



MZUZU DISTRICT REGISTRY
HIGH COURT OF MALAWI
11 SEP 2017
PAID
P.O. BOX 12, MZUZU

IN THE HIGH COURT OF MALAWI
MZUZU REGISTRY
CIVIL CAUSE NUMBER 143 OF 2017

BETWEEN
NTHONDO BANDA AND 242 OTHER
MEMBERS OF THE KANYIKA COMMUNITY..... PLAINTIFF
-AND-
GLOBE METALS & MINING (AFRICA) LTD.....1ST DEFENDANT
ATTORNEY GENERAL2ND DEFENDANT

2nd DEFENDANT'S DEFENCE

1. The 2nd Defendant refers to paragraph 2 of the Plaintiff's Statement of Claim and states that the Attorney General (the 2nd Defendant) is a wrong party to the proceedings. The 2nd Defendant contends that District Councils are governments in their own right and can sue and be sued as such. Therefore, before the hearing of the summons herein, the 2nd Defendant will make a preliminary application to have it struck out of the record on the ground aforesaid.

2. The above notwithstanding, the 2nd Defendant refers to paragraphs 2, 14, 15, 16 and 24 of the Plaintiff's statement of claim and strongly denies the contents therein. The 2nd Defendant contends that it had never given assurances to the Plaintiffs that they would be compensated and would be relocated. Issues of compensation and relocation in mining and extractive industries in Malawi are not within the jurisdiction of the District Councils (District Commissioners).

10 SEP 2017
JOHN TENNYSON &
ASSOCIATES
P.O. BAG 333
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10:30 Accepted

Further, the 2nd Defendant avers that it has no jurisdiction to grant mining permit to the 1st Defendant and therefore the Plaintiff's allegations in paragraph 2 of its Statement of Claim are untenable. Therefore, the 2nd Defendant denies the contents of paragraph 2 of the Plaintiffs' Statement of Claim in totality and puts the Plaintiffs to strict proof thereof.

3. The 2nd Defendant refers to paragraph 3, 27, 28, 34 and 35 of the Plaintiffs' Statement of Claim and denies allegations of environmental damage and puts the Plaintiffs to strict proof thereof. The 2nd Defendant contends that the 1st Defendant undertook to properly manage the environment including the land and in as far as the 2nd Defendant is concerned, all areas affected by the project have been rehabilitated and there is nothing that can prevent continued tiling and ploughing of the arable land.
4. The 2nd Defendant refers to paragraphs 26, 27, 28, 29 and 30 of the Plaintiffs' Statement of Claim and denies the contents therein and puts the Plaintiff to strict proof thereof.
5. In totality, the 2nd Defendant denies being liable for
 - 5.1 Common law damages for breach of contract and/ or negligence and /or nuisance.
 - 5.2 Compensation in terms of section 46 of the constitution of Malawi
 - 5.3 The claimed payment of just and reasonable compensation for the alleged violations of the Plaintiffs' rights under section 28 of the Land Act and section 5 of the Environmental Management Act.
 - 5.4 Any other claims as specified in the Statement of Claim

5.5 Costs of the action

6. Save as herein before expressly admitted, the 2nd Defendant denies each and every allegation of fact as if the same were set out and traversed seriatim, and puts the Plaintiffs to strict proof thereof.

WHEREFORE the 2nd Defendant prays that Plaintiff's action be dismissed.

Dated the 11th day of September 2017



Neverson Chisiza

Senior State Advocate

For: **THE ATTORNEY-GENERAL**

To: JOHN TENNYSON & ASSOCIATES
(Legal Practitioner for the Plaintiffs)

Private Bag 79

MZUZU

: GLOBE METALS & MINING (AFRICA) LIMITED
(1st Defendant)