



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT KAJIADO

ELC CASE NO. E032 OF 2021

GEORGE NKAACA MATEU.....1st PLAINTIFF
JACOB TEUSI.....2rd PLAINTIFF
SOKOIYON TEUSI.....3rd PLAINTIFF
SARINGE TEUSI.....4th PLAINTIFF
DANIEL TAUTA.....5th PLAINTIFF
JOHN SIMEL.....6th PLAINTIFF
SAMMY NKINAIYO.....7th PLAINTIFF
KUNTAI NKINAIYO.....8th PLAINTIFF
RAPAINE SARINKON.....9th PLAINTIFF
DANIEL KIPIRASH SAIGILU.....10th PLAINTIFF

-VERSUS-

CHANIA GREEN GENERATION LTD.....1st DEFENDANT
NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY.....2nd DEFENDANT

RULING

This ruling is on the Notice of Motion dated 9th June, 2021.

The motion which is by Chania Green Generation Limited, the applicant herein is brought under **Sections 1A and 3A of the Civil Procedure Act, Order 26 Rules 1, 2 and 3, Order 2 Rule 15 Civil Procedure Rules** and all other enabling provisions of Law seeks the following substantial orders;

- (a) *The matter be certified urgent and heard ex- parte in the first instance.*
- (b) *Pending the hearing and determination of this application, there be a stay of all proceedings in this suit.*
- (c) *This application and the Applicant's Preliminary Objection dated 4th June 2021 be heard in priority to the plaintiffs' application dated 7th May, 2021 or any other proceedings in the suit.*
- (d) *The plaintiffs' suit instituted by way of a plaint dated 7th May, 2021 be struck out.*

IN THE ALTERNATIVE

(e) Pending the hearing and determination of this suit, the Plaintiffs be ordered to provide security in the form of an unconditional and irrevocable bank guarantee from a reputable Kenyan Bank in the sum of Kshs. thirty million only (Ksh. 30,000,000/=) for the Applicant's costs of this suit or any other amount that the court deems fit.

(f) Pending the hearing and determination of this suit, the Plaintiffs be ordered to give security in the form of an unconditional and irrevocable bank guarantee from a reputable Kenyan Bank for the sum of Kshs. two billion only (Kshs. 2,000,000,000/=) as projected damages that the Applicant will suffer if the project is delayed, stopped or stalled as a result of the Plaintiffs' suit.

(g) The proceedings in this suit be stayed until the Plaintiffs comply with the orders in (e) and (f) above.

(h) In default of compliance with the orders on furnishing security in prayers (e) and (f) above, the Plaintiffs suit be struck out.

(i) The costs of this application be borne by the Plaintiffs in any event.

The application is grounded on 47 grounds, supported by an affidavit sworn by Kwame Parker who is a director of the applicant and which has 53 paragraphs and annexures running into 446 pages.

In summary, this is what the Applicant is saying in the more than 500 pages of literature.

Firstly, the first and third Respondents i.e George Nkaaka Mateu and Sokoion Teusi have been sabotaging the Applicant's project namely Leshuta Wind Power Station at Corner Baridi in Kajiado County by covering holes dug to erect the power lines.

Secondly, the Applicant has obtained all the necessary licences to undertake the project and has even reduced the number of wind turbine generators (WTG) from 32 to 12.

Thirdly, there was public participation, training and capacity building by and of the residents of the five villages within the vicinity of the project on the impact of the project in their daily lines.

The first Respondent participated and raised his objection saying that noise pollution and infrasound of the turbines would disturb sleep, cause headaches, dizziness and tinnitus but he could not produce empirical evidence to prove this.

Fourthly, the applicant was cognizant of the impact that the project would have on the villages nearby and employed measures such as ensuring that no house would be built within 225 metres of a turbine, the noise levels were within the accepted range set out in the First Schedule of Environment Management and Coordination (Noise and Excessive Vibration Pollution Control) Regulations 2009 and that the level of electromagnetic radiation generated from the turbines is low and does not negatively impact on the flora and fauna.

Fifthly, the value of land in the vicinity of the Wind Power Project has appreciated and not depreciated as stated by the respondents.

Sixthly, the turbines used by the Applicant are of non- reflective colors with no company insignia or graphics in order to mitigate against the visual impacts of the wind farm. The statement by the Respondents that the project is an eyesore is not true.

Seventhly, there is no proof that the respondents right to a clean and healthy environment has been or is at risk of being violated.

Eighthly, **LAND PARCEL NO. KJD/LOODARIAK/8511** does not exist having been subdivided into three (3) parcels namely; **KJD/LOODARIAK /27649, KJD/LOODARIAK /27650 and KJD/LOODARIAK 27651** two of which belong to the Applicant while the third belongs to one Francis Sheke Ole Mateu who has granted the Applicant an easement over it.

Previously the Applicant and the Plaintiffs have had dealings over the Applicants access to the **parcels numbers KJD/LOODARIAK 8502 and KJD/LOODARIAK 8509** which did not bear fruit. The Applicant has no intention of using the said parcels.

Ninthly, any delay in the completion of the project will expose the Applicant to sanctions and penalties from its contractors. The Applicant has spent about Kshs. Two Billion (2,000,000,000) towards the project and the Plaintiffs should deposit this amount in court if they deserve any order of injunction.

Finally, the Plaintiff should deposit the costs of Kshs. 30,000,000/= and security for due performance of the decree if the Court is to issue an injunction as sought.

Instead of the Plaintiffs responding to the Application dated 9/6/2021 as directed by Angote Judge on 6/7/2021, they filed Written Submissions on 27/7/2021 responding to the First Defendant's Preliminary Objection dated 4/6/2021.

From the foregoing, it is obvious that the Application dated 9/6/2021 is unopposed.

I do not know if failure to oppose it was due to a misunderstanding of the order dated 6/7/2021 or otherwise.

Whatever the case, I find it fair and just to allow the said Application in terms of prayers (e) and (f) only. Prayers (g) and (h) will await the outcome of the Notice of Motion dated 7/5/2021 which I now certify urgent and direct the respondents to reply thereto within 14 days.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 3RD DAY OF NOVEMBER, 2021.

M.N. GICHERU

JUDGE