IN THE HIGH COURT OF TANZANIA
(MAIN REGISTRY)

AT DAR ES SALAAM

MISC. CIVIL APPLICATION NO. 2 OF 2020

TANCAN MINING COMPANY LTD.....APPLICANT

VERSUS

MINISTER FOR MINERALS.....1st RESPONDENT

THE MINING COMMISSION.....2nd RESPONDENT

THE ATTORNEY GENERAL.....3rd RESPONDENT

RULING

10/03/2020 & 11/03/2020

Masoud, J.

With her statement of facts and an affidavit verifying the facts in the said Statement respectively signed and sworn by one Peter Zhizhou (the General Manager of the applicant), the applicant urged the court for leave to apply for an order of mandamus compelling the second respondent whose name was with an order of the court amended to read the Mining Commission as opposed to the Mining Commissioner to consider the applicant's application for mining licence. Despite urging for the order, the application was vigorously countered by the

respondents who filed a counter affidavit sworn by one Aron Robinson Ruturagara.

The order was sought pursuant to among other things rules 5, 6, and 7 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, GN No. 324 of 2014; sections 18(1) and 19(3) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Act [cap. 310 R.E 2002].

The essence of the application as is apparent from the record was the failure of the second respondent to entertain the applicant's application for mining licence lodged in 04/11/2005 and on-line application on 24/10/2016 for extension of three prospecting licence, of which the applicant was never informed of its outcome until 23/07/2019 following her written inquiry dated 24/06/2019. The outcome received from the applicant's written inquiry had it that the applicant's application for mining licence was rejected because the applicant was in default of prospecting licences No. 8484//2012, and Mining licence No. 496 of 2013.

The thrust of the applicant's complaint is that she was never afforded an opportunity to be heard in relation to the accusation that led to the rejection. The rejection was contrary to sections 63(1) of the Mining Act cap. 123, which requires the applicant to be given opportunity to make any needed rectification in the relevant application. Consistent with this complaint, the applicant is of the view that she was never given the official rejection notification referred to in the second respondent's letter dated 23/07/2019.

Ms Fatma Amir, learned counsel for the applicant who appeared and argued the application for the applicant treaded with the lines of the affidavit verifying the facts stated in the statement of facts made in support of the application. In so doing, she intelligibly drew the attention of the court to relevant annexures in the application and the counter affidavit and the fact that the counter affidavit noted the applicant's averments about the lodging of the application for mining licence and the averment that the applicant did not receive any feedback for her mining licence application.

The learned counsel further examined the annexures in the counter affidavit and observed that they are at best not corresponding with the

applicant's application but a company known as Tanzania American International Development Corporation (2000) Ltd. The forgoing argument applies also to the alleged default and cancellation notices.

Mr Allan Shija, learned State Attorney, for the respondents disputed the application. He told the applicant were notified through the address and contact person indicated in her application. He thus refuted the argument that there was a failure of giving feedback and observing rules of natural justice. He added that the notification as to cancellation of prospecting licenses and default notices were duly served to the applicant.

Since this matter is an application for leave, this court is bound by the restatement of the position of law in **Emma Bayo vs the Minister for Labour and Youth Development and Others** Civil Appeal No. 77 of 2012, CAT Arusha (unreported). The restatement has it that:

> *...the stage of leave serves several important screening purposes. It is at the stage of leave where the High Court satisfies itself that the applicant for leave has made out any arguable case to justify the filing of the main application. At the stage of leave the High Court is also required to consider whether the applicant is within the six months limitation period within which to seek a judicial review of the decision of a tribunal subordinate to the High Court. At the*

> *leave stage is where the applicant shows that he or she has sufficient interest to be allowed to bring the main application. These are the preliminary matters which the High Court sitting to determine the appellant's application for leave should have considered while exercising its judicial discretion to either grant or not to grant leave to the applicant/appellant herein.[Emphasis supplied].*

The question therefore is whether the application passes the screening test set out in the restatement of the law in **Emma Bayo's case** (supra). This issue necessarily invites the court to consider whether the applicant has shown by facts in the affidavit that verifying the statement of facts that his interests have been or will be adversely affected unless the court intervenes by prerogative orders.

On the record, it is clear that the present application was hinged on the letter dated 23/07/2019 informing the applicant of the outcome of her application following her written inquiry. It is obviously this communication that triggered the matter. On the basis, I think the application is within the period of six months counting from the date on which the alleged decision was brought to the attention of the applicant for the first time.

In relation to the above, the respondents' State Attorney is maintaining that there were communications made by the second respondent to the applicant about the decision of the second respondent on the applicant's application. The respondents are not disputing that the applicant lodged the application with the second respondent for mining licence. The issue seems to be whether the decision about rejection was made, communicated to the applicant and the applicant afforded an opportunity to be heard in relation to matters on the basis of which the alleged rejection was made.

On the other hand, the applicant's position which is strongly echoed in the applicant's learned counsel is that there were a failure of provision of any feedback by the second respondent. The only feedback was obtained following the applicant's written inquiry as to what had happened with her application.

On top of such submissions, the learned counsel for the applicant had it that the law required the second respondent to afford the applicant an opportunity to address whatever anomaly found in the application for mining licence. Such opportunity was, according to the applicant's counsel, never given. There was nothing from the respondents counter

affidavit and submissions by the learned State Attorney refuting the argument that the respondent was required by law to afford the applicant an opportunity to be heard on matters that relate to the rejection of the application.

I am settled that determination of issues that arise from the above conflicting arguments of the counsel for the parties is not a task of this court at this stage of leave. Rather, it is the task of this court when the application for judicial review is properly before it once leave is granted. The issues that arise from such arguments serve, in my view, to show that there is not only an arguable case that mandates this court to consider granting the leave, but also sufficient interest on the part of the applicant justifying allowing the applicant to make an application for orders stated in the chamber summons.

As regards to the issue of having sufficient interest if I were to expound on it, I am clear that it was not in dispute that the applicant was a holder of prospecting licences, she had lodged application for mining licence, and paid relevant fees for such applications and given the feedback of his application after making a written inquiry on the fate of her application. It is also common ground that the counter affidavit opposing

the application just took note of the fact that the applicant lodged the application for mining licences with the second respondent.

What I have pointed out above shows that the applicant has sufficient interest to be allowed to bring the main application for judicial review. I am in this respect mindful of rule 4 of the Judicial Review Procedure and Fees Rule (supra). Such interest has also not been disputed in any way by the respondents. All considered, I am prepared to answer the issue as to whether the present application passes the screening test set out in the restatement of the law in **Emma Bayo's case** (supra) in the affirmative.

In conclusion, I am prepared to, as I hereby do so, exercise my discretion by granting the application for leave to file application for judicial review as specified in the chamber summons. The said application should be filed within 14 days of the granting of the leave as required by rule 8(1)(b) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, 2014. As regards costs, I order the same to follow events.

I order accordingly.

Dated at Dar es Salaam this 11th day of March 2020.

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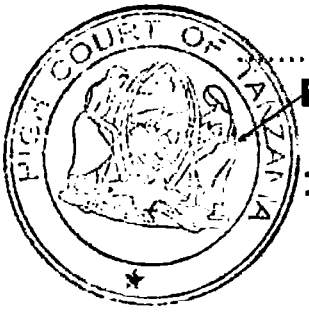
B. S. Masoud
Judge

Court:

Ruling delivered in the presence of Mr Mwang'enza Mapembe, Advocate for the Applicant and Mr Allan Shija, State Attorney for the respondents, this 11th day of March 2020.



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B. S. Masoud
Judge
11/03/2020