

***Come Again Mines (Pvt) Ltd v Parks & Wildlife Mgmt Authority & Anor* HH-392-14 (Chigumba J) (Judgment delivered 30 July 2014)**

The applicant had been carrying out mining operations for several years in an area north-east of Harare, before that area was designated as a national park. The Parks and Wildlife Authority then demanded fees from the applicant for it to be allowed to continue its mining activities. It claimed that it was entitled to do so in terms of the Parks and Wildlife Management Authority (Tariff of Fees) By-Laws SI 5 of 2013. The applicant sought an order declaring that the fees were *ultra vires* the enabling legislation, being inconsistent with the provisions of ss 119 and 129A of the Parks and Wildlife Act [Cap 20:14]. Section 119(2) prohibits mining within a national park except in terms of a permit issued by the Minister of Environment or in accordance with any prospecting rights lawfully acquired in respect of the area before the date when such area became a national park. Held: Section 119(2)(b) applies to the applicant's mining permits, which conferred mining rights on it and which were issued before the area was designated as a national park. Very wide discretion is placed in the hands of the Authority in enacting the by-laws. The Authority may make by-laws fixing the fees to be paid for any authority, permit or licence issued or supplied in terms of the Act. There was no evidence as to what the terms and conditions of these registered claims were, or what the fact of registration of the claims conferred on the applicant in terms of mining rights. The application would be refused.

Editor's note: Section 119(1) of the Act prohibits prospecting or mining within a national park except (a) in terms of a permit issued by the Minister [of Environment] with the consent of the Minister of Mines or (b) in accordance with any prospecting rights lawfully acquired in respect of the area of the national park before the date when such area became a national park. Subsection (2) prohibits the acquisition or working of any mining location within a national park except (a) in terms of a written agreement between the Minister and the person concerned which has been approved by the President or (b) in accordance with any mining rights lawfully acquired in respect of the area of the national park before the date when such area became a national park. Section 129A(a) allows fees to be fixed for "any authority [or] permit ... granted, issued or supplied in terms of *this Act*" (my emphasis), while para (b) allows the Authority to fix "a tariff of fees payable by persons prospecting, or working any mining location within the park area under a permit or agreement referred to in section 119". As the applicant's rights were granted under the Mines and Minerals Act before the area was designated as a national park, its rights were not granted under the Parks and Wildlife Act, nor was it mining in terms of a permit