

**THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT**

ORIGINAL JURISDICTION

LAND CASE No. 19 OF 2022

1. PENINA MHERE WANGWE
2. MARKO CHACHA GICHERE
3. HELENI DANIEL MATAIGA
4. EMMANUEL AUGUSTINO WANGWE
5. ALEXANDER CHACHA NYANKAIRA
6. NYANGIGE NYAMARUNGU MWITA
7. JOHN MENYE MWITA
8. JASTINE MWITA KIMUNE
9. MATIKO BISENDO MARWA
10. DAUDI JUMA NYANKAIRA
11. ESTER DAUDI NYANKAIRA
12. MAKENGE DANIEL MAKENGE
13. MATONGO JUMA NYANKAIRA
14. KOROSO SASI RAGITA
15. ALLY MUYUI CHACHA
16. MATAIGA SAMMY DANIEL
17. ROBIN MOTENGI MARWA
18. BHOKE PETER CHACHA
19. AGNES PAULO CHACHA
20. MWITA CHACHA MUYUNI
21. OTAIGO CHACHA MHIRI
22. BEATRICE DANIEL BWANA
23. MARIA JUMA MASEYA
24. SIMON MSETI WANGWE
25. ROBI CHACHA MHIRI
26. MWITA CHACHA KEGOYE
27. DANIEL ELIYA MATIKO
28. PETER MNIKO MWERA
29. WINFRIDA SAMWEL MOTENGI
30. SAMWEL MOTENGI MARWA
31. NICODEMAS KITUNKA JOHN
32. GEORGE NYAMOHONO NYAMONGE

..... PLAINTIFFS

Versus

NORTH MARA GOLD MINE LIMITED DEFENDANT

RULING

01.09.2023 & 04.09.2023
Mtulya, J.:

Mr. Shiduki Lubango, learned counsel for **North Mara Gold**

Mine Limited (the defendant), appeared in this court on 28th August

2023 praying for interpretation of sections 96 (3) & (4), 119 (1) (c) and 121 of the **Mining Act** [Cap. 123 R.E. 2019] (the Mining Act) as a whole and together. In his opinion, reading the indicated sections together as a whole, this court will find that compensation disputes emanating from mining operations are lodged in the Mining Commission (the Commission) established under section 21(1) of the Mining Act. According to Mr. Lubango, section 96 (3) of the Mining Act provides for compensation in respect of disturbances on the rights of the occupiers of lands where mining operations are taking course, whereas section 96 (4) of the Mining Act opens up a valve for any land owner who wants to dispute the rate of compensation to access the Commission.

In the opinion of Mr. Lubango, the Commission may inquire into and decide disputes between persons engaging 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 assessment and payment of compensation.

According to Mr. Lubango, the words third parties are very crucial in the provision of section 119 (1) of the Mining Act as the present plaintiff are not engaging in mining activities, but may be interpreted as *third parties* as per **Black's Law Dictionary, 10th Edition 2004**. In that case, according to Mr. Lubango, the plaintiffs'

complaints on the size of compensation may be resolved in the Commission and this court comes second at appellate level under section 121 of the Mining Act.

In order to persuade this court to follow his course, Mr. Lubango cited the authorities in precedents of this court in **Uhuru Mining's Cooperatives Society Limited v. Paul Joseph Mulya & Two Others**, Misc. Civil Appeal No. 5 of 2021, **Tibe Keneth Rwakatare (As Administrator of the late Getruda Rwakatare) v. Juma Said Kasila**, Land Case No. 19 of 2022, **Jackson Nyamachoa v. Higira Zablon & Two Others**, Civil Appeal No. 31 of 2020 and **Africa Mashariki Gold Mines Ltd v. Nyirabu Magige & Others** [2002] TLR 261. Regarding the recent decision in **Zebadia Wanchara Chacha v. North Mara Gold Mine Limited**, Land Case No. 27 of 2022, which had resolved that this court has mandate in issuing declaratory orders related to compensation emanated from lands acquisition disputes, Mr. Lubango contended that the decision did not touch section 93 (3) & (4) of the Mining Act.

Replying the submission of Mr. Lubango, the plaintiffs have marshalled **Dr. Chacha Murungu**, learned counsel to argue the points of protest. According to Dr. Murungu, the indicated sections 96 (3) & (4), 119 and 121 regulate mining disputes arising from prospecting mining or mining operations, and interpretation of the words *third parties* in section 119 (1) of the Mining Act must be

interpreted in the context of mining disputes. In the opinion of Dr. Murungu, reading the indicated sections, the key words are *prospecting or engaging in mining operations*. According to him, the present dispute is about *acquisition of land and related appropriate compensations* and not *assessment of compensation*. Dr. Murungu submitted further that this court and other land courts enacted under the **Land Disputes Courts Act [Cap. 216 R.E. 2019]** (the Land Disputes Act), the **Land Act [Cap. 113 R.E. 2019]** (the Land Act), and the **Village Land Act [Cap. 114 R.E. 2019]** (the Village Land Act), have been mandated with exclusive jurisdiction to resolve land matters and any interest in lands. According to him, the enactment in section 133 of the Mining Act did not amend any of the indicated statutes regarding the powers of this court and other enacted land disputes resolving machineries.

In order to persuade this court to incline on his submission, Dr. Murungu cited the authorities in **Suzana Pius Karani v. Godlisten Mbise**, Civil Appeal No. 14 of 2019, **Jackson Nyamachoa v. Higira Zablon & Two Others** (supra), **Uhuru Mining's Cooperatives Society Limited v. Paul Joseph Mulya & Two Others** (supra), and **Zebadia Wanchara Chacha v. North Mara Gold Mine Limited** (supra) and **Arcopar (OM) S.A v. Harbeth Marwa and Family Investments Co. Ltd**, Civil Application No. 94 of 2013. Finally, Dr. Murungu concluded that the cited authorities registered by Mr.

Lubango concerned mining rights, boundaries and other related mining matters, not compensations emanating from lands acquisition disputes.

In a brief rejoinder, Mr. Lubango submitted that the law in section 96 (3) & (4) of the Mining Act reading together with sections 119 (1) and 121 of the Mining Act regulate compensations emanating from mining disputes and the present case falls in the Commission as per reading of the words of section 119 (1) of the Mining Act on *third parties*.

On my part, I consulted the provisions in sections 96 (3) & (4), 119 (1) and 121 of the Mining Act. Section 119 (1) and 121 of the Mining Act will not detain this court for obvious reasons that section 119 (1) of the Mining Act has already received interpretation of this court and section 121 of the Mining Act concerns right of appeal from the Commission to this court. Section 119 (1) of the Mining Act was invited and interpreted in the precedent of **Zebadia Wanchara Chacha v. North Mara Gold Mine Limited** (supra), where this court at page 16 of the ruling held that:

...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.

As from the indicated precedent in **Zebadia Wanchara Chacha v. North Mara Gold Mine Limited** (supra), the issue in the present protest is: whether the plaintiffs in the instant case are *engaging in prospecting or mining operations*. According to Mr. Lubango, reading section 119 (1) of the Mining Act, the plaintiffs are not engaging in prospecting or mining operations, but they are captured by the words: *third parties*. In the opinion of Dr. Murungu, the interpretation of the word *third parties* must be interpreted in the context of mining activities, not compensations from lands acquisition disputes or interests, which are the territory of land courts. Section 119 (1) of the Mining Act, in brief reads, that:

*...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 (c) the assessment and payment of compensation.*

(Emphasis supplied).

Section 96 (3) of the Mining Act on the other hand provides that:

*Where, **in the course of prospecting or mining operations, any disturbance of the rights of the lawful occupier of any land or damage to any crops, trees, buildings, stock or works thereon is caused,** the registered holder of the mineral right by virtue of which the operations are carried on, **is liable to pay***

the lawful occupier fair and reasonable compensation in respect of the disturbance or damage according to the respective rights or interest of the lawful occupier in the property concerned
(Emphasis supplied).

Thereafter, the enactment in section 93 (4) of the Mining Act follows, in brief, that: *where the amount of compensation to be paid pursuant to subsection (3) in any particular case is in dispute, either party may refer the matter to the Commission.* Finally, the enactment of section 119 (1) (c) of the Mining Act comes into play that the Commission may order or decide disputes for those who are engaging in prospecting or mining operations, including the third parties, in connection with the assessment and payment of compensation.

On the other hand, the enactment of the long title to the Land Disputes Courts Act provides for establishment of land disputes settlement machinery and matters incidental to lands, whereas section 3 of the indicated Act provides that: *every dispute concerning land shall be instituted in the court of competent jurisdiction to determine land disputes.* Section 3 (2) (a)-(e) of the Land Disputes Act, section 167 (1) (a)-(e) of the Land Act, and section 62 (2) (a)-(e) of the Village Land Act vest powers to the following institutions to hear and determine all complaints regarding land matters, namely: *the Court of Appeal; the High Court; the*

District Land and Housing Tribunal; the Ward Tribunal; and the Village Land Council.

The enactments in Mining Act as displayed in sections 96 (3) & (4), 119 (1) and 121 in totality show that where the amount of compensation to be paid in the course of prospecting or mining operations, *any disturbance* or *damage* on the rights of the lawful occupier of any land, the registered holder of the mineral right is liable to pay the lawful occupier fair and reasonable compensation in respect of the *disturbance* or *damage*. However, if it happens the parties are not in agreement on the amount of compensation to be paid, either party may refer the matter to the Commission. In the Commission, any aggrieved party by the order or decision of the Commission, may lodge an appeal in this court within thirty (30) days without any delay.

On the other hand, reading sections 3 (2) (a)-(e) of the Land Disputes Act, section 167 (1) (a)–(e) of the Land Act, and section 62 (2) (a)-(e) of the Village Land Act as whole display that all manner of disputes, actions and proceedings concerning land, are to be resolved in land courts as indicated in the sections. The land statutes are silent on any reference to the Mining Act and engagement of prospecting or mining operations. Similarly, the Mining Act is silent on any of the indicated machineries in the cited land statutes, save

for this court which appears at an appellate level under section 121 of the Mining Act.

However, scanning of the words in the enactment of section 96 (3) of the Mining Act, the key words avoided the word: *acquisition of lands*. The words in the enactment shows: ***in the course of prospecting or mining operations, any disturbance of the rights of the lawful occupier of any land or damage is caused, the registered holder of the mineral right, is liable to pay the lawful occupier fair and reasonable compensation in respect of the disturbance or damage.*** The key words, in the indicated section, in my considered opinion, is: *any disturbance of the rights of the lawful occupier of any land*. The word disturbance is not defined in the Mining Act and it appears twice in the whole Mining Act, of course under section 96 (3) of the Act. According to **On-line Cambridge Dictionary** [<https://dictionary.cambridge.org>], disturbance means *something that interrupts someone or makes someone feel worried*, whereas **Black's Law Dictionary, 8th Edition 2004**, has defined the word disturbance as: *an act causing annoyance, disquiet, or interfering with a person's pursuit of a lawful occupation or peace and order of a neighborhood, community or meeting*.

This court in the decision of **Iddi Salum Babu v. Grace Sillo Wawa & Two Others**, Civil Appeal No. 79 of 2016, has considered the word disturbance similar to interference with convenience to

cause suffering to land owner. The case was resolving noises caused by a neighbor's generator. Similarly, the **On-line Cambridge Dictionary** had considered an example of a situation where: residents are tired of disturbance caused by the night club. Similarly, at Common Law practices, according to the **Black's Law Dictionary, 8th Edition 2004**, an example is derived in the following words: a wrong done to an incorporeal hereditament by hindering the owner's enjoyment of it [land].

From the interpretations of the word *disturbance*, it is obvious concerns interference with one's enjoyment of land rights, such as noise, dust or any inappropriate use of land that interrupts relaxation of neighbors. At any rate, the words *disturbance on land* as enacted in section 96 (3) of the Mining Act, cannot be interpreted as *acquisition of land*, which has its own distinct procedures in other enactments.

The word acquire, on the other hand, means: *take. obtain or get*. Acquisition is the process of taking, getting, gaining possession or controlling over something (see: **On-line Cambridge Dictionary** [<https://dictionary.cambridge.org>] and **Black's Law Dictionary, 8th Edition 2004**). **The Land Acquisition Act** [Cap. 118 R.E. 2019] (the Acquisition Act), Land Act, Village Land Act and Land Disputes Act are all silent on the meaning of the words: *land acquisition*. Similarly, our superior court, the Court of Appeal had detailed

considerations of land acquisition in the precedents of **James Makundi v. Permanent Secretary, Ministry of Lands, Housing and Human Settlement Development & Two Others**, Civil Appeal No. 181 of 2021 and the **Attorney General v. Sisi Enterprises Ltd**, Civil Appeal No. 30 of 2004, but had declined the meaning of *land acquisition*. On the other hand, both **On-line Cambridge Dictionary** [<https://dictionary.cambridge.org>] and **Black's Law Dictionary, 8th Edition 2004**) are silent on the words: *land acquisition*. According to Law Insider Dictionary, land acquisition means a compulsory taking or alienating of land and other assets attached on it (see: Law Insider- [<https://www.lawinsider.com/dictionary/land-acquisition>]).

In my considered opinion, I think, land acquisition is the process whereby a land owner is alienated all or part of his land by another person for various reasons, including prospect in mining or mining operations, in return for a compensation to the land owner.

In the present dispute, pleadings as displayed in the prayers of the Amended Plaint, it is apparent that the plaintiffs are asking this court to scrutinize the acquisition process of their lands, including valuation and compensation and to issue declaratory orders with regard to the complained process. Similarly, the issues agreed by the parties and reduced into writing by this court on 3rd May 2023, show that the parties are in contest on valuation and compensation processes. The complained process is not part of the enactment of

section 96 (3) of the Mining Act. The enactment of section 96 (3) of the Mining Act and Commission's mandate under section 119 (1) of the Mining Act on assessment and payment of compensation, should remain in the territory of disturbance caused to the third parties during prospecting or mining operations, not acquisition process of the plaintiffs' lands.

In resolving the plaintiffs' complaints in this court, a bundle of enactments regulating acquisition of lands will be registered. The enactments can only be interpreted by courts of law, not the Commission with insufficiencies of legal experts, as it was stated elsewhere in a number of times (see: **Zebadia Wanchara Chacha v. North Mara Gold Mine Limited** (supra). Mr. Lubango has registered a bunch of decisions in **Uhuru Mining's Cooperatives Society Limited v. Paul Joseph Mulya & Two Others** (supra), **Tibe Keneth Rwakatare (As Administrator of the late Getruda Rwakatare) v. Juma Said Kasila** (supra), **Jackson Nyamachoa v. Higira Zablon & Two Others** (supra) and **Africa Mashariki Gold Mines Ltd v. Nyirabu Magige & Others** (supra).

However, the cited decisions have no similar facts like the present dispute. The decision in **Uhuru Mining's Cooperatives Society Limited v. Paul Joseph Mulya & Two Others** (supra) the dispute concerned mining rights of the parties in one location, and

this court had resolved the dispute falls under the Commission's mandate, as reflected at page 17 and 18 of the judgment.

Similarly, the precedent in **Tibe Keneth Rwakatare (As Administrator of the late Getruda Rwakatare) v. Juma Said Kasila** (supra) involved two miners disputing on ownership of the mining land, each claiming the other is trespasser. The precedent in **Jackson Nyamachoa v. Higira Zablon & Two Others** (supra) displays the appellant was praying for access of mining site where he had invested Tanzanian Shillings Five Million. Finally, the precedent in **Africa Mashariki Gold Mines Ltd v. Nyirabu Magige & Others** (supra) determined a dispute where a plaintiff had a right of occupancy granted under Land Ordinance in a mining plot.

Dr. Murungu had cited the authorities in **Suzana Pius Karani v. Godlisten Mbise**, Civil Appeal No. 14 of 2019, **Jackson Nyamachoa v. Higira Zablon & Two Others** (supra), **Uhuru Mining's Cooperatives Society Limited v. Paul Joseph Mulya & Two Others** (supra), and **Zebadia Wanchara Chacha v. North Mara Gold Mine Limited** (supra) and **Arcopar (OM) S.A v. Harbeth Marwa and Family Investments Co. Ltd**, Civil Application No. 94 of 2013.

The decisions in **Uhuru Mining's Cooperatives Society Limited v. Paul Joseph Mulya & Two Others** (supra) and **Jackson Nyamachoa v. Higira Zablon & Two Others** (supra) have already been indicated the nature of disputes resolved. The precedent in

Zebadia Wanchara Chacha v. North Mara Gold Mine Limited

(supra) did not resolve the words *third parties* and *disturbance* in the context of mining and land disputes. The authority in **Arcopar (OM) S.A v. Harbeth Marwa and Family Investments Co. Ltd** (supra) explains circumstances of binding nature of previous decisions of courts of law. It has nothing related to the complaint on compensation size emanated from acquisition of lands.

In brief, and for purpose of clarity, the enactment of section 133 of the Mining Act has declined consideration of amendment to any land statutes. In its 133 provisions and two schedules at the very end of the Mining Act, no single word which has referred acquisition. If the framers of the Mining Act were intended to take away powers of the land courts, they would have said so in its final provisions. Even if the issue of size of compensation emanated from land acquisition procedures was enacted in the Mining Act, that would have invited the interpretation of court of law as whether the enactment is in conflict with land statutes. I think, the defendant has brought this protest in this court without any merit whatsoever.

I am aware that Mr. Lubango had other two complaints with regard to the jurisdiction of this court, namely: first, disclosure of specific amount and support of valuation report; and second, time limitation. On the protest of disclosure of specific amount and valuation report, Mr. Lubango submitted that the ninth paragraph to

the Amended Plaintiff in this case has declined specific damages hence had produced a Tanzanian Shillings Four Hundred Million without proof of the valuation reports, and the attached forms in the Amended Plaintiff gives a figure of 68,609,804.36/=Tshs.

In substantiating his submission, Mr. Lubango had cited the enactments in Order VI Rule 7 of the of the **Civil Procedure Code [Cap. 33 R.E. 2022]** (the Code) and section **49 (2) (b) of the Valuation and Valuers Registration Act**, No. 7 of 2016 (the Valuation Act) and a multiple authorities in precedents (see: **Yara Tanzania Limited v. Ikuwo General Enterprises Limited**, Civil Appeal No. 309 of 2019; **National Insurance Corporation v. Sekulu Construction Company** [1986] TLR 157; **Mwanahamisi Seifu v. Mwajuma Seifu & Two Others**, Land Case No. 110 of 2020; **Alphonse Kakweche & Another v. Bodi ya Wadhamini Bakwata Tanzania**, Land Case No. 97 of 2019; **Shukrani Chacha v. Shabani Zuberi Mrutu**, Land Case No. 15 of 2020; **Venance Benedict Minde v. Massa Ally Lwayo**, Land Case No. 26 of 2022).

Dr. Murungu in replying the submission contended that Mr. Lubango is asking evidence of valuation reports at preliminary stages of proceedings, which cannot amount to preliminary point of law in resisting jurisdiction of this court, as per precedents in **Mukisa Biscuits Manufacturing Company Limited v. West End Distributors Limited** [1969] EA 696, **Mohamed Enterprises (T) Limited v.**

Masoud Mohamed Nasser, Civil Application No. 33 of 2012; **Gideon Wasonga v. The Attorney General**, Civil Appeal No. 37 of 2018; and **Rukia Ruhaza Bhulilo v. Zaituni Saidi & Two Others**, Land Case No. 32 of 2021.

According to Dr. Murungu, the Amended Complaint in the ninth and eleventh paragraphs has estimated value exceeding Tanzanian Shilling Four Hundred Million for purposes of court's jurisdiction as per requirement of Order VII Rule 1(i) of the Code and that the plaintiffs are complaining on compensation in land matters. In the opinion of Mr. Murungu, the plaintiffs will produce evidence during the hearing of the case to substantiate their claims and that the requirement of the valuation reports is not part of the enactment in Order VII Rule 1(i) of the Code, and estimated values find support of section 37 (1) (b) of the Land Disputes Courts Act and item 1(b) of the First Schedule to the **Court Fees Rules of 2018, GN. No. 247 of 2018** (the Court Fees Rules).

According to him, the figure produced by Mr. Lubango in a total of 68,609,804.36/=Tshs. was wrongly interpreted by Mr. Lubango as the forms are intended to show that the items valued, but not compensation claimed. According to Dr. Chacha, the plaintiff are not searching specific damages, but declaratory orders of this court in general damages, which is allowed by the law.

In search of interpretation of Order VII Rule 1 of the Code from India Commonwealth Jurisdiction, Dr. Murungu produced a book titled **Sarkar's: The Law of Civil Procedure**, 11th Edition, 2007, at page 1127, which indicated that: *valuation given by the plaintiff for purposes of jurisdiction is to be ordinarily accepted, unless the court comes to the conclusion that wrong valuation has been put by the plaintiff out of improper motive*. Finally, Dr. Murungu produced a bunch of precedents in favor of estimated values and decline of valuation reports (see: **Abraham Sykes v. Araf Ally Sykes & Another**, Civil Case No. 211 of 2022; **Khamis Muhidin Musa v. Mohamed Thani Mattar**, Civil Appeal No. 237 of 2020; **Seif Mtiara v. Jumanne Juma Shaha**, Land Case No. 168 of 2021; **Mage Minga v. Egid Lazaro Chingilile**, Land Appeal No. 71 of 2022; and **Hamadi Shabani Kagunda v. Maulid Rashid**, Land Appeal No. 16 of 2019).

In a brief rejoinder, Mr. Lubango submitted that he calculated the forms attached and found the figure in total reads 68,609,804.36/=Tshs. Regarding the book of titled **Sarkar's: The Law of Civil Procedure**, Mr. Lubango submitted that the statement from the book is in the favor of the protest and that the Court Fees Regulations does not confer jurisdiction to courts. According to him, jurisdiction is a creature of statute and in the present case it is the Mining Act which confers jurisdiction to the Mining Commission. In

the opinion of Mr. Lubango, complaints must be read together with their attachment to identify the mandate of courts.

I have read the complained ninth paragraph in the Amended Complaint and found the following statement: *for the purpose of this suit, the value of plaintiffs' houses, crops and trees and unexhausted improvements on their lands are estimated to exceed 400,000,000/=Tshs*, whereas the first prayer in the complaint, the plaintiffs pray for: an order declaring that the defendant has unlawfully acquired the plaintiffs' pieces of lands because the defendant has not complied with the law and procedures in land valuation process and compensation.

The law in Order VII Rule 1 (i) of the Code provides, in brief that: *plaint shall contain a statement of the value of the subject matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits*. According to the expert on the subject of complaint, **Sarkar's: The Law of Civil Procedure**, 11th Edition, 2007, at page 1127 of the book: valuation given by the plaintiff for purposes of jurisdiction is to be ordinarily accepted, unless the court comes to the conclusion that wrong valuation has been put by the plaintiff out of improper motive.

In the present case, I see no any fault as from the reading of the first to the eleventh paragraphs of the Amended Complaint or plaintiffs have indicated the figure of 400,000,000/Tshs. for

improper motive. In fact, their statement goes hand in hand with thinking of the Court of Appeal on the need to interpret laws with due regard to: *public policy factor or on customs, habit and needs of the people prevailing at that time* (see: **Arcopar (OM) S.A v. Harbeth Marwa and Family Investments Co. Ltd** (supra).

It is from this basis this court had declined all precedents which resolved jurisdiction of courts based on valuation reports in similar case like the present one (see: **Zebadia Wanchara Chacha v. North Mara Gold Mine Limited** (supra). In the precedent this court moved a step further and considered economic situations of most of villagers in Tanzania, and stated at page 18 of the Ruling 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....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...This court will observe the provisions of the Constitution and enactments in statutes in dispensing substantive justice to the parties.

In my considered opinion, and considering the ninth paragraph and first prayer in the Amended Complaint, and interpretations brought by the book in **Sarkar's: The Law of Civil Procedure** and this court in **Zebadia Wanchara Chacha v. North Mara Gold Mine Limited** (supra), it is obvious that plaintiffs are at right course. They have not identified any specific damages in their complaint and some of them have attached the forms to show values disputed, not compensation claimed. The plaintiffs are asking for declaratory orders of this court as indicated in their prayers in the Amended Complaint. This protest of Mr. Lubango has no any quality whatsoever.

I understand Mr. Lubango has also complained on time limitation of the case and cited Item I part I of the Schedule to the Law of Limitation and decision in **Elias Mwita Mrimi v. North Mara Gold Mine**, Civil Case No. 8 of 2020, which require suits of compensation be lodged in twelve (12) months. In substantiating his claim, Mr. Lubango cited the fifth, seventh, ninth, sixteenth,

twentieth, twenty eighth and thirtieth plaintiffs who attached documents showing the cause of action had occurred in July 2021 and filed the case on 23rd August 2022. Replying the submission, Dr. Murungu conceded that the case was filed on 23rd August 2022 as from the eviction letter issued by the defendant on 16th August 2023 prior to payment of appropriate compensation to the plaintiff. According to Dr. Murungu, the cause of action arose on the indicated date of the letter and not otherwise, as the plaintiffs were aware of the dispute on the date. In substantiating his submission, Dr. Murungu cited the eighth paragraph with the support of fourth, fifth, sixth and tenth paragraphs in the Amended Plaintiff. In Dr. Murungu's opinion, Mr. Lubango is confusing valuation report and compensation form.

In brief rejoinder, Mr. Lubango insisted that the seven (7) indicated plaintiffs lodged their cause out of time as indicated in the Amended Plaintiff and its associated attachments. I have read the eighth paragraph in the Amended Plaintiff and noted the following words: that on 16th August 2022, the defendant issued a seven (7) days' notice to all the plaintiffs who have been paid meagre and nominal compensation to vacate their lands and give way to the defendant to carry out its mining activities. The said paragraph annexed NT2, which is a letter dated 16th august 2023 and titled:

*Notisi ya Siku Saba ya Kuwataka Wananchi Ambao
Wamekwishalipwa Fidia Kuondoka Katika Maeneo
Husika Kupisha Shughuli za Mgoji.*

In my considered opinion, this notice was an alarm to the plaintiffs to vacate their land for defendant's mining activities, despite the size of compensation. Reading NT2, the eighth and tenth paragraphs, the cause of action had occurred on 16th August 2022. The plaintiffs in that case have complied with the cited Item I part I of the Schedule to the Law of Limitation. This complaint registered by Mr. Lubango also has no any merit and hereby overruled.

Having said so, it is obvious that the complaints registered by Mr. Lubango have no any merit whatsoever. The ruling of this court in the precedent of **Zebadia Wanchara Chacha v. North Mara Gold Mine Limited** (supra) had resolved in detail similar complaints and Mr. Lubango admitted during the hearing of the protests that he read and understood the decision. The decision in **Zebadia Wanchara Chacha v. North Mara Gold Mine Limited** (supra) was considered as a separate suit and this court ordered costs to the defendant. It will employ the same course in the instant ruling as this is a priority case of large investment in this State, but was intervened and delayed. Any delay to the case, does not only cause sufferings to the parties, but also delay earnings to the Government.

In the result, the protests are overruled with costs as this is a separate suit which engaged this court in terms of time and

resources. The protests have also interfered the integrity and sanctity of the proceedings of this case without any justifiable cause.

It is so ordered.



F.H. Mtulya

Judge

04.09.2023

This Ruling was delivered in Chambers under the Seal of this court in the presence of the fourth, fifth, seventh, ninth, twentieth and thirty first plaintiffs, **Emmanuel Augustino Wangwe, Alexander Chacha Nyankaira, John Menye Mwita, Matiko Bisendo Marwa, Mwita Chacha Muyuni** and **Nicodemas Kitunka John**, respectively, and their learned counsel **Mr. Daud Mahemba** and in the presence of **Mr. Shiduki Lubango**, learned counsel for the defendant through teleconference attached in this court.

F.H. Mtulya

Judge

04.09.2023