THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT

ORIGINAL JURISDICTION

LAND CASE No. 27 OF 2022

1. **ZEBADIA WANCHARA CHACHA**
2. **RHOBI SAMWEL KEGOYE**
3. **MNIKO SAMWEL KEGOYE**
4. **MARWA NGARIBA MNIKO**
5. **HEZRON MAKARANGA SANDO**
6. **GIRIMBE MACHUGU NYAMARUGU**
7. **GETRUDA RAPHAEL NGARARE**
8. **MWITA CHACHA ROSWE**
9. **CHARLES MAGORI ANTHONY**
10. **MANKO GHATI MWITA**
11. **GEORGE MWITA NYAMAHOYI**
12. **MARIA MUNGE MARWA**
13. **MARIA MUSA IBRAHIM**
14. **FRANCIS PIUS MKAMI**
15. **BHOKE MWITA CHACHA**
16. **MATINDE MASEKE MWERA**
17. **JAMES MARWA MAHANDO**
18. **JOSEPHAT MWITA TUGARA**
19. **NEEMA RHOBI PETER**
20. **GRACE ROBIN MOTENGI**
21. **DANIEL RYOBA NYAMTARA**
22. **WINFRIDA ZAKARIA MAKURI**

..... **PLAINTIFFS**

Versus

NORTH MARA GOLD MINE LIMITED ..... **DEFENDANT**

RULING

16.08.2023 & 22.08.2023
Mtulya, J.:

The appreciation of two (2) enactments in two (2) different statutes on three (3) important issues in this country are still in turbulences. The enactments are in section 66 of the **Advocates Act [Cap. 341 R.E. 2022]** (the Advocates Act) and section 3B (2) of the

Civil Procedure Code [Cap. 33 R.E. 2022] (the Code). The issues are: speed justice, substantive justice and avoidance of technicalities in resolving civil disputes brought in courts. The issues require officers of this court to further the principle of overriding objective, cooperate with courts, efficient use of resources, easy accessibility of courts and determination of disputes in affordable costs.

It is fortunate that all the indicated three (3) issues have received the thinking of our superior court in judicial hierarchy, the Court of Appeal in the precedents of **Yakobo Magoiga Gichele v. Peninah Yusuph**, Civil Appeal No. 55 of 2017 and **Gasper Peter v. Mtwara Urban Water Supply Authority (MTUWASA)**, Civil Appeal No. 35 of 2017.

In the present case, the parties are disputing on land acquisition process and fair compensation hence the plaintiffs approached this court on 14th December 2022 complaining that sometimes in 2022 the defendant had encroached into their lands, houses, crops, trees and other unexhausted improvements valued at estimated value of Tanzanian Shillings **Four Hundred Million** (400,000,000/=Tshs). The said lands are located at **Komarera Village within Nyamwaga Ward in Tarime District of Mara Region**.

However, before the parties have registered relevant materials for and against the case, three (3) points of law were raised by the defendant protesting the jurisdiction of this court to entertain and

resolve the dispute. In brief, the points were as follows: first, no certainty of monetary value was pleaded; second, the case is time barred; and finally, the case escaped the Mining Commission established under the **Mining Act** [Cap. 123 R.E. 2019] (the Mining Act).

The respondent was summoned on 16th day of August 2023 to explain on the points of protest, and had decided to invite the legal services of **Mr. Waziri Mchome** and **Mr. Audax Kameja**, learned counsels, to argue the points. According to the learned counsels, the 10th paragraph of the plaint displays general damage of Tanzanian Shillings Four Hundred Million without any specifics on how the figure was arrived. In their opinion, the law requires specific claim be specifically pleaded in the plaint to give courts pecuniary jurisdiction.

In support of the move, the dual learned counsels had registered several authorities, namely: section 5, and 37 (1) (a) & (b) of the **Land Disputes Courts Act [Cap. 216 R.E. 2019]** (the Land Disputes Courts Act) on monetary jurisdiction of this court; Order VII Rule 1 (1) (i) & (3) of the Code on specific claim; and precedent in **Godlove Mtweve v. Chief Executive Officer, TANROADS & Another**, Land Case No. 154 of 2018.

In the opinion of the counsels, in cases like the present one, the plaintiffs must attach valuation report to substantiate their

claims to give pecuniary mandate to this court to resolve their case as directed by this court in **Mwanahamisi Seif v. Mwajuma Seif & Two Others**, Land Case No. 110 of 2022; **Alphonce Kakweche & Another v. Bodi ya Wadhamini Bakwata Tanzania**, Land appeal No, 97 of 2019; and **Shukrani Chacha Chacha v. Shabani Mrutu**, Land Case No. 15 of 2002.

According to the defendant's learned counsels, a dispute filed without specification on value of the cause of action, it must be struck out for want of lower court as stated in the precedents in **Mwananchi Communication Limited & Two Others v. Joshua Kikajula & Two Others**, Civil Appeal No. 126/01 of 2016 and **Khamis Muhidin Musa v. Mohamed Thani Maltar**, Civil Application No. 237 of 2020.

Regarding the second protest, the dual learned minds submitted that the instant case concerns a claim of compensation and it was filed out of twelve (12) months statutory time period as required by the provision of section 3 & Item I Part I of the Schedule to the **Law of Limitation Act [Cap. 89 R.E. 2019]** and precedents in **Mariam Soud Hussein v. Pius Solanki**, Land Case No. 2 of 2021; **Elias Mwita Mrimi v. North Mara Gold Mine Ltd**, Civil Case No. 8 of 2020; and **Ali Shabani & 45 Others v. Tanzania National Roads Agency (TANROADS) & Another**, Civil Appeal No. 216 of 2020. In substantiating their submission, the dual had cited the 11th

paragraph in the plaint which shows that the cause of action arose sometimes in 2022, without specification of month and date. According to the learned counsels, the plaintiffs knew their assessment and entitlement since October 2021, but had filed the case for compensation on 14th December 2022, which is more than a year to complain on compensation.

In the final protest, the dual counsels, submitted that the plaintiffs have brought the case in a wrong forum as the plaintiffs are owners of the land and defendant a mining company doing mining activities. In their opinion, when a dispute of compensation arose and concerns land owners and mining companies in mining activities and prospects, the dispute falls under sections 96 (3) & (4) and 119 (1) of the Mining Act and must be resolved under the **Mining (Disputes Resolution) Rules**, GN. No. 323 of 2021.

In citing precedents in support of the submission, the dual had cited **Tambueni Abdallah & 89 Others v. National Social Security Fund**, Civil Appeal No. 33 of 2000 and **Heritage Insurance Company Limited v. Abihood Michael Mnjokava**, Civil Appeal No. 1 of 2020. According to the dual counsels, this court comes into the second at appellate level hence it cannot receive and entertain original mining disputes as the first instance court.

Replying the submissions of the defendant, the plaintiff had invited **Dr. Chacha Murungu** and **Mr. Daud Mahemba**, learned

counsels. In their opinion, the resistances of the defendant have no any merit whatsoever. On their part, the last protest may be answered straight forward as there is already specific decision of this court which had resolved a dispute like the present one. In substantiating their submission, the dual cited the precedent of this court in **Jackson Nyamachoa v. Higira Zeblon & Two Others**, Civil Appeal No. 31 of 2020, and in it this court had cited the decision in **Suzana Pius Karani v. Godlisten Mbise**, Civil Appeal No. 14 of 2019, which had resolved that section 119 (1) of the Mining Act is applicable to parties who are engaging in a prospecting or mining operations.

In the opinion of Dr. Chacha and Mr. Mahemba, this court has both constitutional and statutory mandate to resolve land and compensation disputes and cannot delegate that noble mandate to administrative body located at the Mining Act without any competence, convenience or understanding of land issues. According to the dual, the law as enacted in section 3(2), 37 (1) (b) & (c) and 62 (2) of the Land Disputes Courts Act and section 167 of the **Land Act** [Cap. 113 R.E. 2019] (the Land Act) empowers this court to resolve issues of estimated value of Tanzanian Shillings Four Hundred Million. In their opinion, the defendants have not produced similar precedent which resolves section 119 (1) of the Mining Act,

rather they registered decisions related labor disputes and other matters.

Regarding the first point of objection, the learned counsels submitted that attachment of valuation report in land and compensation disputes is not a legal requirement as per section 37 (1) (b) & (e) of the Land Disputes Courts Act, Order VII Rule 1 (1) of the Code, Regulation 3 (2) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations GN. No. 174 of 2003, Rule 4 of the Court Fees Rules of 2018, GN. No. 247 of 2018, which require estimated value of the disputed lands in land actions.

The dual also cited a bundle of precedents stating that in land disputes there is no need of scientific valuation report, which cannot be afforded by a large number of communities in Tanzania (see: **Seif Mtiara v. Jumanne Juma Shaha**, Land Case No. 168 of 2021; **Hamadi Shabani Kagunda v. Maulid Rashid**, Land Appeal No. 16 of 2019; and **Mage Minga v. Egid Lazaro Chingilile**, Land Appeal No. 71 of 2022). According to the dual counsels, the plaintiffs are asking for declaration orders of general damages in a suit of compensation emanated from land dispute as displayed in 4th, 5th 6th 8th 9th of the plaint read together with the reliefs claimed and that is allowed by the Court of Appeal in the precedent of **Khamis Muhidin Musa v. Mohamed Thani Mattar**, Civil Appeal No. 237 of 2020, which had resolved at page 11 of the decision that: punitive and general

damages are legally one large category of general damages fit for declarations orders.

Regarding cases cited by the defendant in the first point of objection, the dual counsels submitted that the precedents are distinguishable as the court was busy interpreting confusions brought by the parties in the value of the disputed properties and brought in the court sale agreements in variance with valutions reports. According to the dual, no such confusions were brought in the present case as the plaintiffs have not registered any sale agreement or valuation report and pray for general damages and declaration orders.

In the opinion of the plaintiffs' counsels, the defendant had brought in this court the first point which does not meet legal requirement of a point of law as per requirement of the law as it invites facts and evidences in evaluation report. According to them, the practice is discouraged in the precedents of **Hezron M. Nyachiya v. Tanzania Union of Industrial and Commercial Workers & Another**, Civil Appeal No. 79 of 2001, **Gideon Wasunga & Three Others v. The Attorney General & Two Others**, Civil Appeal No. 37 of 2018, and **Mohamed Enterprises (T) limited v. Masoud Mohamed Nasser**, Civil Application No.33 of 2012.

With regard to the second point of protest, the dual counsels had briefly submitted that the plaintiffs have explained as to when

the cause of action arose as reflected at the 9th and 11th paragraphs of the plaint. According to the dual, the plaintiffs have indicated that they became aware of the inadequate compensations sometimes in 2022 and they said so because they received notice of payment on different dates starting from July 2022 to September 2022 and filed the present case in December 2022. In their opinion, the plaintiffs have complied with the requirement of twelve (12) months period in filing compensation suit as per the Law of Limitation.

Rejoining the plaintiffs' submission, the defendant's learned counsels have submitted that the precedent in **Khamis Muhidin Musa v. Mohamed Thani Mattar** (supra) stated that general damages cannot form the basis of determining the court's pecuniary jurisdiction hence suits of general damages must be initiated at lower courts. In their opinion, the plaintiffs ought to have identified each specific claim to give jurisdiction this court. According to the dual counsels, valuation reports do not go to the evidences of the case, but justification of the value of the suit hence the issue of estimated value is not correct as interpreted by the plaintiffs' counsels.

With time limitation, the defendants' learned counsels have submitted that time has to be calculated when the cause action arose and in this case is when the plaintiffs accepted and signed the contract of compensation as reflected to the attached forms in the

plaint, which show that the plaintiffs were aware of the deal before the year 2022. Finally, the learned counsels have submitted that the present dispute is regulated by the Mining Act and the proper forum is the Mining Commission, and that it does not matter whether the Commission is convenient or conversant with land issues.

Regarding the precedent in **Jackson Nyamachoa v. Higira Zeblon & Two Others** (supra), the dual submitted that the case had resolved breach of contract and not mining issues, but the indicated precedents in **Tambueni Abdallah & 89 Others v. National Social Security Fund** (supra) and **Heritage Insurance Company Limited v. Abihood Michael Mnjokava** (supra) have set legal position and interpretation of the word *may* for want of specific forums established by law. In the dual opinion, the plaintiffs have the right to choose whether to go to the Commission or remain at easy, but they have no right to choose any forum as they so wish.

I have glanced the record of the present case and grasped the submissions of the learned minds. The record in the plaint shows, at the eleventh paragraph that: *the cause of action occurred sometimes in 2022 at Komarera Village in Nyamwaga ward, Tarime District*. According to Dr. Chacha for the plaintiff, that is display of the date when the cause of action arose and it was printed so, because there are several claims in different days beginning from July to September 2022, whereas Mr. Mchome thinks that is a

general statement, and in any case, the dispute was supposed to arise when the plaintiffs had signed the deal before 2022.

In his opinion, the plaintiffs were aware since October 2021, but had filed the case for compensation on 14th December 2022, which is more than a year to complain on compensation. However, Mr. Mchome had declined to cite specific date when the deal was negotiated and signed. In the present case, it is the plaintiffs who are entitled to say when they became aware of the breach of the deal to approach this court. They have said it all at the eleventh paragraph, and this court cannot be detained in search of other dates.

There is a large bunch of precedent registered in this case to resolve whether it is this court or Mining Commission which is empowered to resolve the current dispute (see: **Tambueni Abdallah & 89 Others v. National Social Security Fund** (supra); **Heritage Insurance Company Limited v. Abihood Michael Mnjokava** (supra); and **Jackson Nyamachoa v. Higira Zeblon & Two Others** (supra). However, before resolving the matter, it is necessary to glance the complaint of the plaintiffs in this court. The plaintiffs, as they displayed in third and the fourth paragraphs of the Amended Plaint filed on 13th February 2023, in brief that:

> *...the plaintiff are owners of the pieces of land under customary right of occupancy which they*

have [been cultivating] crops, planted trees, built houses and other structures dating prior to the period of valuation process carried out by the defendant and its agents...and [the defendant] without any justifiable cause failed and refused to pay compensation to the plaintiffs for all unexhausted improvements on lands.

This citation shows that the dispute is on compensations arising from land acquisition by the defendant from the plaintiffs. There is no indication of engagement of prospecting or mining operations as per requirement of the law in section 119 of the Mining. For purposes of appreciation of the section, it is hereby quoted;

*The **Commission** 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 area subject to a mineral right;

(b) the claim by any person to be entitled to erect, cut, construct or use any pump, line 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 supplied).

The Mining Act is silent in the definition section on the meaning of the Commission, However, the interpretation clause under section 4 of the Mining Act provides for the Commissioner for Minerals, who in accordance to section 20 of the Mining Act shall be appointed by the president and responsible for advising the Minister responsible for minerals on all matters related to mining sector.

The Commission is explained in section 21 of the Mining At to mean a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of suing and being sued. The functions of the Commission, as per section 22 (a)–(v) of the Mining Act, are generally to supervise and regulate the proper and effective carrying out of the mining industry and mining operations

Regarding to its members, the Commission is composed of the Chairman; the Permanent Secretary Treasury; the Permanent Secretary from the Ministry responsible for Lands; the Permanent Secretary from the Ministry responsible for Defence; the Permanent Secretary from the Ministry responsible for Local Government; the Chief Executive Officer of the Federation of Miners Associations of

Tanzania; Deputy Attorney General; and two eminent persons who possess proven knowledge and experience in the mining sector one of whom shall be a woman.

Looking at the establishment, composition, functions and nature of disputes resolved in the Commission: *between persons engaged in prospecting or mining operations*, it is obvious that the Commission cannot resolve disputes related to the appropriate compensation in acquisition of lands. Similarly, the provisions of sections 3(2), 37 (1) (b) & (c) and 62 (2) of the Land Disputes Courts Act provide that every dispute or complaint concerning land shall be instituted in the Court having jurisdiction to determine land disputes in a given area. Sub section 2 of section 3 of the Land Disputes Courts Act establishes courts of competent jurisdiction as the: Village Land Council; Ward Tribunal; District Land and Housing Tribunal; the High Court; or the Court of Appeal of Tanzania. The commission is not part of the cited enactment. This court is part of the cited enactment.

I am aware, two decisions were cited by the learned counsels for the defendant in **Tambueni Abdallah & 89 Others v. National Social Security Fund** (supra) and **Heritage Insurance Company Limited v. Abihood Michael Mnjokava** (supra). The precedent in **Tambueni Abdallah & 89 Others v. National Social Security Fund** (supra), at page 13, the Court had resolved that: *it is clear that*

trade disputes have to follow the prescribed procedures and there is no room for going to High Court straight. The precedent regulated trade disputes under section 4 (1) of the Industrial Court Act, 1967 and the case was resolved i21st July 2004, before insertion of section 3A in the Code on the principle of overriding objective.

Similarly, the precedent in **Heritage Insurance Company Limited v. Abihood Michael Mnjokava** (supra) was invited to resolve on section 123 of the Insurance Act and Regulation 6 (1) of the Ombudsman Regulation, 2013 GN. No. 411 of 2013 which require all complaints filed by insurance customers against insurance registrant to be filed with the Insurance Ombudsman. The court in the precedent had determined that: *whenever the law establishes a forum for determining certain types of cases, such types of cases are to be filed in the established forum*.

The two indicated precedents did not provide this court with the test of mining and land issues as directed by the section 96 (1) of the Mining Act, which requires the rights conferred by a mineral right to be exercised reasonably and not be exercised so as to affect injuriously the interest of any owner or occupier of the land. The decision in **Jackson Nyamachoa v. Higira Zeblon & Two Others** (supra) is specifically tries to reply the issue of applicability of section 119 (1) of the Mining Act as follows:

I am of the view that the dispute between the parties is based on breach of contract. It does not fit in the disputes which the commissioner may inquire and decide under section 119 (1) of the Mining Act. in alternative, evidence was required to prove whether the dispute at hand falls in the above cited provision... [Commissioner's mandate] is limited to disputes set out in section 119 (1) of the Mining Act. I am persuaded by the decision of the court in ***Suzana Pius Karani v. Godlisten Mbise****, Civil Appeal No. 14 of 2019, when this court said 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).*

In my considered opinion, the issue whether it is this court or Mining Commission which is empowered to resolve the current dispute, my holding is: it is this court which is empowered to resolve land associated disputes, including suits of compensations emanated from lands disputes. The Mining Commission is reserved for disputes between persons engaging in *prospecting or mining operations*.

The plaintiffs in the instant case are not mining companies and cannot be said they are searching or doing mining activities. The

Commission cannot resolve their differences with the defendant. If it does so, it will be taking the constitutional and statutory mandate of this court in resolving land matters and land associated disputes. Looking at the constitution of the Commission alone, I do not think, if any learned friend and officer of this court can submit that the administrative body with deficiencies of learned minds can resolve differences arising from acquisition of land or appropriate compensation in land matters.

The first objection in this contest cannot detain this court. Reading section 37 (1) (b) of the Land Disputes Courts Act, Order VII Rule 1 (1) (i) of the Code, Regulation 3 (2) (d) of the Regulations, Rule 4 of the Court Fees Rules of 2018, GN. No. 247 of 2018, are all in favor of estimated value of the subject matter in disputes. The enactments have received the interpretation of this court in a bunch of precedents (see: **Seif Mtiara v. Jumanne Juma Shaha** (supra); **Hamadi Shabani Kagunda v. Maulid Rashid** (supra); and **Mage Minga v. Egid Lazaro Chingilile** (supra), and taking cognizance of section 3A of the Code, I think, I am persuaded by the decisions.

In the present case the plaintiffs are praying for declaratory orders of general damages in a suit of compensation emanated from land dispute as displayed in 4th, 5th 6th 8th 9th of the plaint read together with the reliefs claimed. According to the Court of Appeal in

the precedent of **Khamis Muhidin Musa v. Mohamed Thani Mattar** (supra), which was resolved on 3rd December 2021, the punitive and general damages are legally one large category of general damages fit for declaratory orders. The cited decision of the Court of Appeal is obvious a move in support of this court in holding that there is no need of scientific valuation report in filing land disputes.

The move must receive a large support of decisions as it is a good than bad. It will help a large number of poor communities in this nation to access our courts with less costs and distance in search of land valuers. That is the meaning of speed justice with affordable rate. It is part of cherishing the move enacted in section 3A & 3B of the Code on speed trials in substantive justice and article 107A (2) (a), (b) and (e) of the **Constitution of the United Republic of Tanzania [Cap. 2 R.E. 2002]** on taking regard to social and economic status of the disputants, justice without delay and avoidance of technicalities.

In the end, I think, the three (3) indicated protests brought by the defendant in this case contravene the meaning and purpose of section 3A and article 107A (2) of the Constitution. This court was established to interpret rights and interest of all persons, including the poor communities located at Komarera Village in Tarime. They cannot be shouldered more costs than necessary, unless there are specific enactments on the requirements of valuation reports,

specific values and the Commission. This court will observe the provisions of the Constitution and enactments in statutes in dispensing substantive justice to the parties.

In the upshot, the protests raised by the defendant are hereby overruled for want of merit. As this is a separate suit, the defendant to pay the plaintiffs costs. I do so with reasons. The defendant has delayed the proceedings of the case and declined to abide with provision of Order VIII Rule 2 of the Code and directives of this court in **Rukia Ruhaza Bhililo v. Zaituni Saidi & Two Others**, Land Case No. 32 of 2021. In totality, the defendant had intervened the integrity and sanctity of the proceedings of this case without any justifiable cause.

It is so ordered.

F.H. Mtulya

Judge

22.08.2023

This Ruling was delivered in Chambers under the Seal of this court in the presence of **Dr. Chacha Murungu**, learned counsel for the plaintiffs and in the presence of **Mr. Waziri Mchome**, learned counsel for the defendant through teleconference attached in this court.

F.H. Mtulya

Judge

22.08.2023