable harm. For these reasons I dismissed the application as not urgent.

*Murambasvina Legal Practice*, applicant's legal practitioners  
*Mazhande and Mazhande Legal Practice*, 1<sup>st</sup> respondent's legal practitioners  
*Kwenda & Chagwiza Attorneys*, 2<sup>nd</sup> respondent's legal practitioners  
*Civil Division*, 3<sup>rd</sup> & 4<sup>th</sup> respondents' legal practitioners