IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

CIVIL APPEAL NO. 13 OF 2022

(Arising from the decision of the Court of the Resident Magistrate of Musoma at Musoma in Civil Case No. 4 of 2021)

BETWEEN

GODYSON STEVEN OGAMBI ..... 1ST APPELLANT

ZAITUNI OGAMBI ..... 2ND APPELLANT

IRASANILO GOLD MINE ..... 3RD APPELLANT

VERSUS

MAGERE MANG'ERA ..... RESPONDENT

JUDGMENT

A.A. MBAGWA, J.

This is an appeal against the decision of the Court of the Resident Magistrate of Musoma (the trial court) in Civil Case No. 4 of 2021 in which the appellants were ordered to compensate the respondent to the tune of Tshs. 50,000,000/= being general damages for breach of contract.

Before embarking into the merit of the appeal, I find it pertinent to extract a background of the matter albeit in brief. It goes as follows; the

respondent herein filed a civil suit against the respondents before the trial court. He was claiming the total sum of Tshs. 78,848,100/= as specific damages and Tshs. 50,000,000/= as general damages he suffered from the appellants' breach of contract.

The respondent evidence before the trial court was to the effect that on 15th April, 2020 he entered into a contract with the 1st and 2nd appellants for a pathway through their mining pitch No. 44 to the respondent's pitch No. 9D. The contract duration was for one year, but on the 24th day of October, 2020 the 1st and 2nd appellants blocked the passage to the respondent's pitch No. 9D contrary to the terms of agreement. Subsequently, i.e., on 26th November, 2020 the 1st and 2nd appellants served the respondent with the notice of terminating their contract for the reasons that they have been ordered and instructed by the 3rd respondent to terminate their contract. The respondent's testimony was supported by Mang'oha Togoro (PW2) and exhibits P1 – P4.

In their defence, the appellants marshalled two witnesses namely Isaya Daudi, manager of the 3rd appellant and Godyson Steven Ogambi, the 1st appellant. Their testimony was to the effect that according to the constitution of IRASANILO GOLD MINE (Community Based Organization of which 1st and 2nd appellants and respondent are members and working

under it), a person is not allowed to engage in any contract particularly the extraction of gold under IRASANILO GOLD MINE without prior notice to the leaders and license by the group. They were also of the views that if any dispute arises, it should have been resolved by the 3rd appellant office and if the solution is not attained the disputed should be referred to Chama cha Wachimbaji Wadogo wa Madini Mkoa wa Mara (MAREMA). They further contended that if the dispute is still unresolved, the same should be referred to mining commission and not otherwise.

Having heard the parties' evidence the trial court was opined that the 1st and 2nd appellants breached the contract between them and the respondent. Nonetheless, the trial court held that the respondent has had failed to prove the specific damages. In the end, it decided the matter in favour of the respondent as explained early above and granted him general damages to a tune of Tshs 50,000,000/=.

As the decision of the trial court did not amuse the appellants, they decided lodge the appeal at hand to assail it. In their memorandum of appeal they raised two grounds namely;

1. That, the trial Court erred in law and fact by entertaining the matter while it had no jurisdiction to entertain the same.

2. That, the trial Court erred in law and fact by failing to critically analyze and take into consideration the watertight evidence adduced by the appellants.

During the hearing of the appeal, the appellants were represented by Ms. Mary Joakim, learned advocate whilst the respondent had the services of Godfrey Muroba, learned advocate.

Submitting in support of the appeal, Ms. Mary Joakim contended that the trial Court had no jurisdiction to entertain the matter. Referring to section 119 (1) of the Mining Act [Cap 123 R.E 2019], Ms. Joakim submitted that the dispute was about mining activities as such, the respondent ought to refer the dispute to the Commissioner for Mining. She added that section 120 of the Mining Act enjoins the court to execute the orders issued by the Commissioner. She was thus of the views that the Resident Magistrate has no power to hear and determine the dispute.

Ms. Joakim went further and argued in the alternative that, the Resident Magistrate had no power to hear the matter because it was about land matters as it related to ownership of the mining pitch as reflected at page 6 of the plaint. She proceeded that, according to section 3 of the Land Act No. 4 of 1999 land excludes minerals and petrol. She argued that section

4 of the Land Disputes Courts Act prevents the ordinary courts from hearing land disputes.

With regard to 2nd ground, the appellants' counsel submitted that the trial court failed to analyze the evidence presented by the appellants. She proceeded further that DW1, Isaya Daud told the court that the Constitution prohibits members to enter into a contract without involving the leaders. Thus, the contract between the respondent and 1st and 2nd appellants were void, the appellants' counsel argued. She thus concluded by praying the court to allow the appeal with costs.

In reply, the respondent's counsel submitted that the Resident Magistrate Court had all jurisdiction to entertain the matter. He expounded that the dispute between the parties is breach of contract and that the respondent had no other option than institution of suit as per sections 37 (1) and 39 of the Law of Contract Act [Cap 345 R.E 2019].

Referring to the decision of this Court in the case of **Jackson Nyamachoa vs Higira Zabron and Others,** Civil Appeal No. 31 of 2020, HC at Musoma, Mr. Muroba averred that, section 119 of the Mining Act is not applicable in this matter. He elucidated that, the dispute between the parties did not concern mining operations or license for

extraction for minerals rather it was on breach of contract for pathway. He was thus opined that the dispute cannot be treated as a land matter.

As regard to the 2nd ground, the counsel submitted that there was a valid contract between the 1st and 2nd appellants and the respondent. He further submitted that it was not necessary to involve the 3rd appellant. The counsel proceeded that, much as all the elements of contracts were fulfilled, there is no Constitution which can invalidate the contract save the Constitution of the country. He also submitted that the appellants' evidence was considered but that the respondent's evidence was weightier.

In rejoinder, the appellants' counsel reiterated her submission in chief and she added that at paragraph 3, the appellants were disputing that the respondent was owner of the mining pitch. As such, the matter ought to go to the Commissioner for Mining.

Having considered the grounds of appeal, submissions of the parties and the record of the appeal, I found two issues for determination. First, whether the trial court had jurisdiction to try the matter and second, whether the trial court failed to analyze and consider the evidence adduced by the appellants.

Starting with the 1st ground, it was appellants' counsel contention that as per section 119 (1) of the Mining Act, the dispute between the parties herein should have been referred to the Commissioner for Mining. She was of the views that the section empowers the Commissioner to handle all mining disputes. For purpose of convenience let me reproduce the said provision. Section 119 (1) of the Mining Act provides:

> *"119 (1) The Commissioner may inquire into and decide all disputes between persons engaged in prospecting or mining operations, either among themselves or in relation to themselves and third parties other than the Government not so engaged, in connection with-*
> *(a) The boundaries of any subject to a mineral right;*
> *(b) The claim by any person to be entitled to erect cut, construct, or use any pump, tine of pipes, flume, race, drain, dam or reservoir for mining purposes, or to have priority of water taken, diverted, used or delivered, as against any other person claiming the same;*
>
> *(c) The assessment and payment of compensation pursuant to this Act; or*
>
> *(d) Any other matter which may be prescribed.* [Emphasis
>
> added]

As seem above the section is just permissive. Further, Commissioner is vested with powers to inquire and decide disputes between persons

engaged in prospecting or mining operations. However, not all dispute pertaining to prospecting or mining operations are inquired and decided by the Commissioner. His mandate is limited to disputes set out in paragraph (a), (b), (c) and (d) of section 119 (1) of the Mining Act.

When dealing with similar issues, this Court (Mongella J) in the case of **Suzana Pius Karani vs Godlisten Mbise,** Civil Appeal No. 14 of 2019, HC – Mbeya stated that;

> *"...the provision is crystal clear to the effect that the kind of disputes to be entertained by the Commissioner are to be connected with matters enlisted under subsection (1) (a-d) which includes disputes on boundaries or erection, cutting, construction and use of facilities listed under subsection (1) (b) above.*

Looking at the pleadings of the respondent before the trial Court it is obvious that his dispute emanates from the breach of contract between him and the appellants. In the case of **The National Bank of Commerce Limited v. National Chicks Corporation Limited & 4 Others,** Civil Appeal No. 129 of 2015 (CAT, unreported) it was to the effect that the court has to scrutinize the contents of the pleadings to ascertain whether it is mandated to entertain the suit before it or not. See also **Jackson Nyamachoa vs Higira Zablon & 2 Others,** Civil Appeal No. 31 of 2020, HC at Musoma.

Therefore, I am of the opinion that, the dispute between the parties is based on breach of contract and thus it does not fall under the disputes which the Commissioner may inquire and decide under section 119 (1) of the Mining Act.

As regard to the 2nd ground, the appellants' counsel contended that DW1 told the trial court that the Constitution prohibits members to enter into contract without involving the leaders. He thus concluded that the contract between the respondent and 1st and 2nd appellants were void. With due respect to the appellants' counsel, the averment is contrary to the evidence adduced by DW1 before the trial court. At page 38 of the trial court typed proceedings when DW1 was cross examined by the respondent's counsel, he stated that there is no any provision in their constitution which categorically provides that a member is not allowed to enter into contract by another person without prior notice. Therefore, the respondent and 1st and 2nd appellants did nothing wrong to enter into a contract without giving prior notice to the leaders of their organization.

Besides, the exhibit P1 at page 40 of the trial court typed proceedings, the 1st appellant did testify that they entered into a contract with the respondent. Thus, taking into account that they freely entered into the said contract, they are all bound by the said contract and its consequences

thereto. See **Simon Kichele Chacha vs Aveline M. Kilawe,** Civil Appeal No. 160 of 2018, CAT at Mwanza.

The 1st and 2nd appellants are consequently responsible for the breach of contract between themselves and respondent as the failed to honor their terms.

In the event, I uphold the order for payment of general damages to a tune of Tanzania shillings fifty million (TZS 50, 000,000/=)

Regarding the issue of the dispute of owning mining pitch raised by the appellants' counsel in rejoinder, the issue is unfound as the same was already answered in affirmative by the trial court at page 4 to 6 of the judgment. The trial court found that the respondent is the rightful owner of the mining pitch No. 9D.

In the upshot, I find the appeal with no merits and consequently I dismiss it with costs.

It is so ordered.

Right of appeal is fully explained.

THE HIGH COURT OF TANZANIA MUSOMA

A.A Mbagwa

JUDGE

28/04/2023