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LEGAL NEWS

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Court Invalidates Provisions Pertaining to CSR Funds Allocation in Tanzania

Recently, the High Court of Tanzania (the Court) delivered its judgment in a judicial review application filed by Godfrey Mwita Kegoye and four others against the Minister for Minerals and the Attorney General. The Applicants sought orders of certiorari and prohibition to challenge the legality of regulation 4(4) (a) and (b) of the Mining (Corporate Social Responsibility) Regulations 2023 on the basis that the said regulation transgressed the provisions of the Mining Act, 2020. In this regard, as per the Applicants, the Minister for Minerals usurped his powers in promulgating the CSR Regulations as they provide for something not sanctioned by the Mining Act.

Background

The Applicants are residents of villages surrounding the North Mara Gold Mine in Tarime District, Mara Region. Since 2018, these communities had been receiving 100% of CSR resources (finances) from the Mining Company, which funded development projects, such as schools, water systems, and roads. However, in 2023, the Minister for Minerals promulgated the CSR Regulations, allocating 40% to host communities in the village, ward or streets, and 60% to district and town council levels. The Applicants claimed this change reduced their benefits and undermined their ability to implement community development projects, 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.

Arguments raised by Parties

On the one hand, the Applicants argued that, the impugned regulation is ultra vires the Mining Act, for it introduces a distribution formula that is not provided for in the Mining Act. They contended that the Mining Act intended CSR resources to directly benefit host communities at village, ward or street levels, and reducing their share from 100% to 40% defeated that purpose. Additionally, they claimed that they were not consulted before the enactment of the regulation, thus violating principles of natural justice and legitimate expectation. They further argued that the regulation negatively affects their economic, social, and environmental development.

On the other hand, the Respondents argued that, the Minister acted within his statutory powers under the Mining Act to make regulations governing CSR implementation. They maintained that the law does not specify how CSR resources should be distributed, thus justifying the regulation. The Respondents also contended that stakeholder consultations were conducted, and that the Applicants were represented through local government officials. Furthermore, they argued that the regulation was designed to benefit broader communities nationwide and not just a specific group. Thus, as per the Respondents, the CSR Regulations cannot be amended to accommodate the interests of a few individuals, while the same applies nationwide.

Decision of the Court

The High Court held in favour of the Applicants. It found that regulation 4(4) (a) and (b) was inconsistent with the Mining Act because it unlawfully introduced a division of CSR resources that undermined the intention of the parent legislation, by transferring them to other portfolios at the Minister's discretion to the detriment of host communities. The Court ruled that allocating 60% of the funds to local government authorities defeated the purpose of CSR, which is to directly benefit host communities.

The Court also held that there was no proper consultation with the affected communities, and that the alleged consultation process was inadequate and failed to meet the standards of meaningful participation. This amounted to a violation of natural justice, as the host communities/local inhabitants were denied the right to be heard. Consequently, the Court declared the regulation ultra vires, null, and void, quashed it through an order of certiorari, and issued an order of prohibition against its implementation.

To read the Judgment [click here](#)

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info@ecraattorneys.co.tz

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ECRA Attorneys Address

10th Floor-Left Wing, Mwanga Tower,
Komanya Street, Kijitonyama,
Dar es Salaam, Tanzania
T: +255 743 024 396 | +255 714 949 604
E: info@ecraattorneys.co.tz
W: www.ecraattorneys.co.tz

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