

Resolving Mining Disputes in Tanzania: An Examination of the Role of Arbitration

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ABSTRACT: Disputes are an inevitable aspect of socioeconomic activities, and the mining sector is no exception. As one of the most important sectors of Tanzania's economy, mining often witnesses conflicts between various stakeholders, including government entities, mining corporations, local communities, human rights defenders, and environmental activists. Given the significance of this sector, establishing effective dispute resolution mechanisms is essential for ensuring its sustained growth and prosperity. This paper examines the role of arbitration as a key mechanism for resolving mining disputes in Tanzania. Arbitration, as an alternative dispute resolution (ADR) method, provides parties with the opportunity to resolve conflicts outside the traditional court system through a neutral third party. The paper also explores the challenges of using arbitration in mining disputes and suggests ways to improve the arbitration system in Tanzania.

KEYWORDS: Arbitration, Mining Disputes, Alternative Dispute Resolution, Stakeholders, Conflict Resolution, Mining Sector, Dispute Settlement.

I. INTRODUCTION

The mining sector in Tanzania faces various disputes, with tax-related and contractual or investment disputes being the most common.¹ Tax disputes often arise from differences in interpreting tax laws, such as whether shareholder loans should be treated as capital contributions or loans, issues with the imposition and withholding of taxes, delays in VAT refunds, and challenges involving capital gains tax and transfer pricing in reorganizations.² Contractual and investment disputes usually involve delays in finalizing framework agreements needed for project financing and challenges to contract enforcement.³ Other common disputes in the sector include those related to employment, regulatory compliance, labor rights, financial matters, infrastructure, health and safety, environmental concerns, and ESG (Environmental, Social, and Governance) compliance and among others.⁴

The Mining Act [CAP. 123 R.E. 2019] establishes the legal framework for the regulation and management of mining activities in Tanzania. Part XI of the Act provides mechanisms for dispute settlement, empowering the Mining Commission to resolve conflicts arising from mining and prospecting operations.⁵ This part includes provisions addressing the resolution of disputes between stakeholders, the enforcement of the Commission's orders, and the right of appeal to the High Court.⁶ The Act emphasizes the role of the Commission as a key arbiter in disputes but does not explicitly provide for arbitration or other alternative dispute resolution (ADR) methods beyond its mandate. Leaving the question of how parties may resolve disputes outside of the Commission's mandate open for exploration. Therefore, this paper focuses on arbitration as a dispute resolution mechanism within the Tanzanian mining sector. It examines the benefits of arbitration in addressing the complex nature of mining disputes and explores how it operates within Tanzania's legal framework. By analyzing the role of arbitration in resolving mining disputes, this paper aims to provide a comprehensive understanding of its effectiveness and the challenges faced in its application.

¹ Carstens, J., & Hilson, G. (2009). Mining, grievance and conflict in rural Tanzania. *International Development Planning Review*, 31(3), 301-326.

² Andrew, J. S. (2003). Potential application of mediation to land use conflicts in small-scale mining. *Journal of cleaner production*, 11(2), 117-130.

³ Gastorn, K. (2020). International Arbitration on Investment Disputes in Natural Wealth and Resources Sector in Tanzania. *The Eastern African Law Review*, 47(2).

⁴ Ngowi, J. (2024, May 6). Resolving disputes in the Tanzania mining sector. *Mondaq*. Retrieved January 1, 2025, from <https://www.mondaq.com/mining/1459696/resolving-disputes-in-the-tanzania-mining-sector>

⁵ Section 119(1) of the Mining Act [CAP. 123 R.E. 2019]

⁶ Section 121 of the Mining Act [CAP. 123 R.E. 2019]

II. HISTORICAL BACKGROUND OF ARBITRATION IN MINING DISPUTES IN TANZANIA

Historically, mining disputes in Tanzania were primarily resolved through litigation in national courts.⁷ However, the court system faced significant limitations, including prolonged delays, high costs, and an inability to address the specialized technical issues that often arise in mining-related disputes.⁸ The slow pace of litigation posed particular challenges for mining companies, especially foreign investors, whose operations and financial stability could be severely affected by unresolved disputes.⁹ In response to these challenges, Tanzania gradually shifted toward arbitration as an alternative dispute resolution (ADR) method. Arbitration offers several advantages over traditional litigation, such as neutrality, confidentiality, and the ability to appoint arbitrators with specialized expertise in areas like mining law, environmental regulations, and resource management. This shift was further supported by Tanzania's growing integration into the global economy and its commitment to creating a more investment-friendly environment, particularly in the mining sector.¹⁰

The introduction of the Arbitration Act of 1966 was a significant milestone in formalizing the use of arbitration in Tanzania. This Act provided the legal framework for both domestic and international arbitration proceedings and was modeled on the United Nations Commission on International Trade Law (UNCITRAL) Model Law.¹¹ As disputes in the mining sector became more complex, Tanzania's arbitration framework continued to evolve. The enactment of the Arbitration Act of 2020 marked a major reform, replacing the outdated 1966 Act, which was based on British colonial law. The new law incorporates contemporary international arbitration principles, including provisions from the UNCITRAL Model Law, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and the ICSID Convention.¹² The 2020 Arbitration Act introduced clearer guidelines for the arbitration process, covering the appointment of arbitrators, conduct of proceedings, enforcement of awards, and the resolution of jurisdictional issues. This modernized framework was designed to accommodate both domestic and international arbitration, making it particularly suitable for global mining corporations operating in Tanzania.¹³ Therefore, establishment of the Tanzania Arbitration Centre (TAC) further strengthened the arbitration framework. The TAC provides a neutral platform for managing arbitration cases, ensuring fair and efficient dispute resolution. As a result, arbitration has become the preferred method for resolving mining-related conflicts in Tanzania, offering a faster and more specialized alternative to traditional court litigation.

III. GENERAL OVERVIEW OF THE LEGAL FRAMEWORK GOVERNING THE MINING SECTOR IN TANZANIA

The legal framework governing the mining sector in mainland Tanzania is composed of three key areas: international investment law, national investment law, and investment agreements (or investment contracts). These areas provide the foundation for investment activities within the country.¹⁴ The legal structure for foreign investment in the mining sector in Tanzania is mainly fragmented, with different laws addressing various aspects of investment protection and governance.

⁷ Mashamba, C. J. (2014). *Alternative dispute resolution in Tanzania: Law and practice*. Mkuki na Nyota Publishers, at page 78.

⁸ *Ibid*

⁹ *Ibid*

¹⁰ Ngowi, J. (2024, May 6). Resolving disputes in the Tanzania mining sector. *Mondaq*. Retrieved January 1, 2025, from <https://www.mondaq.com/mining/1459696/resolving-disputes-in-the-tanzania-mining-sector>

¹¹ Kapinga, W. (2014, August 26). *Arbitral dispute resolution: Legal framework in Tanzania*. Simmons & Simmons. Retrieved January 1, 2025, from <https://www.simmons.com/en/publications/ck0dnkhsgumgj0b33eh3p1n2s/22-arbitral-dispute-resolution-legal-framework-in-tanzania>

¹² *Ibid*

¹³ *Ibid*

¹⁴ Magogo, T. D. (2018). *Impact of Legal Framework Governing Investment in Tanzania on Ensuring Maximum Benefits for the Country and Its Citizens* (Doctoral dissertation, SAUT).

A. The Constitution of the United Republic of Tanzania, 1977 : The Constitution of the United Republic of Tanzania, 1977, as the supreme law of the land and provides, among other things, the right to own and protect property. Article 24(2) of the Constitution¹⁵ specifically safeguards individuals from the expropriation of their property without prompt, fair, and adequate compensation. This principle is also reflected in the Tanzania Investment Act of 1997, which emphasizes the need for compensation in cases of expropriation of property and investments. Concerning the resolution of disputes amicably, the Constitution provides a legal foundation for the application of ADR, a mechanism under Article 107A of the Constitution that provides for the principles of administration of justice in Tanzania, where Principle Number Four through Article 107A (2) (d)¹⁶ requires the court to deliver justice to promote and enhance dispute resolution among persons involved in the disputes. This principle demands the court use another informal mechanism of arbitration to ensure an amicable resolution of disputes. Therefore, the aim of introducing Alternative Dispute Resolution (ADR) in Tanzania was to complement the second principle in administrative justice under Article 107A (2) (b),¹⁷ which requires the court to deliver justice promptly or without delays. This principle provides advocates or the court with the use of informal methods, such as arbitration, to achieve amicable settlements among parties in dispute.

B. The Tanzania Investment Act, Cap 38 of 2023 : The Tanzania Investment Act of 2023 regulates investment matters in Tanzania and establishes the Tanzania Investment Centre (TIC), the government's primary agency responsible for promoting and facilitating investments. The TIC coordinates, encourages, supervises, and advises the government on investment policies. Section 33 of the Act¹⁸ provides a mechanism for resolving disputes between investors and the Centre or the Government regarding business enterprises. It stipulates that efforts should first be made to resolve disputes through negotiation,¹⁹ and if that fails, the parties may submit the dispute to arbitration, using methods mutually agreed upon, including in accordance with Tanzanian arbitration laws, the International Centre for Settlement of Investment Disputes (ICSID) rules, or within the framework of any bilateral or multilateral investment protection agreements between Tanzania and the investor's country.²⁰ These provisions ensure effective dispute resolution through negotiation and arbitration, offering flexibility for both domestic and international resolution. As a signatory to the New York Convention, Tanzania facilitates the recognition and enforcement of foreign arbitral awards in member states, allowing parties to enforce arbitral awards internationally without lengthy court procedures. The Arbitration Act and its rules also outline procedures for enforcing or challenging foreign awards.²¹

For mining disputes that qualify as investment disputes, arbitration offers an efficient and expedited means of resolution, with the option for either domestic or international arbitration, making it a preferred method for resolving mining-related conflicts, especially for foreign investors seeking specialized dispute resolution. This makes it a preferred method, particularly for foreign investors seeking specialized dispute resolution. A notable example is the case **Montero Mining and Exploration Ltd v. United Republic of Tanzania**,²² where claims arose from the Tanzanian Government's cancellation of the claimant's retention license for the Wigu Hill rare earth element project. Furthermore, one of the factors for parties opting for investment arbitration is ensuring the existence of an agreement that permits the state to resolve the dispute through arbitration. For instance, in the case **Salini Costruttori S.p.A. and Italstrade S.p.A. v. Hashemite Kingdom of Jordan**,²³ the Arbitral Tribunal dismissed the proceedings, finding that no agreement had been signed between the parties to grant jurisdiction to the Tribunal. The onus is on the claimant to demonstrate that such an agreement exists. Between 2005 and 2023, at least 13 investment disputes were referred to ICSID for arbitration.

¹⁵ The Constitution of United Republic of Tanzania, Cap 2 of 1977 as amended from time to time.

¹⁶ *Ibid*

¹⁷ *Ibid*

¹⁸ The Tanzania Investment Act, Cap 38 of 2023

¹⁹ Section 33(1) of the Tanzania Investment Act, Cap 38 of 2023

²⁰ Section 33(2) of the Tanzania Investment Act, Cap 38 of 2023

²¹ Ngowi, J. (2024, May 6). Resolving Disputes in the Tanzania Mining Sector. *Mondaq*. Retrieved January 1, 2025, from <https://www.mondaq.com/mining/1459696/resolving-disputes-in-the-tanzania-mining-sector> at 3:19 PM.

²² (ICSID Case No. ARB/21/6)

²³ ICSID Case No. ARB/02/13, Decision on Jurisdiction, November 15, 2004.

C. The Mining Act [Cap 123 R.E. 2019] : The Tanzania Mining Act²⁴ establishes a specific procedure for resolving disputes between individuals engaged in prospecting or mining operations and third parties, excluding the government, or between mining operators. Section 119 of the Mining Act²⁵ addresses the resolution of disputes related to mining operations. These disputes are limited to matters such as the boundaries of areas subject to mineral rights, claims related to water rights (including water infrastructure) connected to mining activities, the assessment and payment of compensation under the Mining Act, and other prescribed issues. The High Court of Tanzania, **in Civil Appeal No. 31 of 2020 between Jackson Nyamachoa and Higira Zablon and Others**, addressed the issue of whether a dispute between the parties fell under the scope of Section 119. The Court noted that the dispute in question was based on breach of contract and did not fall under the disputes the Commissioner may inquire into under Section 119(1) (a), (b), (c), or (d) of the Mining Act. The Court further emphasized that evidence was required to prove whether the dispute fell within these prescribed provisions. Disputes under Section 119 are to be resolved by filing a complaint with the Mining Commission. The High Court of Tanzania has ruled that the Commissioner for Mining's powers to resolve disputes are confined to those outlined in Section 119 of the Mining Act. The Court stated:

"Reading from the above-cited provision, I agree with the trial court that the Commissioner is vested with powers to inquire into and decide disputes between persons engaged in prospecting or mining operations. However, not all disputes concerning prospecting or mining operations fall under the Commissioner's jurisdiction. His mandate is limited to disputes set out in paragraphs (a), (b), (c), and (d) of section 119(1) of the Mining Act...

the provision is crystal clear that the disputes to be entertained by the Commissioner must relate to matters listed in subsection (1) (a-d), which include disputes over boundaries or the erection, cutting, construction, and use of facilities listed under subsection (1) (b) above."

Section 119 of the Mining Act stipulates;

"119 (1) The Commissioner may inquire into and decide all disputes between persons engaged in prospecting or mining operations, either among themselves or in relation to themselves and third parties, other than the Government, not so engaged, in connection with the boundaries of any subject to a mineral right, the claim by any person to be entitled to erect, cut, construct, or use any pump, line of pipes, flume, race, drain, dam, or reservoir for mining purposes, or to have priority of water taken, diverted, used, or delivered, as against any other person claiming the same, the assessment and payment of compensation pursuant to this Act, or any other matter which may be prescribed."

Also, in Suzana Pius Karani vs. Godlisten Mbise,²⁶ her Ladyship had this to say on the above provision;

"...the provision is crystal clear to the effect that the kind of disputes to be entertained by the Commissioner are to be connected with matters enlisted under subsection (1)(a-d), which includes disputes on boundaries or erection, cutting, construction, and use of facilities listed under subsection (1)(b) above."

Looking at Section 119 of the Mining Act and its judicial interpretation, it is clear that certain disputes cannot be resolved through arbitration or any other form of ADR outside the procedure provided by the law. Such disputes must be lodged with the Mining Commission, which will inquire into the matter, hear the parties, and make a determination. If a dispute does not fall under the provisions of Section 119, parties must seek the appropriate forum to file the dispute. For instance, in the case of a breach of contract, the resolution forum may depend on the dispute resolution clause. It could be an arbitral tribunal or, if no arbitration clause exists, state courts. If the matter is adjudicated in court, the nature of the dispute and the value of the subject matter will determine the specific court with jurisdiction to hear and decide the case.²⁷

²⁴ The Mining Act[Cap 123 R.E 2019]

²⁵ *Ibid*

²⁶ Civil Appeal No. 14 of 2019, HC at Mbeya.

²⁷ Ngowi, J. (2024, May 6). Resolving Disputes in the Tanzania Mining Sector. *Mondaq*. Retrieved January 1, 2025, from <https://www.mondaq.com/mining/1459696/resolving-disputes-in-the-tanzania-mining-sector> at 5:27PM.

D. The Law of Contract Act (Cap. 345 R.E. 2019) : An agreement that is enforceable by law is considered a contract, as defined in section 2(1) (h) of the Law of Contract Act.²⁸ In Tanzanian domestic arbitration law, the arbitral tribunal is obligated to apply the substantive law chosen by the parties in their agreement. All agreements are regarded as contracts if they are made with the free consent of competent parties, involve lawful consideration, and have a lawful object, as stipulated in section 10 of the Act.²⁹ Furthermore, contracts are not enforceable if they are expressly declared void.

When parties select the laws of a particular country, this selection pertains to the substantive laws of that country, excluding its conflict of laws rules. In the absence of such a choice, the tribunal will apply the law it deems applicable based on conflict of laws principles. In contract law, parties are free to choose their preferred method of dispute resolution. For example, if a dispute is initially submitted to the Mining Commission but remains unresolved, the matter may be taken to court. However, in investment disputes with clauses specifying international arbitration, parties must ensure that evidence and witnesses are prepared accordingly. A notable example of this is the case of **Acacia Mining PLC, Bulyanhulu Gold Mine Ltd, and Pangea Minerals Ltd v. Government of Tanzania**,³⁰ where the investment treaty stipulated international arbitration provisions. This clause may conflict with Tanzanian laws and policies, such as the Mineral Policy of 2009 and Section 9(1) of the Natural Wealth and Resources (Permanent Sovereignty) Act of 2017, which prohibits the exportation of raw resources for beneficiation outside Tanzania. This legal framework creates a contradiction while international arbitration clauses in investment treaties may be applied, they can conflict with Tanzania's domestic policies that emphasize the beneficiation of natural resources within the country. Consequently, although Tanzania does not generally apply international law to substantive matters, it may utilize international procedures, especially in cases involving investment treaties with international arbitration clauses.

E. The Mining (Dispute Resolution) Rules, 2021 : The Mining (Dispute Resolution) Rules, 2021, were enacted to articulate procedures for settling mining disputes between persons engaged in prospecting or mining operations and any third parties, excluding the government. These Rules outline the procedures for filing a dispute, starting with lodging a Memorandum of Complaint, followed by the responding party filing a reply to the Memorandum.³¹ Once these steps are completed, the dispute is ready for hearing, with the hearing procedures well detailed in the Rules. The hearing process involves the production of evidence and the appearance of witnesses. The High Court of Tanzania, in one of its decisions, held that a hearing conducted by the Mining Commission must be oral. Witnesses are required to appear and testify before the Commission, as opposed to merely filing statements and submissions narrating facts and the legal position regarding the matter under dispute. The hearing must ensure that all parties involved have an opportunity to present their cases orally. **Rule 8**³² mandates oral hearings, ensuring compliance with natural justice principles, as emphasized by the High Court in the case of **Jephtar Musa Gumbala (supra)**,³³ the High Court of Tanzania emphasized that parties must be heard before any decision is made. The Court stated;

"The right to be heard before adverse action is taken against such party has been stated and emphasized by the courts in numerous decisions. That right is so basic that a decision arrived at in violation of it will be nullified, even if the same decision would have been reached had the party been heard, because the violation is considered to be a breach of natural justice."

A person aggrieved by the Mining Commission's decision may appeal to the High Court of Tanzania. Subsequent appeals may lie with the Court of Appeal of Tanzania, which serves as the apex court in the country's judicial system. Therefore, arbitration serves as an alternative mechanism for resolving mining disputes, offering confidentiality, industry expertise, and binding resolutions that are enforceable under the Arbitration Act and the New York Convention, complementing the formal litigation process outlined in the Rules.

²⁸ The Law of Contract Act (Cap. 345 R.E. 2019)

²⁹ *Ibid*

³⁰ LCIA Case No. UN173686

³¹ Rule 4 of the Mining (Dispute Resolution) Rules, 2021

³² The Mining (Dispute Resolution) Rules, 2021

³³ High Court Civil Appeal No. 29 of 2022 between Jephtar Musa Gumbala & Another and Tanzoz Minerals Limited

F. The Natural Wealth and Resources (Permanent Sovereignty) Act of 2017 : The Natural Wealth and Resources (Permanent Sovereignty) Act of 2017 and the Natural Wealth and Resources (Review and Re-Negotiation of Unconscionable Terms) Act of 2017 assert Tanzania's sovereignty over its natural resources, emphasizing national control and protection of interests in contracts involving resource extraction and exploitation. The Permanent Sovereignty Act prohibits disputes related to natural resources from being adjudicated in foreign courts or tribunals, requiring such matters to be resolved within Tanzania's legal framework.³⁴ Additionally, the Review and Re-Negotiation of Unconscionable Terms Act allows for the renegotiation of contracts that include clauses referring disputes to international arbitration, deeming them ineffective under Tanzanian law if not renegotiated. These provisions challenge the use of international arbitration, reinforcing the application of domestic law over foreign adjudication in resource-related matters.

G. The Employment and Labour Relations Act [Cap 366 R.E. 2019] : Employment disputes cannot be avoided in the mining industry. The disputes vary in their nature. The most common employment disputes in Tanzania are disputes regarding terminating employment contracts. The Employment and Labour Relations Act,³⁵ provides for the relations of the employer and employees in different employment activities including the investment activities. The Act addresses and prohibits forced labor and child labor.³⁶ It also covers the issues of remunerations including the salary of the employee and the procedure on how to solve labor disputes.³⁷ For example disputes involve issues of working hours and working hour's arrangements.³⁸ According to section 88(1) of Employment and Labour Relation Act,³⁹ disputes which must be referred to arbitration include: a dispute of interest if the parties to the dispute are engaged in essential services and the dispute has been unsuccessfully mediated; a complaint over fairness of an employee's termination of employment, any other contravention of the ELRA or any other labour law or breach of contract in which the amount claimed is below the pecuniary jurisdiction of the High Court (that is, below one hundred (100) million shillings), and any dispute referred to arbitration by the labour court.⁴⁰

The law provides that if the parties at the stage of mediation fail to resolve a dispute of interest (in essential services) or fails to resolve a complaint (dispute of right), the Commission for Mediation and Arbitration must appoint an arbitrator to decide the dispute. The decision to refer a case for arbitration or to court must be made by the party to the dispute and not the mediator or arbitrator. This was established in the case of **Nicomedes**

Kajungu and 1374 Others vs. Bulyankulu Gold Mine (T) Ltd,⁴¹ in which the trial judge held that a mediator has no power to refer a dispute to court after the failure of mediation; such referral may only be made by a party to the dispute, and the mediator should issue the certificate to the parties in the prescribed manner only. In Tanzania, unless exempted by law or agreement, all employment disputes are referred to the Commission for Mediation and Arbitration (CMA) for mediation.⁴² If mediation fails at the CMA, the referring party may apply for the dispute to be referred to arbitration before the Arbitrator at the CMA or, depending on the nature of the dispute, it can be referred for adjudication to the High Court of Tanzania (Labour Division).⁴³ If the matter is referred for arbitration at the CMA, an aggrieved party may challenge the CMA Award at the High Court of Tanzania through Revision or Review.⁴⁴ The High Court (Labour Division) decision is appealable to the Court

³⁴ Section 9(1) of the Natural Wealth and Resources (Permanent Sovereignty) Act of 2017

³⁵ The Employment and Labour Relations Act [Cap 366 R.E. 2019]

³⁶ Section 5(1) and section 6(1) of the Employment and Labour Relations Act [Cap 366 R.E. 2019]

³⁷ Section 27(1) and 28(1) of the Employment and Labour Relations Act [Cap 366 R.E. 2019]

³⁸ Section 19(1) of the Employment and Labour Relations Act [Cap 366 R.E. 2019]

³⁹ The Employment and Labour Relations Act [Cap 366 R.E. 2019]

⁴⁰ Refer to the case of *Dr.NoordinJella vs. Mzumbe University, Complaint No.47 of 2008*-High Court of Tanzania-Labour Division at Dar es Salaam ,whereby it was held that all complaints irrespective of pecuniary considerations should first be referred to mediation, and after it fails, then it can referred to the Court for determination if the total claim exceeds 100 million shillings.

⁴¹ Civil Appeal No.110/2008

⁴² Section 86(1) of the Employment and Labour Relations Act [Cap 366 R.E. 2019]

⁴³ Section 86(7)(b)(i),(ii) of the Employment and Labour Relations Act [Cap 366 R.E. 2019]

⁴⁴ Section 94(1)(b) of the Employment and Labour Relations Act [Cap 366 R.E. 2019]

of Appeal of Tanzania on points of law only.⁴⁵ The law permits parties to agree on the use of private arbitrators. Consequently, if an arbitration agreement exists between the employer and the employees, standard arbitration procedures will be followed to resolve the employment dispute. This principle was affirmed in the case of **Project Manager Barrick Gold Mine (Bulyanhulu) v. Adriano Odhiambo**,⁴⁶ which emphasized the importance of an orderly resolution of disputes. This process ensures that all parties understand the nature of the case, have the opportunity to present their evidence, and call witnesses. It is also important to note that some labor matters pertain to compliance. In cases where an employment dispute arises due to an employer's failure to adhere to prescribed labor standards, authorities such as the labor commissioner and labor officers are empowered to issue directives or compliance orders. Employers have the right to challenge these compliance orders before the labor commissioner and, if necessary, escalate the matter to the Labour Court.⁴⁷

H. Tax Administration Act [Cap 438 R.E. 2019] : Another common type of dispute in the mining sector is a tax dispute. Tax disputes may arise for a number of reasons, including, but not limited to, incorrect interpretation of tax legislation, issuing tax assessments without the support of material facts, assessments issued out of time, poor record keeping and incompetency in tax matters by either tax officers or taxpayers, transfer pricing, tax audits and VAT refunds, tax treaties and international agreements, to mention but a few.⁴⁸ The Tax Administration Act⁴⁹ (TAA) in Tanzania serves as the cornerstone for tax governance and regulation, consolidating tax administration to streamline the enforcement of tax laws by the Tanzania Revenue Authority (TRA). Its primary aim is to ensure that taxpayers fulfill their obligations justly and punctually. The Act empowers TRA officials with the necessary tools, directions, and obligations to effectively manage taxes.⁵⁰ Under section 50 of the TAA,⁵¹ the Commissioner General of TRA is empowered to make decisions and assessments on specific tax matters provided under the tax legislation. A person aggrieved by such a decision may file an objection with the Commissioner General within 30 days. If the objection is admitted, the Commissioner General may determine the objection, call for further evidence or ask for any other information as may be necessary for the determination of the objection. In determining the objection, the Commissioner General may amend the decision subject to the objection or refuse to amend the decision or assessment issued. It is the requirement of the law that the one who is objecting the decision must deposit 1/3 of the assessed tax, whichever amount is greater. Or he must deposit an undisputed amount of tax payable. Such requirement is provided under section 50(5).⁵² **Njake Enterprises and Oil Transport Ltd v Commissioner General of TRA**,⁵³ adopted the provision of section 50(7)⁵⁴ which states, "When a tax payer files and objection and make payment under subsection 5 then the liability to pay tax shall be suspended until the objection is finally determined"

The person has to lodge his appeal first to the Commissioner General in the first instance. When aggrieved by the decision of the Commissioner General with regards to his objection then the aggrieved person may adopt the second attempt; to lodge his appeal to the Tax Revenue Appeal Board (TRAB). The procedures for appealing to TRAB are provided under the TRAA. The process of appeal is initiated by filing a Notice of Appeal and issuing it to the Commissioner within 30 days following the date of the final determination of assessment or any other decision by the Commissioner General. When aggrieved by the decision of the board the third attempt is to lodge the appeal to the Tax Revenue Appeals Tribunal (TRAT), when not in tandem with the decision of the

⁴⁵ Rwebangira, G. (2013). *Manual for labour law in Tanzania*. Tumaini University Makumira Dar es Salaam College, Faculty of Law. At page 151.

⁴⁶ High Court of Tanzania-Labour Division at Mwanza, Revision No.290 of 2008 (Unreported)

⁴⁷ Rwebangira, G. (2013). *Manual for labour law in Tanzania*. Tumaini University Makumira Dar es Salaam College, Faculty of Law. At page 151-154.

⁴⁸ Magai, S. D., & Ngocho, B. (2020, August 24). Mining in Tanzania: Effects of the mining legal framework overhaul. *DLA Piper Africa*. Retrieved January 2, 2025, from <https://www.dlapiperfrica.co.tz/insights/2020/mining-in-tanzania-article.html>

⁴⁹ The Tax Administration Act, Cap. 438 R: E 2019.

⁵⁰ Mbago, F., (2018). Tax Dispute Settlement Procedures in Tanzania. *Available at ISBN: 9783668788121*

⁵¹ The Tax Administration Act, Cap. 438 R: E 2019.

⁵² *Ibid*

⁵³ (2002) 2 TTLR 224

⁵⁴ The Tax Administration Act, Cap. 438 R: E 2019.

tribunal, the aggrieved party has to lodge his appeal to the Court of Appeal of Tanzania as the last resort of settlement.⁵⁵ Therefore, there is no particular legislation to govern tax disputes in the mining sector. If a tax dispute arises in the mining industry, the usual mechanism for settling the tax dispute in the country will be applied. We shall highlight some of the available options.

I. The Tax Revenue Appeals Act,[Cap. 408 R.E 2019] : The Tax Revenue Appeals Act empowers TRAB and TRAT to resolve complaints or appeals by mediation, conciliation and arbitration.⁵⁶ However, the Act does not provide details on how and when a complaint can be resolved using an ADR mechanism. However, the Finance Act 2021.⁵⁷ The Tax Revenue Appeals Act was amended to allow a party to appeal at any stage of the proceedings, provided it is before the delivery of judgment, to apply for an amicable settlement through mediation.⁵⁸ However, the law does not establish any authority to conduct mediation or arbitration, nor does it designate a mediator or arbitrator. The law does not establish any authority which will conduct mediation, arbitration or a person who will be the mediator or designate an arbitrator. This implies that the parties to the appeal will determine how the arbitration process will take place. In practice, taxpayer officers and their counsel typically meet with responsible officers of the TRA to discuss settlement proposals submitted by one of the parties. The law mandates TRAT or TRAB to report the outcome of the mediation or arbitration, and ultimately, it is TRAB or TRAT, as applicable, that issues the final order regarding the arbitration outcome or arbitration.

1. THE CHALLENGE OF ARBITRATION APPLICATION IN TANZANIA.

a) National Sovereignty vs. International Arbitration : One of the key challenges to the application of international arbitration in Tanzania is the conflict between the nation's sovereignty over its natural resources and the use of foreign arbitration to resolve disputes. The Natural Wealth and Resources (Permanent Sovereignty) Act asserts Tanzania's control over its natural resources by prohibiting disputes related to these resources from being adjudicated in foreign courts or arbitration tribunals. This creates a direct challenge to the inclusion of international arbitration clauses in contracts with foreign investors, which are often seen as essential for ensuring neutral and impartial dispute resolution.⁵⁹ As a result, international investors may be reluctant to enter into agreements with Tanzanian entities, fearing that the absence of arbitration clauses will expose them to the uncertainties of the local legal system. This tension between national legal frameworks and international arbitration practices creates a challenging environment for Tanzania in attracting foreign investment, particularly in industries that rely heavily on resource extraction and international partnerships.

b) Enforcement of Arbitral Awards : The enforcement of arbitral awards in Tanzania is hindered by several challenges, despite the country's ratification of the New York Convention. Local courts often fail to recognize foreign awards, especially in cases involving national interests, where political factors influence decisions.⁶⁰ Procedural issues, such as non-compliance with the Labor Institutions Mediation and Arbitration Guidelines (LIMAG) and incomplete or improper documentation of proceedings, also complicate enforcement. For example, in **Charles Musa Matelego v. Epsom Ltd**⁶¹ and **Alliance Tobacco Ltd v. Zaida Mahava**,⁶² awards were quashed due to procedural irregularities, including missing records and failure to follow prescribed arbitration procedures. Additionally, judicial intervention and political considerations can delay or prevent the enforcement of awards, as demonstrated in **China Railway Jiang Engineering Co. Ltd v. Abdalah Ibadhi & Salum Mtengevu**.⁶³ Notwithstanding the fact that the Arbitration Act does not state the grounds for remitting an

⁵⁵ Mbago, F., (2018). Tax Dispute Settlement Procedures in Tanzania. Available at ISBN: 9783668788121. p 8.

⁵⁶ section 17(1)(b) of the Tax Revenue Appeals Act, Cap 408 R.E 2019

⁵⁷ Act No. 3 of 2021

⁵⁸ section 70 of the Finance Act 2021

⁵⁹ Pastory, W. R. B. (2022). Challenges of the legal protection of foreign investment in the mining sector in Tanzania's mainland: A case study of Lake Zone. *Journal of Legal Studies and Research*, 8(1). Retrieved from <https://thelawbrigade.com/wp-content/uploads/2021/12/Winchislaus-R.B-Pastory-JLSR.pdf>

⁶⁰ Nyika, E. S. (2016). Enforcement of Arbitral Awards in Tanzania: Applicable Laws and their Practical Challenges. *The Law School of Tanzania Journal*, 1(2), 61-78.

⁶¹ Revision No.3 of 2007; High Court of Tanzania at Dar es Salaam

⁶² Revision No.41 of 2008 ; High Court of Tanzania at Dar es Salaam

⁶³ Revision No.61/2008; High Court of Tanzania at Dar es Salaam (Rweyemamu R.M.J)

award, the Civil Procedure Code Arbitration Rules on its part, succinctly provides for the grounds for remitting an award.⁶⁴

IV. CONCLUSION

Investment disputes between investors and the government in the mining sector are often governed by contracts with international clauses that allow parties to opt for arbitration as a dispute resolution mechanism. In the absence of an agreement on arbitration, the right to appeal to the High Court serves as a remedy. However, for disputes related to tax, labor, environmental health, and other issues within the mining sector, the law directs such matters to the Mining Commission, which currently lacks provisions for arbitration or other alternative dispute resolution (ADR) methods. To enhance the resolution process, it is essential to establish more specific rules and designate authorities responsible for alternative dispute mechanisms, particularly for tax-related disputes. The inclusion of arbitration, especially for substantive tax disputes, would strengthen Tanzania's dispute resolution framework, ensuring a more efficient and comprehensive approach to resolving conflicts in the mining industry.

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