KUDZANAI TARUVINGA
and
ROSE GOLD SECURITY COMPANY (PRIVATE) LIMITED
and
GIVEMORE PATIKOLO
and
THULANI MAQEDA
and
ALEX ROBSON CHIPANI
and
GERALD SIBANDA
and
OBEY MUSANIWA
versus
THE COMMISSIONER – GENERAL OF POLICE, ZIMBABWE
and
TAWANDA SHOKO
and
MORRIS MANYANI
and
NYARAI MUGOMBI
and
NOISE NGWENYA
and
NATHAN RUSIKE
and
THULANI TARUVINGA
and
WALLACE NDLOVU

HIGH COURT OF ZIMBABWE
MAMBARA J
HARARE; 22, 23, & 27 May 2025

Urgent Chamber Application

S. Kuchena, for the applicants
C. Chipo, for the 1st and 2nd respondents
R Mabwe, for 3d – 7th respondents

MAMBARA J: This is an urgent chamber application filed on 20 May 2025. The applicants – Kudzanai Taruvinga and others – seek a spoliation order, an interdict, and a declaratory order in relation to the property and operations of Progress Mine in Filabusi,

Matabeleland South. The first applicant, Taruvinga, avers that he and his co-applicants were in peaceful and undisturbed possession of Progress Mine until they were unlawfully dispossessed by the respondents. The respondents include the Commissioner-General of the Zimbabwe Republic Police as first respondent, the Officer-in-Charge of Filabusi Police and other individuals alleged to have participated in the contested takeover of the mine. The applicants allege that on or about 12 May 2025, a group of men led by the second respondent (the Filabusi police officer) and acting in concert with certain private individuals (cited as the third to seventh respondents) descended on Progress Mine without a court order and forcibly removed the applicants from the site. In the founding affidavit, first applicant Taruvinga describes the incident in stark terms:

> "On the 12th of May 2025, around midnight, approximately twenty armed men, among them police officers, stormed Progress Mine. They were led by the second respondent and two men representing a company called Trade River Investments. The invaders ordered all our workers to vacate *instantly*, threatening to shoot anyone who resisted. Within hours, the respondents had seized control of the mine's operations, barring me and my team from entry. We had been in peaceful possession and operating the mine lawfully until this brutal and unwarranted dispossession."

On the strength of these allegations, the applicants seek a final spoliation order to be restored to possession of the mine, an interdict to bar the respondents from interfering further, and a declaratory order confirming the applicants' entitlement to peaceful possession and declaring the respondents' actions unlawful. The application was filed as urgent, accompanied by a certificate of urgency executed by the applicants' legal practitioner. The matter was set down for urgent determination, and the respondents were served. The respondents filed a notice of opposition on 23 May 2025, opposing the relief and raising several points *in limine*.

In their opposing affidavits, the respondents dispute the applicants' version of events and the propriety of this application. The second respondent (Officer-in-Charge, Filabusi) denies any unlawful conduct, asserting that *"the police were enforcing the law, not engaging in self-help. The applicants were conducting illegal mining activities. Our actions were pursuant to a lawful directive to halt those operations."* More importantly, the third respondent – who is an associate of Trade River Investments (Pvt) Ltd (the company trading as Progress Mine) – reveals that there were prior legal proceedings concerning the mine. He states: *"The applicants deliberately concealed the existence of High Court Bulawayo case HCBC 445/25, initiated by Trade River Investments (Pvt) Ltd, the lawful owner of Progress Mine. In that case (filed earlier in May 2025), Trade River sought to evict these same applicants from the mine on account of their unlawful occupation. The matter was however removed from the roll of*

urgent matters on 10 May 2025 and is pending finalization on the ordinary roll. According to the respondents, the applicants failed to disclose this critical information to this Court and have instead chosen to forum shop by approaching the Harare High Court while a related matter is pending in Bulawayo.

It is common cause that the urgent application was instituted on 20 May 2025. The applicants' papers were placed before me and I directed that the matter be postponed to the next date to enable the respondents to file their papers. The respondents then filed opposing papers on 23 May 2025 and 27 May 2025.

Before delving into the merits (if any), this Court must first resolve the preliminary points *in limine* raised by the respondents. These points are as follows:

Lack of urgency – the respondents contend the matter is not urgent and does not warrant preferential treatment on the urgent roll.

Defective certificate of urgency – the respondents allege the certificate of urgency is fatally inadequate.

Material non-disclosure – the respondents argue the applicants failed to disclose material facts (including the prior Bulawayo proceedings) to the court.

Lis alibi pendens – the respondents assert that there is a pending case (HCBC 445/25 in Bulawayo) concerning the same subject matter, thereby barring this application.

Defective relief sought – the respondents submit that the nature of the relief (spoliation, interdict and declaratory combined) is improperly framed and incompetent at law.

Non-joinder of Trade River Investments (Pvt) Ltd – the company with a direct interest in the mine's ownership/operations is not cited, which respondents say is a fatal non-joinder.

Lack of *locus standi* – the respondents question whether the applicants have the legal standing to bring this application, given that the mining rights vest in a company not before the court.

Each of these objections will be examined in turn.

Lack of Urgency

The first point *in limine* is lack of urgency. The respondents submit that the applicants have not demonstrated that their case is so urgent that it "cannot wait" to be heard in the normal course. They point to an apparent delay between the date of the alleged dispossession and the filing of this application. According to the opposing papers, the mine takeover occurred on 12 May 2025, yet the applicants waited until 20 May 2025 to file this application – a full week

later. The respondents argue that if the matter were genuinely urgent, the applicants would have acted immediately or within a day or two. Allowing a week to elapse without a satisfactory explanation indicates that any urgency is self-created. In their view, the applicants had ample time to seek legal recourse or at least to give notice to the respondents, instead of ambushing them with an unsustainable urgent application.

The applicants, on the other hand, insist that the matter is inherently urgent. They claim that each day they are kept out of the mine results in irreparable harm: loss of mining output, possible degradation of the mine assets, and the entrenchment of the respondents' unlawful possession. The applicants aver that they acted as soon as practicable – stating that they spent the days after the incident trying to engage local authorities and gather evidence, and only when it became clear that no relief was forthcoming did they rush to this Court. In the certificate of urgency, the legal practitioner asserted that *"the continued occupation of the mine by the respondents has crippled the applicants' mining operations and income, and any delay in intervention by this Court will render any future victory pyrrhic."* The applicants thus maintain that they did not sit on their rights, and that the urgency is not self-created but flows from the respondents' ongoing interference.

The test for urgency in our jurisdiction is well-established. An applicant must show that a matter cannot wait without irreparable prejudice occurring. In *Kuvarega* v *Registrar-General* 1998 (1) ZLR 188 (H), CHATIKOBO J famously stated:

> "What constitutes urgency is not only the imminent arrival of the day of reckoning; a matter is urgent if, at the time the need to act arises, the matter cannot wait. Urgency which stems from a deliberate or careless abstention from action until the deadline draws near is not the type of urgency contemplated by the rules. It necessarily follows that the certificate of urgency or the supporting affidavit must always contain an explanation of the non-timeous action if there has been delay."

This dictum makes clear that the court must scrutinize not just the harm alleged, but also the timing of the application and any explanations for delay. In the present case, the applicants' explanation for the one-week delay is less than compelling. While they allege they attempted other avenues in the interim, they have provided scant detail or evidence of any concrete steps taken between 12 May and 19 May 2025. There is no indication, for example, that they sought immediate interim relief in Bulawayo (where the property is situated) or that they issued any urgent letter or notice to the respondents during that week. It appears the applicants only sprang into action to prepare this application days after the fact, which suggests a leisurely approach inconsistent with genuine urgency.

Moreover, the harm articulated – primarily financial loss from halted operations – while significant, is not obviously irreparable. Loss of gold production or revenue, in principle, can be quantified and compensated by damages. The applicants did not demonstrate that the mine was in danger of irreversible damage (such as flooding, equipment destruction, or loss of life) that could not be rectified later. Instead, their case largely concerns economic prejudice and deprivation of possession. Such prejudice, though unpleasant, does not automatically qualify as the kind of extreme irreparable harm that mandates immediate court intervention ahead of other litigants.

Additionally, the existence of parallel proceedings in Bulawayo (discussed further under *lis pendens* below) calls into question the necessity of this separate urgent application. If indeed an order had already been granted by the Bulawayo High Court on 10 May 2025 (as respondents claim) or at least that proceedings were underway there since early May, then the applicants were aware of a legal dispute and cannot claim to be taken by surprise on 12 May. Their *"last-minute"* rush to this Court on 20 May might well be viewed as an attempt to circumvent or pre-empt the outcome in Bulawayo, rather than a bona fide urgent need for relief.

Having weighed the submissions, I am inclined to agree with the respondents that true urgency has not been established. The applicants have not shown that *"the matter cannot wait"*. On the contrary, the timeline suggests that the applicants themselves treated the matter as something that could wait at least a week. This delay, unexplained in any convincing way, is precisely the kind of self-created urgency that our courts frown upon. Accordingly, the point *in limine* that the application lacks urgency is upheld. This alone would justify removing the matter from the urgent roll. However, for completeness – and in view of the other objections raised – I will proceed to consider the remaining points *in limine* as well.

Defective Certificate of Urgency

The second preliminary objection is that the certificate of urgency is fatally defective. In terms of r 60(6) of the High Court Rules 2021, an urgent chamber application must be accompanied by a certificate by a legal practitioner explaining why the matter is urgent. The rationale is that a lawyer, as an officer of the court, should independently assess and vouch for the urgency. The respondents argue that the certificate in this case does not meet the required standard. They note that the certificate, signed by the applicants' counsel on 19 May 2025 spans over 7 pages and offers only a conclusionary assertion that the matter is urgent because the applicants have been dispossessed of their mining site. The respondents submit that the certificate merely regurgitates the applicants' allegations without demonstrating that counsel

applied his mind to the *criteria* for urgency. In particular, it fails to state any facts as to when the cause of action arose and why the applicants could not obtain relief sooner. It does not explain the delay between 12 and 19 May, nor does it clarify why the matter could not be addressed through the ongoing Bulawayo proceedings. According to the respondents, such an omission-laden certificate cannot sustain an urgent application – the effect being that the application should be treated as not urgent and be struck off the roll.

In response, the applicants' counsel contends that the certificate of urgency, albeit brief, sufficiently conveys the core justification for urgency – namely that the applicants were unlawfully deprived of possession of income-generating assets and that any delay in relief would result in continuing loss. He argues that it is unnecessary for the certificate to delve into minute detail (which is the purpose of the founding affidavit); as long as it highlights the *nature* of the urgency and the fact that irreparable harm is imminent, it should be deemed adequate. Counsel submits that form should not be elevated over substance, and minor imperfections in the certificate should not defeat an otherwise urgent matter.

The importance of a proper certificate of urgency cannot be gainsaid. As MALABA JA (as he then was) observed in *Chidawu & Ors v Sha & Ors* 2013 (2) ZLR 260 (S), the certificate of urgency is not a mere formulaic requirement but a vital safeguard to ensure that only deserving cases jump the queue of normal cases. The legal practitioner must do more than parrot the client's claims; he or she must certify *to the court* that a genuine inability to wait exists, based on the practitioner's own assessment of the facts. In the present case, the certificate is indeed perfunctory. It provides almost no insight into *why* the matter cannot wait beyond asserting that the applicants are suffering ongoing interference. It does not mention the date of dispossession or the steps taken afterward. It is silent on the Bulawayo case, which is a glaring omission given its obvious relevance to urgency (if proceedings were already underway elsewhere, one would expect the lawyer to explain why another urgent application was necessary). The certificate's failure to explain the delay is particularly damning in light of the Kuvarega injunction that any delay must be accounted for in the certificate.

In short, the certificate of urgency in *casu* falls far short of the expected standard. It omits material information, lacks specificity, and does not demonstrate that counsel independently verified or considered critical facts. A defective certificate of urgency undermines the foundation of an urgent application. As this court noted in *Document Support Centre (Pvt) Ltd v Mapuvire* 2006 (2) ZLR 240 (H), where a certificate is grossly inadequate, the court is entitled to refuse to deal with the matter on an urgent basis. I find that to be the case

here. This provides yet another basis to find that the matter is not properly before me as an urgent application.

Material Non-Disclosure

The third preliminary point concerns material non-disclosure. The respondents accuse the applicants of failing to disclose highly pertinent facts in their application. It is trite that in urgent chamber applications, an applicant must observe *uberrima fides* – the utmost good faith – and disclose all facts that might influence the court's decision. The duty of candour is a stringent one. Urgent applications punctuated by material non-disclosures or by outright falsehoods must be discouraged at all costs and as a seal of disapproval the court will reward those who attempt to obtain court orders ... through material non-disclosures or falsehood with an award of admonitory costs.

The chief omission cited by the respondents is the existence of prior proceedings in the Bulawayo High Court, case number HCBC 445/25. It is common cause (from the respondents' uncontroverted evidence) that Trade River Investments (Pvt) Ltd – the company operating Progress Mine – filed an application in Bulawayo earlier in May 2025 against some of the present applicants (and perhaps others) concerning the same mining site. The founding papers in the present case make no mention whatsoever of the Bulawayo matter. The applicants did not volunteer that there was another court case revolving around Progress Mine, let alone one in which the matter had been referred to the ordinary roll. This information only surfaced through the respondents' opposition. The respondents submit that this was a deliberate concealment aimed at misleading the court into thinking that the applicants had no other remedy or ongoing dispute elsewhere. Had the court been apprised of HCBC 445/25 at the outset, it might not have entertained the matter on an urgent basis at all given the doctrine of *lis alibi pendens*. Thus, the concealment was patently material.

Beyond the Bulawayo case, the respondents also point out that the applicants failed to disclose other relevant details: for example, any communication from the police or authorities prior to the 12 May incident. The opposing affidavit suggests that police had intervened on the basis of a formal complaint by Trade River Investments. The applicants' founding affidavit, however, painted the picture of a completely lawless raid, without acknowledging that *perhaps* the respondents believed they had lawful cause.

In their argument, applicants' counsel attempted to downplay the nondisclosure. He submitted that the applicants were not *"party to the Bulawayo case"* in the sense that they were not the ones who filed it, and thus they did not think it incumbent to mention it. This is

disingenuous. Even if not applicants, they were certainly aware of being respondents or at least interested parties in that case. One cannot simply ignore pending litigation in another court over the same subject on the excuse that one did not initiate it. The duty is to disclose "all the facts that are relevant and would be useful in the resolution of the dispute". The Bulawayo proceedings and any interim relief therein were manifestly relevant to the present application, touching directly on the rights and possession of the mine.

The failure by the applicants to disclose the HCBC 445/25 proceedings is a grave material non-disclosure. It suggests mala fides or at least an unacceptable suppression of truth on a point which goes to the heart of the case. Our courts have repeatedly stressed that an applicant who approaches on an urgent basis (or without notice) must do so with clean hands and must disclose even those facts which are unfavourable to his case. The sanction for breach of this duty is typically denial of the relief sought, even if the applicant might otherwise have a case on the merits. In *Graspeak Investments (Pvt) Ltd v Delta Corp (Pvt) Ltd & Anor* 2001 (2) ZLR 551 (H), for example, a spoliation order granted ex parte was discharged upon revelations that the applicant had failed to disclose material facts in the founding papers. Similarly, in the present matter, the nondisclosure of the parallel proceedings (and any order emanating therefrom) is so material that it fatally taints the application. On this basis alone, the application ought to be dismissed. I shall indeed dismiss it, but before doing so formally, I will consider the remaining points which reinforce the conclusion already reached.

Lis Alibi Pendens (Pending Proceedings)

The next point *in limine* is *lis alibi pendens*, meaning a suit pending elsewhere. The respondents' position is that the dispute over Progress Mine is already the subject of litigation in the Bulawayo High Court (case HCBC 445/25), and that it is improper for the applicants to pursue a parallel application in Harare. The legal doctrine of *lis pendens* can be raised as a special plea or point *in limine* to prevent duplicative litigation. The requirements are well-established: there must be another action pending between the same parties (or their privies), based on the same cause of action, and in respect of the same subject matter. If those elements are satisfied, the court has a discretion to stay or dismiss the later proceedings to avoid the iniquity of parallel judgments and the wasting of judicial resources.

In this case, it is uncontested that HCBC 445/25 was filed prior to the present application and is still pending. The applicants before me are (at least some of) the respondents in the Bulawayo matter. Although the applicants here chose not to cite Trade River Investments (Pvt) Ltd as a party, it is clear from the opposing papers that Trade River is the applicant in the

Bulawayo case and that the individuals cited as third to fifth respondents here are associated with Trade River (most likely its directors or agents). In substance, therefore, the protagonists in both matters are the same: on one side, the Taruvinga faction (claiming the right to operate the mine), and on the other side, the Trade River faction (claiming the same right). The subject matter is identical – control and possession of Progress Mine. The relief sought is also effectively the same, albeit framed differently: in Bulawayo, presumably Trade River seeks an order confirming its right to the mine and ejecting the applicants (Taruvinga and team), whereas in Harare the applicants seek an order confirming their right to possession and ejecting the respondents. These are opposite sides of the same coin.

The applicants, through counsel, argued that *lis pendens* should not strictly apply because the parties are not exactly identical (the Commissioner of Police, for instance, is only cited in Harare, not in Bulawayo) and because the causes of action are styled differently (one being perhaps an interdict or eviction, the other a spoliation). This argument is not persuasive. Courts faced with *lis pendens* look to substance over form. The involvement of the police in the Harare case does not change the essential nature of the dispute; indeed, the police were involved precisely because of the conflict between Taruvinga's group and Trade River's group. The Commissioner-General of Police has been cited nominally as a respondent here likely due to the alleged role of police officers in enforcing the takeover. This does not create a truly distinct set of parties – the real contest remains between the mine's competing stakeholders. Likewise, the cause of action in both cases is rooted in who is entitled to possess and operate Progress Mine. Whether one calls it a spoliation on one hand or an interdict on the other, the underlying issue is the same. Our law does not countenance litigants hopping from one court to another hoping for a more favorable outcome on the same dispute. A litigant should not pursue parallel remedies in different courts "as a matter of public policy, without good cause… in truth and substance, the present application is exactly the same as the one pending elsewhere".

I find that the requirements of *lis alibi pendens* are met in this case. The parties are effectively the same (or at least in privity), the cause and subject are the same, and there is no suggestion that the Bulawayo High Court is not capable of granting adequate relief. The applicants have offered no compelling reason why this Court should step into a matter already before a concurrent jurisdiction. To allow this application to proceed would countenance forum shopping and risk inconsistent rulings. Indeed, if this Court were to grant a spoliation order restoring possession to the applicants, it could directly conflict with any interim or final order

the Bulawayo Court might grant in HCBC 445/25. The law seeks to avoid placing courts on a collision course in that manner. Consequently, the point of *lis pendens* is upheld. The proper course is to stay or dismiss these proceedings in deference to the earlier-filed case.

Defective Nature of Relief Sought

The respondents further contend that the relief sought by the applicants is defective and incompetent. They take issue with the form and combination of remedies in the draft provisional order. The applicants in one breath seek a spoliation order (which is a final mandatory order restoring possession), a temporary interdict (to stop interference), and a declaratory order (a pronouncement on rights). The respondents argue that this conflation of remedies is procedurally and substantively improper:

A spoliation order (*mandament van spolie*) is by nature final relief. Its effect, if granted, is immediately to restore the *status quo ante* without the need for a return date or further confirmation. It is not ordinarily something granted as interim relief pending a later determination – it is itself the *end* relief in a spoliation application. By including a spoliation order in a provisional order with a return date (as appears to be the case here), the applicants have muddled the procedural framework. It is unclear whether they wanted the spoliation order to be interim (which makes little sense, as spoliation cannot be temporary) or final. This lack of clarity is prejudicial to the respondents and indicative of a misconceived application.

The interdict sought overlaps with the spoliation relief. If applicants are restored to possession via spoliation, an interdict to prevent interference is somewhat duplicative – the law already forbids unlawful dispossession. If, on the other hand, applicants are not entitled to spoliation, then an interdict would require them to prove a clear or prima facie right, which they likely cannot establish (since, by not granting spoliation, one would imply they have no right to possess). Thus, combining these in one application is logically inconsistent. The respondents say the interdict is being used as a *"back-up"* in case spoliation fails, which is an abuse of process.

The declaratory order sought would effectively pronounce that the applicants are the lawful possessors (or have some enforceable right in respect of the mine) and that the respondents' actions were unlawful. The respondents submit that such declaratory relief is ill-suited for urgent determination. Declaratory orders are typically final relief granted after thorough ventilation of the issues, often in ordinary (not urgent) proceedings. Here, the applicants seek a declaratur without having joined the party (Trade River Investments) whose rights would be directly affected (as discussed under non-joinder). Moreover, granting a

declaratory in a spoliation context offends the well-known principle that a spoliation court does not delve into the merits of competing rights to property – it only assesses possession and unlawful dispossession. By asking the Court to declare their entitlement, the applicants are essentially inviting the Court to decide the very ownership/entitlement dispute that should be decided (if at all) in the Bulawayo case or a proper action. This, respondents argue, is impermissible.

The applicants, in response, contend that the reliefs are complementary and were crafted to afford full protection. They argue there is nothing preventing a litigant from seeking multiple remedies in one application if they arise from the same facts. The spoliation order would restore the *status quo*, the interdict would ensure no further disruptions, and the declaratory would clarify the parties' rights to prevent future spoliation or interference. They maintain that doing it all at once is efficient and avoids a piecemeal approach.

While the Court appreciates the applicants' desire for comprehensive relief, the respondents' criticism is essentially valid. Spoliation is a robust but narrow remedy – it serves to instantly undo a wrongful dispossession, restoring possession to the former possessor *ante omnia*. It is granted on the simple proof of prior peaceful possession and illicit dispossession, without regard to the underlying entitlement. Once granted, spoliation is final; there is no need for a return date or further argument on that order. If an applicant succeeds in proving spoliation, final judgment is entered in their favour for restoration.

In this case, the draft order's structure (as can be gleaned from the papers) was confusing. It appeared to seek an *"interim"* spoliation order pending confirmation – which is a misnomer. If the Court finds spoliation proved, it would simply order restoration forthwith. If not proved, that relief is refused entirely. There is no such thing as a provisional spoliation. Thus, the draft relief betrays a lack of understanding of the remedy, rendering it technically defective.

Similarly, pairing a declaratory judgment on rights with a spoliation claim is procedurally awkward. A party should first obtain spoliatory relief to regain possession, and separately, if so advised, pursue a declaratur or other relief to settle the question of entitlement. By seeking a declaratory in the same urgent motion, the applicants sought to shortcut normal process. A declaratory order, particularly one affecting absent third parties (like the mine owner), is not ordinarily granted as a matter of urgency. It requires all interested parties to be heard, evidence to be fully laid out, and legal arguments on the merits – none of which is feasible or appropriate in a truncated urgent hearing.

Moreover, granting the declaratory that applicants seek would essentially prejudice Trade River Investments (which claims ownership/rights) without giving it a chance to be heard – which underscores the non-joinder issue. In effect, the relief as framed asks the Court to not only restore possession (which spoliation can do) but also to pronounce the applicants' right to possess vis-à-vis all comers. That goes beyond the scope of a spoliation proceeding. In *Chisveto v Minister of Local Govt.* 1984 (1) ZLR 248 (H), it was emphasized that the policy of spoliation is to prevent self-help and to restore order, leaving the actual disputes of right to be resolved in appropriate fora later. The applicants' draft order runs contrary to that policy by seeking a resolution of the ultimate dispute now, under the guise of urgency.

Therefore, I find the criticism of the relief well-founded. The application is procedurally improper in the relief it prays for, which is an additional ground to refuse the relief. A court cannot grant an order that is incoherent or incompetent in form. This is not a mere technicality, but a matter of jurisdiction and fairness – the Court will not grant final declaratory or substantive relief affecting third-party rights on an urgent basis without full inquiry.

Non-Joinder of Trade River Investments (Pvt) Ltd

A further point *in limine* is the non-joinder of Trade River Investments (Pvt) Ltd, the company said to trade as Progress Mine. The respondents argue that Trade River Investments is the holder of the mining title or rights to Progress Mine, and is in fact the entity on whose behalf the 3rd to 5th respondents were acting. It is apparent that any order regarding possession or operation of the mine would directly affect Trade River's interests. Yet the applicants did not cite the company as a party to this application. The respondents contend this is a fatal omission: no effective or binding order can be made in the absence of a party that has a direct and substantial interest in the subject matter of the litigation.

The legal principle on joinder is straightforward: any party with a direct and substantial interest in the outcome of a case should be before the court, either as an applicant or respondent. If such a party is not joined, the court may refuse to proceed until they are joined, or may dismiss the matter if the non-joinder is fundamental. This prevents prejudice to the absent party and avoids multiplicity of proceedings. In *United Watch & Diamond Co. (Pty) Ltd* v *Disa Hotels Ltd* 1972 (4) SA 409 (C) at 415, it was stated that the test is whether a party has a legal interest in the subject of the litigation which may be affected prejudicially by the judgment of the court.

Applying that test here, Trade River clearly has a legal interest in who holds possession of Progress Mine. Indeed, by all accounts it is the company that claims the right to mine that

location (presumably through a mining licence or tribute agreement). It was actively asserting those rights in the Bulawayo case. An order from this Court restoring possession to the applicants would necessarily dispossess Trade River (and its agents, the third – fifth respondents). The prejudice to Trade River of such an order is self-evident – it would lose control of its asset without being heard. Likewise, any declaratory this Court might issue regarding rights to the mine would implicate Trade River's legal rights. In short, Trade River's interests are at the very centre of this dispute.

Why then did the applicants not cite the company? One can only speculate. Possibly, the applicants thought to avoid *lis pendens* by excluding the company (as it was the applicant in Bulawayo). Or they assumed that citing the individual directors/officers (third to fifth respondents) was enough, since those individuals represent the company's interests on the ground. If the latter, that is a misconception – in law, a company is a separate person, and one cannot simply proceed against some of its agents and bind the company by proxy without proper joinder. The record shows no attempt by applicants to seek leave to join the company or any intimation that the company's absence is excusable.

The non-joinder of Trade River Investments (Pvt) Ltd is a serious procedural irregularity. The interests of that company are so intertwined with the relief sought that the entire application cannot be fairly adjudicated in its absence. Our courts have consistently held that where a party with a direct interest is not before the court, it is not competent to make an order affecting that party. For instance, in *Catholic Diocese of Masvingo v Municipality of Masvingo & Ors* HH-51-07, the court refused to proceed in the absence of a necessary party whose rights would be affected. The same principle applies here. This defect provides yet another ground to refuse the relief sought. The applicants ought to have joined Trade River if they wanted comprehensive relief; failing that, their application cannot succeed.

Locus Standi of the Applicants

Finally, the respondents challenge the *locus standi* of the applicants, i.e., their legal standing to bring this application. *Locus standi* in judicio requires that a litigant demonstrate a direct and substantial interest in the subject matter and the outcome of the case. If a litigant's interest is too remote or is derived through another party who is not before the court, the litigant may lack standing.

The respondents argue that the applicants have not established any lawful right or interest of their own in Progress Mine. They note that the mining claims and operational rights are held by Trade River Investments (Pvt) Ltd (as per official records). None of the applicants

are shareholders or directors of Trade River (at least, no evidence was provided to suggest such). The first applicant Taruvinga described himself in the papers as "a businessman" who had been running operations at the mine – but he did not clarify under what authority. There is no mention of any lease or tribute agreement between applicants and Trade River. If the applicants were mere *invitees* or *contractors* under Trade River at some point, that arrangement is not evidenced. On the face of it, the respondents contend, the applicants were unlawful occupiers with no legal entitlement to be there, and when the lawful owner asserted its rights, the applicants were removed. In these circumstances, respondents submit, the applicants cannot claim *locus standi* to seek a declaratory or interdict about the mine's operations, as those rights belong to the mine owner (Trade River) which is not in court.

It is true that for the spoliation remedy, strict legal title is not required – even a trespasser in prior peaceful possession can have standing to claim a spoliation order against a subsequent intruder. Thus, to the extent the application is for spoliation, the applicants' physical possession before 12 May 2025 would have given them standing to ask for restoration (assuming they indeed were in possession). However, for the interdict and declaratory relief, the applicants needed to demonstrate some clearer right or legal capacity. They seek to interdict interference with mining operations and a declaration essentially that *their* possession is lawful as against the respondents. If, in law, the right to possess or mine lies with Trade River, then the applicants individually have no locus to assert such right. They would, at best, be proxies or agents for the company – but again, no proof of any agency or authority was provided.

The applicants, in reply, maintained that they do have a direct and substantial interest: they were the ones physically conducting mining and earning income from it until the ouster. They aver that they had an arrangement (unspecified) under which they were entitled to operate the mine, and thus the interference by respondents harmed their personal interests. However, this claim was not supported by any written agreement or documentation. The founding affidavit was notably vague on why the applicants were in possession to begin with – it simply stated they "were in peaceful possession and operating the mine," without explaining the legal basis. Under scrutiny at the hearing, applicant's counsel suggested there was a partnership agreement which the respondents are refusing to honour but again, nothing concrete was placed before the Court.

On the evidence and averments properly before me, the applicants' *locus standi* is doubtful, especially regarding the declaratory relief. While they might have standing to seek restoration of possession (as dispossessed occupiers), they do not appear to have standing to

seek a determination of the right to possess in the long term. That right prima facie belongs to Trade River. If, for instance, Taruvinga claimed to be a representative of the previous owner of the mine or a beneficiary of an agreement with Trade River, he would have needed to make that clear and perhaps bring the action in a representative capacity or together with that owner. He did not. Each applicant appears to come before the court in his personal capacity, yet none is the holder of the mining title or an official of the company that holds it.

This Court cannot ignore the corporate veils and legal rights involved. To grant the declaratory as prayed would be to say that persons with no proven legal title or capacity have a right to possess the mine superior to that of the title-holder which is absurd in law. Thus, the applicants lack *locus standi* to claim such declaratory relief. They also lack standing to seek an interdict to protect mining rights that are not theirs. The only colour of standing they had was to seek relief against being unlawfully dispossessed (spoliation) as a factual matter – but as discussed, that remedy is overshadowed by the other defects in their case.

In sum, I find that the applicants have failed to establish *locus standi* to pursue the broader relief in this application. This provides yet one more reason why the application cannot succeed.

Conclusion and Disposition

Having analyzed each of the points *in limine*, the cumulative outcome is inescapable: the applicants' case is beset with fatal defects. The matter was not urgent, the certificate of urgency was inadequate, and the applicants did not approach the court with the candour and completeness required in urgent proceedings. They concealed a parallel proceeding and thereby violated the *uberrima fides* principle, which alone vitiates their application. Additionally, the existence of pending proceedings in Bulawayo (lis pendens) means this Court should not entertain the matter at all, to avoid duplicative litigation. The form of relief sought is irregular and not grantable in the manner prayed for. The non-joinder of the key interested party (Trade River Investments) and the questionable *locus standi* of the applicants underscore that this application, as presented, is not properly before the Court.

In the exercise of my discretion, and in line with the above findings, I conclude that this application must be dismissed on the preliminary points without proceeding to the merits. Even if one of these points were insufficient on its own, collectively they undeniably justify dismissal. The courts cannot sanction what appears to be an abuse of urgent process and a blatant attempt to obtain relief by concealing material facts and side-stepping pending litigation.

The general rule is that costs follow the result. The respondents have prevailed and have asked for costs. There is no reason to depart from the norm. In fact, the degree of non-disclosure and the opportunistic nature of this application would ordinarily incline the court to award costs on a punitive scale as a mark of disapproval. I will accordingly award costs on a higher scale.

Accordingly, the application is dismissed in its entirety. The applicants shall bear the costs of suit on a legal practitioner- client scale.

MAMBARA J: ……

L. T Muringani, applicants' legal practitioners
Civil Division, 1st and 2nd respondents' legal practitioners
Drau Law Chambers, 3rd – 7th respondents' legal practitioners