

IN THE HIGH COURT OF TANZANIA

AT MWANZA

LAND CASE NO. 17 OF 2005

FIN HOLDING LTD.....PLAINTIFF

VERSUS

GEITA GOLD MINING LTD.....DEFENDANT

JUDGMENT

BUKUKU, J.:

The plaintiff herein is praying for judgment and decree as follows:-

- (i) Permanent injunction restraining the defendant from vacating the plaintiff from the disputed area.
- (ii) Declaring that the vacation notice by the defendant to the plaintiff dated 04th February 2005 is null and void.
- (iii) Costs of the suit.
- (iv) Any other relief (s) which the Honorable court may deem just and fair to grant.

The above prayers areas per the plaint filed on 8th February 2005.

Among the undisputed facts are the following: Way back in 1995, one Felix Isidory Ngowi owned precious mineral claim No. 42447, 42448

and 42449 respectively, at Ridge 8, and Nyamulilima area within Geita District. In the year 1997, the original owner transferred the said precious mineral claims to the plaintiff herein, and the Commissioner for Minerals duly consented to such transfer. In that same year, the Commissioner for Energy vested exclusive ownership of mineral rights over the same area to the defendant after the said rights were transferred to the defendant from Anglo Gold Exploration (T) Limited.

In February 2005, the respondent herein issued a vacation notice to the plaintiff, which demanded the plaintiff to vacate from the area in which she is prospecting. It is from this background that the plaintiff decided to file this suit.

In their amended written statement of defence, the defendant denied what has been averred in the plaint. The defendant claims that, she is the only holder of mineral rights in that area, and by virtue of that, it has exclusive right to carry out mining operations in the disputed area, namely, a locality known as Ridge 8 situate in Nyamulilima area in Geita District, the area which the plaintiff also claims to be his. Further, the defendant claims that, the said exclusive right was initially granted to them in the form of several prospecting licenses granted to the defendant's

predecessors which were later converted into a special mining license, and which special mining license was ultimately transferred to the defendant. The defendant does not deny the fact that, at the time of filing the suit, the plaintiff was conducting mining operation in the said area but that, he was doing so illegally since he does not possess any valid mineral right over the said area. According to the defendant, the precious mineral claims numbers 42447, 42448, and 42449 were cancelled by the Commissioner for Mineral Resources way back in 1997. With that, the defendant prays for the dismissal of the suit with costs.

Though the defendant has filed his written statement of defence, he made appearance in court as and when he so wished to do so. According to the record, since 4th December, 2012, the defendant never made appearance. On 29th August, 2013, Ms. Lucia Learned Advocate for the plaintiff, prayed the matter to be heard ex parte. I readily granted her prayers, hence this judgment.

Having in mind that even in ex-parte proof a party must prove its case to the required standard, I proceeded to hear the plaintiff who testified as **PW1**. Issues framed for the determination of this court are as follows:-

1. Whether the plaintiff is the lawful owner of precious mineral claims No. 42447, 42448 and 42448..
2. Whether the notice issued to the plaintiff on 4th February, 2005 by the defendant is null and void.
3. To what relief (s) are parties entitled to.

The evidence adduced orally by **PW1** including five documentary exhibits established how the plaintiff came into logger heads with the defendant. Now, to answer the first issue: It is an established fact that, before the defendant came into existence in the suit area, the plaintiff was already in existence. **Exhibit P2** – clearly shows this. At page 1 of **Exhibit 2** states:-

"PW1 Fadhili Mosses averred before this court that he is a District Mining Officer Geita and he knows the accused is his customer....."

Which connotes that, the plaintiff was well known in the mining business. That aside, when the plaintiff was testifying before the District Court, he told the court that, he had been doing mining business since 1984 at Chibugwe hills and that in 1990, he applied for a prospecting right which he was granted. He also told the court that, in 1993, the United

Nations Revolving Fund came in the suit area to prospect. When he was told to vacate, he lodged a complaint to the Commissioner of Mines and he was allowed to continue mining in that area.

In 1995, the commissioner of Mines registered the plaintiffs' claim titles in dispute and he paid the relevant fees up to 2001. Which means, when the Anglo American's came into the suit land, already the plaintiff was there. According to the record, Anglo American prospecting services (proprietary) Ltd. was granted its prospecting license on 30th May 1997. This was done while the plaintiff was still the rightful owner of the suit area since he had paid all dues up to 2001. It is also on record that, Anglo Gold Exploration (T) Ltd transferred its prospecting licenses to the defendant on 30th October, 2002.

I think with all due respect, what I see here is a case of double allocation. As intimated earlier on, the plaintiff had paid for his mining levies up to 2001. When the revocation notice was issued by the Commissioner for Mines, the plaintiff had already paid for the claims four years ahead. For that matter, I answer the first issue in the affirmative that, the plaintiff is the rightful owner of the said mining plots. I will now traverse the second issue.

It is not in dispute that, at one point, the plaintiff was charged with the offence of criminal trespass Contrary to section 299 of the Penal Code, in Criminal Case.No. 348/1999. He was accused of entering and mining in the area of Anglo American (by then) without lawful permit. After a full trial, the District Court of Geita found the accused not guilty and hence was acquitted. In his judgment, the District Magistrate observed that, the plaintiff was licensed to mine and prospect the area in dispute since 1993 because he had obtained the claim titles license and did pay the relevant fees up to the year 2001. During the trial, the plaintiff tendered all relevant documents in court and were admitted as **Exhibit D1** collectively.

It is also on record that, the decision of the District Court aggrieved the Director of Public Prosecutions, who decided to appeal to this court vide Criminal Appeal No. 76 of 2000. For whatever reasons, the same Director of Public Prosecutions withdrew the appeal and the application to withdraw the said appeal was duly granted by Katiti J. (as he then was), on 24th May 2001. Later on, the same Director of Public Prosecutions filed an application under section 378 of the Criminal Procedure Act for restoration of the appeal which he said was wrongly withdrawn by his subordinates.

Having heard the application, on 30th November, 2009, my Learned brother Nyangarika, J. dismissed the application for restoration of the appeal.

In dismissing the application, Nyangarka, J. observed that, the reasons advanced in the affidavit supporting the application are internal matters of the office of the DPP which have no room in this court. Since then, there has never been an application, a revision, or any other decision of the court over the matter.

From the above therefore, it is obvious that the decision of the District Court of Geita in Criminal Case No. 348 of 1999 stands unopposed. For that matter in answer to issue No.2, it goes without saying that, the vacation notice issued by the defendant dated 04/02/2005 is therefore illegal and unlawful, since it is the same area which the district court decided upon and declared the plaintiff the lawful owner.

Having properly directed my mind to the legal position that even in ex-parte proof a party must prove his case up to the standard required, **(see: Peter Ng'homango V. Gerson M.K. Mwangwa and the Attorney General; CAT – Civil Appeal No. 10 of 1998)**, on the totality of the evidence adduced by the plaintiff, I am satisfied that, the plaintiff is

legally entitled to the disputed land and that, the vacation notice issued by the defendant is null and void.

With the above, I now turn to the reliefs. The plaintiff herein has prayed for declaratory orders. He has also prayed for costs and any other relief (s) which this court may deem just and fair to grant. Considering that there is a court decision regarding this suit land, and since there is no pending appeal or revision over the same, I grant the plaintiff the prayers as prayed in his plaint. The defendant is also condemned to pay costs of this suit.

Ordered accordingly.

**A.E. BUKUKU
JUDGE**

Delivered at Mwanza.

This 16th October, 2014