

**THE REPUBLIC OF UGANDA,
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

CIVIL APPEAL NO 155 OF 2013

**(ARISING FROM HIGH COURT MISCELLANEOUS CAUSE NO 88 OF
2012)**

(CORAM: KAKURU, KIRYABWIRE, MADRAMA JJA)

THE ATTORNEY GENERAL}APPELLANT

VERSUS

EAST AFRICAN GOLD SNIFFING COMPANY LTD}RESPONDENT

JUDGMENT OF CHRISTOPHER MADRAMA IZAMA

15 This is appeal arises from the judgment and orders of the High Court (Civil Division) Mwangunsya J, Judge of the High Court as he then was in Miscellaneous Cause No 28 of 2012, being an application for judicial review in which the learned trial judge allowed the application.

20 The background to the application is that the Respondent sought declarations that the Minister of Energy and Mineral Development does not have jurisdiction to review the decision of the Commissioner of Geological Survey and Mines under section 118 of the Mining Act, 2003 in the absence of a request for administrative review made by a person aggrieved by the decision of the Commissioner. Secondly, the Respondent sought a
25 declaration that the request for administrative review made by Hima Cement Ltd on 28th of February 2012 was not the request of a person aggrieved under section 118 of the Mining Act. Thirdly, the Respondent sought a declaration that the preliminary decision of the Minister dated 26th of April 2012 is illegal. Fourthly, the Respondent sought declaration that in the circumstances of the

Decision of Hon. Mr. Justice Christopher Madrama Izama Font: Arial, size: 10pt, security: 2020 style: ITALIC COURT OF APPEAL
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5 case, the Minister acted *ultra vires* and therefore the final decision and orders
of the Minister arising out of the administrative review proceedings initiated
by Hima Cement Ltd are null and void. Fifthly, the Respondent sought an
order of *certiorari* to quash the final decision of the Minister dated 26th of
April 2012. Last but not least the Respondent sought an order to restore the
10 status quo of the Exploration Licence No 0932 (EL 0932) as it was before the
final decision of the Minister.

The decision of the learned trial judge rested on his finding that Hima
Cement Ltd was a nonentity and could not be an aggrieved person. That
essentially disposed of the application for judicial review and the learned trial
15 judge granted the remedies sought by the applicant. The orders issued
included an order of *certiorari* to quash the decision of the Minister as *ultra
vires* and vitiated by an error apparent on the face of the record because a
non-existent entity was given audience.

The Appellant was aggrieved and lodged this appeal on the following
20 grounds:

1. The learned trial judge erred in law and fact in finding that Hima
Cement Ltd is a non-existent person in law and therefore, Hima Cement
Ltd did not possess the legal standing to request for the administrative
review proceedings under section 118 of the Mining Act, 2003 that the
25 learned trial judge quashed by way of a prerogative order of *certiorari*.
2. The learned trial judge erred in law and fact in finding that Hima
Cement Ltd has not suffered a legal grievance in law so as to entitle it
to lodge administrative review proceedings under section 118 of the
Mining Act, 2003.
- 30 3. The learned trial judge erred in law and in fact in faulting and quashing
the honourable Minister's decision on the basis of the fact that Hima
Cement Ltd was a non-existent entity, a point which was never raised

5 at the administrative review proceedings and which the Minister had no opportunity of making a finding upon.

4. The learned trial judge erred in law and fact by failing to take into account all the illegalities of irregularities which the Respondent committed while procuring the initial Exploration Licence No 0932, in
10 his final ruling in Miscellaneous Cause No 88 of 2012.

5. The learned trial judge applied the wrong principles on judicial review in finding for the Respondents, hence coming to wrong conclusions in his ruling.

15 The Appellant prays that the appeal is allowed and the judgment and orders of the High Court in Miscellaneous Cause No 88 of 2012 be set aside. The Appellant further prays that the orders of the Minister be reinstated and be allowed to stand. Finally, the Appellant prays for costs in the High Court and Court of Appeal.

20 This appeal was scheduled for 30th of March 2020 for hearing but due to the global pandemic of Covid 19, Counsel were requested to address the court by way of written submissions. The Appellant is the Attorney General and at the scheduling conference learned Counsel Mr Philip Mwaka, Principal State Attorney appeared on his behalf while learned Counsel Mr Joshua Byabashaijja represented the Respondent.

25 **Submissions of Counsel**

30 The Appellant's Counsel by way of background submitted that the Respondent was granted an exploration licence by the Commissioner Geological Survey and Mines Department on 30th of January 2012 over an area previously held by Hima Cement Ltd (Hima Cement (1994) Ltd). Hima Cement Ltd was aggrieved by the grant of exploration licence No 0932 to the Respondent and requested the Hon Minister of Energy and Mineral Development (hereinafter referred to as the Minister) for administrative

5 review of the decision to grant the licence. Hima Cement Ltd raised several grounds for the administrative review by the Minister. The Minister duly gave the parties notice of administrative review and hearing for 26th of March 2013 and heard the parties inter parties during which evidence was led and there was a right of cross examination. The Hon Minister issued her decision on
10 the matter on the same day. The Hon Minister found that the Commissioner did not take into account section 28 (3) of the Mining Act 2003 which required an applicant for a mineral right to demonstrate financial capacity and the Respondent did not demonstrate that financial capacity. Secondly, the Hon. Minister found that the Commissioner did not give due regard to
15 the requirement that an applicant for a mineral right demonstrates sufficient technical competence and experience and provision for training of Ugandans. Thirdly, the Hon. Minister found that the ground concerning failure to erect temporary beacons prior to the submission of application for exploration licence in accordance with the regulations 9, 10, 12 (1) (a) (iii), 54
20 (3) and 55 of the Mining Regulations, 2004 failed. Fourthly, the Hon Minister noted that the proximity with the which the Respondent obtained prospecting licence No 0862 and applied for and obtained an exploration licence No 0932 was a cause for concern. Fifthly, the Hon Minister noted that the application for the exploration licence was not properly endorsed by the
25 Chief Administrative Officer as required by regulation 8 (c) of the Mining Regulations, 2004.

The Hon Minister set aside the grant of the exploration licence No 0932 whereupon the Respondent applied for judicial review of the decision of the Minister under section 119 of the Mining Act, 2003.

30 The Appellant's Counsel submitted on grounds 1 and 2 of the appeal together. Grounds 1 and 2.

5 He submitted that Hima Cement Ltd as a matter of fact, exists as a legal
person. The evidence on record shows that Hima Cement (1994) Ltd changed
its name to Hima Cement Ltd. This was by removing the numbers "1994"
from its name. He submitted that Hima Cement Ltd which initiated the
administrative review and was allowed to participate in the suit adduced in
10 court evidence of the steps it showed to change its name, including a special
resolution duly registered by the Registry of Companies, the Uganda
Registration Services Bureau (URSB).

The Appellant's Counsel prayed that the court finds that Hima Cement Ltd
does in fact exist as a legal person, having changed its name from Hima
15 Cement (1994) Ltd. He relied on section 19 (1) of the Companies Act, Cap
110 re-enacted in section 40 (1) of the Companies Act No 1 of 2012 which
provides that a company may change its name by special resolution and with
the written approval of the Registrar. He submitted that the evidence of the
special resolution was adduced in evidence. He further submitted that this
20 evidence shows that Hima Cement Ltd was in substantial compliance with
the provisions of the law governing change of name.

He further submitted that even if the change of name was not gazetted, it
does not make void the change of name. The purpose of gazetting was to
give notice and does not go to the root affecting the change of name. Finally,
25 he submitted that any shortcomings in the registration can be explained
away as a clerical error which was insignificant and did not go to the root of
the change of name. Further, that endorsements of the registrar upon the
special resolution and a certificate of change of names both of which were
submitted in evidence originate from URSB which Hima Cement Ltd has no
30 control over. He submitted that Hima Cement Ltd played its part in securing
the change of name.

5 Further, the Appellant's Counsel submitted that even if the change of name was not gazetted, it does not in any way avoid the change of name.

The Appellant's Counsel submitted that notwithstanding any defects in the change of name from Hima Cement (1994) Ltd to Hima Cement Ltd, or where the change of name is found to be improper or obsolete for any reason, it is
10 apparent in the pleadings and evidence that the entity being referred to is well known as Hima Cement (1994) Ltd whose legal status is established and unchallenged.

The Appellant's Counsel further submitted that the error in the name was a misnomer. That in any case Hima Cement (1994) Ltd and the Hima Cement
15 Ltd are one and the same company and the names were used interchangeably. Further that the omission of the numbers "(1994)" cannot in any way be considered fatal to the existence of the legal entity. Further, the Appellant's Counsel submitted that the Respondent was conscious and was aware at all material times with whom it was dealing, interacting and
20 corresponding specifically prior to and during the administrative review and in so doing various referred, addressed the entity interchangeably as Hima Cement Ltd or Hima Cement (1994) Ltd.

The Appellant's Counsel further submitted that the Respondent is estopped from denying the interchangeable use of the expression or the names of the
25 Hima Cement Ltd and Hima Cement (1994) Ltd.

In conclusion learned that Counsel prayed that this court finds that Hima Cement Ltd does in fact exist as a legal entity having duly changed its name from Hima Cement (1994) Ltd. Secondly, he prayed that the court finds that the reference to Hima Cement Ltd was in fact a misnomer in reference to
30 Hima Cement (1994) Ltd. Thirdly, the Appellant's Counsel prays that this court finds Hima Cement (1994) Ltd and Hima Cement Ltd are one and the same.

5 The Appellant further submitted that Hima Cement Ltd had *locus standi* and qualified as "a person aggrieved".

He submitted that Hima Cement Ltd or Hima Cement (1994) Ltd suffered a legal grievance because it was an interested party by virtue of the fact that its core business is based on mining and cement production which was the
10 very subject of the Exploration Licence No 0932. Secondly, that Hima Cement Ltd owned the surface rights subject to the mineral area of the Exploration Licence No 0932 and had expansive infrastructure on the locus. Thirdly, he submitted that the minerals being a public resource, any entity Uganda would qualify as an aggrieved person in Uganda in relation to the control
15 and management of the public resources or the failure thereof.

Appellant's Counsel prayed that this court finds that the entity referred to as Hima Cement (1994) Ltd or Hima Cement Ltd exists in fact, or is a misnomer does in fact exist as a legal entity capable of instituting administrative review proceedings under section 118 of the Mining Act, 2003. Secondly, he prayed
20 that this court finds that the entity aforementioned does in addition to being a legal person, was also an aggrieved person with locus standi to initiate administrative review proceedings under section 118 of the Mining Act, 2003.

Ground 3

The Appellant's Counsel submitted that the decision of the learned judge to
25 the effect that Hima Cement Ltd did not exist as a legal entity and therefore does not have *locus standi* to initiate administrative review proceedings as an aggrieved person was not at any time raised in the proceedings before the Minister. Moreover, as submitted earlier, the parties repeatedly and interchangeably referred to the entity as Hima Cement Ltd or Hima Cement
30 (1994) Ltd. He reiterated submissions that the Respondent is estopped from denying that Hima Cement Ltd is a misnomer for Hima Cement (1994) Ltd.

5 Ground 4

The Appellant's Counsel submitted that the learned trial judge did not comprehensively address the merits in the judicial review and failed to pronounce himself on the same.

Ground 5

10 The Appellant's Counsel submitted that the learned trial judge applied wrong principles or misapplied the principles of judicial review in finding for the Respondent, hence coming to the wrong conclusion in his ruling.

He submitted that firstly, the learned trial judge misapplied the law in finding that Hima Cement Ltd was not a legal entity. Secondly, the learned trial judge
15 misapplied the law in finding that Hima Cement Ltd was not a misnomer of Hima Cement (1994) limited. Thirdly, the learned trial judge misapplied the law in failing to find that Hima Cement Ltd was one and the same as Hima Cement (1994) Ltd in usage, reference and reality. Fourthly, the learned trial
20 judge misapplied the law in failing to find that Hima Cement Ltd and Hima Cement (1994) Ltd were not and could not to be used interchangeably. Fifthly, the learned trial judge misapplied the law in finding that Hima Cement (1994) Ltd had not in effect changed its name to Hima Cement Ltd. The Appellant's Counsel further submitted that in ground 6 that the learned trial
25 judge misapplied the law by faulting Hima Cement Ltd for not effectively changing its name by virtue of and alleged inconsistencies in the endorsement of documents, (special resolution) and issuance of documents (certificate of change of name), which was the preserve of and which originated from URSB. Seventhly, the learned trial judge misapplied the principle in **Miscellaneous Application No 12 of 2012 Kilembe Mines Ltd
30 versus Uganda Gold Mines Ltd** citing the authority of Supreme Court of Kenya in **Fort Hall Bakery Supply Co. Ltd versus Frederick Muigai Wangoe [1959] EA 474**. He submitted that in the Kilembe Mines Ltd the

5 learned trial judge found that there was no misnomer to the fact that the
offending company did not have any existence whatsoever since it was a
foreign company, not registered in Uganda. In the present case it was a
change of name of an already existing legal entity. Hima Cement Ltd was in
fact a misnomer for an already existing entity being Hima Cement (1994)
10 limited.

He submitted that in **Fort Hall Bakery Supply Company Ltd versus
Frederick Muigai Wangoe [1959] EA 474**, the plaintiff was a loose
association of bakers. They had not obtained a business name and the court
found that they were not a legal entity with capacity to sue or be sued. On
15 the 9th ground, the learned trial judge misapplied the law or failed to apply
the proper principles and this led to the court making a wrong decision.
Lastly the Appellant's Counsel submitted that the learned trial judge
improperly exercised his discretion to question the decision of the Minister
and prayed that this court finds so.

20 Learned Counsel submitted that section 19 of the Companies Act Cap 110 as
re-enacted in section 40 (5) of the Companies Act 2012 allows for continuity
of obligations and legal proceedings including litigation in spite of the
change of name.

He prayed that the appeal is allowed with costs.

25 In reply, the Respondent's Counsel submitted that the company calling itself
Hima Cement Ltd made a request for administrative review challenging the
grant of Exploration Licence No 0932 to East African Gold Sniffing Ltd, the
Respondent. On 26th of April 2012, the Minister of Energy and Mineral
Development conducted the administrative review and set aside the grant of
30 Exploration Licence No 0932. The Respondent was aggrieved and filed an
application for judicial review in the High Court. On 26th of March 2013 a
ruling was delivered in favour of the Applicant (who is the Respondent

5 herein) where the court found *inter alia* that Hima Cement Ltd was a non-existent entity which could not commence the administrative review proceedings. Secondly, the court found that Hima Cement Ltd was not an aggrieved person within the meaning of the law.

10 The Respondent's Counsel pointed out that Hima Cement Ltd never appealed the decision of the High Court. It is only the appeal of the Attorney General which is before this court.

The Respondent's Counsel submitted that there are preliminary points of law which are capable of disposing of the appeal in its entirety namely:

- 15 1. The Minister, being an impartial administrative tribunal adjudicating a dispute between private parties, cannot lawfully appeal to challenge the decision of the High Court.
2. The Attorney General cannot competently bring the appeal, because the points and issues raised appear to be raised on behalf of the said Hima Cement Ltd, which did not appeal.

20 Without prejudice the Respondent's Counsel responded to the arguments in support of the appeal.

With regard to ground 1, the Respondent's Counsel submitted that the learned trial judge made the proper determination based on facts and law that Hima Cement Ltd is not a person at law. Secondly, the Respondent
25 submitted that the evidence on record confirm that Hima Cement Ltd is not a person at law. Thirdly, in the alternative and without prejudice the Respondent's Counsel submitted that the non-compliance with the change of name procedure under the Companies Act, is not a minor excusable default and neither can such non-compliance be attributed to the staff of the
30 Companies Registry. Fourthly, the Respondent's Counsel submitted that

5 Hima Cement Ltd cannot derive its legal existence from Hima Cement (1994) Ltd, as the two are completely different at law.

The Respondent's Counsel submitted that the mining lease No 3480 was held by Hima Cement (1994) Ltd and there is no relationship at all with the said Hima Cement Ltd. Further, Hima Cement Ltd could not, by any stretch of
10 imagination have suffered a legal grievance when it did not hold any mineral rights in the area covered by Exploration Licence No 0932. Further that Hima Cement Ltd lacked the *locus standi* to apply for administrative review. He submitted that judicial precedents in Uganda has settled what amounts to legal grievance and there is no evidence on record to prove that Hima
15 Cement Ltd suffered any legal grievance.

Ground 3

The Respondent's Counsel further submitted that at the commencement of the administrative review, he raised a point of law challenging the capacity of Hima Cement Ltd to bring the administrative review proceedings.
20 Secondly, Counsel submitted that estoppels is not available to the Appellant. Thirdly, the Respondent's Counsel submitted that the Appellant cannot be allowed to raise the point because it is trite principle of law that an illegality once discovered vitiates all. In the alternative and without prejudice the Respondent's Counsel submitted that in the determination of whether Hima
25 Cement Ltd was an aggrieved person within the meaning of section 118 of the Mining Act, 2003, it was a cardinal jurisdictional point of law that the Minister was under duty to establish before conducting the administrative review. Further he submitted that the existence of Hima Cement Ltd is a major point of law which has a fundamental bearing on the matter before
30 the court.

Ground 4:

5 The Respondent's Counsel submitted that the trial judge made a proper determination based on facts and law.

He submitted that the omission of the Commissioner from the administrative review proceedings denied the Minister the opportunity to establish the reasons and basis for the grant of the Exploration Licence No 0932 to the Respondent and as such any alleged discrepancies cannot be considered at this stage.

Further, the Respondent's Counsel submitted that the learned trial Judge was not mandated to delve into all the matters raised by the parties, once there are points of law whose determination is sufficient to dispose of the entire matter before the court.

He submitted that judicial review proceedings are restricted to procedural matters and are not on the merits review of the determination of an administrative tribunal.

Ground 5

20 The Respondent's Counsel submitted that the learned trial judge made a proper determination and rightly applied the principles of judicial review.

With regard to the merits, the Respondent's Counsel submitted that administrative review proceedings that omitted the Commissioner Geological Survey and Mines, as the Respondent, were tainted with procedural impropriety. He submitted that as a result of the procedural flaws above, the Commissioner was never heard in administrative review and resulted in the absurd decision that set aside the Commissioner's decision to grant exploration licences No 0932. Secondly the entire administrative proceedings were marred with procedural impropriety and for that reason alone the decision of the Minister should be quashed.

5 The Respondent's Counsel prayed that this court dismisses the appeal on all grounds of appeal and upholds the decision of the learned trial judge with costs to the Respondent.

10 In rejoinder the Appellant's Counsel submitted that the matter raised is a matter of law and the Attorney General is at liberty to pursue the argument in the interest of justice as an officer of the court and head of the Ugandan Bar. Secondly, he submitted that the status of Hima Cement Ltd vis-à-vis Hima Cement (1994) Ltd was the core point in the Judgment of the learned trial judge though it was never raised in the administrative review proceedings before the Hon Minister of Energy and Mineral Development.

15 Thirdly, the Appellant's Counsel prayed that the court to consider the matter since Hima Cement Ltd which derived from Hima Cement (1994) Ltd is presently locked out of the appeal before court.

In rejoinder on grounds 1, 2, 3, 4 and 5 of the appeal, the Appellant's Counsel majorly reiterated earlier submissions.

20 **Resolution of the appeal**

I have carefully considered the grounds of appeal, the written submissions of Counsel, the laws cited as well as the record of appeal.

25 The Respondent's Counsel objected to the appeal of the Attorney General on the ground that the Minister, being an impartial administrative tribunal adjudicating in a dispute between private parties, cannot lawfully appeal to challenge the decision of the High Court. Secondly, that the Attorney General cannot competently bring the appeal because the points and issues raised appear to be raised on behalf of Hima Cement Ltd, which did not appeal.

30 The 1st ground of objection that the Minister cannot file an appeal cannot be sustained because it is the Respondent in Miscellaneous Cause No 88 of 2012 that filed an application for judicial review and cited the Attorney General of

5 Uganda as the Respondent. The Respondent had applied for judicial review seeking remedies of declaration that the Minister of Energy and Mineral Development (the Minister) does not have jurisdiction to review the decision of the Commissioner of Geological Survey and Mines under section 118 of the Mining Act, 2003 in the absence of a request for administrative review
10 made by a person aggrieved by the decision of the Commissioner. Secondly, for declaration that the request for administrative review made by Hima Cement Ltd on 28th February, 2012 was not a request of a person aggrieved under section 118 of the Mining Act. It further sought a declaration that the preliminary objection of the Minister dated 26th of April 2012 is illegal.
15 Further, that the Minister acted *ultra vires* and for an order of *certiorari* to quash the final decision of the Minister dated 26th of April 2012 and restore the Exploration Licence 0932 granted to the Respondent.

Secondly, Hima Cement Ltd was not cited as a party to Miscellaneous Cause No 88 of 2012. Hima Cement Ltd was represented before the Minister by
20 Sebalu and Lule advocates and had applied on behalf of the company for administrative review in respect of Exploration Licence No 0932 granted to the Respondent. The record clearly indicates that Moses Segawa of Sebalu & Lule advocates swore an affidavit in reply to Miscellaneous Cause No 88 of 2012 and paragraphs 1, 2 and 3 thereof are material and in which he stated
25 as follows:

1. That I am an advocate of the High Court of Uganda practising with Sebalu & Lule advocates and instructed by our client, Hima Cement Ltd to swear this affidavit and I depone hereto in such capacity.
2. That I have read and understood the contents of the application above and
30 Dennis Kusasira's affidavits sworn in support thereof.
3. That I am familiar with all matters pertaining to this case having represented our client Hima Cement Ltd in the underlying application for Administrative Review (Administrative Review) before the Minister of Energy and Mineral Development (Minister) which was commenced by our client, challenging the

5 grant of EL 0932 to the Respondent. (Meant applicant who is the Respondent to this appeal)

However, the affidavit in reply does not cite Hima Cement Ltd as a party and in paragraph 26 thereof indicates that the deponent made the affidavit in reply and opposition to the applicant's application above and affidavits
10 sworn in support thereof.

The question of interest is whether Hima Cement Ltd as the party (even though it was declared non-existent entity) which moved the Minister for review of the exploration licence was a cited party to proceedings in the High Court? The matter was entitled as between the Attorney General and the
15 Respondent in the High Court. In the High Court the Respondent was the applicant for judicial review and the Attorney General was the Respondent. The contention that Hima Cement Ltd did not appeal has some merit as stated below.

The real question is whether the Attorney General can represent the interests
20 of Hima Cement Ltd (though declared a nonentity by the learned trial judge). Resolving that question also imports another controversy as to whether prima facie, it was proper to decide the judicial review application in the High Court without joining the party which moved the Minister to conduct an administrative review of the exploration licence in question.

25 Section 118 of the Mining Act 2003 under which the Minister was moved provides as follows:

118. Administrative review by Minister

(1) Any person aggrieved by any decision of the Commissioner may, within thirty
30 days after being notified of the decision, request in writing, an administrative review of the decision by the Minister.

5 (2) The Minister may within 60 days after receipt of a request for administrative review under this section, confirm, set aside or vary the decision complained about.

(3) The Minister shall give reasons in writing for his or her decision on a review under this section.

10 The right of a person aggrieved to move the Minister for administrative review is not in dispute. Though Hima Cement Ltd was not cited as a party, Mr. Ecimu of Messieurs Sebalu & Lule advocates appeared for Hima Cement in the proceedings pursuant to rules 6 and 10 of the **Judicature (Judicial Review) Rules 2009** and associated himself with the submissions of the Counsel for the Respondent to this appeal (Mr. Byabashaija) on the principles
15 governing the exercise of prerogative powers in the authorities cited. This is referred to at page 23 of the judgment of the court. The submissions of Counsel for Hima Cement Ltd are clearly referred to by the learned trial judge and the question of whether Hima Cement Ltd was an aggrieved party was addressed. Rule 6 of the Judicature (Judicial Review) Rules, 2009 provides
20 that persons directly affected shall be served. It reads as follows:

6. Mode of applying for judicial review.

(1) In any criminal or civil cause or matter, an application for judicial review shall be made by notice of motion in the form specified in the Schedule to these Rules.

25 (2) The notice of motion must be served on all persons directly affected and where it relates to any proceedings in or before a lower Court and the object of the application is either to compel the lower Court or an officer of the lower Court to do an act in relation to the proceedings or to quash them or any order made in the proceedings, the notice or summons shall also be served on the Registrar of the Court and, where any objection to the conduct of the Presiding Officer is to be
30 made, on the Presiding Officer.

(3) Unless the Court has otherwise directed, there shall be at least ten days between the service of the notice of motion and the hearing.

5 (4) A motion shall be fixed for hearing within fourteen days after service of the notice of motion.

10 (5) An affidavit giving the names and addresses of, and the places and dates of service on, all persons who have been served with the notice of motion shall be filed before the motion is fixed for hearing and, if any person who ought to be served under the rule has not been served, the affidavit shall state that fact and the reason for it; and the affidavit shall be before the Court on the hearing of the motion.

15 (6) If, on the hearing of the motion, the Court is of the opinion that any person who ought, whether under this rule or otherwise, to have been served, has not been served, the Court may adjourn the hearing on such terms (if any) as it may direct in order that the notice of the motion may be served on that person.

Rule 6 (2) of the Judicature (Judicial Review) Rules, 2009 allows all persons affected to be served with the application for judicial review. Secondly, rule 10 (1) provides as follows:

20 10. Hearing of applications for judicial review.

(1) On the hearing of any motion under rule 6, any person who desires to be heard in opposition to the motion and appears to the court to be a proper person to be heard, shall be heard, notwithstanding that he or she has not been served with notice of the motion or the summons.

25 It is clear from the record that the entity described as "Hima Cement Ltd" was represented in the proceedings. The appeal before this court was however lodged by the Attorney General only and not by Hima Cement Ltd. At page 31 of the judgment, the learned trial judge stated as follows:

30 I have considered the general submissions of Counsel, however having found that Hima Cement Ltd was a non-existent party, it cannot at the same time be said to be aggrieved. The authorities cited on this issue are, with due respect of Counsel, merely academic. Suffice it to note, I am of the considered view that Hima Cement is not a person (legally) and therefore falls outside the ambit of section 118 of the

5 Mining Act. To put it more precisely, if it is not a person at law then it cannot be aggrieved. Basing on this finding, I am inclined to find as I hereby do that the administrative review was improperly conducted, there was no legal person to make the request envisaged.

10 That was and still is the crux of the dispute. The learned trial judge found that Hima Cement Ltd was a nonentity and therefore not an aggrieved person who could move the Minister for administrative review under section 118 of the Mining Act, 2003. The question of whether the Attorney General is the proper party to deal with whether Hima Cement Ltd was an aggrieved party capable of applying for administrative review before the Minister under
15 section 118 of the Mining Act, 2003 is a preliminary point of law and has to be determined the first.

Section 118 concerns the right of any person aggrieved by the decision of the Commissioner to apply for administrative review of the decision of the Commissioner. The crux of the matter is that under section 180 (2) of the
20 Mining Act, the Minister may within 60 days after receipt of the request for administrative review confirm, set aside or vary the decision of the Commissioner. In the facts of this case, the Minister cancelled the Exploration Licence No 0932 which had been issued by the Commissioner of Geological Survey and Mines Department. The application for judicial review was not
25 heard on the merits of the Minister's decision but was decided on the basis of locus standi in that the learned trial judge found that Hima Cement Ltd was a nonentity and therefore incapable of commencing any administrative review proceedings before the Minister. Flowing from that finding, the learned trial judge quashed the decision of the Minister. It is apparent Hima
30 Cement Ltd is an interested party and ought to have appealed to the Court of Appeal or in the very least ought to have been heard. The way to be heard is by filing a notice of appeal and lodging a memorandum of appeal giving its grounds of appeal. The Attorney General cannot bring itself within the

5 ambit of section 118 of the Mining Act 2003 because it cannot be aggrieved
by a decision of the Commissioner in the issuance of an exploration licence.
I have further considered the fact that it is the Respondent who cited the
Attorney General as a party to the judicial review application in the High
Court. The Appellant's Counsel submitted that the Respondent is barred by
10 the doctrine of estoppels from raising the issue of the right of the Attorney
General to appear in the proceedings. The right of the Attorney General to
appear in proceedings before the court is governed by statutory law and the
doctrine of estoppels imported by section 114 of the Evidence Act, Cap 6
does not override express statutory provisions.

15 I have accordingly considered the objection of the Respondent's Counsel to
the appeal on the basis that the Attorney General is not an aggrieved person
under section 118 of the Mining Act, 2003.

Ground 1 of the appeal is that:

20 **The learned trial judge erred in law and fact in finding that Hima Cement
Ltd is a non-existent person in law and therefore, Hima Cement Ltd did
not possess the legal standing to request for the administrative review
proceedings under section 118 of the Mining Act, 2003 that the learned
trial judge quashed by way of a prerogative order of *certiorari*.**

Secondly ground 2 of the appeal is that:

25 **The learned trial judge erred in law and fact in finding that Hima Cement
Ltd has not suffered a legal grievance in law so as to entitle it to lodge
administrative review proceedings under section 118 of the Mining Act,
2003.**

Ground 3 of the appeal is that:

5 **The learned trial judge erred in law and in fact in faulting and quashing the honourable Minister's decision on the basis of the fact that Hima Cement Ltd was a non-existent entity, a point which was never raised at the administrative review proceedings and which the Minister had no opportunity of making a finding upon.**

10 The rest of the grounds flow from the finding of the learned trial judge that Hima Cement Ltd is a nonentity which was therefore not an aggrieved party. Grounds 4 and 5 follow the event of finding that Hima Cement Ltd is a nonentity and any decision on grounds 1, 2 and 3 would affect the outcome of grounds 4 and 5 of the appeal.

15 It is therefore my finding that the ground 1 of appeal is not available to the Attorney General who under the Government Proceedings Act, Cap 77 is the legal representative of Government. Similarly, ground 2 of the appeal is not available to the Attorney General because it complains about the finding that Hima Cement Ltd is not an aggrieved person. Section 10 of the Government
20 Proceedings Act provides as follows:

Civil proceedings by or against the Government shall be instituted by or against the Attorney General.

The Attorney General represents the Government of Uganda. Similarly, article 119 of the Constitution of the Republic of Uganda which creates the office
25 of the Attorney General and provides for the functions of that office provides in article 113 (3) that the Attorney General shall be the Principal Legal Adviser of the Government. Secondly, article 119 (4) (c) of the Constitution of the Republic of Uganda inter alia provides that the Attorney General shall represent the Government in courts or any other legal proceedings in which
30 the Government is a party.

5 Article 119 (3) and (4) of the Constitution of the Republic of Uganda are reproduced for ease of reference and provides that:

119. Attorney General.

...

(3) The Attorney General shall be the principal legal adviser of the Government.

10 (4) The functions of the Attorney General shall include the following—

(a) to give legal advice and legal services to the Government on any subject;

(b) to draw and peruse agreements, contracts, treaties, conventions and documents by whatever name called, to which the Government is a party or in respect of which the Government has an interest;

15 (c) to represent the Government in courts or any other legal proceedings to which the Government is a party; and

(d) to perform such other functions as may be assigned to him or her by the President or by law.

20 Was the government a proper party under section 118 of the Mining Act when the decision for review by the Minister is that of the Commissioner under the Mining Act? Ground 3 of the appeal is merely consequential to the finding that Hima Cement Ltd is a nonentity. By finding that Hima Cement Ltd is not an aggrieved person, it followed that it could not have obtained the remedies granted by the Minister and therefore the decision of the
25 Minister was consequentially quashed. One might argue that the Attorney General would be interested in some questions of law. However, the Attorney General could only have represented the Minister. This was not possible in this case as the Minister was the adjudicator in the proceedings from which the application from which the application for judicial review had been made.
30 Secondly, the Attorney General was not purporting to represent the Commissioner who issued the exploration licence. In the circumstances of

5 this appeal, the Attorney General was clearly challenging the decision
declaring Hima Cement Ltd a nonentity. This is a question of fact based on
the registration by URSB. Secondly, it is not a question of general public
importance. Last but not least, the Attorney General has no capacity to
represent private limited liability companies or individual members of the
10 public.

In the premises, I would sustain the objection on the ground that the
Attorney General has clearly appealed the decision of the learned trial judge
that Hima Cement Ltd is a nonentity. On the other hand, Hima Cement Ltd
as described in the judgment has not appealed.

15 In the premises, the Attorney General's appeal has no merit for the reasons I
have set out in the judgment.

I would accordingly dismiss this appeal as it has no merit whatsoever with
costs both at the High Court and in this Court.

20 Dated at Kampala the 12th day of June 2020



Christopher Madrama Izama

Justice of Appeal

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO 155 OF 2013

(ARISING FROM HIGH COURT MISCELLANEOUS CAUSE NO 88 OF 2012)

(CORAM: KAKURU, KIRYABWIRE, MADRAMA JJA)

THE ATTORNEY GENERAL}APPELLANT

VERSUS

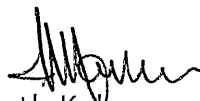
EAST AFRICAN GOLD SNIFFING COMPANY LTD}..... RESPONDENT

JUDGEMENT OF KENNETH KAKURU JA

I have had the benefit of reading in draft the judgment of my learned brother Madrama JA. I agree with him that this appeal has no merit and ought to be dismissed with costs for the reasons he has set out in his judgment.

As for Hon Mr. Justice Kiryabwire JA also agrees, The appeal stands dismissed with costs here and the Court below.

Dated at Kampala this ^{12th}..... day of ^{June}..... 2020



Kenneth Kakuru

JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
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THE ATTORNEY GENERAL.....APPELLANT

VERSUS

EAST AFRICAN GOLD SNIFFING COMPANY LTD.....RESPONDENT

JUDGMENT OF JUSTICE GEOFFREY KIRYABWIRE J.A.

I have had the opportunity of reading the Judgment of Brother the Hon Justice Christopher Madrama in draft and I agree with the findings and final decisions and Orders and have nothing more useful to add.

Dated at Kampala this.....^{12th} day of ^{June}..... 2020


Justice Geoffrey Kiryabwire J.A.