



Our Ref: JS/230/17

26th July 2017

Omari Shee Mbega (Chairman)
Swalehe Ramadhan Mwinyi (Speaker)
Athuman Ali Shee (Secretary)
Rama A. Mwanjama (Signatory)

Contact email: wanyee kinuthia@gmail.com

Dear Sirs

REQUEST FOR INFORMATION UNDER THE ACCESS TO INFORMATION ACT 2016

I refer to your further two letters dated 8th July 2017 again requesting information pursuant to the provisions of the Access to Information Act. In particular, you request that Base Titanium provides you with copies of the Environmental Impact Assessment (“EIA”) and mining license for our present mining operations.

We have further considered your requests and reiterate the response given in our letter Ref: JS/212/17 dated 30th June 2017 that Base Titanium does not consider the Access to Information Act to be applicable in the current circumstances. Base Titanium therefore declines to provide you with the requested information on the following basis:

- a) the requests do not disclose your legal right or fundamental freedom that has been breached or violated;
- b) the requests do not disclose that Base Titanium is liable for any alleged breach or violation; and
- c) the requests do not disclose or establish that the information or documents requested are necessary and required by you to exercise or protect your rights or fundamental freedom which have allegedly been breached or violated.

By way of further explanation, in your request you refer to the “mining license” for Base Titanium’s present mining operations. As noted in our response of 30th June 2017, Base Titanium conducts mining operations under a Special Mining Lease granted by the Government of Kenya and not under Special License No. 173 to which you refer. The latter, correctly referred to as Special Prospecting License No. 173, confers rights granted by the Government of Kenya to Base Titanium to undertake exploration activities only over a pre-defined area – it does not grant or confer rights to undertake mining activities.

It is noted that the Constitution of Kenya (Section 62) defines minerals as public land. Further, the Mining Act 2016 provides that minerals are the property of the Republic and vested in the National Government in trust for the people of Kenya, which applies despite any right or ownership of, or by any person in relation to any land in or under which any minerals are found.

The law, therefore, requires private land owners to provide access to their land and not to obstruct a duly licensed entity in carrying out the said prospecting or exploration exercise. However, in the event that damage

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to or loss of any property is caused by prospecting or exploration activities, then the affected landowners have the right to claim compensation as provided for under the Mining Act.

The exploration that Base Titanium has sought to undertake pursuant to Special Prospecting License No. 173 is, therefore, for the benefit of the country and the people of Kenya. The purpose of exploration is to establish if economically viable mineral deposits are present in the area covered by the license. If such mineral deposits are established, these may subsequently be exploited under an appropriate mineral right granted by the Government for and on behalf of the people of Kenya, including the communities you represent.

If you wish to appeal against Base Titanium's decision, you may do so by lodging your appeal or complaint with The Commission on Administrative Justice. Alternatively, as stated in our letter of 30th June 2017, the respective statutory authorities responsible for environmental and mining matters are the National Environment Management Authority and the Ministry of Mining. You may, therefore, wish to direct your requests to these relevant Government agencies.

Yours faithfully



J. Schwarz

General Manager – External Affairs & Development