

**IN THE MATTER OF
KATANGA MINING LIMITED, ARISTOTELIS MISTAKIDIS, TIM HENDERSON,
LIAM GALLAGHER, JEFFREY BEST, JOHNNY BLIZZARD, JACQUES
LUBBE and MATTHEW COLWILL**

MOTION OF TERENCE MOYANA

(Intervenor Participation pursuant to 21(4) of the Rules of Procedure)

ORDER SOUGHT

1. Terence Moyana (“Moyana”) objects to the proposed application made on November 2, 2020, to vary the terms of the settlement, in reference to the above proceeding and seeks Intervenor Participation status to either:

(a) Request that Katanga Mining Limited’s (“Katanga”)¹ application be approved on the condition that it produce and make available:

(i) a copy of the referenced PricewaterhouseCoppers (“PWC”) preliminary report dated July 15, 2019, *and* status report dated March 27, 2020; and

(ii) a copy of the documents relied upon KPMG LLP in drafting the fairness opinion dated April 8, 2020, associated with its going private transaction;

or

(b) Reject Katanga’s application.

GROUND

2. Moyana is a resident of Ontario, a long-term investor of Katanga. Relevant to this proceeding, Moyana purchased Katanga’s common shares listed on the Toronto Stock Exchange (“TSX”) during 2017, 2018, and 2019.

¹ On June 5, 2020, Katanga became a wholly owned subsidiary of Glencore PLC. During the relevant period, November 17, 2017 and November 7, 2019, Katanga was an independent company but majority owned, approximately 86%, by Glencore PLC. Katanga’s operations were primarily carried out through a 75% owned subsidiary, Kamoto Copper Company SA (“KCC”), pursuant to a joint venture agreement with La Generale es Carrieres et Gecamines (“Gecamines”), a DRC state-owned entity, which owns 25% of KCC.

3. On November 20, 2017, Katanga announced that it completed an investigation by independent directors of the Company of certain past accounting practices and disclosure statements, which led to the restatement of its financial statements released on SEDAR for the years 2014 - 2016, plus 1Q 2017.

4. A reasonable investor could reasonably infer that Katanga's prior impugned conduct (prior to 1Q 2017) would have ceased. After November 20, 2017, Moyana purchased additional shares of Katanga.

5. On December 18, 2018, Katanga and the Ontario Securities Commission ("OSC") reached a settlement publicly announcing that between January 1, 2021 and March 31, 2017, Katanga failed to maintain adequate internal controls over its financial reporting, et al.

6. This settlement expressly touted that Katanaga was to pay for an independent consultant, approved by the OSC, to conduct a review of the policies, procedures and effectiveness of its metal accounting:

(a) copper production and financial performance;

(b) corporate governance, internal controls, and procedures; and

(c) reliance on, and payments to, individuals and entities associated with one particular individual and its operating environment, including the risk of public sector corruption in the Democratic Republic of the Congo.

7. A principal term of the settlement was that Katanga was going to submit to a review of its policies and procedures relating to metal accounting and the integration of production statistics into its financial accounting and implement the necessary changes to those policies and procedures. To quote the OSC's news release,

[], the review to be conducted by the independent consultant, and the implementation of necessary changes, will further protect the capital markets from harm caused by improper practices.

8. A reasonable investor could reasonably infer that Katanga's prior impugned conduct would have ceased. Thereon after, Moyana purchased additional shares of Katanga.

9. However, it now appears that Katanga's impugned conduct may not have ceased and, if that is the situation, its core and non-core documents on SEDAR may contain misrepresentations. Requiring Katanga to complete and publish the PWC report is consistent with the OSC's settlement for the benefit of those same investors, which included Moyana, and there is a *reasonable possibility* that the PWC report could provide material facts about any of the following conduct:

(a) On December 21, 2017, the Office of Foreign Assets Control, U.S. Treasury Department sanctioned Dan Gertler, which was further expanded to 14 other entities affiliated with Mr. Gerler, including those that conduct business with KCC;

(b) On June 12, 2018, Katanga and Glencore PLC announced that they would be gifting \$1.4 billion to Gecamines, which was followed by Katanga publishing a news release dated June 15, 2018, that it would continue paying Dan Gertler related entities;

(c) On July 3, 2018, Glencore PLC announced that it has been subpoenaed by the U.S. Department of Justice relating to its business in DRC;

(d) On April 25, 2019, it was announced that Glencore and its subsidiaries were being investigated by the U.S. CFTC for possible corrupt practices in connection with commodities;

(e) On March 1, 2019, Glencore PLC announced that it was providing Gecamines another \$1.6 billion (a debt write-off), which became debt to Katanga;

(f) On December 9, 2019, it was announced that the U.K. Serious Frauds Office opened a formal investigation of Glencore PLC's business practices in the DRC (but not disclosing the relevant time period); and

(g) On June 19, 2020, Glencore PLC announced that the Office of the Attorney General of Switzerland opened a formal investigation of Glencore PLC's business practices in the DRC (but not disclosing the relevant time period).

10. On November 6, 2019, there were approximately 1.9 billion shares of Katanga valued at C\$0.35, while Glencore PLC owned approximately 86% (approximately 1.64 billion shares) and minority shareholders, including retail investors such as Moyana, owned approximately 14% (approximately 266 million shares valued at C\$93 million).

11. On November 7, 2019, Katanga released a statement of a rights offering that resulted in it converting \$5.8 million of debt into approximately 59 billion shares of Katanga to Glencore PLC, *which \$1.4 billion of this debt included funds paid by Glencore PLC to Gecamines.*² This news resulted in Katanga's shares to close at C\$0.19 per share, or down 44%; those same 266 million shares owned by minority shareholders became worth C\$50 million).

12. On November 2, 2020, Katanga made its application to make an order to permit Katanga (Glencore PLC) to shut-down the independent Consultant's review and reporting of Katanga's business operations to ensure that the impugned conduct identified in the OSC's settlement was discontinued.

13. The paragraphs 17 to 22 of Katanga's application fails in logic because it is those same public investors, referenced by Katanga, that *on a reasonable possibility* were injured by ongoing impugned document after the settlement with the OSC (*i.e.*, December 18, 2018) as reflected that the impugned conduct identified within the OSC's settlement and multiple examples of similar impugned conduct occurring after the restatement period (1Q 2017), *supra*, paragraph 9.

² Glencore, plc, 2019 Half-Year Report, ending 30 June 2019, released 7 August 2019, at 65 ("KCC Debt Restructuring").

14. In the ongoing U.S. Proceeding, Katanga has argued that the U.S. courts should not provide access to justice to investors and, rather, have them come to Canada or Switzerland.³

EVIDENCE

15. Moyana relies on the following documents in support of this applications:

- (a) The materials released on the OSC's website concerning the Katanga matter;
- (b) The materials released by Katanga, on SEDAR;
- (c) Katanga's submissions found within the U.S. Federal District Court of the District of New Jersey, *Katanga Mining Limited Securities Litigation*, 17-cv-12188-CCC-JBC (D.NJ);
- (d) Glencore's non-core document disclosure dated April 25, 2019, Glencore's 2019 half-year report dated August 7, 2019, and Glencore's news releases; and
- (e) The materials released on various U.S. federal agencies' websites.

December 1, 2020

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³ *Katanga Mining Limited Securities Litigation*, 17-cv-12188-CCC-JBC (D.NJ), Document 76-1, (July 31, 2020), at p 17, "**Moreover, at least two foreign countries have powerful interests in this case: Canada**, where Katanga is incorporated and its shares traded, and Switzerland, where it is headquartered. Thus, exercising jurisdiction over Katanga [] would be unreasonable. The claims against them should be dismissed." Compare, *Kaynes v BP, plc*, 2013 ONSC 5802, at para 44-53, and 2016 ONCA 601, at para 17.