



REPUBLIC OF KENYA



KENYA LAW

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JTG Enterprises Limited v China Gezhouba Group Company Limited & 3 others (Civil Case E649 of 2021) [2023] KEHC 17986 (KLR) (Commercial and Tax) (31 May 2023) (Ruling)

Neutral citation: [2023] KEHC 17986 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E649 OF 2021**

A MABEYA, J

MAY 31, 2023

BETWEEN

JTG ENTERPRISES LIMITED PLAINTIFF

AND

CHINA GEZHOUBA GROUP COMPANY LIMITED 1ST DEFENDANT

**PRINCIPAL SECRETARY MINISTRY OF WATER, SANITATION AND
IRRIGATION 2ND DEFENDANT**

SMEC INTERNATIONAL PTY 3RD DEFENDANT

ATTORNEY GENERAL 4TH DEFENDANT

RULING

1. The defence closed its case on May 25, 2023. At that juncture, Hon Maanzo Learned Counsel for the defence applied that the court does visit the locus in quo with a neutral Geologist to witness for itself the rock formation. Ms. Murugi for the AG supported the application.
2. Mr. Kihiko, Learned Counsel for the plaintiff opposed the application. He indicated that there is already on record a geological report.
3. I have considered the application. Already on record is the testimonies of the witnesses on the documents filed. The parties had the opportunity to produce all the evidence they know or thought was in support of their cases. If the court visits the locus in quo, will that not amount to investigating the evidence?



4. My view is that, even if the court visited the site, it will not be able to discern the rock formations. That will be in futility. And, if the visit is with the help of the so called proposed neutral geologist, the court would be out for fact finding which I think may not be proper.
5. In this regard, I believe the evidence on record is sufficient for the purposes of the case before me.
6. Accordingly, the application for site visit is declined. Let the parties proceed to give their submissions. The plaintiff to file and serve own submissions within 14 days. The defendant to file and serve own submissions within 14 days of service. Judgment to be on 28/7/2023.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 31ST DAY OF MAY, 2023.

A. MABEYA, FCIArb

JUDGE

