



Date: 24/11/2022

MARANGE COMMUNITY UPDATE ON THE PROGRESS MADE ON INTENDED DEMONSTRATIONS IN MARANGE

IN THE MAGISTRATES' COURT
FOR THE PROVINCE OF MANICALAND
HELD AT MUTARE
In the matter between:-

CASE NO. 1175/22

NEWMAN CHIADZWA

Applicant

And

CHIEF SUPERINTENDENT MBIRA

1st Respondent

COMMISSIONER GENERAL OF POLICE NO

2ND Respondent

MINISTER OF HOME AFFAIRS

3RD Respondent

& CULTURAL HERITAGE

EX-PARTE APPLICATION FOR AN INTERDICT

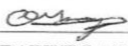
TAKE NOTICE THAT on the 23rd day of November 2022 at 08:30am an Application will be made to this Court for an order in terms of the draft.

TAKE FURTHER NOTICE that the matter is set down for hearing on the return date on the 23rd day of Nov 2022 at 8.30 am, or so soon thereafter as the matter may be heard.

The attached affidavit and other documents are tendered in support thereof.

DATED AT MUTARE ON THIS 10th DAY OF NOVEMBER 2022.




ZIMBABWE LAWYERS FOR HUMAN RIGHTS
Applicant's Legal Practitioners
Ground Floor Winston House
MUTARE (KK/PT/PIL/Mtre)

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On 26 October 2022, the Marange community represented by Mr Newman Chiadzwa of Chiadzwa Community Development Trust (CCDT) and leaders of Zimbabwe Diamond Allied Workers Union (ZIDAWU) Trust, Bocha Diamond Community Trust (BDCT), Young Entrepreneurs Trust Zimbabwe (YETZ), Centre for Research and Development (CRD), Zivai Community Empowerment Trust (ZICET), Amalgamated Chiadzwa Development Trust (ACDCT) and Centre for Natural Resource Governance (CNRG) notified the Zimbabwe Republic Police of a scheduled peaceful demonstration on the 8th of November 2022. The notice was turned down because of two reasons; first, the notice didn't comply with section 7(2) (h) of the Maintenance of Peace and Public Order Act (MOPA) and second that the venue is under the Protected Places and Areas Act (PPAA).

As provided in MOPA, the group sought an audience with the regulatory authority to negotiate conditions that will have allowed the community of Marange to proceed with the demonstration under these circumstances. The meeting was inconclusive. The group made a second notification to the police for a demonstration that was scheduled for the 15th of November 2022. The second notice, being in compliance with MOPA, was also not cleared. The reason for the denial of the peaceful demonstration was cited as failure to comply with Section 10 of the MOPA and section 5(2) of the Protected Places and Areas Act. Realising the unjust application of the law by the regulatory authority, the group sought legal assistance to find a remedy through the courts. Thus an urgent Ex-parte court application seeking to set aside the prohibition order of 9 November 2022 and an interdict to stop the police from interfering with the planned demonstration was made on 11 November at Mutare Magistrate Court. The court directed the case to proceed by way of notice, denying the remedy the community of Marange had sought to hold the demonstration on 15 November 2022. The group was however informed that the Police and Ministry of Home Affairs who are respondents to the case, intend to oppose the application made by the community stakeholder group represented by Newman Chiadzwa. On 23 November 2022, the two parties appeared in court and were told to file their heads of argument before the magistrate makes a determination anytime after 29 November 2022.

In taking this legal route the group affirms its commitment to the diamond community of Marange's quest for freedom and economic justice. This year alone, the group engaged with mining companies, State security grounds operation in Marange, the Minister of Mines and Mining Development a record 4 times, the Ministry of Home Affairs, Security and Defence and all Parliamentary Portfolio Committees providing oversight to the responsible ministries. Central to these discussions were the unjustifiable implementation of the conditions of the Protected Places and Areas Act notice placing Chiadzwa under regulation by this Act and the denial of the community's right to economic justice from the exploitation of their diamonds. These engagements did not yield anything meaningful. Needless to say that these high-level engagements have been taking place over the years without anything accruing to the diamond community. It cannot, therefore, be over emphasized that the community demand to hold peaceful demonstrations is justified after all internal remedies to claim their rights have been exhausted.

The banding together of Marange diamond community stakeholders in demanding accountability in Marange diamonds has threatened those benefitting from the exclusionary and unsustainable state of affairs in Marange. As a result, human rights defenders championing the rights of the Marange diamond community have been subjected to all forms of intimidation and harassment by state security agencies. A smear campaign to soil divisions in the advocacy movement on Marange and character assassinate rights defenders through fictitious articles has also been witnessed in nameless online publications linked to state security agencies. The group is conscious of the machinations of state security agencies to distract the work of rights defenders in Marange. The group is also aware of the state security agencies' plot to distract the nation's attention from demanding accountability for the illicit outflow of diamonds in Marange at the hands of state security forces and mining companies governed by the state. Only last week a security guard at Anjin Investments was reportedly found in possession of 91 pieces of diamonds. Information is awash in the mining community which points to the collusion of illegal diamond buyers and state security agencies in the leakage of diamonds from these mining entities. Needless to say that illegal diamond digging and trade are glaringly taking place in Marange under the watch of state security arms. The state has not shown serious commitment to plugging

these leakages. The group is also aware of the machinations of the state to disrupt the diamond community's resolve for social and economic justice from diamond mining.

Through this statement, we the undersigned unequivocally make it clear that the diamond community of Marange will continue to explore all avenues within the confines of the law to claim the constitutional rights of the community to freely express themselves in demanding the following.

1. Amendment or review the General Notice 180 of 2007 placing Chiadzwa under the Protected Places and Areas Act. The Review of General Notice 180 of 2007 placing Chiadzwa under Protected Places and Areas Act according to section 6(2) of the Protected Places and Areas Act. The conditions and compliance to it thereof is leading to:

- Violation of human rights.
- Unjustifiable or unreasonable limitation of Constitutional rights. Section 86 (3) provides that, "No law may limit the following rights enshrined in the bill of rights, and no person may violate them (a) the right to life (b) the right to dignity, (c) the right not to be tortured or subjected to cruel, inhuman or degrading treatment or punishment. These rights are being violated daily in Marange by state security agents.
- Lagging in development for Marange community because Mutare Rural District Council is not at liberty to undertake development without permission from diamond concession holders. That process is arduous and unsustainable.
- We demand to be relocated if the PPA conditions are not reviewed. We did not ask to be in a Protected Area where we are now being subjected to prison life. It is high time Chiadzwa is removed from being a Protected Area or military personnel removed just as other Diamond areas such as Murowa. Mining companies in Marange must strengthen their own security capabilities. The government committed to a phased withdrawal of the military from Marange in November 2009, but Marange has remained heavily militarised with porous security practices. These state security agents are perpetrating human rights violations in Marange. The human rights violations have to STOP henceforth.

2. A transparent community development and benefit agreement that is legally binding by 31 December 2022. The community has already drafted a Community Benefit Agreement (CBA) that was shared with both mining companies and the Ministry of Mines. If signed the CBA will address some of the community grievances that include social service delivery issues such as infrastructural development, education, health, maintenance and construction of roads that heavy mining companies have destroyed.

3. Operationalisation of community diamond mining concession that ZCDC offered to the community as reported by the Portfolio Committee on Mines and Mining Development in its self-assessment report of the diamond sector that was presented to parliament on Tuesday 12 May 2022(National Assembly Hansard 17 May 2022 Volume 48 NO 46).In pursuance of this offer, the community justifiably formed a community share ownership trust to manage its portion of the revenue generated from the mining concession.ZCDC made an undertaking to operationalise the concession beginning of 2022 but nothing has materialised.

4. Progressive rehabilitation of land by mining companies as open pits left are breeding malaria and claiming our livestock and lives.

5. The fulfilment of commitments made for the Arda Transau relocated community by mining companies and government. Relocated families at Arda Transau have gone for 12 months without safe, clean and portable water as envisaged in section 77 of the Constitution. The Anjin community needs their bills to be split between residential (households) and commercial billing. The allocation and completion of houses for Jinan 6, 7 & 8 communities of Arda Transau must be expedited.

Organisations:

Young Entrepreneurs Trust Zimbabwe (YETZ)

Centre for Research and Development (CRD)

Bocha Community Development Trust (BCDT)

Zivai Community Empowerment Trust (ZICET)

Chiadzwa Community Development Trust (CCDT)

Zimbabwe Diamond Allied Workers Union (ZIDAWU)

Amalgamated Chiadzwa Community Development Trust (ACDCT)