

MAONI TRADING (PVT) LTD

Versus

TRIANIC INVESTMENTS (PVT) LTD

And

NQOBILE KHUMALO

And

FRANCISCA MUFAMBI

And

THE MINISTER OF MINES & MINING DEVELOPMENT

And

**COMMISSIONER GENERAL
ZIMBABWE REPUBLIC POLICE**

And

THE SHERIFF OF THE HIGH COURT OF ZIMBABWE

IN THE HIGH COURT OF ZIMBABWE

BERE J

BULAWAYO 21 DECEMBER 2016 & 13 JULY 2017

C. Chamunorwa, for the applicant

No appearance for the respondents

BERE J: In this case I have been requested to provide reasons for the provisional order which I granted on 21 December 2016. Here they are.

On 1 December 2016, my brother MAKONESE J under case number HB-340-16 dealt with an urgent chamber application involving the same parties wherein the current applicant appeared as 2nd and 3rd respondents. The parties were represented by the same legal practitioners who are

currently involved in the same case except that in the present case, the respondents, despite having been duly served with the notice of hearing were in default of attendance.

On 1 December 2016, and after hearing argument MAKONESE J then made the following order:

“In the circumstances, I make the following order:

1. The application be and is hereby dismissed.
2. The applicants are to pay costs on an attorney and client scale.”

Pursuant to this order having been granted and on 26 December 2016 I was seized with the instant application where the applicants sought the provisional order that I granted in default of the now appellants. Mr *P. Muzvuzvu* who briefly appeared on behalf of the 2nd and 3rd respondents advised the court that he in fact had not been briefed by his instructing counsel Mr *Mugiya* and sought to be formerly excused from the hearing. Mr *L. Dube* who appeared on behalf of 4th respondent indicated that he was not opposing the provisional order and pledged that his client would abide by an order of this court.

In granting the provisional order, and after going through the elaborate and well detailed judgment by MAKONESE J, earlier on alluded to, I am satisfied that the requested order does not fundamentally alter the order given by my brother Judge who had the benefits of hearing extensive argument on the matter.

After going through the detailed application filed by Mr *C. Chamunorwa* in this case I am more than satisfied that the interim relief sought by the applicants (being premised on an order which has not been appealed against) is for an order of an administrative nature which will assist in the facilitation of the enforcement of the earlier order.

I am also satisfied that without granting this order the applicant would, as argued by Mr *C. Chamunorwa* find it extremely difficult to enjoy the benefits intended by MAKONESE J in his decision of 1 December 2016 which order as I said has not been appealed against.

The prejudice to the applicant which has been articulated by the applicant's counsel demonstrates that the balance of convenience in this matter is heavily tilted in favour of the applicants.

It is for these reasons that I find comfort in granting the interim relief sought.

Calderwood, Bryce Hendrie & Partners, applicant's legal practitioners