



**Kochale & 4 others v Lake Turkana Wind Power Ltd & 4 others;
Lesianntam & 4 others (Interested Parties) (Environment & Land Case
163 of 2014) [2022] KEELC 3391 (KLR) (23 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3391 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 163 OF 2014**

PM NJOROGE, J

MAY 23, 2022

BETWEEN

**MOHAMED ILTARAKWA KOCHALE 1ST PLAINTIFF
KOCHALE SOMO CHALE 2ND PLAINTIFF
ISSA JITEWE GAMBARE 3RD PLAINTIFF
DAVID TOMASOT ARAKHOLE 4TH PLAINTIFF
SEKOTEY SEYE 5TH PLAINTIFF**

AND

**LAKE TURKANA WIND POWER LTD 1ST DEFENDANT
MARSABIT COUNTY GOVERNMENT 2ND DEFENDANT
ATTORNEY GENERAL 3RD DEFENDANT
CHIEF LAND REGISTRAR 4TH DEFENDANT
NATIONAL LAND COMMISSION 5TH DEFENDANT**

AND

**AARON ILTELE LESIANNTAM INTERESTED PARTY
HENRY PARASIAN SAKALPO INTERESTED PARTY
STEPHEN NAKENO INTERESTED PARTY
JOB LMALSIAN LENGOYA INTERESTED PARTY
DAIR LENTIPAN INTERESTED PARTY**



RULING

1. This application is dated 5th of May, 2022 and seeks the following orders:
 1. That this Application be certified urgent and service on the Respondents be dispensed with in the first instance;
 2. That Gitson Energy Limited, the Applicant be joined to these proceedings as an interested party;
 3. That upon granting of prayer 2 above, Gitson Energy be allowed to build its wind farm as was the case for the Lake Turkana Wind Power Ltd which was allowed to build its wind farm even as the land setting apart suit was in progress.
 4. That costs of this Application be awarded to the Applicant;
 5. Any such other order(s) that this Honourable court may deem fit to grant in the circumstances.
2. The application has the following grounds:
 1. The suit herein is scheduled for mention for directions on the 9th of May, 2022 before this Honourable court;
 2. The subject matter of this suit directly affects the Applicant herein as its (*sic*) been working to for the last 20 years to set up a hybrid 300 MW Wind farm and 50 MW Solar Power Plant in Bubisa area in Marsabit County;
3. The said hybrid project was approved by the Ministry of Energy on 16th February 2010 and a Commissioning date of early 2013 was granted in September 2010;
4. The County Council of Marsabit in its full Council meeting held on July 08, 2010 approved the setting a part of the project land and the setting a part of the project land was gazetted by the County Council of Marsabit through the then Commissioner of Lands through Gazette Notice 13135 of 11th September 2012;
5. The area MP and some residents moved to Court seeking to quash the Gazette Notice to set apart 60,705 hectares in High Court Miscellaneous Application No. 374 of 2012 *Francis Chachu Ganya v AG & Others. Gitson Energy* was allowed as the Interested Party. Its noteworthy that County Council of Marsabit was neither sued nor a party at the High Court stage;
6. Being dissatisfied with the High Court decision, the Applicant moved to the Court of Appeal in Nairobi Civil appeal 47 of 2014 *Gitson Energy Ltd v Francis Chachu Ganya & 6 others*.
7. The appeal judgment was delivered on the 24th of February 2017. The Court while upholding the High Court decision to quash the Gazette Notice 13135, affirmed Gitson Energy's accrued rights on the project land to develop the project in accordance with the law if it wanted to continue with the project.
8. That the County Council of Marsabit failed to form a Divisional Land Board to set apart the land. The Marsabit County which replaced the defunct County Council of Marsabit after 2013 General Elections was joined in the matter and without the parties' objections though it was opposing the Applicant's appeal.



9. After the Court of Appeal judgment, the Applicant wrote a letter to the National Lands Commission (NLC) to further engage and continue the project land process in the light of the Court decision.
10. The NLC did not respond to the said letter, but instead forwarded it to the Cabinet Secretary of Lands who in turn forwarded it to Chief Lands Registrar who responded in a letter dated 28th August 2017 ref: MST/A/22/23.
11. In her letter, the then Chief Lands Registrar informed the Applicant that the drafting of the Community Land Regulations was pending parliament approval.
12. The Community Land Regulations were gazette (sic) under Kenya Gazette Supplement No. 178 dated 24th November 2017, Legal Notice No. 279 (Community Land Regulations, 2017).
13. The Cabinet Secretary for Lands appointed Community Land Registrars in a Kenya Gazette Notice No. 529 dated 29th January 2021 (Community Land Registrars Appointment). The Community Land Registrar's role is defined in the Kenya Gazette Supplement No. 178 dated 24th November 2017, Legal Notice No. 279 ([Community Land Regulations](#), 2017) especially for the unregistered Community land areas like Marsabit County.
14. After that, the Applicant wrote a letter to the Cabinet Secretary for Lands Hon. Farida Karoney dated 28th November 2021 requesting her to form the Adjudication Committee for Marsabit County as required by law including, Legal Notice No. 279 ([Community Land Regulations](#), 2017). The Cabinet Secretary did not respond to the Applicant's letter dated 28th November 2021 and a reminder letter was sent which has also not been responded to.
15. The Intended interested Party, Gitson Energy in its letter to Cabinet Secretary for Lands Hon. Farida Karoney dated 28th November 2021 and copied to NLC, Marsabit County Government and others, submitted its claim on the project land under Section 12 (6) of the [Community Land Regulations](#), 2017.
16. The inaction, delays and failure of the Cabinet Secretary for Lands to act on the Applicant's request has direct bearing to the Applicant's instant suit as their setting apart was quashed and must regularize it in accordance with law.
17. Unlike the Applicant, Lake Turkana Wind Power which has already built its 310 MW wind farm project in Marsabit, Gitson Energy is delayed to build its 300MW wind farm in Bubisa, Marsabit despite both projects being approved almost at the same period, have the same size of land 60,705 hectares, same fuel i.e., Wind, and in the same County in Marsabit.
18. Gitson Energy, the Applicant herein moved to Court through Judicial Review 324 of 2018 [Republic v Cabinet Secretary of the National Treasury & 5 others Ex parte Gitson Energy](#) [2020] eKLR to protect its project approval issued on 16th February 2010 and the project commissioning date of early 2013 which was delayed due to the Gazette Notice suits at High Court and Court of Appeal that took 5 years to be concluded.
19. That Gitson Energy obtained the orders in the Judicial Review 324 of 2018 [Republic v Cabinet Secretary of the National Treasury & 5 others Ex parte Gitson Energy](#) [2020] eKLR.
20. One of the Respondents in the Judicial Review 324 of 2018 [Republic v Cabinet Secretary of the National Treasury & 5 others Ex parte Gitson Energy](#) [2020] eKLR, Energy & Petroleum Regulatory Authority (EPRA) has filed a stay application (*sic*) the Court of Appeal pending the filing of the



intended Appeal which one of the grounds is that Gitson Energy, does not have project land for its 300MW Wind project.

21. It's rather a discriminatory assertion as the Applicant in this matter (LTWP) is in the same position yet the EPRA as the Energy Sector regulator has not cancelled LTVVP power license despite this Court's decision in 2021.
22. Gitson Energy has been pursuing the National Land Commission, Cabinet Secretary for Lands and Chief Lands Registrar to ensure its land issue is fully addressed in accordance with the law. There are no reasons for the delay and Gitson Energy is losing millions of shillings every day.
23. Gitson Energy agreed with County Council of Marsabit to share 2.5% of Net profits annually with the Local Community. The delay is equally depriving the local community their share of the profits which could have been used to mitigate the current drought that has plagued the Marsabit County where People have died from hunger and famine, their livestock decimated and their lives destroyed.
24. The Local community in Bubisa contacted the Applicant late in November 2021 and requested food donations as they had not received any from the Government or other organizations.
25. The Applicant quickly mobilized its team and resources and delivered foodstuffs and silage (hay) for the livestock where over 2000 households were served. The event was covered by the local and national media. The Applicants effort and humanitarian donations moved the Government of Kenya and other entities including the Applicant to donate food in Marsabit.
26. The delays of Cabinet Secretary, Community Land Registrar, and National Land Commission is negatively impacting the Applicant, community and Kenyan economy that the price of oil has gone up to over \$110/barrel.
27. Gitson Energy as the Intended Interested Party has a direct stake on this matter and the actions of omission or commissions by the Cabinet Secretary of Lands, Community Land Registrar, National Land Commission and Marsabit County impacts it.
28. Gitson Energy as the Intended Interested Party has been patiently waiting for the Cabinet Secretary of Lands, Community Land Registrar, National Land Commission and Marsabit County to act as per the relevant laws and regulations including *Community Land Regulations*, 2017. As such it is first in the queue to have its Land issue resolved through the laid down procedure with no further delays.
29. Gitson Energy as the Intended Interested Party prays it is treated the same way as LTVVP which was allowed to build its wind farm even as the land setting apart suit was in progress. These 2 Wind farm projects are similarly placed and even Court Decisions are consistent as such should be treated the same way.
30. It is therefore in the interest of justice and fairness that this Application be certified urgent and be fixed for directions and hearing on a priority basis.
31. The Applicant is willing and ready to abide by any such directions to be issued and to ensure that it does not delay or drag the hearing and determination of this suit.
32. It is therefore in the interest of justice that the Applicant makes the instant Application.
33. Although the Applicants want to be enjoined before 9/5/2022, this application was filed at Meru on 13/5/2022.
34. Meru ELC 163 of 2014 was heard by a three Judge Bench and Judgment was delivered on October 19, 2021. One Judge, therefore, cannot hear this application without the input/Concurrence of the other



2 Judges. I have electronically sent the application to the Judges. They will give their input regarding which directions are to be issued and how they are to be issued. I issue the following orders:

- a. The above notwithstanding, it will do no harm to have the application properly served upon all parties within 14 days of today.
- b. The service should contain information to the other parties that there will be a mention for directions on 27/6/2022.
- c. This Ruling will be transmitted electronically.

DELIVERED IN CHAMBERS AT ISIOLO THIS 23RD DAY OF MAY, 2022.

Court Assistant: Balozi

HON. MR. JUSTICE P. M. NJOROGE

JUDGE

