SHAMVA MINING COMPANY (PRIVATE) LIMITED
versus
OCCA MINING (PRIVATE) LIMITED
and
THE MINING COMMISSIONER-MASHONALAND CENTRAL N.O.
and
THE SECRETARY FOR MINES AND MINING DEVELOPMENT N.O.
and
THE MINISTER OF MINES AND MINING DEVELOPMENT N.O.

HIGH COURT OF ZIMBABWE
MUSITHU J
HARARE, 10 October 2024 and 15 April 2025

Opposed application- *Declaratur*

Adv L Uriri & Mr T. Sena, for the applicant
Adv S.M. Hashiti & Adv K. Kachambwa, for the 1st respondent

MUSITHU J: This application for a *declaratur* was made in terms of s 14 of the High Court Act [*Chapter 7:06*], and the applicant petitioned the court to declare null and void, a certificate of registration in respect of nine gold reefs that were registered in the name of the first respondent. The *declaratur* was sought on the grounds that the claim was registered on ground that was not open to prospecting and pegging and that it was registered in violation of the prior pegger principle. The applicant and the first respondent are both mining entities registered in accordance with the laws of Zimbabwe. The second to fourth respondents are regulatory authorities of mining operations in Zimbabwe.

Background to the Applicant's Case

The applicant is the holder of mining rights and title in terms of a mining lease over a piece of land measuring about 540 hectares in extent located in the Shamva District of Mashonaland Central, known as Mining Lease number 32 (the Mining Lease). The Mining Lease was issued on 13 August 2015, giving the applicant exclusive mining rights on that piece of land. The applicant

claimed that its flagship operations had been carried out at this location since the 1930s when the mine was first opened.

Sometime in 2018, the applicant discovered that the first respondent had encroached into its Mining Lease. It reported the dispute to the Provincial Mining Director (the PMD) for Mashonaland Central through letters dated 27 October 2018, 24 June 2020 and 26 August 2021. The first respondent was informed of the dispute but declined to submit to the jurisdiction of the PMD to allow for the resolution of the dispute by that office. The PMD notified the first respondent of his intention to cancel its mining claim through a letter of 10 November 2021. The reasons for that decision were that: the first respondent's claim was registered within the Mining Lease of the applicant; that the applicant was the prior pegger, and that the first respondent's claim was registered on ground that was not open to pegging and prospecting.

According to the applicant, on 26 November 2021 the first respondent filed an urgent chamber application under HC 6810/21 against the PMD and Freda Rebecca Gold Mine (Freda Rebecca). In that application, the first respondent sought to interdict the PMD from implementing his decision to cancel its claim. Freda Rebecca, a sister company of the applicant, was erroneously cited as the first respondent in that matter, as the first respondent herein was of the mistaken view that it was the one that had filed the complaint to the PMD. On 17 December 2021, MANYANGADZE J granted a provisional order interdicting the PMD from implementing his decision to cancel the first respondent's claim pending the return date. Paragraph 2 of the interim order directed the Mining Commissioner to submit a report in terms of s 341 of the Mines and Minerals Act (the Act), pending the return date.

On 2 February 2022, the Ministry of Mines and Mining Development invited the first respondent, Freda Rebecca and the applicant for a ground verification survey. A survey report was subsequently filed with the court on 26 April 2022. The report revealed that: the Mining Lease was gazetted on 28 November 2014 and registered on 13 August 2015 after the applicant had applied for the conversion of its claims into a single mining lease; the first respondent's claim was registered on 10 October 2016 after the first respondent applied for registration on 3 August 2016; that the first respondent's claim partially overlapped the Mining Lease; the first respondent's claim was registered within a Mr K. Kadyauta's farm boundaries; and two of the identified Mining Lease ground beacons were within Mr K. Kadyauta's farm boundaries.

Freda Rebecca opposed the confirmation of the provisional order. At the hearing of the matter before DEME J, the first respondent withdrew its claim against Freda Rebecca. The court proceeded to confirm the final order for an interdict against the PMD who had not filed opposing papers. The PMD was therefore interdicted from proceedings with the cancellation of the first respondent's claim. The applicant contends that despite the order against the PMD, the question of the invalidity and the irregularity of the first respondent's claim was still open as the court did not interrogate it. The applicant further averred that the first respondent's claim was registered on ground that was not open to prospecting and pegging, and to that extent it was irregular and invalid. It should not have been registered in the first place.

The applicant further averred that it was the prior pegger and for that reason, the rights of the first respondent as the subsequent pegger were subordinate to the applicant's rights. Further, in terms of the law, the holder of a mining lease had the exclusive rights of mining any ore or minerals within the vertical limits of the area covered by the Mining Lease. The applicant therefore had exclusive rights to conduct mining activities on the entire Mining Lease.

The applicant further submitted that the first respondent must be penalized with an order of costs on the legal practitioner and client scale. This was because after the proceedings in HC 6810/21, and the production of the survey report, it was clear that the first respondent's claim was irregular and liable to cancellation.

The First Respondent's Case

The opposing affidavit was deposed to by Kenneth Kadyauta in his capacity as the Managing Director of the first respondent. The affidavit raised three preliminary points which were that: the impeachment of the first respondent's title was barred; the applicant's claim had prescribed and that the application before the court was essentially one for review disguised as a *declaratur*. I shall relate to these later in the judgment.

As regards the merits of the case, the deponent narrated the history of the parties' competing rights as follows. On 4 December 2001, the deponent was allocated 18.3 hectares of land at Rutherdale Farm (the farm) under the Land Reform and Resettlement Programe. He took up occupation of the farm following the allocation. The deponent claimed to be customarily married to three wives. He built the first homestead for his first wife at the farm in 2001. The homestead for the second wife was built in 2007.

The farm was being utilized for either crop farming or grazing until they discovered gold deposits. The first respondent was formed for the benefit of the deponent and his family, and for the purposes of holding a certificate of registered title. At the time he was offered the farm in 2001, the area was not registered by anyone as a mining location. There were no mining activities taking place at the farm. Mining Lease number 32 was only issued on 13 August 2015. The transfer of the Mining Lease to Goldfields of Shamva (Private) Limited was approved and registered on 25 November 2015. The applicant acquired a certificate of registered title on 10 October 2016.

The deponent averred that the applicant could not have acquired mining rights over his farm, and it could not be regarded as a prior pegger because: the farm area was not open for prospecting and registration of any mineral rights. No one could have pegged any area within 450 metres of the principal homestead or within 90 metres of any building or permanent improvement without his written consent; the farm was also not open for prospecting and registration of mineral rights without his consent as the occupier because it was less than 100 hectares in extent. The deponent never gave his written consent to the applicant. The farm area was therefore excluded from the Mining Lease, and it could only have been included with his written consent.

The first respondent denied encroaching into the applicant's Mining Lease. It claimed that it was the applicant who instructed the Mining Commissioner to unlawfully cancel the first respondent's certificate of registration. The first respondent also dismissed the survey report as being inaccurate and inconclusive. It claimed that it disputed the beacons pointed out by the applicant as these were old and disused. They had been erected from as far back as 17 May 1968. The deponent also claimed that the report did not consider the history of the farm, and the rights conferred upon him by law.

The first respondent insisted that the 18,3 hectares of farmland was never part of the Mining Lease when that lease was issued on 13 August 2015. That land was not open to prospecting. There was no prior pegger when the first respondent was issued with a certificate of registration over the area on 10 October 2016. The first respondent also averred that s 153 of the Act had no application in this matter. The section envisaged a situation where a person was served with notice of the intended mining lease and was informed of the procedural rights to object to that lease, and they chose not to exercise such rights. In such a scenario, a person was barred from raising such issues again after the mining lease was issued having been given the opportunity and refused to use it.

SUBMISSIONS AND ANALYSIS OF THE PRELIMINARY POINTS

Whether the impeachment of the first respondent's title was barred

Mr *Kachambwa* for the first respondent, submitted that the impeachment of the first respondent's title was barred under s 58 of the Act. Counsel further submitted that s 58 imposed a two year bar against the impeachment of title, and it operated in two instances. The first was where a claim was illegally pegged and the second was where there was no compliance with the Act. It was further submitted that contrary to the applicant's averment that s 58 did not apply where the pegging of a claim was a nullity, the authorities confirmed that the purpose of that law was to validate that which was invalid. Reliance was placed on the case of *Buchwa Iron Mining Company (Pvt) Ltd v Mumbire & Ors*[1], where the court endorsed this interpretation as being reflective of the correct position of the law.

It was further contended that s 58 dictated the period within which one had to exercise their rights to challenge the validity of title in a claim. In the present matter, the applicant's claim had been made some six years out of time.

In his response, Mr *Uriri* for the applicant, dismissed the first respondent's reliance on the *Buchwa Iron Mining Company*, arguing that the High Court judgment was set aside by the Supreme Court in 2013. Counsel submitted that the common law was settled on the principle of the law that you cannot put something on nothing. A nullity could not be condoned or given effect to. It was further submitted that s 58 could not be applied to protect the rights of a claim that was pegged in an area not open for prospecting and pegging. Once it was established that the applicant had prior rights, the court could not resort to s 58 of the Act.

In motivating the applicant's argument, reliance was placed on the case of *Jin Yang Africa v Estate Late George Makurira (represented by Angela Chandaengerwa) & 4 Ors*[2], where the court held that a prior pegger had superior rights and s 177 of the Act protected such a pegger. The court was not persuaded by the argument that s 58 of the Act could be applied to protect the rights of a claim that was pegged in an area that was not open for pegging. The court reasoned that once it

[1] HH 152/12
[2] HB 18/22

was established that the applicant had prior rights, then the court should not resort to s 58 of the Act.

The court was also urged to have regard to the fact that in terms of s 50(1) of the Act, the second respondent could, notwithstanding the provisions of s 58 of the Act, at any time cancel a certificate of registration issued on the grounds that it was registered on a ground not open to prospecting and pegging as provided for in the Act.

It was further submitted that at any rate, the applicant disputed the first respondent's title through a letter of 27 October 2018 directed to the Provincial Mining Director. That complaint had been made before the period of two years lapsed.

There appears to be an apparent conflict in decisions of this court concerning the significance of s 58 of the Act, and whether it is reconcilable with s 177 of the same Act. Section 58 of the Act states as follows:

> **"58 Impeachment of title, when barred**
> When a mining location or a secondary reef in a mining location has been registered for a period of two years it shall not be competent for any person to dispute the title in respect of such location or reef on the ground that the pegging of such location or reef was invalid or illegal or that provisions of this Act were not complied with prior to the issue of the certificate of registration."

In the *Buchwa Iron Mining Company* case, this court per KUDYA J (as he was then) had this to say about s 58:

> "Mr *Uriri,* however, submitted that the first respondent's title was protected by s 58 of the Act as his rights had been registered for more than two years. The precursor to s 58 of the present Act was s 55 in the Mines and Minerals Act [*Chapter 203*]. An interpretation of that section was rendered by DAVIES J in *Robinson* v *Trojan Nickel Mine Ltd* 1969 (2) RLR 571 (GD). In that case a certificate of registration was issued by the Mining Commissioner on the false representations of the predecessor of Trojan Nickel Mine that it had the permission of the predecessor of Mrs Robinson to peg mining claims within 50 feet of her cultivated lands but not within 500 yards of her homestead. At the time of registration the registered area was not open to prospecting and could not be registered. Mrs Robinson's application for a declaration of invalidity of the registered mining claim was dismissed on the ground that despite the allegation of fraud the provisions of s 55 protected the defendant's title from attack as it had been registered for more than two years.
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> It seems to me that like s 55 before it, s 58 protects title from attack two years after registration, firstly, on the ground that such title was acquired through invalid or illegal pegging; and secondly, on the ground that before the certificate of registration was issued, some provisions of the Act were not followed. The declaration of invalidity sought by the applicant is based, amongst others, on the ground that pegging in Reserved Area 854 was illegal. Such a ground is hit by s 58 unless the challenge is raised within two years from the date of registration. The other ground on which the declaration is sought was that the first respondent prospected in Reserved Area 854 in contravention of s 31 (1) (a) and s 35 (1) of the Act. In other words, the ground for invalidity was that the first

respondent did not comply with the provisions of the Act. Again, this submission flounders on the s 58 rock if it is raised after two years of such registration.

Mr *Uriri* submitted that the decision of the court in *Buchwa Iron Mining Company* was overturned by the Supreme Court on appeal sometime in 2013. An undertaking was made to provide the citation of the Supreme Court judgment that overturned the High Court judgment. At the time of preparing this judgment, the Supreme Court authority had not been availed to me. Be that as it may, and as has been noted already, in the *Jin Yang Africa v Estate Late George Makurira* matter, the court reached a different conclusion altogether. The court held that s 58 of the Act was not available to protect the rights of a claim that was pegged in an area not open for pegging.

In the case of *CRG Quarries (Private) Limited v The Provincial Mining Director and Zimbabwe International Quarries (Private) Limited*[3], I had occasion to deal with a similar issue where the apparent conflict between s 58 and s 177 manifested itself. I maintained the view that although from a reading of s 58, one's title in a mining location could not be impeached on the basis that the pegging of that location was done illegally, or that a provision of the law was not complied with before a certificate of registration was issued, that provision was not without its own limitations. How then does one reconcile s 58 with s 177 of the same Act? This is because s 177 (3) seeks to resolve disputes concerning mining rights on the bases of priority of such mining rights. Section 177 provides as follows:

> **"177 Priority of mining rights**
> (1) For the purposes of this section—
> "pegger" means the person in whose name or on whose behalf a mining location, reef or deposit was registered and each and every successor in title to the rights acquired by such person.
> (2) For the purposes of subsection (3)—
> "acquisition of title" shall be taken to mean the due performance of the first physical act required to be done under this Act, or any previous law governing mining rights at the time when the act was performed, in order to acquire any exclusive rights in respect of any mining location, reef or deposit.
> (3) Priority of acquisition of title to any mining location, reef or deposit, if such title has been duly maintained, shall in every case determine the rights as between the various peggers of mining locations, reefs or deposits as aforesaid and in all cases of dispute the rule shall be followed that, in the event of the rights of any subsequent pegger conflicting with the rights of a prior pegger, then, to the extent to which such rights conflict, the rights of any subsequent pegger shall be subordinated to those of the prior pegger, and all certificates of registration shall be deemed to be issued subject to the above conditions."

The first respondent's contention was that its rights were protected by s 58 of the Act because its title had not been impeached for a period of more than two years. The applicant on the

[3] HH 98/24

other had argued that s 58 was inapplicable based on the authority of the *Jin Yang Africa* case. It was submitted that the applicable provision was s 177 because it sought to resolve disputes between peggers by the application of the priority of mining right principle.

A closer reading of the two sections suggests to me that they both seek to preserve the title of a pegger albeit in different ways. In the case of s 58, one simply needs to establish that the mining location has been registered for a period of two years without any legal challenge. In the case of s 177(3), the rights of a prior pegger take precedent ahead of those of a subsequent pegger in the event of the rights of the subsequent pegger conflicting with those of the prior pegger. The apparent conflict that arises between s 58 and s 177 is that while a prior pegger can seek refuge under s 177(3), a subsequent pegger can also invoke s 58 if no claim was made within two years of registration of the mining location. This is the scenario in the present dispute.

My view is that an apparent conflict between provisions of the same statute must be resolved through the rule of harmonious construction. The basis of this rule is that the legislature could not have intended to contradict itself. The statute must thus be read harmoniously as one to give effect to the intention of the law maker. Further, a provision of a statute should be given a meaning which is consistent with the context in which it is found. See *Tapedza & Ors* v *ZERA & Ors*[4] and *Kunaka* v *Master of High Court & Ano*[5].

Section 58 falls under Part IV of the Act, which deals with the acquisition and registration of mining rights. Section 177 on the other hand deals with rights of claim holders and landowners. From my reading of the law, the invalid or illegal pegging alluded to in s 58 refers to the original process of pegging or setting out of boundaries by the mining authority at the time that mining rights are acquired. The mining authority is estopped from denying the validity of the process that led to the acquisition of mining rights when it was the same authority that granted those mining rights to the claim holder. I hold this view because of the wording of s 50 of the Act which states that:

> "**50 Cancellation of certificate of registration**
> (1) Subject to subsection (2), the mining commissioner may, notwithstanding subsection (1) of section *fifty eight*, at any time cancel a certificate of registration issued in respect of a block or site if he is satisfied that—

[4] SC 30/20 at p 4
[5] HH 293/23 at p 11

> (a) at the time when such block or site was pegged it was situated on ground reserved against prospecting and pegging under section *thirty-one* or *thirty-five* or on ground not open to pegging in terms of subsection (3) of section *two hundred and fifty-eight*; or
> (b) provisions of this Act relating to the method of pegging a block or site were not substantially complied with in respect of such block or site."

Section 50 permits the mining commissioner to cancel the certificate of registration if, at the time that a block or site was pegged, it was situated on ground that was not reserved for pegging or prospecting or on ground that was not open to pegging in terms of the other provisions of the Act cited therein. The fact that it is the mining commissioner who can invoke s 50 as read with s 58 speaks to the significance of those provisions. As already noted, both s 50 and s 58 fall under the part of the Act that deals with the acquisition and registration of title. That part of the Act relates to the process in which title was acquired.

In my view, s 58 was intended to deal with a conflict between the regulator and the holder of mining rights. This explains why s 50 permits the mining commissioner to cancel a certificate of registration. It is the mining commissioner who is presumed to know the exact locations of the mining claims and is presumed to have carried out due diligence before issuing out a mining certificate. It is the mining commissioner, who as the regulator, enforces compliance with the mining laws. At any rate, the only party that can legitimately impeach a miner's title in the manner envisaged under s 58 is the mining commissioner as the regulator. It is the regulator that must enforce the provisions of the law.

Disputes involving claimholders must be resolved under Part X, which, as already noted, applies to rights of claimholders. It could not have been the intention of the legislator to resolve the question of title or boundary disputes based on a two-year prescriptive period, thus denying legitimate claims by aggrieved peggers. One can conceive of the very complex nature of mining operations and the size of mining claims which run into thousands of hectares in extent. It could take a claim holder a considerable period of time to discover an encroachment into their claim by a third party.

It is for the foregoing reasons that I determine that there is no merit in the first respondent's preliminary objection that the applicant's claim was time barred by dint of s 58 of the Act.

Whether the applicant's claim had prescribed in terms of the Prescription Act

The second preliminary point was that the applicant's claim, being one for a *declaratur* and for the cancellation of the certificate of registration was a debt in terms of the Prescription Act

[*Chapter 8:11*]. The applicant was not only seeking a *declaratur*, but also consequential relief in the form of the cancellation of the certificate of registration which was a claim for a debt under the Prescription Act. Reference was also made to the case of *Elfrolou (Pvt) Ltd v Muringani*[6], where the court held that a declaratory order coupled with consequential relief was a debt in terms of the Prescription Act. It was also submitted that the word debt as defined in the Prescription Act was given a wider meaning in *John Conradie Trust v The Federation of Kushanda Pre-Schools Trust & 3 Ors*[7], where the court held that the phrase *"anything which may be sued for"* in the definition of debt under the said Act, gave that term a very wide meaning synonymous with a cause of action.

Mr *Kachambwa* submitted that the applicant became aware of the debt and the facts upon which the debt was based on or about 27 October 2018, going by its letter of the said date. That letter did not suffice to interrupt the running of prescription, as prescription could only be interrupted by the service of process in terms of s 19 (2) of the Prescription Act. It was further submitted that the attempt to rely on the PMD's report of 25 March 2022 did not help the applicant's cause. This was because the litigation referred to in that report, (HC 6810/21) had not been initiated by the applicant. In any case, that matter was decided in favour of the first respondent herein. The report by the PMD was provided after the applicant's claim had prescribed.

In response, the applicant submitted in its heads of argument that a claim for a *declaratur* was not subject to prescription. The court was referred to the case of *Ndlovu v Ndlovu & Ano*[8], in which the court held that a declaratory order is a remedy to secure the public interest of certainty or correct legal position, and such a remedy did not prescribe. It was submitted in the alternative that the running of prescription was interrupted by the institution of proceedings before a quasi-judicial body. In motivating this alternative argument, the applicant submitted the following: it reported a dispute of encroachment to the second respondent in 2018; in terms of the Act, the proceedings held before the second, third and fourth respondents were quasi-judicial proceedings and therefore legal proceedings. These proceedings commenced in 2018 when a dispute was reported by the applicant. The said proceedings terminated on 21 June 2021 when the first respondent refused to submit to the jurisdiction of the second respondent. It was submitted that

[6] 2013 (1) ZLR 300 (H)
[7] SC 12/17 at p 5
[8] 2013 (1) ZLR 110 (H) at p 112

even if it was argued that the cause of action arose in 2016, as suggested by the first respondent, the running of prescription was interrupted by these intervening proceedings.

It was further submitted for the applicant that in terms of s 7(2) of the Prescription Act, the running of prescription was interrupted by the service on the possessor of the thing of any process whereby any person claimed ownership in that thing. Section 7(1) of the Prescription Act defined process to include a petition. It was submitted that the **Black's Law Dictionary, 11th Edition**, defined the word petition as *"a formal written request presented to a court or other official body."* Since the applicant had petitioned the second respondent in 2018 to have the encroachment dispute resolved, prescription was interrupted by the institution of those proceedings.

The second preliminary issue raises two critical legal issues, which require proper ventilation. The first is whether the applicant's claim, being one for a *declaratur* and consequential relief is a debt which is susceptible to prescription in terms of s 15(d) of the Prescription Act. If the court finds that a claim for a *declaratur* is a debt for purposes of the Prescription Act, then the court must determine whether the running of prescription was interrupted by what the applicant termed the institution of legal proceedings before the second respondent. I now turn to deal with these seriatim.

Whether a claim for a declaratur and consequential is a debt and subject to the Prescription Act

As highlighted above, there seems to be two schools of thought in this jurisdiction on whether a claim for declaratory relief is subject to prescription as contemplated by the Prescription Act. In the *Ndlovu* matter, the court determined that a claim for a *declaratur* did not prescribe. In the recent judgment of *Nguluwe & Anor v Dewa & 4 Ors*[9], the court determined that a claim for a *declaratur* was susceptible to prescription. In resolving this issue, the court must consider the status of a *declaratur* in the context of the word "debt" as defined in the Prescription Act, to determine whether it is susceptible to prescription or not. The word "debt" is defined in the Prescription Act as follows:

> ""debt", without limiting the meaning of the term, <u>includes anything which may be sued for or claimed by reason of an obligation arising from statute, contract, delict or otherwise</u>." (Underlining mine for emphasis).

[9] HH 387/23

The meaning attributed to the word "debt" is so wide and generous as to cater for all conceivable claims that one can visualize under the law. This is because the definition caters for claims that may arise out of statute, contract, delict "or otherwise". Section 3(2) of the said Act excludes from its scope any right or obligation of any person in relation to any other which is governed by customary law. In *John Conradie Trust v The Federation of Kushanda Pre-Schools Trust & 3 Ors*[10], the Supreme Court explained the term "debt" as follows:

> "The phrase, "*anything which may be sued for*" gives the term 'debt' a very wide meaning synonymous with cause of action as observed by GREENLAND J in *Denton v Director of Customs & Excise* 1989 (3) ZLR 41 at 48. In that case the learned judge had occasion to remark that:
>
> > "Note that the word "debt "used in this Act (Prescription Act) and the words "cause thereof" used in s 178 (4) of the Customs and Excise Act mean the same thing. This is because of the wide meaning of "debt" set out in the former"

I associate myself with the views expressed in the dictum above that the words *"anything which maybe sued for"* are so wide in their scope as to cover claims for declaratory orders and consequential relief, if the underlying obligation is not one arising from a statute, contract or delict. In the present matter, the first respondent's contention was that the applicant's claim was premised on the fact that the first respondent had a statutory obligation under s 177(3) as read with s 31(1)(b) of the Act not to prospect and peg on ground that was not open to prospecting or pegging. The *declaratur* was therefore sought by reason of an obligation arising from statute. Whichever way one looks at it, my view is that even without specific mention of the words "statute, delict or contract", the applicant's claim would still fall under the ambit of the words *"anything that maybe sued for"*.

In arriving at its conclusion in the *Ndlovu* matter, the court appeared to adopt a restrictive interpretation of the words *"by reason of an obligation"* in concluding that a *declaratur* is a remedy to secure the public interest of certainty or correct legal position. The court did not explain the significance of the words *"anything which may be sued for"* or the words *"otherwise"*, after the specific reference statute, contract and delict. The court did not go further to explain how and why a claim for a *declaratur*, would still fall outside the ambit of *"anything which may be sued for"* or the words *"otherwise"* in view of the wider meaning of those words even though according to the court, a *declaratur* sought to secure the public interest of certainty or correct legal position.

[10] SC 12/17 at pages 5-6 of the judgment

I find the approach in the *John Conradie Trust* case more instructive and reflective of the correct position of the law. The applicant's claim arose by reason of an obligation imposed by the Act. The applicant averred that the provisions of the Act were violated by the first respondent hence its petition to the second respondent. If a *declaratur* can be deployed as an instrument to assert rights arising from statute, contract or delict, then I find no reason why such a claim can be excluded from the wide and generous definition of the word *"debt"* which includes *"anything which may be sued for"*. In the absence of any persuasive authority to the contrary, I am persuaded to align myself with the position of the law that deems a claim for declaratory relief to be a debt for purposes of the Prescription Act. I therefore conclude that the applicant's claim for a *declaratur* and consequential relief was a debt for purposes of the Prescription Act.

Whether the running of prescription was interrupted

Having determined that the applicant's claim was one for a debt as contemplated by s 2 of the Prescription Act, the next issue is to determine whether the running of prescription was interrupted by the intervening proceedings as submitted on behalf of the applicant. In its heads of argument, the first respondent submitted that the applicant had three years from the date of registration of the first respondent's certificate of registration to seek the cancellation of such registration. The first respondent's certificate of registration was issued on 10 October 2016. Three years prescribed on 10 October 2019. The present proceedings were only instituted on 18 July 2023.

The first respondent further contended that at any rate, on 22 March 2018, the applicant had full knowledge of the first respondent's certificate of registration. This is because in its letter of 27 October 2018 addressed to the PMD, the applicant had on 22 March 2018 discovered that someone had officially pegged within the lease area. The three years to challenge the first respondent's title had therefore prescribed on 22 March 2021.

As already highlighted above, the applicant's alternative argument was that if the court found that its claim was one for a debt as defined under the Prescription Act, the running of prescription was interrupted by the institution of proceedings before the second respondent. These proceedings were only terminated in June 2021 when the first respondent declined to submit to the jurisdiction of the second respondent.

Section 19(1) of the Prescription Act deals with the judicial interruption of prescription. It states as follows:

> "**19 Judicial interruption of prescription**
> (1) In this section—
> "process" includes—
> (a) a petition;
> (b) a notice of motion;
> (c) a rule *nisi*;
> (d) a pleading in reconvention;
> (e) a third party notice referred to in any rule of court;
> (f) any document whereby legal proceedings are commenced.
> (2) The running of prescription shall, subject to subsection (3), be interrupted by the service on the debtor of any process whereby the creditor claims payment of the debt."

From a reading of s 19(1), it is clear to me that the word *"process"* as it relates to paragraphs (a) to (e) is specific to pleadings before a court of law. Para (f) refers to *"any document whereby legal proceedings are commenced"*. A letter of complaint, such as the one written by the applicant to the PMD dated 27 October 2018, cannot in my view be referred to as *"any document whereby legal proceedings are commenced."* This is because the Act itself prescribes the way proceedings must commence before the Mining Commissioner's Court. Section 347(1) and (2) of the Act states as follows:

> "**347 Summons and commencement of proceedings before mining commissioner**
> (1) Every proceeding in a mining commissioner's court shall be commenced by a summons which shall as nearly as material be in the prescribed form.
> (2) Every such summons shall be issued by such mining commissioner upon the application of any complainant, and shall be filled up according to the nature of his case so as to show the substance of the complaint, and shall require the defendant to appear before the mining commissioner's court on a day and at a place to be named in the summons." (Underlining for emphasis)

From a reading of the above provision, it follows that judicial interruption of prescription could only have occurred in the present matter if legal proceedings were commenced by *"any document"* in the manner envisaged by para (f) of s 19(1) of the Prescription Act. Any proceedings that were commenced in a manner that did not accord with the provisions of s 347 of the Act for purposes of para (f) of the Prescription Act would not constitute judicial interruption of prescription. No proceedings were commenced before the Mining Commissioner's Court following the first respondent's refusal to submit to the jurisdiction of that Court as required by s 345 of the Act. This is because the Mining Commissioner did not issue any summons as required by s 347(2) of the Act. The 27 October 2018 petition by the applicant did not therefore commence

any proceedings if the Mining Commissioner did not issue the said summons, and consequently did not interrupt the running of prescription.

There is also another legal hurdle to the applicant's submission that prescription was interrupted by its petition of 27 October 2018. Section 19(3) of the Prescription Act states that:

> "(3) Unless the debtor acknowledges liability, the interruption of prescription in terms of subsection (2) shall lapse and the running of prescription shall not be deemed to have been interrupted, if the creditor—
> (a) does not successfully prosecute his claim under the process in question to final judgment; or
> (b) successfully prosecutes his claim under the process in question to final judgment, but abandons the judgment or the judgment is set aside."

The commencement of proceedings alone does not conclusively interrupt the running of prescription. In terms of s 19(3) above, the person claiming that there was judicial interruption of prescription must go a step further and ensure that such claim is prosecuted to final judgment. In *casu*, no proceedings were commenced in terms of s 347 of the Act and consequently the running of prescription was not interrupted.

For the foregoing reasons, the court determines that the applicant's claim had prescribed, it being a debt for purposes of s 2 as read with sections 15 and 19 of the Prescription Act. There is therefore merit in the first respondent's preliminary objection that the applicant's claim had prescribed. Having reached that conclusion, it is unnecessary for the court to traverse the remaining preliminary points and the merits of the case.

COSTS OF SUIT

The general rule is that costs follow the event. I find no reason to depart from the general rule and award costs to the first respondent as the successful party.

Resultantly it is ordered that:

1. The application is dismissed.
2. The applicant shall bear the first respondent's costs of suit.

ChimukaMafunga Commercial Attorneys, legal practitioners for the applicant
Madzima Chidyausike & Museta, legal practitioners for the 1st respondent