



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MALINDI**

**PETITION 6 OF 2012**

**MOHAMED ALI BAADI & 9**

**OTHERS.....PETITIONERS**

**VERSUS**

**THE HON. ATTORNEY**

**GENERAL.....RESPONDENT**

**R U L I N G**

1. This Petition was filed in the Nairobi Central Registry on 25<sup>th</sup> January, 2012. On the following day, Lenaola J. ordered it transferred to the High Court in Malindi for reasons that the same was in respect of a claim relating to land within Lamu, which falls under the jurisdiction of this court.

2. Subsequently, the petitioners filed a Notice of Motion under article 165(4) of the Constitution of Kenya, 2010 seeking a referral of the Petition to the Chief Justice for the appointment of a 3-Judge bench to hear the matter. On grounds, inter alia, that the same raises substantial questions of constitutional law regarding:

- (i) The relationship between the National and County Government with respect to development of natural resources
- (ii) The distribution of functions between the National and County Government under the fourth schedule of the Constitution.
- (iii) The “astronomical financial implications of the proposed project (the Lamu Port - Southern Sudan - Ethiopia Transport or LAPSSET)
- (iv) The participation of the Lamu people in the project as well as complex land and environmental issues.

3. Mr. Muite representing the Petitioners argued the application on 25<sup>th</sup> June, 2012. Ms. Lutta for the Hon. Attorney General, also representing the 2<sup>nd</sup> to 8<sup>th</sup> Respondents was reportedly indisposed. Through Mr. Kilonzo, she informed the court that she had not received instructions from the Attorney General’s office in Nairobi and therefore left the application to the court for determination. Ms Ikegu for the 9<sup>th</sup> Respondent did not oppose the application. The 10<sup>th</sup> Respondent NEMA, has not appeared.

4. I have now had the advantage of reading through the Petition in light of the submissions made before me this morning by the Petitioner's Counsel.

I note that this Petition raises novel and weighty issues of law under the following articles of the Constitution, among others:

(a) Article 10(2):- with respect to national values and principles of governance which include sharing and devolution of power, and the participation of the people. Alongside this issue is the question of the balance of power between the National and County Government as outlined in the Fourth Schedule of the Constitution.

(b) Article 11:- The State's obligation to promote all forms of national and cultural expression. The petitioners herein amplify the unique fact that Lamu was declared a World Heritage Site by UNESCO in 2001 and complain that the proposed project will have an adverse impact on the culture of the people of Lamu.

(c) Articles 60 1(d), (e), 61, 62(2): On land use, management and conservation, land classification and ownership by the people. This petition raises complex questions on land and environment alongside the critical question of the participation of the people of Lamu in decisions touching thereon.

5. In view of the foregoing, I am satisfied that this matter raises substantial questions of law in a setting of fairly unique circumstances and ought to be heard by an uneven number of judges as provided for under Articles 165(4) of the Constitution. I therefore direct that this matter be placed urgently before the Hon. The Chief Justice for purposes of empanelling of a bench of judges of 3 (three) judges or more.

Delivered and signed at Malindi this 25<sup>th</sup> of **June, 2012** in the presence of Mr. Muite for the Petitioners, Ms Ikegu for 9<sup>th</sup> Respondent.

**C. W. Meoli**

**JUDGE**  
**25-6-2012**