



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC CASE NO. 163 OF 2014 (FORMELY NAIROBI ELC 1330 OF 2014)

MOHAMUD ILTARAKWA KOCHALE.....1ST APPLICANT

KOCHALE SOMO CHALE2ND APPLICANT

ISSA JITEWE GAMBARE.....3RD APPLICANT

DAVID TOMASOT ARAKHOLE.....4TH APPLICANT

WILLIAM LENGOYIAP.....5TH APPLICANT

SEKOTEY SEYE..... 6TH APPLICANT

(SUING ON BEHALF OF THE RESIDENTS OF LAISAMIS CONSTITUENCY

AND KARARE WARD OF MARSABIT COUNTY)

=VERSUS=

LAKE TURKANA WIND POWER LTD.....1ST RESPONDENT

MARSABIT COUNTY GOVERNMENT.....2ND RESPONDENT

THE ATTORNEY GENERAL3RD RESPONDENT

CHIEF LAND REGISTRAR.....4TH RESPONDENT

THE NATIONAL LAND COMMISSION.....5TH RESPONDENT

AARON ILTELE LESIANTAM.....1ST INTERESTED PARTY

HENRY PARASIAN SAKALPO.....2ND INTERESTED PARTY

STEPHEN NAKENO.....3RD INTERESTED PARTY

JOB LMALASIAN LENGOYA.....4TH INTERESTED PARTY

DAIR LENTIPAN5TH INTERESTED PARTY

RULING

When this court resumed hearing this morning, Mr. Kiprop, counsel for the interested parties’ drew the court’s attention to an incident that occurred yesterday (22.7.2019) when FARARA LENAIKOI (IPW 3) was testifying. Counsel informed the court that the witness had informed him that there is a video recording taken while he was testifying and which is circulating on a whatsapp group. The recording is likely to endanger the lives of the interested parties who have always opposed the plaintiff’s case. Counsel asked the court to intervene and

punish the involved parties if they can be identified as doing the recording is also illegal.

Mr. Kiprop was supported by both Mr. Wairoto counsel for 1st defendant and Ms. Kungu counsel for the 3rd and 4th defendants and also holding brief for Miss Njuguna for 5th defendants.

Mr. Minishi for 2nd defendant left the matter to the court.

Ms. Hashi for the plaintiffs reserved her right to respond and urged the court to consider the complaint as a delaying tactic and asked the court to proceed with the trial. Counsel nonetheless referred to a similar incident on 23rd May 2016 when Justice Njoroge who was then handling the matter gave some directions. She said that all this might very well be internal frustrations by the parties. She added further that she had not seen the video in question and would like to have access to it.

The court adjourned to chambers to consider the issues raised.

While in chambers, one of the court assistants Ms. Cecilia Ekeno who is the Samburu interpreter, informed us that when the court adjourned yesterday (22nd July 2019), she was accosted by some people who told her to step aside so that the interpretation can be done by someone else. They even proposed that the interpretation be done by another person whose name they gave as ELIJAH who is employed by a law firm in Meru town.

We have anxiously considered the concerns raised by Mr. Kiprop and the responses thereto.

As a court we have not had the advantages of viewing the video although Mr. Kiprop had volunteered to share it with us and other counsel. However Mr. Kiprop is an officer of this court and we do not think he could raise such a serious matter if he did not have evidence to that effect. We are satisfied that the video exists and we don't consider it prudent to take the court's time watching it. We must get on with the core business of this court which is to finalize this case that is just about to end in terms of receiving the evidence of the witnesses.

The court has also looked at the record of 23rd May 2016 when the then counsel for 2nd defendant MR. ABDI HASSAN complained to Justice Njoroge about an incident which occurred on 9th March, 2016 when he was accosted by a crowd, threatened and called names. The incident was witnessed by the deputy registrar of this court and counsel. Justice Njoroge warned the plaintiffs to keep order while in court.

It is of course improper for any person without the leave of the court, to record the proceedings particularly if the intention is to intimidate the witnesses and even the court. We take great exception to that.

Similarly, we cannot ignore the issue raised to us by the court assistant, also an officer of the court about having been intimidated by some people yesterday (22nd July 2019).

Right now this court is not in a position to know who is circulating the video or who accosted Ms. Cecilia Ekeno. What is clear to us however is that whoever it is, must be a party in these proceedings or acting on their directions. As this matter is coming to a close, the only order we find appropriate to make is to have this case henceforth heard in the absence of all the parties herein. Only counsel, the court assistants, research officers and the security details shall remain in court. This order shall remain in force until the final determination of this case.

HON. JUSTICE B. N. OLAO

Sign: **date:**

HON. JUSTICE L. N. MBUGUA

Sign: **Date:**

HON. JUSTICE E. C. CHERONO

Sign: **Date:**

23/7/2019

Later at 11.00 am

Coram as before

Kananu (Meru Interpreter)

Cecilia (Samburu/Turkana interpreter)

Lomurut (Rendille interpreter)

Mr. Sagana and Ms. Hashi for plaintiffs

Mr. Wairoto for 1st defendant

Mr. Minishi for 2nd defendant together with Ms. Barako

Ms. Kungu for 3rd and 4th defendant's also holding brief for Ms. Njuguna for 5th defendants

Mr. Kiprop for interested parties

The ruling is hereby delivered to the parties and counsel.

HON. JUSTICE B. N. OLAO

Sign: **Date:**

HON. JUSTICE L. N. MBUGUA

Sign: **Date:**

HON. JUSTICE E. C. CHERONO

Sign: **Date:**