

On Tuesday 19 October 2021, a Meru Environment and Land Court Bench three (3) judge bench comprising of Justice P.M. Njoroge (Presiding), Justice Y. Angima and Lady Justice G. Kemei delivered the judgment in the protracted dispute pitting Lake Turkana Wind Power Limited, the Hon. Attorney General, the County Government of Marsabit, the National Land Commission and the residents of Loiyangalani and the project area supporting the project, against a group of former Councillors and their supporters, who filed the case as plaintiffs.

In the judgment, the Judges faulted the County Government of Marsabit (the then County Council of Marsabit), for irregularly setting apart the wind project land to Lake Turkana Wind Power, without following the clear procedures laid down under the repealed Trust Land Act and the repealed Constitution. However, the judges declined to nullify the project stating that the same was already complete, and uncontroverted evidence was tendered to demonstrate that the power generated by the company was part of the national grid. Due to the immense benefits of the project to country in the form of generating 300MW of clean renewable energy and other benefits to the local communities being employment, education, infrastructure, improved security amongst others, the Judges ordered the County Government of Marsabit, the Honourable Attorney General, the Chief Land Registrar and the National Land Commission to, within 1 year, rectify the setting apart process in respect of the project land.

It would appear that the Judges sought to strike a balance between ensuring strict compliance with the law, and preserving a national government and Vision 2030 project. It will be interesting to see how the rectification will be done or if any of the parties will seek to appeal the judgment to the Court of Appeal.