



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT KITALE**  
**PETITION NO.1 OF 2017**

**LOWKWAWI LORIMOWI.....1<sup>ST</sup> PETITIONER**  
**ROBERT EKAI LOTARUK.....2<sup>ND</sup> PETITIONER**  
**LOYEN ELUBIT.....3<sup>RD</sup> PETITIONER**  
**LOLIM NAKUWA.....4<sup>TH</sup> PETITIONER**  
**NABEI ELUBIT.....5<sup>TH</sup> PETITIONER**  
**ISWENENE ELEBIT.....6<sup>TH</sup> PETITIONER**  
**NGIKENOI ELUBI.....7<sup>TH</sup> PETITIONER**  
**TOBIA AGERIO.....8<sup>TH</sup> PETITIONER**  
**ELUBIT LOMUMOWI.....9<sup>TH</sup> PETITIONER**  
**ELOMASE ELUBIT.....10<sup>TH</sup> PETITIONER**  
**LOSIL ELUBIT.....11<sup>TH</sup> PETITIONER**  
**NAREGAE LOLIM.....12<sup>TH</sup> PETITIONER**  
**MARKO NABEI.....13<sup>TH</sup> PETITIONER**  
**KAMARET LOKIM.....14<sup>TH</sup> PETITIONER**  
**AWESIT LORUMOWI.....15<sup>TH</sup> PETITIONER**  
**ANYAMAN LORIMOWI.....16<sup>TH</sup> PETITIONER**  
**AKINYOKORI LORIMOWI.....17<sup>TH</sup> PETITIONER**  
**LOGWAWI LORIMOWI.....18<sup>TH</sup> PETITIONER**

EPUNGURE ALASU.....19<sup>TH</sup> PETITIONER  
KOLOI LOKWAWI.....20<sup>TH</sup> PETITIONER  
MAGRET ISUKETE.....21<sup>ST</sup> PETITIONER  
LOPERITO LOKWAWI.....22<sup>ND</sup> PETITIONER  
LOTUKGI EVAN.....23<sup>RD</sup> PETITIONER  
ASINYEN ESURON.....24<sup>TH</sup> PETITIONER  
NAMUKE LOCHO.....25<sup>TH</sup> PETITIONER  
KOLOI AKORI.....26<sup>TH</sup> PETITIONER  
JOHN LOYARUK.....27<sup>TH</sup> PETITIONER  
NAHASHON LOTARUK.....28<sup>TH</sup> PETITIONER  
ROBERT LOTELENGO.....29<sup>TH</sup> PETITIONER  
PETER LOLIM.....30<sup>TH</sup> PETITIONER

**VERSUS**

TULLOW OIL (K) LTD.....1<sup>ST</sup> RESPONDENT  
COUNTY COMMISSIONER TURKANA COUNTY.....2<sup>ND</sup> RESPONDENT

**AND**

THE HONORABLE ATTORNEY GENERAL.....1<sup>ST</sup> INTERESTED PARTY  
MINISTRY OF ENERGY & PETROLEUM.....2<sup>ND</sup> INTERESTED PARTY

**RULING**

1. The application dated **10/3/2017** came up for highlighting of submissions this morning. When he stood to address the court Mr. Bosek for the Petitioners applied to orally amend a number of documents so that where the ***Mining Act 2016*** had been mentioned, it would be substituted with the ***Petroleum (Exploration and Production) Act Cap 308***. The counsel for the Applicant urged the court to consider that as at the time of filing of the applicants' submissions the error had been identified and in those submissions, the proper Act had been cited instead of the ***Mining Act 2016***. He urged that there is no need to make a formal application and that it is just that the oral application be allowed.

2. On his part, Mr. Eredi who appears for the 2<sup>nd</sup> Respondent and holds brief for Mr. Wetangula for the 1<sup>st</sup> Respondent, and also appears for the Interested Parties, urged that it is an unfair application in that it goes to the root of the defence. He urged that the Applicants application was made after the Applicants saw the Respondents submissions in which the Respondents stated that the applicable Act was the ***Petroleum (Exploration and Production) Act***. Mr. Eredi admits the Constitution allows for substantive justice rather than technicalities. He urges the court to decline the amendment application.

3. I note that both opposing sides have filed their submissions. The Applicant has taken inordinately long to bring the application for amendment. It may be as well that the Respondents and the Interested Parties have been misled to rely on the pleadings as they are in making their responses. However I agree that **Article 159 2(d)** emphasizes on substantive justice rather than procedural technicalities.

4. Is the issue at hand a mere procedural technicality? In my view, it is not. I find that reliance on one statute is not a mere issue of procedure, but of the strength, the substance of the case that one believes in, and when a party has had as long as the Applicant has to effect the appropriate amendment, he should not be allowed to ambush their adversary on the day of the hearing by relying on other Acts of Parliament. The most appealing thing to do in the circumstances is to decline the amendments proposed and hear the counsel on the substance, bearing in mind that any party's case is normally based on their pleadings. In my view it is too late to make any amendments to the substantive pleadings at the moment and the application is hereby declined.

Dated, signed and delivered at Kitale on this **16<sup>th</sup>** day of **October, 2017**.

**MWANGI NJOROGE**

**JUDGE**

**COURT**

Ruling read in open court in the presence of Mr. Eredi for the 2<sup>nd</sup> Respondent and Interested Parties (also holding brief for Mr. Wetangula for the 1<sup>st</sup> Respondent) and Mr. Bosek for the Petitioners.

Court Assistant – Isabellah.

**MWANGI NJOROGE**

**JUDGE**

**16/10/2017**