

22nd June 2018

Mr. Joe Shwarz
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Your Ref: **Special Licence No. 173**

Dear Sir,

RE: Official Request for the Special Mining Lease used by Base Titanium to Conduct Mining Operations in Kwale County

We refer to your previous letter, dated 26th July 2017, whereby you state that “Base Titanium conducts mining operations under a Special Mining Lease granted by the Government of Kenya” (Please see Annex 1 - Response from Base Titanium Limited).

As members of the communities who are directly impacted by your mining operations, we would like to formally request a copy of the above document. We make this request pursuant to Section 4 of the *Access to Information Act*, which states that:

Section 4(1) Subject to this Act and other written law, every citizen has the right of access to information held by –

(a) the State; and

(b) another person and where that information is required for the exercise or protection of any right or fundamental freedom.

Section 4(2) Subject to this Act, every citizen’s right to access information is not affected by –

(a) any reason the person gives for seeking access; or

(b) the public entity’s belief as to what are the person’s reasons for seeking access.

Section 4(3) Access to information held by a public entity or a private body shall be provided expeditiously at a reasonable cost.

For more information – **Case Study: The Titanium Issue** – www.madaraka.net/?page_id=1647

Section 4(4) This Act shall be interpreted and applied on the basis of a duty to disclose and non-disclosure shall be permitted only in circumstances exempted under section 6.

Section 4(5) Nothing in this Act shall limit the requirement imposed under this Act or any other written law on a public entity or a private body to disclose information.

Section 6(4) Despite anything contained in subsections (1) and (2), a public entity or private body may be required to disclose information where the public interest in disclosure outweighs the harm to protected interests as shall be determined by a Court.

Section 11(1) Where a decision is taken to provide the information applied for, an information access officer shall send to the applicant a written response within fifteen working days of receipt of the application, advising –

(a) that the application has been granted;

(b) that the information will be contained in an edited copy, where applicable;

(c) the details of any fees or further fees to be paid for access, together with the calculations made to arrive at the amount of the fee;

(d) the method of payment of such fees, if any;

(e) the proposed process of accessing the information once the payment if any is made; and

(f) that an appeal may be made to the Commission in respect of the amount of fees required or the form of access proposed to be provided.

Section 11(2) Subject to subsection (3), upon receipt of the fee payable, an information access officer shall provide the information to the applicant or permit the relevant inspection immediately but in any event not later than two working days from the date of receipt of the payment.

Section 11(3) Any information to be made accessible to an applicant shall be produced forthwith at the place where it is kept, for inspection in the form in which it is held unless the applicant requests that it be made available in another form and, if it is practicable to do so, such information may be copied, reproduced or used for conversion to a sound transmission at the expense of the applicant.

Section 11(4) Where a request for information is to a private body, subsections (1), (2), and (3) shall apply with necessary changes made.

Section 12(1) No fee may be levied in relation to the submission of an application.

Section 12(2) A public entity or private body from which an application for access to information has been made may charge a prescribed fee for the provision of the information and the fee shall not exceed the actual costs of making copies of such information and if applicable, supplying them to the applicant.

Pursuant to the above, we make this request in light of your company's guidelines on "Stakeholder Engagement...prior to commencing any further exploratory drilling", by "fully inform(ing) the Kwale County Government, the local administration, the political leadership and affected communities" – and particularly, by providing "...full details of the planned programme in order to eliminate misunderstandings and misconceptions around exploration and to seek support and informed consent."¹

We therefore look forward to your co-operation in this important matter, particularly as a sign of good faith on the part of your company. Thank you.

Sincerely,

The communities of *Gazi, Vumbu, Maumba, Magaoni, Fihoni, Majikuko, Mwaloya, Bumamani, Madongoni, Masindeni, Mwandimu, and Zigira.*

Represented by:

Mzee Omar Shee Mbega

Chairman, Committee of Gazi Location

Contact email: wanyee kinuthia@gmail.com

C.c: Hon. Uhuru M. Kenyatta (President, Republic of Kenya)
Hon. William S. Ruto (Deputy President, Republic of Kenya)
Hon. Salim Mvurya (Governor, Kwale County)
Hon. Fatuma Mohamed Achan (Deputy Governor, Kwale County)
Hon. Issa Juma Boy (Senator, Kwale County)
Hon. Suleiman Dori (Member of Parliament, Msambweni Sub-County, Kwale County)
Kwale County Commissioner
Msambweni Sub-County Commissioner
Mr. Keith Spence (Non-Executive Chairman, Base Resources Ltd., Australia)
Mr. Tim Carstens (Managing Director, Base Resources Ltd.)
Mr. Colin Bwye (Executive Director, Operations & Development, Base Resources Ltd.)
Mr. Sam Willis (Non-Executive Director, Base Resources Ltd.)
Mr. Michael Anderson (Non-Executive Director, Base Resources Ltd.)
Mr. Michael Stirzaker (Non-Executive Director, Base Resources Ltd.)
Mr. Malcolm Macpherson (Non-Executive Director, Base Resources Ltd.)
Ms. Diane Radley (Non-Executive Director, Base Resources Ltd.)
Professor Joseph Maitha (Chairman, Base Titanium Ltd., Kenya)
Mr. John Ngumi (*Director*, Base Titanium Ltd., Kenya)
Mr. Desterio Oyatsi (*Director*, Base Titanium Ltd., Kenya)
Mr. Aly-Khan Satchu (*Director*, Base Titanium Ltd., Kenya)
Mr. Chadwick Poletti (*Director*, Base Titanium Ltd., Kenya)

¹ www.basetitanium.com

For more information – **Case Study: The Titanium Issue** – www.madaraka.net/?page_id=1647

Annex 1

Response from Base Titanium Limited



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: wanyeekinuthia@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

