

TANZANIA / JUDGMENT

GOLD AFRICA LIMITED VS MINING COMMISSION OTHERS

COURT
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IN THE HIGH COURT OF TANZANIA DODOMA SUB REGISTRY AT DODOMA CIVIL REVIEW NO. 4979 OF 2025 (Arising from the Ruling and Orders of the (Hon. Longopa, J.) in Misc. Civil Application No. 2887 of 2025 dated 21 February 2025] BETWEEN GOLD AFRICA LIMITEDAPPLICANT VS

1. THE MINING COMMISSION1ST RESPONDENT
2. THE MINISTER OF MINERALS – MINISTRY OF MINERALS2ND RESPONDENT
3. THE ATTORNEY GENERAL.....3RD RESPONDENT
4. EB HANCE COMPANY LIMITED.....4TH RESPONDENT
5. ELIAS BULAYA.....5TH RESPONDENT
6. GODFREY RUTESIGIRWA.....6TH RESPONDENT AND REEF GOLD LIMITEDNECESSARY PARTY

RULING

Date of last Order: 04/04/ 2025 Date of Ruling: 09/04/ 2025 LONGOPA, J.: 1|Page The applicant being dissatisfied by the decision of this Court in Miscellaneous Civil Application No 2887 of 2025 which struck out the application with costs having found that the applicant lacked locus standi to apply for interim orders, on 5th March 2025 instituted this application for review of the decision. The application was made under Order XLII Rule 1 (a) and Sections 78(1)(a) & 95 of the Civil Procedure Code Act, Cap. 33 R.E. 2019. In the Memorandum of Review, the applicant seeks intervention of this court on the following grounds, namely:

1. The Hon. Court proceeded to hear and determine the Application without the Respondents having filed any document traversing chamber summons and the supporting affidavit hence denial of due process, fair trial and the right to adequately and fully be heard on the substance of the alleged matters;

2. The Hon. Court heard and determined factual matters thereby going to the root and substance of the subject matter of the Application without having received any formal material facts and circumstances placed on the record of the Application by the Respondents in form of pleadings such as counter – affidavits and notices of preliminary objection but instead determined those on the basis of oral submissions from the bar and the unrepresented parties;
3. The letter authored and signed by Mr. Elias Bulaya and sneaked into the record of the Application contain serious allegations touching the substance of the subject matter of the Application as well as consisting deliberate falsehoods amounting to fraudulent misrepresentation aimed at concealing the truth. Much as the Hon. Court does not make any reference to the letter but for the fact that it was written and addressed to the Court for purposes of being placed before the record of and for use by the Hon. Court, chances are 3|Page that the Hon. Court saw and read the same and might have been prejudiced hence the approach it took on the two issues for determination;
4. The Hon. Court's Ruling contains patent and contradictory errors in that whereas at page 3 the Court records that the licences were to expire on 24th February 2025 but at page 2 records 22nd February 2025;
5. On 24th February 2025, the Applicant made a search on the status of the Mining Licences through the 1st Respondent's portal and discovered that the licences were not and have not, as of that day, been cancelled or suspended;
6. The Hon. Court erred and/or contradicted itself with regards to the status of the mining licences in that whereas at pages 3, 5 and 9 the Court extensively 4|Page deliberated on the status of the licences but at page 24 states: "----- I shall refrain from addressing on the status of the mining licences in question as that shall be as academic endeavour without purpose to achieve". Through that contradictory approach, the Hon. court erred to make a bold conclusion that "that aspect is put to rest as such" without hearing the parties thereon;
7. Had the Hon. Court required the 1st and 2nd Respondents and the rest to file counter affidavits as per practice it would not have ruled on the status of the licences in the manner done for want of sufficient material facts duly and formally sourced from and furnished by the 1st Respondent as the only institution legally mandated and empowered to regulate and govern mining licences in the country; and 5|Page
8. There is an apparent and patent error at page 9 of the Ruling where the Hon. Court quotes itself as making submissions for and on behalf of the Respondents to this effect: - "My submission is that as director of the necessary party he was aware that the mining licence in question were cancelled by the Mining Commission since October 2024 and the notices of cancellation were sent to the office of the necessary party through a Post Office address of Reef Gold Limited which is company secretary and the Applicant have access. This Applicant knew about the cancellation of the mining licences but decided to bring frivolous and vexatious proceedings before this court against the Respondent".

9. The Hon. Court erred in discussing the parameters of Sections 233 and 234 of the Companies Act in an application for interim orders and mareva injunction, thereby pre-empting the rights of the Applicant prior to 6|Page the filing application for unfair prejudicial conducts and derivative actions. It was the applicant's prayers that on the strengths of the above grounds this Honourable Court be pleased to: (a) review its decision and orders dated 21 February 2025 in Miscellaneous Civil Cause No. 2887 of 2025 on the basis and strength of each and/or all the above listed grounds and the extent thereof; (b) award costs of the Application; and (c) issue such other reliefs or orders the Hon. Court may deem fit and proper to grant. In support of the Memorandum of review, the applicant referred to the Proceedings, Ruling, Orders and Documents in Misc. Civil Application No. 2887 of 2025; Letter from Mr. Elias Bulaya & Godfrey Butesigirwe referenced RGL/HC/DN/23/2025 dated 14th February 2025; and Status of Mining Licences from the Mining Portal dated 24th February 2025. On 4th April 2025 this Court heard on the parties vide oral submissions thoroughly arguing in favour and against the application for review. The applicant enjoyed legal services of Mr. Roman Masumbuko, 7|Page learned advocate; for the 1st, 2nd and 3rd respondents, Ms. Jenifer Kaaya, learned Senior State Attorney assisted by Mr. Erasto Barua, learned State Attorney appeared; Mr. Mutakyamirwa Philemon, learned advocate appeared for the 4th, 5th and 6th respondent; while Mr. Elias Bulaya, Managing Director for necessary party appeared to argue on the application. Having heard the rival submissions by the parties to this application for review, this court is duty bound to address the issues raised by the applicant to find if the same have iota of merits. I shall be guided by the pleadings, legal principles both statutory and precedents as well as submissions of the parties with regard to the grounds of the review. This court has critically considered and reviewed the respective submissions by the parties which in line with the principle in *Edward Jonas vs Tanzania Breweries Ltd* (Civil Appeal No. 394 of 2020) [2024] TZCA 652 (29 July
- 2024) (TANZLII), at pages 24-25, this court shall not endeavour to reproduce. 8|Page It is important to preface important material facts that led to the ruling in the Miscellaneous Civil Application No 2887 of 2025. It is lucid from pages 1, 2 and 3 of the Ruling in that application that: One, the applicant is a shareholder of the necessary party. Two, upon institution of the application in Miscellaneous Civil Application 2887 of 2025 during pendency of the respondents and necessary party filing their responses vide counter affidavit, the applicant invited this court to grant interim orders to maintain status quo of the mining licences which were about to expire by operation of law on 24th February 2025. Three, all the licences are in the name of the necessary party, an incorporated company. Four, it was the applicant's prayer that set on motion the need to address the locus standi issue. Further, it is on record in page 4 of the proceedings where it is revealed that on 13th February 2025 the applicant prayed for issuance of interim orders to maintain the status quo of the mining licences held in the name of the necessary party, Reef Gold Limited. Moreover, on page 6 of the proceedings, this court reminded the parties on the pendency of prayer 9|Page for interim orders. In the circumstances, it was the applicant's prayer to invoke the jurisdiction of the Court orally to grant interim orders that made this court to

invite the parties to address it on two aspects. The directives of this Court are categorically illustrated in second paragraph of page 3 of the Ruling, quoted in verbatim that: It was on this background that on 20th February 2025 this court invited the parties to address it on two main aspects, namely: First, what is the current status of the six Mining Licences in order for the Court not to issue an unenforceable interim order. Second, the locus standi of the applicant before the court which touches on court's jurisdiction to grant interim orders of maintaining the status quo/ issue Mareva injunction given that the applicant corporate body is not the owner of the Mining Licences in question. (Emphasis supplied). Simply stated, among others, the Court invited the parties to address if the court had jurisdiction to grant interim orders in favour of the applicant given the prevailing circumstances. The applicant invoked the 10 | P a g e jurisdiction of the court to grant interim orders pending the respondents' filing necessary documents and hearing of the matter. It is on record, at pages 7-11 of the proceedings that all the parties made submissions on two issues. This is also reflected on pages 3 to 10 of the Ruling where the submissions are aptly summarised in detailed manner. This short background sets the context of the matter that lead to the ruling in question. Before embarking on the merits or otherwise of the application for review, it is pertinent to address a matter raised by the counsel for the 4 th, 5th and 5th respondent on the competency of the application for review. It was the view of the counsel for the 4th, 5th and 6th respondents that "the Applicant's application for Review is incompetent to proceed for hearing on merits for contravening the provisions of Order XLII, Rule 2, and Section 78 of the Civil Procedure Code, (Cap 33. R.E 2019). Order XLII Rule 1(1) of the Civil Procedure Code, Cap 33 R.E. 2019 provides as following in respect of the circumstances where the application for review may be preferred under the Code, namely that: 11 | P a g e 1.-(1) Any person considering himself aggrieved- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

- (b) by a decree or order from which no appeal is allowed, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order. The review is one of the remedies available to the parties in civil proceedings dissatisfied with the decision of the court whereby a court is invited to revisit its decision. This avenue is only available in limited circumstances. Generally, once a decision is made that court which made 12 | P a g e the decision becomes functus officio. Two, the most appropriate manner to challenge a decision is by appeal or revision to a superior court. The review is not an alternative to appeal and it cannot raise issues that can only be determined on appeal. As such, a trial court is empowered to revisit its decision when there is apparent error on the face of the record which is special circumstances to the general rule proscribing the court to revisit its decisions. The guidance on need to entertain review is the principle in the case of National Microfinance Bank vs Leila Mringo & Others (Civil

Application No. 316 of 2020) [2021] TZCA 233 (7 June 2021) (TANZLII), at page 7, where the Court of Appeal of Tanzania stated that: We are aware that, the principle that a review is by no means an appeal in disguise because it is a matter of policy that litigation must come to an end. (RIZALI RAJABU VS REPUBLIC, Criminal Application No. 4 of 2011 (unreported)). There is also no doubt that this Court has jurisdiction to review its own decision in any given 13 | P a g e case which is aimed at ensuring that a manifest injustice does not go uncorrected. See CHANDRANK JOSHIBHAI PATEL vs R. [2004] TLR. 218. The grounds on which this Court could review its decisions are at present limited to only five as listed under Rule 66 (1) (a) to (d) of the Rules namely: One, the decision was based on a manifest error on the face of the record resulting in the miscarriage of justice; two, a party was wrongly deprived of an opportunity to be heard; three, the court's decision is a nullity; or four, the court had no jurisdiction to entertain the case and five, the judgment was procured illegally, or by fraud or perjury. The instant civil review is premised on some of these aspects reiterated by the Court of Appeal of Tanzania. This court found it imperative to the parties to argue the same on merits given that at the face of application it appears to be premised on proper grounds of review namely the apparent and patent errors on face of record, illegality in form 14 | P a g e of fraud and the discovery of the new facts or evidence. This is despite fact that the applicant had a right to appeal against the Ruling in question. To address this application for review, it is important to reiterate at the outset that jurisdiction of the court is one of the basic and fundamental aspects that any court must ascertain before granting any order on the rights of parties to the case. A court cannot issue an order relating to the rights and obligations of the parties in circumstances where such court has no jurisdiction. Illustratively the need to ascertain jurisdiction of the case was subject of analysis in the case of Commissioner General Tanzania Revenue Authority & Another vs Milambo Limited (Civil Appeal 62 of 2022)

[2022] TZCA 348 (14 June 2022) (TANZLII), at pages 17-18, where the Court of Appeal of Tanzania reiterated that: The question of jurisdiction was emphasized in the case of FANUEL MANTIRI NG'UNDA VS HERMAN MANTIRI NG'UNDA AND 20 OTHERS, Civil Appeal No. 8 of 1995 15 | P a g e (unreported) as the Court stated: "The question of jurisdiction for any court is basic, it goes to the very root of the authority of the court to adjudicate upon cases of different nature... The question of jurisdiction is so fundamental that courts must as a matter of practice on the face of it be certain and assured of their jurisdictional position and the commencement of the trial....it is risky and unsafe for the court to proceed with the trial of a case on the assumption that the court has jurisdiction to adjudicate upon the case." From the above quoted excerpts, principally, in adjudication, the question of jurisdiction is a threshold question which must be addressed at the earliest opportunity in order to save time and costs and dire consequences of the proceedings being nullified at the later stage in case the objection is raised and sustained. Therefore, jurisdiction is a 16 | P a g e creature of statute and not the dislikes or likes of the parties or mere compelling situations as intimated by the learned High Court Judge despite a strong presumption that civil courts have jurisdiction to decide all questions of civil nature, the exclusion of

jurisdiction of civil courts is not to be readily interfered and such exclusion must either be explicitly expressed or clearly implied. Being guided by the principle that ascertainment of jurisdiction is the first and foremost aspect to consider before granting any orders that might have impacts on rights and obligations of the parties to the case, the Court called upon the parties to address it on locus standi of the applicant that had implications on jurisdiction. That is the reason, the court prior to analysing the locus standi categorically in pages 11 and 12 of the ruling prefaced the need to consider jurisdiction of the court in accordance with the prevailing laws of the land as the locus standi of the applicant would establish whether or not the court had mandate to grant the prayers. 17 | P a g e The question of locus standi being intertwined with jurisdiction was a preliminary issue that called for need to address the same before the court assumes mandate to grant any interim orders. Jurisdiction goes to the root of the powers of the court itself to grant any lawful orders. The first ground is on the denial of the right to be heard whereas the applicant is seriously challenging the decision given the respondent had not filed counter affidavits thus the determination of the matter violated due process, fair trial and the right to be heard adequately and fairly. Indeed, this court is fully aware of the well-entrenched and constitutionally protected right to be heard as part and parcel of fair hearing. This Court is fully guided by the principles in the case of CRDB Bank Plc vs the Registered Trustees of Kagera Farmers Trust Fund & Others (Civil Appeal No. 496 of 2021) [2024] TZCA 94 (23 February

- 2024) (TANZLII), at pages 11-12, the Court of Appeal stated that: It is trite law that, any decision affecting the rights or interest of any person which is arrived at without such person being afforded a right to be heard, is a nullity even 18 | P a g e if the same decision would have been arrived at had the affected party been heard. A simple question is whether the parties were heard prior to determination of the locus standi question hence jurisdiction of the court. It is on record that pages 3 to 10 of the Ruling in clear and lucid terms reveal that all the parties were invited to address the locus standi and indeed all of them thoroughly addressed on the two issues that were raised by the court. As such, the applicant cannot be heard that parties were denied the right to be heard. This is also reflected on pages 6-11 of the proceedings of the Court. This was in line with the principle in Said Mohamed Said vs Muhusin Amir & Another (Civil Appeal No. 110 of 2020) [2022] TZCA 208 (25 April 2022), at page 6, where the Court stated that: The more so, a trial judge is obligated to decide the case on the basis of the issues on record. As to what should a judge do in the event a new issue crops up in the 19 | P a g e due course of composing a judgment, settled law is to the effect that the new question or issue should be placed on record and the parties must be given opportunity to address the court on it. This court having been faced with an oral application to grant interim orders to restrain the respondents from dealing with the mining licences in question necessitated the locus standi to be addressed. That is why, the Court put it on record and invited all the parties to address the same. As locus standi is a jurisdictional issue, it needed not to have all the pleadings in form of affidavits and counter affidavits to be filed before determining whether the applicant had locus standi or

otherwise. Locus standi as part of jurisdictional issue is legal issue which does not depend on factual issues that would be stated in the pleadings in form of affidavit and counter affidavits. The applicant having pleaded categorically that it was an incorporated entity that was applying for protection of rights in the mining licences of another person/ necessary party who was also an incorporated company left nothing uncontested by parties on that status. 20 | P a g e Indeed, prayer to invoke court's jurisdiction to grant interim orders triggered the need of addressing competency of the applicant to apply for those orders. This court was guided by the principle that locus standi is quite fundamental aspect that should be addressed at the earliest opportunity. As the applicant invited the court to exercise jurisdiction to issue interim orders in favour of the applicant, it was incumbent upon the court to ascertain whether or not it had jurisdiction thus need to address the locus standi issue. In the case of Chama Cha Wafanyakazi Mahoteli Na Mikahawa Zanzibar (HORAU) vs Kaimu Mrajis Wa Vyama Vya Wafanyakazi Na Waajiri Zanzibar (Civil Appeal 300 of 2019) [2020] TZCA 1923 (18 December 2020) (TANZLII), at pages 10-11, the Court of Appeal of Tanzania noted lucidly that: Having heard the rival submissions for and against the appellant's locus standi, the key issue for our 21 | P a g e determination which we think is capable to dispose of this appeal is, whether the appellant had locus standi to institute the application against the respondent before the High Court which eventually led to the current appeal. It has to be understood at the outset that, locus standi is a common law principle which provides that, only a person whose right or interest has been interfered with by another person has a right to bring his claim to court against that other person (See Lujuna Shubi Ballonzi, Senior v. Registered Trustees of Chama cha Mapinduzi [1996] TLR 203; Godbless Jonathan Lema v. Mussa Hamis Mkanga & Two Others, Civil Appeal No. 47 of 2012 (unreported). We wish to observe that a person whose right or interest has been interfered by another is able to come to the court personally or through an authorised agent or board depending on the circumstances of each case. 22 | P a g e A similar position of the Court was reiterated in Peter Mpalanzi vs Christina Mbaruku (Civil Appeal 153 of 2019) [2021] TZCA 510 (23 September 2021) (TANZLII), at pages 5-6, where the Court observed that: Simply defined locus standi is the right or legal capacity to bring an action or to appear in a court. In Lujuna Shubi Ballonzi v. Registered Trustees of Chama Cha Mapinduzi (1996) TLR 203, Samatta, J (as he then was) had the following to say on locus standi: "Locus standi is governed by common law according to which a person bringing a matter to court should be able to show that his right or interest has been breached or interfered with. The High Court has the power to modify the applied common law so as to make it suit local conditions." Locus standi is a rule of equity that a person cannot maintain a suit or action unless he has an interest in the subject matter. Unless a person stands in a sufficient close relation to the subject matter so as to give a 23 | P a g e right which requires protection or infringement of which he brings the action, he cannot sue on it- see Godbless Lema v. Mussa Hamis Mkanga and 2 Others, Civil Appeal No. 47 of 2012 (unreported). Further, locus standi is a point of law rooted into jurisdiction. It is for that reason that it must be considered by a court at the earliest opportunity or once it is raised. Indeed, this Court seized the opportune moment when the

applicant prayed for interim orders to require the parties to address whether the applicant had locus standi to allow grant of interim in his favour by ensuring that court was having prerequisite jurisdiction to grant such interim orders. It is settled law that the impact of lack of locus standi on the party to a case is to render the trial court or tribunal incompetent to try the matter. In the case of *Martin Itambu vs Shabani Dedu* (Civil Appeal No. 513 of 24 | Page

- 2021) [2024] TZCA 55 (16 February 2024) (TANZLII), at page 6, the Court of Appeal of Tanzania stated that: We respectfully agree with the learned counsel that, after having held that the appellant did not have a locus standi, the High Court ought not to have determined the appeal on merit. Because locus standi is a jurisdictional issue, the Tribunal lacked the requisite jurisdiction to try the application. The same was not maintainable for having been filed by a person who did not have interest in the suit land. In exercising the right to be heard, the Court is enjoined to avail opportunity to parties when any issue arises before the court determines such issue. That principle was emphasized in the case of *Hussein Mapunda vs Alfred Mwandali* (Civil Appeal No. 383 of 2021) [2024] TZCA 574 (18 July 2024) (TANZLII), at pages 6-7, where the Court reiterated that: 25 | Page As Mr. Mwamboneke rightly argued, this was an exclusionist approach which is now on the line, and it defies the settled position taken across jurisdictions, ours inclusive, in a number of ways. One, it infracts the settled position which is to the effect that cases must be decided on the issues or grounds on record -see: *Kumbwandumi Ndemfoo Ndossi* (supra). Two, it amounts to a denial of the right to be heard, which is anchored in the phrase "justice should not only be done, but also manifestly and undoubtedly seen to be done." As Mr. Mwamboneke alluded to, the right to a fair hearing which the appellant contends was violated is now constitutionally guaranteed under Article 13 (6) of the Constitution, and that an act to trample on this inviolable right has undesirable consequences and the decision bred out of that discrepant process is considered to be flawed and, therefore, a nullity. In highlighting the importance of ensuring that courts confine their decisions to issues or grounds on record, we 26 | Page accentuated in *Kumbwandumi Ndemfoo Ndossi* (supra), as follows: "Basically, cases must be decided on the issues or grounds on record and if it is desired by the court to raise other new issues either founded on the pleadings or arising from the evidence adduced by witnesses or arguments during the hearing of the appeal, those new issues should be placed on record and parties must be given an opportunity to be heard by the court." There is no flicker of doubts that it is on record in both the proceedings dated 20th February 2025 and the ruling of the Court that the parties were invited to address two main issues before the court namely the locus standi of the applicant given that the mining licences were properties of necessary party who is incorporated entity, and the status of the mining licence at the time of institution of the application in question. Locus standi as jurisdictional issue is a pure point of law that can be raised at any time by the court suo motto or a party to the case. For 27 | Page instance, in *Registered Trustee of SOS Children's Villages Tanzania vs Igege Charles & Others* (Civil Application No. 426 of 2018) [2022] TZCA 428 (14 July 2022) (TANZLII), at 8-9, the Court of Appeal stated lucidly that: In

addition, if a person who brings action has no locus standi this puts the question the issue of jurisdiction which must be considered at the earliest, be it by the parties or the court itself. The parties were fully heard on the locus standi question before the finding of the court on the same. The question was locus was raised by the court at the earliest opportunity having been enjoined to grant interim orders. Granting interim orders entailed exercise of jurisdiction of the court thus the need to ascertain the jurisdiction. This court is not convinced by arguments by the counsel for applicant that locus standi cannot be determined as a preliminary matter. Nor the argument that courts are precluded from imploring the parties to address 28 | P a g e the question of locus standi suo motto when the court is enjoined to exercise its powers has no place in the jurisprudence of this jurisdiction. As the applicant's counsel had prayed that this court be pleased to grant interim orders, this court was mandated to call upon the parties to address the question of locus standi as it touched on the jurisdiction to exercise the powers that applicant wished the court to do in its favour. That concludes the lamentation on parties not being heard as legal issues of jurisdiction would require no factual statements in counter affidavit for it to be determined. At this juncture, the first ground in the Memorandum of review collapses for lack of merits. The second ground is light and should not detain this court at all. It relates to the complaint that the court determined factual matters going to the root of the case without having received them formally. I am afraid the applicant has misconceived the whole ruling due to misapprehension of the law. It is on record that the whole decision has traversed the question of locus standi in the light of principle of corporate separate personality 29 | P a g e applicable to companies. That is what is forming the basis of the whole analysis in pages 11 to 24 of the Ruling. There is nothing factual matters in nature which would require a formal presentation of documentation from the respondents. Nothing at all. It is this court's view that analysis in pages 11-24 of the ruling where analysis was done at lengthy on the applicable legal principles in form of statutory law and precedents in light of applicant's prayer for interim orders given the averments, he formally presented in court via the affidavit of the applicant that would sufficiently disposed jurisdiction issue. The only factual aspect would be the status of the mining licence which was not determined on merits. Having addressed the locus standi as a jurisdictional issue against the applicant the court never touched on the question of status of the mining licence in recognition of the principle that once a court lacks jurisdiction it cannot determine anything of merits nature by dealing with factual issues. The second ground is therefore destitute of merits and it is hereby overruled. 30 | P a g e On the third limb of the memorandum of review the applicant complained about a letter from one Elias Bulaya, the Managing Director of the Reef Gold Limited, the necessary party to have contained misleading, falsehoods and fraudulent misrepresentation aiming at concealing the truth and that chances are that the court was influenced by such letter. This is bound to fail at the outset. As the applicant has categorically stated that nowhere the letter or its contents were referred to in the ruling, raising it through speculation that court might have read it is unwarranted. It is unfortunate that a party to a case represented by a well experienced senior advocate could have raised such frivolous and vexatious arguments. It

is a disrepute to legal profession for a learned advocate to rely on self-speculations, or distortions as the counsel is fully aware that courts in this jurisdiction determine matters on issues and material that have been formally placed before a court of law and they are on record. He was aware that in the ruling there is no single clause referring to the letter nor a single paragraph determining the matter on basis of the alleged letter. 31 | P a g e Indeed, as the applicant admits in the memorandum of review and oral submission that the alleged letter never featured in a single word or line in the ruling complained of, it is unwarranted to argue and think that the court might have been influenced by alleged letter. What is complained in the said letter that was neither produced nor formed part of the proceedings is that of existence of misrepresentation is allegedly statements that the mining licences had been cancelled by the Mining Commission. This did not form a basis of the decision as upon finding that the applicant lacked locus standi this court stated explicitly that it would not address the question of status of the mining licences as there was no need at all given that it would have no jurisdiction to entertain the matter as the applicant had no legs to standi. What is the reflection of page 24 of the ruling in question. The allegation of fraud would require a serious proof of the same from the person who alleges. The only basis of the complaint on fraud is that Managing Director of necessary party had on 14th February 2025 written a letter that was uploaded on Electronic Case Management System 32 | P a g e (ecms), and served to the parties. According to the applicant, though such letter was filed yet it was not forming part of the proceedings of the court that lead to the decision dated 21st February 2025. It is settled view that applicant have not established an iota of fraud in this review. In *Bilali Ally Kinguti vs Ahadi Lulela Said & Others* (Civil Appeal No.500 of 2021) [2023] TZCA 17337 (13 June 2023) (TANZLII), at pages 15-16, the Court observed that: There is a plethora of authorities to the effect that allegation of fraud in civil proceedings must be specifically pleaded and proved on a higher degree of probability than that which is required in ordinary civil cases. For instance, in the case of *Omari Yusufu v. Rahma Ahmed Abdulkadr* [1987] T.L.R. 169 the Court said: "...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 33 | P a g e probability than that which is required in ordinary civil cases..." Again, in the case of *City Coffee Ltd v. The Registered Trustee of Iloilo Coffee Group* [2019] 1 T.L.R. 182, the Court stated thus: "...it is clear that regarding allegations of fraud in civil cases, the particulars of fraud, being serious allegation; must be specifically pleaded and the burden of proof thereof, although not that which is required in criminal cases; of proving a case beyond reasonable doubt, it is heavier than a balance of probabilities generally applied in civil cases. It is on record that basis of the decision of the Court was based on averment by the Applicant in the application before the court contained in Chamber Summons and affidavit, oral submissions of the parties, and applicable legal principles both statutory and precedents. It was analysis of all these aspects in light of the issue of locus standi that features the whole ruling. Nothing touched on status of mining licences whether were on still 34 | P a g e validly existing or were cancelled at the time of the ruling. If there would be determination on the status of the mining licences that would have amounted to determination of factual issues. In fact, the

whole ruling was not determined on the ground of the mining licences status. That aspect was categorically ignored for the reasons stated in page 24 of the ruling. The complaint on this limb is not only frivolous and vexatious but also uncalled for. It fails too. The fourth and eighth grounds of the memorandum of review shall be addressed jointly. At the outset, it is correct that there are grammatical and clerical errors in the ruling with regard to date of expiration of the mining licence in accordance with the law i.e. tenure of the mining licences, on one hand and the paraphrasing of the submissions by the Managing Director of the necessary party, one Mr. Elias Bulaya. It is on record that page 2 of the Ruling complained of indicates that the mining licences for necessary party, Reef Gold Limited were expiring by 35 | P a g e effluxion of time on 24th February 2025. It is indeed an error on page 3 of the Ruling to refer the same date as 22nd February 2025. Both aspects of clerical error and grammatical error in nature are very minor and do not have any impact whatsoever on the basis of the Ruling. The reasons for such findings are two. First, the error on date is found on pages 2 and 3 of the Ruling which are only dealing with a summary of material facts of the case. Second, the grammatical error on page 9 of the ruling is typically of editorial nature. That part of ruling only summarises the respective submissions by the parties. That paragraph ought to have been put in reported form but appeared differently. However, in the proceedings that paragraph represented part of the submission by one Elias Bulaya, Managing Director of the necessary party. That being the case, nothing prejudiced the applicant by such editorial error. The editorial error was to the extent of replacing the words “it is my submission” to “it was submission by necessary party...” Having considered thoroughly on the nature of the errors that are complained of, it is my settled opinion that such clerical cum editorial 36 | P a g e errors have nothing to impair any of the parties’ rights and obligations. They are in part of the ruling that is not determining the issues. There was nothing in the ruling of a determination nature regarding the dates. Also, the basis of the ruling is not on dates nor on cancellation of the mining licence which that paragraph represented. The basis of determination was whether the applicant had a locus standi in law given that properties which he called the court to invoke its jurisdiction by way of issuance of interim orders were owned by necessary party who was incorporated company. As a ruling is akin to Judgment, in terms of the Civil Procedure Code, Cap 33 R.E. 2019, the law is articulate in Order XX Rule 4, to the extent that: A judgment shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision. The ruling complained can be dissected in terms of the Order XX Rule 4 of CPC as follows: First, concise statement of the case is reflected from 37 | P a g e pages 1 to 10 (in second paragraph of that page) of the Ruling containing two main aspects, namely the material facts and submission by the parties. Second, point of determination is categorically stated in page 10 which lucidly states that “The main issue for determination is whether or not this court has jurisdiction to grant interim orders to restrain the respondents from dealing with or transferring or expiration of the term of the licence by law in the circumstances of this application.” Third, the decision is simple and straight forward that applicant lacked locus standi to sue thus no right to interim orders could be granted in its favour. Fourth,

the reasons were enumerated to be based on corporate separate personality principle as demonstrated throughout the analysis from pages 12 to 24 of the ruling. Thus, there is nothing significant to rescue the applicant's incompetent application to have a legal remedy in the circumstances based on allegation of apparent and patent errors. For instance, in the East African Development Bank vs Blueline Enterprises Limited (Civil Application 47 of 2010) [2011] TZCA 53 (6 September 2011) (TANZLII), at page 8-9, the Court stated that: 38 | P a g e In Oxford Advanced Learners Dictionary of Current English by A.S. Hornby 4th Edition at page 758 the word "manifest" is defined as "clear and obvious". In this sense, an error is manifest if it is "clear and obvious". In Chandrakant this Court stated: It is, we think apparent that there is a conflict of opinion as to what amounts to an error manifest on the face of the record and it is important to be clear of this lest disguised appeals pass off for applications for review. We say so for the well-known reason that no judgment can attain perfection but the most that courts aspire to is substantial justice. There will be errors of sorts here and there, inadequacies of this or that kind, and generally no judgment can be, beyond criticism. Yet while an appeal may be attempted on the pretext of any error, not every error will justify a review. Also, to borrow a leaf in the case of Hass Petroleum (T) Limited vs Ukod International Company Limited (Commercial Case No. 68 of 39 | P a g e

2022) [2023] TZHCComD 310 (22 September 2023) (TANZLII), at page 18, the High Court (Hon Nangela, J [as he then was]) observed that: I do take note that Exh.P-4 shows a demand for payment of TZS 689,044,063.84 which amount also appears in the Plaintiff. However, the difference between what is shown in the Exh.P-3 and in Exh.P-4 is too trivial to make any sense. Considering what the Latin Maxim de minimis non curat lex holds, this court will not be taken for a ride by such a negligible difference. The clerical and editorial errors on the ruling as I have pointed out were so insignificant to warrant any consideration by court let alone thoughts of having impacts of revisiting the decision. In essence, the lamentations on this aspect collapse for being unmerited. The fifth, sixth and seventh limbs of memorandum of review are addressed jointly as they are closely intertwined. They relate to the status of the mining licences. The complaints are that: one, upon search by the applicant on 24th February 2025, the findings were that the mining licences 40 | P a g e were still active in the name of the necessary party. This implies two things in my view, namely that if the court would have allowed respondents to file respective counter affidavits, then the 1st respondent would have revealed that such licences were still valid and existing; also, that this discovery amounts to new and important matter or evidence that could assist this court to order otherwise. Two, that the court extensively deliberated on the status of the mining licences pages 3,5 and 9 of the ruling thus the determination in page 24 that the court declines to address the matter was unwarranted. All the three limbs have no merits whatsoever by any standard of legal reasoning. The complaints/ grounds were as a result of misapprehension on part of the applicant to understand the scheme of the ruling in question. Pages 3, 5 and 9 of the ruling have no deliberation at all. An ordinary meaning of deliberation in English language is "a long and careful consideration

or discussion.” Also, in Bryan A. Garner (Ed.), Black’s Law Dictionary, Ninth Edition, WEST-Thomson Reuters, at page 492 41 | Page term “deliberation” means the act of carefully considering issues and options before making decision or taking some action; esp., the process by which a jury reaches a verdict, as by analyzing, discussing, and weighing the evidence. On record, what is contained in page 3 relates to two aspects only: one, is enumeration of the mining licences which are subject matter of the application. Two, a statement on record as directive to parties to address the court the status of the mining licences. As I have dissected on essential parts of the ruling in addressing clerical and grammatical error of editorial nature, the contents of pages 3, 5 and 9 of the ruling are part and parcel of concise statement of the case comprising material facts and submission by parties. There is no deliberation at all in pages 3, 5 and 9 as deliberation on the issues commenced on page 10 through page 25 of the

ruling.

The reason behind the findings in page 24 where the court put to rest the question of status of the mining licence is a settled principle of law that where a court enters a finding that a party has no locus standi or that 42 | Page a court has no jurisdiction, such court is duty-bound not to determine anything on merit from that point of such finding as it lacks jurisdiction. The dust is settled by principle in the case of Martin Itambu vs Shabani Dedu (Civil Appeal No. 513 of 2021) [2024] TZCA 55 (16 February 2024) (TANZLII), at page 6, the Court of Appeal of Tanzania stated that: We respectfully agree with the learned counsel that, after having held that the appellant did not have a locus standi, the High Court ought not to have determined the appeal on merit. Because locus standi is a jurisdictional issue, the Tribunal lacked the requisite jurisdiction to try the application. The same was not maintainable for having been filed by a person who did not have interest in the suit land. Thus, the Court having explicitly declared and enumerated without mincing words in page 22 of the Ruling that the “applicant, Gold Africa Limited has no locus standi to institute an action including application like 43 | Page the one at hand on behalf of the company or in defence of the assets of the company to which it is a member”, it was incumbent for the court not to analyse any other thing on merit. Indeed, if it was not absence of proper comprehension or dishonesty on part of the applicant to purposely choose the words that only suits the applicant in that paragraph, he would have found the paragraph explicitly stated it all. It stated that: “Having answered the issue of locus standi in favour of applicant to be in a negative, I shall refrain from addressing on the status of the mining licences in question as that shall an academic endeavour without a purpose to achieve. That aspect is put to rest as such.” (Bold added for emphasis). Indeed, the reason was categorically stated thus left no room whatsoever for the parties to speculate as to why the question on status of the mining licence was not necessary to be addressed. The reason was categorically stated that as the court had found the applicant to have no locus standi there was no need to address on the status of the mining licences. That is lucid. Stating that on pages 3,5 and 9 there was 44 | Page deliberation is unfortunate for the applicant’s failure to understand the obvious that such part of the ruling had nothing to do with deliberation other than stating facts to set a stage for analysis at a later stage. To wind up this

part, the aspect of discovery of new and important matter or evidence is inapplicable. It is so held because of two reasons. First, the application was not determined on basis of status of the mining licences on date of the decision. Second, all the mining licences are in the name of the Reef Gold Limited, a necessary party thus properties of the necessary party. It changes nothing in law as the finding in the complained ruling was based on the corporate separate personality principle that properties of necessary party, Reef Gold Limited can be enforced by the Company itself not shareholders. Having found that the licences are still in the name of the necessary party adds nothing valuable for the court to revisit its position as the finding reflects the obvious that made the basis of that decision in the complained ruling. Illustratively, grounds five and six in the memorandum of review are destitute of any merits whatsoever. They thus overruled. 45 | P a g e

The last aspect is about lamentation that the Court erred in discussing the parameters of Sections 233 and 234 of the Companies Act in an application for interim orders and mareva injunction, thereby pre-empting the rights of the Applicant prior to the filing application for unfair prejudicial conducts and derivative actions. I should state at the outset that this aspect is devoid of merits. It is on record that parties in Miscellaneous Civil Application No 2887 of 2025 addressed this court on the applicability of sections 233 and 234 to establish locus standi of the applicant. The applicant cited the case of Mohamed Said Kiluwa vs Kiluwa steel Group Company & 2 Others (Misc. Commercial Application 1 of 2022) [2022] TZHCComD 24 (8 February 2022) (TANZLII) to illustrate the applicability of sections 233 and 234 of the Companies Act on ability of shareholder to sue and defend for assets of the company where such shareholder is a member. Indeed, parties having submitted on the two provisions of the law which allegedly formed the basis of locus standi for the applicant it was 46 | P a g e incumbent upon the court to analyse the import of those provisions to establish if truly the same whether explicitly or implicitly would sustain the applicant to maintain an action against any other party on assets of another person in law. According to the applicant, this court was only required to recognise that the applicant's right to institute the applicant to protect the properties of the necessary party was premised on sections 233 and 234 of the Companies Act, Cap 212 but such court had no powers whatsoever to analyse the two provisions. Simply, the argument of the applicant is senseless. How could the court have powers to take cognizance of the provision favouring the locus of the applicant while at the same time powers to analyse and ascertain if truly such provisions empowered the applicant to initiate proceedings is excluded. It would be an abscondment of duty on part of this court to refrain from making analysis of the legal provisions for which parties had 47 | P a g e contending opinions on whether the same established locus standi or otherwise on party of the applicant. In fact, it was the applicant's version of submission that stated explicit that locus standi of the applicant was premised on the strengths of sections 233 and 234 of the Companies Act. In fulfilling the sacred duty by the court as the authority with final decision in administration of justice as entrenched in Article 107A (1) of the Constitution of the United Republic of Tanzania, Cap 2 R.E. 2002, it was pertinent for the court to address parameters of the coverage in the two provisions of the Companies Act. Such analysis would establish existence or otherwise of a pigeon hole to fit in the applicant's locus standi in the circumstances. Unfortunately, none was found to exist in favour of the applicant. Having deliberated in detailed manner of each ground of review, it is opportune moment to reiterate that the applicant has failed to establish that any

grounds contained in the memorandum of review is merited to warrant this court to revisit its previous decision contained in Ruling dated 21st February 2025 in Miscellaneous Civil Application No 2887 of 2025. The 48 | P a g e whole application for review must crumble naturally for having preferred without an iota of merits. The application for review is therefore dismissed in its entirety for being demerited. Having considered the frivolous nature of the application, it is my considered opinion that the applicant should be condemned to costs of the application. The application for review therefore stands dismissed with costs. It is so ordered. DATED at DODOMA this 9th April 2025. E.E. LONGOPA JUDGE 09/04/2025. 49 | P a g e

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