

GOVERNMENT NOTICE No. 323 published on. 16/4/2021

THE MINING ACT,
(CAP. 123)

RULES

(Made under section 122)

THE MINING (DISPUTES RESOLUTION) RULES, 2021

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THE MINING ACT,
(CAP. 123)

RULES

(Made under section 122)

THE MINING (DISPUTES RESOLUTION) RULES, 2021

Citation	1. These Rules may be cited as the Mining (Dispute Resolution) Rules, 2021.
Interpretation	2. In these Rules, unless the context otherwise requires-
Cap. 123	“Act” means the Mining Act; “Executive Secretary” means the Executive Secretary of the Commission appointed under section 24 of the Act;
Power to handle dispute	3.-(1) Subject to section 119 of the Act, the power to inquire into and decide all disputes between persons engaged in prospecting or mining operations shall be vested to the Executive Secretary. (2) The power of Executive Secretary under sub rule (1) may be delegated to any officer of the Commission of a rank of director.
Lodging of complaint Cap. 123	4.-(1) Where in the course of prospecting or mining operations dispute arises which falls within the scope of Section 119 of the Act, a complainant who wishes the Commission to inquire into and decide the dispute may, upon payment of fee prescribed in the First Schedule, lodge to the Commission a memorandum of complaint in duplicate. (2) The complaint under sub rule (1) shall be in Form MDF. 1 set out in the Second Schedule, and shall

state briefly the subject matter of the complaint and relief sought.

(3) Upon receipt of the memorandum of complaint, the Commission shall register and assign a number of the dispute.

(4) The Commission shall, within fourteen days from the date of registration, assess the memorandum of complaint as to whether the subject matter falls within the jurisdiction of the Commission under Section 119 of the Act.

(5) Where the commission is of the opinion that a memorandum of complaint is outside the jurisdiction of the Commission, shall notify the complainant and the matter shall not proceed for hearing.

(6) Where the commission decides to proceed with the hearing, shall direct the complainant within seven days, to serve the respondent with the registered memorandum of complaints accompanied with a notice to file defence in the form MDF 2 as set out under the Second Schedule.

Reply to
memorandum of
complaint

5. The respondent shall reply to memorandum of complaints and submit to the Commission and serve the complainant within fourteen days from the date of receipt of the complaint.

Notice of hearing

6. The Commission shall issue a notice of hearing to the parties in Form MDF.3 set out under the Second Schedule by registered post, fax, emails, by dispatch or by other acceptable electronic means of communication.

Language of
proceedings

7. The language of the proceedings shall be English or Kiswahili.

PART IV HEARING OF DISPUTE

Hearing of
dispute

8.-(1) On the day fixed for hearing of the dispute, the complainant shall state the case in support of the

issues raised in the memorandum of complaint.

(2) The respondent shall then state his case and may address the Commission generally on the whole case.

Production of
evidence

9.-(1) The parties or their representatives shall produce at the first hearing, documentary evidence of every description in their possession or power, on which they intend to rely on and which has not already been submitted to the Commission, and any document which the Commission has ordered to be produced and the Commission shall take account of the evidence so produced.

(2) Documentary evidence in the possession or power of any party which has not been produced to the Commission at the first hearing shall not be produced at a subsequent hearing unless good cause is shown, to the satisfaction of the Commission, for the failure to produce the document at the first hearing.

(3) Where the Commission admits a document not produced at the first hearing he shall record the reason for so doing.

(4) The Commission may, at any stage of the hearing reject any document which it considers irrelevant or otherwise inadmissible, and shall record the ground for such rejection.

Witnesses

10.-(1) The parties may call person whose attendance is required either to give evidence or produce documents in support of their case,

Provided that where such person fails to appear, the hearing shall continue without such person.

(2) The commission may, if deems fit, call any person to testify on any matter involved in the complaint.

(3) Each party to the dispute shall bear the cost of witnesses appearing to give evidence in support of his case.

(4) The cost for calling witnesses shall not waive the rights of the decree holder to claim for costs.

Appearance and
non appearance
of parties

11.-(1) Where the respondent appears at two successive hearings and the complainant does not appear at either hearing without sufficient cause the complaint shall be dismissed and shall not be entertained again.

(2) Where the complainant appears and the respondent does not appear at two successive hearings the dispute shall be heard *ex-parte*.

(3) Where the dispute is heard *ex-parte* and judgment is pronounced against the respondent, the respondent may, upon payment of fee prescribed in the First Schedule and prior to the Commission filing an order for execution, apply to the Commission within thirty days from the date of the judgment, to set aside the judgment and re-hear the dispute.

Setting aside of
ex parte
judgment

12.-(1) Where the Respondent satisfies the Commission that the notice was not duly served on him or that he was prevented by sufficient cause from appearing when the complaint was called for hearing, the Commission shall set aside the judgment and re-hear the dispute.

Adjournment

13. Where the hearing of the complaint has begun, the hearing shall be continued unless the Commission finds the adjournment of the hearing to other time or place to be necessary.

Recording of
proceedings

14.-(1) During the hearing, the Commission shall take records of the proceedings which shall include parties present, date of the hearing and evidence produced.

(2) The Commission shall keep records of all disputes decided by the Commission and shall take notice in writing of all evidence given before the Commission.

Judgment and
order

15.-(1) The Commission, after the complaint has been heard, shall pronounce judgment and make an order either at once, or on some future day, of which due

notice shall be given to parties or their representatives.

(2) Every judgment and order shall be written, and shall be dated and signed by the Commission as of the date which it is pronounced.

(3) Every judgment shall contain a statement of the case, point for determination, the decision thereon and the reason for such decision.

(4) Parties to any dispute under these Rules or any other person, shall be entitled to obtain a copy of the decision, order, record and notes upon payment of fees specified in the First Schedule.

Revocation
GN No. 224 of
1999

16. The Mining (Disputes Resolution) Rules, 1999 is hereby revoked.

SCHEDULES

FIRST SCHEDULE

(Made under Rule 4(1), 11(3), 15(4))

Fees

Fees for Instituting a Complaint and obtaining a copy of Order or Decision	
	TSHS
Primary Mining Licence holders	200,000
Prospecting Licence holders	1,000,000
Mining and Special Mining Licence holders	1,500,000
Instituting a Claim by Third Party	200,000
Obtaining a copy of order, decision or record and notes for parties	100,000
Obtaining a copy of decision and order by any person	200,000
Application to set aside <i>ex parte</i> Judgment for Primary Mining Licence holder	100,000
Application to set aside <i>ex parte</i> Judgment for Prospecting Licence holder	200,000
Application to set aside <i>ex parte</i> Judgment for Mining and Special Mining Licence holders	300,000

SECOND SCHEDULE

FORM MDF.1

IN THE MATTER OF MININGACT,
(Cap. 123)

THE MINING COMMISSION

(Made under Rule 4 (2))

MEMORANDUM OF COMPLAINT

I.....(Complainant)

of P. O. Boxhereby lodge

complaint against.....(Respondent)

of P. O. Box.....on the following;

1. Subject matter of complaint

.....
.....
.....
.....
.....

2. Relief sought

.....
.....
.....

Mining (Disputes Resolution)

GN. NO. 323 (Contd.)

.....

Signed and delivered at.....this.....day of.....,
20.....

Signature

Received this.....day of.....20.....

.....

Commission Registry

.....

Official Stamp

To be served upon

The Respondent

.....

P.O. Box.....

.....

.....

Signature

IN THE MATTER OF MINING ACT,
(Cap.123)

THE MINING COMMISSION

(Made under Rule 4 (6))

NOTICE TO FILE DEFENCE

Dispute No.....of.....

Instituted by..... of P. O. Box.....(Complainant) against

.....of P.O. Box(Respondent)

WHEREAS the above named complainant has instituted a complaint against you, the particulars of which are mentioned in the annexed copy of the memorandum of complaint.

YOU ARE HEREBY notified that you are required to file your defence before the Commission within fourteen days from the date of receipt of this summons and a copy be served to the Complainant.

GIVEN under my hand and seal of the Commission this.....day
of.....20.....

.....

The Executive Secretary

IN THE MATTER OF MINING ACT,
(CAP. 123)

THE MINING COMMISSION

(Made under Rule 6)

NOTICE OF HEARING

Dispute No.....of.....

Instituted by.....of P. O. Box.....(Complainant) against

.....of P.O. Box(Respondent)

WHEREAS the above named complainant has instituted a complaint against you, the particulars of which are mentioned in the annexed copy of the memorandum of complaint.

YOU ARE HEREBY notified that you are required to appear before the Commission in person or by your legal representative on.....day of....., 20.....(am/pm)at.....(place) to answer the claim, and you are directed to produce on that day all the documents upon which you intend to rely in support of your defence.

TAKE NOTE that, failure to appear on the specified date and time, the dispute may be heard and determined in your absence.

GIVEN under my hand and seal of the Commission this.....day of.....20.....

.....

The Executive Secretary

Dodoma
25th March, 2021

IDRIS KIKULA
Chairman