

GRANDWELL HOLDINGS (PVT) LTD
versus
ZIMBABWE CONSOLIDATED DIAMOND COMPANY (PVT) LTD
and
MBADA DIAMONDS (PVT) LIMITED
and
MORRIS MPOFU
and
COMMISSIONER GENERAL – ZIMBABWE REPUBLIC POLICE

HIGH COURT OF ZIMBABWE
MANZUNZU J
HARARE, 16 October 2018 & 7 March 2019

Opposed Application

S Moyo, for the applicant
L Uriri, for 1st & 3rd respondents
J Bhudha, for 4th respondent

MANZUNZU J: This is an opposed application in which the applicant seeks an order in the following terms:-

“IT IS ORDERED THAT:

1. The application for contempt of court be and is hereby granted
2. The first, third and fourth respondents be and are hereby barred from filing any papers before this honourable court until such time as they shall have purged their contempt of court in this matter. All court papers filed by the first, third and fourth respondents before this honourable court be and are hereby struck out of the record.
3. The third respondent shall serve a three (3) month jail term for contempt of this honourable court but shall be released sooner upon proof of compliance by him and the first respondent with all orders of this honourable court made under HC 1977/16, HC 1290/17 and HC 2593/17
4. The respondents shall jointly and severally, the one paying the other to be absolved, pay costs of suit for this application on a legal practitioner and client scale.”

The contempt of court is based on the alleged breach of three orders of this court. I will recite hereunder only the relevant parts of the orders which form the basis of the applicant’s application:

Order of 16 March 2016

On 16 March 2016 in case No. HC 1977/16 in the urgent chamber application involving the following parties:

GRANDWELL HOLDINGS (PRIVATE) LIMITED versus MINISTER OF MINES & MINING DEVELOPMENT and ZIMBABWE MINING DEVELOPMENT CORPORATION and MARANGE RESOURCES (PRIVATE) LIMITED and ZIMBABWE CONSOLIDATED DIAMOND COMPANY and MBADA DIAMONDS (PRIVATE) LIMITED and COMMISSIONER-GENERAL, ZIMBABWE REPUBLIC POLICE; the court made an order the relevant part of which reads:

“For the purposes of safeguarding assets, all of the fifth respondent’s security personnel, with all their chain of command, shall be entitled, authorized and empowered to remain at the fifth respondent’s mining site at Chiadzwa Diamond Concession, as directed in paragraph 2 of the order of this court on 29 February 2016, until the resolution of this matter.”

Order of 24 February 2017

On 24 February 2017 in Case Number HC 1290/17 the urgent application in the matter of GRANDWELL HOLDINGS (PRIVATE) LIMITED and ZIMBABWE CONSOLIDATED DIAMOND COMPANY LIMITED, COMMISSIONER GENERAL, ZIMBABWE REPUBLIC POLICE, MBADA DIAMONDS (PRIVATE) LIMITED; the court made the following order:

“1. The 1st and 2nd respondents and those acting on their behalf be and are hereby interdicted from collecting, from third respondent’s concession area, diamond ore mined by the third respondent, accessing areas secured by security personnel of the third respondent or otherwise interfering in any manner with such security arrangements in relation to the said concession area.”

Order of 25 April 2017

On 25 April 2017 in HC 2593/17 with the same parties as in HC 1290/17 the court made the following order:

“1. Pending the appeal filed by the first respondent under case number SC 159/2017, the first and second respondents and those acting on their behalf be and are hereby interdicted from collecting, from third respondent’s concession area, diamond ore mined by the third respondent, accessing areas secured by security personnel of the third respondent or otherwise interfering in any manner with such security arrangements in relation to the said concession area as per interim relief granted by this honourable court on the 24th of February 2017.

2. Should the first and second respondents fail to comply with paragraph 1 above and to purge their failure to comply with the interim order granted by Justice Tsanga on the 24th of February 2017 under Case Number 1290/17, they shall be denied audience before this honourable court and any papers filed by them shall be struck out of the record”.

A glimpse of the three orders will show that the direct beneficiary is Mbada Diamonds (Private) Limited the second respondent in this case. The applicant is a 50% shareholder in the second respondent company. This was said to be a derivative action although the first, third and fourth respondents argued that the applicant had no *locus standi*.

It is not in dispute that court orders as outlined above were granted by this court. The applicant alleges that first, third and fourth respondents have committed acts of spoliation with the result that on 25 April 2017 a further order for an interdict was granted by the Court. It is alleged that that order was also disregarded by the said respondents. The act complained of is that the respondents collect diamond ore from the second respondent’s concession area. The fourth respondent is alleged to have prevented second respondent’s security personnel from taking their positions in the second respondent’s concession area thereby aiding the other respondents to remove diamond ore from second respondent’s concession area.

The requirements of contempt of court still stand as per the case of *JC Conolly and Sons Pvt Ltd v Ndhlukula & Anor* HB 43/2015 which are:

- “1. That the person charged with contempt had knowledge of the court order;
2. That such person was aware of the constraints placed upon him by the court order;
3. That the person disobeyed the court order;
4. That the disobedience of the court order was willful.”

The first, second and fourth respondents’ position is that there was no act of spoliation after the orders of the court were made. As far as they are concerned the second respondent’s diamond ore is under judicial attachment by the Sheriff as at 21 January 2017. In short, they deny acting in breach of the court orders. The onus is on the applicant to show the breach of the court orders.

This application is founded on broad generalized sweeping allegations of breach which are disputed by the respondents. Even the supporting affidavit of Tichaona Saul Chaurura is not specific as to when first respondent moved the diamond ore as he alleged. He said it was around this year. But we are dealing with the issue of contempt which must establish acts post the order. From the manner in which the evidence has been presented it is difficult if not impossible to say what acts constitute contempt for the order of 25 April 2017. The applicant has failed to show any

acts by the respondents with a degree of clarity. One must be able to answer the simple question, “what did the respondents do or not do and when?” As already observed the allegations by the applicant are generalized and cannot stand as a pillar for contempt. Applicant has not discharged the onus upon it.

I agree with Mr *Uriri* that there is no order which deals with third respondent. He was cited in his personal capacity. He is alleged to have acted in his official capacity yet the order sought is for his imprisonment in his personal capacity. There is a disconnect. He cannot be held for contempt.

The last issue is the propriety or otherwise of a derivative action. I will not labour on this because this is not the first time the respondents are raising this point *in limine*. It was raised in HC 1977/16 with the court ruling that the circumstances warranted a derivative action. I find no justification to disturb that finding by the court.

However, for reasons already stated I find that the applicant has failed to make a case for contempt of court. Despite such failure there is nothing adverse to attract costs at a higher scale as prayed for against the applicant. Accordingly;

IT IS ORDERED THAT

1. The application be and is hereby dismissed with costs.

Scanlen and Holderness, applicant’s legal practitioners
Matsikidze & Mucheche, 1st respondent’s legal practitioners
Civil Division of the Attorney General’s office, 4th respondent’s legal practitioners