

BUILDING COMMUNITY POWER

PENHALONGA SERVICE DELIVERY COMMITTEE WINS A LAND MARK HIGH COURT RULING

LYNDONNE MUDZU
and
SELINA MAREVANGEPO
and
GETRUDE MARWISA
and
LAWRENCE IMBAYARWO
versus
MUTASA RURAL DISTRICT COUNCIL



HIGH COURT OF ZIMBABWE
MUZENDA J
MUTARE, 18 and 28 July 2022

OPPOSED APPLICATION

D. Tandiri, for the Applicants
J Zviyaya, for the Respondent.

MUZENDA J: The nine (9) residents of Tsvingwe High Density Suburb, Penhalonga, Mutasa Rural District Council approached court seeking the following relief as it appears in the draft order annexed to the application.

"IT IS ORDERED THAT:

1. The Respondent's failure to ensure supply adequate, constant clean and potable water be and is hereby declared to be a violation of Applicants' right to clean safe and potable water as provided for under section 77 (a) of the Constitution of Zimbabwe, 2013.
2. The respondent be and is ordered to supply adequate, constant, clean and potable water to the Applicants' premises within thirty (30) days.
3. The Respondent shall bear the Applicant's costs of this application.

29 JUL 2022

P.O. BOX 93, MUTARE
ZIMBABWE



To view full document of High Court ruling, click the following link ----->
<https://www.dropbox.com/s/092z15fg1wyvc1/Penhalonga%20Court%20Case.PDF?dl=0>

BACKGROUND

In 2021 CRD undertook a community led in Penhalonga in response to concerns raised persistently by the community of ward 21 on lack of service provision on clean water, health, infrastructure, education and environmental health and safety in their community. The audit was also a community led initiative to appraise the performance of MRDC in realising set targets on service delivery set out in its 5 year strategic plan ending in December 2020. The 9th Parliament of Zimbabwe ushered in by the President in September 2018 is premised on "policy consistency, transparency, accountability and predictability". To obtain these values government promised to introduce reforms and align laws with the constitution in order to close existing gaps impacting on service delivery. In local government, various acts that guide local governance such as the Rural District Councils, Traditional Leaders Act, Mines and Minerals and Forestry Act to name just a few are not synchronised. President proposed to retable the Mines and Minerals Act (MMA) to foreclose existing gaps and modernise the mining sector in line with global best practices. The MMAB is critical to address farmer/miner conflicts, issues of displacement, issues of security of tenure for people living on communal land, obliging mining companies to comply with environmental laws, revenue transparency to fiscus and increased taxation to local councils among other issues. The current Rural District Act (RDA) provide for collection of land levies from mining companies by local authorities. These levies are calculated based on manual labour with the first 100 labourers equating to one unit and thereafter 50 labourers per one unit. This mode of tax collection is unsustainable in modern mining dominated by high technology and less manual labour. The Gold Trade Bill and the Precious Stones Trade Bill which seeks to curb leakages of precious minerals were also announced as accompanying bills to the MMAB.

The exploitation of natural resources can only sustain communities if local institutions are empowered. Therefore, the President proposed to introduce the Provincial and Metropolitan Bill (PMB) to 9th Parliament. The bill intends to establish Provincial and Metropolitan Councils (PMCs) with devolved powers to ensure equitable sharing of local and national resources as enshrined in chapter 14 of the constitution. President also announced accompanying bills on devolution such as the Traditional Leaders Amendment Bill for traditional leaders to participate in provincial assemblies together with the RDC's Bill to give greater autonomy to Rural District Councils in line with devolution. As government table these laws before the 9th Parliament audit results are important sources for policy reforms.

COMMUNITY LED AUDIT FINDINGS ON WATER AND ENVIRONMENT SERVICE DELIVERY

The Rural District Council's Act (RDC's) Chapter 29.13 provide for the establishment of Area Development Committee (ADC) in peri urban areas for the purpose of preparing and submitting Area Development Plans (WDP's) to the Rural District Development Committee (RDDC's) of a local council for approval. It is also responsible for working with residents to monitor implementation of ADPs and also communicate to local authority on service delivery issues affecting community for redress. Community led audits undertaken by CRD in Penhalonga ward 21 found out that community did not have an Area Development Committee (ADC) The audit also realized that the councilor of the area was remotely connected to issues of service delivery affecting the community.

At the same time residents has no access to publicly held information they require to hold local authority to account despite the passing of Freedom of Information bill into law in 2020. CRD led community actors in reviewing local government documents such as strategic plans to identify the performance of local authority to meet its Key Result Areas (KRAs) in service delivery areas such as water, health, infrastructure and environment. The audit discovered a nexus of factors contributing to the failure by local authority to deliver quality services to residents as outlined below.

WATER

EIA AUDIT FINDINGS EMA 2021 CRD POLICY DIALOGUE

Name of river	Extent of damage (hectares)	Hotspot areas requiring rehabilitation	People responsible for damage of site	Impact to downstream users
Mutare River	42 ha	Area along road to Penhalonga. This is the area below Redwing mine slimes dump- Area near old DTZ workshop, stretching to near Africa University. Key point : Area just before and slightly after bridge near Africa University- along Mutare Nyanga highway:	Illegal miners	1. Erosion of river banks is causing massive water pollution. 2. The silt in the river is causing water pump blockages and affecting irrigation processes for downstream farmers. 3. Water for domestic use downstream is now deemed unsafe for people and livestock
Nyamukwarara river	6 ha	Mostly the old Chinese (P n P mine) as well as haphazard individual mining sites.	P n P mine Illegal miners	1. Erosion of river banks is causing massive water pollution along the Zimbabwe section of the river 1. The river originates in Mozambique and meanders through Zimbabwe, then meanders again into Mozambique.
Haroni river	21ha	Area just after the confluence of Haroni and Rusitu river systems where	Cyclone idai Illegal gold panners Earlybrands	Erosion of river banks is causing massive water pollution. Haroni is feeding into Buzi River into Mozambique, therefore affecting water quality for our neighboring country. Water in haroni river is now brown in color and unsafe for domestic use and for livestock



KRA for water and sanitation for MRDC for 2016 to 2020 was to increase access to clean water and sanitation from 75% to 95% by December 2020. MRDC intended to achieve this KRA through water connection blitz, drilling of new boreholes and maintenance of old ones. In the same vein their KRA for spatial planning and infrastructural development was to be achieved through increasing access to service stands from 3000 to 4000 by pegging and rehabilitation of water works. Information obtained by the audit revealed that MRDC has no capacity to meet water service delivery for its consumers in Penhalonga. The audit observed that MRDC did not have the means to draw cheap normal flow water from Pungwe, Mutare and Tsambe tributaries and undertake product beneficiation for its end users.

MRDC informed the audit that it was refurbishing a water reservoir tank at its only waterworks at Chinyanjera in Penhalonga to accommodate 300m³(cubic metres) using some of the devolution funds. Chinyanjera draws water from a spring near Imbeza. However, the capacity of Chinyanjera to supply water to Penhalonga is only limited to Manager's Hill, a low residential area in Penhalonga. The audit observed that the other 3 water reservoirs that supply water to the rest of the residential areas in Tsvingwe, Penhalonga Low residential areas and Mahwemasimuke areas have low water holding capacity and required upgrading. Free digging of gold, housing construction on top of water pipes and poor maintenance of water pipes were major reasons for water pipe bursts in Penhalonga.

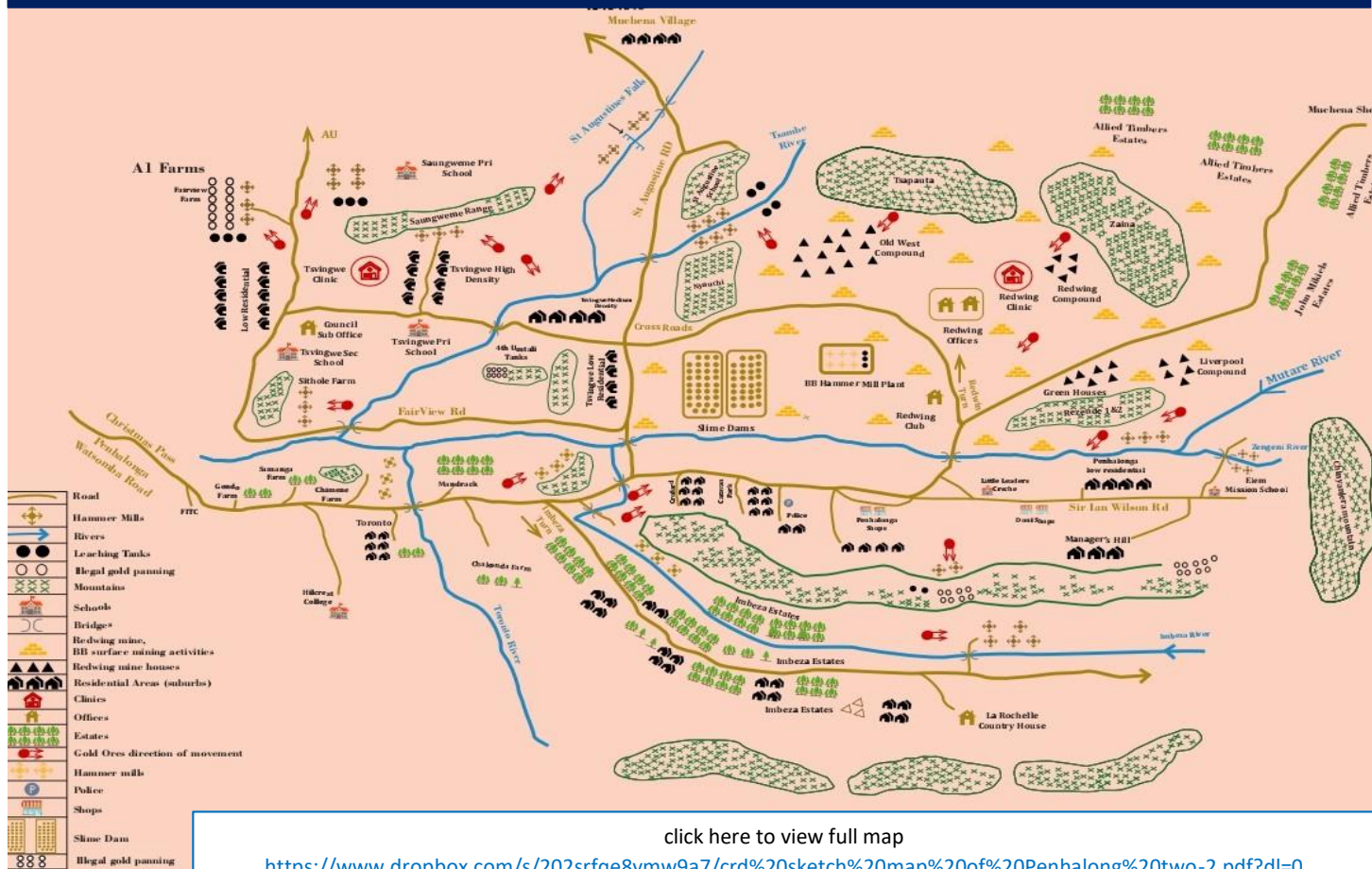
Water leakages as a result of numerous pipe bursts were contributing to inefficiencies in water service delivery to residents in Penhalonga. The audit concluded that MRDC was not capable of meeting the demands of the people of Penhalonga on water service delivery.

The failure by MRDC to meet its key result area on rehabilitation of water works meant the council's continued dependence on water supply from Mutare City Council (MCC). MCC draws its water mainly from Odzani, Small Bridge dams and Pungwe river for its consumers. MCC is the custodian of Pungwe water pipeline that passes through Penhalonga. The audit discovered that MRDC is charging an exorbitant price of \$45 cents per cubic meter to MRDC for its water requirements for Penhalonga. The audit learned that after effecting its administration fees, MRDC was charging consumers \$62 cents per cubic meter for the water supplied by MCC. The exorbitant price for water has seen residents failing to pay for water service delivery leading to accumulation of debt owed by MRDC to MCC. By the time the audit was conducted, the debt had risen to over \$40 million. The audit was informed that MRDC was failing to meet its debt obligation to MCC at the same time failing to raise enough revenues from consumers to buy water from MCC. Faced with financial challenges to procure water treatment chemicals and high consumer demands for water for its own communities, MCC has often undertaken severe water rationing for Penhalonga. The audit observed that Penhalonga residents were going for 1 to 2 weeks without water supplies. Most residential areas located in upland areas like Mahwemasimike were going for 3 to 6 months without water service delivery.

Informants explained that the Pungwe national line start from the obstruction water point in Pungwe river up to their water treatment plant at Odzani. They added that only Mutasa communities that fall along the pipeline between Pungwe and Odzani water works were covered by the agreement and they were accessing raw water through established take off water points. Informants asserted that after water has been treated at their water works at Odzani, the Pungwe pipeline becomes a private line for MCC water and Mutasa communities that fall along the line up to Christmas pass in Mutare were not covered by the agreement. Sources at MCC questioned the wisdom of MRDC to demand administration of a water resource that they do not have. They argued that MCC was ready to provide constant water supplies directly to Penhalonga residents and collect water revenues from them until MRDC develop their own water works. The audit found out that the gazetted price for drawing natural water by government was US\$2 per 1 million litres, a pricing model that was cheap for local authorities. MRDC could apply water permit from Pungwe sub catchment council or Odzi sub catchment council to draw natural water from its abundant natural water sources. However experts argue that the establishment of independent waterworks for processing and supplying the water to Penhalonga remains a mammoth task for MRDC to achieve in the shortest of time in order to meet its key result area for water service delivery. At the same time the audit observed that most water sources in Mutasa have been heavily polluted by dumping of toxic substances by gold mining activities.



CRD MAP OF PENHALONGA ILLUSTRATING SPREAD OF HARZADOUS GOLD MINING ACTIVITIES



KRA for MRDC for 2016 to 2020 was to reduce environmental degradation activities from 80% to 70%. The KRA was to be achieved through rehabilitation of gullies, management of natural resources, extraction sites and establishment and management of community based tourism structures. The audit discovered 6 sites with 129 hammer mills and 6 cyanidation sites operating along Mutare, Tsambe rivers and other subsequent streams in Penhalonga. Other milling sites identified by the audit were located in farming and forestry communities. These milling sites were processing gold ore coming from free digging mining activities at Redwing Mine. The audit established that processing of gold on these sites were using mercury and cyanide and toxic waste was flowing directly into the rivers because there were no proper water reticulation structures. The audit visited the Ministry of Mines and found out that all these mining operations did not have permits and EIA certificates to undertake their operations. The audit discovered that MRDC, EMA and ZINWA were some of the key stakeholders that were consulted by Ministry of Mines before a mining licence was issued. The audit discovered that these regulatory authorities were not enforcing compliance with the law on illegal mining activities in Penhalonga. Workers interviewed on the illegal mining sites informed the auditor that they paid bribes to both regulatory authorities and law enforcement agencies to continue with their illegal mining activities. The audit also observed that regulatory authorities and police officers were

aware that these mining operations were illegal in violation of section 73 of the constitution on citizen rights to environmental health and safety, violation of S.I 258 of 2018 which prohibits processing plants to be constructed within 500 metres from the river bank, violation of EMA Act on mining without an EIA, violation of S.I 109 of 1990 which compels miners to fence and enclose any water containing cyanide and other hazardous substances in the treatment of minerals and tailings, violation of mines and minerals (custom and milling plants) on movement of ores from mining area to milling plants among other violations. The audit discovered that the mining model at Redwing Mine was behind adverse environmental impacts affecting communities in Penhalonga. Information gathered from Redwing Mine indicated that Redwing Mine workers applied for corporate rescue in 2019 following the failure by mining company to meet their salary obligations. The information indicated that mining operations were affected by unfavourable operating conditions such as delayed receipt of gold production payments together with the gold pricing structure of 45% nostro and 45 % local currency that was not favourable for company to maintain cash flows for operations. The approval of Redwing Mine workers application for corporate rescue management by the High Court of Zimbabwe on 27 July 2019 saw the emergence of worst mining practices observed by the audit.

ESTABLISHMENT OF PENHALONGA SERVICE DELIVERY COMMITTEE



Against this background CRD established Penhalonga Service Delivery Committee (PSDC) in 2021 to demand local authority accountable for service delivery. PSDC began to occupy local space on service delivery in the community by mobilising residents to demand MRDC to conduct elections for an Area Development Committee (ADC.) In December 2021 they wrote a final letter reminding them of their constitutional obligation to conduct elections for ADC. MRDC made an unfulfilled promise to hold elections in Penhalonga by end of January 2022 at the same time failing to meet residents demand for clean water supplies in violation of the RDC Act and the constitution of Zimbabwe. Residents of Penhalonga as already stated above were going for several months without clean water supplies against a worsening dumping of toxic chemicals in alternative sources of water such as Mutare, Tsambe, Zengeni, Imbeza and downstream farming communities by hazardous mining activities in Penhalonga. This development saw CRD accompanying PSDC to ZLHR which facilitated PSDC to file a high court application on 10 March 2022 demanding MRDC to provide clean water supply to residents as obligated by the RDC Act and the constitution of Zimbabwe. In defence to the application MRDC made farfetched arguments that the application was vague and imprecise. They highlighted that the applicants had no proof that they were bona fide residents to initiate court proceedings against MRDC.

MRDC also argued that they were not the primary supplier of the water commodity and shifted blame to City of Mutare which determines the quantities of supply to MRDC

MRDC also argued that PSDC had not exhausted domestic remedies available to engage with MRDC and receive an update of the current water supply challenges in water 21. These arguments were dismissed with costs by Justice Muzenda in a landmark ruling that was delivered in July 2022. The ruling ordered MRDC to restore clean and portable water supply to residents of Penhalonga within 30 days because the failure by MRDC to provide residents with clean water supply was in violation of section 77 of the constitution. The ruling forced MRDC to negotiate with Mutare City for a payment plan to clear its mounting water debt. Water was restored to many residential areas in compliance with the High Court ruling. Although some sections of the community are still facing severe water challenges due to consistent water pipe bursts and lack of water storage facilities, the water supply situation has improved forging ahead to exerting pressure on MRDC to develop its own water works as a panacea to end over reliance on water from Mutare City. The court victory has galvanised residents to increase their voice on service delivery in Mutasa District.

