

**IN THE HIGH COURT OF TANZANIA
(DODOMA DISTRICT REGISTRY)**

AT DODOMA

MISC CIVIL APPLICATION NO. 27 OF 2021

(Originating from Civil Case No. 4 of 2021 of the High Court of Tanzania at Dodoma)

OPEN GEMSTONES COMPANY LTD APPLICANT

VERSUS

JUHUDI MINE GROUP MONDO RESPONDENT

RULING

13th August, 2021 & 28th February, 2022

M.M. SIYANI, J.

Open Gemstones Company Ltd (the applicant) has filed the instant application for a temporary injunction under section 68 (e) and 95 and Order XXXVII Rule 1 (a) of the Civil Procedure Code, Cap 33 (RE 2019) against Juhudi Mine Group (the respondent). They seek an order restraining the respondent from carrying out any mining activities or entering any contract with any other person/investor pertaining to the mining area at Mondo Village in Chemba District Dodoma Region with Primary Mining licence No. 0586DOM, 0587DOM, 0588DOM, and

0589DOM pending the hearing and determination of Civil Case No. 4 of 2021 at this court.

Through the affidavit filed to support the application, it was averred that on 4th March 2020 and 14th October 2020 respectively, parties herein entered into a contract of which it was agreed that the applicant would operate the respondent's mines by injecting capital on the project and that the two would share profits. However, the deposed facts show further that to the surprise of the applicant and he has injected the capital as per the terms of the contract, on 23rd April 2021, the respondent terminated the contract without justifiable reasons hence causing him financial loss.

The application was disposed of by oral hearing. The applicant was presented by Mr. Freddy Kalonga learned Advocate and counsel Julius Kessy appeared for the respondent. In the nutshell, the Counsel for the applicant reiterated the content of the affidavit and explained his fear that if not restrained, the respondent will enter into a contract with other entities something which will cause irreparable loss to the applicant. The learned counsel, therefore, moved the court to issue the sought orders

and more so to allow him to collect his motor vehicle which remains impounded in the mine, by the respondent.

On her part, counsel for the respondent despite not objecting to the release of the applicant's motor vehicle, strongly resisted the application. He contended that for temporary injunction orders to be granted the applicant must establish the conditions set in the case of **Atilio Vs Mbowe (1969) HCD 284** which are; **the** existence of triable issues, the possibility of the applicant suffering an irreparable loss if the orders are not granted and the balance of convenience tilting in favour of the applicant.

The learned counsel stated that since one of the terms of the parties requires the respondent to compensate the applicant should the contract be illegally breached, then the applicant has not met conditions for granting of temporary injunction.

Having heard both parties, the issue for my determination is whether this application meets the conditions for grant of the sought orders as outlined in the case of **Atilio vs Mbowe** (supra) and reiterated by counsel Kessy. On the first criterion regarding on existence of the triable

issue, I believe the question, of whether the respondent has breached the mining contract, raises a triable issue worth consideration of the court. Therefore, the first criterion has been met.

The second precondition is proof of the applicant's hood to suffer irreparable loss. The loss envisaged by the applicant is the costs incurred in running the mining which to him will be irreparable as the respondent will enter into the contract with other entities. In my opinion, the learned counsel's argument on this issue is insufficient. I am of the view that there is no direct irreparable loss that the applicant will suffer if this application is declined. As correctly submitted by Mr. Kessy, my conclusion above is fortified by the fact that, the applicant can recover his capital should it be established that the respondent has breached the contract. Indeed, compensation was one of the terms of the contract of the parties herein. The law is that Courts will only grant injunctions if there is evidence that there will be an irreparable loss that cannot be adequately compensated by an award of general damages. In the case of **American Cynamid Co. Vs Ethicon Ltd** [1975] 1 All ER 504 at p.509, Lord Diplock stated:

"... the object of the temporary injunction is to protect the plaintiff against injury by violation of his right for which he could not adequately be compensated in damages recoverable in the action if the uncertainty were resolved in his favour on the trial..."

It follows, that the applicant has failed to meet the second prerequisite condition for grant of injunctive orders. It will therefore be an academic exercise to delve into the remaining issue because a temporary injunction can only be granted where all three conditions are met. In the circumstance, save for recovery of a motor vehicle with Registration No. T 341 DDU make Howo, which was not contested by the respondent, the application in respect of the temporary injunction, is accordingly dismissed with cost. It is so ordered.

DATED at **DODOMA** this 28th day of February, 2022



M. M. SIYANI
JUDGE