



**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 PLAINTIFF**  
**LINUS NKONGE MUKINDIA..... 5TH PLAINTIFF**  
**ELIPHAZ NJAGI KIUNGA..... 6TH PLAINTIFF**  
**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**

**R U L I N G**

[1] This Application is dated 26th July, 2016. It seeks orders:-

***(1) THAT this matter be certified urgent and be heard ex-parte in the first instance.***

***(2) THAT this Honourable Court be pleased to issue a temporary injunction restraining the respondents whether by their servants/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 pending the hearing and determination of the present Application.***

**(3) THAT a temporary injunction do issue 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 proceedings with construction of roads, furrows, electricity transmission line/towers or for whatever purpose whatsoever pending the hearing and determination of this Application.**

**(4) THAT a Mandatory injunction do issue compelling the respondents to compensate and/or relocate the applicants and all affected residents bordering the South Mara small hydroelectric power project.**

**(5) THAT the 1st, 2nd and 3rd Respondents be compelled to return all the title deeds confiscated by them and belonging to residents.**

**(6) THAT the Respondents be compelled to conduct an environmental impact assessment with full participation of the applicants, community members of the affected areas and the public at large.**

**(7) THAT an order do issue in term of prayer 2 and 3 pending the hearing and determination of the current suit.**

[2] The Application is supported by the Affidavit of JAPHET RIUNGU NJAU and has the following grounds:-

**(a) The 1st, 2nd and 3rd Respondents misrepresented to the Applicant and residents of the area that they would be compensated before commencement of works and that only 20 feet was to be taken for purposes of building a trench but when construction commenced , more land was taken and no negotiation on compensation was done. Unless this Honourable Court intervenes immediately, there is fear that the residents shall be left out in the cold as their land shall continue to be alienated and their interests may diminish hence causing irreparable harm.**

**(b) The Respondents did not follow the right procedure in purporting to acquire way leaves over the Applicant's/ resident's properties as provided for in the Land Act 2012.**

**(c) The Respondents, in particular the 4th respondent are dumping soil on the respondents and other community members land and shambas hence causing severe degradation of the environment and soil erosion in such large magnitudes since the land is sloppy and making the land unusable and prone to landslides which shall impact on the very life of the residents. The dumped waste also finds itself into the river hence causing pollution yet the river serves a very large section of the community and county at large .**

**(d) The Respondent did not involve the Applicants and affected residents in counting the trees and crops including coffee trees destroyed when construction commenced so as to facilitate compensation and they may continue cutting down crops and trees if this Honourable Court does not intervene forthwith.**

**(e) The land has become uneconomical and inconvenient to use as the furrows are dug in the middle of land and construction thereon in effect leaving two unusable portions and some dumped with soil and the gradient steeper.**

**(f) The river (mara river) which is complete with a water fall at the site river intake is not only a source of water and a tourist attraction but is also a hearing and spiritual site.**

**(g) The Applicants and other residents stand to suffer health risks due to the dust and other debris emanating from the construction works.**

**(h) The 6th Respondent did not properly conduct the process of environment impact**

***embarrassment in accordance with laid down rules, laws and procedures as there was no participation of residents/ community members , neither was the same published as required so as to give the public a chance to participate.***

***(i) The interests of justice.***

[3] When the Application was slated for Interpartes hearing on 14/09/2016, the parties indicated to the Court that some of them required time to put in their responses. M/S Sheilla Mugo told the Court that she had served the 4th Defendant and was surprised that it was not in Court. M/S Ngigi for the 6th Defendant told the Court that she was seized of the matter only on 14/09/2016 and she needed 14 days to respond. Mr. Ngigi for the 1st, 2nd and 3rd Respondents told the Court, that whereas he was of the opinion that this application should be handled expeditiously as it concerned public works, it was necessary to have all responses filed before further orders for filing Submissions were issued. M/S Ngingi also told the Court that the 6th Defendant needed to send its inspectors to the concerned site so that an expert opinion could be obtained. This report would assist the Court during determination of this application.

[4] I have considered the issues pertinent to this application. There is no doubt that there will be delay in the hearing and determination of this application as the parties will need time to file their responses.

[5] In matters concerning the environment, this Court is enjoined to embrace the precautionary principle. In the Circumstances, the following orders are issued:-

***(1) Prayers 2 and 3 are granted in terms of Section 63 CPA until this application is heard and determined.***

***(2) Plaintiffs must serve the pleadings in this suit upon all the unserved parties within 10 days of today.***

***(3) Parties to file their Written Submissions , with the Plaintiffs doing so within 21 days of today and the other parties to do so within 21 days after receiving the Plaintiffs' Written Submissions.***

***(4) Parties are encouraged to seek an out of Court Settlement which must not contain elements detrimental to the environment. Where necessary such a settlement must include apposite restoration.***

***(5) Orders issued by this Court today be properly served upon all absent parties by the Plaintiff within 10 days of today.***

***(6) Directions on 08/11/2016.***

***(7) Costs shall be in the cause.***

***(8) It is so ordered.***

**DELIVERED IN OPEN COURT AT MERU THIS 15TH DAY OF SEPTEMBER, 2016 IN THE PRESENCE OF:-**

CC: Daniel

Ngigi for 1st, 2nd and 3rd defendants

M/S Kithinji for the 6th Defendant

M/S Sheilla Mugo for the Plaintiffs

**P. M. NJOROGE**

**JUDGE**