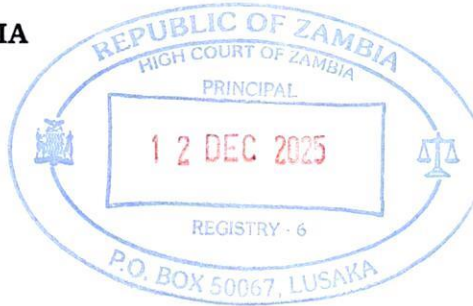


**IN THE HIGH COURT FOR ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**  
*(Civil Jurisdiction)*



**2025/HP/0904**

**BETWEEN:**

**CHIVUMBWE MINING LIMITED**

**PLAINTIFF**

**AND**

**GRIZZLY MINING LIMITED**

**1<sup>ST</sup> DEFENDANT**

**PRIDEGEMS MINES LIMITED**

**2<sup>ND</sup> DEFENDANT**

**Before the Honourable Lady Justice S. Chocho, in chambers on the 12<sup>th</sup> day of December, 2025.**

*For the Plaintiff: Mr. W Chinyemba of Messrs Eric Silwamba, Jalasi and Linyama  
Legal Practitioners.*

*For the Defendant: Mr. C Chali of Messrs Chali Chitala Advocates.*

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## **R U L I N G**

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**Cases referred to:**

- 1. Antonio Ventrigrilia and Another v Finsbury Investments Limited  
SCZ Appeal No 2 of 2019.***
- 2. Order 18 Rule 19 (a) of the High Court Rules, Chapter 27 of the Laws  
of Zambia.***
- 3. Konkola Coppermine PLC Appeal No. 74 of 2018.***
- 4. Kalymnos Processing Limited and Another v Konkola Copper Mines  
Appeal No. 74 of 2023.***

**Legislation referred to:**

- 1. Order 33 Rule 3 and 7 of the Rules of the Supreme Court of England (White Book) 1999 Edition.**
- 2. Order 14 Rule 2 of the Rules of the Supreme Court of England (White Book) 1999 Edition.**
- 3. Order 18 Rule 19 (a) of the High Court Rules, Chapter 27 of the Laws of Zambia.**
- 4. Sections 5(1), 11, 78 (3), 84 and 86 (6) of the Minerals Regulations Commission Act, 2024.**

**1. INTRODUCTION**

- 1.1. This is a Ruling in Respect to the Defendants application for an Order to dismiss matter on a point of law. The Notice of Motion to Raise Preliminary Issues on points of Law is made pursuant to **Order 33 Rule 3 and 7 and Order 14 Rule 2 of the Rules of the Supreme Court of England (White Book) 1999 Edition as Read together with Order 18 Rule 19 (a) of the High Court Rules, Chapter 27 of the Laws of Zambia.**
- 1.2. The Defendants application is supported by an affidavit in support of application to raise Preliminary Issues on points of law and a list of authorities and skeleton arguments filed into Court on August 19<sup>th</sup>, 2025.

## 2. **BACKGROUND**

2.1. The background to this matter as per pleadings and affidavit evidence is that the Plaintiff commenced this matter against the Defendants by way of Writ of Summons and Statement of Claim dated June 26<sup>th</sup>, 2025 claiming the following reliefs;

- i) An Order for an injunction restraining the Defendants, their servants, agents, or any persons acting under their authority, from further trespassing upon, entering, occupying or conducting any unauthorized activities, including but not limited to mining and water pumping operations, within the area covered by Small Scale Exploration Licence No. 38563-HQ-SEL;
- ii) Damages for trespass to be assessed by the Court;
- iii) An Order for the removal of all equipment, structures and materials introduced by the Defendants onto the area covered by Small Scale Exploration Licence No. 38563-HQ-SEL;
- iv) Costs incidental to this action; and
- v) Any other relief the Court may deem just and equitable.

2.2. The Defendants entered Appearance and filed a Defence on July 21<sup>st</sup>, 2025.

2.3. The Defendants made an application for the determination of points of law on August 19<sup>th</sup>, 2025. The issues for determination are as follows;

- i) Whether or not this Honourable Court has jurisdiction to adjudicate upon this matter as it relates to ownership, boundaries of and entitlement to Mining Rights;
- ii) Whether or not the Plaintiff has a cause of action against the Defendants herein; and
- iii) If all the questions or one them is answered in the negative, the Plaintiff's case should be dismissed with costs to the Defendants.

2.4. The Plaintiff made an application for an Order for interim injunction on September 18<sup>th</sup>, 2025.

### 3. **AFFIDAVIT EVIDENCE**

- 3.1. The Defendants filed an affidavit in support of application to raise Preliminary Issue on points of law on August 19<sup>th</sup>, 2025 deposed by one Langsone Mukuma.
- 3.2. The Defendants aver that this Court cannot adjudicate on this matter without determining the ownership, boundaries and entitlements relating to the Plaintiffs' Small Scale Exploration License No. 38563 – HQ – SEL and BestGrade under License No. 7200 – HQ-SML and Small-Scale Mining License No. 7142 – HQ – SML.
- 3.3. The Defendants aver that all disputes concerning the issues, validity and boundaries, of mining rights fall within the jurisdiction of the Mines and Minerals Tribunal which is mandated by statute to resolve such matters.

- 3.4. The Defendant avers that seeking an injunction from this Court under the guise of a trespass action amounts to the Plaintiff's improperly attempting to circumvent the statutory procedures and the exclusive jurisdiction of the Mines and Minerals Tribunal.
- 3.5. The Defendants avers that the Plaintiff has no cause of action in trespass against the Defendants.
- 3.6. In opposition, the Plaintiff filed an affidavit in opposition to the affidavit in support of Notice of motion to raise Preliminary Issues on points of law on September 11<sup>th</sup>, 2025 deposed by one Bryan Pinkney.
- 3.7. The Plaintiff avers that the area covered by the Plaintiff's Small-Scale Mineral Exploration License No. 38563 – HQ – SEL does not overlap with License No. 7200 – HQ - SML and Mining License No. 38563 – HQ – SEL.
- 3.8. The Plaintiff avers that a search as conducted on the Zambia Mining Cadastre eGovernment portal in respect of Small-Scale Mineral Exploration Licence no. 38563 – HQ SEL on July 20<sup>th</sup>, 2025 and it was discovered that the Plaintiff was no longer reflecting as the legal owner but the records indicated the existence of Small-Scale licences
- 3.9. No. 7142 – HQ – SML and No. 7200 HQ – SML registered in the name of Best Grade Mining Investments Limited.
- 3.10. The Plaintiff avers that the area covered by the Plaintiff's Small-Scale Mineral Exploration Licence No. 38563 – HQ – SEL has not been subject of sale as the same was acquired from the Ministry of Mines and

Mineral Development directly after cancellation of the licence previously held by Marlex Mining Investment Limited.

- 3.11. The Plaintiff avers that the Ministry of Mines and Minerals Development issued a public notice averring that 3,429 mining and non-mining rights were to be defaulted by the Mining Licence Committee for non-compliance with Mines and Minerals Development Act, and that the respective holders were given 30 days within which to show cause why their licences should not be revoked.
- 3.12. The Plaintiff avers that on August and 12<sup>th</sup> 2024, the said Small Scale License No. 7200 held by Marlex Investments Mining Limited was cancelled at the time it was allegedly transferred or given to BestGrade Mining Investments Limited.
- 3.13. The Plaintiff avers that this dispute is not one of mineral rights but rather surface rights and that this Court does have the Jurisdiction to adjudicate upon this matter.
- 3.14. The Plaintiff further avers that this matter is deeply entrenched in the tort of trespass.
- 3.15. The Defendants filed an affidavit in reply to the affidavit in opposition to affidavit in support of Notice of Motion to raise Preliminary Issues dated September 17<sup>th</sup>, 2025 deposed by one Langsone Mukuma.
- 3.16. The Defendants aver that they do not claim or assert ownership of the area covered by the Exploration Licence Number 38563-HQ-SEL but deny that the Plaintiff has exclusive rights over the area as the area is

subject of and covered by Small Scale Licence No. 7200-HQ-SML owned by BestGrade Mining Investment Limited.

- 3.17. The Defendants aver that the Plaintiff has conceded that it holds no legal claim to the area covered by the Exploration Licence No. 38563-HQ-SEL as the system does not reflect or recognise the Plaintiff as the owner of the said licence.
- 3.18. The Defendants aver that any activities conducted have been under the instructions and on behalf of BestGrade Investment Limited who is the registered owner of Small Scale Licence No. 7200-HQ-SML and Small Scale Licence No. 7142-HQ-SML.
- 3.19. The Defendants aver that Small-Scale Licence No. 7200-HQ-SML and Small Scale Licence Number 7142-HQ-SML were transferred to BestGrade Mining Investments Limited on July 2<sup>nd</sup>, 2025 and not the alleged July 23<sup>rd</sup>, 1997.

#### 4. **COURSE OF HEARING**

- 4.1. The application was heard on September 18<sup>th</sup>, 2025 and both parties were present at the hearing.
- 4.2. The Defendants abandoned the second question of law raised in the Notice of Motion and stated that they wish to concentrate on the first question on Jurisdiction.
- 4.3. The Defendants stated that reliance will be placed on the affidavit in support and list of authorities and skeleton arguments filed into Court

on August 15<sup>th</sup>, 2025 and the affidavit in reply and skeleton arguments filed into Court on September 17<sup>th</sup>, 2025.

- 4.4. The Defendants submitted that the issues herein can only be resolved by the Ministry of Lands through the Mining Appeals Tribunal and that even though this Court has the Jurisdiction to adjudicate upon mining rights concerning trespass; the Jurisdiction only comes in when the complainant enjoys surface rights acquired by owning license and in the case in casu, the Plaintiff does not own the land.
- 4.5. In response, the Plaintiff stated that they filed an affidavit in opposition and skeleton arguments on September 11<sup>th</sup>, 2025 and stated that they will rely on the same.
- 4.6. The Plaintiff submitted that the action has been commenced against the Defendant relating to trespass over land the Plaintiff acquired consent to use from the Chief.
- 4.7. The Plaintiff submitted that the action is one of trespass and not competing licences and that the action for trespass is viable.
- 4.8. In reply, the Defendants submitted that the Plaintiff has no locus standi to take out these proceedings.

## **5. LAW AND SUBMISSIONS**

- 5.1. The Defendants filed skeleton arguments in support of its application on September 11<sup>th</sup>, 2025.
- 5.2. The Defendants submit that this Court lacks the Jurisdiction to entertain the Plaintiff's claim as it contains matters exclusively within

the jurisdiction of the Minerals Regulations Commission and the Mining Appeals Tribunal under the **Mineral Regulation Commission Act, 2024**.

- 5.3. The Defendants submit that this Court has the jurisdiction to hear and determine the Defendant's preliminary issues. Reliance is placed on a plethora of authorities which I shall not reproduce as the same are on record.
- 5.4. The Defendants submit that this Court lacks jurisdiction to entertain the Plaintiff's claims as the subject matter, the ownership and controlling mining rights fall exclusively under the jurisdiction of the Mines and Minerals Regulation Commission, the Mines Appeals Tribunal and the Court of Appeal in that Order.
- 5.5. Placing reliance on **Sections 5(1), 78 (3) and 86 (6) of the Minerals Regulations Commission Act, 2024**, The Defendants submit that the Act provides the grievance and dispute resolution procedures where it comes to dealing with mining rights and that the Mining Appeals Tribunal is the appropriate body for hearing disputes regarding mining rights and related matters. The Sections provide as follows;

***“There is established the Minerals Regulation Commission which is a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name and with power subject to the provisions of this act, to do acts and things that a body corporate may, by law, do or perform.”***

*“The Tribunal shall have jurisdiction to hear and determine*

*–*

*(d) appeals from decisions of the Commission, or a person exercising the functions or power of the Commission;*

*(e) proceedings relating to misconduct in the mining industry; and*

*(f) Such other matters as may be specified in, or prescribed in terms of this Act or any other written law.”*

*“A person aggrieved with the decision of the Tribunal may, appeal to the Court of Appeal.”*

- 5.6. The Defendants submit that it is clear that the jurisdiction of the Mining Tribunal is exclusive and exhaustive in matters relating to mining rights and the High Court has no role in adjudicating such disputes.
- 5.7. The Defendant’s further submit that the Plaintiff’s attempt to frame this matter as a simple trespass action is a deliberate effort to circumvent the Jurisdiction of the Tribunal and improperly obtain an injunction from the Court.
- 5.8. In opposition, the Plaintiff filed skeleton arguments in opposition on September 11<sup>th</sup>, 2025.
- 5.9. The Plaintiff submits that **Order 33 of the Rules of the Supreme Court of England** does not apply to the present circumstances as BestGrade Mining Investment Limited, an interested party is not a party to these proceedings.

- 5.10. The Plaintiff submits that whether this Court has Jurisdiction is anchored on BestGrade's Small-Scale Mining License No. 7299 – HQ – SML and Small – Scale Mining License No. 7142 – HQ – SML but BestGrade Mining Investment Limited is not a party to the proceedings.
- 5.11. In reply to the Plaintiff's opposition, the Defendants submit that in light of the case of **Antonio Ventrigrilia and Another v Finsbury Investments Limited SCZ Appeal No 2 of 2019<sup>1</sup>**, a Court cannot make lawful decrees in the absence of jurisdiction.
- 5.12. Placing reliance on the case of **Citi Bank v Suhahyl Dudhia Appeal No. 6 of 2022<sup>2</sup>**, the Defendants submit that a jurisdictional question must be raised at any stage of proceedings either by formal application or viva voce.
- 5.13. The Defendants submit that the Plaintiff's concession that the Ministry of Mines records do not reflect them as holder of licence goes to the very root of this matter as the Plaintiff does not have a legal right or interest capable of being affected.

## 6. **COURTS DECISION**

- 6.1. I have had occasion to review and consider the application, having heard Counsel for the Plaintiff and Counsel for the Defendants, read the affidavits, skeleton arguments and authorities cited by the parties for which I am grateful.
- 6.2. The question the Defendants raise is one of jurisdiction and one that must be attended to as it is a trite principle of law that a Court can only

hear and determine matters that are within its jurisdiction. The determination of the same has a bearing on the injunction application. The issue for determination is reproduced in 2.3 above.

- 6.3. It is the Defendants contention that this Court has no Jurisdiction to adjudicate this matter as it borders on determination of ownership, boundaries and entitlement of mining rights. The Defendants are of the view that although cause of action is trespass, the same cannot be determined minus the Court pronouncing itself on the issue to do with mining rights.
- 6.4. On perusal of the Plaintiff's Statement of Claim, it is the Plaintiff's claim that the Defendants have wrongfully/unlawfully entered, occupied and conduct unauthorized activities in the area covered by Small-Scale Exploration Licence No. 38563-HQ-SEL, the Licence which the Plaintiff claims to be the lawful holder.
- 6.5. The Court of Appeal in the case **Konkola Coppermine PLC Appeal No. 74 of 2018<sup>3</sup>** rightly guided that matters relating to mineral rights and mining licences are governed by the Mines Act while matters relating to surface rights can be enforced by taking out a civil action. This position was later affirmed in the case of **Kalymnos Processing Limited and Another v Konkola Copper Mines Appeal No. 74 of 2023<sup>3</sup>**.
- 6.6. The **Minerals Regulation Commission Act** provides for a dispute resolution framework. The Act in **Section 11** provides for the types of mining rights as follows:

***“11. (1) The following mining rights may be issued under this Act:***

***(a) an exploration licence; and***

***(b) a mining licence”.***

6.7. From the above provision of the law, it is clear that mining licences/issues to do with mining licences fall under mining rights. Furthermore, the dispute resolution procedure is embedded in **Sections 78, 84** and **86** which provide as follows:

***“78. (1) There is established the Mining Appeals Tribunal.***

***(2) The Tribunal shall have an official seal which shall be judicially noticed.***

***(3) The Tribunal shall have jurisdiction to hear and determine***

***—***

***(a) appeals from decisions of the Commission, or a person exercising the functions or powers of the Commission;***

***(b) proceedings relating to misconduct in the mining industry; and***

***(c) such other matters as may be specified in, or prescribed in terms of this Act or any other written law”.***

***“84. A person aggrieved with a decision of the Commission may, within thirty days of the decision of the Commission appeal to the Tribunal”.***

***“86. (6) A person aggrieved with the decision of the Tribunal may, appeal to the Court of Appeal”.***

6.8. On perusal of the pleadings and evidence on record, I am of the view that the Plaintiff has not shown that they have surface rights but rather

claim to have a Small-Scale Exploration Licence over the area in dispute.

- 6.9. This is one such matter in which the procedure provided in the **Minerals Regulation Commission Act** is to be followed as the claim over the area is based on a Small-Scale Exploration Licence and in determining whether the Defendant has trespassed on the area; this Court will have to interpret/look into the Plaintiff's assertion that the Plaintiff is the rightful licensee over the area which goes to a determination of mining rights. Determination of the same lies with the Mining Appeal Tribunal.
- 6.10. For the foregoing, this Court does not have the jurisdiction to entertain the Plaintiff's action. I am fortified by the authority in the case of **Antonio Ventriglia and Another v Finsbury Investments Limited Appeal No. 2 2019**<sup>1</sup> in which it was guided that jurisdiction is indeed everything and out of nothing comes nothing. The proceedings are improperly before me.
- 6.11. Having found as above, determining the Plaintiff's injunction application becomes otiose.

7. **CONCLUSION**

- 7.1. For the foregoing reasons, **I HEREBY** dismiss the Plaintiff's matter in its entirety as this Court lacks the requisite jurisdiction to hear and determine the action.
- 7.2. For the avoidance of doubt, the injunction application and other applications filed by both parties and are yet to be heard and determined in this matter fall for want of jurisdiction.
- 7.3. Costs to the Defendants to be taxed in default of agreement.
- 7.4. Leave to appeal is granted.

**Delivered at Lusaka on the 12<sup>th</sup> day of December, 2025.**



**S. CHOCHO**

**HIGH COURT JUDGE**

