HB 25/19
HC 587/18

BRIGHTON MUDONDO

Versus

SARAH RAVENGWA

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 18 JANUARY & 14 FEBRUARY 2019

Opposed Application

B. Masamvu for the applicant
N. Sibanda for the respondent

MAKONESE J: The applicant filed an application for a final interdict in respect of a mining claim known as SARAMINE 'A', situate in Kwekwe District, under certificate of registration number 30705. Previously, the mine was registered in 2002 by the applicant's mother who worked upon the mining claims. The respondent opposes the grant of the interdict and avers that the mining claim encroaches on to the respondent's Woodridge Plot. It is common cause that the respondent is the holder of a certificate of occupancy in respect of Plot number 6 Woodridge, measuring 40 hectares in extent. The certificate of occupancy was issued by Zibagwe Rural District Council in accordance with the law. It is not in dispute that the respondent is the legal owner with rights, title and interest in the piece of land in question.

In applications for a final interdict the requirements are clear and settled. The question the court must resolve is whether this is a proper case for the relief sought. It is now settled law that there are three essential requisites for the grant of a final interdict:

(a) A clear right on the part of the applicant
(b) Actual or reasonable apprehension of injury; and
(c) No other remedy by which the applicant can be protected.

Factual background

The respondent was allocated Plot 6 Woodridge Plot measuring 40 hectares on 6th July 2009. The land in question was allocated for the purpose of agricultural use. On 27th November 2017 the applicant purported to register a mining claim known as SARAMINE 'A' comprising 6 gold reefs on land allocated to the respondent, or adjacent to it. The applicant's mining activities have naturally come into direct conflict with the respondent's agricultural activities. Several attempts by the Department of Mines and the Ministry of Lands to resolve the apparent conflict have yielded negative results. Applicant alleges that respondent is disrupting his mining activities which have led to the institution of these proceedings. The respondent has alleged that applicant has no clear right over the mining activities and that he obtained the certificate of registration by fraudulent means. The respondent contends that the applicant has failed to establish the requirements for a final interdict and that this application is not merited.

The legal position

The facts in this matter as narrated above are very narrow. Plot number 6 Woodridge measures 40 hectares in extent. The plot was legally allocated to the respondent for agricultural use. Respondent's title to the land is not in dispute. The plot is less than 100 hectares and in terms of section 31 (1) (g) (i) of the Mines and Minerals Act (Chapter 21:15) the land in dispute is not open for prospecting except with written consent of the land owner or by written consent of the Minister responsible of Mines. The applicant did not obtain the respondent's written consent, neither was there Ministerial consent. Even assuming that applicant purports to have been granted the authority to prospect, the decision to grant such authority was null and void and of no force and effect and contrary to the *audi alterim partem* rule. This principle requires the administrative authority to give notice of any proposed action and to allow affected persons to make representations. In this matter, the respondent was not given due notice of the proposed mining location.

I am satisfied that on the facts before the court, the applicant has not established a clear right. The alleged right is contested and does not in fact exist. Further, and in any event, no

injury actually committed or reasonably apprehended that warrants the granting of an interdict has been established. The applicant does not state exactly what the respondent is alleged to have done that amounts to interference with the perceived mining rights. It terms of section 180 of the Mines and Minerals Act the landowner is prohibited from interfering with proper mining activities. Respondent alleges, and it is not seriously denied that the applicant is not carrying out any mining activities at SARAMINE 'A. In his founding affidavit the applicant alleges that:

> "*Of concern is that I am having problems in carrying out mining activities at my mine. The major problem is the respondent whose farm shares its portion with my mine. I tried to engage her on several occasions but to no avail. I sought audience with the Ministry of Mines officials in particular the Provincial Mining Director but it appears he could not assist …*"

It is clear that the alleged unlawful activities by the respondent are nothing but a smokescreen to pursue mining activities on disputed land. In my view, there are no concrete allegations that applicant's rights, if any have been violated. The *locus classicus* of the authorities that sets out the requirements of a final interdict is *Setlogelo* v *Setlogelo* 1914 AD 221 per INNES JA.

The requisites for a final interdict were re-affirmed in *Flame Lily Investments Company (Pvt) Ltd* v *Zimbabwe Salvage (Pvt) Ltd and Anor* 1980 ZLR 378.

In *ZESA Staff Pension Fund v Mushambadzi* SC-57-02, ZIYAMBI JA emphasised that a final interdict would not be granted unless the essential requirements were met.

For the aforegoing reasons, I come to the conclusion that the application for an interdict is not properly grounded both on the facts and the law.

In the circumstances, and accordingly, the application is hereby dismissed with costs.

Mutatu & Partners, c/o Dube-Tachiona, & Tsvangirai, applicant's legal practitioners
Messrs Hore & Partners, c/o Sengweni & Partners, respondent's legal practitioners