

Press Release

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Sosian Energy Appeal hearing concluded

Nairobi, 29 June 2022: The National Environment Tribunal (NET) has concluded a three-day hearing on the Appeal case where communities in Nakuru, Menengai area challenged the Environmental Impact Assessment (EIA) Licence issued by the National Management Authority (NEMA) to Sosian Energy Limited, a private energy company, for geothermal exploration in the Menengai Area, in Kenya.

Over the three-day hearing, the court heard evidence from NEMA's compliance officer and two of Sosian Energy Limited's expert witnesses regarding the following key legal questions in the case:

1. Was the firm hired as the lead EIA expert qualified to undertake the EIA process at the time?
2. Does the exploratory drilling conducted by SEL fall within the bounds of a Social Environmental Assessment (SEA) which ought to have been completed?
3. Was there adequate public participation and consultation with impacted communities as required in the Environmental Management and Coordination Act (EMCA)?
4. Did the EIA Report sufficiently assess the negative impacts arising from the proposed project?
5. Were the mitigation measures adequate and sufficient to lessen the negative impacts identified in the EIA?

Following the conclusion of the hearing on Wednesday 29 June, the Court has given the Appellants 10 days to file written submissions and another 10 days for the Respondents to file their written submissions with an additional three days for the Appellants to respond to the submissions by the Respondents.

"This case underscores the importance of legal compliance to ensure energy projects – renewable or otherwise – do not undermine community rights to adequate consultation, human dignity and to live in a clean and healthy environment.," said Nyaguthii Chege, Director, Natural Justice – East Africa.

Sosian Energy Limited holds an exploration licence to explore and extract and develop geothermal steam for energy production on 9.8Km² of private land in the Menengai Area. Any geothermal energy discovered would be sold to Kenya Power Lighting and Company. On 12 February 2021, NEMA granted the licence for the exploratory activities, which include drilling of thermal gradient wells to a depth of 200m, drilling water wells to provide water for drilling exploration wells and exploration drilling to a depth of 2.7Km.

Residents of the Menengai Area opposed the license granted since the public participation process was seriously flawed and did not conform to the Environmental Impact (Assessment and Audit) Regulations, 2003. The Menengai area locals, who have experienced the effects of geothermal activity, are also critical of the Environmental and Social Impact Assessment (ESIA) Report, which they claim is insufficiently focused on the region's detrimental effects on air quality and noise. They worry that the ESIA Report does not adequately address the potential necessity for resettling residents who live close to the proposed geothermal well owing to noise and air pollution based on their prior experiences.

"We call upon the tribunal to conduct a fact-finding mission on the ground so that they can have firsthand experience and feel the sentiments of the locals as well as understand the nature of the complaints we have so that it may guide the Tribunal to make an informed decision", said Timothy Tuikong, one of the affected community members in Menengai Area.

“Even renewable energy projects have the potential to adversely impact communities and for this reason, communities need to have a say and an opportunity to assess the adequacy of any proposed mitigation measures before project implementation,” said Christine Nkonge, ED, Katiba Institute, Appellants attorneys

The case is back at the Tribunal on 25th July, when the parties will highlight their submissions and the Tribunal will give a judgment date.

ENDS

Notes to editors:

1. The project-affected communities organized themselves under Menengai West Stakeholders Forum (MWESFO), a registered community-based organisation representing communities in Menengai West and Soin Wards. They are the Appellants in this case.
2. Sosian Energy Limited, a private energy company, for geothermal exploration in the Menengai Area, in Kenya are the Respondent in this case.
3. National Environment Management Authority NEMA are also Respondents in this case.
4. Lawyers for the Appellants are Katiba Institute and Natural Justice.
5. Please see attached factsheet.

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