

IN THE HIGH COURT OF TANZANIA

(IN SUB REGISTRY OF MWANZA)

AT MWANZA

MISCELLANEOUS CIVIL APPLICATION NO. 09 OF 2023

(Arising from Civil Case No. 01 of 2023)

ANDREW BOLLEN DULL.....1ST APPLICANT

SHABANI DAUDI IBRAHIM.....2ND APPLICANT

DUNSTAN MOSES MONGI.....3RD APPLICANT

VERSUS

EAGLE BRAND MINING INVESTMENT MANAGEMENT

CO.LTD.....RESPONDENT

RULING

Date of Last Order:18/01/2023

Date of Ruling: 20/01/2023

KAMANA, J:

Under Certificate of Urgency, Andrew Bollen Dull, Shabani Daudi Ibrahim and Dunstan Moses Mongi hereinafter to be referred to as Applicants have filed this Application under section 2(1), (2) and (3) of the Judicature and Application of Laws Act, Cap. 358 [RE.2019], Order XXXVII Rules (1) and (2), sections 68(e) and 95 of the Civil Procedure Code, Cap.33 [RE.2019] and any other provisions of the law. In the



Application which is supported by their affidavit, the Applicants are seeking ex-parte orders as follows:

1. That, this Honourable Court be pleased to restrict the Respondent from continuing to use the Applicants' Mining Licence Nos. 0002635 and 0002636 in its mining activities.
2. That, this Honourable Court be pleased to restrict the Respondent from continuing to use and operate its Clean in Place Machinery (CIP) and other mining equipment within the Applicants' licenced premises (Nyamatura Gold Mine) located at Magenge Ward, Sobola Village, Geita District in Geita Region.
3. That, this Honourable Court be pleased to restrict the Respondent from continuing to use and operate its Clean in Place Machinery (CIP) and other mining equipment within the Applicants' licenced premises (Nyamatura Gold Mine) located at Magenge Ward, Sobola Village, Geita District in Geita Region.
4. That, this Honourable Court be pleased to restrict the Respondent from continuing damaging and wasting the Applicants' licenced premises with chemicals coming from mining process.
5. That, this Honourable Court be pleased to restrict the Respondent from disposing, selling or removing mining rocks from Applicants'



licenced premises Nyamahuna Gold Mine located at Magenge Ward, Sobola Village, Geita District in Geita Region.

6. Any other order(s) as this Honourable Court may deem fit and just to grant.

In the course of hearing this Application, the Applicants were represented by Mr. Chrispine Myeke Simon, learned Counsel. He prefaced his submission by stating that the Applicants entered into partnership with Tanzania Investment Company Limited in 2016 whereby the latter was permitted by the former to use their mining licences to conduct mining activities. It was his submission that things went well until March 2020 when the Applicants found that their partner is no longer existing and mining operations under their licenced area were conducted by Eagle Brand Mining Investment Management Co. Ltd, the Respondent.

Mr. Simon submitted that following that finding, his clients approached the Respondent who promised to pay them their dues as per the agreement between the Applicants and Tanzania Investment Company Limited which were Tshs. 300,000,000/- a month. However, according to learned Counsel for the Applicants, since March 2020 the



Respondent has refused to pay his clients their charges despite continuing to use their mining licences in its operations.

It was his submission that the Respondent is supposed to pay his clients a total of Tshs.10,000,000,000/-. That being the case and taking into consideration that the Respondent is about to close its business in the mining area, the learned Counsel submitted that the requested orders be granted ex-parte to restrain the Respondent from continuing with mining operations in the Applicants' licenced area.

Having considered the submissions of the learned Counsel, I am of the view that the Application is meritorious. According to Order XXXVII Rule 1 of the Civil Procedure Code, Cap. 16 [RE.2019], the Court has discretionary powers of ordering temporary injunction if it is satisfied that any property in dispute is likely to be wasted, damaged or loss its value due to being used by a party to a suit. The Order states:

(1) Where in any suit it is proved by affidavit or otherwise—

(a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit of or suffering loss of value by reason of its continued use by any party to the suit, or wrongly sold in execution of a decree;

or



(b.....,

the court may by order grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, loss in value, removal or disposition of the property as the court thinks fit, until the disposal of the suit or until further orders:

Provided that, an order granting a temporary injunction shall not be made against the Government, but the court may in lieu thereof make an order declaratory of the rights of the parties.

In the instant Application as evidenced in the affidavit of both Applicants, the main issue is the alleged Respondent's act of trespassing in the Applicants' mining area and the alleged former's act of using the latter's mining licences. In view of that I think it is prudent to grant the requested orders with a view to restraining the Respondent from continuing with their mining operations in the Applicants' licenced area. This move is within the purview of Order XXXVII R.1.

I am alive with the provisions of Order XXXVII R.4 which makes a precondition that a notice must be issued to the opposite party before granting injunction. I am further aware of the exception to the precondition in cases where issuance of the notice would cause delays



and hence defeating the purpose of granting injunction. The Rule stipulates:

'The court shall in all cases, before granting an injunction, direct notice of application for the same to be given to the opposite party, except where it appears that the giving of such notice would cause undue delay and that the object of granting the injunction, would thereby be defeated.'

Given the circumstances that led to this Application, I am of the opinion that issuance of the notice to the Respondent would cause undue delay which would defeat the purpose of injunction taking into consideration the fact that the Respondent is about to close its business in the mining area.

Application is granted. Hence, I order the following:

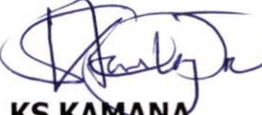
1. The Respondent should not use the Applicants' Mining Licence Nos. 0002635 and 0002636 in its mining activities.
2. The Respondent should not use and operate its Clean in Place Machinery (CIP) and other mining equipment within the Applicants' licenced premises (Nyamatura Gold Mine) located at Magenge Ward, Sobola Village, Geita District in Geita Region.
3. The Respondent should not use chemicals coming from mining operations within the Applicants' licenced premises.



4. The Respondent should not dispose, sell or remove mining rocks from Applicants' licenced premises Nyamahuna Gold Mine located at Magenge Ward, Sobola Village, Geita District in Geita Region.

The orders shall exist and be valid pending the hearing and determination of this Application inter parte. At this stage, I order no costs. It is so ordered.




KS KAMANA
JUDGE
20/01/2023

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