**REPORTABLE (92)**

**FIDELITY PRINTERS AND REFINERS (PRIVATE) LIMITED**
**v**
**(1) THE MINISTER OF MINES AND MINING DEVELOPMENT N.O (2) THE PROVINCIAL MINING DIRECTOR FOR MIDLANDS PROVINCE N.O (3) JONAH NYEVERA**

**SUPREME COURT OF ZIMBABWE**
**MAVANGIRA JA, CHIWESHE JA & CHATUKUTA JA**
**HARARE: 11 OCTOBER 2021**

*T. Zhuwarara,* for the appellant

*P. Chibanda,* for the first and second respondents

*G.R.J. Sithole,* for the third respondent

**CHIWESHE JA:** This is an appeal against the whole judgment of the High Court handed down on 28 April 2021 under judgment HH 211/21 in which the court *a quo* confirmed the forfeiture of the appellant's mining block registered under registration certificate number 18132, also known as Mirage 3 situate at Kwekwe Mining District of the Midlands.

At the close of submissions we delivered an ex tempore judgment and allowed the appeal with costs. The parties have requested that they be furnished with written reasons for our judgment. We outline them hereunder.

**FACTUAL BACKGROUND**

The appellant is a duly registered company which is wholly owned by the Government of Zimbabwe through the Reserve Bank of Zimbabwe. At all material times the appellant was the owner of the mining block registered under certificate number 18132 commonly referred to as Mirage 3, Kwekwe Mining District. With time it decided to sell its interests in the mine to a company owned by one Zvayi. On 8 January 2021 the appellant wrote to the second respondent advising him of the intended sale of its interests. It wished to settle all outstanding fees on its account before it concluded the sale. It sought, from the second respondent, to be advised of the amount owing on its fees account. It was the response to that letter that triggered the dispute between the appellant and the first and second respondents.

On 11 January 2021 the second respondent wrote to the appellant advising that the appellant's claim to the mine was forfeited on 5 June 2020. This unexpected response by the second respondent took the appellant completely by surprise as no notice of forfeiture had been served upon it. The appellant immediately engaged the first and second respondents seeking an amicable resolution of the matter. The respondents would have none of it, insisting that the forfeiture had been lawfully effected in terms of the Mines and Minerals Act [*Chapter 21:05*] (the Act). The appellant was also informed that the mining claim had since been relocated to the third respondent. Aggrieved by this turn of events the appellant approached the court *a quo* on an urgent basis seeking a provisional order in the following terms:

> "**INTERIM RELIEF/PROVISIONAL ORDER GRANTED PENDING THE RETURN DAY THIS COURT ORDERS THAT**:
> 1. The operation of the decision by the second respondent to forfeit applicant's mining claim known as Mirage 3 Mine registered under certificate Number 18132 is hereby suspended pending the return day.
> 2. The operation of decisions by the first and second respondents subsequent to the forfeiture referred to in paragraph 1 (one) hereof, including the award of a special mining grant to the third respondent over the land covered by Mirage 3 Mine registered under Certificate Number 18132 is also suspended pending the return day.
> 3. Pending the return day, an interdict is granted restraining the third respondent, or his agents from doing any of the following acts:

3.1 Entering the land covered by Mirage 3 Mine registered under Certificate Number 18132.
3.2 Disturbing or threatening the applicant's mining operations in the area under Mirage 3 Mine registered under certificate number 18132.

**TERMS OF THE FINAL ORDER SOUGHT**

1. The forfeiture of the applicant's claim Mirage 3 Mine registered under Certificate Number 18132 purportedly done on 5 June 2020 is set aside.
2. For the avoidance of doubt, further to para 1 (one) hereof, any act done by the first and second respondents further to the forfeiture aforesaid, whose effect is to alienate the area under Mirage 3 Mine registered under Certificate Number 18132 is declared invalid and consequently null and void.
3. Those of the respondents who oppose the application, are ordered to pay the applicant's costs on a scale of attorney and own client, jointly and severally, the one paying the others to be absolved."

The provisional order was granted by TAGU J on 17 February 2021.

**CONFIRMATION PROCEEDINGS IN THE COURT *A QUO***

On the return date the appellant moved for confirmation of the provisional order and issuance of the final order sought. The arguments in the court *a quo* centered on the interpretation of s 260 of the Act. It reads:

> "260 **Forfeiture for failure to obtain inspection certificate for block.**
> Failure to obtain an inspection certificate within the period prescribed therefor shall, unless a protection certificate has been obtained under s 270 in respect of such block, render liable to forfeiture the block in respect of which such failure has taken place."

**SUBMISSIONS BEFORE THE COURT *A QUO***

In the court *a quo* the respondents argued that in terms of s 260 the forfeiture of a mining block for the reason of failure to pay fees is automatic and by operation of the law. Accordingly, the forfeiture of the appellant's block must be viewed in that light. They insisted that there was no duty on the mining commissioner to personally notify the appellant of the intended forfeiture - a posting of the notice of forfeiture on the notice board at the Mining Commissioner's office was all that the law required to be done.

On the other hand, the appellant argued before the court *a quo* that forfeiture was not automatic but at the discretion of the mining commissioner. Where the commissioner intends to forfeit a block, he is required at both common law and in terms of the Administrative Justice Act [*Chapter 10:28*] (AJA) to give prior adequate notice to the owner of the block of his intention to do so and to invite representations from such owner before any forfeiture is effected. Failure to do so, argued the appellant, renders the forfeiture null and void for failure to observe the rules of natural justice as required under the AJA.

The court *a quo* ruled in favour of the respondents and discharged the provisional order with costs. Dissatisfied with that outcome, the appellant has filed this appeal. It relies on four grounds of appeal.

**GROUNDS OF APPEAL**

The grounds of appeal are as follows:

"1. The Court *a quo* erred in its interpretation and implementation of s 260 of the Mines and Minerals Act [*Chapter 21: 05*]. Such provision does not permit the 1st and 2nd respondents to act arbitrarily and without due notice to an affected party such as the appellant.
2. Concomitantly, the Court *a quo* also misdirected itself in finding that the second respondent had acted lawfully when such respondent had not given proper prior notice before forfeiting the appellant's mining rights in Mirage 3 Kwekwe.
3. Furthermore the Court *a quo* also erred in determining that the provisions of the Mines and Minerals Act [*Chapter 21:05*] excused the 1st and 2nd respondent from giving credence to the appellants' rights as espoused in the Administrative Justice Act [*Chapter 10:2*8].
4. Additionally the Court *a quo* grossly misdirected itself in finding that, in the circumstances, the 3rd respondent had lawfully been issued a special Grant which Grant only came into existence because of the unlawful forfeiture of the appellant's mining rights in respect of Mirage 3 Kwekwe."

The appellant seeks the following relief:

"1. That the instant Appeal Succeeds with Costs.
2. That the order of the Court *a quo* be set aside and substituted with the following:
'1. The Provisional Order issued by this Court in HC 85/21 on 17 February 2021 be and is hereby confirmed.

2. The forfeiture of the Applicant's claim Mirage 3 Mine registered under certificate number 18132 purportedly done on 5 June 2020 is hereby set aside.

3 For the Avoidance of doubt further to para 2 hereto any act done by the 1st and 2nd respondents further to the forfeiture aforesaid, whose effect is to alienate the area under Mirage 3 Registered under Certificate Number 18132 is declared invalid and consequently null and void.

4. The respondents shall pay costs of suit.'"

**THE ISSUE FOR DETERMINATION**

The grounds of appeal raise only one issue for determination, namely, whether the first and second respondents acted arbitrarily when they forfeited the appellant's mining rights without giving it prior notice and the right to make representations.

**SUBMISSIONS BEFORE THIS COURT**

The parties in the main made the same submissions as those before the court *a quo.*

Mr *Zhuwarara,* for the appellant, persisted with the argument that s 260 of the Mines and Minerals Act [*Chapter 21:05*] does not provide for automatic or summary forfeiture of a mining block. He further submitted that first and second respondents are required under common law and in terms of the AJA to give prior notice before any decision which has adverse effects on the rights and interests of others is taken. He bemoaned the fact that the notice in respect of the forfeiture of the appellant's mining block was only given after the decision to forfeit had been taken.

Mr *Chibanda*, for the first and second respondents, prevaricated in his submissions. In the one breath he submitted that the words "render liable to forfeiture" in s 260 of the Act connote automatic forfeiture by operation of law. In the next breath he submitted that the words mean vulnerable to forfeiture. He further submitted that the notice given by the first and second respondents was merely to confirm the forfeiture that had already occurred by operation of law.

Mr *Sithole,* for the third respondent, virtually conceded the merits of the appeal by submitting that the provisions under consideration seriously required amendment by reason of lack of procedural clarity once a mining block is rendered liable to forfeiture.

**ANALYSIS**

The fate of this appeal hinges on the interpretation of s 260 of the Act, in particular the meaning of the words "render liable to forfeiture." It also hinges on the interpretation of s 272 of the Act as read with s 3 of the AJA. Given their ordinary grammatical meaning these words do not connote automatic forfeiture by operation of law as contended by the respondents. The words used by the legislature in this section simply mean that the mining block in respect of which the statutory fee has not been paid is susceptible to forfeiture. It may be forfeited at the discretion of the Mining Commissioner. In our view s 260 does not provide for automatic forfeiture. It merely renders the mining block liable or open to forfeiture. We are fortified in this regard by the provisions of s 271 which state that "where any mining location is liable to forfeiture in terms of this Act, the mining commissioner may declare such location to be forfeited." (Own emphasis).

We are in agreement with Mr *Zhuwarara* who submitted that the issue is not about the conduct of the appellant but about the procedure to be followed once a mining block

becomes liable to forfeiture. A Mining Commissioner intending to forfeit a mining block must follow certain minimum procedures in order to comply with the rules of natural justice. Section 260 does not prescribe the procedure to be followed once a block becomes liable to forfeiture. That, in our view, does not absolve the first and second respondents from the obligation to give prior notice and invite representations before forfeiture. As rightly submitted by Mr *Zhuwarara*, that obligation has always existed under the common law as pronounced by this Court in a plethora of authorities which include the cases of *Metsola* v *Chairman* of the *Public Service Commission and Another* 1989(3) ZLR 147 (S) at 155 C–D and *Taylor v Ministry of Higher Education* and *Another* 1996 (2) ZLR 772 (S) at 780 A-B.

In the case of *Metsola* v *Public Service Commission and Another* (*supra)*, it was held that when a statute empowers a public official to give a decision which prejudicially affects the property or liberty of an individual, that individual has the right to be heard before any action is taken against him, unless the statute expressly or by necessary implication indicates the contrary. Similarly in the *Taylor* case (*supra*), it was held that the maxim "*audi alteram partem*" expresses a flexible tenet of natural justice that has resounded through the ages. The "*audi*" principle applies both where a person's existing rights are adversely affected and where he has a legitimate expectation that he will be heard before a decision is taken that affects some substantive benefit, or advantage or privilege that he expects to acquire or attain and which it would be unfair to deprive him of without first consulting him.

This common law obligation was subsequently enacted in the AJA. (See *U-Tow Trailers (Private*) *Limited* v *City of Harare and Another* 2009 (2) ZLR 259(H). Subsection (2) of s 3 of the AJA provides:

"(2) In order for an administrative action to be taken in a fair manner as required by paragraph (a) of subsection (1), an administrative authority shall give a person referred to in subsection (1)-
(a) adequate notice of the nature and purpose of the proposed action; and
(b) a reasonable opportunity to make representations; and
(c) adequate notice of any right of review or appeal where applicable."

However subs (3) of that section allows an administrative authority to depart from the requirements prescribed in subs (2) under certain circumstances. It provides:

"An administrative authority may depart from any of the requirements referred to in subsection (1) or (2) if-
(a) The enactment under which the decision is made expressly provides for any of the matters referred to in those subsections so as to vary, or exclude any of their requirements; or
(b) The departure is, under the circumstances, reasonable and justifiable, in which case the administrative authority shall take into account relevant matters, including:-
(i) The objects of the applicable enactment or rule of common law;
(ii) The likely effect of its action;
(iii) The urgency of the matter or the urgency of acting thereon;
(iv) The need to promote efficient administration and good governance;
(v) The need to promote the public interest."

Neither Mr *Chibanda*, for the first and second respondents, nor Mr *Sithole*, for the third respondent, contended in the court *a quo* or in this Court that the first and second respondents were entitled, in terms of subs 3, to depart from the provisions of subs 1 and 2 on the grounds that the Act expressly provides otherwise, or, on the grounds that the departure, under the circumstances, was reasonable and justifiable. Rather the first and second respondents merely stated that they were dealing with thousands of persons, the implication being that it was impractical, given the numbers, to comply with the dictates of natural justice. One does not deny the rights of persons merely because such persons are "too many".

The forfeiture of a mining claim involves the abrogation of a right and as such the forfeiture cannot be automatic. In the case of *In re Munhumeso and Ors* 1994(1) ZLR 49 (SC)

it was held that derogations from rights and freedoms which have been conferred should be given a strict and narrow rather than wide construction. Rights and freedoms are not to be diluted or diminished unless necessity or intractability of language dictate otherwise.

**THE NOTICE OF FORFEITURE**

In forfeiting the appellant's claim, the second respondent proceeded by way of a document referred to as "Forfeiture Notice Number 5 of 2020" given under his hand. The preamble to this notice reads.

> "The following mining locations have on this second day of July 2020 been forfeited in terms of s 260 of the Mines and Minerals Act (*Chapter 21 :05*) and will, subject to provisions of s 31 and 35 of the said Act, be open to relocation on 10 July 2020, unless revoked on or before 25 June 2020."

A list of the mining locations so forfeited thereafter follows. The list includes the appellant's mine, the subject of this appeal. In doing so the second respondent acted in terms of s 272 of the Mines and Minerals Act which provides for posting of all forfeited mining blocks on a notice board for a period of 35 days during which period any affected party may apply for the revocation of the forfeiture.

As already indicated the notice of forfeiture is issued without prior notice. That way the affected party is denied the opportunity to make representations prior to forfeiture. This is the gist of the appellant's argument. *In casu* the appellant avers, and this was not disputed, that it had been informed that as a state entity it would be exempted from paying for the inspection certificate referred to under s 260 of the Act. It was not afforded the opportunity to make representations in this regard before forfeiture was effected as required by the rules of natural justice.

In any event, the notice of forfeiture was posted on the notice board at the second respondent's office. In other words the notice never left the second respondent's premises. It was never brought to the appellant's attention. The appellant became aware of the notice when it wrote to the second respondent concerning an entirely different matter. The mere posting of the notice on the notice board is clearly an inadequate and ineffective means of communication.

The respondents have argued that s 260 of the Act should not be read in isolation but together with ss 197 to 199. The provisions of those sections require the holder of a mining lease or block to obtain a first inspection certificate and renew such certificate annually in order to protect the mining lease or block. None of the provisions referred to exempts the respondents from compliance with the rules of natural justice when forfeiting a mining lease or block. On the contrary subs (3) (4 and (5) of s 199 require the respondents, when forfeiting a mining lease or block that has not been adequately developed or worked for a period of one year from the date of registration of such block or lease, to first refer the matter to the Board for investigation. If the board finds that such lease or block has indeed not been adequately developed or at all, the Board "shall" call upon the holder to make representations as to why such block or lease should not be forfeited. Subsection (5) of s 199 is particularly poignant. It provides:

> "(5) After considering any representations made by the holder in terms of subsection (4), unless the Board finds that-
>
> (a) the failure to develop or work, or adequately to develop or work such block or mining lease, is due to circumstances beyond the control of the holder and that he has made every effort to overcome them, or
> (b) it is the holder's declared intention to start or continue developing or working the block or mining lease within a period of six months on a scale satisfactory to the Board; or
> (c) there is reasonable cause for the delay in developing or working the block or mining lease or for not adequately developing or working such block or mining lease; or
> (d) the block forms part of a series of not more than ten blocks contiguous to a main block being worked by the holder and is essential to the proper working of such main block;

the Board shall order the mining commissioner to forfeit forthwith the registered block or mining lease, and shall notify the holder accordingly."

Subsection (5) thus complies with the rules of natural justice as it affords the holder to make prior representation before forfeiture is declared. The subsection also demonstrates that forfeiture is not automatic but executed by the second respondent, be it in this particular instance at the behest of the Board. It should be noted further that this subsection obliges the respondents to comply with the rules of natural justice before effecting forfeiture of a mining block that has not been worked at all. Surely the duty to do so would be greater in the case of a mining block that is being worked where the holder would have incurred costs or made an investment. As already observed, s 260 itself does not provide similar modalities. Because of that lacuna the respondents have to rely on the provisions of the Administrative Justice Act in order to comply with the rules of natural justice as they are obligated to do.

**NO EXPRESS PROVISION IN THE MINES AND MINERALS ACT TO DEPART FROM THE PROVISIONS OF SUBSECTIONS (1) AND 2 OF SECTION 3 OF THE ADMINISTRATIVE JUSTICE ACT WITH RESPECT TO MINING BLOCK**

The respondents have urged this Court to read s 260 of the Act not in isolation but together with other pertinent sections.

A reading of Part XVI of the Act in particular ss 260 to 265 shows that the question of forfeiture is dealt with differently depending on the nature of the asset to be forfeited. With regards forfeiture of mining leases, s 263 of the Act provides:

"263 Forfeiture of mining leases.

(1) If the holder of a mining lease fails to obtain any inspection certificate within the period prescribed therefor, the mining commissioner shall by registered letter notify the holder of such failure and shall send a copy of such letter to the Board.

(2) If within a period of thirty days from the date of posting such notification such holder has failed to obtain such inspection certificate, the mining commissioner shall inform the Board and the Board shall, by registered letter, notify the holder that the mining lease is liable to forfeiture.

(3) Within a period of thirty days from the date of the posting by the Board of such notification, the holder of the mining lease may, if he has not obtained such inspection certificate, make written application to the Board for an extension of time within which to obtain such certificate.

(4) If within the period mentioned in subsection (3), the holder of the mining lease has not obtained such inspection certificate or failed to make such application for an extension of time, the Board may direct the mining commissioner to declare the mining lease to be forfeited, and the mining commissioner shall forthwith comply with such direction.

(5) Where the holder of a mining lease has made application to the Board for the extension of time mentioned in subsection (3), the Board may refuse such application or may grant an extension of time for such period as it may deem fit.

(6) Where an extension of time has been granted under subsection (5), the Board may, on the application of the holder of the mining lease, from time to time, grant further extension of time.

(7) Where the Board has refused to grant any such extension of time or where an extension has been granted and the holder of the mining lease has failed to obtain the inspection certificate before the expiry of such extension of time, the Board may direct the mining commissioner to declare the mining lease to be forfeited, and the mining commissioner shall forthwith comply with such direction."

With regards forfeiture of mining locations, s 265 of the Act provides:

"265 forfeiture of mining location:

(1) If a holder of a registered mining location fails to comply with a directive given by the Minister in terms of subsection (5) of section *two hundred and twenty*, the Minister may order in writing that the registered mining location on which the dump concerned is situated be forfeited, unless the holder thereof satisfies the Minister that he took all reasonable and practicable steps to comply with the directive either by working the dump himself or by tributing it to someone else but was unable to do so.

(2) Subject to subsection (3), an order in terms of subsection (1) shall not take effect until a period of thirty days has expired after the holder of the registered mining location concerned has been notified in writing of the order.

(3) During the period of thirty days referred to in subsection (2), any person aggrieved by an order in terms of subsection (1) to forfeit a registered mining location may appeal to the High Court against such order and, pending the determination of such appeal, the mining location concerned shall not be forfeited.

(4) The procedure in any appeal in terms of subsection (3) shall be as prescribed in rules of court.

(5) In any appeal in terms of subsection (3), the High Court may make such order in the matter as it thinks just."

The provisions under ss 263 and 265 are a permissible departure from or substitute for the mandatory provisions of subs (1) or (2) of s 3 of the Administrative Justice Act. Section 3 (3) of that Act allows an administrative authority to depart from the provisions of subsections (1) or (2) if the enactment under which the decision is made (in this case the Mines and Minerals Act) expressly provides for any of the matters referred to in subs (1) or (2) so as to vary or exclude any of their requirements. In other words departure from the provisions of those subsections can only be entertained where the Mines and Minerals Act expressly provides for the rules of natural justice to be followed by an administrative authority if such provision may capture all the requirements as spelt out by the Administrative Act, or vary them or exclude any of them. We thus consider, for that reason, that ss 263 and 265 are compliant with the rules of natural justice as epitomized by the Administrative Justice Act in so far as they expressly capture all or some or even exclude any of those rules. In short the enactment must contain express provisions dealing with the rules of natural justice, be it their inclusion or exclusion in whole or in part.

In contrast, there are no similar provisions in the forfeiture clauses under ss 260, 261 and 262. The forfeiture of a mining block being an abrogation of the rights of its holder, an administrative authority is obliged to give prior notice of such forfeiture and allow the holder of such rights an opportunity to make representations. The fact that s 260 and the other forfeiture sections do not have provisions for such prior notice and other procedures of natural justice means that there is a lacuna in the Act. However the void left by that lacuna has been filled in by the AJA which requires that administrative authorities act lawfully, reasonably and in accordance with the rules of natural justice. Any departure therefrom must be sanctioned by an express provision in the enabling enactment. An express provision is one whose provisions are by their clarity not open to conjecture. Phrases such as "without prior notice," "automatic" "notwithstanding" come to mind as examples of the term "express provisions." There being no such express provision in the forfeiture clause, the administrative authority is bound by the provisions of subs (1) and (2) of s 3 of the Administrative Justice Act.

*In casu,* the first and second respondents have not motivated the factual basis upon which the departure from the provisions of the AJA could be held to be reasonable or justifiable. The first and second respondents sought to rely on the provisions of s 3 (3) (iv) of the Administrative Justice Act, namely the need to promote efficient administration and good governance. No explanation has been given as to why the first and second respondents have not utilized various platforms available through information technology to better manage the numbers. Nor has it been shown how the observance of rules of natural justice would negatively impact efficient administration and good governance. Indeed Mr *Chibanda*, intimated that the relevant provisions of the Act needed to be reviewed to bring them into line with the rules of natural justice.

Assuming the first and second respondents' submissions are correct, namely that no prior notice is required before the forfeiture of a mining block and that ss 271 and 272 of the Act are a permissible derogation from the provisions of ss 1 and 2 of the AJA as defined under s 3 (3) of that Act, the inevitable conclusion is that the respondents are only required to comply with the rules of natural justice after forfeiture. The question to be determined would then be whether the notice given by the second respondent after forfeiture complies with the law.

In our view the notice is manifestly fictitious in that it is only posted at the notice board at the second respondent's office. In other words, the notice does not go beyond the second respondent's premises. Unless the holder of a mining block physically visits the second respondent's office, he or she will remain unaware of the fact that his or her mining block has been forfeited. In order to be valid such notice must be effectively communicated. Section 3 (2) (a) of the AJA requires the respondents to give the appellant "adequate notice of the nature and purpose of the proposed action." In practical terms therefore, the second respondent is required, in terms of s 272 (1) of the Act to post the notice of forfeiture on his notice board, and in terms of the AJA, to communicate this notice to the appellant or any other person so affected. The first and second respondents argue that the posting of the notice at second respondent's premises on its own suffices. They argue that because of the numbers involved it would be impracticable to deliver personal service of the notice. The AJA does not provide that notices be served personally. In this jurisdiction it is permissible to serve notices through the Government Gazette and the print media. Notices can also be served through websites and various information technology platforms. No explanation has been given as to why notices could not be served that way. This question was specifically directed at counsel for the respondents.

**DISPOSITION**

*In casu,* the notice of forfeiture was not drawn to the appellant's attention. As a result the appellant was not in a position to make any representations, a right accorded to it by law. The resultant forfeiture of the appellant's mining block under those circumstances cannot be sanctioned. The appellant was alerted to the forfeiture when it made certain inquiries on matters not related to forfeiture. The appellant avers that it had been advised by the respondents that as a government entity it was exempt from paying the statutory fees. Because the notice was not communicated to it, it was unable to make these or other representations to the second respondent.

It is our view therefore that by not affording the appellant prior notice of the forfeiture and the opportunity to be heard before any action is taken thereby and failing to comply with the peremptory provisions of s 3(1) and (2) of the Administrative Justice Act, the first and second respondents acted arbitrarily when they forfeited the appellant's mining rights. Alternatively, the respondents' failure to give effective and adequate notice to the appellant after forfeiture in terms of s 272 of the Act, is a breach of the rules of natural justice. For these reasons the purported forfeiture must be declared null and void. Any actions or conduct of the first and second respondents consequent upon the purported forfeiture, including the relocation of the mining block to the third respondent, is of no legal force or effect. Costs will follow the cause.

Accordingly, it is ordered as follows;

1. The appeal be and is hereby allowed with costs.

2. The order of the court *a quo* in HH211/21 be and is hereby set aside and substituted with the following:

"a. The provisional order issued by this Court in HC85/21 on 17 February 2021 is hereby confirmed.

b. The forfeiture of the applicant's claim Mirage 3 Mine registered under certificate number 18132, purportedly done on 5 June 2021, is hereby set aside.

c. Further to para (b) above any act done by the first and second respondents further to the forfeiture aforesaid, whose effect is to alienate the area under Mirage 3 Mine registered under certificate number 18132, is declared invalid and consequently null and void.

d. The respondents shall pay costs of suit."

**MAVANGIRA JA :** I agree

**CHATUKUTA JA :** I agree

*Coghlan Welsh & Guest*, appellant's legal practitioners

*Civil Division of the AG'S Office*, 1st and 2nd respondent's legal practitioners

*Matatu & Partners*, 3rd respondent's legal practitioners