



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

ENVIRONMENTAL AND LAND CASE NO. 113 OF 2016

NJAU MUCHOKI.....1ST PLAINTIFF

JAPHET NGIGE.....2ND PLAINTIFF

**KARIMI MURIITHI.....3RD
PLAINTIFF**

**JAPHET RIUNGU NJAU.....4TH
PLAINITFF**

**LINUS NKONGE MUKINDIA.....5TH
PLAINTIFF**

**ELIPHAZ NJAGI KIUNGA.....6TH
PLAINITFF**

MARANGU JUSTO.....7TH PLAINTIFF

VERSUS

**KTDA GREATER MERU POWER COMPANY LIMITED.....1ST
DEFENDANT**

**KTDA POWER COMPANY LIMITED.....2ND
DEFENDANT**

**WERU TEA FACTORY LIMITED.....3RD
DEFENDANT**

**JIANGXI WATER & HYDROPOWER CONSTRUCTION COMPANY LIMITED.....4TH
DEFENDANT**

**ANDRITZ HYDRO GMBH.....5TH
DEFENDANT**

**NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY.....6TH
DEFENDANT**

J U D G M E N T

1. In their Plaint dated 20th July, 2016, the Plaintiffs pray for judgment against the defendant for:-

a. A permanent injunction restraining the respondents whether by their servants/ agents from alienating, digging, excavating/ proceeding with any further construction of the proposed 2.0 MW South Maara small hydro electric power project.

b. A permanent injunction restraining the Respondents from trespassing into the suit premises for the purposes of erecting/constructing and /or proceeding with construction of roads, furrows, electricity transmission lines/towers or for whatever purpose whatsoever.

c. An order compelling the defendants to restore the affected land to its original immediate condition prior to the damage caused.

d. Compensation for loss of land and property including crops and trees .

e. Damages.

f. Any other or further relief that this Honourable Court may deem fit and just to grant.

2. In obeisance to the precautionary principle Interim Orders were on 15th September, 2016, granted in the following terms:-

1. THAT an order of Temporary Injunction is granted restraining the respondents whether by their servants or agents from alienating, digging, excavating and / or proceeding with any further construction of the proposed 2.0 MW South MARA small hydro -electric Power Project until this application is heard and determined.

2. That an Order of Temporary Injunction is hereby issued in terms of Section 63 CPA restraining the respondents from trespassing and/or committing any further acts of trespass on the suit premises for the purposes of erecting / constructing and or proceeding with construction of roads, furrows, electricity transmission line/ towers or for whatever purpose whatsoever until this application is heard and determined.

3. On 8th December, 2016, the parties proffered two consents which they wanted adopted as orders of this Court.

4. The 1st Consent is dated 5th November, 2016 and is in the following terms:-

1. The Plaintiffs parcels of land already physically affected by the 2.0 MW South Mara Small Hydro-Electric Power Project (Hereinafter the "Project") shall be valued at the rate of Kshs. 1,000,000/= per acre.

2. The 2nd Defendant will enter into fresh agreements for sale with the Plaintiffs who are yet to receive payment in respect of their parcels of land already affected by the Project as well those where more land than had been initially agreed upon has been taken up by the Project. The fresh agreements for sale shall operate as the basis of payment by the Defendants and which payments shall be full and final compensation for the parcel acquired.

3. A valuation of the Plaintiffs' parcels of the crops damaged by the project will be conducted immediately upon filing of this consent in court and payment for the damaged crops shall be done together with the payments in two (2) above. The valuation and payment should be concluded in not more than sixty (60) days from the date of filing of this consent in court.

4. All titles held by the defendant's , where compensation has been done, shall be released to the landowners within 60 days from the date of filing this consent.

5. Compensation in respect of the alleged uneconomical parcels of land will be done on a case to case basis and only where deemed necessary after an assessment and valuation of the alleged

uneconomical parcel of land and in any event within 60 days of the filing of this Consent in Court.

6. The 1st, 2nd, 3rd, 4th and 5th Defendants undertake to ensure adherence with the Environmental Impact Assessment Report as approved by the 6th Defendant.

7. Pursuant to their corporate social responsibility commitment, the 1st, 2nd & 3rd Defendant shall undertake projects in consultation with the plaintiffs and other members of the public but subjects to the budget available.

8. The 1st-5th Defendants will pay the Plaintiffs thrown away costs as well as the advocates cost as agreed within 10 days of the filing of this consent in court.

9. The Interim Orders granted herein on 6th September, 2016 be and are hereby vacated.

10. In default of the above clauses, the parties shall be at liberty to apply.

11. The suit herein be and is hereby marked as settled subjected to compliance.

5. This Consent , dated 5th November, 2016, is adopted as an order of this Court.

6. The 2nd Consent is a further Consent dated 6th December, 2016 and is in the following terms:-

FURTHER CONSENT

1. This Further Consent is made in furtherance to the Consent dated 5th November, 2016 and filed in Court on 8th November, 2016.

BY CONSENT OF THE PARTIES

1. The 1st to 5th Defendants shall comply with the Environment Management Plan contained in the Environment Impact Assessment Report for the Proposed small Hydro Electric Project Murugi Location, Mara District, Annexure "ZOI" to the 6th Respondent's Replying Affidavit.

2. The 1st to 5th Defendants shall comply with the Environmental Impact Assessment License issued by the 6th Defendant on 20th July 2012 and renewed on 14 August 2014, together with the Conditions therein.

3. The 1st to 5th Defendants shall adopt and effect the recommendation in the Inspection Report prepared by the 6th Defendant pursuant to the site inspection on 28TH November, 2016 (stated erroneously as 26th November, 2016), a copy of which is attached to this Further Consent.

4. In the event of non-compliance by the 1st to 5th Defendants with the terms herein, the 6th Defendant shall be at liberty to enforce compliance under the Environmental Management & Co-ordination Act, Chapter 387 Laws of Kenya .

5. The matter be marked as fully settled subject to compliance.

7. This Further Consent is adopted as an order of this Court.

8. This suit is marked concluded and fully settled.

9. It is so ordered.

DELIVERED IN OPEN COURT AT MERU THIS 19TH DAY OF DECEMBER, 2016 IN THE PRESENCE OF:

CA: Daniel

Sheila Mugo for the Plaintiffs

Manasses Kariuki h/b Kibicho for 1st defendant

P.M. NJOROGE

JUDGE