

BERKS 5 MINE
and
ELIZABETH MAVUNGA
versus
LASTON SADYA
and
THE PROVINCIAL MINING DIRECTOR, MINISTRY OF
MINES AND MINING DEVELOPMENT N.O

HIGH COURT OF ZIMBABWE
MANZUNZU J
HARARE, 27 August 2019 & 23 January 2020

Urgent Chamber Application

G.K Muchapireyi, for the 1st & 2nd applicants
C. Chitekuteka, for the 2nd respondent

MANZUNZU J: This is an urgent chamber application in which I granted the provisional order after hearing the applicants and second respondent.

The first respondent despite proper service of the notice of set down on him was in default. The notice of set down was served on the first respondent on 25 August 2019 through his employee a Mr Itai Maperera who accepted service on behalf of the first respondent according to the Sheriff's remarks.

At the hearing there was a Mr B. Mugadza and Z. Chibondo who purported to represent the first respondent. They failed to show any authority to stand in for the first respondent. The matter therefore proceeded in default of the first respondent.

The second respondent was represented by *Mr C Chitekuteku* who took the position that second respondent would not oppose the application and will abide by the decision of the court.

Despite the absence of opposition I nevertheless asked Mr *G K Muchapireyi* for the applicants to move the application. I will deal with his address later after a summary of the background to this case.

The second applicant is the registered owner and holder of title of the first applicant with mining claims. The applicants state that they have been operating mining in a peaceful

and undisturbed manner since 1989. The respondent is the owner of a mining plant which operates adjacent to Berks 5 Mine. The first respondent operates Berks 13 Mine. The first respondent is alleged to have extended his mining operations into second applicant's mining claim. This was achieved by the removal of surveyor's beacons which demarcated Berks 5 mine boundaries and then first respondent fenced off the encroached area which includes 3 mining shafts. The first respondent consolidated his occupation by setting up buildings. Efforts to resolve the matter amicably failed.

The matter was shown to be urgent and in the absence of any contestation it was treated as such. The certificate of urgency is clear on the grounds as to why it must be treated as urgent.

The applicants seek relief in the form of an interdict. The law in respect to interim interdict is settled:

The following requirements must be shown:

a) A prima facie right

The right must be an actual right as a mere interest is not enough. In *casu* more than a prima facie right has been shown in that the mine claim is registered with second respondent.

b) A reasonable apprehension of irreparable harm if interim interdict is not granted.

If first respondent is allowed to continue mining operations, it was argued, applicant is likely to suffer irreparable harm. The interim order is only granted if, by not granting the relief, it will be very difficult, if not impossible, to restore the *status quo*.

c) Absence of a satisfactory remedy

There must be no alternative satisfactory remedy available e.g. claim for damages that would adequately compensate any loss. In *casu* the first respondent would continue to extract ore.

d) Balance of convenience

It was argued the balance of convenience favours the applicants more so in the absence of opposition. The applicant has been doing her mining operations which have been interfered with by the first respondent.

I was satisfied that the applicants had made a good case for an interdict and for these reasons I granted the provisional order as follows:

TERMS OF THE 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 it be and is hereby ordered that the 1st Respondent and all persons acting through him be and are hereby directed to cease all operations within the 1st applicant forthwith.
2. 1st Respondent to restore all the ore removed to the Applicants.
3. 1st Respondent to pay cost of suit on a legal practitioner and client scale.

INTERIM RELIEF GRANTED:

Pending the determination of this matter, Applicants are granted the following interim relief:

1st Respondent and all person acting through him be and are hereby:

1. Interdicted from carrying on any milling or mining operations at Berks 5 mine.
2. The 2nd Respondent be and is hereby directed to institute the dispute resolution mechanism as directed by section 346 of the Mines and Minerals Act (Chapter 21:05) within 7 days of date of this order.
3. The 1st Respondent to produce sales sheets to the 2nd Respondent of all gold sold from the period beginning 10 July 2019 to date.

SERVICE OF THE PROVISIONAL ORDER

That leave be and is hereby granted for Applicants' legal practitioners or the Sheriff of the High Court or his lawful authorized deputies or assistants to attend to the service of this order forthwith upon the Respondents in accordance with the Rules of the High Court.

Muvirimi Law Chambers, 1st & 2nd Applicants' legal practitioners