

ARRASKER INVESTMENT (PVT) LTD

Versus

MARKO MOSES SIBANDA

AND

PROVINCIAL MINING DIRECTOR – MAT SOUTH PROVINCE

IN THE HIGH COURT OF ZIMBABWE
NDUNA J
BULAWAYO 20 NOVEMBER 2024

Chamber application for stay of mining activities

Mr B Mathonsi for the Applicant

Mr L Mpofo for the 1st Respondent

No appearance for the 2nd Respondent

NDUNA J: This is an application for an interdict. Applicant applies for a stay of mining activities taking place at Britwell Mine 40502, which overlaps into Applicant's boundary for Motapa Mining Lease 22, by the 1st Respondent pending the finalisation of the matter under HCBC 599/24. He further avers that an order has been issued by the 2nd Respondent directing the 1st Respondent to vacate the mining location. However, the 1st Respondent has continued in occupation of the mining location. A dispute has arisen between the parties as to whether the 1st Respondent has complied with the determination by the 2nd Respondent or not. The applicant in this matter avers that the 1st Respondent continues to mine in his mine, hence, the need to have him stopped pending some other litigation which is going on between the parties.

The 1st Respondent avers that he is not mining in the area held by the applicant. He further states that there is no need for this application.

The circumstances surrounding the action is that the applicant went to the Provincial Mining Director with a case in which the first applicant was alleging that the 1st Respondent had entered his mining claim. The Provincial Mining Director had made a ruling to the effect that his findings were in agreement with the assertion. He therefore made a ruling that the 1st Respondent was to desist from such conduct and was to abide by the appropriate mining boundaries. The ruling of the Provincial Mining Director was to the following effect;

“Findings

1. Matopo Mining Lease 22 was registered on 12th November 1995
2. Britwell Mine (40502) was registered on the 9th November 2001.
3. Britwell Mine partially over pegs Motapa Mining Lease 22 boundary

Recommendation/Determination

Britwell Mine (Registration number 405020 is the later pegger and overlaps onto Matopo Mining Lease 22. Marko Moses Sibanda should immediately stop all operating on the overlaps area and adjust the boundaries of Britwell Mine to avoid the overlap”

There is a finding that the 1st Respondent had gone over the border and was by then operating within the applicant’s mine. Following that finding the 1st Respondent claims that he has since gone back and is now mining in his own mine. This is disputed by the applicant who still alleges that the 1st Respondent is still over-mining. However, the view of the applicant is that the hearing under case number HCBC 599/24 is going to rectify that, hence, his need to have the 1st Respondent stopped from mining in the area which he is currently stuck in. This, the applicant alleges will preserve the gold in the spaces under dispute and thereafter the dispute has been resolved; the rightful owner will then proceed to mine it. He further alleges that the dispute is going to be finalised when the matter HCBC 599/24 is to be dealt with. All this is disputed by the 1st Respondent who asserts that he is rightly carrying out his mining and has no reason to stop.

It is the applicant’s assertion that the 1st Respondent has appeared to have moved off the area but has in actual fact continued to mine in the prohibited area in what he has termed an “overlap”.

What is clear here is that the two miners are neighbours to each other. There is a boundary dispute between them. The applicant wants any mining activity in the area which he asserts belongs to him to be stopped. He is sure that the action between the parties in case number HCBC 599/24 will make it clearer as to whom the mine belongs to. He further avers that the case in terms of which the resolution of the matter will be resolved is case number

HCBC 599/24. This case is now awaiting to be set for trial. He has engaged the 2nd Respondent in a bid to make him move in and resolve the anomalous situation prevailing at the mine without success. The 2nd Respondent has now gotten out of the way and is now speaking of an appeal against his decision. It is not what the applicant is in need of. The applicant needed him to attend to the mine and see if the 1st Respondent was not in occupation; that is not mining therefrom. This is what the 2nd Respondent had ordered. He had gone to the mine and discovered that the 1st Respondent had erred and had gone over the boundary. He had issued out his orders and all what the applicant was claiming was compliance with the orders. It was important that the 2nd Respondent should have gone to the mine and establishes the correct position; as to whether his orders were being carried out.

In its submissions, the Applicant argued that the application was to protect its interests in the sense that should judgment be granted in its favour, it would have something to execute on; hence the need to have stoppage of activity on the mine where there is the dispute. It is not that the applicant is praying for a caveat on the entire mine; but that which extends only to the area which there is a dispute of ownership. It is proper that the court intervenes and issues out an order being prayed for by the applicant.

It is accordingly ordered as follows;

IT IS ORDERED THAT:

1. All mining activity being carried out by the 1st Respondent at Britwell Mine 40502, which overlaps into Applicant's boundary for Motapa Mining Lease 22, be and is hereby stayed pending the finalisation of the matter under HCBC 599|24.
2. The 1st Respondent to bear the costs of the application.

Webb Low & Barry, applicant's legal practitioners
Malinga & Mpofu legal Practitioners, 1st respondent's legal practitioners