RONALD DAVISON MUGANGAVARI

Versus

PROVINCIAL MINING DIRECTOR – MIDLANDS N.O.

And

K & G MINING SYNDICATE

IN THE HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 29 OCTOBER & 11 NOVEMBER 2021

Opposed Application

D. Mwonzora for the applicant
T. Zishiri for the respondents

MOYO J: This is an application in terms of section 4 (2) of the Administrative Justice Act wherein the applicant seeks relief:

> "1) The directive issued by the 1st respondent on 17th January 2018 be and is hereby set aside.
> 2. The applicant be and is hereby allowed to resume all mining operations at Clifton 15 Mine (Reg No. 12598) immediately upon the granting of this order.
> 3. The 2nd respondent be and is hereby ordered to pay costs of suit at a higher scale in the event that they oppose this application."

The cause of action is espoused in paragraphs 9-13 wherein applicant states that 1st respondent issued a directive in January 2018 stopping all mining activities at Cliffton 15 Mine and that applicant then challenged the directive under cover of HC 1776/19 wherein judgment was granted in favour of applicant but it was subsequently appealed against. On appeal, the judgment in favour of applicant was set aside under SC-35-20 and the order of the court in that case was substituted with: "The application be and is hereby dismissed with costs."

2nd respondent opposed the application and raised preliminary points.

1. The first preliminary point is that the matter is *res judicata*. 2nd respondent's counsel argued that the case before me is identical to HC 1776/19 which was dismissed on appeal by the Supreme Court.

2nd respondent submitted that;

The parties in this matter are the same as the parties in HC 1776/19. That the subject matter is the same as the 1st respondent's directive of January 2018 is the point in issue. That the cause of action stated in paragraphs 12 and 13 of the founding affidavit in this matter is the same complaint that was raised in paragraphs 13 and 18 of the founding affidavit in HC 1776/19.

2nd respondent's counsel also submitted that the Supreme Court has already spoken, discussing applicant's complaint *vis-à-vis* the directive of January 2018 by the 1st respondent.

2nd respondent's counsel prayed for a dismissal of the application with costs as prayed for.

Applicant's counsel in replying to the point *in limine* raised did not refute that the substance and the cause of the complainant is similar to the one in HC 1776/19 but applicant's counsel submitted that in the other matter a declaratur was being sought in terms of section 14 of the High Court Act whereas in the application before me an order is being sought in terms of section 4 (2) of the Administrative Justice Act. He further submitted that the dispute between the 2 parties remains unresolved and that it should be finalized. In the Supreme Court case of *Kaondera* vs *Mandebvu*, SC-12-06 the requisites for a plea of res judicata were clearly stated and they were;

- The suit must have been between the same parties.
- It must have concerned the same subject matter
- It must have been founded on the same cause of action.

As already demonstrated herein, it goes without saying that the requirements of a plea of *res judicata* are clearly satisfied in this matter. I hold the view that what applicant decides to call its application each time it approaches the court against the same respondents over the same complaint cannot be held to defeat the plea of *res judicata*. The complaint is the directive issued by 1st respondent in January 2018, which directive applicant is at qualms with and seeks to have it set aside. In High Court 1776/19, applicant sought to have the directive set aside through invoking section 14 of the High Court Act. Again, in this matter

applicant seeks to set the directive aside through invoking section 4 (2) of the Administrative Justice Act. What should be noted is that applicant has the same issues, same complaint, same cause of action against the same respondents but because he has failed on one platform it now seeks to employ a different vehicle to bring the same matter before court. It is not the title on the cover of the application that matters in such an instance in my view, it is the subject matter, the bone of contention between the parties. Clearly, the bone of contention is the same, the subject matter is the same, and applicant cannot be allowed to bring the same suit which has failed by deciding to call by something else. I accordingly hold the view that 2nd respondent's objection is proper and must be upheld.

I accordingly uphold the point *in limine* and applicant's matter having already been dealt with in HC 1776/19 is improperly before me.

On the issue of costs 2nd respondent's counsel motivated for costs at a punitive scale for reasons that applicant has decided to bring a matter that they are aware has already been dismissed by this court and a matter that the Supreme Court has already pronounced itself on. 2nd respondent argues that applicant is clearly abusing court process. I agree with the submission made by the 2nd respondent that the applicant is clearly in abuse of court process and that punitive costs are warranted.

The application is accordingly struck off the roll with costs at a higher scale.

Mwonzoro & Associates, applicant's legal practitioners
Civil Division of the Attorney General, 1st respondent's legal practitioners
Kwande Legal Practitioners, 2nd respondent's legal practitioners