

**IN THE COURT OF APPEAL OF TANZANIA  
AT IRINGA**

**(CORAM: LUANDA, J.A., LILA, J.A., And MKUYE, J.A.)**

**CIVIL APPEAL NO. 91 OF 2015**

**UMICO LIMITED ..... APPELLANT**  
**VERSUS**  
**SALU LIMITED ..... RESPONDENT**

**(Appeal from the judgment and decree of the High Court of Tanzania  
at Songea.)**

**(Fikirini, J.)**

**Dated the 12<sup>th</sup> day of May, 2015  
in  
Civil Case No. 6 of 2012**

**JUDGMENT OF THE COURT**

4<sup>th</sup> & 7<sup>th</sup> June, 2018

**LUANDA, J.A.:**

In the High Court of Tanzania at Songea, SALU LIMITED (henceforth the respondent), sued UMICO LIMITED (the appellant) for breach of agency and lease agreements entered on 23<sup>rd</sup> June, 2006 and 4<sup>th</sup> April, 2007 respectively. The respondent had prayed for judgment and decree be entered against the appellant for the following reliefs:-

- (i) A declaration that the defendant (appellant) was in breach of agency and lease agreements.*

- (ii) An order for payment of Tsh. 2,713,500,000/= in specific damages.*
- (iii) An order for payment of Tshs. 1,000,000,000/= in general damages.*
- (iv) Costs of the suit.*
- (v) Any other or further reliefs which this honourable (High Court) might deem fit and just to grant.*

As usual before the trial commenced, the High Court framed issues as follows:

- 1. Whether there were lease agreement and agency agreements.*
- 2. Whether the defendant (the appellant) is in breach of the above two agreements.*
- 3. Whether the plaintiff (the respondent) is entitled to damages both general and specific.*
- 4. To what reliefs are the parties entitled to.*

At the end of the trial, the High Court was satisfied that the parties entered into both agreements namely lease and agency. As regards to breach of those contracts, the answer was in the affirmative. Turning to damages, the trial High Court found the respondent to have failed to prove specific damages but

awarded the respondent Tshs 100,000,000/= as general damages. The appellant is aggrieved, hence this appeal.

In this appeal, the appellant was represented by Mr. Dickson Ndunguru, learned counsel and Mr. Edson Mbogoro, learned advocate appeared for the respondent. It should be borne in mind that both counsel represented the parties at the High Court during trial.

Mr. Ndunguru has filed a memorandum of appeal consisting of four grounds. He, however, dropped one ground. So, he remained with three grounds.

We have thoroughly gone through the pleadings as well as the proceedings of the trial High Court, the real and only issue in dispute in this case is whether or not the parties entered into a lease and agency agreements. We shall discuss the appeal on this point. So, we shall discuss the appeal generally.

As said earlier on, the High Court found the parties had entered into the aforestated agreements and further that the appellant had breached. Accordingly, she was condemned to pay damages.

Luckily the parties relied their respective cases on the following documents namely, Exh. P1 lease agreement; Exh. P3 a letter of handing over from the

appellant and Exh. P.6 a letter of appointment of agency of the respondent. We shall reproduce them at a later stage in this judgment.

Submitting as to the existence of those agreements, Mr. Nduguru did not deny his client to have entered into agreements with the respondents. But he said at the time the respondent sued the appellant there were no contracts in existence. Elaborating he said exh. P6 a letter of appointment of agency has two limbs. First, Exh. P6 assigned the respondent to act as an agent of the appellant to take over all assets in the mining area. Second task according to Mr. Ndunguru is to operate the mining which was later embodied in a lease agreement Exh. P1. He went further to say that Exh. P6 in itself did not create any lease agreement. Further, Exh. P3 had a life span of two years. It commenced on 4/4/2007 and ended on 4/4/2009. So at the time the respondent sued the appellant there were no any contract in existence.

On the other hand, Mr. Mbogoro at first he said the two contracts were in existence. But when prompted by the Court he conceded that lease agreement had expired. But the agency agreement is there by implication.

We wish to begin by stating that it is trite principle of law that generally if the parties in dispute had reduced their agreement to a form of a document, then no evidence of oral agreement or statement shall be admitted for the

purpose of contradicting, varying, adding to or subtracting from its terms (see Ss. 100 and 101 of the Evidence Act, Cap 6 RE 2002)

In order to get the picture of the dispute, the reproduction of the aforestated documents is necessary. We reproduce as hereunder.

Exh. P.6, appointment letter of agency date 23/6/2006 reads a follows:-

*"UMICO LIMITED P. O. Box 615 Songea – Tanzania*

*Mr. Samuel Kinunda,  
Managing Director,  
Salu Ltd,  
P. O. Box 10516,  
DAR ES SALAAM*

*Dear Sir,*

*In view of the termination of joint venture agreement between Umico Ltd and Kiboko Resources Ltd, and the transfer of the assets and properties relating thereto from the joint venture company, Lukarasi Gold Mining Co. Ltd, to Umico Ltd, we hereby appoint you, i.e. your company, to act as agent of Umico Ltd in facilitating the smooth process of the said transfer.*

*In your capacity as agent of Umico Ltd you should receive from Kiboko Resources Ltd and take over custody of the infrastructure site and all assets in the mining licence area, and*

*continue to take care of the said assets and as appropriate, to effect necessary repairs to, and carry out maintenance of the said properties. You may also carry out all or any essential operations in the licence area in relation to and in furtherance of the purposes and interests of the mine and the mining licences, all as agent of Umico Ltd.*

*This appointment is made on the understanding that after completion of the handover of all assets and licence back to Umico Ltd pursuant to the termination of agreement with Kiboko Resources Ltd as aforesaid, your company will continue operations in the licence area upon terms and conditions to be contained in a lease agreement now being negotiated and which is to be entered into with Umico Ltd and, accordingly, this appointment will be subject to any further terms and conditions as shall be stipulated in the said lease agreement.*

***For the avoidance of doubt this letter does not in itself, constitute the contemplated lease agreement.***

*[underscore ours]*

*Your sincerely,*

*Sgd*

*Br. Aidan Mhuwa, OSB  
CHAIRMAN OF THE BOARD*

On the other hand Exh. P1 lease agreement reads as follows:

*"AGREEMENT*

*THE AGREEMENT made on this 4<sup>th</sup> day of April, 2007 between SALU Limited of P.O. Box 10516, Dar es Salaam (hereinafter Salu) of the one hand, and UMICO Limited of P. O. Box 650, Songea (hereinafter Umico), of the other hand;*

*WITNESSES as follows:-*

*WHEREAS Umico is the holder of five mineral prospecting licences and one mining licence, all relating to an area in Mbinga District, Ruvuma Region, known as the Lukarasi area ("the licence area"); and*

*WHEREAS Umico is desirous of letting its licence area to some other able and willing person or body to operate it in accordance with the terms and conditions of the licences; and*

*WHEREAS Salu is able, willing and ready to carry out operations in the licence area in accordance with the terms and conditions of the said licences; and*

*WHEREAS Salu is able and willing to take on lease from Umico the entire licence area and to operate it for and on behalf of Umico for as long as the lease may subsist;*

*NOW, THEREFORE, it is hereby agreed that:*

*1. Umico hereby leases to Salu and Salu hereby takes on lease from Umico, the entire licence area to which relate Mining Licence No. ML 173/2004, as prospecting licence PL2913/2004, PL3129/2005, PL3130/2005, PL 3131 and PL3132/2005, along with all infrastructure as well as other facilities and equipment owned by Umico and left on site in the licence area from the date of execution on this agreement up to the date, **not exceeding two calendar years, that this agreement shall be replaced by a production agreement to be signed by the parties herto.** [Emphasis supplied]*

*2. Salu shall, subject to this agreement, hold the licence area with all rights to do all or any mining operations therein and for that purpose to use all and any of the facilities, equipment and infrastructure in the area, and with all rights to export, sell or otherwise dispose of any gold or other mineral extracted, mined, produced or processed at or from the licence area, and*



*shall be free for that purpose to engage or employ such qualified personnel as may be suitable for any such operations.*

*3. In consideration of the lease hereby created Salu shall pay rent to Umico at the rate of USD500 per month and, in addition to rent, Salu shall also pay to Umico a monthly commission on all the gold produced from the licence area at the rate of 20% of the value of the gold so produced every month.*

*4. Salu shall have the right of physical possession of the licences referred to herein and shall be responsible to pay for and discharge all liabilities to the Government or any of its agencies in relation to the said licences.*

***5. Salu shall be responsible for the proper care and maintenance of the licence as well as for the proper care and maintenance of all Umico's facilities, equipment and infrastructure therein, and Salu shall be free at any time to develop or improve any of the facilities, equipment and infrastructure in the licence area for the purpose of making full and proper utilization of the licences and the licence area.*** [Emphasis supplied]

*6. While the lease hereby created subsists, Umico shall not sell, transfer or otherwise dispose of, and shall not seek to sell transfer or otherwise dispose of, any or all of its rights in the licence area or any part thereof without first offering to so sell, transfer or otherwise dispose of the same to Salu.*

*7. While the lease subsists, Umico shall at all reasonable times have the right of entry into the licence area for the purpose of ascertaining the state and extent of any mineral production going on and for that same purpose, upon demand by Umico, Salu shall at all reasonable times grant any officer or agent of Umico access to any record or information in Salu's possession which relates to the state or extent of any mineral production in the licence area, whether such record or information is in the licence area or not.*

*8. Nothing contained in this agreement shall restrict Salu from bringing into the licence area any facility, equipment or other property of its own for use or development therein.*

*9. This agreement shall come into force immediately after its execution by the parties to it except that the liability to pay rent shall commence from the 1<sup>st</sup> day of May, 2007.*

*IN WITNESS THEREOF, the parties hereto have executed this agreement on the date and in the manner as herein appearing.*

*SIGNED for and on behalf of*

*UMICO LIMITED by:*

*Name: Br. Aidan Mhuwa OSB      Signature Br Aidan OSB*  
*Designation Chairman              Date: 04.04.2007*

*In the presence of*

*Name Jwani Mwaikusa              Signature .....*  
*Designation Director              Dated 4/4/2007*

*Signed for and on behalf of*

*SALU LIMITED by:*

*Name: Samuel Kinunda              Signature: .....*  
*Designation: .....              Dated 12.04.2007*

*In the presence of:*

*Name: Lucy Kinunda              Signature: .....*  
*Designation: Director              Date: 04/04/2007*

While Exh. P3 runs as hereunder:-

*"UMICO LTD, P. O. BOX 615, SONGEA*

*04 September, 2009*

*Mr. Samuel Kinunda,  
Managing Director,  
Salu Limited,  
P. O. Box 10516,  
DAR ES SALAAM.*

*YAH: KUKABIDHI MGODI NA MALI ZOTE ZA UMICO LIMITED.*

*Ndugu, rejea kichwa cha habari cha hapo juu.*

*Utakumbuka kuwa, tarehe 04.04.2007 UMICO LIMITED iliingia mkataba (agreement) na SALU Ltd, ambapo SALU Ltd ilikodishwa mgodi wa dhahabu wa Lukarasi unaomilikiwa na UMICO.*

*SALU Ltd ilipewa mamlaka ya kutunza mali zote za UMICO LIMITED na kuendesha shughuli za uchimbaji dhahabu katika mgodi huo kwa muda wa miaka miwili (2).*

*Kwa bahati mbaya hakuna hata jambo moja lililotekelezwa katika makubaliano yaliyopo katika mkataba ule; hata hivyo muda wa mkataba ulifika tamati yake (expire) tarehe 04.04.2009.*

*Kwa sababu hiyo UMICO LIMITED imefikia maamuzi yafuatayo juu ya mkataba wake na SALU Ltd.*



- *Kamanda wa Polisi wa Mkoa Ruvuma – kwa taarifa*

Our reading and understanding of Exh. P6 is that the appellant and Kiboko Resources Ltd Company had entered into a joint venture agreement to run a mining company going by the name of Lukarasi Gold Mining Co. Ltd, the details of which are not disclosed. Whatever the position, the two parted company and so the appellant appointed the respondent to be her agent not only in facilitating the transfer of assets but also to effect necessary repairs of the mining site as well as carrying out assential operations of mining activities; which means the respondent was permitted to extract mineral from the site. However, after the respondent had completed the handover of assets back to the appellant, she was allowed to continue with the operations. While that was taking place, lease agreement was being worked out. However, a caveat was made to the effect that what was contained therein was not a lease. This letter is dated on 23/6/2006.

On reading this letter we are of the settled view that the letter was written as a temporary measure to arrest undisclosed situation obtaining at the site. Indeed, it creates an agency agreement. Unfortunately, the respondent did not respond in writing. As things stand, the respondent accepted those conditions otherwise she would not sue on that contract. Though no specific time to accomplish the task was stated, but having in mind that the arrangement was a

temporary one, in the ordinary course of event it was expected that the handover would not take long.

Be that as it may, on 4/4/2007 almost a year later a lease agreement was entered. One of the terms of the agreement was its life span. It was a two years term as contained in clause 1 (Exh. P6). Not only that clause 5 refers to proper care and maintain of all facilities, equipment and infrastructure therein. We are of the settled view that the equipments above referred include those assets the respondent was assigned to collect and transfer following the termination of the joint venture agreement between the appellant and Kiboko Resource Co. Ltd. It is clear then that the agency agreement was taken on board on the lease agreement. So long as the agency agreement was taken on board in the lease agreement the agency agreement came to an end on 4/4/2007 the date when the lease agreement was signed. It is also clear that when Exh. P1 came to an end on 4/4/2009 there is no other contract which was entered though clause 1 shows a written production contract would have been entered. So, we are unable to go along with Mr. Mbogoro who said by necessary implication there was an agency contract. So long as the lease agreement was in writing there is no room for oral evidence to come in.

As regards Exh. P3 it is not useful to the respondent. It is merely a reminder following the expiry of the contract and the request for the handover of the properties belonging to the appellant.

In view of the foregoing, we find the learned judge was wrong to enter judgment in favour of the respondent and award general damages. We set aside the award of Tshs. 100,000,000/= as general damages. For avoidance of doubt the respondent has no right to remain at the site. The appeal is allowed with costs.

It is so ordered.


**DATED** at **IRINGA** this 7<sup>th</sup> day of June, 2018.

B. M. LUANDA  
**JUSTICE OF APPEAL**

S. A. LILA  
**JUSTICE OF APPEAL**

R. K. MKUYE  
**JUSTICE OF APPEAL**

I certify that this is a true copy of the Original.

  
P. W. BAMPIYA  
**SENIOR DEPUTY REGISTRAR**  
**COURT OF APPEAL**