

CITATION: AMAPLAT MAURITIUS LTD. et al. v. ZIMBABWE MINING
DEVELOPMENT CORPORTATION, 2024 ONSC 6469
COURT FILE NO.: CV-22-00684792-00CL
DATE: 20241118

SUPERIOR COURT OF JUSTICE – ONTARIO – COMMERCIAL LIST

APPLICATION UNDER Rule 14.05 of the *Rules of Civil Procedure*

RE: AMAPLAT MAURITIUS LTD. and AMARI NICKEL HOLDINGS ZIMBABWE
LTD., Applicants

AND:

ZIMBABWE MINING DEVELOPMENT CORPORTATION and THE CHIEF
MINING COMMISSIONER OF THE REPUBLIC OF ZIMBABWE, Respondents

BEFORE: Justice Peter J. Osborne

COUNSEL: *Katelyn Leonard*, for the Applicants

Michelle Folinias, for the Respondents

HEARD: November 18, 2024

ENDORSEMENT

[1] Counsel for the Respondents (Moving Parties) moves, pursuant to Rule 15.04, for an order removing them as counsel of record for the Respondents in this proceeding. This Application seeks relief in the form of an order recognizing and enforcing a judgment of the High Court of Zambia in Canada.

[2] Public and redacted versions of the Motion Record and Supplementary Motion Record have been filed.

[3] The Applicants take no position on the motion but submit that they will suffer real procedural and substantive prejudice unless a term of any order granted authorizes substituted service in respect of all future court documents and correspondence in this proceeding. In particular, they seek an order authorizing service of all documents by electronic mail, on both representatives of the Respondents and their US counsel.

[4] In my view, both the order removing counsel and the proposed conditions are appropriate here. I am satisfied that is appropriate that counsel for the Respondents be removed from the record on the basis of the materials filed.

[5] I am also satisfied that substituted service on the Respondents, at least unless and until new counsel are appointed, is appropriate. This matter has already had a lengthy history. I observe, among other things, that Zimbabwe is not a signatory to the Hague Convention. Without the proposed conditions being made in terms of the service on the Respondents, and therefore the ability of the Applicants to continue to prosecute this proceeding, this matter will inevitably be materially delayed.

[6] Counsel for the Respondents has contact information for representatives of the Respondents, including and also through US Counsel, who are acting for the Respondents in US proceedings in which recognition and enforcement of the same Zambia judgment that is the subject of this Application is being sought in the United States.

[7] For all of these reasons, substituted service on the Respondents is authorized pursuant to Rules 16.01(4) and 16.04(1) as such is appropriate in the circumstances of this case: *Attorney General of Ontario v. \$7,950.50 in Canadian Currency*, 2017 ONSC 5855 at para. 14; and *Chambers v. Muslim*, 2007 CanLII 82791 (ONSC) at paras. 4 & 13.

[8] Substituted service on United States-based counsel retained is also, in my view, a reasonable and efficacious manner of substitution, the fundamental objective of which is to bring to the attention of the Respondents notice of all steps in this matter: *Del Giudice v. Thompson*, 2021 ONSC 903 at para. 13.

[9] Service on US counsel in these circumstances would in my view not be contrary to the State *Immunity Act*, since this order relates to service of non-originating processes: *State Immunity Act*, R.S.C. 1985, c. S-18, ss. 9(2) & 17.

[10] Finally, and as noted, it is appropriate that substituted service be effective unless and until counsel come on the record for the Respondents or those parties provide alternate email addresses for service: *Costco Wholesale Corporation v. Hall*, Order of Associate Justice Jolley dated March 18, 2024, CV-23-00705970-0000.

[11] Counsel for the parties have agreed on a form of order which is acceptable to the Court. Order to go in the form signed by me which is effective immediately and without the necessity of issuing and entering.

Osborne J.