1. SHATIRWA INVESTMENTS (PRIVATE) LIMITED — HC 2619/19
versus — Ref HC 6197/18 & HC 2294/18
METALLON GOLD (PRIVATE) LIMITED — & HC 979/20
and
GOLDFIELDS OF SHAMVA (PRIVATE) LIMITED
and
GOLDFIELDS OF MAZOWE (PRIVATE) LIMITED

2. ASSOCIATED MINE WORKERS UNION OF ZIMBABWE — HC 2696/19
versus — Ref HC 978/20
MAZOWE MINING COMPANY (PRIVATE) LIMITED
and
GOLDFIELDS OF SHAMVA (PRIVATE) LIMITED
and
MASTER OF THE HIGH COURT (PRIVATE) LIMITED
and
REGISTRAR OF COMPANIES

HIGH COURT OF ZIMBABWE
CHITAPI J
HARARE, 5 December, 2019; 29 January, 2020; 11 February, 2020 and 20 February, 2020

Opposed application: Corporate Rescue: Insolvency Act [Chapter 6:07]

T. Mpofu and R. Stewart, for the applicant in HC 2619/19
T. Magwaliba and R.J. Gumbo, for the applicant in HC 2696/19
F. Girach and Mr *G. Gapu* for the 1st, 2nd and 3rd respondents in HC 2619 and 1st and 2nd respondents in HC 2696/19
A. Demo, for Intervenor ZETDC in HC 2619/19

CHITAPI J: The above applications HC 2619/19 and HC 2696/19 were consolidated for purposes of hearing. Such course was agreed to by the litigating parties and it was a course that the court agreed to. The respondents in both cases are the same and the relief sought against them is also the same. The applicants albeit different seek the same relief that the respondents should be placed co-corporate rescue in terms of s 124 (1) of the Insolvency Act [*Chapter 6:07*] until such time that they are discharged therefrom in terms of s 125 (2) of the same enactment.

At the commencement of the hearing on 5 December, 2019 the respondents' counsel Mr *Girach* raised a number of points *in limine* which were fiercely opposed by applicants' counsel Messrs *Magwaliba and Mpofu*. At the end of argument I reserved judgment on the points *in limine*. On 29 January, 2020, I made an order dismissing the points *in limine* whereafter counsel addressed the merits of the application. At the resumed hearing Mr *Gapu* appeared for the respondents in plea of Mr *Girach* who was said not to be available. Upon dismissing the points *in limine,* I indicated that my reasons for their dismissal would be captured in the main judgment.

Points *in limine*

In order to holistically deal with the points *in limine,* I propose to firstly deal with the parties, then the nature of the application and lastly the procedure which governs the making of the application.

Parties:

The applicant in case No. HC 2619/19 is described as Shatirwa Investments (Private) Limited, a company incorporated according to the laws of Zimbabwe. The first, second and third respondents in the same case are respectively described as Metallion Gold Zimbabwe (Private) Limited, Goldfields of Shamva (Private) Limited and Goldfields of Mazowe (Private) Limited, all being limited liability companies incorporated according to the laws of Zimbabwe. No issues arise on the papers in respect to the citation of the parties and their corporate status.

In case No. HC 2696/19, the applicant, Associated Mine Workers Union of Zimbabwe is described as a registered trade union and a universitatis whose main function is to represent the interests and rights of mining and related industry workers affiliated to it. The first respondent is described as Mazowe Mining Company (Private) Limited, a limited liability company registered in accordance with the laws of Zimbabwe. The first respondent is said to have changed its name initially from Nudara Mining Company (Private) Limited, then to Goldfields of Mazowe Mining on 13 July, 2018, the name changes having been done consequent on special resolutions to that effect passed at each change. The second respondent is described as Goldfields of Shamva (Private) Limited, a duly incorporated and registered company according to the laws of Zimbabwe. The third and fourth respondents are the Master of the High Court and Registrar of Companies both cited in terms of s 124 (2) (a) of the Insolvency Act. I should pause here and make a note that in terms of the provisions of s 124 (2) (a), of the Insolvency Act, an applicant bringing proceedings for an order of corporate rescue is required to serve a copy of the application on the Master of the

High Court and the Registrar of Companies. It is not necessary to actually cite by name the two officials as respondents. Their citation as has been done by the applicant in case No HC 2696/19 does not affect the application since the purpose of serving them in terms of s 124 (2) (a) is to alert them to the application. Whether cited and served or just served without being cited is inconsequential. I will deal later with the point *in limine* raised by the first and second respondents in regard to the legal status of the second respondent in due time.

The nature of the applications

In both cases, the applicants have petitioned the court to make an order placing the respondent companies under corporate rescue. Corporate rescue is defined in s 121 (1) (b) of the Insolvency Act, as follows:

> "(b) 'corporate rescue' means proceedings to facilitate the rehabilitation of a company that is financially addressed by providing for-
> (i) The temporary supervision of the company, and of the management of its affairs, business and property; and
> (ii) A temporary moratorium on the rights of claimants against the company or in respect of property in its possession.
> (iii) The development and implementation, if approved, of a plan to rescue the company by restructuring its affairs, business, property, debt and other liabilities, and equity in a manner that maximizes the likehood of the company continuing in existence on a solvent basis or, if it is not possible for the company to so continue in existence, results in a better return for the company's creditors or shareholders than would result from the immediate liquidation of the company."

As explicitly set out above, proceedings for corporate rescue are designed to be invoked in circumstances where the company sought to be placed under corporate rescue must is shown to be financially distressed. The term "financially distressed", is defined in s 121 (1) (f) of the Insolvency Act as follows:

> "(f) financially distressed in relation to a particular company at any particular time means that-
> (i) It appears to be reasonably unlikely that the company will be able to pay all of its debts as they become due and payable within the immediately ensuing six months; or
> (ii) It appears to be reasonably likely that the company will become insolvent within the immediately ensuing six months."

The aim of corporate rescue is to avert the liquidation of a company which is in financial distress where there are indications that the company's fortunes or business can be rescued or salvaged so that the company is revived and continues to exist as a going concern. In *Keen* v *Wedge hood Village Golf and Country Estate (Pty) Ltd*,2012 (2) SA 378 (WCC) BINNS- WARD J sitting in the South African High Court stated as follows at paragraph 14 of his judgment

> "It is clear that the legislature has recognized that the liquidation of companies more frequently than not occasions significant collateral damage, both economically and socially, with attendant

> destruction of wealth and livelihoods. It is obvious that it is in the public interest that the incidence of such adverse socio-economic consequences should be avoided where reasonably possible. Business rescue is intended to serve that public interest by providing a remedy directed at avoiding the deleterious consequences of liquidations in cases in which there is a reasonable prospect of salvaging the business of a company in financial distress, or of securing a better return to creditors than would probably be achieved in an immediate liquidation.

I embrace the observations and elucidation of the principle underlying corporate or business recue. It is a modern law of insolvency concept which looks at the failing enterprise not as just a unit that is going under but as one which impacts on the livelihood of those dependent on it. The enterprise may even be a lifeline of a whole town or region. The concept of business rescue recognizes that the failure of a business corporate enterprise and its liquidation can have disastrous and damaging effects on creditors, employees and the community which benefits indirectly from the operations of the enterprise. The nature of corporate rescue proceedings are therefore intended to emphasize corporate sustainability as opposed to liquidations, the latter being a last resort when efforts to sustain the corporate enterprise have been given a chance and failed to salvage the enterprise from going under. It is a concept which has been embraced by developed and developing economies because it is progressive. CHASEN J in *Oakdende Sauare Properties (Pty) Ltd* v *Farm Bothasfontain (Kyalami) (Pty) Ltd* 2012 (2) All SA 433 at para 12 states-

> "the general philosophy permeating through the business rescue provisions is the recognition of the value of the business as a going concern rather than the juristic person itself. Hence the name business rescue and not company."

Save to state with respect that I see no substance in drawing a distinction between the use of the words business as opposed to company rescue since what is important and in focus is the purpose of the concept rather than what one names it, I otherwise agree with the observation of CHASEN J. It follows therefore that in determining the two applications before me, I must be always remain appreciative of the import and purport of corporate rescue under the Insolvency Act. It must be noted that it is a recent welcome addition to Zimbabwe Law on insolvency and modernizes the law on dealing with financially distressed corporate enterprises by placing emphasis on saving rather than destroying businesses.

The procedure in applications for corporate rescue

An application to place a company under corporate rescue may be made by the company itself by resolution to that effect subject to the provisions of s 122 of the Insolvency Act. Where the company has not applied for the relief of corporate rescue as contemplated in s 122, an affected

person may in terms of s 124 (2) and at anytime apply for an order placing the company under supervision and commencing corporate rescue proceedings. Section 121 (1) (a) of the Insolvency Act defined affected person as

> "(a) 'affected person' in relation to a company means-
> (i) a shareholder or creditor of the company; and
> (ii) any registered trade union representing employees of the company; and
> (iii) if any of the employees of the company are nor represented by a registered trade union, each of those employees or their respective representatives."

In both applications before me, the *locus standi* of the applicants to bring this application as creditor and trade union respectively in case No HC 2696/19 and HC 2696/19 is not disputed. The respondents in case No. HC 2696/19 however dispute the *locus standi* of the applicant on a different basis being that the applicant's creditor status was compromised by a settlement of debt agreement entered into by the applicant and the respondents.

The applications *in casu* have not been brought at the instance of the respondent's companies. I will not therefore deal with the procedure where the company applies for corporate rescue. I will confine myself to the procedure when the application is brought by an affected person. The application like any other application is brought in terms of the rules of this court governing court applications. Section 124 (2) of the Insolvency Act sets out what the applicant should do. I will quote it *extenso* because the respondents in both applications have in the opposing affidavits raised issue with the applicant's alleged non compliance with the provisions of the sections. Section 124 (2) as foresaid reads:-

> "(2) An applicant in terms of subsection (1) must-
> (a) serve a copy of the application on the company, the Master and the Registrar of Companies; and
> (b) notify each affected person of the application by standard notice
> (3) each affected person has a right to participate in the hearing of an application in terms of this section."

The powers of the court on hearing the application are set out in s 124 (4) and will be dealt with in due time.

Points *in limine* raised by the first and second respondents in case No HC 2619/19.

The first and second respondents raised two points *in limine*. Firstly they alleged a failure by the applicant to comply with s 124 of the Insolvency Act, more particularly in that the applicant did not "notify each affected person of the application by standard notice." I have already quoted the provisions of s 124 (2) (b) of the Insolvency Act which is the one relied upon. The respondents

therefore pleaded that the application was fatally defective on account of the applicant's failure to give notice and that the application ought therefore on that basis to be dismissed with costs.

In response to the objection on the alleged failure by the applicant to notify "each affected person as provided for in s 124 (2) (b), the applicant in the answering affidavit averred firstly that it would not have been possible to give individual notice to unknown parties other than by way of a public advertisement. The applicant submitted that such order for service could only be in a form granted by the court order upon the grant of the application. The applicant in the founding affidavit attached as annexure 1, a draft order for publication which the court would have the application was asked to grant. The content of the draft notice for publication was premised on the fact that the court has already issued an order for commencement of corporate rescue proceedings. The procedure which the applicant proposed is wrong for the obvious reason that the intention of the law giver in providing that the applicant must notify each affected party by standard notice is to enable affected persons to be heard if they elect to take part in the hearing that determines whether or not to grant the order for corporate rescue or any other order as set out in s 124 (4) of the Insolvency Act. The correct interpretation to be placed on the provisions requiring notification to be given to affected parties can only be determined by finding the intention of the legislature from the language used in the statute. In doing so, the statute is read as a whole and its provisions should be harmoniously construed by reading all its provisions together. Following on the above approach or tenet of statutory interpretation, if one considers the provisions of subs (2) and (3) of s 124, it becomes clear that to the extent that subs (3) gives a right to each affected person to participate in the hearing of the application for an order for corporate rescue, then the affected party must be notified of the application prior to its determination or hearing, otherwise without receiving prior notification of the application, the affected party will not be aware of the hearing and cannot exercise rights to participate in the hearing. A failure to give notification to affected persons prior to the hearing would thus render subs (3) nugatory, redundant or superfluous. The applicant in its answering affidavit averred that it had adopted the procedure which has always been used in liquidation and judicial management proceedings whereby publication would be ordered by court order. Such approach for the reasons I have given is wrong and not contemplated in the provisions of s 124 (2) (b) of the Insolvency Act.

In the answering affidavit, the applicant averred that *ex abundanta cautela*, after considering the opposition filed on behalf of the respondents and in particular relating to the

applicant's alleged failure to notify affected parties, it caused a public advertisement to be published notifying the public of the filed application without stating a date of hearing as it was not possible to include the date since none had been allocated.

Mr *Girach* submitted that the intention of the legislature was that each affected person as defined in subs (1) (a) s 121 of the Insolvency Act should be individually notified. The applicant in its answering affidavit submitted that it would not be practical to notify each affected person because it would be impossible for the applicant to have details of all the creditors employees and shareholders of the company. In response Mr *Girach* submitted that the applicant should have requested for such details from the respondent companies. In my view Mr *Girach*'s suggestion is not practical and fails to take into account the realities of the situation on the ground. An application for an order of corporate rescue made by an affected person other than the company is not a welcome intervention in the affairs and management of the company concerned. It is not reasonable to expect that the company would co-operate with a creditor who seeks to place it under corporate rescue by providing information on its business affairs. This is especially so, where the company has not passed a resolution to that effect. The facts of this application clearly show that the course of action taken by the applicant was not within the contemplation of the respondent's companies. They in any event opposed the application vehemently hence showing that there is no common purpose in relation to the relief sought in the application. The respondent's companies did not in any event disclose or list any affected persons whom they claim should have been notified. The position taken by the respondent companies was one calculated to defeat the legislative intent in placing spanners in the works to ensure that the application is not determined on account of a technical objection.

It goes without saying that although the provisions of subs 2 (b) of the Insolvency Act provides that each affected party should be notified of the application by standard notice, neither the manner of notification nor the form or content of the standard notice are defined. There is no doubt that this lacuna needs to be addressed by the legislature in order that there should be no confusion created in relation to the notification procedures. It is a principle of law that in dispensing justice, courts are under a duty to interpret and give effect to a statute notwithstanding a lack of clarity or the presence of an ambiguity in that statute. In view of this, one must consider the ordinary grammatical definition of the word "notify" which is to give notice or inform someone or a party to an action. In regard to its meaning in the context of an application for corporate rescue,

I would suggest that the word "notify", imports the giving of notice by the applicant as the person who has a duty to give it, to some person(s) entitled to receive the notice. Such notice is usually given in a prescribed manner or form. In *casu*, as already noted, the prescribed manner is not provided for and neither is the form. If one bears in mind that what is intended by the legislature by providing for notice to be given is to alert affected persons whose rights may be affected by the court's determination in an application for corporate rescue to participate in the proceedings, then, a public notice should suffice. I make in this regard, a general observation that in terms of the provisions of the High Court Rules 1971, it is an accepted form of service, which in essence amounts to notification of a pending case that it be given by manner of substituted service in terms of order 6 r 46 (4) whereby the court may authorise service by publication in a form that the court may direct. Usually service will be by way of publication in a publicly accessed newspaper.

I am well aware that *in casu* the court did not direct notification by publication. I however adverted to the point in order to demonstrate that it would be permissible for the court to recognize publication of its process as a method of notification or service. The use of publication of the process would therefore not amount to a foreign let alone forbidden concept within the parameters the rules of procedure in this court. The question that must be addressed is whether in the absence of explicit provision in subs (2) (b) of s 124 of the Insolvency Act, it was reasonable for the applicant to cause publication of the prosed application. I hold that the applicants ingenuity in causing publication was reasonable and that such a course under the circumstances and sufficiently effective for purposes of notifying the public of the existence of the pending process to which the notice relates.

Without seeking to lay a rule that closes the *lacuna* in procedure which subs (2) (b) of s 124 presents, what is beyond reproach is firstly that the notification to affected parties must be made or communicated before the application is determined or heard. In this way affected parties may then exercise the rights accorded to them by sub (3) to participate in the hearing. The procedure is a departure from the practice which the applicant referred to as having been in use in judicial management and liquidation applications as obtain under the Companies Act, [*Chapter 24:03*]. Secondly in the absence of the definition of a standard notice, what is implied therein is that the notice should be the same in wording and form and alert the affected persons of the existence of the application. Such notice may provide that copies of the applications may be uplifted from the address of service of the applicant and provide the time for upliftment. As regards

the manner of notification, I do not consider it prudent to provide a manner of doing so. The circumstances of how a notification has been made will inform the court in determining whether it can be accepted that there was effective notification by reasonable standards. It is hoped that the legislature will quickly fill the gap so that applications for orders for corporate rescue are not unduly delayed by the raising of dilatory defences like whether there has been proper service of applications for corporate rescue on affected persons.

It follows from what I have outlined above in regard to the objection or point *in limine* that the affected parties were not notified, that the objection had no merit and was dismissed. As regards the effectiveness of the notice which was made through publication, the publication resulted in affected parties, namely Havilah Gold (Pvt) Limited participating in the proceedings. It filed a supporting affidavit and consent to the placement of respondent companies and in particular the second respondent under corporate rescue. The said affected party claimed that the second respondent failed to pay an amount of USD$1 510 000-00 due for the purchase of a gold processing plant by the second respondent from the affected party. It also alleged that the second respondent was avoiding meeting the affected party to discuss the issue and that no operations by the second respondent were taking place with the processing plant remaining affixed on the second respondent's claim but idle. Another affected party, Zimbabwe Electricity Transmission and Distribution Company (ZETDC) as a creditor also filed a consent to the granting of the order for corporate rescue. It attached a court judgment which it obtained against the first respondent under case No. HC 1655/18 dated 12 March, 2018 for payment of USD$2 772 686-19 which is still outstanding and was therefore over 10 months overdue upon the filing of this application on 28 March, 2010. ZETDC also attached copy of another pending case in this court filed on 19 February, 2019 wherein it claims payment of $9 331 136-36 in outstanding bills for electricity consumed by the various trading entities of the first respondent, namely, Mazowe Mine, Shamva Mine and How Mine. There was also attached to the application the Sheriff's report in case No HC 10919/18 wherein the first respondent's goods were attached for failure to pay a judgment debt and sold. The publication was therefore effective since it elicited participation by affected persons.

The other point *in limine* already briefly discussed was that the applicant lacked *locus standi* because it entered into a settlement agreement with the applicant wherein the only outstanding obligation was for the respondents to deliver a mining lease to the applicant. The respondents did not attach the agreement in issue. On the contrary what was attached was a letter

from the applicant's legal practitioners to the respondent's legal practitioners dated 21 March, 2019. The applicant' legal practitioners in the letter accused the respondents of materially misrepresenting that it could transfer a mining lease to the applicant yet they had failed to even show that they owned such a lease. The letter purported to rescind and cancel the agreement. I should state that at the hearing, Mr *Girach* for the respondents made a spirited effort to persuade the court to accept that there had been a compromise between the applicant and the respondents. Despite his commendable efforts in this regard, Mr *Girach* could not point out to the agreement referred to nor set out the terms which were allegedly satisfied by the respondents. The court cannot determine an issue raised based on conjecture.

Mr *Girach* raised another point *in limine* that the applicant did not serve the application on the Master of the High Court and the Registrar of Deeds. Mr *Girach* submitted that the Master must be served because he is required to provide a report. The issue of non-service of the application was not pleaded by the respondents in their notice of opposition. The submission was then made that because the issue was in effect a point of law, it could be raised at any stage of the proceedings. As a general rule it is the law that a point of law may be raised at any stage of proceedings. However the raising of the point of law should not result in prejudice to the party against whom it is raised. See *Muskwe* v *Nyajima & Ors* SC 17/12, *Muchakata* v *Netherburn Mine* 1996 (1) ZLR 153, *Gold Dorven Investments (Private) Limited* v *Tel One (Pvt) Ltd and A.R Gubbay N. O* SC 9/2013. In response to the issue of service, Mr *Mpofu* for the applicant submitted that the court should take notice that despite the point taken, the Master had in fact filed a report. I however noted that in para 16 of the founding affidavit the applicant averred that:

> "Both the Master of the High Court and the Registrar of companies have been included in this application as required by the Act and it is humbly submitted that there should be no opposition to the relief sought. The respondent's financial distress is trite given the court order for over US$6 million as their inability to settle same since the granting of the order. An experienced team to supervise and run the corporate rescue proceedings has been proposed and a willing operator for the mining operations sourced. This is an ideal candidate for corporate rescue proceedings in a bid to avoid liquidation proceedings and to ensure that creditors receive full value for debts."

The respondents in the opposing affidavit did not plead to paragraph 16 as above quoted. The applicants averments remained untraversed or untrodden. It is a well-known principle of pleadings that what is not denied is to be deemed as admitted. The respondents by not denying that the applicant had included the Master and Registrar in the proceedings cannot raise the objection now and seek to rely on it without explaining why they let the applicant to continue with

proceedings on the assumption that the issue of the Master and Registrar being served with the application was a non-issue. In any event, from the applicant's papers, it shows that it attached a bond of security which its legal practitioners executed in favour of the Master wherein they stood surety for any fees and charges which the Master of the High Court would deem necessary for the prosecution of this application up to the point that a corporate rescue practitioner was appointed. The bond of security was attached and marked annexure H to the founding affidavit. A Master's certificate was also attached and marked annexure G. The copy on record is not signed by the Master. The issue of its not being signed did not arise for dispute between the parties. As I understood the objection therefore, it related to whether or not the provisions of s 124 (2) requiring service of the application were complied with. In view of the analysis of the paper trail I have set out and the lack of denial by the respondents of applicant's averments in para 16 of the founding affidavit, I am constrained to and must find that there was service or notification of the application upon the Master of the High Court and the Registrar of Companies.

Assuming that there is substance in Mr *Girach*'s submission that the Master and Registrar were not served and that I am wrong in my analysis and reasoning, I consider that Mr *Mpofu'*s argument in the alternative has substance. He submitted that in the absence of a sanction given in the legislation for a failure to comply with the provisions requiring service of the application on the Master and Registrar, the provisions should be taken as being directory rather than peremptory. If directory then the noncompliance cannot have the effect of rendering the application a nullity. In my view, the service of the application on the Master and Registrar is for their information because there is nowhere in the provisions of s 124 of the Insolvency Act, that speaks to any duty which the Master or Registrar should perform upon being served with the application. The court is not disabled to determine whether or not to grant an order for corporate rescue on account of non-service of the application on the Master and Registrar. It is also open to the court to make an order for such service to be affected and postpone the matter with an appropriate wasted costs order and resume hearing the matter after service has been affected on the Master and Registrar. I therefore must agree with Mr *Mpofu*'s submission that upon a consideration of the provisions of s 124 aforesaid, it is not contemplated that the non-service of an application renders the application a nullity. There would be no prejudice caused to the respondents by ordering an adjournment to allow for service of the application on the Master and Registrar, other than costs. In *casu* however I did not consider it necessary to adjourn the hearing and order that the application be served

because the applicant was not controverted in its assertion that the Master and Registrar had been included in the application. I would therefore still dismiss the objection brought in as a point of law as unmeritorious.

In case No. HC 2696/19 the first point in *limine* that the relief sought against the respondents was *lis pendens* in case No. 2619/19 was abandoned because the two cases were consolidated for purposes of the hearing. The second point in *limine* was that the first respondent Mazowe Mining was not served with the application. It was also averred that the second respondent namely Goldfields of Shamva (Private) Limited was a nonexistent entity since it changed its name to Shamva Mining Company (Private) Limited. The third point *in limine* was that the applicant did not comply with the peremptory requirement to notify all affected persons about the application. The deponent to the opposing affidavit averred that he was employed by the first respondent and by Shamva Mining Company Private Limited (thus distancing himself from Goldfields of Shamva (Pvt) Ltd, the erstwhile name of Shamva Mining Company) as company secretary. I noted that in the certificate of service of the notice of opposition it is stated that the notice relates to both first and second respondents yet at the same time the objection is made that the first respondent was not served and the second respondent is nonexistent. A party to litigation may not in his pleadings approbate and reprobate at the same time. It makes no sense for a party to accept and reject at the same time and vice versa. See *Chirembe* v *Chiroodza and Anor* HH 163/18; *Wangay*i v *Mudukuti* HB 155/17. If the first respondent was not served with the application but decides to oppose it on the merits and in substance, it cannot in the same breath rely on non-service to move for dismissal of the application. Equally, if second respondent does not exist, then it cannot oppose anything because it is not there. It is a ghost or mirage or at best an imagined juristic entity. The opposing affidavit however speaks in para 19 to the failure of the companies to meet their obligations as being caused by their failure to produce at optimum capacity due to blameworthy conduct by the Reserve Bank of Zimbabwe in large part in that the Reserve bank of Zimbabwe does not avail foreign currency for critical spares and equipment despite the companies having sold gold to Fidelity Printers. It was alleged in the same paragraph that the "companies" were reorganizing their operations and cutting down on the workforce which is currently bloated and hampering the companies from returning to profitability. Further it was averred that the retrenchment exercise was under way and the "companies" were in the process of raising funds to capitalize operations so that they are able to pay off their "liabilities and also pay current trade debts."

The deponent to the opposing affidavit further averred that liabilities to employes had been settled through a trade off of salary with company houses. The 'companies' were said to operate independently of each other, each entity having its own managing director, thus there was no management vacuum. What clearly emerges from the opposing affidavit is that the respondents have opposed the application substantively and in the case of the second respondent, it did so under its changed name. The first respondent in any event was served with the application on 12 April, 2019 as detailed by the applicant in the answering affidavit. The objection that service was not affected on the first respondent was ill-conceived. The applicant however withdrew its case against the second respondent as cited with a tender of costs. In view of the acceptance in the opposing affidavit that second respondent's old name was used, there would have been no prejudice in the applicant seeking an appropriate amendment rather than withdrawing it. This however becomes an aside in that the application as against the second respondent was withdrawn. Case No HC 2896/19 therefore has one respondent, namely second respondent.

The last but one point in *limine* which I deal with pertains to an alleged failure by the applicant to notify affected parties of the application. In this regard, I incorporate the same observations I made in this regard when dealing with case No. HC 2619/19 on that point. In *casu* the applicant annexed to its answering affidavit as annexure B, a notice of the application tailor made to inform any interested party of the existence and filing of this application. I hold that the notice was sufficient and was standard in form and content for every interested party. The notice was flighted in the Herald Newspaper which has a wide circulation in Zimbabwe.

The last point *in limine* concerned the lack of *locus standi* and authority of the deponent to the founding affidavit to represent the applicant trade union and its constituent workers. The general rule of practice and procedure is that a representative of a juristic entity whose authority to represent that entity has been questioned should provide proof or evidence of that authority. The opposing affidavit challenged the applicant to prove that it represented the workers at the mine. It also challenged the authenticity of the resolution which authorized the deponent to represent the workers on the basis that it was not signed by workers concerned but by some alleged representatives whose representative body was not shown. In response thereto the deponent in the applicant's founding affidavit stated that not only was he acting as representative of the applicant's trade union but he doubled up as a creditor owed US$51 659 money by the first respondent as successor in the title to Mazowe Mine being the business or enterprise name used prior to first

respondent taking over operations thereat. There is in my view and on all the documentary evidence of *locus standi* in the unchallenged personal interest of the deponent as an affected person and the objection had to fail.

I now deal with the merits of the application. It does not appear to me that I should overburden these reasons for judgment with detailing every act of insolvency as justifies the grant of an order for corporate rescue as prayed for because the respondent companies in both cases and by their explicit and implicit admissions are financially distressed. It is convenient at this stage to deal with two intervening chamber applications which the respondents made under case No. HC 979/20 in relation to case number HC 2619/19 and HC 978/20 in relation to case No. HC 2696/19. The applications were vehemently opposed by the applicants and another affected party namely, Zimbabwe Electricity Transmission and Distribution Company. The applications were filed on 10 February, 2020. I should mention that I was in the middle of wrapping up writing judgment which I had anticipated to deliver on 12 February, 2020 having reserved the judgment on 29 January, 2020 after hearing arguments on merit.

The respondents filed applications purportedly in terms of r 235 of the High Court rules for leave to file a further affidavit. Rule 235 provides that after the filing of the answering affidavit, no further affidavit may be filed without the leave of the court. Mr *Gapu* for the applicant submitted that it was permissible to file with the leave of the court a further affidavit before judgment. He drew a parallel with r 437 (5) which relates to action proceedings. Rule 437 deals with the burden of proof and the right or duty to begin in civil trials. Subrule (5) states:

> "In any case of any doubt or dispute arising the court shall have discretion to determine which party shall begin. Either party may, with the leave of the court, adduce further evidence at any time before the judgment; but such leave shall not be granted if it appears to the court that such evidence was intentionally withheld out of its proper order."

Mr *Stewart* who appeared for the applicant company in the main case HC 2619/19 and respondent in application HC 979/20 submitted that it was unprocedural for the respondents to apply to lead evidence after the hearing had all been concluded but for the reserved judgment. He submitted that order 32 prescribed the sequence of filing pleadings or more aptly affidavits and that the sequence had to be followed as provided. In both his oral submissions and relying on the opposing affidavits of the respondents, Mr *Stewart* submitted that r 235 was intended for instances where the applicant in an answering affidavit would have for the first time raised facts which require rebuttal by the respondent. Counsel cited the case of *Associated Newspapers and Media*

and Information Commission v *Minister of Information and Publicity* HH 29/2007 where the following appears:

> "…. The respondents base their application to file the further affidavits on new matters allegedly raised in the answering affidavit,

Mr *Gumbo* for the respondents in case No. HC 978/20 similarly argued that r 235 was intended to enable the respondent to address issues raised in the answering affidavit and provide information which was not available when the opposing affidavit was prepared. Counsel submitted that the rule was not available for invocation where the main matter as in this case had been argued and judgment reserved. It was further submitted that the respondents were seeking to delay judgment further by introducing a new defence to their initial position.

It is therefore important to revisit the content of r 235. The rule proceeds as follows:

> "After an answering affidavit has been filed, no further affidavit's may be filed without the leave of the court or judge."

An analysis of the rule shows that the rule is not directed at the respondent. It is neutral which means that any party to the application may file a further affidavit after the answering affidavit, provided however that the leave of the court or judge would need to be first applied for and granted before any further affidavit can be filed in terms of the rule. My view is that r 235 is intended to provide flexibility in regard to the filing of affidavits in application proceedings.

In the case *Turner and Sons (Pvt) Ltd* v *Master of the High Court & Ors* HH 498/15, MAKONI J (as she then was) had to determined *inter alia* whether r 235 precluded the filing of a further affidavit after the filing of the answering affidavit. The affidavit had however been filed without the leave of the court or judge being first obtained which rendered the affidavit inadmissible. The learned judge cited the case of *James Brown & Hancer (Pty) Ltd* v *Summons N.O* 1963 (4) SA 656 (A) where at 660 D-F OGLIVIE THOMPSON JA stated–

> "It is in the interests of the administration of justice that the well-known and well established general rules regarding the number of sets and proper sequence of affidavits in motion proceedings should ordinarily be observed. That is not to say that those general rules must always be rigidly applied, some flexibility controlled by the presiding judge exercising his discretion in relation to the facts of the case before him must necessarily also be permitted."

In my view the quoted remarks aptly summarise the correct position of law and the rules of this court, in particular r 235. The sequence of filing affidavits in application proceedings are contained in rr 230 (founding affidavit); 233 (notice of opposition and opposing affidavit); 234

(answering affidavit). These are the default rules that set out the sequence of affidavits. Thereafter r 238 on the filing of heads of argument comes into play. Rule 235 then involves the court or judge having to authorize filing of additional affidavits. The rule must therefore be considered as an exception to the sequential filing of affidavits in application proceedings. Thus, as with an exception where it can only be granted upon application to the court or judge, its grant would be in the court or judge's discretion. With every discretion having to be exercised judiciously, the onus on a balance of probabilities rests on the applicant who requires an indulgence to file an additional affidavit to satisfy the court or judge that the grant of the indulgence is in the interests of justice and will not prejudice the other party. The circumstances of each case will determine whether or not leave to file an additional affidavit after the answering affidavit should be granted.

To resolve the apparent confusion which counsel have argued upon in relation to the import and purport of r 235, I hold that r 235 is not intended only for the utilisation by a respondent who wishes to answer allegations made in the answering affidavit. The rule does not say so. It would therefore be wrong to lay it as a rule that r 235 is intended to enable that the answering affidavit may be traversed. Rule 235 should be looked upon as intended to provide a leeway for parties to be able to place additional evidence, facts or material which are not contained in the three sets of affidavits as l have outlined them. The overriding considerations whether to allow further affidavits to be filed is that of serving the interests of justice. It is my view however that the court or judge should sparingly allow a deviation from the sequence of filing affidavits in terms of r 235. It must appear to the court that the interests of justice would otherwise not be served if the further affidavit were not admitted outside of the sequence aforesaid.

As to whether, the court may act in terms of r 235 after parties have closed their arguments and the judgment is reserved, there is nothing in r 235 to preclude this. Until judgment has been pronounced, the court or judge remains seized with the matter. The court or judge may call the parties to address on any particular point which the court or judge may require further address on. Such a course is not improper for as long as all parties involved participate. By the same token a party may as done by the respondent's apply to file a further affidavit. The applicant can also do so as much as the respondent can. There is no need to draw a parallel between r 235 and 437 (5) in this regard because whilst r 437 (5) is permissive in express terms in its use of the words "before judgement", r 235 does not preclude the making of an application to file an additional affidavit after the filing of the answering. I must therefore hold that any party to the application may in

terms of r 235 properly apply to file an additional affidavit for as long as the court or judge has not given judgment and become *functus officio*. Whether or not the application made will be granted is a different consideration all together.

A case in point and on all fours with the case in *casu* is the judgment of MOLAHLELI AJ in *N.M Scrap (Pty) Ltd* v *Transnet Ltd* an unreported judgment delivered in the South Gauteng High Court, Johannesburg [2013] ZAGP JHC 86. The learned judge had to deal with an interlocutory application to file an additional affidavit after "closure of pleadings and argument and after judgment on the merits was reserved." The respondent had filed an application to file a further affidavit in support of its defence to the main application after the application was argued and judgment was reserved. The applicant in the main application opposed the application to file the further affidavit. The learned judge in that case reasoned that it was procedural to make the application. He however emphasised the need for the court to not readily admit the additional affidavit moreso where prejudice to the other party which cannot be cured by a costs order will ensue. The learned judge further observed that permission to file the additional affidavit should be refused where the explanation for the request is unreasonable.

Reference was made by the learned judge to the case of *Standard Bank of South Africa* v *Sewpersadh and Anor* where the court stated;

> "(10) The court will exercise its discretion to admit further affidavits only if there are special circumstances which warrant it or if the court considers such a course advisable. In *Bangto Bros and others* v *National Transport Commission and Others* 1973 (4) SA 667; it was held among other things that a litigant who seeks to serve an additional affidavit is under a duty to provide an explanation that negatives mala fides or culpable remissness as the cause of the facts and for information not being put before the court at an earlier stage. There must furthermore be a proper and satisfactory explanation as to why the information contained in the affidavit was not up earlier, and what is more important, the court must be satisfied that no prejudice is caused to the opposite party that cannot be remedied by an appropriate order as to costs."

In paragraphs 13 and 15 of the judgment the learned MOLAHLELI AJ continued:

> "(13) The applicant's counsel argued in opposing this application that the step taken by the respondent of seeking to file further affidavits after the matter been argued and judgment reserved was extra-ordinary and unusual and should for that reason be dismissed. It was further argued that allowing the respondent to file a further affidavit would be unfair on the applicant in the context where the matter has already been argued and judgment was reserved.
> (14)……
> (15) There can be no doubt that the step taken by the respondent is unusual, as a request, such as this ordinarily ought to have been made after the closure of pleadings. There can be no doubt that the applicant is prejudiced by this approach. However, the fact that the application is made after the closure of pleadings after judgment was reserved is not determinative of whether permission to file additional affidavit should be granted or not. The request made after the merits of the matter

had been argued and judgment reserved, does indeed require of the applicant to place a compelling explanation as to why the application is made so late."

As l have already observed rule 235 does not prescribe the stage at which the application to file a further affidavit after the filing of the answering affidavit may be made as long as judgment has not been delivered. It must be borne in mind that motion proceedings are intended to ensure an expeditious procedure for case disposal. The application to file a further affidavit after argument and judgment has been reserved has the effect of re-opening the case and impacts of the expedition with which the case should be disposed of. It is therefore proper to lift the bar a notch higher and require that the party seeking to file such additional affidavit should give compelling reasons as opposed to just a reasonable explanation as to why the application is made so late in the proceedings. The court may well have begun to prepare judgment and such an application results in the court or judge having to reconsider the whole matter. I need therefore to consider whether the applicants have demonstrated exceptional or special circumstances to persuade the court to rule in favour of allowing them leave to file the additional affidavit. In making that determination, the court must also have regard to the content of the affidavit to appreciate the materiality of the evidence intended to be adduced.

The respondent averred in their applications that the affidavits which they intended to file were material to the determination of the consolidated applications in that it could well be unnecessary for the court to pass judgment since the applicants may well be able to resolve their disputes with the applicants. The respondents averred that it had managed to raise funds to enable the companies to pay creditors and provide working capital to fund the revival of operations at the mines. In the proposed supplementary affidavit, the respondents averred that in the period commencing 3 February 2020, the management and shareholders of the respondent companies had managed to raise $39 129 459.03 which it was contended had been deposited with their legal practitioners, Scanlen & Holderness. It was averred in paragraph 4 of both proposed affidavits in the two applications as follows:

"(4) The funds are a deposit meant to pay creditors once their accounts have been reconciled. Additional funds are available where necessary to pay creditors. Additional funds are available where necessary to pay creditors. In addition funds are also immediately available to provide working capital for the operations of the company and to source equipment. Management is already working on a plan for the revival of the mines to enable employees to resume working and commence production."

In paras 5, 6 and 7 of the respondents proposed affidavit in both applications, it is stated-

> "5. I believe that the concern of the respondents' creditors is for them to get paid. The companies are now able to do so. Once the creditors have been paid, there will be no need for the companies to be placed under corporate rescue. It will be unnecessary.
> 6. The respondents intend to contact all creditors and settle their accounts once the parties agree on the sums owing. This will entail a reconciliation of their accounts for all the creditors who are owed by all the companies.
> 7. It is not in the interests of the respondents for the companies to be placed under co-operate rescue because the *raison d'etre* for such process has been addressed. Furthermore, the placement of the companies under corporate rescue will unnecessarily muddle management plans to revive the companies by bringing in third parties as corporate rescue practitioners who may have their own plans. Those corporate rescue practitioners also charge astronomical fees which would have to be paid by the companies from the pot that should be available to pay creditors and to provide working capital for the mines."

I do accept that the information sought to be placed before the court was not available when the application was argued. The information was not withheld from the court at the time of hearing. The information sought to be placed before the court concerns the conduct of the shareholders and management of the respondent companies in making efforts to raise money to pay off creditors and inject working capital and buy capital equipment so that production at the mines can resume. The affidavits are in my view sufficiently relevant to the issues for determination as to justify that they be admitted in evidence. The parties' legal practitioners agreed that in the event that I allow the proposed affidavits into evidence, my determination should take the depositions therein into account as well as the arguments by counsel without having to delay judgment further by waiting for the applicants counsel in the main matters to file further opposing affidavits.

Having carefully considered the new evidence together with the opposing affidavits in both main cases, I found that the new evidence far from defeating the applicants' case for corporate rescue actually corroborate the case for corporate rescue. The position taken in the additional affidavit contradict the positions taken by the respondent's mining companies in their main opposing affidavits. In case No. HC 2619/19 the respondents admitted indebtedness to the applicant but argued that they had entered into a settlement of debt agreement whose consummation was being delayed by the delay by the Ministry of Mines to issue them with a mining lease which formed an integral part of the debt settlement agreement. It was averred that the respondents were not financially distressed since their assets exceeded their liabilities, hence making them unsuited as candidates for corporate rescue. As regards the proposed appointment of corporate rescue practitioners it was argued that Mr David Whatman as applicants' legal practitioner was conflicted because either him or his firm of legal practitioners, Matizanadzo &

Warhurst had sued the respondents in numerous applications prior to the current one. On this latter point, although the applicant argued that Mr Whatman was an experienced commercial business and lawyer, which point is not disputed, it certainly would be undesirable that the same firm which argues for the placement of a company on corporate rescue is the same firm which then provides one of its members as a corporate rescue practitioner. In this case, the respondents have argued against their placement on corporate rescue with Mr Whatman's firm arguing in favour of such placement. It would not accord with principles of good corporate governance and impartiality that Mr Whatman is considered as a suitable appointment for corporate rescue practitioner either as an individual or together with Mr Saruchera who has also been proposed.

I have indicated that the respondents' additional affidavit actually supports or corroborate the case for corporate rescue. It is accepted therein that the applicant in case No. HC 2619/19 is a creditor and that the respondents have not been operational and that the money which has been sourced will revive the operations of the companies. This puts paid to any argument that the respondents mining companies are not financially distressed. In the same vein, the argument that the assets of the companies exceed their liabilities is only stated by word of mouth with nothing to support the assertion like producing balance sheets and other financial records of the companies. Further, the argument on assets exceeding liabilities does not defeat corporate rescue in that a company whose assets exceed liabilities can still be financially distressed within the definition and meaning of financially distressed as provided for under the Insolvency Act. The applicant in the answering affidavit attached information and documents which show on a balance of probabilities that the respondent companies are indeed financially distressed. In the additional affidavit this is not refuted save that the respondents simply aver that they have raised $39 plus million to take them out of the red. Therefore the fact that they have been and are in the red is beyond doubt.

The same arguments apply in relation to case No. HC 2696/19. The respondents admit that they want to revive the mines using the $39 million plus dollars. They accept contrary to their earlier position in the opposing affidavit that they are indebted to the creditors whom they have failed to pay and that they have not been operational as going concerns. It is not necessary to individually itemize the various creditors who are owed as detailed by the applicants. The respondents appear not to be sure of the extent of their obligations because the additional affidavit speaks to the need to reconcile accounts of creditors owed by the respondents. It is therefore safe for the court to assume that the respondent company relies on hope that after reconciliation, the

$39 plus million will be sufficient to pay off creditors and fund operations. The problem with the respondent's position is that it has not been open and candid with the court in not disclosing its status, production plans, projections and estimates and in fact its financial status. It is therefore impossible for the court to project that the respondents' positions in both matters could be reasonably expected to have positively altered and its business operating as going concerns in the next six months. The mere mobilization of 39^+ million dollars on its own cannot without further ado herald the dawn of a new era for the respondent companies. In short, whilst the applicants in their founding and answering affidavits attached documents of evidence tending to prove financial incapacity on the part of the respondent companies, the latter were coy with details of business and operational information.

I also need to comment that in relation to the 39^+ million-dollar deposit, I asked Mr *Gapu* to confirm whether or not the amount was credited to the Trust account of Scanlen & Holderness legal practitioners, such that it was ready for disbursement. Mr *Gapu* submitted that the money was not credited to the receiving account. In short therefore the position was that the respondent companies had at the time of hearing the chamber applications to adduce further evidence on 11 February 2020 not received the deposit supposedly made on 7 February 2020. Such confirmation has even as I write this judgment not been received nor intimated. Proof of receipt of funds was therefore not available and it would have been a misdirection on the part of the court to hold that 39^+ million dollars was now available to the respondents. Applicants counsel raised argument that the amount aforesaid can only have come about as a result of the respondent companies further increasing its liabilities to the detriment of affected parties. It is not necessary in my view to get into the details of how the money was raised because not only has the respondent companies withheld that information and thus not been candid with the court, the money is not in credit of the respondents. It is therefore pointless to debate sources of money which has not been shown to be available. The court cannot make any order in relation to something which is still to be realized more so without evidence to support a funding that the 39^+ is a genuine deposit.

I also need to draw the parties' attention to the provisions of s 125 of the Insolvency Act and in so far as the applications before me are concerned to specifically subparagraph (b) of subsection 1 of s 125. In terms thereof, corporate rescue proceedings commence upon the filing of any application to the court by an affected person in terms of s 124 (1). Once the proceedings have commenced s 126 provides that "no legal proceeding, including enforcement action, against the

company, in relation to any property belonging to the company; or lawfully in its possession, may be commenced or proceeded with in any forum---" Section 127 protects property interests of the company during corporate rescue proceedings. The compnay may only dispose or agree to dispose of property in the ordinary course of business or in a *bona fide* transaction at arm's length for value approved in writing by the corporate rescue practitioner. During argument, it was submitted that there had been no disclosure of how the 39^{+} million had been realized. Again the failure to make full disclosure by the respondent companies placed the court in a difficult position in that it could not determine whether or not the effect on the companies of the undisclosed manner in which the money was raised would not adversely affect the company or whether it was properly done since the company was already deemed to be under corporate rescue proceedings from the time of filing of the applications. The respondent companies were required to demonstrate that the money they sourced was not obtained or realized in a manner that would adversely affect the companies distressed state.

The respondents did not really present evidence or material to show that they are not financially distressed, not even bank records. They failed to place information before the court from which the court could determine that in the ensuing 6 months from now the respondents' companies would be able to pay their debts or not become insolvent. I must remark in this regard that other than to cry that corporate rescue would adversely affect the management plans for revival of production of the mining entities and that the corporate rescue practitioner would levy fees which erode further the companies' resources, there was nothing of real substance pleaded to persuade the court that the respondents companies were anything other than proper candidates for corporate rescue. No details of revival plans were placed before the court. The arguments proferred against corporate rescue were not backed by any facts. Corporate rescue in any event has the effect of shielding the company from predatory creditors so that the company gets back on its feet. The company property is temporarily made immune against adverse claimants. A restructuring plan in which the interested parties participate is put in place to maximize the likelihood of sustaining the company. Instead of appreciating the making of an order for corporate rescue, the respondent companies vehemently opposed the application yet they did not place before the court their plan B other than to rush to court on the eve of judgment to further argue against corporate rescue on the basis that an amount of 39^{+} million had been mobilized, without even showing that such money was on the table ready for disbursement.

The further argument that control of the company would be taken away from management and the company owners is a selfish argument which fails to take account of the greater good which is that corporate rescue is intended not as a hostile take over of the company but to sustain an ailing or distressed company and safeguard the interests of all interested and affected persons. For management and shareholders to seek to cling to control of the companies when clearly they have failed to sustain the companies and the companies have virtually collapsed is being irresponsible in the extreme. As regards the argument that the corporate rescue practitioner will further erode the companies' resources in charging fees, the argument again limps. Fees charged are set out by law. Instead of worrying about fees which the corporate rescue practitioner will charge, the respondents should focus on the revival of their operations through the vehicle of corporate rescue. Its success will ensure that they become the ultimate beneficiaries.

I now deal with the choice of corporate rescue practitioner(s). I have already disqualified Mr David Whatman for conflict of interest. This leaves Messrs Reggie Saruchera of Grant Thornton as proposed in case No. HC 2619/19 and Dr Cecil Hondo Madondo as proposed in case No. 2696/16. During argument, counsel submitted that both proposed practitioners should be appointed. It is however clear that under case No. HC 2696/19, following the withdrawal of the case against the first respondent, there would remain the second respondent only for which Dr Madondo has been proposed. However, in regard to case No. HC 2619/19 there are three respondents with the third respondent in fact being what should have been the first respondent had it been properly cited in case No. HC 2696/19. The second respondent is common in both cases. Case No. HC 2619/19 preceded case No. HC 2696/19 having been filed on 28 March 2019 whilst case No. HC 2696/19 was filed on 1 April 2019. It has not been denied that both Messrs Reggie Saruchera and Dr Madondo are able experienced and proven corporate rescue practitioners. I must however consider that the second respondent in case No. HC 2696/19 is also a respondent in case No. HC 2619/19. There are therefore two practitioners proposed for the second respondent. The two practitioners cannot exercise *pari passu* powers of being corporate rescue practitioners for second respondent although they can be jointly appointed in terms of the Insolvency Act. Since all the respondents are intrinsically connected in regard to their shareholding ownership and control, the appointed corporate rescue practitioners work in regard to one company dovetails with the other. An appropriate order in regard to the second respondent in case No. HC 2696/19 is therefore

one in which both proposed rescue practitioners are jointly appointed with one subordinated to the other.

I therefore make the following order

1. The 1st, 2nd (which is also 2nd respondent in case No. HC 2696/19) and 3rd respondents in case No. HC 2619/19 are hereby placed under supervision and corporate rescue proceedings in terms of s 124 (1) (a) of the Insolvency Act [*Chapter 6:07*] and shall be subject to supervision, management and control as provided for in the said, Act
2. In terms of the provisions of subsection (5) of s 124 of the Insolvency Act, an order is made appointing as interim corporate rescue practitioner
   (a) Reggie Saruchera of Grant Thornton in respect of 1st, 2nd and 3rd respondents in case No. HC 2619/19.
   (b) Reggie Saruchera of Grant Thornton jointly with Dr Cecil Hondo Madondo of Tudor House Consultants the latter in a subordinate capacity to the former in case No. HC 2696/19.
3. The corporate rescue practitioners shall carry out their duties in accordance with the relevant provisions of the Insolvency Act and shall be entitled to be remunerated in terms of s 136 of the Act.
4. The costs of this application shall be costs of corporate rescue in relation to each of the two cases HC 2619/19 and HC 2696/19 respectively.

Matizanadzo & Warhurst, applicants' legal practitioners HC 2619/19
Gumbo & Associates, applicants' legal practitioners HC 2696/19
Scanlen & Holderness, respondents' legal practitioners in both cases