

July 5, 2022

Legal Alert: Granite is not a mineral!

NEW! ALP Infrastructure Law News

ALP Alerts is a free legal information service provided by ALP East Africa in respect of the firm's practice areas in its country presence in Kenya, South Sudan, Tanzania, and Uganda.

The Alerts are also available on the ALP website www.alp-ea.com

Supreme Court holds that “granite” is not a mineral (as to require a mining licence) but stone commonly used for building or similar purposes, and further holds the *Mining Act's* definition of building or industrial mineral to be inconsistent with the Constitution.

Mineral or stone?: China Road & Bridge Corporation v. Welt Machinen Engineering Limited; China Road & Bridge Corporation v. Welt Machinen Engineering Limited & Attorney General, Consolidated Civil Appeals No. 13 & 14/2019.

Background

In 2013, UNRA awarded a contract to China Road & Bridge Corporation (“China Road”) to construct the Moroto-Nakapiripirit Road. China Road approached the Nakapiripirit District administration for permission to excavate building stones (granite) from the Kamusalaba Rock to construct the road. The Nakapiripirit District Local Government entered into a hire of land agreement where China Road was given the authority to mine stones at UGX 50,000,000/=.

After China Road had started the process of quarrying the stones, Welt Machinen Engineering (“Welt”) obtained a prospecting licence within the same area. Welt obtained the location licences from the Ministry of Energy and Mineral Development conferring upon it the exclusive rights to excavate granite stones from the Rock. On that basis, Welt sought to have China Road terminate its excavation on the ground that it was the rightful and exclusive owner of the rights. Welt was unsuccessful in that effort and sued China North leading to a series of civil suits, appeals, and applications in various courts until the dispute reached the Supreme Court of Uganda.

A key issue addressed by the Supreme Court is whether industrial granite rock is a mineral that would require a license from the Ministry of Energy and Mineral Development before excavation.

Judgment of the Supreme Court

In rendering its judgment, the Court took note of Article 244(3) of the Constitution that provides that “mineral” does not include clay, murrum, and or any stone commonly used for building or similar purposes.

The Court agreed with China Road that the Kamusalaba rock was excavated and crushed into aggregates for the tarmacking of the Moroto-Nakapiripirit Road which brought it under the operation of Article 224(5) of the Constitution (as amended) and therefore fell within the ambit of the excluded substances from the definition of minerals. Therefore, the Court held that: “*Granite stone is not a mineral but stone commonly used for building purposes*”.

In addition, the Court held that the definition of “building mineral and “industrial mineral” under section 2 of the *Mining Act* is inconsistent with Article 244 of the Constitution (as amended) in as far as it includes substances excluded as minerals under the Constitution which is the supreme law of Uganda.

However, the Court advised the Parliament to pass a law to regulate the exploitation of any substance excluded from the definition of mineral when exploited for commercial purposes in accordance with the Article 244(6) of the Constitution.

On a separate note, the Court held that the Nakapiripirit District Local Government lacked the capacity to contract or enter into any agreement on behalf of any legal entity and, as such, the agreement between the local government and China Road was void given that it contravened the Constitution (Article 241) and the Land Act (sections 59 and 60) that give powers to deal with land not belonging to anyone to the District Land Board. To that end, the Court held that the rock was not owned by anyone and, as such, the rightful entity to transact on behalf of the District and to receive the compensation was Nakapiripirit District Land Board.

Conclusion

In conclusion, the *Mining Act* does not apply to substances like granite which are excluded from the definition of mineral under the Constitution of Uganda (as amended).

Disclaimer: No information contained in this alert should be construed as legal advice from ALP East Africa or ALP Advocates or the individual authors, nor is it intended to be a substitute for legal counsel on any subject matter.

For additional information in relation to this alert, please contact the following:

Judith Maryanne Aboto
Associate, Infrastructure Department

jaboto@alp-ea.com

Fiona Latigi Lamaro
Associate, Regulatory & Compliance Department

flatigi@alp-ea.com

ALP East Africa

Who we are

ALP East Africa is a premier integrated legal and professional services firm. ALP combines high impact analysis, strategy, and innovation to provide a single service point for clients' legal and professional services' needs. ALP has a deep understanding of Africa and in all assignments, the practice deploys a multidisciplinary and integrated approach using an extensive network of global and local partners to support our clients.

Our contacts

ALP Advocates

Lotis Towers, 5th floor
Plot 16 Mackinnon Rd
P.O. Box 28611
Kampala, Uganda
+256 414 671 997
info@alp-ea.com

ALP Kenya

Westpark Towers, 5th floor,
Mpesi Lane (off Parklands
Rd)
P.O. Box 102942-00101
Nairobi, Kenya
+254 721 836 545
Kenya@alp-ea.com

ALP South Sudan

Old KCB Building, 3rd
floor, Room No 204
Off Bilpam Rd (opp.
Rainbow football field)
P.O. Box Private Bag
Juba, South Sudan
+211 922 908 002
SouthSudan@alp-ea.com

ALP Tanzania

Janqid Plaza, 1st floor
Ali Hassan Mwinyi Rd (off
Chambruma Rd)
P.O. Box 1652
Dar-es-Salaam, Tanzania
+255 717 425 183
Tanzania@alp-ea.com

Website: www.alp-ea.com

Email: info@alp-ea.com

