

SCRAIVEN NYAMUCHENGWA  
versus  
LARRYSOPE HEALTH CARE (PVT) LTD  
and  
THE MESSENGER OF COURT – MUREHWA

HIGH COURT OF ZIMBABWE  
**TAKUVA J**  
HARARE: 17 January 2025

### **Urgent Chamber Application**

*T Magwaliba with A Mhlanga*, for the Applicant  
*M Mandeverere*, for the 1<sup>st</sup> Respondent  
*T Mtombeni*, for the 2<sup>nd</sup> Respondent

TAKUVA J: Applicant has approached this court on an urgent basis seeking a spoliation order and the restoration of the *status quo ante*. The order sought is stated thus:

1. The application for a spoliation order be and is hereby granted.
2. The Applicant shall retake possession of the mining claim known as ME348G SCRAI A situated in the district of Goromonzi forthwith upon the granting of this order.
3. The Respondents shall pay the costs of this suit jointly and severally, the one paying the other to be absolved on an attorney and client scale.

### **FACTUAL BACKGROUND**

#### **Applicant's case**

The Applicant claims to be the registered owner of a mining claim known as ME3448G SCRAI A, located in Goromonzi district. He states that on 13 January 2025, while conducting operations at the site, the second Respondent arrived with a group of assistants and advised him that he was supposed to vacate the mining site. According to the Applicant, the second Respondent presented a warrant of ejectment, a bond of indemnity, and a letter from the first Respondent's legal representatives. The Applicant contends that none of these documents referred to or identified him.

He further asserts that the warrant was issued to be enforced against individuals claiming rights through Ray and Tanyaradzwa Brian Kaukonde and Ray and Brian Enterprises

(Pvt) Ltd, who were the subjects of proceedings in the Magistrates' Court under case number GMZ CG42/24. The Applicant insists that he is not connected to any of these parties.

The Applicant claims he informed the second Respondent that the writ was being enforced at the wrong site—specifically, at ME3448G SCRAI A. Despite this, the second Respondent allegedly proceeded to dismantle all mining equipment and demolish workers' housing structures on the premises. The Applicant argues that within just a few hours, the second Respondent executed the warrant of ejectment at an incorrect location and against the wrong individuals.

He accuses the second Respondent of failing to act in accordance with his duties as an officer of the court, describing the conduct as unreasonable and inhumane. The Applicant also alleges that the actions taken violated his privacy and infringed on his property rights.

He emphasizes that he had been in peaceful, undisturbed possession of the ME3448G SCRAI A mining claim since 2017, up until the incident on 13 January 2025. He reiterates that he was not a party to case number GMZ CG42/24, was never cited, and received no legal notice or summons related to that matter. According to the Applicant, the legal proceedings in question involved a different mining claim entirely, and the respondents named therein operate from a separate location.

As a result, the Applicant is seeking a court order to restore possession of the mining claim to him.

### **First Respondent's case**

The first Respondent contends that the Applicant has deliberately omitted important background facts that are relevant to the present case. According to the first Respondent, on 13 July 2021, it visited its registered mining claim, known as Milling Site ME18 at Pagejo Farm in Goromonzi, and found it occupied by illegal miners.

To address the situation, the first Respondent sought the intervention of the Provincial Mining Director in Marondera via a letter dated 18 July 2021. With assistance from the Zimbabwe Republic Police, the illegal miners—including the Applicant—were subsequently removed from the site.

In response to the eviction, the Applicant filed an urgent application in case HC 3934/21, seeking an interdict to halt the eviction. However, the court ruled that the matter was not urgent and struck it off the roll. Following this, the first Respondent continued to press for the enforcement of the Provincial Mining Director's directive. On 22 October 2021, the police

again intervened at the site, halted the illegal activities, confiscated mining equipment, collected evidence, and opened a criminal docket. The Applicant again approached the courts in another urgent application in HC 5814/21, but once more, the matter was struck off for lack of urgency.

The first Respondent stated that during this dispute, it discovered that the Applicant held a mining title, SCRAI A ME348G, which had been improperly registered over the first Respondent's existing milling site. A separate dispute also emerged between the Applicant and Ray Tanyaradzwa Brian Kaukonde, resulting in a notice of cancellation being issued against the Applicant's claim. The first Respondent claimed that on 27 July 2021, it received a letter from the Provincial Mining Director cancelling its own mining claim based on allegations of over-pegging on Mr. Kaukonde's site. Similarly, the Applicant was issued a notice of intent to cancel his claim on the basis that it overlapped with the first Respondent's Milling Site ME18.

The first Respondent appealed this decision, while the Applicant did not appeal the cancellation of his own claim. Then, on 21 August 2021, the first Respondent was granted an injunction order under the Mines and Minerals Act, effectively barring the Applicant from conducting any mining operations on ME18. Following this, the Applicant was removed from the site by the police, and his efforts to regain possession through court actions were unsuccessful.

Following the cancellations, Ray Tanyaradzwa Brian Kaukonde and Ray & Brian Enterprises (Pvt) Ltd assumed possession of the site, including ME18. They later took both the Applicant and first Respondent to court in case HC 3134/24. However, the matter was struck off the roll because the court declined to rule on it while an appeal was still pending before the Minister of Mines and Mining Development.

Despite the standing injunction, Ray & Brian Enterprises (Pvt) Ltd resumed mining operations at the site and introduced other individuals to work there. The first Respondent claims that representatives of Ray & Brian Enterprises (Pvt) Ltd entered into agreements with the Applicant, allowing him to continue mining activities—acts which were in clear defiance of the court order.

According to the first Respondent, the appeal decision by the Minister led to the cancellation of both the Applicant's and Mr Kaukonde's mining claims. Based on this outcome, the first Respondent then applied to the Goromonzi Magistrates' Court for an eviction order against Ray Tanyaradzwa Brian Kaukonde and Ray & Brian Enterprises (Pvt) Ltd, and any other persons occupying the site under their authority, asserting that only the first Respondent

had lawful rights to the property. The eviction was granted, and although Mr Kaukonde appealed the decision, that appeal was struck off the roll in case HCH 4100/24.

### **The Law**

The law that applies to the remedy of *mandament van spolie* is now well settled. The established legal requirements in applications such as this are that an applicant must prove that he was in peaceful and undisturbed possession of the property and was unlawfully dispossessed of the said property. Ownership of the property does not matter at this stage.

The celebrated case of *Botha & Anor v Barrett* 1996(2) ZLR 73(s) aptly stated the position at pp 79-80.

“It is clear law that in order to obtain a spoliation order two allegations must be made and proved. These are:

- a. that the applicant was in peaceful and undisturbed possession of the property; and
- b. that the respondent deprived him of the possession forcibly or wrongfully against his consent.”

The onus to prove the requirements in an application for a spoliation order is on the applicant and the lawfulness or otherwise of the possession challenged is not an issue. It has also been said that spoliation proceedings are by their very nature urgent.

### **Application of the law to the facts**

With regards to the first requirement, the Applicant must demonstrate that he had peaceful and undisturbed possession of the property. However, based on the facts presented, it is evident that this was not the case. It is undisputed that the Applicant was not in peaceful and undisturbed possession of the mining claim. His claim was revoked twice by the relevant authorities, yet he continued to return and attempt to mine the same area. Despite multiple efforts to convince the court to grant him rights over the claim, he was unsuccessful. The repeated evictions over the years further indicate that his possession was neither peaceful nor uninterrupted. Additionally, the Applicant did not challenge the cancellation of his claim through an appeal, suggesting an acknowledgment on his part that the mine was not lawfully his.

*In casu*, the Applicant has failed to prove peaceful and undisturbed possession of the mining claim which is a crucial requirement in the granting of a spoliation order.

As for the second requirement, the Applicant was not unlawfully or forcibly dispossessed of the mining claim without his consent. The first Respondent followed proper legal channels by

obtaining a court order authorizing the Applicant's eviction. The eviction was lawfully executed by the appropriate authorities, meaning that no force or unlawful conduct was used in reclaiming the mining site. Due process of law was observed, and the court's directives were implemented accordingly. Although the eviction occurred without the Applicant's consent, it cannot be deemed wrongful under the circumstances.

*In casu*, the Applicant has failed to prove that the respondent deprived him of the possession forcibly or wrongfully against his consent which is a crucial requirement in the granting of a spoliation order.

In the result, I make the following order:

- (1) The application be and is hereby dismissed with costs.

**TAKUVA J.....**

*Madzivire Attorneys at Law*, applicant's legal practitioners  
*Kadzere, Hungwe and Mandevera*, first Respondent's Legal Practitioners