

**NGONIDZASHE NCUBE t/a GOODLUCK SYNDICATE**

**Versus**

**OWEN NARE t/a PANDA SYNDICATE**

**And**

**THE PROVINCIAL MINING DIRECTOR - MAT. NORTH N.O**

**And**

**COMMISSIONER GENERAL OF THE ZIMBABWE REPUBLIC POLICE**

IN THE HIGH COURT OF ZIMBABWE

TAKUVA J

BULAWAYO 30 JANUARY, 9 FEBRUARY & 12 APRIL 2018

**Urgent Chamber Application**

*B. Dube* for the applicant

*S. Nkomo* for the 1<sup>st</sup> respondent

*Ms R. Hove* for the 2<sup>nd</sup> & 3<sup>rd</sup> respondents

**TAKUVA J:** This is one of those urgent chamber applications pregnant with disputes of fact. The applicant and 1<sup>st</sup> respondent own adjacent mining claims in Hope Fountain. When the parties appeared before me on 30 January 2018, I proceeded in terms of r246 of this Court's Rules and made the following order:

- “1. The matter is postponed to the 9<sup>th</sup> February 2018 at 0900 hours.
2. The parties be and are hereby directed to visit the area in dispute in order to verify the correct boundaries on the site.
3. The parties' legal practitioners be and are hereby directed to participate in the inspection and verification exercise.
4. The 2<sup>nd</sup> respondent be and is hereby directed to submit a comprehensive report after the inspection.
5. Both parties be and are hereby directed not to carry out any mining operations between today and the 9<sup>th</sup> of February 2018.”

Upon resumption of the hearing on the 9<sup>th</sup> of February 2018, the 2<sup>nd</sup> respondent filed its report compiled from indications and observations at the disputed area. I will revert to this report later in this judgment.

### **The Facts**

The applicant (hereinafter referred to as Goodluck) is the registered owner of a mining claim known as Mzika 6 held under a certificate of registration number 39530 registered on 14 September 1998. The 1<sup>st</sup> respondent (hereinafter referred to as Panda) issued a prospecting licence on the District Administrator who is the land owner on 21 July 2017. The 2<sup>nd</sup> respondent had approved the prospecting exercise. On 24 July 2017 a verification exercise was carried out by the 2<sup>nd</sup> respondent's officials. Thereafter 1<sup>st</sup> respondent registered his claim under number 48520 on 10 January 2018.

Armed with this registration certificate, Panda placed its workers on the site on 31 December 2017 to clear bushes and obtain samples for purposes of a geological report. Goodluck immediately complained to the 2<sup>nd</sup> respondent who resolved the dispute in Panda's favour further aggrieving Goodluck leading to this application.

Goodluck's application is based on the grounds that Panda invaded its claim on 18 January 2018 by firstly mounting its mining equipment in the form of compressors and other mining tools. Secondly, its workers were threatened and labeled illegal gold panners who should be evicted immediately. Thirdly they removed the boundary beacons which were marked in 1998 and replaced them with their "new fence". Fourthly it was alleged that Panda "illegally and fraudulently" obtained a registration certificate over Goodluck's claim. Finally, it was contended that Goodluck continue to suffer irreparable harm in that Panda is illegally removing gold ore resulting in significant pecuniary loss. Goodluck argued that it has exhausted all the available remedies at 2<sup>nd</sup> respondent's offices.

The 1<sup>st</sup> respondent denied disrupting Goodluck operations in the manner alleged. It in fact contended that it is Goodluck that is mining illegally on its lawfully registered claim thereby

causing irreparable injury. It relied on the maps provided by the 2<sup>nd</sup> respondent to show that the two claims are not even contiguous. Further, Panda denied that Goodluck has a *prima facie* right to the disputed shaft or area.

On the papers, the issue is whether or not Panda has encroached into Goodluck's mining claim? Goodluck has sought an interim interdict. The requirements of such relief to be granted are settled. They are;

- (1) that the right which is sought to be protected is clear; or
- (2) that (a) if it is not clear, it is *prima facie* established, though open to some doubt; and (b) there is a well-grounded apprehension of irreparable harm if interim relief is not granted and the applicant ultimately succeeds in establishing his right;
- (3) that the balance of convenience favours the granting of interim relief; and
- (4) the absence of any other satisfactory remedy.

See *Nyambi & Ors v Min Local Govt & Anor* 2012 (1) ZLR 559 (H); *Econet (Pvt) Ltd v Minister of Information* 1997 (1) ZLR 342 (H)

The 1<sup>st</sup> issue to tackle is whether or not Goodluck has a right to protect. According to the report produced after an inspection in loco, the following facts can be deduced;

- (a) Goodluck's registered claim in terms of the docket and coordinates on the ground is reflected by the "red" rectangle ABCD.
- (b) Panda's registered claim is shown by the green rectangle 160m away from Goodluck.
- (c) The orange block denotes boundaries for a block registered under Bekithemba Ncube.
- (d) The purple denotes the position of the block as surveyed on the 5<sup>th</sup> of February 2018.
- (e) The blue block denotes the initial ground position of Goodluck whose beacons were not permanently installed as at 24 July 2017.

- (f) There was no change on the position of Panda beacons as of the last survey carried out on 24 July 2017.

The dispute in this case arises from the fact that Goodluck claims ownership of the area denoted by the “purple” and “blue” blocks on the map. These are the blocks that encroach into the Panda claim. This position by Goodluck is not consistent with their map presented to this court and filed at the Ministry of Mines. Quite clearly, Goodluck adjusted its beacons unilaterally as confirmed by temporary beacons that were found on the ground by the team that conducted the inspection *in loco*. This was further confirmed by the fact that all permanent structures for Goodluck fall right at the centre of the red block as it was upon registration. However, this orientation has since been deliberately altered from what it was in 1998.

Finally, it was observed that all three blocks namely, the green belonging to Panda the orange belonging to B. Ncube and the red belonging to Goodluck are regular except for the “purple” and “blue” whose hectarage is now 13ha instead of 10 ha prescribed for a normal gold block that should measure 200 by 500 metres. This confirms that the blue and purple blocks were parcelled out without the 2<sup>nd</sup> respondent’s input or approval.

Applying the law to these proved facts, I find as follows:

1. Goodluck has not shown a legal right which is being infringed or which it apprehends will be infringed because those two blocks (blue and purple) are not registered in its name.
2. As regards apprehension of irreparable harm, the 1<sup>st</sup> respondent (Panda) has not interfered with Goodluck’s rights simply because it does not possess such rights.
3. Goodluck’s rather belated claim that it has a *prima facie* right because it has been mining in the area for more than 15 years has no merit because that is not the case it brought before the court.

In any event, the temporary beacons observed were fresh, suggesting that Goodluck extended its claim towards Panda’s claim recently.

4. In weighing the prejudice to the applicant (Goodluck) will suffer if the interim interdict is not granted against the prejudice to Panda if it is, I find that there is greater possible prejudice to Panda.
5. Goodluck must restrict its operations within the boundary beacon positions marked by the Mine Surveyor Matabeleland North on 7 February 2018 during the ground visit.

In the circumstances, Goodluck has failed to establish the requirements for an interim interdict.

Accordingly, the application is dismissed with costs.

*Sengweni Legal Practice*, applicant's legal practitioners  
*Mathonsi Ncube Law Chambers*, 1<sup>st</sup> respondent's legal practitioners  
*Civil Division of the Attorney General's Office* 2<sup>nd</sup> & 3<sup>rd</sup> respondent's legal practitioners