ZIMBABWE PLATINUM MINES (PRIVATE) LIMITED Applicant
versus
ZIMBABWE REVENUE AUTHORITY 1st Respondent
and
STANBIC BANK 2nd Respondent

HIGH COURT OF ZIMBABWE
BERE J
HARARE, 7 – 8 December 2011

R Theron, for applicant
S.P. Musithu, for 1st respondent

BERE J: Following submissions by the two legal practitioners I am enjoined to determine the aspect of urgency in this matter before considering the application on merits.

This case has a well documented history dating back to December 2009, spilling over to 2010 and 2011. It is clear that the applicant fully appreciated the need to challenge the legislation on royalties from the time the figures were amended from 2,5% to 3,5 in 2009, and to 5% in 2010.

Ironically instead of filing the now threatened application for a declaratory order, the applicant complied with the payment of the royalties at the new rate of 3,5% before unilaterally reverting back to the preferred rate of 2,5%.

From that time up until November 2011 both the applicant and the respondent have been exchanging notes on the question of royalties. It is clear that both parties differ on the correct rate to be applied in the computation of royalties and this has been so for quite sometime now.

Representations have been made to the Ministry of Finance by the applicant as regards the way forward in tackling the aspect of the payment of royalties and at the time we heard this application no conclusive position had been taken.

By its letter of 10 November 2011 the first respondent signalled its intention to institute lawful measures to recover the royalties outstanding in terms of the current operating legislation as understood by it. The applicant did not do anything by way of filing an application for a declarator to stop the first respondent from carrying out its threatened action towards the recovery these royalties.

Inaction on the part of the applicant led to the first respondent appointing the second respondent on 17 November 2011 as the collector of the outstanding royalties in terms of the Income Tax Act as a result of which the first $7 209 476-00 was garnisheed towards the reduction of the royalties.

It was only after that that the instant urgent application was filed.

This application is leaning on no substantive application at all to find a permanent solution to the dispute between the parties. The applicant has had the opportunity to file an application for a declarator from 2009 to date.

No such application had been filed as at last week when I heard this matter. It is doubtful that even as I write this judgment, any such application has been filed.

The totality of the casual approach adopted by the applicant for a period of almost two years does not in my view justify urgency in this matter. If anything the urgency is clearly self created.

The applicant knew that in terms of the existing legislation if the revenue expected was not remitted in full the first respondent would invoke some legal process to recover same and the garnishee order could not possibly have come as a surprise warranting to be interfered with by way of the instant urgent chamber application.

What the applicant has done in this case is to watch things to its detriment develop without taking timeous corrective action to protect itself. This is a clear case which fits squarely into the observation made by the late CHATIKOBO J when he commented:-

> "Urgency which stems from a deliberate or careless abstention from action until the deadline draws near is not the type of urgency contemplated by the rules"[1].

The applicant had all the time in the world to act, a period close to two and half years, but did not act.

I accordingly decline to treat this matter on an urgent basis.

Applicant is ordered to pay costs.

Scanlen & Holderness, applicant's legal practitioners
Zimra Legal & Corporate Services Division, 1st respondent legal practitioners

[1] Kuvarega v egstrar General & Anor 1998 (1) ZLR 188 (H) @ 193