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IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

(CORAM: NDIKA, J.A.. RUMANYIKA. J.A., AND NGWEMBE. J.A)

CONSOLIDATED CIVIL APPEALS NO. 658 AND 1105 OF 2025

KEDA TANZANIA RESOURCES COMPANY LIMITED.....1st APPELLANT
BHG ENERGY AND MINERALS LIMITED.....2nd APPELLANT

VERSUS

KOM MINING COMPANY LIMITED.....*1st* RESPONDENT
THE MINING COMMISSION.....2nd RESPONDENT
THE ATTORNEY GENERAL.....3rd RESPONDENT
(Appeal from the Judgment and Decree of the High Court of Tanzania Commercial Division at Dar es Salaam)

(Mkeh&J)

dated 30th day of January, 2025

in

Civil Case No. 16362 of 2024

JUDGMENT OF THE COURT

7thOctober&9thNovember, 2026

NGWEMBE. J.A.:

Keda Tanzania Resources Company Limited (the 1st appellant) and BHG Energy and Minerals Limited (the 2nd appellant) were both aggrieved

by the judgment and decree of the High Court of Tanzania, Commercial Division at Dar es Salaam (the trial court) in Commercial Case No. 16362 of 2024. Consequently, they filed separately Civil Appeal Nos. 658 and 1105 of 2025, respectively. At the hearing, the two appeals were consolidated under rule 110 of the Tanzania Court of Appeal Rules, 2009 (the Rules) as they originate from the same judgment and decree.

The nature of the dispute was that KOM MINING COMPANY LIMITED, (the 1st respondent) purchased two mining prospecting licences from the 2nd appellant whereas, the first contract was executed on 7/1/2023, which is the subject of this appeal and the second contract entered on 10/1/2023. In the course of processing a transfer of the licence

before the Mining Commission (the 2nd respondent), the 1st respondent discovered that the 2nd appellant had purportedly sold the same licence to the 1st appellant by a contract signed on 28/4/2023. The 2nd appellant assisted the latter to secure transfer and registration from the 2nd

Being discontented with the acts of the 2nd appellant, the 1st respondent.

respondent sued the appellants herein together with the 2nd and 3rd respondents, seeking among others: *first,* a declaratory order that the purchase agreement of Prospecting Licence No. PL12103/2022 entered on 07/01/2023 between the 1st respondent and 2nd appellant remained valid; *second,* the 2nd appellant breached that agreement by making a subsequent agreement and transfer of the said licence to the 1st appellant on 28/04/2023; *third,* a declaratory order that, the subsequent transfer agreement was void *ab initio;* and *fourth,* the transfer order made by the 2nd respondent to the 1st appellant on 16/05/2023 was illegal; *fifth,* the 1st respondent be declared the rightful owner of the licence in dispute; *sixth*;

the 2nd appellant be ordered to fulfil her contractual obligation under the

agreement dated 07/01/2023; and *seventh*, award of punitive damages, general damages and costs be made.

According to the pleadings and evidence adduced at trial, the 2nd appellant was holding a valid licence granted by the 2nd respondent for a

period of 48 months commencing from 01/11/2022 on the area measuring 8.42 Square Kilometres, at Nachingwea District in Lindi Region. That, on 07/01/2023 entered into a transfer agreement of rights of prospecting

licence to the 1st respondent in consideration of USD. 10,000.00 (exhibit PI). After the 1st respondent had paid the price, and received the original documentations, it initiated a transfer process

Meanwhile and out of the blue, the 2nd appellant executed another agreement purporting to transfer the same rights of prospecting from the 2nd appellant to itself.

licence

to the 1st appellant (exhibit D3). The 2nd appellant then requested the 2nd

respondent to halt the transfer process in favour of the 1st respondent (exhibit D2). Further, the 2nd appellant facilitated the transfer of that

licence in favour of the 1st appellant. Eventually, the transfer process was

made by the 2nd respondent in favour of the 1st appellant. Having noticed the said transfer through official search (exhibit P10), the 1st

respondent

objected to that transfer. In the due course, the 1st respondent sued the appellants together with the 2nd and 3rd respondents as alluded to above.

The 2nd appellant disputed the claim and averred that the agreement between her and the 1st respondent was not made by the company but

by a director of the company one Turn bo Damian Isuto by coercion and duress. It was its pleading and evidence, testified by the said Isuto as DW1, that the said Isuto was abducted by the director of the 1st respondent's company, one Mhoja Nkwabi Kabalo. While under restraint, DW1 was forced to sign those documents whose contents he did not know about at that time. That, he added that, other documents relied upon by the 1st respondent were forged. Moreover, he alleged to have reported the alleged abduction to the Director of Criminal Investigation (DCI) at Police Head Quarters (exhibit Dl).

Four issues were framed for the trial Court's determination; *first,* whether there was a valid contract between the 1st respondent and the 2nd appellant and between the 1st and 2nd appellants; *second,* whether there was any breach of contract; *third*' whether the transfer between the 1st and 2nd appellants was lawful; and *fourth*, what reliefs were the parties entitled to.

Upon hearing the parties, the High Court (Mkeha, J., as he then was) found that the agreement in exhibit PI between the 1st respondent and 2nd appellant was valid and enforceable. The 2nd appellant failed miserably to substantiate its allegations of coercion and abduction. It remained far from the truth. Equally, the narration that when was the said Isuto was abducted, the documents were presented to his wife Ms. Anna Karoli Lekule (co-director), to sign as a condition for his release was unfounded because the said wife and co-director was not called to testify at trial. Furthermore, the alleged abduction on 05/01/2025 and execution of exhibit PI on 07/01/2023 and the reporting the incident to the DCI on 01/02/2023 were not compatible to reality as there was no explanation for all that delay. Surprisingly, the said director who alleged to have been abducted, proceeded to execute another subsequent agreement with the 1st respondent just three days after the first contract, that is, on 10/01/2023 transferring another mining licence which is not subject of this dispute.

Given the trial court's finding that the sale between the 1st respondent and 2nd appellant was valid and enforceable in law, it found it ineluctable that the 2nd appellant had nothing to sell to the 1st appellant,

rendering the purported sale to the 1st appellant void *ab initio.* It was also

the finding of the trial court that the 2nd appellant breached the agreement with the 1st respondent when it halted the transfer process in its favour.

That, owing to the above conclusion, the trial court held that the 1st appellant was not a *bona fide* purchaser for value since, apart from the

fact that there was no valid contract and thus, no right to transfer the said licence to it, also it did not exercise due diligence like inquiring on the whereabouts of the original licence instead of relying in its copies. It was

also the decision of the High Court that the 2nd respondent acted improperly by proceeding to transfer the said licence in favour of the 1st appellant while well aware of the subsisting agreement with the 1st respondent. Consequently, the 2nd appellant was ordered to fulfil its contractual duties towards the 1st respondent. Also, the 1st respondent

The appellants were not amused by that decision of the trial court, was awarded general damages of TZS. 50,000,000.00 and costs hence as alluded to above, the 1st appellant preferred an appeal to the payable by both appellants.

Court raising twelve grievances which may be summarized into the following grounds: **one,** the 1st appellant was a *bona fide* purchaser; **two,** the trial court ignored the substantial investment made in the prospecting area; **three,** the trial court failed to order equitable remedy in its favour

instead of nullifying the transfer; and **four,** the trial court lacked jurisdiction and that, the order for costs was improper in law.

The 2nd appellant likewise stood firm to challenge the decision of the trial court based on nine grounds, which may conveniently be summarized into the following grievances: **one,** the trial court lacked jurisdiction; **two,** the trial court failed to analyse the evidence properly; **three** the award of general damages was excessive; and **four,** the trial court erred in nullifying the transfer of the licence to the 1st appellant.

At the hearing of this appeal, Mr. John James, learned advocate represented the 1st appellant and the 2nd appellant was represented by a team of learned counsel Messrs. Stephen Axweso, Ms. Abbriaty Kivea, Ferdinand Makore and Victor John Kikwasi. On the other side, the 1st respondent was represented by Dr. Chacha Murungu, learned advocate, who teamed up with Messrs. Kyariga Nyaisa Kyariga, Goodchance Lyimo, Gideon Opanda, Octavian Mushukuma, Shundi Murutu and Jonathan Wangubo, all learned counsel. Another team of State lawyers for the 2nd and 3rd respondents were led by Messrs. Boaz Msoffe, Omary Ngatanga and Frank Makigijo, learned State Attorneys.

In support of the appeal, Mr. James adopted and relied on the written submission filed in Court on 5/6/2025 with no additions.

2nd appellant, Mr. Makore, first prayed to withdraw their ground on jurisdiction of the trial court and proceeded to add to the written submission filed in Court on 30/6/2025, that there was evidence that the contract between 2nd appellant and the 1st respondent was obtained under duress. More so, Mr. Axweso forcefully argued that PW3 testified that he received all documents from the 1st respondent and that he signed the transfer forms on behalf of the 2nd appellant. That the trial court did not address and consider the allegations of forgery which was reported to the police and PW3 was interrogated by police. It was Mr. Axweso's assertion that had the trial court considered that piece of her evidence, it would have reached at a different finding.

Mr. Kikwasi took over and added to what Mr. Axweso has submitted, that an order by the trial court to the 2nd appellant that should fulfil contractual obligation was improper, contrary to the terms and conditions of the contract itself which stated that, in case the transfer is refused by the Mining Commission, parties will revert to their original position.

Mr. Kyariga adopted their written submission and added that, the 1st appellant would not be a *bond fide* purchaser as she signed a void contract in terms of item 1. 6 appearing in pages 398 - 404 of the record of appeal.

More so, the 1st appellant failed to verify the existence of the original documents which are under custody of the 1st respondent.

Mr. Murutu briefly argued that the epicentre of the dispute is on the 2nd appellant's purported sale and transfer of the mining licence to the 1st appellant which did not have. That, there was no coercion or duress

between them. More so, the 2nd appellant did neither plead nor lead evidence to establish and prove the alleged coercion. He further pointed

that, the same director of the 2nd appellant signed another contract with

the 1st respondent on 10/01/2023 and he cooperated in clearing and transferring the said licence from the Mining Commission. Above all, that he wrote several other correspondences including the letters at page 357. The argument that paragraph 6 (f) of the contract provided for the

Mr. Msoffe, for the 2nd and 3rd respondents, argued in support of the remedy, is irrelevant in the circumstances of this case. Therefore, the

trial court's decision. He submitted that the first agreement between the 1st appellant could not claim any remedy from the invalid contract.

2nd appellant and the 1st respondent remained valid and enforceable to Thus,

date while the subsequent agreement with the 1st appellant on the same urged the Court to dismiss the appeal with costs.

subject matter was invalid, unenforceable and illegal. To him, the trial

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court was correct to invalidate the whole process of the second contract between the appellants as the 2nd appellant had nothing to sale to the 1st appellant. That, the Mining Commission could neither invalidate the first contract nor could it validate the second contract which was invalid, illegal and unenforceable. Supported his argument by the decision of the Court in **Melchiades John Mwenda v. Gizelle Mbaga & Others** [2020] TZCA 1856.

Mr. Msoffe added by referring us to section 150 of the Mining Act, that the Mining Commission does not have powers to resolve disputes related to contractual rights like the one under consideration. He buttressed his argument with our decision on **ZB Holdings (T) Limited v. Goodwil (Tanzania) Ceramic Company Limited** [2026] TZCA 1058. In conclusion, Mr. Msoffe implored the Court to dismiss the appeal with costs.

Mr. Axweso rejoined that the facts about coercion and duress were pleaded and evidence was led by the 2nd appellant, as per pages 649 - 650. Further he contended that section 119 (d) of the Mining Act, allows the Mining Commission to determine matters of similar nature. His point was that, had the dispute been referred to the Mining Commission, it

would exercise its powers to solve the dispute without resorting to the court process.

After careful consideration of the written submissions by parties and their respective oral arguments and perusal of the record of appeal, we find that the crucial issues for our determination boiling into whether the trial court's decision was supported by the evidence on record and whether the reliefs granted by the trial court were proper in law.

Even though the 1st appellant abandoned the ground on jurisdiction of the trial court, the same was maintained by the 2nd appellant and he actually addressed us on it. We therefore find imperative to emphasize few issues on this ground: *first,* the High Court has both territorial and unlimited pecuniary jurisdiction. To question its jurisdiction, there must be a clear provision of law which ousts its jurisdiction; *second*\ all suits for or against the government, in terms of sections 6 and 7 of the Government Proceedings Act, Cap 5 R.E. 2023 are instituted in the High Court. Other courts below the High Court possesses no jurisdiction to entertain cases for or against the government; *three,* in respect of this appeal, the Mining Commission was also impleaded as one of the defendants in the trial court and the Office of Solicitor General acting as advocate for the Government, appeared to defend the Commission. Therefore, the Commission could

not entertain the complaint of the parties in this case without offending the principle of impartiality and the rule against bias. That said, the issue of jurisdiction of the High Court was unfounded and we entertain no doubt that the trial court was seized with jurisdiction. We accordingly dismiss this complaint.

The next issue is on validity of the contract between the appellants. Both appellants maintained that there was no legal basis upon which to nullify their contract which adhered to the statutory requirement. On the other side, ali respondents challenged its validity as the 2nd appellant had nothing to sell to the 1st appellant.

Determining this ground, we take note of the duty of the first appellate court to have the liberty to reevaluate the evidence and reach at independent findings or factual inferences when appropriate. In this case there are certain issues which are not disputed: *first* the 1st respondent signed a sale agreement on 07/01/2023 for transfer of the 2nd appellant's prospecting mining licence for the consideration of USD 10,000.00 as exhibited by exhibit PI; *second*before the said agreement could be entered, the 2nd appellant's board meeting was convened and a board resolution was reached to sell the said licence to the 1st respondent. *Ihe* Secretary and Chairman of the 2nd appellant's board signed the board

resolution as indicated in exhibit P3; *third*\ it is on record that on 30/01/2023, TRA issued a Tax Clearance Certificate in respect of that transfer; *fourth*, the 2nd appellant, in what we perceive as good faith, wrote a letter on 31/01/2023 requesting some rectification of the location of the prospecting project area to be at Nachingwea in Lindi Region; *fifth,* it is undisputed that, the appellant instructed the 2nd respondent to halt the transfer process of the interest in PL 12103/2022 to the 1st respondent; and *sixth*, it is uncontested that the 2nd appellant, while knowing that there was a subsisting contract with the 1st respondent, sold the same licence to the 1st appellant and effectively facilitated its transfer.

We have dispassionately considered the 2nd appellant's contention that its director was coerced to sign exhibit PI and all the accounts about the alleged abduction. In its WSD, paragraphs 3, 4, 5 and 6, as well as the testimony of DW1, indicate that the sale agreement with the 1st respondent was void as it was under coercion as alluded to above. However, such assertion was considered by the trial court and found wanting. Considering the whole circumstances culminating in the signing of the said contract, including the presence of the company board resolution before signing it, payment slips and the letter from TRA which bears the receipt stamp of the TRA, all contradicts the assertion of abduction and coercion. The 2nd appellant's actions prior to and following

the agreement, as well as the chronology of events, established that the agreement was freely entered into. The allegations of coercion and abduction are nothing more than a disingenuous, fabricated narrative.

Further, we agree with the learned trial Judge on failure of the 2nd appellant to summon the co-director one Anna Karoli Lekule, who was alleged to have also signed the documents by coercion. That failure is incompatible with the allegations of abduction and coercion; otherwise, her evidence would have corroborated the alleged coercion and duress.

We view that the law is settled on allegations of coercion or forgery or duress, that the alleging party must specifically plead and strictly prove it. Tine standard of proof is above the ordinary standard in civil suits. See **Omari Yusuph v. Rahma Ahmed Abdulkadr** [1987] TLR 169, where the Court observed that:

> *"As shown, the appellant came to court seeking to Impinge the transfers of the property alleging criminal conduct i.e. fraud on the parts of the vendors, the purchasers and Mr. Ismail. I think it is now established that when the question whether someone has committed a crime is raised in civil proceedings that allegation need be established on a higher degree of probability than that which is required in ordinary civil cases, the*

logic and rationality of that rule being that the stigma that attaches to an affirmative finding of fraudjustifies the imposition of a strict standard of proof"

The above position has been maintained in many of our decisions including, **City Coffee Ltd v. The Registered Trustee of Ilolo Coffee Group** [2019] TZCA 386.

In our examination and analysis of the evidence on record, we are in agreement with the trial court that there was no such abduction as alleged by DW1, let alone coercion in executing the said sale agreement. We would conclude in the affirmative that the sale agreement between the 2nd appellant and the 1st respondent was valid, binding and enforceable in law.

We would like to emphasis on sanctity of contract that, once parties have duly entered into it, they must honour their obligations. Once a contract is freely and voluntarily entered into, it should be held sacred, and should be enforced by the courts if it is broken. It is a fundamental legal principle that once parties have freely and properly entered into a lawful agreement, its terms must be honoured and enforced. Such doctrine ensures predictability, trust and stability in commercial, like this one and personal dealings. It is closely tied to the Latin Maxim of *Pacta*

sunt servanda (Agreements must be kept). Thus, the 2nd appellant was obliged to perform the agreed terms and conditions of the contract.

To our understanding, and as rightly decided by the trial court, since the contract between the 2nd appellant and 1st respondent remained valid, obviously the subsequent agreement with the 1st appellant on the same

subject mining licence and the purported transfer were void *ab initio* under the relevant doctrine of *nemo dat quod non habet.* See; **Tom Morio v. Athumani Hassan and Others** [2022] TZCA 114; and **Wild Africa Limited v. Kastuli S. Teko and Others** [2026] TZCA 737.

Regarding the allegations posed by the 1st appellant that it was a *bona fide* purchaser, we find the assertion falling short in the circumstances of this case. That, the 1st appellant failed to demonstrate its good faith and due diligence. For instance, DW2 a director of the 1st

appellant at page 665 testified under cross-examined as follows:

> *"Yes, we bought two licences. USD 780,000 before*
> *VAT. For both licences. Yes, we had a copy. I do*
> *not know whether absence of the original was disclosed at the Mining* ***Commission... I did not know BHG had no original licence.*** *Alter we had paid the last payment is when we came to* ***know BHG had no originai licence.*** *On 28/07/2023. Yes, I asked for the originai licence*

from BHG. The response was that she had some issues with KOM MINING CO. Regarding the disputed licence, I don't know whether the transfer fees were paid".

[Emphasis provided]

The testimony of DW3, corroborates that, the 1st appellant was not diligent, as per page 671 that it proceeded with the execution of the said agreement in the absence of the original documents, which were and still under the custody of the 1st respondent. This alone tells all on the diligence of the 1st appellant under the doctrine of *caveat emptor.* The doctrine is a classical common law principle that the primary responsibility for checking the quality, fitness, and condition of a product or property falls on the purchaser before completing the purchase process. Had the 1st appellant exercised due diligence, it would have noticed that the 2nd appellant did not have that subject matter to dispose of. Thus, the 1st appellant had a constructive notice and could not benefit from its own wrongs.

Another criterion which was paramount fact is the illegality of the purported sale itself. We resolved earlier that there was nothing for the
2nd appellant to sell and therefore, any purported sale was illegal. In illegal sale, no buyer can be a *bona fide* purchaser. See the case of Millicom

Tanzania Nv v. James Alan Russels Bell & Others [2018] TZCA 355 where the Court *inter alia* observed that:

> *"7/7 our considered view, the 2nd respondent cannot take shelter of being a bona fide purchaser. We say so because with the illegal sale there can be no bona fide purchaser and in fact no title passed to the 2nd respondent Besides, we have found the 2nd respondent to be the cause of her misfortune because a day after the purchase of shares which was the earliest opportune moment, having smelt a rat on some indicators of misrepresentation, she ought to have maintained her demand to be refunded money. Instead, while in possession of the current status on ownership of the auctioned shares obtained from BRELA she opted to join the illegal transaction".*

The above stance of the law precludes the 1st appellant to benefit under the principle of *bona fide* purchaser. Having failed to obtain original

documents from the 2nd appellant, that was an indication of a rotten rate,

she ought to have demanded to be refunded her money instead of joining

illegitimate wagon. In the circumstances of this case, the 1st appellant

cannot benefit under the principle of *bona fide* purchaser as she was not a *bona fide* purchaser.

The claim of equitable remedies which the 1st appellant suggested that the trial court should have granted, we think it would be much suitable to it to pursue against the one received the money. A court of law cannot assist to enforce an unenforceable contract, like in this case.

Otherwise, the 1st appellant knows the one received the money. We, therefore, refuse its suggestion.

In regard to the complaint against the award of general damages and costs of the suit, quickly we take note that matters of general damages are within the discretionary powers of the trial court and rarely the Court may interfere. See **Henry Hiday Illanga v. Manyama Manyoka** [1961] E.A. 705 and **The Cooper Motor Corporation Ltd v. Moshi Arusha Occupational Health Services** [1990] T.L.R. 96, In the latter case we held that:

> *"Whether the assessment of damages be by a judge or a jury, the appellate Court is not justified in substituting a figure of its own for that awarded below simply because it wouid have awarded a different figure if it had tried the case... before the appellants court can properly intervene, it must be satisfied either that the judge, in assessing the damages, applied a wrong principle of law (as taking into account some irrelevant factor or leaving out of account some relevant one); or,*

short of this that the amount awarded is so inordinateiy low or so inordinately high that it must be a wholly erroneous estimate of the damage"

As alluded to above, we find the trial court applied the right principles of law in awarding general damages to the 1st respondent. The fundamental principle by which the courts are guided in awarding damages is *'restitutio in integrum** meaning that, the law will endeavour, so far as money can do it, to place the injured person in the same situation as if the contract had been performed. Undeniably, the 1st respondent suffered injury by an intentional breach of contract by the 2nd appellant. It paid the 2nd appellant USD 10,000.00 in 2023 together with other pertinent costs. The value of the property in question was significant at least at the time the second illegal sale was undertaken. Therefore, general damages being discretionary powers of the trial court was properly awarded to the 1st respondent to recover from injuries caused by the appellants. We have, therefore, no reason to fault the trial court's award of general damages.

In respect of the award of costs, the 1st appellant challenged it, but the general rule is that costs must follow the cause, unless the circumstances of the case are exceptional. The 1st appellant pleads

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exoneration from the costs alleging that it committed no wrongs, but in our decision, just like the trial court, it was a party to the wrongs committed by

the 2nd appellant, intentionally or negligently. We pointed out its role in resolving whether it was a *bona fide* purchaser. Consequently, this claim is

In the event and for the reasons so stated, we find no reason to unmerited and we dismiss it.

interfere with the decision of the trial court as was properly decided according to the available evidence and the law. Thus, the consolidated appeal is unmerited, and it stands dismissed with costs.

DATED at **DODOMA** this 6th day of November, 2026.

G. A. M. NDIKA
JUSTICE OF APPEAL

S. M. RUMANYIKA
JUSTICE OF APPEAL

P. J. NGWEMBE
JUSTICE OF APPEAL

Judgment delivered virtually this 9th day of November, 2026 in the presence of Mr. John James, learned counsel for the 1st appellant, Mr. Stephen Axweso and Ms. Abbriaty Kivea both learned counsel for the 2nd appellant, Mr. Kyariga Nyaisa Kyariga and Mr. Gideon Opanda both learned counsel for the 1st respondent, Mr. Boaz Msoffe, learned State Attorney for the 2nd and 3rd Respondents and Mr. Fahmi, Court Clerk; is hereby certified

as a true copy of the original