IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB-REGISTRY

AT MUSOMA

MISCELLANEOUS CAUSE NO. 000013576 OF 2025

IN THE MATTER OF AN APPLICATION FOR ORDERS OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF THE MINING ACT (CAP. 123 R.E. 2019)

AND

IN THE MATTER OF KANUNI ZA WAJIBU WA WAMILIKI WA LESENI ZA MADINI KWA JAMII ZA MWAKA 2023 T.S. NA. 409 LA 2023 (MINERAL RIGHT HOLDERS' SOCIAL RESPONSIBILITY) REGULATIONS, G.N. NO. 409 OF 2023)

AND IN THE MATTER OF APPLICATION TO CHALLENGE REGULATION 4 (4) (a) & (b) OF G.N. NO. 409 OF 2023, MADE BY THE 1ST RESPONDENT AND PUBLISHED ON 23RD DAY OF JUNE 2023, FOR CONTRAVENNING SECTION 105 (5) OF THE MINING ACT, CAP. 123 R.E. 2019

AND

IN THE MATTER OF THE LAW REFORM (FATAL ACCIDENTS AND MISCELLANEOUS PROVISIONS) (JUDICIAL REVIEW PROCEDURE AND FEES) RULES, 2014 (G.N. NO. 324 OF 2014)

BETWEEN

1. **GODFREY MWITA KEGOYE.....1ST APPLICANT**
2. **GOTORA CHARLES CHICHAKE.....2ND APPLICANT**
3. **PAUL ISACK BAGENI.....3RD APPLICANT**
4. **DAUDI ITEMBE NYAMHANGA.....4TH APPLICANT**
5. **BOGOMBA RASHID CHICHAKE.....5TH APPLICANT**

AND

THE MINISTER FOR MINERALS.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

RULING OF THE COURT

16/11/2025 & 28/01/2026

Kafanabo, J.:

This is an application for orders of certiorari and prohibition, brought by chamber summons, supported by a joint affidavit and a joint statement of the Applicants. The application challenges the validity of Regulation 4(4)(a) and (b) of the **Mineral Rights Holders' Social Responsibility Regulations/the Mining (Corporate Social Responsibility) Regulations (Kanuni za Wajibu wa Wamiliki wa Leseni za Madini Kwa Jamii), G.N. No. 409 of 2023** (hereinafter referred to as the 'CSR Regulations'). The Respondents filed a counter-affidavit and a reply statement, firmly opposing the application. The Respondents also raised a preliminary objection, asserting that the application is time-barred. However, upon consideration of the merits of the preliminary objection, this Court dismissed it, paving the way for the determination of the main application.

In this application, the Applicants beseech the Court to grant the following substantive orders:

(i) *The Court be pleased to issue an order for Certiorari quashing the decision of the First Respondent to enact, publish and apply Rule 4(4)(a) and (b) of the Mineral Rights Holders Social Responsibility Regulations, G.N. No. 409 of 2023 (Kanuni za Wajibu wa Wamiliki wa Leseni za Madini Kwa Jamii, za Mwaka 2023, T.S. Na. 409 la Mwaka 2023), published on the 23rd day of June 2023.*

(ii) *The Honourable Court be pleased to issue an order of Prohibition to prohibit the implementation and application of Rule 4(4)(a) and (b) of the Mineral Rights Holders Social Responsibility Regulations,*

G.N. No. 409 of 2023 (Kanuni za Wajibu wa Wamiliki wa Leseni za Madini Kwa Jamii, za Mwaka 2023, T.S. Na. 409 la Mwaka 2023), published on the 23rd day of June 2023.

To appreciate the nature of the application before the Court, the background of the matter shall be briefly considered. According to the affidavit supporting the application, the Applicants are residents and local inhabitants of the villages of Matongo, Nyangoto, Mjini Kati, and Kewanja (hereinafter referred to as the 'North Mara Villages'), within Matongo Ward, Nyamongo Area, in the Tarime District, Mara Region. The said villages surround the North Mara Gold Mine. The Applicants' residence status in the said villages was proved by the introduction letters attached to the affidavit supporting the application as 'Annex F1'. Moreover, the Applicants' residences and their status as local inhabitants were not disputed by the Respondents.

It is also on record that the Applicants, being local inhabitants and residents of the North Mara Villages surrounding the North Mara Gold Mine, directly benefit from the corporate social responsibility resource allocation (hereinafter referred to as 'CSR Resources') granted by the North Mara Gold Mine (the mineral rights holder) since the year 2018, to which their North Mara Villages were allocated One Hundred Per cent (100%) of the CSR Resources given by the North Mara Gold Mine to the surrounding Villages.

It is also not in dispute that the North Mara Villages fully participated in the preparation and implementation of a Corporate Social Responsibility Plan for environmental, social, economic and cultural activities, including the construction and improvement of village roads and pathways; water

reservoirs and tanks; and the building of schools and hospitals, to which the Applicants were direct beneficiaries.

However, on 23rd June 2023, the First Respondent (hereinafter also referred to as the 'Minister') promulgated and published the CSR Regulations, which the Applicants claim affected them and other local inhabitants within the mining areas on several fronts. First, the CSR Regulations removed the Applicants' total ownership and enjoyment of 100% of the CSR Resources allocated to them by North Mara Gold Mine as part of its corporate social responsibility. Second, the CSR Regulations allocated a large portion (i.e., 60%) of the CSR Resources, initially intended for the host communities, to district, town, municipal and city councils that are not part of the host communities in the area where mining operations are carried out. Third, the 40% of the CSR Resources currently allocated to the local/host communities is significantly lower than the 100% allocated to them before the enactment of the CSR Regulations, thereby denying the host communities the ability to plan for and undertake environmental, economic, social, and cultural activities within their areas.

Given the above, the Applicants claim that the first Respondent's act of enacting Regulation 4(4)(a) and (b) of the CSR Regulations is ultra vires, as the Applicants, as local inhabitants, were never consulted or given an opportunity to air their views and participate before the relevant enactment, thereby defeating their economic, social, environmental, and cultural benefits emanating from CSR Resources.

The Respondents, as alluded to above, did not dispute the Applicants' beneficiary status in relation to the CSR Resources in the North Mara Villages.

Nevertheless, the Respondents deposed in their counter-affidavit that the CSR Regulations establish the modality for distributing the fund and benefiting the host communities surrounding mining areas across the country, and that the same does not deny the host communities the right to plan and undertake economic, social, and cultural activities. It is also the Respondents' contention that there is no evidence that the Applicants have been affected by the alleged minimal allocation of the CSR Resources. The Respondents further deposed that the CSR Regulations cannot be amended to accommodate the interests of a few individuals, while the same applies nationwide.

It is also the Respondents' position that the enactment and publication of the CSR Regulations were not ultra vires, as they were published by the Minister for Minerals in accordance with the powers conferred on him under the **Mining Act, Cap 123 R. E. 2019**, which is the principal law regulating mining activities in Tanzania. The Respondents further stated that, before the enactment of the said regulations, the Ministry consulted all stakeholders in the mining sector, including representatives from local government authorities and local communities, at a meeting held on 21st November 2024. It was deposed that the Applicants and their local communities were represented by Anthony Nyange (Vice Chairman of Tarime District Council) and 3 other representatives.

Furthermore, the contents of the statement in support of the application and the reply thereto are a reiteration of the affidavit and counter-affidavit, respectively, save for the grounds upon which the application is sought. The substance of those grounds is as follows:

a) Applicants, as the local inhabitants of the Nyamongo Area, within which mining activities are carried out, are directly affected by the minimal allocation of the funds/resources to their villages, which is contrary to the intention and requirements of the Mining Act, 2019.

b) Rule 4(4)(a) and (b) of the 'Kanuni za Wajibu wa Wamiliki wa Leseni za Madini kwa Jamii za Mwaka' 2023 G.N. No. 409/2023 (Mineral Rights Holders social Responsibility) Regulations, G.N. No. 409 of 2023 conflicts with section 105(5) of the Mining Act, cap 123 R.E 2019.

c) The Applicants, as among the host communities and inhabitants of the local area within which mining operations/activities are taking place, were never consulted and/or involved for purposes of airing their views in the whole process of formulating the said Mineral Rights Holders Social Responsibility Regulations, G.N. No. 409 of 2023.

The above grounds upon which the application is made were disputed by the Respondents in their joint reply statement, cementing their position in opposing the application.

Furthermore, it is on record that this application was disposed of on the basis of the parties' written submissions, which were duly made by the parties, who were duly represented by the learned counsels. The Applicants were represented by Messrs Kassim Gilla and Kevin Mutatina, learned Advocates, and the Respondents were represented by Mr. Kitia Turoke, a learned Senior State Attorney. The parties' submissions shall be considered in the course of determining the specific grounds of the application as enumerated herein above.

Nonetheless, at the outset, it should be clearly stated that, in light of the parties' pleadings and the submissions for and against the application, the Applicants, being the local inhabitants of the North Mara Villages surrounding the North Mara Gold Mine, as proved by 'Annex F-1' to the affidavit supporting the application, have an interest in the CSR Resources allocated to their villages in terms of section 105 of the **Mining Act, Cap. 123 2019 (now section 136(5)** of the **Mining Act, Cap. 123 2023**, hereinafter referred to as the 'Mining Act').

It follows that, and as rightly pointed out by the Applicants' counsels, the Applicants are the appropriate persons and have locus standi to bring this application to this Court in terms of Rule 4 of the **Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules**, 2014, G.N. No. 324 of 2014 (hereinafter referred to as the '**Judicial Review Rules'**). See also the case of **Registered Trustee of Sos Children's Villages Tanzania vs Igenge Charles & Others** (Civil Application No. 426 of 2018) [2022] TZCA 428 (14 July 2022), where the Court of Appeal expounded on the issue of locus standi and the right to bring an action.

Moreover, this Court has jurisdiction to hear and determine the application under Article 108(2) of the **Constitution of the United Republic of Tanzania 1977,** as amended from time to time, and section 2(3) of the **Judicature and Application of Laws Act, Cap. 358 R.E. 2023** and section 17(2) of the **Law Reform (Fatal Accidents and Miscellaneous Provisions) Act [Cap. 310 R.E. 2019]**. Further, the

Applicants have complied with Rules 5, 6 and 8 of the **Judicial Review Rules**.

Furthermore, in addition to having jurisdiction to determine and entertain the matter, certain conditions must be met before the Court grants the prerogative writs. In our jurisdiction, the circumstances under which judicial review may be granted were stated in the case of **Sanai Murumbe & Another v. Muhere Chacha [1990] TLR 54.** The Court of Appeal, when considering the circumstances under which an application for judicial review may be granted, held that:

> "***The High Court is entitled to investigate the proceedings of a lower court or tribunal or a public authority on any of the following grounds, apparent on the record.*** *One, that the subordinate court or tribunal or public authority has taken into account matters which it ought not to have taken into account. Two, that the court or tribunal or public authority has not taken into account matters which it ought to have taken into account. Three,* ***lack or excess of jurisdiction*** *by the lower court. Four, that the conclusion arrived at is so unreasonable that no reasonable authority could ever come to it.* ***Five, rules of natural justice have been violated. Six, illegality of procedure or decision.*** *(Associated Provincial Picture Houses, Ltd. v Wednesbury Corp. [1947]2 AH E.R. 680 and Council of Civil Service Unions v Minister for the Civil Service [1984] 3 AH E.R. 935).*
> "

Additionally, in the case of **Aidan Frederick Lwanga Eyakuze vs Commissioner General of Tanzania Immigration Service Department & Others** (Civil Appeal No. 13 of 2020) [2020] TZCA 1884 (4 December 2020), the Court of Appeal held that:

*"**Suffice to say, it is well understood that in judicial review proceedings, the court's duty is usually to inquire on the legality of the impugned decision or order to see whether the decision-making authority acted within its jurisdiction, whether it complied with the rules of natural justice ...**"*

Moreover, this Court also draws inspiration from the case of **Anisminic Ltd v Foreign Compensation Commission** [1969] 2 AC 147, where the House of Lords(UK) observed that:

*"**Normally the court can interfere with the decision of an inferior tribunal (1) when it exceeds or fails to exercise its jurisdiction or when the tribunal has done something which it has no power to do at all and there is a nullity**, or (2) when the inferior tribunal has done something which it has power to do, but in the course of exercising its jurisdiction has made an error in law. **Whether it is a case of nullity or error in law, the court can interfere either by certiorari** or mandamus. **In a case of nullity the court can interfere in any event.**"*

Given the above, it is clear that this Court has jurisdiction to consider the legality of the First Respondent's act and/or decision and to assess whether it was made in accordance with the law. Therefore, this Court reverts to the main contentions in this application, as set out in the grounds, which shall be considered seriatim.

As regards the first ground of the Application, the issue for determination is whether the Applicants are directly affected by the minimal allocation of funds/resources to their villages, contrary to the intention and requirements of the Mining Act.

In support of this first ground, the Applicants' counsel's submissions were essentially a reiteration of what is contained in the pleadings and has already been restated above. The Applicants' contention is that the allocation of 40% of the CSR resources to the host communities has a direct negative impact on the Applicants and other local inhabitants within the mining area, which, under section 105(1), (2), (3) and (5) of the Mining Act (now section 136(1), (2), (3) and (5) under the revised edition of the law (a 2023), was meant to benefit the host communities by 100% in terms of the utilisation of the CSR resources from the mineral rights holder in respect of environmental, social, economic and cultural development activities. It was also added that the enactment of Regulation 4(4)(a) and (b) is unreasonable, ultra vires and irrational.

The Respondents argued that the CSR Regulations enacted by the First Respondent are neither irrational nor illegal because the Minister acted within the powers conferred by the law, citing section 160 of the Mining Act. It was also argued that, since section 136 of the Mining Act does not specify how CSR resources should be distributed to host communities, the Minister enacted regulations to make the law effective. It was further added that subsidiary legislation is not a replica of the main Act, but rather provides clarity, elaboration, and further explanation of how the principal legislation should be implemented.

In determining the above issue and the validity of the first ground of the application, the provisions of sections 136(1), (2) and (5) of the Mining Act are pertinent, and they provide that:

> *"136.–(1) A mineral right holder shall, on annual basis,* ***prepare a credible corporate social responsibility plan jointly agreed by the relevant***

local government authority or local government authorities in consultation with the Minister responsible for local government authorities and the Minister responsible for Finance.

(2) The plan prepared under subsection (1), ***shall take into account environmental, social, economic and cultural activities based on local government authority priorities of host community.***

(3) and (4) N/A

(5) In this section "host communities" means inhabitants of the local area in which mining operation activities take place."

Upon reading the above provisions regarding the corporate Social Responsibility plans of the mining rights holders (hereinafter referred to as 'CSR plans'), it is clear that they do not provide for any allocation or distribution of CSR resources. They also do not specify the modality for implementing the CSR plan, save for the requirement that the CSR plan shall consider the local government priorities of the host communities (inhabitants of the local area where mining operations take place), based on their environmental, social, economic, and cultural activities. It is also noted that the above provisions do not explain how the CSR plan would be implemented by the holder of the mining right, and the local government authority is not defined under the Mining Act to clarify who defines the priorities of the host communities, that is, whether the village, street, ward, division, town council, district council, municipal, or city council.

It follows that the CSR Regulations made by the Minister responsible for minerals under section 160(1) of the Mining Act provide some guidance. Regulation 4 of the CSR Regulations provides, in Kiswahili, as follows:

"4.-(1) Mmiliki wa leseni ya ***madini atawajibika kuandaa mpango madhubuti wa wajibu wake kwa jamii kwa kushirikisha halmashauri ya kijiji au mtaa uiiopo katika eneo lenye shughuli za madini*** *kupitia halmashauri husika.*

(2) Mmiliki wa leseni ya ***madini atakuwa na wajibu wa kushirikisha halmashauri ya kijiji au mtaa uliopo eneo lenye shughuli za madini katika kuainisha vipaumbele vya jamii zilizopo au zinazozunguka eneo hilo kwenye zoezi la uandaaji wa mpango wa wajibu wake kwa jamii.***

(3) Bila kuathiri masharti ya kanuni ndogo ya (2), ***miradi itakayoibuliwa na halmashauri ya kijiji au mtaa itapaswa kujadiliwa na Kamati ya Maendeleo ya Kata kwa kumshirikisha mmiiki wa leseni ya madini na kisha kuwasilishwa kwenye halmashauri ya wilaya, mji, manispaa au jiji husika kwa ajili ya uchambuzi na uhakiki*** *ifikapo mwezi Oktoba kila mwaka.*

(4) Kwa madhumuni ya kifungu cha 105(5) cha Sheria, ***jamii ziiizopo au zinazozunguka eneo lenye shughuli za madini zitanufaika na mpango wa wajibu kwa jamii kwa utaratibu ufuatao:***

(a) kiasi cha asilimia 40 kitatengwa kwa ajili ya miradi ya kijiji au mtaa ambapo shughuli za madini zinafanyika; na

(b) kiasi cha asiiimia 60 kitatengwa kwa ajiii ya miradi ya halmashauri ya wilaya, mji, manispaa au jiji husika ambako shughuli za madini zinafanyika."

The above provision of the CSR Regulations may be lightly translated into English as follows:

"4-(1) the mineral rights holder, in cooperation with the relevant local government authorities, is required to formulate a credible corporate social

responsibility plan in collaboration with the village council, the local street or ward authority in the area where mining activities occur.

(2) The mineral right holder must consult the village council and local street or ward authorities within the area of mining operations to identify community priorities when preparing their corporate social responsibility plan.

(3) Subject to sub-regulation (2), projects proposed by the village council, street, or ward authority must undergo review by the Ward Development Committee in collaboration with the mineral rights holder. Subsequently, they should be forwarded to the relevant district, municipal, or city council for analysis and verification by October each year.

(4) For the purposes of section 105(5) of the Act, communities in or near mining areas are entitled to benefit from the corporate social responsibility plan as detailed below:

a) Forty per cent of the allocation shall be designated for projects undertaken by the village or street authority where the mining activities are conducted.

b) Sixty per cent of the allocation will be directed to projects within the specific District, Town, Municipal, or City Council where the mining activities occur."

In light of the above regulation, read together with Regulations 3 and 10 of the CSR Regulations, it is clear that the local government authority referred to in sections 136(1) and (2) of the Mining Act for CSR plan purposes, and responsible for preparing the CSR plan, is either the village council, street or hamlet/suburb. The CSR plan agreed by both the mineral right holder and the village/street council must be discussed by the Ward

Development Committee and later submitted to the town, district council, municipal council, or city council for analysis and verification.

From the above, it is clear that the priorities set out in the CSR plan concern the local inhabitants of the village, street, and ward surrounding the mining area. These priorities are not a priority for the town council, district council, municipal, or city council in which the mineral right holder is carrying out its mining operations.

Moreover, under Regulation 11 of the CSR Regulations, the mineral right holder is required to allocate funds to implement the CSR plan for the inhabitants of the local area in which mining operations take place. The mineral right holder is also required to finance all projects under the approved CSR plan. The relevant provision, enacted in Kiswahili, states:

> *"11.* ***Mmiliki wa leseni ya madini atawajibika-***
>
> ***(a) kutenga fedha kwa ajili ya utekelezaji wa mpango wa wajibu kwa jamii zilizopo eneo lenye shughuli za madini kwa kila mwaka;***
>
> ***(b) kugharamia miradi yote iliyo chini ya mpango wa wajibu kwa jamii kulingana na mpango uliokubaliwa****; na*
>
> *(c) kutoa taarifa ya maandishi kwa halmashauri husika na Tume kuhusu malipo yote yaliyofanywa kwa wakandarasi, wakandarasi wadogo au washirika wengine waliotekeleza miradi."*

The above reproduced regulation may be loosely translated into English as follows:

> *"11. The mineral right holder shall be responsible for:*
>
> *(a) Allocating funds annually to execute the corporate social responsibility plan for the communities surrounding the mining operation areas.*

(b) Provide funding for all projects delineated in the corporate social responsibility plan in accordance with the schedule/plan.

(c) Submitting a written report to the relevant council and the Commission, detailing all payments made to contractors, subcontractors, or other partners involved in the projects."

Given the above, it is clear that the mineral right holder allocates funds to finance CSR projects in accordance with the CSR plan agreed between the mineral right holder and the inhabitants of the local area in which mining operations take place (i.e., the host communities), represented by their village or street councils. The funds allocated by the mineral right holder are not for projects prioritised by the district, town, or municipal council, but for those prioritised by the host communities.

Considering the above, the pertinent question is whether the host communities are allocated minimal funds, contrary to the spirit of the Mining Act. In light of the provisions of the law cited hereinabove, and considering that the Mining Act does not provide for the division of the CSR resources (financing) allocated under regulation 11 of the CSR Regulations, it is clear that allocating 60% of the CSR resources (finances), intended to implement and finance projects planned for the host communities, to the district, town, municipal or city council, while allocating 40% of the CSR resources to the host communities, rather than allocating 100% of the finances intended to cover total value of the value of the projects, defeats the spirit of section 136 of the Mining Act and the CSR Regulations themselves. This is because the Mining Act and the CSR Regulations, especially regulations 4(1)(2)(3), 10, and 11, require the implementation of plans developed in consultation with and with the agreement of host communities.

Therefore, this Court holds that the Applicants are directly affected by the minimal allocation of CSR resources under the current structure promulgated by the CSR Regulations, which is contrary to the spirit of section 136 of the Mining Act. It follows that the first ground of the application is meritorious.

Turning to the second ground of the application, the issue for determination is whether Regulation 4(4)(a) and (b) of the CSR Regulations conflict with section 136(5) of the Mining Act. Given the analysis in the first ground above, this ground will not detain this Court for reasons that will be demonstrated below. Nevertheless, it is important to note that the Respondents' position is that this Court may quash the decision of a public body if it is ultra vires or exhibits an error of law, because such a decision is a nullity. However, the learned State Attorney argued that there is no material evidence or facts to support the grant of the order of certiorari sought by the Applicants in the present case.

As alluded to earlier in this ruling, the Mining Act, particularly section 136, does not provide for the distribution or division of the CSR resources intended for the host communities to the district, town, municipal or city council, as erroneously provided by regulation 4(4)(a) and (b) of the CSR Regulations. This Court also holds that the spirit of section 136 of the Mining Act and of the CSR Regulations is that the CSR resources/finances should not be divided. The indivisibility of the CSR resources is reinforced by the drafting of regulations 4(1), 4(2), 4(3), 10 and 11, which are all geared towards benefiting the host communities rather than the projects to be

proposed and managed by the higher hierarchies of the local government authorities, including the district, town, municipal or city councils.

That said, Regulation 4(4)(a) and (b) of the CSR Regulations have no legal basis because they clearly violate the parent act (the Mining Act) by introducing a division of CSR resources that defeats the purpose for which the CSR resources were intended under the Mining Act. It is also the view of this Court that if the legislature had wanted and/or intended a specific amount of CSR resources to be allocated to the district, town, municipal, or city councils, it would have legislated specifically in that respect, because direct benefit to the host communities is a key aspect of the CSR plan, CSR resources, financing and implementation. That fundamental aspect could not be surrendered to an individual who would easily stray into error and whose decisions could defeat the whole purpose of the legislature when it enacted that the CSR plan should prioritise projects in the host communities.

Moreover, this Court takes note of sections 160(1) and 160(2)(v) of the Mining Act, which empower the Minister responsible for minerals to make regulations on various matters, including principles relating to corporate social responsibility. However, the mandate to make regulations does not confer on the Minister the power to make regulations that defeat the provisions of the parent act, because if he does, the resultant subsidiary legislation or relevant provision of the same shall be void, so far as it conflicts with the parent act.

The above position is clearly provided for under section 36 of the **Interpretation of Laws Act, Cap. 01 R.E. 2023**, which reads:

> *"36. - (1)* ***Subsidiary legislation shall not be inconsistent with the provisions of the written law under which it is made, or***

of any Act, and subsidiary legislation shall be void to the extent of any such inconsistency."

Given the above, it is clear that regulation 4(4)(a) and (b) of the CSR Regulations, which purportedly provides for the division of CSR Resources, allocating 60% to the district, town, municipal, and city councils and 40% to the host communities, is inconsistent with the provisions of section 136 of the Mining Act, which did not give the Minister the mandate to legislate on the division of CSR Resources (finances) intended to benefit host communities and to transfer them to other portfolios at the Minister's discretion, to the detriment of host communities. The Mining Act did not allow the Minister to legislate by prioritising CSR beneficiaries other than those intended by the Mining Act, by adding beneficiaries not intended or mentioned by the Mining Act, or by enacting a provision of subsidiary legislation intended to defeat the purpose of the parent act, namely, CSR plans and resources to benefit the host communities.

Therefore, by allocating 40% of the CSR resources to the host communities and 60% to the town, district, municipal or city council, the CSR plan and the CSR Resources intended by the Mining Act to prioritise and benefit the host communities are defeated by a provision of the subsidiary legislation, namely the CSR Regulations made by the Minister. The Mining Act contains no hint that the legislature intended for the town, district, municipal, or city council to benefit more from CSR Resources than the host communities. It is also crystal clear that the Minister prioritised the town, district, municipal, or city councils through the back door, while throwing the host communities under the bus.

The act of defeating or undermining the legislature's intention is also evident because Regulation 4(4) of the CSR Regulations did not seek extra funding beyond what was procured under the CSR plan prepared to meet the needs of the host communities, but decided to expurgate 60% of the exact funds specifically designed and budgeted to finance identified projects in the CSR plan. Therefore, it was not legislation in good faith; rather, it was, at the very least, administrative sabotage, spearheaded by the administrator's deliberate effort to undermine the parliamentary enactment. Furthermore, Regulation 4(4)(a) and (b) was consciously and expressly adopted to undermine the legislature's intention regarding the beneficiaries of CSR resources by scaling down the funds procured and justified through CSR plans.

Administrative actions aimed at sabotaging the parliament's intentions are not uncommon worldwide, but should not go unchecked by the courts. This Court is inspired by the comments of David L. Noll, a Professor of Law at Rutgers Law School, in his work on '**Administrative Sabotage**' published in the Michigan Law Review, cited as 'Administrative Sabotage, 120 Mich. L. Rev. 753 (2022)'. The article is available at https://repository.law.umich.edu/mlr/vol120/iss5/2. He writes that:

> *"In hundreds of statutes, Congress has authorized agencies to develop subsidiary statutory policy that carries the force of law.* ***The broad language of these delegations allows agencies to make policy decisions that kill or nullify statutory programs****."*

It was further commented that:

> *"****But broad delegations also increase the risk of administrative sabotage****. First,* ***statutory delegations create the basic authorities***

that agencies use for sabotage. *Second,* ***broad delegations create ambiguity about the scope of agency authority, allowing agencies to present actions designed to kill or nullify statutory programs as ordinary exercises of agency discretion***. *Third, that ambiguity makes it less likely that administrative sabotage will be checked by judicial and congressional oversight, because an agency can claim that its actions are within the scope of its statutory authority and entitled to judicial deference."*

The learned author also advised and concluded that:

"*Still,* ***courts should be sensitive to the dynamics of administrative sabotage and willing to use the tools that are available to them to address it. They should also recognize when invitations to deploy constitutional doctrines are part of an effort to sabotage a statutory regime and think twice about participating in the project***."

The above enlightening juristic thoughts and propositions also find support in the persuasive decision of the House of Lords (UK) in the case of **R (Miller) v Prime Minister** [2019] UKSC 41, where the Court declared the Prime Minister's advice to prorogue the parliament for six weeks unlawful because it was outside the power of the Prime Minister and because it had the effect of frustrating/preventing the functions of parliament without reasonable justification as there had been no reason to prorogue the parliament.

In light of the above persuasive authorities, which this Court entirely subscribes to, it is clear, as alluded to earlier, that the act and decision of the First Respondent to enact Regulation 4(4)(a) and (b) of the CSR Regulations were intended to defeat, kill or nullify the programme intended

to be implemented by the use of CSR Resources. Therefore, if such actions (i.e. administrative subversions) by law-making delegated authorities, which undermine the authority of the legislature, were allowed to thrive, the constitutional order and the legislative authority vested in the legislature under Article 64 of the Constitution would be weakened and rendered nugatory. Under the circumstances, this Court cannot afford to be a spectator, but must reject the project intended to subvert the legislative intention by checking the administrative action. It follows that such regulation (Regulation 4(4)(a) and (b) of the CSR Regulations), as rightly argued by the Applicants, is ultra vires, being outside the Minister's regulation-making power. Also see the cases of **Davies and Another v Mistry [1973] 1 EA 463 (CAN)** and **Kasule v Attorney-General [1971] 1 EA 423.**

Moreover, the minister could exercise only the powers vested in him by law and could not arbitrarily enact regulations that would defeat or purportedly amend the principal legislation. See **Salum and Others v Minister for Lands, Housing and Urban Development and National Housing Corporation** (Civil Appeal No 15 of 1994) [1994] TZCA 143 (9 November 1994). Under the circumstances, this Court holds that Regulation 4(4)(a) and (b) of the CSR Regulations is void for being inconsistent with the provisions of the Mining Act.

As regards the third ground of the application, the issue for determination is whether the Applicants and the host communities (inhabitants of the local area within which mining operations/activities are taking place) were consulted in the process of enacting the CSR Regulations.

As alluded to hereinabove, the Applicants contend that they were not consulted during the enactment of the CSR Regulations, but the Respondents deposed and argued that mining stakeholders, including the local government authorities and local communities, were consulted, and that the Applicants were duly represented at the meeting held on 21st November 2024 by Anthony Nyange, the vice chairman of the Tarime District Council, and 3 other representatives. The Respondents also attached an attendance register and a summary of proceedings as 'Annex-OSG1' to the counter affidavit, in an attempt to prove that the Applicants, being members of the local inhabitants, were consulted in the process of enacting the CSR Regulations.

The Respondents also argued that the Applicants' contention that they were not consulted is baseless for want of proof, noting that the Applicants' submissions are not proof. They cited the cases of the **Archdiocese of Dar es Salaam v. The Chairman, Bunju Village Government & 11 Others**, Civil Appeal No. 147 of 2006; **David Joseph Mahende vs Afriscan Group T. Ltd** (Civil Appeal 200 of 2016) [2022] TZCA 816 (15 December 2022); and **Rosemary Stella Chambejairo vs David Kitundu Jairo** (Civil Reference 6 of 2018) 2021 TZCA 442 (2 September 2021).

In resolving the above issue, it should be noted that the Applicants pleaded non-consultation of the local inhabitants in their affidavit and statement, which the Respondents countered by stating that the Applicants and the host communities were consulted. The Respondents attached an attendance register and what purports to be a matrix of proceedings at the supposed consultative meeting.

At the outset, and in light of the Respondents' depositions in the counter-affidavit and reply to the statement supporting the application, it is clear that the Respondents do not object to the principle that consultation with the persons likely to be affected by a particular law is key before any law is enacted by the relevant authority with legislative mandate. This is why they pleaded that the Applicants and the host communities were consulted and attached 'Annex-OSG1' as proof.

However, upon thorough review of 'Annex-OSG1' to the Respondent's counter-affidavit, several issues raise eyebrows, as will be demonstrated below.

First, all attendees and/or invitees to the purported consultative meeting were from either the entities involved in mining activities or local government authorities at the district and town council levels, not at the village, street, or ward levels. Furthermore, no member of the host communities, which were largely affected by the CSR Regulations, attended the meeting.

Second, there is no proof that the Respondents informed the members of the host communities anywhere in the country to attend the said meeting. This is so, considering that neither letters of invitation to the host communities nor to the leaders of the relevant villages were sent and delivered to them, nor were notices of the said meetings published in newspapers or other forms of publication, whether digital or print media, to rely on the presumption that the host communities were duly informed, but failed to attend the meeting, or had no interest in attending the same. Furthermore, there is no proof that the relevant legislative authority or its

representatives visited the host communities to gather their views on the then-proposed regulations.

Third, since the persons invited to and attending the purported consultative meeting represented the interests of the mineral rights holders and the town, district or municipal councils, it is absurd to argue that the chairman of the Tarime District Council represented the local inhabitants of the areas where mining is taking place, given that the Tarime District Council and other local government authorities present at the said consultative meeting represented contending interests from those of the local inhabitants. This is evident from 'Annexe-OSG1', which indicates that the representatives of the district or town councils sought a substantial stake in the CSR resources, thereby undermining the interests of the host communities.

Fourth, the ludicrousness is also reflected in the decision made by the Minister when enacting the CSR Regulations to divide the CSR resources into 60% and 40%, as it was contrary to the majority view of stakeholders at the consultative meeting, most of whom proposed that the town, district, municipal and city councils take a smaller portion of the CSR Resources. However, Regulation 4(4)(a) and (b) represent the reverse of the views aired by the stakeholders.

Fifth, the matrix of views of the alleged stakeholders attached to the counter affidavit does not indicate the author's identity and is not signed to authenticate it.

Sixth, assuming the views contained in the said matrix are authentic, it is clear that no representative of the host communities aired their views at

the said meeting, which further supports the second item above, namely that none of the local inhabitants were invited to attend the purported consultative meeting.

Considering the above, it is important to note that laws are made to regulate the affairs of people, either generally or for a specific group. In this case, subsidiary legislation was enacted to regulate CSR Resources for host communities, and thus the law-making authority had a duty to consult them, given that the provisions of the law directly affected their rights and affairs. As regards the importance of consultation, this Court finds that it was well explained in the case of **R v Secretary of State for Social Services ex parte Association of Metropolitan Authorities** [1986] 1 WLR 1, where, when remarking on implementing a statutory consultation, the Court observed as follows:

> *"**The essence of consultation is the communication of a genuine invitation to give advice and a genuine receipt of that advice; to achieve consultation, sufficient information must be supplied by the consulting to the consulted party to enable it to tender helpful advice; sufficient time must be given by the consulting to the consulted party to enable it to do so, and sufficient time must be available for such advice to be considered by the consulting party;** sufficient in this context does not mean ample, but at least enough to enable the relevant purpose to be fulfilled; helpful advice in this context means sufficiently informed and considered information or advice about aspects of the form or substance of the proposals, or their implication for the consulted party, being aspects material to the implementation of the proposal as to which the consulting party might not be fully informed or advised and as to*

which the party consulted might have relevant information or advice to offer;"

This Court fully subscribes to the above persuasive observation on the rationale for consultation. However, the Court also notes that the requirement to consult is not statutorily provided for under the Mining Act. Given that the Applicants and the local inhabitants were already benefiting from undivided and unscaled-down CSR resources, the Applicants had a legitimate expectation that they would be consulted. See the persuasive decision in the case of **Luton BC v Secretary of State for Education** [2011] EWHC 217.

Moreover, in the case of **R v Devon County Council, ex p. Baker** [1995] 1 All ER 73, the Court of Appeal of England held as follows regarding proper consultation:

"It is common ground that, whether or not consultation of interested parties and the public is a legal requirement, if it is embarked upon, it must be carried out properly. To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken *(R v Brent LBC ex parte Gunning [1986] 84 LGR 168)."*

Again, this Court unreservedly subscribes to the above observation. Therefore, given the contents of 'Annex-OSG1', it is clear that the First Respondent (Minister) failed in his duty to consult the host communities

before the enactment of Regulation 4(4)(a)(b) of the CSR Regulations. Moreover, even the views of the stakeholders who attended the purported consultative meeting were not consciously taken into account in the ultimate decision to enact the CSR Regulations.

Consequently, the failure to consult, or consulting without considering the views of those consulted in the final version of the CSR Regulations, exacerbated the breach of the principle of natural justice, namely the right to be heard, rendering the Minister's decision to enact Regulation 4(4)(a) and (b) of the CSR Regulations a nullity. The cases of **Patrobert D. Ishengoma v. Kahama Mining Corporation Ltd, Barrick Tanzania Bulyanhulu & Others** (Civil Application No. 172 of 2016) [2018] TZCA 227 (2 October 2018), and **Mbeya-Rukwa Auto Parts and Transport Ltd v. Jestina George Mwakyoma** [2003] TLR 251 are relevant to the infringement of the right to be heard.

It follows that failure to consult the local inhabitants of the areas where mining activities were taking place on the law regulating the CSR plan and the allocation of CSR Resources is a fatal irregularity, rendering regulation 4(4)(a) and (b) of the CSR Regulations a nullity.

Moreover, the issue of irrationality of the regulations, as rightly argued by the Respondents' learned State Attorney, shall not be considered by this Court because it was not pleaded in the affidavit or statement supporting the application. See the case of **Paulina Samson Ndawavya vs Theresia Thomasi Madaha** (Civil Appeal 45 of 2017) [2019] TZCA 453 (11 December 2019) (TANZLII).

In light of the above deliberations and analysis, this Court allows this application for judicial review and makes the following orders:

One, the order of certiorari is granted, and the decision of the First Respondent in enacting Regulation 4(4)(a) and (b) of the Mineral Rights Holders' Social Responsibility Regulations/the Mining (Corporate Social Responsibility) Regulations (Kanuni za Wajibu wa Wamiliki wa Leseni za Madini Kwa Jamii), G.N. No. 409 of 2023, is quashed for being ultra vires.

Two, Regulation 4(4)(a) and (b) of the Mineral Rights Holders' Social Responsibility Regulations/the Mining (Corporate Social Responsibility) Regulations (Kanuni za Wajibu wa Wamiliki wa Leseni za Madini Kwa Jamii), G.N. No. 409 of 2023, is declared null and void for being inconsistent with the Mining Act.

Three, this Court prohibits the use, applicability, and implementation of Regulation 4(4)(a) and (b) of the Mineral Rights Holders' Social Responsibility Regulations/ the Mining (Corporate Social Responsibility) Regulations (Kanuni za Wajibu wa Wamiliki wa Leseni za Madini Kwa Jamii), G.N. No. 409 of 2023 , G.N. No. 409 of 2023.

Under the circumstances of the case, each party shall bear their costs. It is so ordered.

Dated at **Musoma,** this 28th day of January 2026.

THE HIGH COURT OF TANZANIA
MUSOMA

K. I. Kafanabo
Judge

The ruling was delivered in the presence of Messrs Kassim Gilla and Kevin Mutatina, Advocates for the Applicants and Ms. Neema Mwaipyana Senior State Attorney, and Anesius Stewart, State Attorney for the Respondents.

K. I. Kafanabo
Judge
28/01/2026