IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(COMMERCIAL DIVISION)
AT MWANZA

COMMERCIAL CASE NO.03 OF 2020

ISSAC & SONS CO. LTD.....PLAINTIFF

VERSUS

NORTH MARA GOLD MINE LTD.....DEFENDANT

Last Order: 09/06/2022
Judgement: 10/06/2022

JUDGMENT

NANGELA, J.:

According to the pleadings filed in this Court by the Plaintiff, this suit was filed on the 23rd December 2020. In it, the Plaintiff, a private limited liability Company duly incorporated under the Companies Act, Cap.212 R.E 2002, seeks for Orders/Judgment and Decree of this Court against the Defendant (a company formerly known as *Afrika Mashariki Gold Mines Limited*) as follows:

1. An order for payment of US$ 21,610,827.00 or equivalent in Tanzanian Shillings being the Plaintiff's entitlement to revenue royalties up to 30th June 2017.
2. An Order compelling the Defendant to pay the Plaintiff the sum of royalties' revenue of 1% as per the contract for the gold produced up for the years 2017,

2018, 2019, and years to come up to the closure of the mine.

3. Interest at the Court rates from the date of judgement and Decree to the date of final payment of the amount claimed.
4. General Damages for breach of contract.
5. Costs be provided for.

On the 4th of February 2021, the Defendant filed her written statement of defence disputing the Plaintiffs claims and raised a preliminary objection which was heard and determined by this Court on the 28th July 2021. It is also worth noting that, when this suit was still pending, the Plaintiff did also approach this Court by way of an Application, (**Misc.Com.Appl.No.14 of 2021**) seeking for orders which would allow her to enter the landed mining properties subject of this suit. This Court was pleased and granted her access to the mining sites which are the subject of controversy in this suit.

On the 10th day of December 2021, following the completion of all pleadings and the preliminary trial processes, this Court drew up issues for determination in the course of hearing of this suit. The agreed issues between the parties and which this Court recorded were as follows:

1. *Whether* the Defendant entered into agreements with the Plaintiff for the payment of royalties.

2. Whether there was/is production of gold from the Plaintiff's former Claim Title Areas.
3. If the answer in the second issue is in the affirmative whether the Defendant is in breach of the terms and conditions of the three agreements by failing to pay the accrued royalties.
4. In the even the answer to the third issue is in the affirmative, whether the Plaintiff suffered specific and general damages.
5. To what reliefs are the parties entitled.

Subsequent to the above drawing up of issues the parties convened for a full hearing of this suit on the 23rd day of May 2022. On that material date, the Plaintiff enjoyed legal services of Dr. Rugemeleza Nshala, assisted by Mr. Nyaronyo Kicheere and Mr. Heri Kayinga, learned advocates. Mr. Faustine Malongo and Ms. Karoline Kivuyo, learned advocates, appeared for the Defendant. In establishing her case, the Plaintiff called a total of three witnesses and tendered various exhibits. Likewise the Defendant called three witnesses as well to establish the Defence case.

At the opening of the Plaintiff's case, the first witness for the Plaintiff, one, Mr. Enock Isaac Mwita (74 years old), a Director and Shareholder of the Plaintiff Company, testified as Pw-1. In his testimony in-chief, Pw-1 told this Court that, initially the Plaintiff

was an original holder and beneficiary of the mining and surface rights granted under the Mining Act, 1979. He further told this Court that, the mining rights held by the Plaintiff were registered as ***Mining Right No.TR 13/91***, ***No.TR 14/91*** and ***No.TR 15/91*** (collectively referred to herein after as the "*former claim title areas*") and, that; currently these are situated within the Defendant's Special Mining Licence No.18/96 in Tarime District.

Pw-1 testified that on the 03rd of September 1999 the parties herein entered into agreement in respect of the "*former claim title areas.*" He tendered in Court three agreements in respects of the three "*former claim title areas*" and, these were admitted as Exh.P.1, Exh.P.2 and Exh.P.3. According to Pw-1, Exh.P.1, Exh.P.2 and Exh.P.3 were prepared by the Defendant's management and legal team in the absence of the Plaintiff's legal representative or a person with any legal knowledge.

Pw-1 told this Court that, under Exh.P.1, Exh.P.2 and Exh.P.3 the Plaintiff granted to the Defendant, exclusive rights to carry out mining operations over the "*former claim title areas*", including other purposes ancillary to the conduct of mining operations, and that, if the Defendant commences Mining operations on any part of the "*former claim title areas*", then the Plaintiff would be entitled to receive a quarterly payable 1% (one percent) royalty of all gold produced from the said "*former claim title areas.*"

Pw-1 told this Court that, in consideration of the Plaintiff transferring to the Defendant her mining rights over the *"former claim title areas"*, the Defendant agreed to pay the Plaintiff:

1. US$ 1,660 at the date of execution of the said *contracts* and US$ 2000 for each Agreement upon approval by the Commissioner for Minerals.
2. The Plaintiff will be entitled to the revenue royalties *calculated* at 1% (one per centum) of all gold *produced* from that part of the land which is payable quarterly and calculated as at the last day of the quarter at the London Spot gold price.

Pw-1 stated further that, in compliance with the Agreements (Exh.P.1 to P.3) the Plaintiff received a total of **US$ 10, 800** for the surrendered three claims Title areas but the Plaintiff has never received the 1% royalties as per the Agreements. He told this Court that, prior to the signing of the agreements, the Plaintiff used to do gold mining activities using whatever means or technology available to her and, that, as indicated in clause 4 of the Agreements the Defendant was fully aware of the existing economic activities within the "*former claim title areas.*"

Besides, Pw-1 stated that, as per clause 4, it was the Plaintiff who was solely responsible to compensate the artisanal miners, shaft sinkers, shamba holders and allotment farmers. According to Pw-1, the Plaintiff did all that to pave way for the Defendant to enjoy an uninterrupted access to the "*former claim title areas*" with legitimate expectation of getting the royalty payments timely.

In his testimony, Pw-1 stated that, although the Defendant has produced a substantial amount of gold since she commenced mining operations over the "*former claim title areas*", the Plaintiff has never been furnished with any information pertaining to production of gold of the "*former claim title areas*." He told this Court that, on the 18th day of December 2020, the Plaintiff's Board of Directors passed a resolution to sue the Defendant for breach of contract. He tendered in Court the Board Resolution which was admitted as Exh.P4.

He claimed, therefore, that, the Plaintiff is entitled to the total sum of **US$ 21,610,827.00** from the Defendant, being the 1% accrued royalties pursuant to the express terms of the said Agreements as of 30th day of June 2017. Furthermore, Pw-1 stated that, the Plaintiff is entitled to be paid accrued royalty revenues for the years: 2018, 2019 and 2020 and the years ahead, up to the time of closure of the mine. He stated that, so far the Plaintiff has suffered embarrassment, disturbance, mental anguish, financial agony, loss of business, loss of reputation, and, thus, claims for general damages.

Upon being cross-examined by Mr. Malongo, Pw-1 told this Court that he did sign Exh.P4 and do agree with all that is written there in, since his lawyer did tell him what it was all about because he is not conversant in English language. He also admitted that, what is in Exhs.P-1 to P3 is all that the parties agreed to and the same form the basis of the claims in this suit. Pw-1 told this Court further that, when the Plaintiff signed Exh.P1 to P3, the same had

already been prepared by the Defendant's lawyers without involving the Plaintiff lawyers and so, the Defendant give them for signing after being given a translator who was the Defendant's Security officer (guard) conversant in both English and Kiswahili.

During cross-examination and re-examination Pw-1 told the Court further that, the Plaintiff used to do gold mining in the "*former claim title areas*" and was able to maintain and provide for the families' needs, but since the Plaintiff surrendered her rights to the Defendant, she has suffered and became impoverished because she has never been paid. He stated that, the security officer who interpreted for him when he signed the Exh.P-1 to P3 was called ABIYA HUDSON WAMBURA and a Government Mining officer was also present.

The second witness for the Plaintiff was one Eng. Peres Joshua Ntinginya, (39yrs old.) testifying as Pw-2. For his part, Pw-2 told this Court that, he is a professional mining engineer registered by the Engineers Registration Board (ERB) with Reg. No. 6715. He holds a BSc. Degree in Mining Engineering and MSc. Degree in Engineering Management, both having been obtained from the University of Dar-es-Salaam, in 2010 and 2016 respectively, and, that, he is currently a doctoral student of the same University.

In his testimony, he told this Court that, on the 09th of August 2021, he was engaged by the Plaintiff to undertake a site visit for inspection and observation of the components and activities on the "*former claim title areas,*" and, thereafter, prepare relevant

inspection report as well as opinion regarding utilization of the afore said lands and mining rights. Pw-2 stated further that, subsequent to the physical inspection, he prepared a report which he tendered in Court as Exh.P5. He also submitted an affidavit regarding his names; and, the same was admitted as Exh.P6.

According to Pw-2, the Report reveals that, the said "*former claim title areas*," are being fully utilised by the Defendant for mining operations and other activities ancillary to mining operations. Pw-2 told this Court that, the ***former Mining Right No.TR 13/91*** is being utilised for gold-bearing ore dump, reinforced concrete wall fence, water piping systems, observation tower, residential houses occupied by local residents of Nyamongo, and part of Nyabirama Pit, in particular the first berm/bench of Nyabirama Pit.

Pw-2 stated further that, the area covered by the ***former Mining Right No.TR 13/91*** is located within the first berm/bench of Nyabirama Pit; and, therefore, the same has been excavated for gold production. It was as well the testimony of Pw-2 that, the ***former Mining Right No. TR 14/91***, is being utilized for activities ancillary to mining operations, including reinforced concrete wall fence, monitoring boreholes, haul road, community road and mine patrol road, residential houses occupied by locals of Nyamongo, and buffer zone.

As regards, the ***former Mining Right No.TR 15/91***, Pw-2 stated that, the same is also being utilised for activities ancillary to mining operations, including security (observation) tower,

reinforced concrete wall fence, waste rock dump, haul road, offices occupied by Capital Drilling, Run- of-Mine (ROM) Pad, and patrol road. Taken as a whole, Pw-2 told this Court that, the "*former claim title areas*," are being fully utilized by North Mara Gold Mine Ltd (the Defendant) for mining activities and other activities ancillary to mining operations for gold production and the Defendant benefits in utilization of the said areas for gold production.

During cross-examination, Pw-2 maintained that, at pages 4 to 6 of Exh.P5 therein is shown satellite images of the "*former claim title areas*," images which were shared to him by one Leonard Vincent Bamuhuga, a land surveyor who was part of his inspection team, and that, at pages 10 to 20 of Exh.P5, explanations are given which support of each of those images.

He told this Court that, all respective coordinates which demarcate each of the "*former claim title areas*," are shown on page 3 of Exh.P5 with explanations regarding each claim area as well as its corresponding image. He testified, therefore, that, although the naming of the images does not show the exact coordinates therein, all the fact is that, the "*former claim title areas*," are within the area of the respective coordinates.

Upon further cross-examination by Mr Malongo, Pw-2 told this Court that, when he visited the sites he did not find the Defendant carrying out mining at the time but he did witness that, mining activities had already taken place on the area described as ***Mining Right No.TR 13/91,*** though he could not tell when exactly was it done or how much gold was extracted from the said area.

Pw-2 also told this Court that, the ***Mining Right No.TR 13/91*** is within Nyabirama Pit which is under the Defendant's ownership and, that; the area is mined for gold production. He told this Court that, in his report, Exh.P5, he opined undoubtedly that, the Defendant has been benefitting in using the "*former claim title areas,*" in its gold production activities.

Upon being asked by the Court, Pw-2 stated that, he is the author of Exh.P5 having been engaged by the Plaintiff to make it and, that, during physical verification of the "*former claim title areas,*" he was among the team which involved himself, the land surveyor engaged by the Plaintiff as well as a team from the Defendant's side. He state that, afterwards, he prepared Exh.P5 and used the satellite images prepared by Mr. Leonard Vincent. He also told this Court that, the kind of mining activities he observed at the ***Mining Right No.TR 13/91*** was heavy mechanised mining activity and, that, there should have been excavators and heavy loading or hauling trucks able to carry up to 200tons of load.

He also told this Court that, crushing of the heavy rocks would as well require use of Drilling and heavy loading equipments. He stated, therefore, that, that is the kind of mining activity which had been carried out at the area of the ***Mining Right No.TR 13/91***. Pw-2 told this Court that, in mining activities, the purpose is to get hold of mineralised boulders (rocks). Some rocks may have gold mineral but others are not but he was not able to tell whether the Defendant got gold minerals at the ***Mining Right No.TR 13/91*** or not.

Pw-2 told this Court as well that, in the ***Mining Right No.TR 14/91*** and the ***Mining Right No.TR 15/91***, the same are not mined but used for other activities ancillary to mining and gold production, such as, wall-fencing, haul roads, rock wastes dumping, RoM-pad (where mineralised rocks are kept), security towers and piping structures and water boreholes, offices for drilling contractors as well as patrol roads. Pw-2 stated further during cross-examination by Mr Malongo that, when he visited these areas, already the mineralised rocks were already marked with a view to extract gold from them as they were close to the crusher and the processing plant.

According to Pw-2, usually, stones with minerals are kept closer to the crusher and the processing plant and, that, had they been waste rocks they would not have been kept near the plant. As for him, there was no other stock pile in that place and other rocks were kept away from the crushing area, meaning that, they were waste rocks. He stated further that, in his report, he has state that mining had taken place on the ***Mining Right No.TR 13/91*** because, in open pit mining, benches and berms are created and such were made in the area for the stability of the pit walls to access dipper ore reserves, although he was not in a position to tell if the Defendant got gold out of it or not but the fact was that the ***Mining Right No.TR 13/91*** was mined.

During re-examination, Pw-2 stated that, the ***Mining Right No.TR 14/91*** acted as a buffer zone, an area where flying rocks would fall during blasting of rocks in the course of mining

activities. He stated that, the ***Mining Right No.TR 14/91*** is within the Defendant's Special Mining Licence. He also confirmed that, the satellite pictures were being taken from the "*former claim title areas,*" by Mr Leonard Bamuhiga who was part of his team, and, further, that, the ***Mining Right No.TR 14/91*** and the ***Mining Right No.TR 15/91*** have not been mined but harbours many activities related or supportive of the Defendant's mining operations and gold production.

Pw-2 told this Court further that, the picture shown on page 23 of Exh.P5 is one for the building used by the Drilling Contractor belonging to Capital Drilling Company. He stated that, while at the site he identified places stocking waste rocks and those keeping mineralised ores near the crusher and the plant. He also told this Court during his re-examination that, in open pit mining, the drilling of the pit is done down wards with creation of berms and benches, as the walls must be left stable to avoid collapsing and provide safety to people and equipment. He stated that, without that, the mining process will not be able to be done since security will be compromised.

The third (last) witness for the Plaintiff's case was Mr. Josephat Muniko Mwita, (69yrs old) testifying as Pw-3. In his testimony in chief, Pw-3 told this Court that, professionally he is a geologist living and working for gain in Nyamongo, Tarime District, Mara Region as one of the Directors and shareholders of the Plaintiff Company. He told this Court that, the Defendant is a successor in title of ***Afrika Mashariki Gold Mines Limited***

(AMGM) while the Plaintiff was the original beneficial owner of the "*former claim title areas*." He told this Court that, on 3rd of September 1999, the Plaintiff executed three Contracts (Exh.P1 to P3) with the Defendant and, that, the agreements were prepared by the Defendant's management and lawyers in the absence of the Plaintiff's lawyers or Plaintiff's duly authorized representative with legal knowledge.

In his further testimony, Pw-3 stated that, as per Exh.P.1 to P.3, the Defendant was granted exclusive rights over the "Former Claim Title Areas," to carry out mining operations and other purposes ancillary to the conduct of mining operations such as disposing, stacking or dumping of mineral waste products and construction of any necessary facilities necessary for mining activities.

On the other hands, Pw-3 told this Court that, as per the agreements signed, if the Defendant was to commence mining operations, the Plaintiff will be entitled to payment of revenue royalty equal to 1% (*one per centum*) of all gold produced from the "*former claim title areas*," payable on a quarterly basis and calculated as at the last day of the quarter at the London spot gold price.

Essentially, Pw-3 reiterated what Pw-1 earlier told this Court regarding what the Plaintiff was to be paid in consideration of the Plaintiff's transfer and surrender of her mining rights over the respective "*former claim title areas*," the Defendant, i.e., the US$ 1660 (upon execution of the transfer Agreements) and US$ 2000

utilized for gold production without the Plaintiff being paid anything. He stated that, the ***Mining Right No.TR 13/91***, the ***Mining Right No.TR 14/91*** and the ***Mining Right No.TR 15/91,*** were together incorporated in the Defendant's ***Special Mining Licence (SML)*** and, consequently, the Defendant is using them for mining operations now. At that juncture, the Plaintiff's case came to a closure paving way for the Defendants case to open.

In establishing her case, the Defendant called three (3) witnesses, who testified as Dw-1 (Alex Fabian Kaizirwa, 46yrs old), Dw-2 (Mr Joseph Calist Rafael, 39 yrs old) and Dw-3 (Mr. George Kondela, 53yrs old). In his witness statement, tendered and received in Court as his testimony in chief, Dw-1 testified that, he works as a Superintendent- Surveyor of the Defendant and his profession is a Land Surveyor (Geomatician). He told this Court that, the "*former claim title areas*" were once mining rights held by the Plaintiff.

He testified, however, that, on the 03rd day of March 1999, the Plaintiff and the Defendant executed three agreements (Exh.P1 to P3) wherein the Plaintiff surrendered and granted to the Defendant sole and exclusive rights to dispose, stack or dump any mineral or waste products and construct any necessary facility to achieve, service or utilise the land for purpose of and associated with disposal, stacking or dumping of any mineral or waste products on the land comprising the *"former claim title areas."*

Dw-1 testified further that, the Defendant has not yet started "gold mining operations" on any of the "*former claim title areas*"

which erstwhile belonged to the Plaintiff. He testified further that, from the year ended 2013 to-date the Defendant has never produced gold from the Plaintiff's "*former claim title areas.*" According to Dw-1, the Defendant has been producing gold from various other areas and the claim areas which belongs to other persons other than the Plaintiff.

Dw-1 testified further that, in the course of "waste stripping" in the area which is part of the Nyabirama pit, the Defendant removed (974.010m^3) of waste soil from approximately 342.556m^2 at the top of the former ***Mining Right No.TR 13/91*** to construct a berm but that, in so doing no gold was produced or mined from the said approximately 342.556m^2 of the former ***Mining Right No.TR 13/91***.

He told this Court that, the said area of 342.556m^2 form part of the fist berm whose main function is to support the surface soil so as to prevent it from collapsing/falling into the mining pit. He stated, therefore, that, the Plaintiff is not entitled to the claims she has made and her case should be dismissed.

During cross-examination, Dw-1 told this Court that, it is indeed true that, some activities such as stacking or waste dumping, stock piling or ores and other laying infrastructure on the "*former claim title areas*" is done by the Defendant, and, in particular on the ***Mining Rights No.TR 13/91*** and ***No.TR 15/91***. He also admitted that, the Plaintiff was paid **US$ 1660** and **US$ 2000** but that, he was unaware of who should have paid compensation to any third

party as per clause 4 of Exh.P1 to P3 or how much was paid as compensation to such persons if any.

Dw-1 stated that, the Plaintiff was paid **US$ 3660** and was further to be paid the 1% royalty only if the Defendant was carrying out mining operations in those "*former claim title areas.*" He admitted that the term "***mining operations***" is not defined in the Exh.P1-P3, but reiterated his earlier statement that, the "*former claim title areas*" are not being utilised. However, he admitted afterwards, that, the ***Mining Rights No.TR 13/91*** and the ***No.TR 15/91*** are being utilised as per the agreements (Exh.P1 to P3).

Dw-1 was adamant that, transporting of ores to the storage or waste dumping site is not part of "mining operations" as such a term was not defined in the agreement. He admitted, however, that, the term may include handling of mineralised ores to the crusher or processor. He stated that, the Defendant did mine gold in other people's areas and did dump such mineralised ores on the ***Mining Rights No.TR 13/91*** and ***No.TR 15/91***.

He nevertheless admitted that, the Defendant did mine-stripping on the ***Mining Right No.TR 13/91*** but that, such an act of stripping does not amount to "**commencement or carrying out mining operations**". He admitted, however, that, the Defendant did construct a berm on TR13/91.

On being further cross-examined, Dw-1 told the Court that, the Plaintiff had two types of rights, surface rights and mining rights and Clauses 1.1 of the Agreements (Exh.P1 to P.3) grant such rights to the Defendant. He admitted that, mining operations do

include infrastructure, hauling roads, blasting, drilling, loading and hauling, to mention but a few. He did admit, however, that, constructing the berm is part of the mining pit. He admitted also that, one cannot be licensed to operate a mine if there are not areas for waste management.

Moreover, Dw-1 admitted that, there must as well be a buffer zone to carry out mining operations, and, that, in the Defendant's written statement of defence; the Defendant did not state that she removed about 974.010m^3 of waste soil from approximately 342.556m^2 at the top of former ***Mining Right No.TR 13/91***. Upon being re-examined by Mr Malongo, Dw-1 stated that, according to Clause 3 of Exh.P1, Exh.P2 and Exh.P3, the Plaintiff was to be paid 1% royalty if the Defendant produced gold from the "*former claim title areas*". He reiterated that, what the Defendant did in 2015 on the ***Mining Right No.TR 13/91*** was stripping of the land by removing the top soil (layer) and excavated an area of approximately 342.553m^2 removing 974.010m^3 of soil there form.

The second witness for the Defendant, Dw-2 testified and told this Court that, he works as a financial analyst for the Defendant's Company. He testified that, the 03rd day of March 1999, the Plaintiff executed three agreements with the Defendant (Exh.P1 to P3) and, that, in consideration of payment of US$ 10,800, the Plaintiff surrendered and granted to the Defendant sole and exclusive rights to dispose, stack or dump any mineral or waste products and construct any necessary facility facilities to achieve, service or utilise the land for purpose of and associated with

disposal, stacking or dumping of any mineral or waste products on the land comprising the "*former claim title areas*".

Dw-2 stated that, it was further agreed that, in the event the Defendant commences "*mining operations*" on the "*former claim title areas*" the Plaintiff would be entitled to royalty equal to the value of 1% of all gold produced from that part of the area and, that, such payment was to be made at the end of each quarter of the year calculated as at the last day of the quarter at the London spot price in cash.

He stated, however, that, the Defendant is not liable to pay revenue/royalty to the Plaintiff because, to date, no gold has been produced or mined from "*the former claim title areas*". He also testified that, for the year ending June 2013, June 2014, June 2015, June 2016 and June 2017, the Defendant never declared to TEITI that it extracted gold from the Plaintiff's formed claim areas.

According to Dw-2, the year ending June 2013, the Defendant never produced 244,833 ounces of gold worth TZS 592,317,323,000/- equivalent of US$ 372,995,795from "*the former claim title areas*" and, consequently, the Plaintiff is not entitled to US$ 3,729,957.95. Likewise, he denied that in the year ended June 2014 the Defendant produced 267,070 ounces of gold worth TZS 561,120,160,000/- equivalent of US$ 346, 584,410 from the *"former claim title areas"* and, consequently, the Plaintiff is not entitled to US$ 3,465,844 as claimed.

Besides, Dw-2 denied that, in the year ended June 2015, the Defendant paid the Ministry of Energy and Minerals TZS

26,095,414,093.00 being royalty for gold produced from the "*former claim title areas*" and that the Plaintiff is not entitled to be paid US$ 4,578,142.8 or any part of as 1% revenue royalty.

Dw-2 testified further that, the Defendant neither produced gold from "*the former claim title areas*" nor paid the Ministry of Energy and Minerals TZS 31,431, 849,540.00 being royalty for gold produced from "*the former claim title areas*". He consequently stated that, the Plaintiff is not entitled to be paid US$ 4,989,182.5 as 1% revenue royalty, for the year ended 30th of June 2016.

Dw-2 testified, as well that, neither did the Defendant produce 384,545 (OZ) of gold worth TZS 1,071, 642,130,289.35 equivalent to US$ 484,769,942.5 from "*the former claim title areas*" for the year ended 30th June 2017 nor is Plaintiff entitled to the alleged US$ 4,847,699.425 as 1% revenue royalty as per Exh.P1 to P3, for that same year. He told this Court that, the Defendant and Plaintiff never agreed that the Defendant will pay to the Plaintiff royalty based on the royalty paid to the Ministry of Energy and Minerals.

He stated, therefore, that, the Defendant has never breached the contract as she has not produced or mined gold from "*the former claim title areas*", and, that, there is no royalty that is due to the Plaintiff from the Defendant. Besides, Dw-2 stated that, during the obtaining material time the Defendant produced gold from other areas belonging to other persons and not from "*the former claim title areas*", and, for that reason, the Plaintiff is not entitled to US$ 21,610,827.00 or any part of it as revenue royalties for the years

ending June 2013, June 2014, June 2015, June 2016 and/or June 2017.

He testified further that, since the Defendant has not produced or mined gold from the "*former claim title areas*", there is no basis for calculating revenues for the years 2018, 2019, 2020, 2021 and the years to follow to the closure of the Defendant's mine.

According to Dw-2, the Defendant has never received any request or demand from the Plaintiff for information regarding the status of production of gold from the "*former claim title areas*" and no gold was ever produced there, hence, the Plaintiff has not suffered any damages resulting from breach of the agreements. He also testified that, the Plaintiff did not issue any demand letter to the Defendant before filing the suit, hence, not entitled to any costs, interests or payment of general damages.

During cross-examination, Dw-2 stated that, the Plaintiff surrendered the surface rights for US$ 1660 and US$ 2000 for each of the "*former claim title areas*", and further, if mining was to be carried out and gold processed from the "*former claim title areas*" a further consideration of 1% royalty would be payable to the Plaintiff, as per Clause 3.1 of the Exh.P1 to P3. He stated that, the Clause refers to "***gold produced***". He admitted, however, that "***mining operations***" includes mining of gold, transporting of gold deposits ores (rocks), storing of such ores, crushing and processing and from there refined gold is obtained.

On being further cross-examined, Dw-2 admitted that, all activities sated in paragraph 7 of his witness statement does

constitute activities taking place on the "*former claim title areas*" and, that, these are part of "*mining operations*". Dw-2 admitted, however, that, paragraph 7 of the Defendant's written statement of defence and paragraph 12 of his witness were at variance but admitted that, the "*former claim title areas*" do indeed facilitate the gold mining operations.

As regards the signing of Exh.P.1 to P3 by the parties, Dw2 told this Court that, the Plaintiff signed it meaning that they understood what they were signing and were paid a total of US$ 10,800.00. He maintained that, the signing did not depend on a translator who translated the Agreements to the Plaintiff. Dw-2 did admit, however, that, the Defendant does pay the government royalty equal to 7 % (6% being royalty and 1% being clearing fee).

Dw-2 admitted that, anybody may carry out calculations regarding how much is paid to the government as 1% and what it amounts to but he was not ready or able to confirm the correctness of the TEITI Reports relied on by the Plaintiff. He admitted further that, TEITI is a government entity, but declined that the Defendant sends information regarding gold production to TEITI. However, upon being shown the extracts of TEITI Reports (Exh.P7), Dw-2 admitted that, the Defendant's name appears to be there including what it produced by end of June 30th 2013, 2014, 2015 to 2018 but does not know where the government got the data it published.

Dw-2 admitted further that, he did not tender in Court any evidence regarding production data by the Defendant so as to show

how much was produced in those years though the Defendant had referred such in the WSD.

During re-examination, Dw-2 told this Court that, the 1% royalty arises from the mining of gold ores in the claim areas by first doing excavation, then drilling and blasting of rocks which are stock piled in a designated area, crushed and processed to get refined gold having been mixed with other chemicals. He maintained that, as for the Exh.P1 to P3, the 1% royalty payment comes from the final product and before mining such, the Plaintiff cannot be paid.

He also reiterated that, the Plaintiff was paid for all claim titles, a total of US$ 10,800.00 in the year 1999. He testified that, nowhere was it shown that the monies were for payment of compensating third parties as Clause 5.5.3 of the agreement does not recognise existence of any encumbrance or third party claims.

He also remained adamant that, there is nowhere in the Exh.P1to Exh.P3 where it is shown that it was the Defendant who prepared the agreements and translated it into Kiswahili version, and that, he did not bring to the Court the Kiswahili version of it. He maintained that, the Plaintiff has never asked to be allowed to access the "*former claim title areas*" otherwise the Defendant would have allowed her to do so. However, when he was asked by this Court regarding whether the Plaintiff has ever brought an application seeking for an order of the Court to be allowed to access the areas, Dw-2 declined there being such an application in Court.

He also affirmed that, he did not tender Defendant's production records in Court as he did not refer to them in the witness statement. He admitted, however, that, the Defendant has produced gold from Gokona, Nyabirama and Nyabigana pits and that, the three "*former claim title areas*" falls within the Nyabirama area though the Defendant has never mined from them.

The final Defence witness was Dw-3, Mr George Kondela, a senior geology superintendent of the Defendant. His testimony in chief was not of any difference from that of Dw-1 or Dw-2. He maintained a similar denial that the Defendant has never produced gold from the "*former claim title areas*". However, like the rest, he admitted that, on the ***Mining Right No.TR 13/91*** the Defendant did strip-mine the land and did construct a berm and, that, about 342.556m^2 of the ***Mining Right No.TR 13/91*** forms part of its berms. He, nevertheless, denied that in so doing any gold was ever found in the area TR 13/91

He admitted, as well, that, during the disputed years, the Defendant did produce gold but not from the "*former claim title areas*" but, rather, from other claim areas belonging to other persons other than the Plaintiff. However, his attempt to tender in documents purporting to be the Defendant's geology reports for the year 2013-2016 was unsuccessful, since the documents were held to be inadmissible and unreliable in evidence.

During cross-examination, Dw-3 admitted that, part of the activities motioned in Clause 1.1 of the Exh.P1-to Exh.P3 are activities related to mining operations and do take place in the

"*former claim title areas*". He stated that, what triggers payment of 1% royalty as per Clause 3.1 of the Exh.P.1-P3 is when the "*former claim title areas*" are mined with ores that are processed and gold is produced. He told this Court that, there is one ROM-pad at TR 15/91 and that all mined ores and transported by haulage trucks and must pass though that ROM-pad before they are sent to the crusher, although others may be sent to the crusher directly.

Dw-3 admitted, however, that, the Defendant constructed a berm and a bench for safety reasons and, that, all these are facilities which help in production but it is in the processing plant that separating gold from the rocks is done. He also admitted that, the security wall is erected on one of the "*former claim title areas*" and the ***Mining Right No.TR 14 /91*** is part of buffer zone and without there being a buffer zone, one cannot be allowed operate the mine.

During re-examination, Dw-3 stated that, the "*former claim title areas*" have never had alluvial gold deposits and have never been mined gold. He maintained that, what triggers payment of 1% royalty gold production is from the "*former claim title areas*" and such areas have never been mined gold. That marked the end of the Defendant's case and, the parties prayed to file closing submissions which, having filed them, I will take them into account as well, along with the testimonies and documentary evidence tendered in this Court.

Before I address the issues raised in this suit, let me reiterate the legal principle that has now become a common legal adage which is that, he who alleges must prove. The principle is firmly

established under our law of evidence. See **The Registered Trustees of Joy in the Harvest vs. Hamza K. Kasungura,** Civil Appeal No.149 of 2017 and the case of **Manager, NBC Tarime vs. Enock M. Chacha** [1993] TLR 228.

In a civil suit as this one at hand, the principle is therefore that, the Plaintiff shoulders the legal duty of proving her case to the required standards set by the law. That legal burden is set out by sections 110 to 112 of the Evidence Act, Cap.6 R.E 2019. The standard set for a civil suit like this one is that of proof on the balance of probability. See the case of **Silayo vs. CRDB (1996) Ltd** [2002] 1 EA 288 (CAT) and **Catherine Merema vs. Wathigo Chacha,** Civ. Appeal No.319 of 2017 (unreported), all being relevant to the point. It is as well trite law, in balance of probability rule, that, if the evidence is such that the court or tribunal can say "*we think it is more probable than not*" then, the case succeeds, but if the probabilities are equal, the case fails.

Guided by those principles and others to be discusses as I go along in determining the issues set out in this case, I will now turn to such issues agreed upon by the parties and find out whether the Plaintiff has been able to discharge his legal and evidential burden of proof.

In this suit, five issues were agreed by the parties and recorded by this Court. To start with, the first agreed issue by the parties was:

'Whether the Defendant entered into agreements with the Plaintiff for the payment of royalties.'

According to the available evidence on record, on the 03rd day of September 1999, the parties herein concluded three separate agreements (but similar in effect and applicability) in respect of ***Mining Rights No.TR.13/91***, ***No.TR.14/91*** and ***No.TR.15/91***. The three separate agreements were tendered in Court and admitted into evidence as Exhibits P.1, Exh.P2 and Exh.P3.

Besides, and despite of the Defendant's denial in paragraph 7 of the Written Statement of Defence, the testimonies of Pw-1, Pw-3, Dw-1, DW-2 and Dw-3, do support a view that, such agreements were concluded by the parties. Under Exh.P1 to P3, the Plaintiff *ceded* "certain of her rights" to the Defendant as regards the "*former claim title areas*" on certain considerations for such surrender of rights.

Of particular relevance to the issue at hand, however, are Clauses 1, 1.1 and 1.2 as well as Clause 3, 3.1 and 3.2 of the Agreements (Exh.P1 to P3) which I will consider first. Clause 1, 1.1 and 1.2 apply to surrender of certain rights over the "*former claim title areas*." Clauses 1, 1.1 and 1.2 state as follows:

"1. CLAIM AREAS

At the date of signing this Agreement AMGM shall pay the Applicant US$ 1,660 (Payable in Tanzanian Shillings at the

exchange rate adjusted at the date of signing this Agreement) receipt of which sum is hereby acknowledged by the Applicant, and in consideration of that payment the Applicant:

1.1 Grants to AMGM the sole and exclusive right to dispose, stack or dump any mineral or waste products and construct any necessary facilities to achieve services or utilize the land for purposes of and associated with disposal, stacking or dumping of any mineral or waste products on the Application area commencing from the date of signing this Agreement; and

1.2 Confirms that, this Agreement, and the grant of right specified in Clause 1.1 above, constitutes a reasonable excuse for the purposes of section 101 of the Mining Act."

According to Exh.P1 to P3, the term "Application Area" referred to the "*former claim title areas*" marked "A" in a map attached to each of those Exhibits and which depicts the areas surrendered to the Defendant. The Plaintiff was recognised as the ***"Applicant"*** of those mining rights which she later surrendered to

the Defendant upon payment of agreed consideration, i.e., **US$1,660.**

Clause 1.1 of Exh.P1 to P3 enlists various activities which the Defendant was permitted, from the date of signing the Exh.P1 to P3, to solely and exclusively undertake on the "***Application Area***". Under Clause 2, a further pay amounting to US$ 2000 was to be made for each agreement for the Plaintiff's surrender of their holder rights to the Commissioner and their attendant withdrawal in favour of the Defendant.

Under Clause 3 of the Exh.P1, P2 and P3, it is very categorical that, in "further consideration of the rights granted to AMGM " (i.e., the Defendant's rights recognised under Clause 1.1), the Defendant **agreed to pay** the Plaintiff a royalty equal to 1% of all *gold produced from any part* of the Plaintiff's "*former claim title areas*".

Before I further embark on the analysis of the above cited Clauses, it is paramount to note that, Exh.P1, P2 and P3 were in English. It has been purported, on page 5 of each of them, that, a ***Kiswahili Version*** of them was attached. A certification by one ***ABIHA EMMANUEL of P. O. Box 422 Tarime***, purporting to certify that the said Kiswahili version of the agreement as being 'a true and accurate translation of the Exh.P1, P2 and P3' and, that, the said ABIHA read it over to the Plaintiff "*who appears to understand and agree with its terms*", is shown.

However, I think there is a need to tarry a bit on this point and make some few observations before I venture any further. In

my view, there are at least four **(4) things which** need to be observed and noted. **One**, the purported Kiswahili version is nowhere attached on the Exh.P.1, P2 or P3. Moreover, the same were, as well, not produced by the Defendant nor attached in the Written Statement of Defence.

Two, to the extent that the Exh.P.1, P.2 and P.3 had to be read over to the "*Applicant*" (Plaintiff) by a "*third party*", who says the Plaintiff ***"appeared to understand it"***, it leaves a lot to desire in terms of, not only the bargaining power of the Plaintiff ("Applicant") but also her comprehensive ability to appreciate the terms of the agreements which she was made to sign and their legal effects.

Three, according to the uncontroverted, testimony of Pw-1, the Agreements were prepared by the Defendant without any involvement of the Plaintiff, its lawyers if any or any other person with a legal mind who could have ably comprehended the meaning and effect of Exh.P.1, P.2 and P.3, from a legal view point.

Four, it is even more palpable when one takes a look at page 5 of each of the Agreements and the fact that, during cross-examination, Dw-2 admitted that, the ***Post Office Box Number*** 422, TARIME, used by the said ABIHA EMMANUEL, the person who purported to have **"read over the Kiswahili version"**, to the Plaintiff, is of the same Post Office Box Number of the Defendant, a fact from which a readily drawn inference will tell that s/he was/is an employee of the Defendant.

Indeed, Pw-1 testified that, the person who read to him the alleged Kiswahili version was one of the Defendant's Security Officers. Moreover, although Dw-1, Dw-2 and Dw-3 admit that, there were two versions of Exh.P.1, P.2 and P.3, and that the Kiswahili version was read over to the Plaintiff, there was no proof that the said *"Defendant's Security Officer"* was competent in English and Swahili language to warrant this Court believe that the Plaintiff understood what was being translated to her, if at all there was such. The Defendant did not even take trouble to bring that person in Court to testify on that fact.

From the above four points, what may be safely concluded or gathered is that, the balances at the negotiating tables were heavily tilted in favour of one party, the party who drafted the agreement. For that reason, I do share the submissions of the learned counsels for the Plaintiff that, in such an environment plagued by all indicators of an unbalance bargaining power, the purported terms of Exh.P.1, P.2 and P.3 have to be read with a lot of caution and any ambiguity as to the terms thereof, has to be resolved in favour of the Plaintiff who is not the one who drafted the said agreements.

Indeed, that is important because, most mineral extraction business across many parts of the developing world, constitute an 'area rife with the risk of asymmetrical bargaining power and fraught with unscrupulous dealings, where one misstep may invite what amounts to indefinite squatting on valuable mineral rights.'

Moreover, having been executed, they have been shielded with confidentiality clauses like Clause 5 of Exh.P.1, P.2 and P.3.

That secrecy has been and continues to be a source of injustice that flows from the extractive industry necessitating a new era of transparency in that industry.

Indeed, that kind of secrecy invigorates the kind of sentiments of great antiquity once echoed in famous case of **Scott vs. Scott** [1913] A.C. 417; at page 477 by Lord Shaw of Dunfermline, regarding the necessity of generally upholding the principle of open justice in various spheres, and quoting from Jeremy Bentham, that:

> "In the darkness of secrecy, sinister interest and evil in every shape, have full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate. Where there is no publicity there is no justice."

As I stated earlier here above, considering the manner in which Clause 3 of the Exh.P.1, P.2 and P.3 was drafted by the Defendant, the same has gravely perpetuated a tendency of secrecy and concealment of information, thus, leaving the Plaintiff in the darkness and financial doldrums, with a yawning gap of knowledge disparity regarding what is taking place and how much has been earned from the *former claim title areas* for the past 23 or so years now. In such a situation, and, as correctly submitted by the learned counsels for the Plaintiff, the applicability of the *contra preferentum* rule cannot be avoided.

That rule is, indeed, entrenched in our jurisprudence to the effect that, an ambiguous term in a contract is to be construed harmoniously by reading the contract in its entirety but, where there is doubt about the meaning of the contract, the words will be construed against the person who put them forward.

In fact, in a case whose facts are somewhat similar to facts in this case at hand, the case of **Mr. Josephat Muniko Mwita (suing under the constituted Power of Attorney conferred to him by Mwita Makindya and Mrs Mwita Anthony Wambura vs. North Mara Gold Mine Ltd,** Commercial Case No.9 of 2019, (unreported), this Court approved the applicability of such a rule. In that case, Hon. Fikirini, J (as she then was) had the following to say:

> "the down side of that is, whenever there is ambiguous or unfavourable provision to the other party who did not take part in negotiating or *drafting* the contract, such omissions are to be construed against that party which, in this case, is the Defendant. Mr, Kayinga's submission on "*contra preferentum*" principle cannot be further well illustrated, as it is self-explanatory, and which I subscribe to."

Let me now revert to the Exh.P.1, P.2 and P.3 in light of what I have discussed herein and with a view to further respond to the first issue agreed upon by the parties herein. As I pointed out, Clause 1 and its sub-clauses I.I and 1.2, as well as Clause 2 of those Exhibits surrendered to the Defendant the surface rights in "*former claim title areas*." For all three agreements, the consideration for the ceding of rights to the Defendant was a meagre **US$ 10,800.**

As submitted by the learned counsels for the Plaintiff, indeed it does not make sense that one will agree to part with three lucrative pieces of land with potential gold bearing rocks underneath for a meagre **US$ 10,800.** Moreover, as per Clause 4 of the **Exh.P.1, P.2** and **P.3** the Plaintiff was also shouldered with a duty to compensate whoever else might have been carrying artisanal mining, including shaft sinkers, shamba holders and allotment farmers whom, as Dw-2 and Dw-3 acknowledged, used to carry out their economic activities for livelihood.

Well, perhaps that painful back-breaking burden was to be atoned by Clause 3 of the agreements (**Exh.P.1, P.2** and **P.3**). But was that Clause straight clear and forward in what it stated? Clause 3 is the key sources of the present controversy between the parties. According to Pw-1, ever since the parties signed the agreements in 1999 to date, the Plaintiff has never enjoyed what was anticipated from that signing, and this fact raises more questions than answers regarding whether the Plaintiff did at all understand the terms of the agreements.

In my view, Clause 3 of the Agreements was not divorced from what the preceding Clauses 1 and 2 provided, and to say the least, as I shall expound on it later, it was an ambiguous Clause. I hold that it was not divorced from what the preceding Clauses 1 and 2 provided because, in its opening sentence, it does link itself to the rights granted in Clause 1 (and its sub-clauses) of the Agreements (Exh.P.1, P.2 and Exh.P.3).

For clarity and aptness, I will reproduce the entire Clause 3 (which, as I stated earlier, is similar in all three agreements). Clause 3 (and its sub-clauses), reads as follows:

> "**3.***ROYALTY*
>
> In further consideration of the rights granted to AMGM under this Agreement and the transfer of the Application to AMGM, AMGM and the Applicant agrees that *if AMGM commences mining operations* on any part of the Application then:
>
> **3.1.** The Applicant will be *entitled to a royalty* equal *to* the *value of 1% of all gold produced* from any part of the area covered by the application.
>
> **3.2** The Payment of royalty under Clause 3:1 to the Applicant will be made at the end of each calendar quarter calculated as at

> the last day of the quarter at the London spot gold price in cash in Tanzanian shillings (such amount to be calculated at the exchange rate between Tanzanian shilling and US Dollars as at the date of payment.)"

As it may be noted from the above provision, under sub-clause 3.1 of the Exh.P1, P.2 and P.3 the parties agreed that, a payment of royalty equal to 1% *of all gold produced* from any part of the "*former claim title areas*" would be an entitlement of the Plaintiff.

In legal phrasing, royalty means payment made to the owner of certain types of rights by those who are permitted by the owners to exercise such rights. *Stroud's Judicial Dictionary*, 3rd Edn, defines this term as:

> "the word 'royalties' signifies, in mining leases, that part of the reddendum which is variable, and depends upon the quantity of minerals gotten or the agreed payment to a patentee on every article made according to the patent. Rights or privileges for which remuneration is payable in the form of a royalty."

In the Indian case of **Commissioner of Income Tax-Ii vs. M/S Punjab State Forest ...** on 4 October, 2013 ITA No. 442 of 2009, the Punjab High Court had the following to say:

> "that royalty is neither a tax nor a fee but is more akin to rent. ... In Wharton's Law Lexicon, Fourteenth Edition, royalty is stated to be payment to the owner of minerals for the right of working the same on every ton or other weight raised. In Stroud's Judicial Dictionary of Words and Phrases, Third Edition, it has been stated to be the reddendum, which is variable and which depends upon the quantity of minerals gotten. In Mozley and Whiteley's *Law* Dictionary (7th Edition), it has been stated:- "A pro rata payment to a grantor or lessor on the working of the property leased or otherwise on the profits of the grant or lease". In Corpus Juris Secundum, Vol.77, "Royalty" has been stated to be a payment made to the landowner by the lessee of a mine in return for the privilege of working it. It is, therefore, clear that royalty is the price paid for

the privilege of exercising the right to explore the minerals. It may be the whole or a part of the consideration of a mining lease."

From the above understanding, it becomes abundantly clear to me that, the rationale for payment of royalty to mineral rights holders like the Plaintiff by the mineral producer is that, such is made payable as a consideration for the extraction of the valuable resources which the rights holders could have extracted but for some reasons have ceded their rights to the mineral producer for such payment in the form royalty.

As I stated earlier, my close scrutiny of Clause 3 of Exh.P.1, P.2 and P.3, however, does tell me, as I have stated, that, the said Clause is not only devoid of clarity but also beset with ambiguity. In essence, the ambiguity that flows from such a provision is that, nowhere does it state how the data regarding gold produced from such "*former claim title areas*", which data would have formed the basis for calculation of the 1% agreed upon quarterly, was to be obtained and from whom or where.

In view of that, much as the offer could have been shown in the eyes of the Plaintiff as being a '*lucrative*' one, it seemed to have been sugar-coated because, and as I stated, the Plaintiff was not told how such production data was to be gathered, when and by who, and even how and when was information regarding commencement of mining operations in those former claim areas and amount produced there-from, was to be shared to the Plaintiff.

Above all, the Agreements and specifically Clause 3 is/was silent regarding how the Plaintiff will access such information in each production quarter. Indeed, as it may be noted from the record of this suit, accessing the areas was itself an issue and the Plaintiff had to seek, by way of an application, for the inspection orders of this Court, which were on the 28th day of July 2021, issued requiring the Defendant to allow the Plaintiff access to the *former claim title areas*.

As this Court observed in the case of **Mr. Josephat Muniko Mwita** (supra), agreements of the kind of Exh.P.1, P.2 and P.3 which relate to situations where one party who, prior to such agreements, was enjoying certain benefits as the initial holder of rights, such as carrying out mining activities for daily subsistence, but who decided to cede such rights and to cease her operations in favour of the other party, would have surely provided clear modality regarding how the attendant factors I earlier pointed out would be achieved for the sake and the realization or enjoyment of the agreed 1% royalty payments.

As the state of affairs stands as of now, Exh.P.1, P.2 and P.3 are silent, which silence means that, all powers were/are left upon the Defendant to decide at will when and whether she should inform the Plaintiff or just bereft of such valuable trigger from her knowledge as it seems to be since 1999 to date. But all other things aside, it is clear from the above Clause 3.1, therefore, that, the parties has an agreement that the Plaintiff would be paid royalties.

It follows, consequently, that, the first issue is proved in the affirmative that, the parties did agree that the Plaintiff would be paid 1% royalty by the Defendant. With that in mind, a way is paved for the consideration our next issue. It is important to note, however, that, the agreed payment of 1% royalty was conditional, and, to address its conditionality, I will proceed to the next issue.

The next or second issue was:

> 'Whether there was/is production of gold from the Plaintiff's former Claim Title Areas.'

As I stated herein above, and before I respond to this second issue, it is imperative to take note that, the payments related to 1% royalties had its conditionality and, that has been the source of acrimony between the parties. In essence, their bone of contention has been, under what conditions or circumstances were such 1% royalty to be paid?

To some extent, I have indicated how clumsily Clause 3 and its sub-clause 3.1 were drafted. That fact, notwithstanding, does not hinder me from making some further considerations regarding that Clause. And, if one is to address that particular question regarding how and under what conditions or circumstances were such 1% royalty to be paid, then, the first port of call, in my view, should be a further closer examination of the agreement itself as a whole, to obtain from it the overall intent of the parties.

As a matter of general principle, to be able to determine the common intention of the parties in a contract or, if no such intention

can be determined, the meaning that reasonable parties of the same class as the parties would give to it within the same circumstances, one has to construe the contract as a whole, taking into account, in particular, the nature and purpose of it, the conduct of the parties and the meaning commonly given to its terms and expressions in the trade concerned. Put differently, that is to say, that, in order to garner the true intention of the parties, one should discovered it by construing the agreement as a whole in the background of all its attendant circumstances.

That, in essence, is a role of the Court and not of the witnesses or the jury, it being a matter of law and not a matter of fact. See, for instance, the South African cases of **KPMG Chartered Accountants (SA) vs. Securefin Ltd and Another** 2009 (4) SA 399 (SCA) at para 39; **Novartis SA (Pty) Ltd vs. Maphil Trading (Pty) Ltd** 2016 (1) SA 518 (SCA) at paras 27, 28, 30 and 35; **Natal Joint Municipal Pension Fund vs. Endumeni Municipality** 2012 (4) SA 593 (SCA) para 18; and the English case of **Investors Compensation Scheme Ltd vs. West Bromwich Building Society & Others** [1998] 1 WLR 896 at p. 912.

In **Natal Joint Municipal Pension Fund vs. Endumeni Municipality** (supra), for instance, Wallis JA had the following to say, at para 18:

> "Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory

instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or un-business like results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or business like for the words

actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation; in a contractual context it is to make a contract for the parties other than the one they in fact made. The inevitable point of departure is the language of the provision itself, read in context and having regard to the purpose of the provision and the background to the preparation and production of the document."

In **M/s Mwananchi Engineering and Construction Corporation Ltd vs. Mr Silvano Copetti**, Civil Appeal No.104 of 2011, CAT (unreported), the Court of Appeal of Tanzania did as well shed light on the issue of interpreting a contractual document. In that case, the Court was involved in interpretation of a Memorandum of Understanding (MoU) and the Court had the following to stay:

"First .... Second, the intention of the parties ... was to be gathered primarily from the terms and conditions stipulated therein and not the mere appendage of their signatures to that instrument....."

Referring to **Mitra's Law of Contract and Specific Relief,** 6th Ed., 2011, pp.177-178, the Court went ahead and stated that:

> "It is well established that, the Court, in order to construe an agreement, has to look to the substance or the essence of it rather than to its form.... It is true that the nomenclature and description given to a contract is not determinate of the real nature of the document or of the transaction thereunder. These, however, have to be determined from all the terms and clauses of the documents and all the rights and results flowing therefrom and not by picking and choosing out of the ultimate effects of result."

Guided by the above principles and, looking at the entire agreement from its preamble to its concluding Clause 7, one would find, and, in my view correctly so as I do, that, in the first place, the Agreements (Exh.P.1, P.2 and P3) were concluded to facilitate the carrying out of the Defendant's mining venture in its "***Special Mining Licence (SML 18/96)***".

According to the section 4 of the Mining Act, Cap.123 R.E 2019, a "***special mining licence***" is defined as "*a licence for large scale mining operation, whose capital investment is not less than US$100,000,000 or its equivalent in Tanzanian shillings.*" This

means that, the kind of mining operations carried out by the Defendant constitutes large scale mining.

In their testimonies which were given during cross-examination, Dw-1 and Dw-3 told this Court that, one cannot be licensed to operate a large scale mining if there are no areas designated for waste management as well as buffer zone(s) where flying rocks would fall during blasting of rocks in the course of mining activities.

It is for such a reason, therefore, that, the "*former claim title areas*" (and other peoples' claim areas not part of this case (as shown in *Annex. Plan to Exh.P.1, P.2 and P.3* and, as per Exh.P5, at page 1), were incorporated within the "***Special Mining Licence***" of the Defendant subject, of course to various prior arrangements with those prior title holders, the kind of arrangement exhibited by Exh.P.1, P.2 and Exh.P.3.

Having said that, the next consideration that flows from the above broader understanding, therefore, is how those facilitative arrangements were further tailored apart from what Clauses 1.1 of the Exh.P.1, P.2 and P3 provide? In other words, how were the continued beneficial rights of the prior holders of the mining rights in the "*former claim title areas*" guaranteed under those facilitative arrangements? That question brings me to the analysis of Clause 3 of Exh.P.1 to P3 (the Clause I reproduced earlier here above), and, as I stated, that Clause is similar in all three exhibits (P.1, P.2 and P.3).

In my view, and having carefully looked at the chapeau of Clause 3 and at Sub-clause 3.1, the natural and ordinary meaning to give to Clauses 3, 3.1 and 3.2 of Exh.P.1, P.2 and P.3 is that, apart from what the parties had agreed under Clause 1 sub-clauses, 1.1 and 1.2 and Clause 2, the parties agreed also, that, should the Defendant "*commence mining operations*" on any part of *former claim title areas,* the Plaintiff would be entitled to be paid, at the end of each calendar quarter calculated as at the last day of the quarter at the London spot gold price a 1% royalty of "*all gold produced*" from "*any part of the area covered by the application*".

However, looking at the italicized words above, one would wish to know and, for better clarity, what they exactly mean. In other words, what did the parties understood regarding the term **'commencement of mining operations'** and, whether such had any link to the payment of the 1% royalty or it is only when "*gold is produced from any part of the area covered by the application*"? Moreover, what did ***"gold produced from any part of the area covered by the application"*** meant in the eyes and ears of the parties?

Essentially, those italicized words which are drawn from Clause 3 and 3.1, need to be given more clarity if one is to effectively address the second issue. The reason for that need lies behind what I stated earlier, that, although the agreement might have become a poor bargain for the Plaintiff, it is however, not the Court's function to improve that bargain. Instead, the court's

mission is to ascertain the objective meaning of the language which the parties have chosen to express their agreement.

In the decision of the UK's Supreme Court in **Woods vs. Capita Insurance,** [2017] UKSC 24, for instance, the Court was of the view, paras 10, 13-14, that;

> "Textualism and contextualism are not conflicting paradigms in a battle for exclusive occupation of the field of contractual interpretation. Rather, the lawyer and the judge, when interpreting any contract, can use them as tools to ascertain the objective meaning of the language which the parties have chosen to express their agreement. The extent to which each tool will assist the court in its task will vary according to the circumstances of the particular agreement or agreements. Some agreements may be successfully interpreted principally by textual analysis, for example because of their sophistication and complexity and because they have been negotiated and prepared with the assistance of skilled professionals. **The**

correct interpretation of other contracts may be achieved by a greater emphasis on the factual matrix, for example, because of their informality, brevity or the absence of skilled professional assistance. .. There may often therefore be provisions in a detailed professionally drawn contract which lack clarity and the lawyer or judge in interpreting such provisions may be particularly helped by considering the factual matrix and the purpose of similar provisions in contracts of the same type. The iterative process assists the lawyer or judge to ascertain the objective meaning of disputed provisions."

(Emphasis added).

From the above premise, if the words contained in Clause 3 of Exh.P.1, Exh.P.2 and Exh.P3 are read in context, and having regard to the purpose of the provision and the background to the preparation and production of the agreements themselves, one will find that, the same was prepared with the influence of the governing law and terms used in the mining industry. As such, a revisit to the meaning ascribed to them from the law itself would be more

meaningful as part of the context under which the parties were operating and consummating their bargain.

At the time in question, the governing law was the ***Mining Act, No.17 of 1979***. Under that previous legislation governing the industry, and being one under which the parties sealed their transaction, and, even under the current Mining Act, Cap.123 R.E 2019, terms "***mine***", "***mining***", and the phrase "***mining operations***", seem to be given wider meaning.

According to the **Mining Act, Cap.123 R.E 2019**, the term "***mining***" "*shall be construed accordingly*"; the rationale for that being that, the *term "mine"* has a twine meaning. In the first place, when used as a noun, the term "mine":

> "means, any place, excavation or working in or on which any operation connected with mining is carried on together with all buildings, premises, erections and appliances belonging or appertaining thereto, above or vertically below the ground within horizontal boundaries of the licence, the purpose of mining, treating or preparing minerals, obtaining or extracting any mineral or metal by any mode or method or for the purpose of dressing mineral ores but does not include a smelter or a refinery."

The above legal definition seems to be applied even in other jurisdictions. In the Canadian case of **MNR vs. Bethlehem Copper Ltd** 74DTC 6520, for instance, the Supreme Court of Canada pointed out that, a mine was a combination of the mineral deposits, the workings and the equipment as well as the machinery needed to extract the ore.

Secondly, under the Mining Act, Cap.123 R.E 2019, when the term "mine" is used as a verb it:

> "means intentionally to mine minerals, and includes **any** operations **directly** or indirectly **necessary therefore** or **incidental thereto, including such processing of minerals as may be required to produce a first saleable product.**" (Emphasis added).

The law does also give the term "*mining operations*" a wider meaning. Section 4 of the Mining Act, Cap.123 R.E 2019 (which is the similar definition as in the previous law the Mining Act No.17 of 1979) defines the term "*mining operations*" to mean: "*operations carried out in the course of mining*".

As I stated earlier, this definition is spacious enough to comprehend every activity by which minerals including gold ores or gold bearing rocks, are extracted or obtained from the earth irrespective of whether such activity is carried out on the surface or in the bowels of the earth. In his testimony upon being re-examined,

Pw-3 told this Court that, "*mining operations*" as understood by the Plaintiff, embraces all processes or activities which lead to obtaining gold. Likewise, during cross-examination, Dw-1, Dw-2 and, even Dw-3, admitted that, the term "*mining operations*" include laying of infrastructure such as hauling roads, berms and benches, blasting activities, drilling, stripping or strip-mining, loading and rock or mineral ore hauling, stacking, crushing, processing of mineralised ores to mention but a few.

Basically, such understanding by Pw-3, and which finds support from Dw-1 and Dw-3 is in line with the provision of the Mining Act, Cap.123 R.E 2019 (or even its predecessor) because all such are regarded as activities or operations carried out in the course of "*mining*", the term "mining" having been used as an action verb. Essentially, as section 4 of the Mining Act Cap.123 R.E 2019, provides, when used as an action verb, mining signifies:

> "to mine minerals, and **includes** any **operations directly or indirectly necessary therefore or** incidental **thereto, including such processing of** minerals **as may be required to produce a first saleable product.**" (Emphasis added).

It follows, therefore, that, mining operations include a chain of processes up to the obtaining of a saleable product, i.e., refined gold.

Having gleaned such understanding, I find, however, that, there still remains a question to respond to, which is: were all such activities or processes taking places in the "area covered by the application" (i.e. the "*former Claim Title Areas*"? A response to that question does take me to the testimonies of the witnesses who testified before this Court and the documentary evidential materials available before me. In the first place, and according to the testimonies of Pw-1, Pw-2 and Pw-3, the "*former Claim Title Areas*" are being fully utilised by the Defendant for "*mining operations*" and other activities ancillary to mining operations.

In my view, the more useful piece of evidence and testimony to rely on is that of Pw-2 who was part of the Plaintiff's team which made an inspection of the said "*former Claim Title Areas*" following the Orders of this Court sought and granted to the Plaintiff on the 28th July 2021. During his testimony he tendered in Court Exh.P5 which was admitted by this Court. According to Exh.P5, whose purposes (as per its pages 1&2) were to verify the boundaries in the "*former claim title areas*" and identifying components and activities taking place within the "*former claim title areas*", the physical site inspection of the areas concerned took place on the 10th day of August 2021.

Pw-2 did testify to this Court that, it involved a team from the Plaintiff's side (himself being part of it) and, a team from the Defendant's side. The team involved, as per Exh.P5, was composed of the following: Mr. Josephat Muniko Mwita, Mr. Heri Louis Kayinga (learned Counsel for the Plaintiff), Mr. Steven Josephat

Mwita, Mr. Leonard Vincent Bamuhiga, Mr. Michael Daniel Bangili and Mr. Ramadhani Luku Semsambaa, these forming the Plaintiff's team. As for the Defendant's team, it was composed of: Mr. Faustine Malongo (learned counsel for Defendant), Mr. Alex Nkaizirwa (Mine Survey Superintendent) and Mr. Edger James (Senior Geologist).

As noted from his oral testimony, Pw-2 was emphatic that, the former ***Mining Right No.TR 13/91*** is located within the first berm/bench of Nyabirama Pit; and, therefore, the same has been excavated for gold production. According to the oral testimony of Pw-2 and Exh.P5, the ***Mining Right No.TR 13/91*** is also currently being utilised for gold-bearing ore stock piling (dump), and supports a reinforced concrete wall fence, water piping systems, observation tower, and forms the first bench of Nyabirama Pit, in particular the first berm/bench of Nyabirama Pit. Pages 4, 9-13 of Exh.P5 do provide images and explanatory observations of what kind of components exists and activities are taking place on the ***Mining Right No.TR 13/91***.

It is worth noting, as well, that, in their testimonies in chief and during their cross-examination before this Court, Dw-1 and Dw-3 admitted that, the Defendant did construct a berm on ***the former Mining Right No.TR 13/91*** and that, the Defendant did carryout stripping in an areas said to be approximately 342.556m^2 of ***the former Mining Right No.TR 13/91***. According to Thomas M. Pantratz's **Environmental Engineering Dictionary and Directory,** Lewis Publishers, CRC Press LLC, London/New York

(2001), at pg. 242, strip mining refers to *'[a] method of mining where surface soil and strata are removed to gain access to the mineral deposits."*

In one Australian income tax related ruling, ***TR95/36-Income Tax: Characterization of Expenditure Incurred in Establishing and Extending a Mine***, it was stated, at paragraphs 46,47 and 51, that:

> "the first step in strip mining is to remove the natural vegetation and topsoil. This is usually done by bulldozers and graders. Pre-stripping involves the construction of a level from which dragline can operate. Once a level area is created by pre-stripping, the surface area is drilled with an electrical powered drill...Access roads or ramp is constructed by cutting into the land downwards angle usually at right angles ..."

In this suit, although in their testimonies in-chief and during cross-examination Dw-1 and Dw-2 denied that, in the course of carrying out stripping on the ***former Mining Right No.TR 13/91*** the Defendant did not produce gold there-from, it is clear that the purpose of stripping/strip-mining is to gain access to the mineralised deposits underground and, as the evidence reveals and the testimonies in chief of Pw-2, Dw-1 and Dw-3 indicates, the first

berm/bench to the ***Nyabirama pit*** was, therefore, constructed on that former Mining Right No.TR 13/91, and gold is being mined from that same pit as admitted by Dw-1, Dw-2 and Dw-3.

In this case, the method or type of mining applied by the Defendant is the open pit mining, also referred to as open-cut or opencast mining. Open pit mining is essentially strip-mining applied in concentric circles. (See: **Cases Decided in the United States Court Claims, June 1965, Volumes 160-171, at pages 164-165**). The pit in the centre grows ever deeper as the circles multiply and grow ever wider in diameter. Like strip-mining, it starts as well with land stripping, as Dw-1 and Dw-3 testified herein above. In the Australian Tax case ***TR95/36 (supra)*** it was stated in paras. 60 and 62 that in an opencast mining:

> "a safe pit slope must be maintained, [and] this involves the excavation of the upper bench or benches beyond the ore limits and into the waste rocks that form the walls of the open pit.... Access to and extraction of the ore is via haulage roads or ramps. Bench widths or berms are also designed to provide protection for men and materials from small slope failures."

In **Cases Decided in the United States Court Claims, (supra)** at page 164-165, it is stated that:

> "The flat part of an open pit bench, called a "berm" must be at least 65 feet ...A width of 85feet is desirable for the efficient operation[s]...since broken ore and waste blasted out of the bank falls in a loose mass... must come to rest wholly inside the track...The mining operations must proceed from the highest level or bench downward. Before a lower bank can be blasted, the berm above must be so wide as to make room...for equipment and future operations before next lower level can be developed."

As it may be noted from the excerpts here above, all those activities pointed out in them are considered to be part of mining operations.

In regards to this suit, therefore, for purposes of ascertaining whether there was commencement of mining operations or not, it is my views that, "*commencement of mining operations*", as one of the preconditions set out by Clause 3 (chapeau) of Exh.P1 (which is in respect of ***the former Mining Right No.TR 13/91***), like the "grant of mines and minerals", is a question of fact.

To borrow the words of the Lord Chancellor in the case of **Magistrates of Glasgow vs. Farie** [1888] UKHL 229 (10 August 1888), referring to the words of Lord Justice James in the case of **Hext vs. Gill,** July 22, 1872, L.R., 7 Ch. App. 699:

> "—what these words meant in the vernacular of the mining world, the commercial world, and landowners" at the time when *they* were used in the instrument it is necessary to consider."

As already demonstrated herein, it has been made pretty clear, through the testimony of Pw-2 and as per Exh.P5 and also Dw-1 and Dw-3, that, part of the ***former Mining Right No.TR 13/91*** has been strip-mined and a berm/bench created as part of the Nyabirama pit from which gold laden ores are mined by the Defendant as readily admitted by Dw-1, Dw-2 and Dw-3. With that in mind, it follows, therefore, that, what the words:

> "*if AMGM* commences *mining* operations *on any part of the Application*" -,

which appears in Clause 3 of Exh.P1 meant, ("in their the vernacular of the mining world, the commercial world, and landowners" at the time when Exh.P1 was executed), that, at any time when the Defendant takes steps to, not only do stripping or strip-mining (remove the surface soil and sub-strata rocks) and/ but also create benches/berms to access underground deposits, conduct drilling and rock blasting, create ROM pad (the surface area upon which haulage trucks shall drive to deposit Ore onto the ROM Stockpiles) in any of the claim areas (including ***the former Mining Right No.TR 13/91***) and, as well, whenever the Defendant gain

access to the mineral deposits in any of the claim areas, all such steps will amount to commencement of mining operations.

Put in another way round, it means that, ***commencement of mining operations*** include all acts meant to gain access to the mineral ores at the bed rocks, and would include the carrying out of activities such as drilling, hauling through haul roads, construction of berms and benches to facilitate deep mining, blasting activities, loading and rock or mineral ore hauling, stacking, crushing, and processing of mineralised ores, all of which, according to Pw-2 and, as per Exh.P5 and the admission of Dw-1 and Dw-3, are activities taking place as ***the former Mining Right No.TR 13/91***.

I am also mindful of the fact that, the type of mining carried out by the Defendant is an open pit mining. In that sort of mining as I stated earlier, **creation of benches/berms** is a necessary step in the course of carrying out mining operations and, by itself amounts to commencement of mining operations, since, as stated by Pw-2 and Dw-3, such are for the purposes of securing the stability of the pit walls when accessing the dipper ore reserves. Dw-1 and Dw-3 did readily admit that, berm/benches constructed at *Nyabirama Pit* were part of that mining pit. Dw-1 admitted, as well, that, as per the available environmental standards, one cannot be licensed to operate a mine if there are not areas for waste management.

In view of all that, it is my considered finding that, such activities constitute ***"commencement of mining operations"*** in the language of the parties under Clause 3, which commencement triggers the applicability of Clause 3.1 and Clause 3.2 of the Exh.P1

(in respect of payment of royalty equal to 1% of all gold produced from ***the former Mining Right No.TR 13/91***. However, it is worth noting, as stated by Dw-1 and Dw-3, the ***former Mining Right No.TR 13/91*** forms part of Nyabirama Pit which is one of the Defendant's Pits with active gold production.

In view of the above, the basis for the requisite payment of the 1% royalty, therefore, must be data regarding production from the Nyabirama Pit where ***the former Mining Right No.TR 13/91*** is located. It cannot be the entire areas from which the Defendant carries out mining operations since those did not fall within the purview of the parties understanding and consensus as per Exh.P.1, P.2 and or P.3. And, in this regard, I have even confined my findings to only data regarding production from the Nyabirama Pit where ***the former Mining Right No.TR 13/91*** is located since this is connected to commencement of operations in that former mining rights by the Defendant.

I do hold it to be so because, as it was stated over a century plus years ago by the Lord President who presided over the matter in the case of **Liquidators of Linlithgow Oil Co., Ltd vs. Earl of Rosebery** [1903] SLR 41_24 (10 November 1903), an, excerpt which I find to be relevant to this case at hand:

> "It is no doubt true that mineral royalties ... are paid, not for the use of the subjects let *salva rei substantia*, but for the

> **right to dig and remove** part of the estate...." (Emphasis added).

Clearly, since the Defendant has dug, strip-mined, and constructed a berm/bench on ***the former Mining Right No.TR 13/91*** (which is the subject of Exh.P-1 and, which forms part of Nyabirama Pit, from which the Defendant is also currently *"digging"* and *"removing"* mineralised ores from which the final product in the name refined gold is obtained), there is no doubt, therefore, that, the Plaintiff is entitled to payment of royalty.

It is my firm view, therefore, that, the Defendant did, not only commence mining operations in that ***former Mining Right No.TR 13/91*** (which is the subject of Exh.P-1) but also, that the Defendant is producing gold out of such mining operations since, as per section 4 of the Mining Act,Cap.123 RE 2019, the act of mining, include *"processing of minerals as may be required to produce a first saleable product."* The Defendant does all that. And, as this Court observed in the case of **Mr. Josephat Muniko Mwita** (supra):

> "since the Defendant was [is] the only one with the information regarding extracted gold, common sense [dictate] that she was [is] duty bound to provide production reports in respect of the mining activities in all claim areas."

As regards the same issue in respect of the ***former Mining Right No.TR 14/91***, it was as well the testimony of Pw-2 that, that former mining right, is being utilized for activities ancillary to mining operations, including reinforced concrete wall fence, monitoring boreholes, haul road, community road and Mine patrol road, and buffer zone as well as for residential occupation by locals of Nyamongo. Pages 14-16 of Exh.P5 do provide descriptive information gathered on the ground by Pw-2.

What is of significance as per Exh.P5 is that, the piece of land described as ***former Mining Right No.TR 14/91*** offers an important buffer zone to the mining operations carried out by the Defendant. However, Pw-2 was categorical that no actual mining operation had taken place on this former claim title area.

As regards, ***the former Mining Right No.TR 15/91***, Pw-2 stated that, the same is also being utilised for activities ancillary to mining operations, including security (observation) tower, reinforced concrete wall fence, waste rock dump, haul road, offices occupied by Capital Drilling, Run- of-Mine (ROM) Pad, and patrol road. Pages 17 to 23 of Exh.P5 do provide elaborate explanation physically observed by Pw-2 during site inspection. Activities on ***former Mining Right No.TR 15/91***, are better linked to activities done on the Mining Right No.TR 13/91, particularly so, because, this is the place where Pw-2 found a gold-bearing-ore-dump as stated on page 11 of Exh.P5, and this ore dump was found adjacent to the Nyabirama Pit within ***the former Mining Right No.TR 13/91***.

As per Exh.P5 and the testimony of Pw-2, the dump might have been created because the ROM Pad which is found on ***the former Mining Right No. TR 15/91*** was full or it was a mechanism to cut down the cycle time of the haulage trucks. The explanation is indeed reasonably sufficient. The ROM Pad at ***the former Mining Right No.TR 15/91*** was found to be closer to the processing plant as a major gold-bearing-stockpile receiving place for ores mined from the Nyabirama Pit and Gokona operations. The haul road as well passes through this claim right to the Rom Pad and Crusher from where the gold bearing ores are fed and the process of extracting gold from them commences, as per page 19 of Exh.5.

As stated by Pw-2, ***the former Mining Right No. TR 15/91*** also provides site for office buildings of the drilling contractor (Capital Drilling), whose functions are vital in enabling mining operations to be properly executed. From my assessment of the evidence and the facts as presented by Pw1, Pw-2 and Pw-3 and the admissions made by Dw-1 and Dw-3, I do come to a considered view that, much as no direct mining operations have taken place on ***the former Mining Right No. TR 14/91*** and ***No.TR 15/91***, nevertheless, these two claim areas, as correctly stated by Pw-2, continue to provide support to the achievement of the main goals of the Defendant, which support was the basis of the consideration paid for by the Defendant to the Plaintiff as per Clause I and Clause 1.1 of Exh.P-1 to P-3.

Since it is undoubtedly clear that the Defendant has commenced mining operations in Nyabirama Pit and ***the former***

Mining Right TR.13/91 is part of such operations, the rest of former claim rights (i.e., the ***Mining Right No. TR 14/91*** and ***Mining Right No.TR 15/91***) continues to provide support to the Defendant to extract mineralise ores from the areas such Nyabirama Pit, where mining operations has commenced. As I extensively discussed herein earlier, ***the former Mining Right No.TR 13/91*** is located within the *Nyabirama pit* and, according to the available evidence from Pw-2, Dw-1, Dw-2 and Dw-3, in that pit gold mining is currently taking place.

On the overall, therefore, the second issue is responded to in the affirmative and, more precisely, in respect of ***the former Mining Right No.TR 13/91*** which is the subject of Exh.P1, and which is linked to the Nyabirama Pit from which gold ores are currently being mined, processed and refined gold is produced by the Defendant. With that ending, the gear levers of consideration shift to the next level, which is the third issue. Essentially the third issue is as follows:

> "If the answer in the second issue is in the affirmative, whether the Defendant is in breach of the terms and conditions of the three agreements by failing to pay the accrued royalties."

In law, a breach of contract is a material non-compliance with the term(s) of a legally binding contract. It occurs when one of the parties fails to perform his/her obligations to the detriment of the other party. It is also well settled that, in a contractual relationship,

each party is expected to honour her or his contractual obligations. This is to say, each party is entitled to perfect performance of the terms agreed under the contract and each expects to obtain the benefit of the deal agreed by the contract.

In this respective suit, the Plaintiff and the Defendant executed Exh.P-1, Exh.P-2 and Exh.P-3 with full expectation that each of them will fulfil her obligation to the letter.

As I stated herein earlier, the former mining rights erstwhile held by the Plaintiff were not surrendered to the Defendant gratuitously. Under section 70 of the Law of Contract Act, Cap.345 R.E 2019, the law is clear that:

> "Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."

In the case at hand, the act of surrendering such rights based on agreed terms and conditions one being of them being that, whenever mining operations commences in any of the "*former claim title areas*", then the Plaintiff will be entitled to 1% of royalty from gold produced from any of the "*former claim title areas*".

In essence, and as discussed earlier in response to the 2nd issue, the Defendant did certainly commence mining operations in

the former *Mining Right No.TR 13/91*. As the evidence revealed herein, the former *Mining Right No.TR.13/91* which is the subject of Exh.P1, is linked or forms part to the Nyabirama Pit from which gold ores are currently being mined, processed and refined gold obtained by the Defendant.

Despite such a proven fact as per the available evidence herein, the Plaintiff has demonstrated through the testimony in chief of Pw-1 and Pw-3 that, since 1999 the Plaintiff has never been furnished with any information pertaining to production of gold from the "*former claim title areas*" and, has never received her entitlement of 1% royalty from gold produced from any of the "*former claim title areas*."

In the case of **Simon Kichele Chacha vs. Aveline M. Kilawe,** Civil Appeal No.160 of 2018 (unreported), the Court of Appeal of Tanzania was of an emphatic view that:

> "It is settled law that parties are bound by the agreements they freely entered into and this is the cardinal principle of the law of contract. That is, there should be a sanctity of the contract as lucidly stated in *Abualy Alibhai Azizi v. Bhatia* Brothers *Ltd* [2000] T.L.R 288 at page 289 thus: - 'The principle of sanctity of contract is consistently reluctant to admit excuses for non-performance

where there is no incapacity, no fraud (actual or constructive) or misrepresentation, and no principle of public policy prohibiting enforcement."

With such an understanding from that settled legal principle regarding sanctity of contract, it is apparent that, the non-payment of the 1% royalty to the Plaintiff following commencement of mining operations in the ***Mining Right No.TR 13/91*** which is the subject of Exh.P1, and which is linked to the Nyabirama Pit from which gold ores are currently being mined, processed and refined gold produced by the Defendant, amounts to an outright breach of Clauses 3, 3.1 and 3.2 of Exh.P1. It follows, consequently, that, the third issue is as well responded to affirmatively.

However, it should be noted that, that affirmative response is only with regard to the ***Mining Right No.TR. 13/91*** because, as stated and established herein above, the rest of the former mining rights are yet to be mined, although they are, as well, providing support towards achieving the Defendant's ultimate goal of mining gold bearing ores from the areas from which mining operations have commenced, one being the ***Mining Right No.TR.13/91*** which is linked to the Nyabirama Pit from which gold ores are currently being mined, processed and refined gold is produced by the Defendant.

The fourth issue calling for my attention is that:

'In the event the answer *to the third issue is in the affirmative, whether the*

Plaintiff ***suffered specific*** *and* ***general damages.'***

Under section 73 (1) of the Law of Contract Act, Cap.345 R.E 2019, the law provides for what should be a remedy for breach of a contract. As aptly captured in the case of **Puma Energy Tanzania Ltd vs. Ruby Roadways (T) Ltd, Civil** Appeal No.287 of 2020 (CAT) Dodoma (unreported):

> "Where a contract has been broken, the party who suffers by such breach is entitled to receive compensation for any loss or damage caused to him by the other party. The compensation must arise naturally in the usual course of things from such breach, or which the parties knew will happen or were likely to result from the breach of contract."

As correctly submitted by the learned counsels for the Plaintiff, the rationale for the award of damages to an aggrieved party is to restore that party in the same position as if the contract was performed as agreed. That, indeed, is in line with the principle of *"restitutio in integrum"* as stated by the Court of Appeal in the case of **Cooper Motors Ltd vs. Moshi/Arusha Occupational Health Services** [1990] TLR 96.

In this case, the Plaintiff has sought for compensation in the form of specific damages as well as general damages. I will start by

examining the issue of specific damages. Basically, it is a settled law that, to be payable, specific damages must, not only be pleaded, but also be strictly proved. The Court of Appeal decisions in the case of **Zuberi Augustino Mugabe vs. Anicet Mugabe** [1992] T.L.R. 137 and that of **Xiubao Cai and Maxinsure (T) Ltd vs. Mohamed Said Kiaratu,** Civil Appeal No.87 of 2020, are quite illustrative on that. In the case of **Zuberi Augustino Mugabe** (supra) the Court of Appeal was of the view that;

> "It is trite law, and we need not cite any authority, that special damages must be specifically pleaded and proved."

In this present suit, the Plaintiff has pleaded for specific losses claimed to have been suffered, which is equal to **US$ 21,610,827.00**, and claims these to be the 1% accrued royalty revenues which, pursuant to the express terms of Exhs.P.1, P.2 and P.3, she ought to have been paid. In efforts to prove such amount, Pw-3 endeavoured to rely on various reports from TEITI.

TEITI is a government multi-sectoral entity establish under the **Tanzania Extractive Industries Transparency Accountability Act, No.23 of 2015** with the aims to increase transparency and accountability in the extractive industries in Tanzania. Ordinarily, TEITI's reports disclose aggregate payments made by major mining and gas operating companies to government, which disclosure includes amount of royalty paid during a particular

fiscal year. As correctly stated by Pw-3, TEITI's reports are indeed readily accessible worldwide online from *http://www.teiti.go.tz.*

It is worth noting, however, that, although this Court admitted them as Exh.P7, that admission was done on the account that they are statutorily mandated reports widely accessible by whoever wishes to access them. That fact, however, does not mean that this Court will wholly rely on them as proof of the specific claims of the Plaintiff. In short, Exh.P7 cannot constitute the appropriate yardstick in calculations of the amount of royalty payable to the Plaintiff in line with Clause 3.1 of Exh.P1 and no adverse inference may be drawn against the Defendant for reasons I shall further explain below.

I hold it so because, even if this Court admitted the TEITI Reports as Exh.P7 on the grounds stated in its ruling made when they were tendered, one factor that needs to be taken aboard before deciding as to whether the claims for specific damages are proved or not, is the usability and weight which I should accord to Exh.P7, taking into account that Pw-3, who produced them as Exh.P7, is not their author and, secondly, they are electronic documents which, in my view, can only be relied upon to show what they disclose and nothing beyond that.

In essence, it is one thing to state that Exh.P7 establishes that, the Defendant declared production of gold worth the amount so disclosed to the general public but, it is quite another thing to prove that such exact amount of gold so declared to be produced by the Defendant as per Exh.P7, was produced from any of the claim

areas. In paragraph 21 of the Defendant's Written Statement of Defence (WSD), the Defendant did admit clearly that, TEITI reports publish minerals and total revenue produced from the Defendant's mine site, including mineral produced from various areas owned by the Defendant and/or areas owned by various former claim owners and no TEITI report from 2013 to 2019 covers gold produced from the Plaintiff's claim areas.

I have noted, indeed, that, in their closing submissions, the learned counsels for the Plaintiff have argued that, the Defendant, apart from the statements of DW-1, Dw-2 and Dw-3, tendered nothing concrete or tangible evidence to disprove the evidence of gold production as reflected in Exh.P7, and that, the evidence or record shows that, the Plaintiff has never been furnished with any information pertaining to production of gold from the former claim title areas by the Defendant. They contended that, the Defendant is thus duty bound as the facts regarding gold production are facts within the Defendant's knowledge.

Indeed, as a matter of legal principle, once a party bearing the *onus* of proof has by a *prima facie* evidence discharged her duty, then, the *onus* of rebuttal will thereby shift to her opponent who should now be required to discharge it. Should she fail to discharge this *onus* of rebuttal, the *prima facie* evidence of the first party will be regarded as sufficient evidence for purposes of discharging the main *onus* of proof.

See, for that matter, the decision of this Court in the case of **Professional Plaint Centre Limited vs. Azania Bank Limited,**

Commercial Case No. 48 of 2021, (unreported) (citing the South African case of **Senekal vs. Trust Bank of Africa Ltd** 1978 (3) SA 375, at 382-383A.)

Besides, I am as well mindful of what section 115 of the Evidence Act provides, that is to say:

> "In civil proceedings when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

Further still, I am also in agreement with the Plaintiff's counsels that the Defendant failed to discharge her onus of rebuttal in respect of the disclosures which appears in Exh.P7 by submitting to the Court the correct data which would have established a contrary position other than what was tendered in Court by the Plaintiff.

In my view, however, whatever weakness may be noted on the part of the Defendant, such will only be relevant in so far as one seeks to establish that the Defendant declared gold production in line with the requirements of section 16 (1) (a) and 17 (5) of the **Tanzania Extractive Industries Transparency Accountability Act, No.23 of 2015**. As a matter of legal principle, it is trite that, the basis of any sound decision of the Court should not be the weakness of the defence but rather the strength of the case for the prosecution/plaintiff, (see the case of **Tanzania Cigarette Co. Ltd**

vs. Mafia General Establishment, Civil Appeal No.118 of 2017 (CAT) (unreported).

In this particular suit, therefore, and in respect of the agreed fourth issue, what needs to be established is if at all the amounts so declared in Exh.P7 were indeed a product of gold specifically produced from any of the former claim areas. As I stated herein above, the requirement for proof of specific claims by the Plaintiff is a strict requirement. Specific claims must be pleaded and strictly proved.

In the case of **Professional Plaint Centre Limited vs. Azania Bank Limited**, Commercial Case No. 48 of 2021, (unreported), this Court was of the view that:

> "the wording "strictly proven" means that, the Plaintiff bears a stricter burden of proof to discharge if his claim is to sail through."

Looking at Exh.P7 which the Plaintiff relies on, the same does not strictly prove that the respective amount shown to be disclosed by the Defendant were exactly obtained from the former claim areas, and in particular the Nyabirama open-pit to which the former Mining Right No.TR 13/91 is linked.

As I stated earlier, Exh.P7 gives, but an aggregate view which this Court cannot rely on it as the basis for calculation of the Plaintiff's entitlement to 1% of gold produced by the Defendant from such former claim title area. As such it is my considered view

that, no weight can be attached on Exh.P7. And, if it was to be relied upon, it could only be for the sole purpose of acting as mere pointer to the fact that the Defendant is in reality producing gold and complying with the disclosure requirement under *Tanzania Extractive Industries Transparency Accountability Act 2015* and its Regulations, but nothing more in relation to its usefulness in establishing the specific claims made by the Plaintiff. As such I will not, at any rate, rely on it at all and it has no determinative or decisive effects in this case at all.

Put differently, Exh.P7 is of no value in establishing that the specific amount claimed by the Plaintiff was produced from *the former claim areas*. That being said, although legally the Plaintiff may be entitled to payment of specific damages, technically the amount claimed by the Plaintiff has not been strictly proved to have arisen or derived from amount of gold production solely produced from the former claim areas.

In view of that, it is my finding that, the fourth issue can only be responded to in the affirmative if disaggregated information regarding gold production in the former claim areas is looked at and not the aggregate data which the Plaintiff has relied upon. What then should be the appropriate data to be used by this Court having held that the Plaintiff is entitled to 1% of royalty which flows from the quantity of gold produced from Nyabirama Open-Pit?

As earlier discussed herein, there has been no data given by the Defendant and the Plaintiff has no other means of getting such data as the Defendant would not make such disclosures, this being

the 23 year of darkness on the part of the Plaintiff, and, hence, the filing of this suit by the Plaintiff in search of her rights.

Indeed, one can understand the difficulties which the Plaintiff has been or may be facing in getting the right information from the Defendant, taking into account that, she cannot monitor the daily operations of the Defendant or access data regarding what is daily produced from the Nyabirama Pit and, taking into account the problems earlier noted in respect of Clause 3 of the contract and Exh.P1 as a whole, regarding disclosure information.

The difficulty is further exacerbated and compounded by the fact that, even the Defendant failed to provide on her own independent and disaggregated data from her operational open mining pits, the Nyabirama Pit, being one of them. Noting such a situation, should this Court fold its hands and tell the Plaintiff, well you are indeed entitled but this Court is of no assistance to you, thus *"depart in peace, be warmed and be filled"* while knowing that what the Plaintiff has continued to be denied for the past 23 years will continue even after coming to this Court?

In the case of **Mohamed Idrissa Mohammed vs. Hashim Ayoub Jaku** [1993] T.L.R 280, the Court of Appeal held, instructively, that:

> "where a party to the contract has no good reason not to fulfil an agreement, **he must be forced to perform his** part, for an agreement must be adhered to and fulfilled." (Emphasis added).

The question that flows from the above quote from the Court of Appeal is how should the Court do that? How should that party be forced? Principally, and from time immemorial, Courts of law have been regarded as temples of justice. However, if justice is to reign, truth must prevail and injustice abhorred. To bring justice to its seat of primacy in any litigation, therefore, the fundamental duty of the Court should be to ascertain the truth and do justice on the basis of that truth and within the precincts of the law.

To amplify further on that, perhaps I should restate what Hon. Mr. Justice J.R. Midha of the Delhi High Court, India stated, in the case of **Ved Parkash Kharbanda vs. Vimal Bindal** (8 March, 2013), at paragraph 11. In that case, the learned judge had the following to say, that:

> "Truth should be the Guiding Star in the Entire Judicial Process Truth is the foundation of justice. Dispensation of justice, based on truth, is an essential feature in the justice delivery system. People would have faith in Courts when truth alone triumphs. The justice based on truth would establish peace in the society."

The similitude of the above are the words of Justice Krishna Iyer J., of the Supreme Court of India in the case of in **Jasraj Inder Singh v. Hemraj Multanchand,** (1977) 2 SCC 155 who described truth and justice as under:

"...Truth, like song, is whole, and half-truth can be noise! Justice is truth, is beauty and the strategy of healing injustice is discovery of the whole truth and harmonising human relations. Law's finest hour is not in meditating on abstractions but in being the delivery agent of full fairness."

In his defence for his reasoning about the role which the Court should play in discovering the truth that dethrones injustice and unfairness, Mr. Justice J.R Midha in the case of **Ved Parkash Kharbanda vs Vimal Bindal (supra) made it clear that:**

"This divagation is justified by the need to remind ourselves that the grammar of justice according to law is not little litigative solution of isolated problems but resolving the conflict in its wider bearings. In *Mohanlal Shamji Soni v. Union of India*, 1991 Supp (1) SCC 271, the Supreme Court observed that the presiding officer of a Court should not simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost and that there is a legal duty of his own,

independent of the parties, to take an active role in the proceedings in finding the truth and administering justice. "

Perhaps I should add one or two other thoughts provoking ideas regarding the need to promote fairness and uproot any seed of injustice in the utilization of our God-given precious resources. In his letter titled "**Letter from a Birmingham Jail [King, Jr.]**" dated 16th April 1963, Rev. Martin Luther King, Jr., unapologetically writing to his fellow clergymen told them that: "Injustice anywhere is a threat to justice everywhere."

The above quoted words of Rev. Martin Luther King, Jr., though given at a different context and for a different course, do, nevertheless, possess a cross-cutting effect and, hence, revealing a sense of relevance and application, even in the present case. I hold it to be so, given that, the role of this Court, as already stated, is rooted in promoting truth and justice.

That, being said, what then should be said of the Plaintiff's fate regarding her entitlement to 1% royalty payment from the Defendant having held that she is entitled as per Exh.P1? How should this Court play its rightful role of ensuring that truth is revealed and justice and fairness prevail over any injustice so far suffered? These questions have be-laboured my mental faculty in a great deal. However, being mindful of the fact that truth sets captives free, this Court was contented that in its pursuit of justice and fairness, there is always a way out.

Being mindful of its noble duty of upholding the truth and administering justice in a fair manner, and, while fully aware that the Plaintiff herein knocked at its doors because she feels that she has suffered injustices for almost 23 years, this Court decided, *suo moto* to summon the parties on the 06th day of March 2022, to allow them to further address it on an issue which it considers necessary to be addressed and where possible dealt with, if truth, fairness and justice are to be administered by this Court and seen to be so administered by all parties.

The summoning of the parties to address this Court was necessary given that, it is trite law that, upon raising new or additional issue, the Court has to accord the parties the right to address it on that new or additional issue. Indeed, that is a legal position emphasized in the cases of **Deo Shirima and Two Others vs. Scandinavian Services Limited,** Civil Application No. 34 of 2008 (unreported), **John Morrisf Mpaki v. NBC Ltd and Ngalagila Ngonyani,** Civil Appeal No. 95 of 2013 (unreported) and **Raza Somji v. Amina Salum** [1993] TLR 208, to mention but a few cases.

On the 06th day of March 2022, therefore, Mr Kayinga, who represents the Plaintiff, appeared in Court, while Mr Malongo appeared for the Defendant. To be specific, the Court put across to the parties the following issue:

> Whether it is just, appropriate and, hence, necessary that this Court should be availed with

information from the Defendant regarding the following:

(a) Gold production, in terms of amount produced and its value from Gokona Pit- from the year 2013 to 2021.

(b) The amount of Gold and its value from Nyabirama Pit from 2013 to 2021 and.

(c) The amount of gold and its value, produced from Nyabigena Pit from 2013-2021.

Having afforded the parties time and right to address this Court in regard to the above issue, this Court considered their submissions and made a decision that, in the interest of promoting justice to the parties, which is the noble role which this Court is expected of, where necessary, the Court may invoke its powers and order that appropriate materials be placed before it. In view of that, the Court ordered the Defendant to avail to it the information stated herein above in its disaggregated form and allowed the parties to appear before the Court on the 9th of June 2022 and address the Court in respect of the availed information.

On the 9th of June, 2022, the Defendant filed the information in Court and the same was availed to the Plaintiff's learned counsel. When the parties convened before me, I asked each of them if they had any comment or submissions to make on the basis of what was

availed to the Court and served upon the other party. Neither of them had any further Comment.

I have had a look at the data availed to this Court pursuant to its order dated 03rd June 2022. The Gold data extracted from the three pits reads as follows:

Nyabirama Pit: Total Ounces (from 2013-2012) = **1,296,102.88**

Total Value in U$ = **1,747,613,260.29**

Nyabigena Pit: Total Ounces (2013-2021).....NIL.....

Gokona Pit: Total Ounces (from 2013-2021) = **1,514,533.66**

Total Value in U$ = **2,152,537,293.46**.

It is worth noting, that, when this Court deliberated on the 2nd and 3rd issues here above, a finding was arrived at to the effect that, the Defendant had commenced mining operations in the former claim area under the **Mining Right No.TR 13/91** whose part is linked to the Nyabirama Pit from which gold ores are currently being mined, processed and refined gold is produced by the Defendant. As such, I held that, the Plaintiff is entitled to a 1% royalty but such an amount is to be derived solely from Nyabirama pit's production and not otherwise.

In view of the information availed to the Court by the Defendant, the Nyabirama pit has, from 2013 to 2021 produced 1,296,102.88 ounces of Gold whose total Value is US$ 1,747,613,260.29. If a mathematical calculation is to be made in respect of that value, the 1% which the Plaintiff is entitled out of it is equal to US$ ($^{1}/_{100}$ x 1,747,613,260.29) which is equal to US$ 17,476,132.6029. This is the amount, if it was to be spread over the

9 years of production, from 2013 to 2021 (and 2013 was the year from when the Plaintiff based their claims), then it will mean that, each year the Plaintiff was entitled to be paid a royalty of US$ 1,941,792.511433333. Unfortunately, that was not paid. It follows, therefore, that, the rightful amount payable as 1% royalty revenue to the Plaintiff from 2013 to 2021 is **US$ 17,476,132.6029.**

Having said that, what about the claims for payment of general damages? In essence, unlike specific damages which need to be not only pleaded but strictly proved, general damages need only be pleaded and need not be proved. If the Plaintiff merely avers that s/he suffered general damages, that averment will suffice. The decided cases of **Cooper Motor Corporation Ltd vs. Moshi/Arusha Occupation Health Services** [1990] TLR 96 and **Fredrick Wanjara, M/S Akamba Public Road Service Limited A.K.A Akamba Bus Service vs. Zawadi Juma Mruma,** Civil Appeal No. 80 of 2009 CAT (Unreported), provide guidance to that effect.

Besides, general damages are payable at the discretion of the Court. In the case of **Niko Insurance (T) Ltd vs. Hussein Athuman Mwaifyusi & Another,** Civil Appeal No.168 of 2017 (CAT) DSM (unreported) the Court of appeal stated that:

> "the purpose of general damages, which is to put the party who has been injured or who has suffered loss in the same position as he would have been if he had not

sustained the wrong for which he
is seeking compensation."

In this case, the Plaintiff's learned counsels have urged this Court to grant the Plaintiff general damages and make a broad estimate taking into account all proved facts on balance of probabilities of this case, including the number of years the Plaintiff has been unlawfully denied her rights to payment of royalty revenues.

Besides, the Plaintiff's learned counsels have urged this Court to consider that the Plaintiff surrendered both her surface and mining rights with a legitimate expectation of getting revenue of 1% from the Defendant's mining operations on its former claim title areas but to date the Plaintiff has never received, not even a dime. For their part, the learned counsels for the Defendant have submitted that, there was not breach and hence no entitlement to payment of general damages.

However, as I held earlier herein above, there was breach of the terms and conditions of Exh.P.1, which is in respect to the former the ***Mining Right No.TR 13/91***. According to the testimony of Pw-1 and Pw-3, the Plaintiff has never been paid anything from the time she surrendered her rights to the Defendant and the Defendant has continued to extract gold from the Plaintiff's former claim title area, in particular from the former the ***Mining Right No.TR 13/91*** which forms part of the Nyabirama pit.

For all such reasons and, while being mindful of the fact that doing justice to parties requires understanding, transparency and

the ability to correct existing errors or injustices, I find that the Plaintiff is entitled to be paid general damages, and, given all the years the Plaintiff remained unpaid, an amount equal to **US$ 300,000.00** will suffice as general damages.

Lastly, we move no to the final issue, which is: *to what reliefs are the parties entitled.*

Generally, however, if any party is to be entitled to reliefs, the said party must have established her case to the required standards. As I stated earlier here above, the legal burden of proof constantly rests upon the party (the Plaintiff or the Defendant), who substantially asserts the affirmative of the issues. Being constant, it means that, such a burden remains fixed at the beginning of trial by the state of the pleadings, and it is settled as a question of law remaining unchanged throughout the trial exactly where the pleadings place it, and never shifts in any circumstances whatever. See **Joseph Constantine Steamship Line vs. Imperial Smelting Corporation Limited** [1942] A.C. 154,174.

I did also point out earlier that, the standard required in civil cases is generally expressed as proof on a balance of probabilities. If I may refer to what Lord Denning J (as he then was) stated in **Miller vs. Minister of Pensions** [1947] ALL E.R. 372; 373, 374, regarding the discharge of such a burden of proof:

> "If the evidence is such that the tribunal can say: We think it more probable than not, the burden is

discharged, but if the probabilities are equal, it is not."

In this instant suit, it is my finding, and without a flicker of doubts, that, what the Plaintiff is claiming from the Defendant is highly probable than not. I am satisfied, on the balance of probability, therefore, that, the Plaintiff has discharged her burden of proving this suit and, for that reason, judgement and decree is entered in favour of the Plaintiff as follows, that:

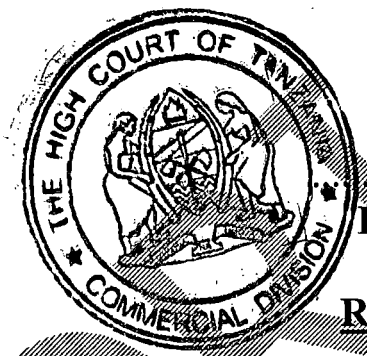
1. The Defendant is hereby ordered to pay the Plaintiff **US$ 17,476,132.6029** or equivalent in Tanzanian Shillings, being the Plaintiff's entitlement to revenue royalties from the year 2013 up to the year 2021.
2. The Defendant is hereby ordered to pay the Plaintiff the sum of royalties' revenue of 1% as per the contract in respect of the Former Mining Right No.TR 13/91, which mining right forms part of the Nyabirama mining Pit, and for the gold produced from Nyabirama Pit for the years 2022 onwards up to the closure of that mine pit.
3. That, the Defendant is hereby ordered to pay the Plaintiff Interest on the amount in item No.1 above at 7% rates from the date of

judgement and Decree to the date of final payment of the amount claimed.

4. That, the Defendant is hereby ordered to pay the Plaintiff General Damages for breach of contract to the tune of **US$ 300,000.00.**
5. The Defendant is hereby ordered to pay the Plaintiff costs of this suit.

It is so ordered

DATED AT MWANZA ON THIS 10TH DAY OF JUNE 2022



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DEO JOHN NANGELA
JUDGE,
Right of Appeal Explained.