LEGAL UPDATE

FB ATTORNEYS

20 November 2026



Court Nullifies Subsequent Sale of Mineral Right

- **Subsequent sale of previously sold mineral right declared void**
- **Purchasers required to exercise proper due diligence**
- **Failure to inspect original licence defeats claim of bona fide purchaser**
- **Allegations of coercion and duress must be strictly proved**
- **High Court's jurisdiction over contractual dispute upheld**
- **Award of TZS 50M in general damages upheld**

Background
On 9 November 2026, the Court of Appeal of Tanzania (the Court) delivered its judgment in Consolidated Civil Appeals No. 658 and 1105 of 2025, concerning the sale and subsequent transfer of the same Prospecting Licence to two different purchasers.

In January 2023, the 1st Respondent entered into an agreement with the 2nd Appellant for the purchase of a Prospecting Licence covering an area of 8.42 square kilometres in Nachingwea District, Lindi Region, for a consideration of USD 10,000. Having paid the purchase price and obtained the original documents, the 1st Respondent initiated the process of transferring the licence before the Mining Commission.

Interestingly, while the transfer process was ongoing, the 2nd Appellant entered into another agreement in April 2023 for the sale of the same licence to the 1st Appellant. The 2nd Appellant subsequently requested the Mining Commission to halt the transfer in favour of the 1st Respondent and facilitate the transfer and registration of the licence in favour of the 1st Appellant.

Aggrieved by the said transfer, the 1st Respondent instituted a suit before the High Court, Commercial Division, which held that the first agreement was valid and enforceable and that the subsequent sale and transfer of the licence to the 1st Appellant were invalid. The High Court further awarded the 1st Respondent general damages of TZS 50M and costs. Dissatisfied with the decision, both Appellants appealed to the Court.

The Court's Decision
In determining the validity of the first agreement, the Court dismissed the 2nd Appellant's allegations that its director had been abducted and coerced into signing the agreement. The Court noted that the existence of a Board resolution authorizing the sale, payment records, tax clearance certificate and subsequent correspondence contradicted the allegations of coercion. The Court reiterated that allegations of coercion, forgery or duress must be specifically pleaded and strictly proved, with the standard of proof being higher than that required in ordinary civil cases.

More importantly, the Court emphasized the principle of sanctity of contract, stating that parties who freely and voluntarily enter into lawful agreements must honour their contractual obligations. Since the agreement between the 2nd Appellant and the 1st Respondent remained valid and enforceable, the 2nd Appellant had nothing to sell to the 1st Appellant. Accordingly, the subsequent agreement and transfer of the Prospecting Licence were void ab initio under the principle of nemo dat quod non habet, meaning that one cannot give what they do not have.

In relation to the 1st Appellant's claim that it was a bona fide purchaser for value, the Court found that the 1st Appellant had failed to exercise proper due diligence. Despite purchasing the licence for valuable consideration, the 1st Appellant proceeded with the transaction without inspecting the original licence, which was in the possession of the 1st Respondent. The Court emphasized the principle of caveat emptor (buyer beware), which places the responsibility of making necessary inquiries before completing a purchase on the purchaser. Furthermore, the Court reiterated that there can be no bona fide purchaser in an illegal sale.

It is worth noting that the Court also upheld the jurisdiction of the High Court to determine the dispute. Among other things, the Court observed that the Mining Commission, having been joined as a defendant in the suit, could not entertain the dispute without offending the principle of impartiality and the rule against bias. Ultimately, the Court dismissed both appeals with costs, thereby upholding the decision of the High Court, including the award of TZS 50M in general damages to the 1st Respondent.

The decision serves as an important reminder to investors acquiring mineral rights to undertake thorough due diligence before completing such transactions. In particular, purchasers should not merely rely on copies of licences or their subsequent registration by the Mining Commission, but should also verify the seller's right to dispose of the licence, inspect original documents and establish whether the licence is subject to any prior contractual arrangements.

To read the judgment, click here.

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E: info@fbattorneys.co.tz

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FB Attorneys
8th Floor, Amani Place, Ohio Street
P. O. Box 19813
Dar es Salaam, Tanzania
T: +255 22 2135994/5
E: info@fbattorneys.co.tz
W: www.fbattorneys.co.tz

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