



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**MERU ELC CASE NO. 163 OF 2014**

**FORMERLY NAIROBI ELC NO. 1330 OF 2014**

MOHAMUD ILTARAKWA KOCHALE.....1<sup>ST</sup> PLAINTIFF  
KOCHALE SOMO CHALE.....2<sup>ND</sup> PLAINTIFF  
ISSA JITEWE GAMBARE.....3<sup>RD</sup> PLAINTIFF  
DAVID TOMASOT ARAKHOLE.....4<sup>TH</sup> PLAINTIFF  
WILLIAM LENGOYIAP.....5<sup>TH</sup> PLAINTIFF  
SEKOTEY SEYE.....6<sup>TH</sup> PLAINTIFF

**VERSUS**

LAKE TURKANA WIND POWER LTD.....1<sup>ST</sup> DEFENDANT  
MARSABIT COUNTY GOVERNMENT.....2<sup>ND</sup> DEFENDANT  
THE ATTORNEY GENERAL.....3<sup>RD</sup> DEFENDANT  
CHIEF LAND REGISTRAR.....4<sup>TH</sup> DEFENDANT  
THE NATIONAL LAND COMMISSION.....5<sup>TH</sup> DEFENDANT  
AARON ILTELE LESIANNTAM.....1<sup>ST</sup> INTERESTED PARTY  
HENRY PARASIAN SAKALPO.....2<sup>ND</sup> INTERESTED PARTY  
STEPHEN NAKENO.....3<sup>RD</sup> INTERESTED PARTY  
JOB LMALSIAN LENGOYA.....4<sup>TH</sup> INTERESTED PARTY  
DAIR LENTIPAN.....5<sup>TH</sup> INTERESTED PARTY

**RULING**

This is a Ruling on the admissibility of the 2<sup>nd</sup> defendant's Replying affidavit sworn on 5<sup>th</sup> April, 2019 and filed on 10<sup>th</sup> April, 2019 in response to the plaintiff's application for contempt of court dated 25<sup>th</sup> April, 2018. The ruling on the said issue was to be delivered on 24<sup>th</sup> July, 2019 by the previous bench but it could not be delivered because the bench recused itself from the matter on 23<sup>rd</sup> July, 2019. The court has noted from the record of proceedings that on 31<sup>st</sup> July, 2018 the court directed the parties to file their responses and written submissions on the contempt of court application within 30 days. It was further directed that the said application shall be dealt with during the trial of the suit. It is apparent from the material on record that the said application was directed against the 1<sup>st</sup> defendant. It is also clear from the record that the 2<sup>nd</sup> defendant only filed its replying affidavit after about 8 months from the date directions were given on 31<sup>st</sup> July, 2018. The said

affidavit was therefore filed grossly out of time. It was also filed without leave of court. The record further shows that the 2<sup>nd</sup> defendant did not seek any extension of time or tender any explanation for the inordinate delay in filing the replying affidavit. Instead, it was the 1<sup>st</sup> defendant's advocate who raised an object to its admissibility on **22<sup>nd</sup> July, 2019** before the previous bench. The 1<sup>st</sup> defendant's advocate consented that the said affidavit had introduced new issues after the 1<sup>st</sup> defendant had closed its case hence it would be prejudicial to allow it to stand. It is also apparent from the material on record that the 2<sup>nd</sup> defendant had also closed its case by that time. The issue of whether or not the said affidavit should be struck out or sustained was fully canvassed on **22<sup>nd</sup> July, 2019** and a ruling thereon deferred to **24<sup>th</sup> July, 2019**. The ruling was not delivered due to reasons already alluded to earlier on. The court has fully considered the 1<sup>st</sup> defendant's objection to the 2<sup>nd</sup> defendant's said replying affidavit as well as the 2<sup>nd</sup> defendant's submissions on the issue. The court has noted that the 2<sup>nd</sup> defendant did not render any reasonable explanation for the lengthy delay in filing the replying affidavit. The court has further noted that the said affidavit was filed after the 1<sup>st</sup> and 2<sup>nd</sup> defendants had closed their cases. As of now, all the parties have closed their respective cases. The 1<sup>st</sup> defendant shall therefore not have an opportunity to counter the contents of the 2<sup>nd</sup> defendant's evidence as contained in the impugned replying affidavit. The court therefore agrees that the belated admission of the said affidavit shall be prejudicial to the 1<sup>st</sup> defendant and an affront to the principle of fair hearing within the meaning of Article 50 of the Constitution of Kenya 2010. The upshot of the foregoing is that the court finds merit in the 1<sup>st</sup> defendant's objection. Accordingly, the said object is sustained and the 2<sup>nd</sup> defendants replying affidavit filed on **10<sup>th</sup> April, 2019** is hereby struck out and expunged from the record.

Delivered at Meru this **21<sup>st</sup> day of January, 2020** in the presence of:

CC Susan Lomwa

CC James Lomurut

Mario Loigwera

Kiprop for the Interested Party

A.Hashi for the Plaintiffs

J. M. Wairoto for the 1<sup>st</sup> defendant

J.W. Kungu for the 3<sup>rd</sup> and 4<sup>th</sup> defendants

J. N. Njuguna for the 5<sup>th</sup> defendants

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**P.M. NJOROGI [PJ]      J.G. KEMEI, J,      Y.M. ANGIMA, J,**