SHANTEL MBEREKO

and

CHEHUMAMBE MINING SYNDICATE

and

RASS MINING SYNDICATE

and

COMMUNITY MINING SYNDICATE

versus

THE MINING COMMISSIONER (HARARE)

and

THE PROVINCIAL MINING DIRECTOR (MASHONALAND CENTRAL)

and

GIFT CHIVANDIRE

and

DICKSON MAFIOS

and

CLIVE FULA

and

RAN MINE (PVT) LTD

and

THE DISPOL, ZRP, MASHONALAND CENTRAL (BINDURA)

and

OFFICER COMMANDING, BINDURA MINERALS

HIGH COURT OF ZIMBABWE

CHIKOWERO J

HARARE, 10 & 11 May 2018

**Urgent chamber application**

Ms *L Rubaya*, for the applicants

Mrs *P Sibanda*, for the 1st, 2nd, 7th & 8th respondents

*D Drury*, for the 6th respondent

3rd and 5th respondents in default

CHIKOWERO J: This matter came before me as an urgent chamber application for an interdict *pendente lite*.

Counsel for the first, second, seventh and eighth respondents raised the preliminary point that the matter was not urgent.

While associating himself with this point *in limine*, the sixth respondent’s counsel raised additional preliminary points.

In sum, the same related to the identity and legal personality of the last three applicants as well as the *locus standi* of all the applicants.

My view is that resolution of the issue of urgency only becomes necessary in the event that I dismiss the other preliminary points.

I agree that, as cited, there is absolutely nothing to show that the second, third and fourth applicants are juristic persons.

The founding affidavit is unhelpful because, in para 1.2, it merely states that they are mining syndicates and alleges:

“The syndicates, are in terms of the High Court Rules allowed to sue and be sued in their names.”

I have not found any provision in either the Rules of this court or the Mines and Minerals Act [*Chapter 21:05*] referring to a “mining syndicate” let alone clothing the same with legal personality.

Despite listening to Mr *Drury*’s submission on this aspect, counsel for the applicant never disclosed whether each of the second, third and fourth applicants exist as a universitas, association, partnership, club or private voluntary organisation.

The papers before me do not disclose the nature of these applicants.

The law in terms of which they exist was never mentioned.

It was not revealed whether they exist in terms of the common law or statute and if the latter, what statute.

It was not alleged that they came into being via their Constitutions. No Constitution was attached to the Founding Affidavit.

In these circumstances, I find that these three applicants do not exist at law. Mrs *Rubaya*’s submission that the second and third applicants are part of the fourth applicants was not only in the nature of evidence from counsel, but took the matter nowhere.

Because they do not exist at law none of them is a *legal persona*. I refer in this regard to the following decisions, *Masuku* v *Delta Beverages* 2012 (2) ZLR 112 (H); *Diocese of Harare* v *Church of Province of Central Africa and Another* 2008 (1) ZLR 112 (H); *CT Bolts (Pvt) Ltd* v *Workers Committee* 2012 (1) ZLR 363 (S).

In *Gariya Safaris (Pvt) Ltd* v *Van Wyk* 1996 (2) ZLR 246 (H) Malaba J (as he then was) remarked at 252G:

“A summons has legal force and effect when it is issued by the plaintiff against an existing juristic or a natural person.”

The same holds true for this application.

The first applicant sued in her “personal capacity as well as in her representative capacity as lead member, (styled “star” or accredited agent, in mining parlance), in all the listed mining syndicates.”

Having found that the second, third and fourth applicants do not at law exist and are not *legal personae*, it follows that the first applicant cannot sue as an agent of a non-existent principal.

Even if I had found that the rest of the applicants exist and were legal personalities, there remains no evidence that the first applicant had express authority to institute proceedings on behalf of them: *Westwood* v *Mecers Property Brokers* 2011 (2) ZLR 491 (H). Further, applicants’ counsel conceded that the certificate of registration number 39451 reflects the registered holder as “Community Mining Syndicate D”.

Community Mining Syndicate D, whatever it is, was not before me.

That certificate also reflects a different mining claim from the two mining claims in respect of which the relief in this matter was sought.

No connection was shown both on the papers and in argument between that certificate and all the applicants. Yet certificate of registration number 39451 was the basis on which the application was made.

All the applicants therefore failed to persuade me that they had the *locus standi* to institute these proceedings and to seek the relief that they craved.

Having found as I have done on the preliminary points of non-existence of -cum-lack of legal personality of the second, third and fourth applicants and the lack of *locus standi* on the part of all the applicants it is unnecessary that I deal with the issue of urgency.

This application was fatally defective. It should never have been filed. It is clear abuse of court process.

It is not possible that I order costs against the second, third and fourth applicants. I have found that they are non-existent, as cited.

All the costs will therefore have to be borne by the first applicant.

In the result, I find as follow:

1. The point *in limine* that the 2nd, 3rd and 4th applicants, as cited, are not legal personalities be and is hereby upheld.
2. The preliminary point that all the applicants do not have locus *standi in judicio* to file this applications be and is hereby upheld.

It consequently is ordered that:

1. The urgent chamber application is dismissed.
2. The 1st applicant shall pay the 1st, 2nd, 6th, 7th and 8th respondents’ costs of suit on the legal practitioner and client scale.

*Mandizha and Company*, applicants’ legal practitioners

*Civil Division of the Attorney General’s Office*, 1st, 2nd, 7th and 8th respondent’s legal practitioners

*Honey and Blanckenberg*, 6th respondent’s legal practitioners