RONALD MUGANGAVARI
Versus
THE STATE

HIGH COURT OF ZIMBABWE
MAWADZE J & WAMAMBO J
MASVINGO 22 MAY, 2019 & 25 NOVEMBER, 2020

Criminal Appeal

L. Mudisi, for the appellant
T. Chikwati, for the respondent

WAMAMBO J: The appellant appeared before a Regional Magistrate sitting at Gweru facing three counts. The first count is contempt of court as defined in section 182(1) (2) (e) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. The second and third counts are attempted murder as defined in section 189 as read with section 47 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. On the first count the learned Regional Magistrate found the appellant guilty and imposed a fine of $300 or in default of payment 3 months imprisonment. In counts 2 and 3 appellant was found guilty of the lesser offence of assault in contravention of section 89 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*].

Appellant in his notice and grounds of appeal raises issue with the conviction and sentence in count one. To that end I will concentrate on count one.

The background of the matter is rather long. During the proceedings Exhibit 4 among others was produced. It is a judgment by TAKUVA J sitting at Bulawayo High Court. The case is that of *Ronald Davison Mugangavari* v *Provincial Mining Director* (*Gweru and K and G Mining*

Syndicate) HB 260-17. TAKUVA J. summarised the background which as will become clearer in the course of this judgment is directly relevant to the issues to be decided upon.

The background of the matter as summarised by TAKUVA J which I will not hesitate to borrow and incorporate herein reads as follows;

"***TAKUVA J:*** *This matter arises from a long and protracted mining dispute going as far back as 2014. The parties have been suing each other left, right and centre, obtaining court orders some of which have been totally ignored.*

As I pointed, out this application is the latest series of the boring drama. The facts as established by the first respondent are that there is one mine with two names. More specifically, Clifton 15 Mine and Midway 21 Mine share the same position on the Master Plan. On the ground, both blocks share the same beacon positions and coordinates. They have the same hectarage of 6.79Ha. For clarity purposes, Midway 21 is a registered mine owned by the second respondent while Clifton 15 is registered and owned by the applicant. It was first registered on 20 February 2012. Midway 21 was first registered on 19 October 2006.

The first respondent sitting as the mining commissioner's court made a determination that aggrieved the applicant who in turn appealed to the Minister of Mines and Mining development. The Minister found merit in the appeal and set aside the first respondent's decision. The second respondent then filed an application for review under case number HC 2031/15. I granted the application for review in HB 131/17 on 1 June 2017. Dissatisfied, the applicant appealed to the Supreme Court under case number SC 380/17. This prompted the second respondent to file an application for leave to execute pending appeal under case number HC 1740/17. The application is pending."

The above provides the broader and more detailed background to the matter. In this case however the State outline reads as follows:-

> "*On 7 September, 2015 the High Court of Zimbabwe issued a provisional order against the accused person staying mining operations on Midway 21 where there was a mining dispute. The provisional order was served upon the appellant through the Sheriff of the High Court on 1 October, 2015. Appellant did not comply with the provisional order. In spite of a complaint about appellant's actions being registered with the Police, Zvishavane*

appellant continued mining operations at Midway 21. Despite a final ruling issued on 1 June, 2017 appellant persisted with his mining activities."

The grounds of appeal against conviction read as follows:-

1. *The court a quo erred by making a finding of fact that Clifton 15 Mine located in Clifton Farm and Midway Mine located in Koodvocate Estate refer to one and the same location, which is physically an impossibility.*

2. *The court erred by subsequently making a finding that operations at Clifton 15 Mine which mine was not mentioned in court order under case number HC 2205/15 constituted an offence of Contempt of Court.*

3. *The court a quo erred by making a finding that appellant committed an offence of contempt of Court on an order which was null and void ab initio under Case Number HC 2031/15.*

On the date of the hearing appellant's counsel pointed out that in his view the order by MOYO J under HC 2205/15 dated 2 September, 2015 is the root of the problem. He further argued that the order by TAKUVA J under HB 260/17 gives an incorrect summation of the facts.

State counsel firmly argued that the HC 2205/15 order given relates to a mine at the same place and on the same piece of land. The order stays mining operations. He further argued that if appellant is dissatisfied with the judgment by TAKUVA J they should appeal against the said judgment rather than take the law into their own hands.

I have read the judgment of the court *a quo* in detail. It spans 9 pages. The trial court summarised and analysed the witnesses' testimonies and also traversed the relevant law.

At page 11 the learned Trial Magistrate found that an order was issued on 7 September, 2015 and served on appellant in October 2015. A final order was issued on 14 June 2016 and served on appellant. Appellant was also served with the 1 June, 2017 judgment.

I will presently deal with the grounds of appeal.

The learned Trial Magistrate found that Midway 21 and Clifton 15 share the same position on the Master Plan. Effectively that the mine has two names. This was also the findings by TAKUVA J in the HB 260/17 judgment mentioned earlier. The findings by TAKUVA J are that on the ground Midway 21 and Clifton 15 are but one mine with two names. They share the same position on the Master Plan and on the ground and also share the same beacons and have the same hectarage of 6.79ha.

However these findings by TAKUVA J under HB 260/17 were certainly not of his creation. These were the findings of the Provincial Mining Director – Midlands.

These are laid out in full in HB 131/17 (HC 2031/15) at page 2 with the support of an official document from the relevant and determining authority. I find that the Trial Magistrate's finding that the mine in question is the same with two names was correct. The first ground of appeal is thus unmeritorious.

In dealing with the second ground it should be noted that the decided cases produced in evidence are interlinked and the parties similar in most of them. The second ground of appeal mentions that Clifton 15 Mine was not mentioned in the order under case number HC 2205/15.

The finding that Midway 21 mentioned in HC 2205/15 and Clifton 15 Mine are one and the same lays this ground to rest.

A mention of one clearly is a mention of the other.

The third ground of appeal was dealt with while dealing with the first ground. The findings and summation by TAKUVA J in HC 2031/15 are supported by an official document from the Provincial Mining Director, Midlands. There is no suggestion that the said official was wrong in his determination. *Mr Chikwati* was correct to say a party cannot ignore a court order because they are of the view that it was erroneously granted. Their course of action should be to have it corrected by pursuing proper legal channels. The order is extant and was granted by a court of competent jurisdiction.

Section 182(1) (2) (e) of the Criminal Law (Codification and Reform) Act, [*Chapter 9:23*] reads as follows:-

"***182. Contempt of court***

(1) Any person who, by any act or omission, implores the dignity reputation or authority of a court –

(a) intending to do so or

(b) realising that there is a real risk or possibility that his or her act or omission may have such an effect, shall be guilty of contempt of court and liable to a fine not exceeding level six or imprisonment for a period not exceeding one year or both

(2) Without limiting subsection (1)(a) person may impair the dignity reputation or authority of a court by doing any of the following acts

(a) ……
(b) ……
(c) ……
(d) ……
(e) *knowingly contravening or failing to comply with any order of a court which is given during or in respect of judicial proceeding and with which it is his or her duty to comply*."

The learned Trial Magistrate considered the offence as given above and was satisfied that appellant was guilty. That an order was granted staying mining operations at the Mine at the centre of the dispute has been proven. That appellant was served with such order also forms part of the record. That complaints about appellant's persistent conduct of flouting the order of court were made and brought to his attention is also part of the record.

The appeal against sentence was not persisted with *Mr Chikwati* for the State submitted that he was of the view that the sentence imposed was lenient but because the State had not appealed against it they would adhere to it. To that *Mr Mudisi* conceded that the sentence was not much. I take it the appeal against sentence was not persisted with.

To that end the appeal against both conviction and sentence are hereby dismissed.

MAWADZE J. agrees ……..

Mutendi, Mudisi and Shumba, appellant's legal practitioners
National Prosecuting Authority, respondent's legal practitioners