



3RD EDITION

AFRICA INTERNATIONAL ARBITRATION MOOT CASE

Warning: The facts presented below are purely fictitious. The facts and questions are hypothetical and designed for the exclusive purposes of the 2024 African International Arbitration Competition. Any resemblance to existing individuals, societies or countries is purely coincidental. Candidates will confine themselves exclusively to the facts presented in the case submitted to them, without distorting or adding to them.



FACTS

1. Wacody is an African state. The southern part of the country, belonging to the province of Zoukouland, is particularly rich in lithium and rare earths. It is also a coastal area where the inhabitants have long subsisted on fishing and agriculture. The country's many rivers flow into this fertile region, which is subject to regular flooding during the rainy seasons.

2. Mr Auguste Camedou was elected President of the Wacodian State on March 1, 2017. His flagship project, aimed at promoting the country's economic takeoff by 2035, is based on developing his country's lithium and rare earths' exploitation. To this end, he is fostering his country's ratification, on February 20, 2023, of the investment protocol of the Agreement Establishing the African Continental Free Trade Area ("AfCFTA").

3. The Wacodian Mining Code and Investment Code were adopted in March 2020 and May 2021, respectively. One of the distinctive features of the Mining Code and the Investment Code was the importance they gave to environmental issues.

4. However, the Investment Code was revised on February 25, 2023, following ratification of the Investment Protocol to the AfCFTA Agreement ("AfCFTA Investment Protocol"). The new Investment Code grants significant tax advantages to mining companies. These provisions have been widely criticized in the country.

5. On February 28, 2023, Bright Global Mining LLC ("BGM"), a multinational mining company, was awarded the mining permits for Blocks 4, 5, 6, 7 and 8 of the vast undeveloped Kali lithium deposit in Zoukouland province, based on an Investment Agreement concluded with the wacodian State on March 3, 2023 ("the Investment Agreement")¹

6. BGM-Kali, a wacodian company in which the wacodian state owns 15% of the shares and BGM 85%, was created to exploit the Kali deposit.

7. On March 20, 2023, BGM acquires the mining rights to blocks 2, 3, 11 and 16 of the rare earths deposits located near Kali, in Samika, also in Zoukouland province. These two projects represent an investment of over US\$25 billion over 10 years.

8. BGM-Samika, a wacodian company wholly owned by BGM, was set up to exploit the Samika deposit.

9. On April 10, 2023, BGM began constructing the infrastructure required for the first phase of mining the Kali lithium deposit.

10. On May 15, 2023, construction work began on the infrastructure required for Phase 1 of the Samira rare earths deposit.

11. In a press release issued on May 17, 2023 by BGM, as well as in written exchanges with the government, which had expressed concerns about the development of rare earths mining activities at Samika to the detriment of the Kali deposit, BGM reaffirmed its commitment to pursuing the planned development of the Kali deposit, in line with the agreements signed with

¹ Investment Agreement between the State of Wacodia and Bright Global Mining LLC dated March 3, 2023, Appendix 1



the government. The multinational also confirmed that the Kali mine would be fully operational by July 2023, in line with the timetable for the construction of infrastructure for the mining of the deposit.

12. On July 03, 2023, the work required to operationalize the Kali mine started.

13. On July 31, 2023, the NGO WacodyEco published a report on BGM-Kali's violations of environmental standards. The report mentions the discovery of dead fish near the Jouver river, which runs alongside BGM-Kali's mining facilities, as well as allergic reactions suffered by individuals belonging to communities living near the BGM's lithium mining area.

14. No investigation was initiated following this report. In a press release, BGM-Kali reiterated its commitment to the agreements signed with the government and its compliance with existing environmental standards. In parallel, the National Environmental Protection Agency (ANAPE) in Wacody published a report on compliance with environmental protection standards and best practices in the operation of the Kali lithium deposit.

15. In August 2023, BGM-Samika entered the first phase of rare earths mining at Samika.

16. In September 2023, in its annual report on business activities in the country, the NGO WacodyEco again reported BGM-Kali's non-compliance with environmental standards and, this time, also denounced violations by BGM-Samika. Cases of allergic reactions were reported, and gradually fishermen began to complain about the scarcity of fish in the Jouver and Riak rivers, which flow through BGM-Samika's operating zone.

17. Once again, no investigation was carried out, and a report by ANAPE in Wacody merely confirmed the environmental protection measures taken by BGM-Kali and BGM-Samika.

18. In October 2023, a new president, Jotade Mendis, from Samika, was elected to lead the wakodian state. He pledged to make mining resources more profitable for local people, and deemed the exemptions on the import of lithium mining equipment to be excessive.

19. As soon as he took office on October 15, 2023, he amended the Mining Code, setting import exemptions for lithium mining equipment at 40%, in line with other minerals.

20. At the same time, the price of lithium reached its lowest level since October 10, 2023, due to the competing development of the sector in many other countries. However, rare earth prices have been on the rise since September 31, 2023, when the export ban on ores by the Republic of Kinte, the world's largest producer of rare earths, came into force.

21. On October 18, 2023, BGM-Samika announced in a press release the end of the second phase of mining at the Samika deposit, and its intention to accelerate the other phases to meet the growing demand for rare earths.

22. On October 20, 2023, BGM-Samika confirmed the end of phase 3 mining at the Samika deposit, following media reports of the discreet start-up of mining on block 11 of the deposit.

23. On October 25, 2023, the NGO WacodyEco published its annual report, noting flagrant violations of environmental standards and systematic pollution of the waters of the Riak River,



caused by Samika's rare earths mining operations, as well as inadequate storage conditions for highly hazardous chemicals.

24. Following these revelations, ANAPE launched its first investigation on October 27, 2023. In the investigation report published on October 30, 2023, ANAPE identified minor violations at the site, but no major violations. It also mentioned that the environmental protection measures put in place by BGM-Samika and the storage system exceeded legal requirements.

25. On November 1, 2023, BGM-Samika announced the end of phase 4 operations at the Samika deposit.

26. On November 5, 2023, the state of Wacody and its neighbor, the Republic of Elimzi, experienced heavy rains and severe floods. The Riak River, flowing into the sea through the Koloun delta on the border between Wacody State and the Republic of Elimzi, overflowed its banks.

27. On November 8, 2023, a report by an African international NGO, AfMed4All, reported an abnormally high rate (30 times higher than the national average of the two delta states) of cancer in the Koloun delta region, establishing a direct link with BGM-Samika.

28. On November 10, 2023, the two states, Wacody and Elimzi, agreed to set up an independent investigation committee, assisted by a specialized international firm.

29. On November 15, 2023, a damning report was issued against BGM-Kali and the Wacody government. The report concluded, among other things:

- BGM-Kali's serious failure to comply with environmental standards,
- inadequate storage and monitoring of chemicals, many of which had not been declared to the authorities,
- a breach of the Mining Code's obligation to notify within 24 hours any "serious" incident. On several occasions, chemical leaks were reported internally without notification to the relevant authorities. Following the major floods of August 2019 in particular, a very large quantity of these chemicals flowed into the Riak River.

30. The report also exposed the ANAPE's lack of skills and resources.

31. The report stated that chemical leaks from BGM-Kali were the most plausible cause of the increase in cancer cases.

32. Following this report, the government issued Decree 9023/PR/RW on November 20, 2023, ordering the suspension of operating activities at BGM-Kali and BGM-Samika. This decision was based on the grounds of violation of the provisions of the Investment Agreement.

Attempted negotiations between the Parties

33. On November 25, 2023, in a press release, BGM publicly denounced these measures as arbitrary and as violating the terms of the Investment Agreement. BGM also expressed its willingness to negotiate with the Wacody government with a view to a rapid resumption of operating activities in the interests of both parties.



34. Despite several days of talks, the parties agreed on December 5, 2023 that the negotiations had been unsuccessful.

35. The State of Wacody demanded the following conditions for the resumption of operations.

- BGM's explicit acknowledgement of its responsibility for the pollution of the rivers Riak and Jouver,
- a firm commitment by BGM to pay compensation to the wacodian citizens affected by the pollution,
- a commitment that this compensation would cover any legal action that may be taken against the Wacodian state by the Republic of Elimzi in relation to this environmental incident,
- the completion of the last two phases of mining at the Kali lithium deposit within a reasonable timeframe.

36. As for BGM, the company:

- considered that the pollution was caused by an event of force majeure, resulting from the floods, and that the ANAPE reports have confirmed its exemplary environmental practices, exceeding the required standards,
- refused to accept any systematic responsibility for compensating pollution victims, while expressing its willingness to participate in compensation efforts,
- declared the completion of the last two phases of exploitation of the Kali lithium deposit as economically non-viable, due to low lithium market prices, and pointed to the unilateral change of exemption rates by the State of Wacody, alleging a violation of the provisions of the Investment Agreement.

Attempted mediation between the parties

37. On December 20, 2023, the Parties agreed to have recourse to mediation in accordance with Article 46 of the AfCFTA Investment Protocol which the State of Wacody has duly ratified.

Recourse to arbitration

38. On December 30, 2023, following the failure of mediation, the Wacodian State decided to submit its dispute with BGM to arbitration in accordance with the Rules of Arbitration of the Mauritius International Arbitration Centre (MIAC) (the "Notice of Arbitration")². The Claimant's Notice of Arbitration was based on the provisions of the Investment Agreement as well as on the provisions of the AfCFTA Investment Protocol³.

39. In its Notification of Arbitration, the State of Wacody appointed Professor Mahi Japi as arbitrator and requested the Arbitral Tribunal to:

- declare that BGM has breached article 1.3 of the Investment Agreement,

² Mauritius International Arbitration Centre (MIAC) Arbitration Rules 2018, Appendix 2.

³ Investment Protocol of the Agreement Establishing the FTA, Annex 3



- declare that BGM is responsible for the chemical pollution of the Koloun delta,
- order BGM to pay damages to the victims of the chemical pollution of the Koloun delta, as well as to guarantee the State of Wacodia against any possible legal action by the Republic of Elimzi, linked to this incident,
- compel BGM to respect its contractual commitments relating to the completion of the last two operating phases of the Kali lithium deposit,
- order BGM to pay damages to the State of Wacodia to compensate for the loss of taxes and dividends resulting from the cessation of operations at BGM-Kali.

40. The government of the State of Wacody informed the NGOs AfMed4All and WacodyEco of the submission of its Notice of Arbitration. The two NGOs have constituted themselves as Amicus curiae to provide information they consider useful to the Arbitral Tribunal. The briefs submitted by these NGOs reiterate the conclusions already published in their reports.

41. BGM is opposing the proceedings and filed its response to the Notice of Arbitration on January 30, 2024 (the "Response to the Notice of Arbitration"). In its Answer to the Notice of Arbitration, BGM appointed Mr. Bitá Bolky as arbitrator and asked the Tribunal to:

- dismiss the claim relating to BGM's declaration of liability for the chemical pollution of the Koloun delta for lack of evidence,
- reject the claim relating to the declaration that BGM breached article 1.3 of the Investment Agreement,
- reject the claim relating to the obligation to complete the last two phases of exploitation of the Kali lithium deposit, on the grounds that the low market price of lithium and the unilateral change in the exemption rates by the State of Wacodia constitute a material impossibility of performing its contractual obligations,
- declare inadmissible the application by the NGOs AfMed4All and WacodyEco to be amicus curiae,
- declare that the State of Wacody has breached Article 3.2 of the Investment Agreement,
- order the State of Wacody to pay damages for the unjustified suspension of operating activities at BGM-Kali and BGM-Samika

42. Both parties reserve the right to supplement and/or amend their claims and pleas in the course of the arbitration proceedings.

43. On March 30, 2024, the co-arbitrators chose to appoint Ms Emilie ABEYO as President of the Arbitral Tribunal. The Chairman has accepted her appointment.



ANNEX1.

INVESTMENT AGREEMENT BETWEEN THE STATE OF WACODY AND BRIGHT GLOBAL MINING LLC (BGM)

Effective date: March 03, 2013

Preamble

CONSIDERING the respective interests of the State of Wacody, hereinafter referred to as "the State", represented by its government, and Bright Global Mining LLC, a company incorporated in LonBai, hereinafter referred to as "BGM", in promoting investment, economic development and the enhancement of Wacody's mineral resources;

RECOGNIZING the need to put in place a clear, mutually beneficial and mutually respectful framework to promote the economic viability of exploration and development initiatives for lithium deposits at Kali and rare earths at Samika.

Article 1: Purpose of the Agreement

1.1. The State grants BGM exclusive rights to explore, exploit and market the lithium deposits located at Kali, as well as the rare earths deposits located at Samika, in the Zoukouland region, in accordance with the provisions of the Mining Code in force.

1.2. The parties acknowledge that particular attention must be given to the economic viability of mining operations, and undertake to promote ethical and sustainable practices in their respective activities.

1.3. The parties agree that lithium mining will take precedence over the exploitation of rare earths due to environmental considerations.

Article 2: Commitments and Investment Protection

2.1. BGM undertakes to comply with environmental standards and to implement environmental protection measures as part of its exploration and operating activities.

2.2. BGM will take measures to minimize the adverse effects of its activities on local communities, particularly with regard to fishing and agriculture.

2.3. The State undertakes to guarantee the effective protection of the investments.

2.4. In the event of the material impossibility of fulfilling its obligations due to an event of force majeure, BGM will be temporarily exempted from its obligations without this resulting in a breach of the Agreement. In such cases, BGM will immediately notify the State of the reasons for the impossibility to comply with its obligations and the parties will work together to restore normal conditions.



Article 3: Tax advantages, protection of economic viability

- 3.1. The State shall grant BGM tax benefits in order to support the economic viability of the exploitation of the deposits. Tax exemptions and facilities are intended to promote sustainable practices while respecting the economic interests of the parties.
- 3.2. The government grants BGM a 100% import duty exemption for lithium mining equipment.
- 3.3. For other minerals, including rare earths, BGM will benefit from a 40% tax exemption.
- 3.4. The parties recognize that changes in circumstances may affect the economic viability of operations. In the event of significant fluctuations in market conditions or economic parameters, the parties undertake to enter into negotiations in good faith to adapt the terms of the Agreement.

Article 4: Exploitation schedule

- 4.1. BGM undertakes to implement an operating schedule for the Kali and Samika deposits in accordance with the specifications and deadlines set forth in this Agreement.
- 4.2. The phase of mining the lithium deposits at Kali shall be as follows:
 - Phase 1: Mining of blocks 4 and 5.
 - Phase 2: Mining of blocks 6 and 7.
 - Phase 3: Mining of Block 8.
- 4.3 The mine will reach full capacity within six years.
- 4.4. The phase of mining rare earths deposits at Samika will take place as follows:
 - Phase 1: Mining of Block 2.
 - Phase 2: Mining of block 3.
 - Phase 3: Mining of Block 11.
 - Phase 4: Mining of Block 16.
- 4.5 The mine will reach full capacity within ten years.

Article 5: Environmental monitoring

- 5.1. Role of ANAPE: The National Environmental Protection Agency (ANAPE) of the State of Wacody will be responsible for monitoring BGM's activities impact on the environment in accordance with applicable standards. BGM will cooperate fully with ANAPE and provide all information required for environmental monitoring.

Article 6: Dispute Resolution

- 6.1. In the event of disputes arising from this Agreement, the parties undertake to enter into negotiations in good faith to attempt to resolve the disputes amicably.



- 6.2. If the negotiations do not result in a settlement within a reasonable timeframe, the parties agree to have recourse to mediation in accordance with the rules of the AfCFTA.
- 6.3. Within 5 days of the failure of negotiations, the parties will jointly select a mediator from a list of approved mediators provided by the AfCFTA .
- 6.4. Should the parties be unable to agree on a mediator within this period, they may request the assistance of a supporting judge, who, within 5 days of the request, will be responsible for appointing the mediator.
- 6.5. The mediator will be chosen to conduct the mediation in an impartial and professional manner, ensuring fairness and a peaceful settlement of the dispute.
- 6.6. The mediation period will not exceed 20 days, unless otherwise agreed by the parties and determined jointly by the mediator and the parties.
- 6.7 If mediation fails within 10 days, any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Arbitration Rules of the Mauritius International Arbitration Centre.
- 6.8. There shall be three arbitrators.
- 6.9. The seat or place of arbitration shall be Mauritius.
- 6.10. The languages of arbitration shall be French or English.
- 6.11. The arbitral award, once rendered, shall be final and binding on the parties.

Article 7: Law applicable to the substance of the dispute

- 7.1. The law applicable to the substance of the dispute shall be the investment agreement between the two parties, the Mining Code and the Investment Code of the State of Wacody, as well as the investment protocol of the AfCFTA. agreement.

Article 8: Survival clause

- 8.1. The clauses of this Agreement shall survive its expiration or termination, if such clauses are relevant to the resolution of any subsequent dispute.

In witness thereof the Parties have signed the Agreement on March 3, 2023.