

PARLIAMENT OF KENYA

PAPERS LAID	
DATE	24/4/2024
TABLED BY	Sen. Kingi
COMMITTEE	Energy
CLERK AT THE TABLE	Kavats



23/4/24

APPROVED
RT. HON. SEN
MASON J. KINGI

13TH PARLIAMENT | 4TH SENATE | THIRD SESSION

STANDING COMMITTEE ON ENERGY

REPORT ON THE PETION FILED ON THE PROTECTION OF THE RIGHT TO LIFE, HEALTH AND A CLEAN ENVIRONMENT AND OTHER CONSTITUTIONALLY PROTECTED RIGHTS AND FUNDAMENTAL FREEDOMS.

PARLIAMENT
OF KENYA
LIBRARY

Rt. Hon. Speaker*
You may approve for tabling
J. M. Nyegenye, C.B.S.,
Clerk of the senate/secretary, PSC
Date: 22/04/24

Clerk's Chamber
The Senate
Parliament Buildings
NAIROBI

April, 2024

COS
This is forwarded and recommended for approval
for tabling
for DC-EG
22/04/2024

Mr. Hon. Speaker,
You may appear for filing
J.M. Nygaard, C.R.S.,
Clerk of the Senate, Albany, N.Y.

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LIST OF ABBREVIATIONS AND ACRONYMS

NUPEA Nucleur Power Energy Agency

1. PRELIMINARIES

The Senate Standing Committee on Energy is established under standing order 228(3) of the Senate Standing Orders. Pursuant to the provisions of the Fourth Schedule of the Standing Orders the Standing Committee on Energy is assigned to consider all matters related to fossil fuels exploration, development, production, maintenance and regulation of energy.

Mandate of the Committee

The Standing Order 228(4)(a) assigns the Standing Committee to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration and operations of the assigned Ministries and departments. In executing its mandate, the Standing Committee on Energy oversees the Ministry of Energy and Petroleum and the following semi-autonomous government agencies-

1. Energy and Petroleum Regulatory Authority
2. Kenya Power & Lighting Company Limited
3. Kenya Electricity Generating Company Limited
4. Kenya Electricity Transmission Company Limited
5. Rural Electrification and Renewable Energy Company
6. Nuclear Power and Energy Agency
7. Geothermal Development Company.

Membership of the Committee

The Committee is composed of the following members-

- | | |
|--|---------------------------|
| 1. Sen. Wamatinga Wahome, MP | - Chairperson |
| 2. Sen. William Kisang' Kipkemoi, MP | - Vice-Chairperson |
| 3. Sen. (Dr.) Boni Khalwale, CBS, MP | - Member |
| 4. Sen. Ledama Olekina, MP | - Member |
| 5. Sen. (Dr.) Oburu Oginga, MGH, MP | - Member |
| 6. Sen. James Lomenen Ekomwa, MP | - Member |
| 7. Sen. Danson Buya Mungatana, MGH, MP | - Member |
| 8. Sen. Abass Sheikh Mohamed, MP | - Member |
| 9. Sen. Edwine Watinya Sifuna, MP | - Member |

1. CONSIDERATION OF THE PETITION

1. *Petitions are provided under Article 119 of the Kenyan constitution: Right to petition Parliament- Every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.*

On Wednesday, 15th November, 2023 during the afternoon sitting of the Senate, Sen. Okiya Omtatah, MP presented a petition to senate by the residents of Uyombo village in Kilifi County concerning the protection of the right to life, health and a clean environment and other constitutionally protected rights and fundamental freedoms.

2. Pursuant to standing order 238 of the Senate Standing Orders, the Petition was committed to the Standing Committee on Energy.
3. Pursuant to Articles 37 and 119(1) of the Constitution, section 5(2) the Petition to Parliament (Procedure) Act and standing order 238 of the Senate Standing Orders, the Committee is mandated to consider the Petition and respond to the Petitioner within the prescribed period.
4. To enable a judicious consideration of the Petition, the Committee resolved to conduct an inquiry on the issues raised in the Petition. In this regard the Committee invited the Petitioner on 1st March 2024 to elaborate further on the issues raised in the Petition and to provide supporting evidence on the same.
5. On 1st March 2024, while undertaking public participation in Kilifi County, the Committee had a meeting with Nuclear Power Energy Agency (NUPEA) to deliberate on issues raised in the petition.
6. On March 2nd 2024 the Committee had a meeting with the residents of Uyombo village, the Governor of Kilifi County, the Senator of Kilifi County, the Senator for Busia County who is the petitioner, NUPEA and NEMA.

7. During the presentation, NUPEA notified the Committee that on 13th July 2023 a court case No. ELCEPPET/E003/2023 Mkobo Ngolo and Zawadi vs Nuclear Power Energy Agency and 4 others was filed at the Environment and land court in Malindi.

1.1. OBSERVATIONS

8. The Committee observed that pursuant to Standing Orders 103 of the Senate a matter is considered as Sub judice when it refers to active criminal or civil proceedings and the discussion of such matter is likely to prejudice its fair determination.

1.2. RECOMMENDATIONS

9. In line with Standing Orders 103 of the Senate Standing Orders the Committee resolved to adjourn the meeting having declared the matter as sub judice.

ACKNOWLEDGEMENT

The Committee thanks the Offices of the Speaker of the Senate and the Clerk of the Senate for the support extended to the Committee in the execution of its mandate. The Committee further extends its appreciation to the Petitioners, Mr. Davis Chirchir, EGH, Cabinet Secretary, Ministry of Energy and Petroleum, Mr. Justus Wabuyabo, CEO Nuclear Power and Energy Agency (NUPEA) and the other stakeholders for their submissions.

Mr. Speaker Sir,

It is now my pleasant duty and privilege, on behalf of the Committee, to present this Report of the Senate Standing Committee on Energy on the Petition concerning the protection of the right to life, health and a clean environment and other constitutionally protected rights and fundamental freedoms.

Signed:



Date:

16/4/2024

SEN. WAMATINGA WAHOME, M.P.
CHAIRPERSON, SENATE STANDING COMMITTEE ON ENERGY



MINUTES OF THE FIFTY-FOURTH (54TH) SITTING OF THE STANDING COMMITTEE ON ENERGY HELD ON TUESDAY, 12TH MARCH, 2024 AT 12.00 NOON AT COMMITTEE ROOM 5, MAIN PARLIAMENT BUILDINGS.

PRESENT

- | | |
|--------------------------------------|---------------------|
| 1. Sen. Wamatinga Wahome, MP | - Chairperson |
| 2. Sen. William Kisang' Kipkemoi, MP | - Vice- Chairperson |
| 3. Sen. Ledama Olekina, MP | - Member |
| 4. Sen. (Dr.) Boni Khalwale, CBS, MP | - Member |
| 5. Sen. (Dr.) Oburu Oginga, MGH, MP | - Member |
| 6. Sen. James Lomenen Ekomwa, MP | -Member |
| 7. Sen. Edwine Watinya Sifuna, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|----------|
| 1. Sen. Danson Buya Mungatana, MGH, MP | - Member |
| 2. Sen. Abass Sheikh Mohamed, MP | - Member |

COMMITTEE SECRETARIAT

- | | |
|------------------------------|---------------------------------|
| 1. Mr. Crispus Njogu | - Clerk Assistant I/ Lead Clerk |
| 2. Ms. Mary Waqo | - Clerk Assistant III |
| 3. Ms. Faith Cherutoh Rotich | - Legal Counsel II |
| 4. Ms. Nancy Mulei | - Research Officer III |
| 5. Mr. Washington Otiato | - Media Relations Officer II |
| 6. Mr. Joseph Lekisima | - Fiscal Analyst III |
| 7. Mr. Nicholas Arusei | - Audio Officer III |
| 8. Mr. John Lekampule | - Assistant Sergeant at Arms |

MIN/SEN/ENG/NO.362/2024

PRELIMINARIES

a) Prayer

The Chairperson called the meeting to order at 12.12 pm. This was followed by a word of prayer.

b) Introductions

There was a round of introductions from the Hon Senators and members of the secretariat.

MIN/SEN/ENG/NO.363/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. William Kisang' Kipkemoi, MP and Seconded by Sen. James Lomenen Ekomwa, MP as follows-

AGENDA

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of the minutes;
4. Matters Arising from the previous minutes;
5. Consideration of the Report on the petition filed by Sen. Andrew Okiya Omtatah, MP on behalf of residents of Uyombo Village in Kilifi County; (*Committee Paper No 57*)
6. Any Other Business; and
7. Date of the Next Meeting and Adjournment.

MIN. SEN/ENG/NO.364/2024

CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

- a) Minutes of the 47th sitting held on Friday, 8th December 2023 were confirmed as the true record of the proceedings after being proposed by, Sen. (Dr.) Boni Khalwale, CBS, MP and Seconded by Sen. William Kisang' Kipkemoi, MP.
- b) Minutes of the 48th sitting held on Friday, 8th December 2023 were confirmed as the true record of the proceedings after being proposed by, Sen. (Dr.) Boni Khalwale, CBS, MP and Seconded by Sen. William Kisang' Kipkemoi, MP.

- c) Minutes of the 53rd sitting held on 7th March 2024 were confirmed as the true record of the proceedings after being proposed by Sen. James Lomenen Ekomwa, MP and Seconded by Sen. William Kisang' Kipkemoi, MP.

MIN. SEN/ENG/NO.365/2024

MATTERS ARISING FROM THE MINUTES

- a) There were no issues deliberated on under matters arising.

MIN. SEN/ENG/NO.366/2024

CONSIDERATION OF THE REPORT ON THE PETITION FILED BY SEN. ANDREW OKIYA OMTATAH, MP ON BEHALF OF RESIDENTS OF UYOMBO VILLAGE IN KILIFI COUNTY (COMMITTEE PAPER NO 57).

- a) The Committee was taken through the report on the petition filed by Sen. Andrew Okiya Omtatah, MP on behalf of Uyombo Village in Kilifi County.
- b) The Committee was informed that at the meeting held on 1st March 2024 in Kilifi County the matter was determined to be subjudice according to standing orders 103 of the Senate Standing Orders following notification by NUPEA of cause number ELCEPPET/E003/2023 Mkoba Ngolo and Zawadi Kalume vs Nucleur Power and Energy Agency and 4 others.
- c) The Committee noted that the issue of Subjudice should have been noted prior to the Speaker presenting the Petition to the House on 15th November 2023.
- d) The report on the petition filed on the protection of the right to life, health and a clean environment and other constitutionally protected rights and fundamental freedoms was adopted after being proposed by Sen. William Kisang' Kipkemoi, MP and seconded by Sen. James Lomenen Ekomwa, MP.

MIN. SEN/ENG/NO.367/2024

ANY OTHER BUSINESS

There were no issues deliberated under Any Other Bussiness-

MIN. SEN/ENG/NO.368/2024

ADJOURNMENT

The meeting was adjourned at 12.54 PM. The date of the next meeting was to be communicated by notice.

SIGNED.....

DATE.....

**SEN. WAMATINGA WAHOME, MP.
CHAIRPERSON.**



MINUTES OF THE FORTY-NINTH (49TH) SITTING OF THE STANDING COMMITTEE ON ENERGY HELD ON WEDNESDAY, 14TH FEBRUARY, 2024 AT 10.00 AM AT MINI CHAMBER, COUNTY HALL.

PRESENT

- | | |
|--|---------------------------|
| 1. Sen. Wamatinga Wahome, MP | - Chairperson |
| 2. Sen. William Kisang' Kipkemoi, MP | - Vice- Chairperson |
| 3. Sen. Ledama Olekina, MP | - Member |
| 4. Sen. (Dr.) Oburu Oginga, MGH, MP | - Member |
| 5. Sen. Danson Buya Mungatana, MGH, MP | - Member |
| 6. Sen. James Lomenen Ekomwa, MP | -Member |
| 7. Sen. Edwine Watanya Sifuna, MP | - Member |
| 8. Hon. Dr. Babu Owino | - Friend of the Committee |

ABSENT WITH APOLOGY

- | | |
|--------------------------------------|----------|
| 1. Sen. (Dr.) Boni Khalwale, CBS, MP | - Member |
| 2. Sen. Abass Sheikh Mohamed, MP | - Member |

COMMITTEE SECRETARIAT

- | | |
|------------------------------|---------------------------------|
| 1. Mr. Crispus Njogu | - Clerk Assistant I/ Lead Clerk |
| 2. Ms. Mary Waqo | - Clerk Assistant III |
| 3. Ms. Faith Cherutoh Rotich | - Legal Counsel II |
| 4. Ms. Nancy Mulei | - Research Officer III |
| 5. Mr. Washington Otiato | - Media Relations Officer I |
| 6. Mr. Nicholas Arusei | - Audio Officer III |
| 7. Mr. Joseph Lekisima | - Fiscal Analyst III |
| 8. Ms. Julia Gachoki | - Assistant Sergeant at Arms |
| 9. Mr. Mike Mwamuye | - Public Communications Officer |
| 9. Mr. Caleb Njogu | - Intern attached to DSEC |

MIN/SEN/ENG/NO.326/2023

PRELIMINARIES

Prayer

The Chairperson called the meeting to order at 10.00 AM. This was followed by a word of prayer.

MIN/SEN/ENG/NO.327/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. James Lomenen Ekomwa, MP and Seconded by Sen. Ledama Olekina, MP as follows-

AGENDA

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of the minutes;
4. Matters Arising from the previous minutes;
5. Meeting with the Cabinet Secretary, Ministry of Energy and Petroleum, Hon. Davis Chirchir, EGH (*Committee Paper No 54*);
6. Any Other Business; and
7. Date of the Next Meeting and Adjournment.

MIN. SEN/ENG/NO.328/2023

**CONFIRMATION OF MINUTES OF THE
PREVIOUS SITTINGS**

This Agenda item was deferred until the next meeting.

MIN. SEN/ENG/NO.329/2023

**MATTERS ARISING FROM THE
MINUTES**

This Agenda item was deferred until the next meeting.

- a. The Committee was informed that Vide a letter Ref. SEN/DSEC/ENERGY/CORR/2024/113 dated 2nd February 2024 the Committee invited the Cabinet Secretary Ministry of Energy to answer to the questions below;
- i. Explain why the LPG refilling facility was located close to human settlement;
 - ii. Provide the name of the company that was running the facility and their beneficial owners;
 - iii. What are the requirements of having an LPG refill and storage facility;
 - iv. What powers does Energy and Petroleum Regulatory Authority have in enforcing compliance of such facilities;
 - v. A list of all LPG refill and storage facilities and their locations in the Country sorted by county; and
 - vi. What safeguards has the Government put in place to avoid a recurrence of the same.
- b. The Committee was informed that Vide a letter Ref. MOEP/P/CONF/1/37 dated 9th February 2024 the Cabinet Secretary, Ministry of Energy requested to reschedule the meeting to another date.
- c. The Committee noted that the Liquid Petroleum refilling facility which exploded on 1st February 2024 in Embakasi, Nairobi City has caused death, injury and destruction of property.
- d. The Committee was informed that so far 10 lives have been lost and 300 people injured with serious burns and infectious deceases.
- e. The Committee noted that other gas facilities could be operating illegally and close to residential areas causing danger to many lives.

- f. The Committee noted that Energy and Petroleum Regulatory Authority (EPRA) needs to provide a list of all gas facilities in the country.
- g. The Committee noted that inspection of the facilities is necessary in order to establish the illegal facilities.
- h. The Committee resolved to re-invite the Cabinet Secretary Ministry of Energy for a meeting on 22nd February 2024 to deliberate on the liquid petroleum refilling facility explosion.
- i. The Committee resolved to invite Director General EPRA, CEO National Environment Management Authority (NEMA) and County Governor of Nairobi for a meeting on 22nd February 2024.

MIN. SEN/ENG/NO.331/2023

ANY OTHER BUSINESS

The following issues were deliberated under Any Other Business-

a) KPLC Smart Meters;

- i. The Committee noted that it was necessary to request for the Minutes for the evaluation Committee, the authorization letter from the Principal Secretary, a procurement opinion from the Public Procurement Authority on the tender awarded to Harley Berry Ltd by Kenya Power and Lighting Company (KPLC).
- ii. The Committee noted that despite Harley Berry being awarded the tender by KPLC the country is still facing a shortage of smart meters.

b) Petition by residents of Uyombo Village;

- i. The Committee noted that the petition by the residents of Uyombo Village in Kilifi County concerning the protection of the Right to life and Health and a Clean Environment and other constitutionally protected rights and fundamental freedoms needs to be given priority.
- ii. The Committee resolved to visit Kilifi County from 29th February 2024 – 3rd March 2024 to consider the petition.

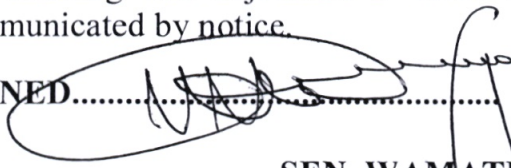
c) Report on the inquiry into the High Cost of Electricity;

The Committee was informed that during Senate Business Committee meeting the report on the Inquiry into the high cost of electricity was discussed and it shall be brought for debate.

MIN. SEN/ENG/NO.332/2023

ADJOURNMENT

The meeting was adjourned at 11.09 AM. The date of the next meeting was to be communicated by notice.

SIGNED.....

DATE.....07/03/2024.....

SEN. WAMATINGA WAHOME, MP.
CHAIRPERSON.



MINUTES OF THE FORTY-THIRD (43RD) SITTING OF THE STANDING COMMITTEE ON ENERGY HELD ON TUESDAY, 21ST NOVEMBER, 2023 AT 11.00 AM IN GROUND FLOOR BOARD ROOM, COUNTY HALL.

PRESENT

- | | |
|--|---------------------|
| 1. Sen. William Kisang' Kipkemoi, MP | - Vice- Chairperson |
| 2. Sen. (Dr.) Oburu Oginga, MGH, MP | - Member |
| 3. Sen. James Lomenen Ekomwa, MP | -Member |
| 4. Sen. Danson Buya Mungatana, MGH, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--------------------------------------|---------------|
| 1. Sen. Wamatinga Wahome, MP | - Chairperson |
| 2. Sen. (Dr.) Boni Khalwale, CBS, MP | - Member |
| 3. Sen. Ledama Olekina, MP | - Member |
| 4. Sen. Abass Sheikh Mohamed, MP | - Member |
| 5. Sen. Edwine Watanya Sifuna, MP | - Member |

COMMITTEE SECRETARIAT

- | | |
|------------------------------|---------------------------------|
| 1. Mr. Crispus Njogu | - Clerk Assistant I/ Lead Clerk |
| 2. Ms. Mary Waqo | - Clerk Assistant III |
| 3. Ms. Faith Cherutoh Rotich | - Legal Counsel II |
| 4. Mr. Erick Osoi | - Research Officer I |
| 5. Ms. Nancy Mulei | - Research Officer III |
| 6. Mr. Nicholas Arusei | - Audio Officer III |
| 7. Mr. Joseph Lekisima | - Fiscal Analyst III |
| 8. Ms. Julia Gachoki | - Assistant Sergeant at Arms |

MIN/SEN/ENG/NO.289/2023

PRELIMINARIES

Prayer

The Chairperson called the meeting to order at 11.25 am, followed by a word of prayer.

MIN/SEN/ENG/NO.290/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after it was proposed by Sen. Danson Buya Mungatana, MGH, MP and Seconded by Sen. (Dr.) Oburu Oginga, MGH, MP as follows-

AGENDA

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of the minutes;
4. Matters Arising from the previous minutes;
5. Consideration of-
 - i. Petition by the residents of Uyombo Village in Kilifi County concerning the protection of the Right to Life and Health and a Clean environment and other Constitutionally protected rights and fundamental freedoms; (*Committee Paper No. 49*)
 - ii. Response of the Ministry of Energy and Petroleum to a statement sought by Sen. James Lomenen, MP on electricity transmission infrastructure within Turkana County (*Committee Paper No. 50*)
 - iii. Review of Memoranda submitted on the Energy Amendment Bill, (*Committee Paper No. 51*)
6. Any Other Business; and
7. Date of the Next Meeting and Adjournment.

MIN. SEN/ENG/NO.291/2023

CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS

Confirmation of Minutes of the 42nd Sitting held on 16th November 2023 was deferred until the next meeting.

MIN. SEN/ENG/NO.292/2023

MATTERS ARISING FROM THE MINUTES

This Agenda was deferred till the next meeting.

MIN. SEN/ENG/NO.293/2023

**CONSIDERATION OF PETITION BY
RESIDENTS OF UYOMBO VILLAGE
IN KILIFI COUNTY CONCERNING
THE PROTECTION OF THE RIGHT
TO LIFE AND HEALTH AND A CLEAN
ENVIRONMENT AND OTHER
CONSTITUTIONALLY PROTECTED
RIGHTS AND FUNDAMENTAL
FREEDOMS(COMMITTEE PAPER NO.
49)**

The Committee was informed that at the Senate Sitting held on Wednesday 16th November 2023 the petition by residents of Uyombo Village in Kilifi County concerning Protection of the right to life and health and a clean environment and other constitutionally protected rights and fundamental freedoms, was referred to the Senate Standing Committee on Energy.

The Committee noted that the petitioners do not want the Nuclear Plant to be put up in Kilifi County. The Committee noted that in some cases activism inhibits development and the Committee should ensure that the views represent that of the Kilifi people. The Committee noted that nuclear energy is a cheaper source of energy.

The Committee resolved to meet with the following stakeholders from 15th January 2024 – 19th January 2024 in Kilifi County-

- i. Ministry of Environment, Climate Change and Forestry;
- ii. Ministry of Energy and Petroleum;
- iii. County Government of Kilifi;
- iv. Sen. (Rtd) Justice Stewart Madzayo, CBS, MP;
- v. The Petitioners;
- vi. National Environment Management Authority; and
- vii. Nuclear Power and Energy Agency

MIN. SEN/ENG/NO.294/2023

RESPONSE OF THE MINISTRY OF ENERGY AND PETROLEUM TO A STATEMENT SOUGHT BY SEN. JAMES LOMENEN, MP ON ELECTRICITY TRANSMISSION INFRASTRUCTURE WITHIN TURKANA COUNTY (COMMITTEE PAPER NO. 50)

The Committee was informed that-

- i. Vide a letter Ref. SEN/DSEC/ENERGY/CORR/2023/90 dated 17th October 2023 the Committee had requested for a response to the statement sought by Sen. James Lomenen, MP from the Cabinet Secretary Ministry of Energy and Petroleum.
- ii. Vide a letter Ref. ME/CONF/1/42 dated 7th November 2023 the Ministry of Energy and Petroleum responded to the statement sought by Sen. James Lomenen, MP on electricity transmission infrastructure in major towns within Turkana County.

The Committee noted that a Cost analysis should be done by the Ministry of Energy on doing a mini-grid versus connection to the National grid for areas not connected to the National grid.

The Committee noted that Rural Electrification and Renewable Energy Cooperation should be in charge of energizing and metering of power to avoid time wastage in unfinished projects due to accusals between REREC and KPLC.

MIN. SEN/ENG/NO.295/2023

REVIEW OF MEMORANDA SUBMITTED ON THE ENERGY AMMENDMENT BILL 2023 (COMMITTEE PAPER NO. 51)

The Committee was informed that it has received one memoranda on the Energy Amendment Bill 2023 from the Council of Governors.

The Committee was informed that the memoranda has been reviewed and a report will be adopted on Tuesday 28th November 2023.

MIN. SEN/ENG/NO.296/2023

ANY OTHER BUSINESS

The was informed that-

- a) Tullow Oil is yet to get an approved Field Development Plan from the Ministry of Energy and Petroleum.

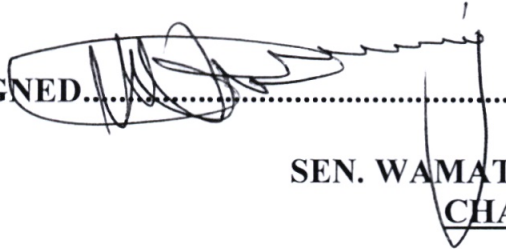
The Committee resolved to find out from the Ministry of Energy and Petroleum the status of Tullow Oil's Field Development Plan.

MIN. SEN/ENG/NO.297/2023

ADJOURNMENT

The meeting was adjourned at 12.52 pm. The next meeting will be by notice.

SIGNED.....



DATE.....

28/11/2023

**SEN. WAMATINGA WAHOME, MP.
CHAIRPERSON.**

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA AT MALINDI
CONSTITUTIONAL PETITION NO..... OF 2023

**IN THE MATTER OF ARTICLES 2, 3, 10, 21, 22, 23, 27, 28, 35, 42, 47, 48, 69, 70, 232, 258
AND 259 OF THE CONSTITUTION OF KENYA**

AND

IN THE MATTER OF SECTION 54, 56 OF THE ENERGY ACT OF 2019

BETWEEN

MKOBA NGOLO.....1ST PETITIONER

ZAWADI KALUME2ND PETITIONER

VERSUS

NUCLEAR POWER ENERGY AGENCY (NuPEA)1ST RESPONDENT

THE PERMANENT SECRETARY

MINISTRY OF ENERGY.....2ND RESPONDENT

THE NATIONAL ENVIRONMENTAL

MANAGEMENT AUTHORITY.....3RD RESPONDENT

AND

THE COUNTY ATTORNEY-

KILIFI COUNTY GOVERNMENT.....1ST INTERESTED PARTY

OCEANS ALIVE TRUST.....2ND INTERESTED PARTY

ROTARY CLUB OF KILIFI.....3RD INTERESTED PARTY

CERTIFICATE OF URGENCY

I **COLLINS KIPNGETICH SANG** being an advocate of the High Court of Kenya and in conduct of this matter on behalf of the Petitioner/Applicant herein certify this application as extremely urgent and the same ought to be heard expeditiously and on a priority basis for the following reasons: -

1. The Respondents have blatantly disregarded the provisions of the Constitution and the Energy Act and continues to carry out unlawful process of establishment of the Kenya's first nuclear power plant, with sheer impunity and unless the orders herein are granted the entire residents of Kilifi County and Kenyans at large stand to suffer irreparably.
2. **THAT** the 1st Respondent is blatantly engaged in a rushed, sham, unlawful, illegal and unprocedural process of establishment of a nuclear power plant in total disregard of the law: circumventing mandatory provisions of the law with outright contempt of section 56 of the Energy Act amounting to mischievous, misdirection and misapplication of law and delegated power in their process of establishment of the Kenya's first nuclear power plant.
3. **THAT** the 1st Respondent is mandated by law and under Section 56 of the Energy Act to:
 - a) carry out research, development and dissemination activities in the energy and nuclear power sector.
 - b) propose policies and legislation necessary for the successful implementation of a nuclear power programme;
 - c) undertake extensive public education and awareness on Kenya's nuclear power programme;
 - d) identify, prepare and facilitate implementation of an approved roadmap for a nuclear power programme;
 - e) in collaboration with the relevant Government agencies develop a comprehensive legal and regulatory framework for nuclear electricity generation in Kenya;
 - f) develop a human resource capacity to ensure Kenya has the requisite manpower to successfully establish and maintain a nuclear power programme;
 - g) identify appropriate sites in Kenya for the construction of nuclear power plants and their related amenities;
 - h) enter into collaborative programmes with other countries, international and national organisations in relation to nuclear electricity research and development;
 - i) identify a suitable operator for nuclear power plants;
 - j) establish a well-stocked library and information centre on nuclear science and technology;
 - k) promote local, regional and international participation in research activities, particularly in technology-oriented research;
 - l) put in place mechanisms to attract private sector funding in research and human resource development for matters relating to energy;
 - m) undertake a national research and human resource development road-mapping to assess the status of research in key energy technologies;
 - n) promote local production of energy technologies;
 - o) collaborate with institutions that collect, analyse and prepare policy papers in order to access energy sector specific information;
 - p) enhance research linkages between industry and academia in matters relating to energy;

- q) continuously train and upgrade human resource capacity in the energy sector to keep up with the changing technological issues in collaboration with training institutions;
 - r) advise on training curriculum and training needs targeting key areas in the energy sector;
 - s) direct, monitor, conduct and implement energy research and technology development in all fields of energy;
 - t) promote energy research and technology innovation;
 - u) provide for—
 - (i) training and development in the field of energy and petroleum, research and technology development; and
 - (ii) commercialization of energy technologies resulting from energy research and development programmes;
 - v) register patents and intellectual property in its name resulting from its activities;
 - w) authorize other persons for the use of its patents and intellectual property on such terms as the Agency may deem fit,
 - x) publish its research findings and other research materials;
 - y) establish facilities for the collection and dissemination of information in connection with research, development and innovation in the energy sector;
 - z) undertake any other energy technology development related activity as directed by the Cabinet Secretary;
 - aa) collaborate with relevant training centres to ensure synergy in matters relating to energy;
 - bb) promote relevant energy research through cooperation with any entity, institution or person equipped with the relevant skills and expertise;
 - cc) make grants to educational and scientific institutions in aid of research in energy issues or for the establishment of facilities for such research;
 - dd) promote the training of research workers in the energy sector by granting bursaries or grants-in-aid for research;
 - ee) undertake the investigations or research that the Cabinet Secretary, after consultation with relevant institutions, may assign to it;
 - ff) advise the Cabinet Secretary on research in the field of energy technology;
 - gg) create awareness and disseminate information on the efficient use of energy and its conservation; and
 - hh) undertake any other functions as may be necessary for the execution of its mandate under this Act.
4. **THAT** there are skewed, callous and clandestine meetings in the name of public participation currently being conducted by the 1st Respondent, not sanctioned by law and which must be arrested to avoid grave misdirection and misapplication of the law and prevent catastrophic legal violations, financial impropriety, loss and to protect lives and the environment from the dangers of unchecked and unsanctioned power.

5. **THAT** there is need to urgently call the 1st Respondent to legal order for their contempt of the provisions of the law to prevent further violations of the law which portends irreparable public order ramifications.
6. **THAT** the Petitioners have filed this petition to challenge the decision of the 1st Respondent to establish Kenya's first nuclear power plant in Kilifi County, particularly along River Kibe, on the basis that the same is shrouded in secrecy, marred with piecemeal collection and dissemination of information, disguised public participation, very limited and/ or lack of public awareness, education and participation skewed to dodge with a view to evading necessary and mandatory legal processes.
7. **THAT** reflecting on the disaster preparedness capacity to deal with a nuclear power plant disaster, there is need to apply urgent caution and urgent safe approach and implementation of the law in the desired development of a nuclear power plant borrowing from world renown countries with nuclear power plants. In March of 2011, Japan experienced the Tohoku earthquake and tsunami of which led to equipment failures of the Fukushima Nuclear Power Plant. This led to a nuclear meltdown that released radioactive materials into the atmosphere. It is reported that more than 570 deaths were as a direct result of the nuclear meltdown and the harmful effects to the environment are still evident to date. In a report titled Strategic Environmental and Social Assessment Report (Sesa) for the Kenya's Nuclear Power Programme report uploaded in the 1st Respondent's website, it is indicated that the 1st Respondent has decided to establish Kenya's first nuclear power plant in Kilifi County, particularly along River Kibe.
8. **THAT** a nuclear power plant is not "your usual project" and as such any establishment of the same requires strict adherence to the law to protect the public from whimsical and erratic exercise of unchecked corrupted power misdirecting itself in law.
9. **THAT** unless this application is certified urgent and heard on priority basis, the 1st Respondent will proceed undeterred, whimsically in an erratic unlawful manner exercising unchecked power not sanctioned by law in establishing the nuclear power plant and which is bound to result to serious negative ramifications to public order, public good, health and safety.

Dated at Malindi this 13th day of July 2023


CHEBOI KIPRONO ADVOCATES
FOR THE PETITIONER

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REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT MALINDI

CONSTITUTIONAL PETITION NO..... OF 2023

**IN THE MATTER OF ARTICLES 2, 3, 10, 21, 22, 23, 27, 28, 35, 42, 47, 48, 69, 70, 232, 258
AND 259 OF THE CONSTITUTION OF KENYA**

AND

IN THE MATTER OF SECTION 54, 56 OF THE ENERGY ACT OF 2019

BETWEEN

MKOBA NGOLO.....1ST PETITIONER

ZAWADI KALUME2ND PETITIONER

VERSUS

NUCLEAR POWER ENERGY AGENCY (NuPEA)1ST RESPONDENT

THE PERMANENT SECRETARY

MINISTRY OF ENERGY.....2ND RESPONDENT

THE NATIONAL ENVIRONMENTAL

MANAGEMENT AUTHORITY.....3RD RESPONDENT

AND

THE COUNTY ATTORNEY-

KILIFI COUNTY GOVERNMENT.....1ST INTERESTED PARTY

OCEANS ALIVE TRUST.....2ND INTERESTED PARTY

ROTARY CLUB OF KILIFI.....3RD INTERESTED PARTY

NOTICE OF MOTION

(Pursuant to Articles 2, 3, 10, 21, 22, 23, 27, 28, 35, 42, 47, 48, 69, 70, 232, 258 and 259 of the Constitution of Kenya; The Constitution of Kenya (Protection of Rights and Fundamental Freedoms), Section 54, 56 of the Energy Act of 2019, Practice and Procedure Rules 2013; the inherent powers of the Court; and all other enabling provisions of the law)

TAKE NOTICE that this Honourable court shall be moved on the day of 2023 at 9.00 o'clock in the forenoon or so soon thereafter as may be possible for Counsel for the hearing of an Application for **ORDERS**:

1. **THAT** this application be certified urgent and be heard exparte in the first instance.
2. **THAT** pending the inter-partes hearing and determination of this Application herein the Honourable Court be pleased to issue a temporary order of prohibition prohibiting the Respondents, whether by themselves, or any of their employees or agents or any person claiming to act under their authority from proceeding to carry out any action towards establishment of the Kenya's first nuclear power plant.
3. **THAT** pending the inter-partes hearing and determination of the Petition herein the Honourable Court be pleased to issue a temporary order of prohibition prohibiting the Respondents, whether by themselves, or any of their employees or agents or any person claiming to act under their authority from proceeding to carry out any action towards establishment of the Kenya's first nuclear power plant.
4. **THAT** consequent to the grant of the prayers above the Honourable Court be pleased to issue such further directions and orders as may be necessary to give effect to the foregoing orders, and/or favour the cause of justice.
5. **THAT** the costs of this application be provided for.

ON THE GROUNDS THAT;

1. **THAT** the 1st Respondent is currently engaging in a rushed, sham, unlawful, illegal and unprocedural process of establishment of a nuclear power plant in total disregard of the law: circumventing mandatory provisions of the law with outright contempt to section 56 of the Energy Act amounting to mischievous, misdirection and misapplication of law and delegated power in their process of establishment of the said nuclear power plant.
2. **THAT** the 1st Respondent is mandated by law and under Section 56 of the Energy Act to:
 - a) carry out research, development and dissemination activities in the energy and nuclear power sector.
 - b) propose policies and legislation necessary for the successful implementation of a nuclear power programme;
 - c) undertake extensive public education and awareness on Kenya's nuclear power programme;
 - d) identify, prepare and facilitate implementation of an approved roadmap for a nuclear power programme;
 - e) in collaboration with the relevant Government agencies develop a comprehensive legal and regulatory framework for nuclear electricity generation in Kenya;
 - f) develop a human resource capacity to ensure Kenya has the requisite manpower to successfully establish and maintain a nuclear power programme;

- g) identify appropriate sites in Kenya for the construction of nuclear power plants and their related amenities;
- h) enter into collaborative programmes with other countries, international and national organisations in relation to nuclear electricity research and development; (h) identify a suitable operator for nuclear power plants;
- i) establish a well-stocked library and information centre on nuclear science and technology;
- j) promote local, regional and international participation in research activities, particularly in technology-oriented research;
- k) put in place mechanisms to attract private sector funding in research and human resource development for matters relating to energy;
- l) undertake a national research and human resource development road-mapping to assess the status of research in key energy technologies;
- m) promote local production of energy technologies;
- n) collaborate with institutions that collect, analyse and prepare policy papers in order to access energy sector specific information;
- o) enhance research linkages between industry and academia in matters relating to energy;
- p) continuously train and upgrade human resource capacity in the energy sector to keep up with the changing technological issues in collaboration with training institutions;
- q) advise on training curriculum and training needs targeting key areas in the energy sector;
- r) direct, monitor, conduct and implement energy research and technology development in all fields of energy;
- s) promote energy research and technology innovation;
- t) provide for—
 - (i) training and development in the field of energy and petroleum, research and technology development; and
 - (ii) commercialization of energy technologies resulting from energy research and development programmes;
- u) register patents and intellectual property in its name resulting from its activities;
- v) authorize other persons for the use of its patents and intellectual property on such terms as the Agency may deem fit,
- w) publish its research findings and other research materials;
- x) establish facilities for the collection and dissemination of information in connection with research, development and innovation in the energy sector;
- y) undertake any other energy technology development related activity as directed by the Cabinet Secretary;
- z) collaborate with relevant training centres to ensure synergy in matters relating to energy;

- aa) promote relevant energy research through cooperation with any entity, institution or person equipped with the relevant skills and expertise;
 - bb) make grants to educational and scientific institutions in aid of research in energy issues or for the establishment of facilities for such research;
 - cc) promote the training of research workers in the energy sector by granting bursaries or grants-in-aid for research;
 - dd) undertake the investigations or research that the Cabinet Secretary, after consultation with relevant institutions, may assign to it;
 - ee) advise the Cabinet Secretary on research in the field of energy technology;
 - ff) create awareness and disseminate information on the efficient use of energy and its conservation; and
 - gg) undertake any other functions as may be necessary for the execution of its mandate under this Act.
3. **THAT** there are skewed, callous and clandestine meetings in the name of public participation currently being conducted by the 1st Respondent, not sanctioned by law and which must be arrested to avoid grave misdirection and misapplication of the law and prevent catastrophic legal violations, financial impropriety, loss and to protect lives and the environment from the dangers of unchecked and unsanctioned power.
 4. **THAT** there is need to urgently call the 1st Respondent to legal order for their contempt of the provisions of the law to prevent further violations of the law which portends irreparable public order ramifications.
 5. **THAT** the Petitioners have filed this petition to challenge the decision of the 1st Respondent to establish Kenya's first nuclear power plant in Kilifi County, particularly along River Kibe, on the basis that the same is shrouded in secrecy, marred with piecemeal collection and dissemination of information, disguised public participation, very limited and/ or lack of public awareness, education and participation skewed to dodge with a view to evading necessary and mandatory legal processes.
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 7. **THAT** a nuclear power plant is not "your usual project" and as such any establishment of the same requires strict adherence to the law to protect the public from whimsical and erratic exercise of unchecked corrupted power misdirecting itself in law.

8. **THAT** unless this application is allowed as prayed, the Respondents will proceed undeterred, whimsically in an erratic manner to exercise unchecked power not sanctioned by law and establish the said nuclear power plant in a process which is bound to result in serious negative ramifications to public order, public good, public health, and safety.

WHICH APPLICATION is grounded upon the Petition herein and the annexed affidavit of **MKOBA NGOLO** dated 13th July 2023 and upon such other or further grounds in support as may be adduced at the hearing hereof.

Dated at Malindi this 13th day of July, 2023

CHEBOI KIPRONO ADVOCATES
FOR THE PETITIONERS/APPLICANTS

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REPUBLIC OF KENYA

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BETWEEN

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VERSUS

NUCLEAR POWER ENERGY AGENCY (NuPEA)1ST RESPONDENT

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THE COUNTY ATTORNEY-

KILIFI COUNTY GOVERNMENT.....1ST INTERESTED PARTY

OCEANS ALIVE TRUST.....2ND INTERESTED PARTY

ROTARY CLUB OF KILIFI.....3RD INTERESTED PARTY

PETITION

**TO: THE HIGH COURT OF KENYA
THE ENVIRONMENT AND LAND COURT
MALINDI**

**THE HUMBLE PETITION of MKOBA NGOLO and ZAWADI KALUME, the 1st and 2nd
Petitioners respectively herein, whose address of service for the purposes of this petition is care of**

DESCRIPTION OF THE PARTIES

1. The Petitioners are Kenyan citizens resident and working for gain in Kilifi County and whose address for service for the purpose of this petition is through the firm of Messrs Cheboi Kiprono Advocates.
2. The 1st Respondent is a State Corporation established under section 54 of the Energy Act of 2019 and tasked with the responsibility to promote and implement Kenya's Nuclear Power Program.
3. The 2nd Respondent is the Principal Secretary at the Ministry of Energy whose mission is to facilitate the provisions of clean, sustainable, affordable, dependable, and secure energy services for national development while protecting the environment.
4. The 3rd Respondent is the principal government authority established under the Environmental, Management and Coordination Act to ensure sustainable management of the environment by exercising general supervision and coordination over all matter's environments.
5. The 1st Interested Party is the County Attorney at the county government of Kilifi whose key mandate includes providing legal advisory services to the County of Kilifi.
6. The 2nd Interested party is an organization operating in the county of Kilifi whose aim is to create a space for the voices of community stakeholders to be heard and used to shape policies for sustainable development and growth.
7. The 3rd Interested Party is a body of professionals, dedicated to helping the local community of Kilifi to better their lives through active participation in the policy and decision-making process of the government.

LEGAL FOUNDATION

8. The Constitution Kenya 2010, ushered in the rule of law, accountability, openness, and transparency in the management of all public affairs.
9. Under Article 2 (4) of the Constitution any act or omission in contravention of this Constitution is invalid.

10. Under Article 2 (5) and (6) of the Constitution the general rules of international law forms part of the law in Kenya and any convention ratified by Kenya forms part of the law of Kenya.
11. Article 3 (1) of the Constitution mandates every person with obligation to respect, uphold and defend the Constitution.
12. Article 2(1) of the constitution pronounces the supremacy of the Constitution. It asserts that the Constitution binds all persons and state organs.
13. Article 10 (1) of the Constitution elaborates on the national values and principles of governance which includes rule of law, democracy, openness, transparency, participation of the people, inclusiveness, good governance, accountability, sustainable development and integrity amongst others.
14. Article 27 of the Constitution provides that every person has equal protection of the law and that the state shall not discriminate against any person based on age, sex, and colour.
15. Article 232 of the Constitution provides that the values and principles of public service include efficient, effective, and economic use of resources and accountability for administrative acts.
16. Article 258(2) of the Constitution provides that every person has the right to institute court proceedings, claiming that the Constitution has been violated or threatened with contravention.
17. Article 259(1) of the Constitution provides that the Constitution shall be interpreted in a manner that advances rule of law and contributes to good governance.
18. Article 21(1) of the Constitution provides that it is the fundamental duty of the State and every State organ to observe, respect, protect, and fulfil the rights and fundamental freedoms in the Bill of Rights.
19. Article 22(1) of the Constitution provides that every person has the right to institute court proceedings, claiming that a right of fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.
20. Article 22(3) of the Constitution provides that in any proceedings brought under Article 22, a court may grant appropriate relief, including— a declaration of rights; an injunction; a conservatory order; and a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24 among other reliefs.
21. Article 35(1) (a) and (3) of the Constitution provides that every citizen has the right of access to information held by the State and the State shall publish and publicise any important information affecting the nation.
22. Article 42 of the Constitution provides that every person has the right to a clean and healthy environment, which includes the right to have the environment protected for the benefit of present and future generations through legislative and other measures, particularly those contemplated in Article 69; and to have obligations relating to the environment fulfilled under Article 70.

23. Article 47 of the Constitution provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
24. Under Article 69 of the Constitution, the state shall-
- a) ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits;
 - b) work to achieve and maintain a tree cover of at least ten per cent of the land area of Kenya;
 - c) protect and enhance intellectual property in, and indigenous knowledge of, biodiversity and the genetic resources of the communities;
 - d) encourage public participation in the management, protection and conservation of the environment;
 - e) protect genetic resources and biological diversity;
 - f) establish systems of environmental impact assessment, environmental audit and monitoring of the environment;
 - g) eliminate processes and activities that are likely to endanger the environment; and
 - h) utilise the environment and natural resources for the benefit of the people of Kenya.
25. Under Article 70 (1) of the Constitution, if a person alleges that a right to a clean and healthy environment recognised and protected under Article 42 has been, is being or is likely to be, denied, violated, infringed or threatened, the person may apply to a court for redress in addition to any other legal remedies that are available in respect to the same matter.
26. Article 70 (2) of the Constitution stipulates that on application under article 70 (1) of the Constitution, the court may make any order, or give any directions; it considers appropriate— to prevent, stop or discontinue any act or omission that is harmful to the environment; to compel any public officer to take measures to prevent or discontinue any act or omission that is harmful to the environment; or to provide compensation for any victim of a violation of the right to a clean and healthy environment.
27. Section 56 of the Energy Act requires that the 1st Respondent must:
- a) carry out research, development and dissemination activities in the energy and nuclear power sector.
 - b) propose policies and legislation necessary for the successful implementation of a nuclear power programme;
 - c) undertake extensive public education and awareness on Kenya's nuclear power programme;
 - d) identify, prepare and facilitate implementation of an approved roadmap for a nuclear power programme;
 - e) in collaboration with the relevant Government agencies develop a comprehensive legal and regulatory framework for nuclear electricity generation in Kenya;

- f) develop a human resource capacity to ensure Kenya has the requisite manpower to successfully establish and maintain a nuclear power programme;
- g) identify appropriate sites in Kenya for the construction of nuclear power plants and their related amenities;
- h) enter into collaborative programmes with other countries, international and national organisations in relation to nuclear electricity research and development; (h) identify a suitable operator for nuclear power plants;
- i) establish a well-stocked library and information centre on nuclear science and technology;
- j) promote local, regional and international participation in research activities, particularly in technology-oriented research;
- k) put in place mechanisms to attract private sector funding in research and human resource development for matters relating to energy;
- l) undertake a national research and human resource development road-mapping to assess the status of research in key energy technologies;
- m) promote local production of energy technologies;
- n) collaborate with institutions that collect, analyse and prepare policy papers in order to access energy sector specific information;
- o) enhance research linkages between industry and academia in matters relating to energy;
- p) continuously train and upgrade human resource capacity in the energy sector to keep up with the changing technological issues in collaboration with training institutions;
- q) advise on training curriculum and training needs targeting key areas in the energy sector;
- r) direct, monitor, conduct and implement energy research and technology development in all fields of energy;
- s) promote energy research and technology innovation;
- t) provide for—
 - (i) training and development in the field of energy and petroleum, research and technology development; and
 - (ii) commercialization of energy technologies resulting from energy research and development programmes;
- u) register patents and intellectual property in its name resulting from its activities;
- v) authorize other persons for the use of its patents and intellectual property on such terms as the Agency may deem fit,
- w) publish its research findings and other research materials;
- x) establish facilities for the collection and dissemination of information in connection with research, development and innovation in the energy sector;
- y) undertake any other energy technology development related activity as directed by the Cabinet Secretary;

- z) collaborate with relevant training centres to ensure synergy in matters relating to energy;
- aa) promote relevant energy research through cooperation with any entity, institution or person equipped with the relevant skills and expertise;
- bb) make grants to educational and scientific institutions in aid of research in energy issues or for the establishment of facilities for such research;
- cc) promote the training of research workers in the energy sector by granting bursaries or grants-in-aid for research;
- dd) undertake the investigations or research that the Cabinet Secretary, after consultation with relevant institutions, may assign to it;
- ee) advise the Cabinet Secretary on research in the field of energy technology;
- ff) create awareness and disseminate information on the efficient use of energy and its conservation; and
- gg) undertake any other functions as may be necessary for the execution of its mandate under this Act.

FACTS RELIED UPON

28. The petitioners have filed this petition to challenge the decision of the 1st Respondent to establish Kenya's first nuclear power plant in Kilifi County, particularly along River Kibe, on the basis that the same is shrouded in secrecy, marred with piecemeal collection and dissemination of information, disguised public participation, very limited and/ or lack of public awareness, education and participation skewed to dodge and evade the necessary legal processes.
29. The 1st Respondent is currently engaged in a rushed, sham, unlawful, illegal and unprocedural process of establishment of a nuclear power plant in total disregard of the law: circumventing mandatory provisions of the law with outright contempt to section 56 of the Energy Act amounting to mischievous, misdirection and misapplication of law and delegated power in their process of establishment of the said nuclear power plant.
30. The 1st Respondent engaged and continues to engaged in skewed, callous and clandestine meetings in the name of public participation, not sanctioned by law, which must be arrested to avoid grave misdirection and misapplication of the law and prevent catastrophic legal violations, financial impropriety, loss and to protect lives and the environment from the dangers of unchecked and unsanctioned whimsical application of power.
31. A nuclear power plant is not "your usual project" and as such any establishment of the same requires strict adherence to the law to protect the public from whimsical and erratic exercise of unchecked corrupted power misdirecting itself in law.

32. There is need to call the 1st Respondent to legal order for their contempt of the provisions of the law to prevent further violations of the law which portends irreparable negative public order ramifications.
33. The Respondents must be called to order from proceeding undeterred, whimsically, in an erratic unlawful manner, exercising unchecked power not sanctioned by law while establishing the nuclear power plant and which unlawful process is bound to result to serious negative ramifications to public order, public good, health and safety.
34. In the absence of a defined policy and clear legal framework guiding the identification of a proposed site for the establishment of a nuclear power plant in Kenya, the 1st and 2nd Respondent cannot legally proceed to identify potential sites for the establishment of a nuclear power plant in Kenya.
35. In conducting its mandate, the 1st and 2nd Respondents are required to develop policies and legislation, undertake public education, public participation, and awareness, identify suitable sites for the construction of Nuclear Power Plants, conduct investigation development and innovation on energy technologies and capacity building for the energy sector.
36. The 1st Respondent's evident casual approach, wrongful and inadequate application of the provisions of the law in their planned establishment of a nuclear power plant amounts to a contravention of the law and portends a serious environmental risk to residents of Kilifi County and Kenyans at large.
37. The 1st Respondent, in a report uploaded on its website dated January 2023 titled " Strategic Environmental & Social Assessment Report (SESA report) for Kenya's nuclear power programme", indicates to have carried out consultation workshops in Kwale, Mombasa, Kilifi, Kisumu, Siaya, Busia, Homa Bay, Migori, Turkana, Uasin Gishu, Nandi, Kericho, Bomet, Nakuru, Muranga, Nyeri, Meru, Embu, Kitui, Garissa, Lamu, Tana River and Nairobi to inform the general public of its plans as well as establish the most suitable area to build a nuclear power plant.

VIOLATIONS OF THE CONSTITUTION AND STATUTE LAW

38. Evident in the *Strategic Environmental and Social Assessment Report dated January 2023* (SESA Report), the Respondents failed to properly direct themselves in accordance with Article 2 (1) (4) (5) (6), 3 (1), 10 (1), 27, 232, 21 (1), 22(1) (a) (3), 42, 47, 69, 70 (1) (2) of the Constitution of Kenya and Section 56 of the Energy Act, which violations are likely to deny or denies, violates, infringes or threatens the right to a clean and healthy environment recognised and protected under Article 42 of the Constitution.

39. The 1st Respondent totally avoided, ignored and disregarded the provisions in Section 56 of the Energy Act and continues to do so blatantly.
40. The process being undertaken by the Respondents does not adhere to the constitutional standards, dictates, principles and statute law.
41. The Respondents have neglected to create effective education and awareness on the establishment of a nuclear power plant violating the right to information which is contrary to Article 35(1) (a) and (3) of the Constitution.

GROUNDS OF THE PETITION

A. INADEQUATE PUBLIC PARTICIPATION

42. The decision of the 1st Respondent to establish the nuclear plant along River Kibe in Kilifi County did not consider the views and concerns of the residents of Kilifi. The law requires that the residents of Kilifi should have a direct involvement in the affairs of their community and the right to influence Government decisions.
43. The right to public participation as provided under Article 10 of the Constitution of Kenya guarantees citizens the right to participate in decision-making processes that affect their lives and the environment.
44. The 1st and 2nd Respondents have failed in their duty to facilitate public participation by ensuring that the residents of Kilifi have the necessary information and effective opportunity to contribute to government projects that will affect their living.
45. Despite the potential environmental and health implications associated with the establishment of a nuclear plant, the residents of Kilifi County have been denied the opportunity to express their concerns, provide input, or participate in meaningful dialogue regarding the selection of the plant's location.
46. The failure of the Respondent to involve the affected residents and stakeholders in the decision-making process violates their constitutional rights and undermines the principles of transparency, accountability, and good governance.

B. LACK OF AWARENESS ABOUT THE IMPACT OF THE NUCLEAR PLANT

47. The residents of Kilifi County, particularly those living in the vicinity of the proposed nuclear plant, are unaware of the potential risks and impact associated with the handling and disposal of nuclear waste which is contravenes the rights of the residents of Kilifi to a clean and healthy environment as enshrined in Article 42 of the Constitution.

48. The Respondent has not conducted comprehensive public awareness campaigns or educational programs to inform the residents about the potential hazards and safety measures associated with the operation of a nuclear plant.
49. The lack of awareness regarding the handling of nuclear waste and the potential risks it poses not only violates the residents' right to information but also puts their lives, health, and the environment at risk.
50. The decision of the Respondent to establish the nuclear plant without ensuring adequate awareness and understanding among the residents is arbitrary, unreasonable, and contrary to the principles of sustainable development and protection of public welfare.
51. The Respondent has failed to meet the requirement of Article 69 of the Constitution of Kenya which obligates the government to ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources to ensure equitable sharing of any accrued benefits.
52. Reflecting on the disaster preparedness capacity to deal with a nuclear power plant disaster, the Respondents have thrown caution to the wind disregarding legal directions in the process of desired development of a nuclear power plant and to say the least have failed to learn from international experiences, borrowing from world renown countries with nuclear power plants.

LACK OF POLICY AND REGULATORY FRAMEWORK

53. Contrary to Article 70 of the Constitution of Kenya and the provisions of the Energy Act, the 1st, 2nd, and 3rd Respondents have failed to establish specific laws and regulations governing the establishment, operation, and decommissioning of a nuclear power plant in Kenya.
54. The absence of a robust legal framework not only compromises the safety of the residents of Kilifi County but also poses risks to the environment, economy, and future generations.
55. Without comprehensive policies addressing nuclear safety standards, emergency preparedness, waste management, liability provisions and the potential dangers associated with nuclear energy, the 1st Respondent cannot legally proceed to identify potential sites for the establishment of a nuclear power plant.

PRAYERS OF THE PETITIONERS

Considering the above grounds, we respectfully pray that the Court grants the following reliefs:

56. An injunction halting the actions of the Respondents' in process of setting up a Nuclear Power Plant at "Site B" or any other site in the Republic of Kenya until a legal framework in Kenya is appropriately established and all relevant laws complied with before establishment of a nuclear power plant.
57. A declaration that the decision of the Respondents identifying "Site B" in Kilifi County, as the most appropriate to establish a nuclear power plant was done contrary to the law.
58. A declaration prohibiting the Respondents from conducting any further identification of site(s) as suitable for the establishment of a nuclear power plant in Kenya until the necessary legislation, regulations and policy is established and environmental impact assessment done in accordance with the law.
59. An order directing the Respondents to liaise with and engage parliament with a view of establishing pertinent legal framework including but not limited to signing the relevant international treaties on establishment of a nuclear power plant, management, safety, and handling of nuclear waste in Kenya before any further exploration exercise and/or identification of potential site(s) for the establishment of a nuclear power plant in Kenya.
60. An order directing the Respondents to conduct a transparent and sufficient public participation exercise in the formulation of law, regulation, policy, and environmental assessments prior to the establishment of a nuclear power plant in Kenya.
61. An order directing the Respondents to undertake extensive public awareness, campaigns, educational programs, sensitization, and publish and publicise all information relating to the establishment of a nuclear power plant in Kenya.
62. An order directing the Respondents to implement and adhere to Section 56 of the Energy Act No. 1 of 2019 in its entirety and all pertinent legal requirements required in the process of establishment of the Nuclear Power Plant.
63. Any other order or relief that the Honorable Court deems just and appropriate under the circumstances.

DATED AT KILIFI THIS 13TH DAY OF JULY 2023

CHEBOI KIPRONO ADVOCATES

ADVOCATE FOR THE PETITIONERS

DRAWN & FILED BY: -

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ROTARY CLUB OF KILIFI

Email: hi@creativethemes.com

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA AT MALINDI
CONSTITUTIONAL PETITION NO..... OF 2023

IN THE MATTER OF ARTICLES 2, 3, 10, 21, 22, 23, 27, 28, 35, 42, 47, 48, 69, 70, 232, 258
AND 259 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF SECTION 54, 56 OF THE ENERGY ACT OF 2019

BETWEEN

MKOBA NGOLO.....1ST PETITIONER

ZAWADI KALUME2ND PETITIONER

VERSUS

NUCLEAR POWER ENERGY AGENCY (NuPEA)1ST RESPONDENT

THE PERMANENT SECRETARY

MINISTRY OF ENERGY.....2ND RESPONDENT

THE NATIONAL ENVIRONMENTAL

MANAGEMENT AUTHORITY.....3RD RESPONDENT

AND

THE COUNTY ATTORNEY-

KILIFI COUNTY GOVERNMENT.....1ST INTERESTED PARTY

OCEANS ALIVE TRUST.....2ND INTERESTED PARTY

ROTARY CLUB OF KILIFI.....3RD INTERESTED PARTY

SUPPORTING AFFIDAVIT BY THE 1ST PETITIONER

I **MKOBA NGOLO** of Post Office Box Number 35291-00200 Nairobi, and a resident of Kilifi County do hereby solemnly MAKE an OATH and state as follows:

1. **THAT** I am a Kenyan Citizen, an adult of sound mind, and the 1st Petitioner herein thus competent to swear this affidavit.
2. **THAT** I make this affidavit on my own behalf and on behalf of the 2nd Petitioner herein, acting in public interest.
3. **THAT** I make this affidavit in support of the Application dated the 13th July, 2023 and to verify the contents of the Petition dated the 13th July, 2023.
4. **THAT** the 1st Respondent is a State Corporation established under section 54 of the Energy Act of 2019 and tasked with the responsibility to promote and implement Kenya's Nuclear Power Program.
5. **THAT** the 2nd Respondent is the Principal Secretary at the Ministry of Energy in the Republic of Kenya.
6. **THAT** the 3rd Respondent is the principal government authority established under the Environmental, Management and Coordination Act to ensure sustainable management of the environment by exercising general supervision and coordination over all matter's environments.
7. **THAT** the 1st Interested Party is the County Attorney of the county government of Kilifi whose key mandate includes providing legal advisory services to the County of Kilifi.
8. **THAT** the 2nd Interested party a non -governmental organization, operating in the county of Kilifi whose aim is to create a space for the voices of community stakeholders to be heard and used to shape policies for sustainable development and growth.
9. **THAT** the 3rd Interested Party is a body of professionals, dedicated to helping the local community of Kilifi to better their lives through active participation in the policy and decision-making process of the government.
10. **THAT** the Petitioners have filed this petition to challenge the decision of the 1st Respondent to establish Kenya's first nuclear power plant in Kilifi County, particularly along River Kibe, on the basis that the same is shrouded in secrecy, marred with piecemeal collection and dissemination of information, disguised public participation, very limited and/ or lack of public awareness, education and participation skewed to dodge necessary legal processes.
11. **THAT** the 1st Respondent is mandated under Section 56 of the Energy Act to:
 - a) carry out research, development and dissemination activities in the energy and nuclear power sector.
 - b) propose policies and legislation necessary for the successful implementation of a nuclear power programme; Establishment of the Nuclear Power and Energy Agency. Headquarters.
 - c) undertake extensive public education and awareness on Kenya's nuclear power programme;
 - d) identify, prepare and facilitate implementation of an approved roadmap for a nuclear power programme;

- c) in collaboration with the relevant Government agencies develop a comprehensive legal and regulatory framework for nuclear electricity generation in Kenya;
- f) develop a human resource capacity to ensure Kenya has the requisite manpower to successfully establish and maintain a nuclear power programme;
- g) identify appropriate sites in Kenya for the construction of nuclear power plants and their related amenities;
- h) enter into collaborative programmes with other countries, international and national organisations in relation to nuclear electricity research and development;
- i) identify a suitable operator for nuclear power plants;
- j) establish a well-stocked library and information centre on nuclear science and technology;
- k) promote local, regional and international participation in research activities, particularly in technology-oriented research;
- l) put in place mechanisms to attract private sector funding in research and human resource development for matters relating to energy;
- m) undertake a national research and human resource development road-mapping to assess the status of research in key energy technologies;
- n) promote local production of energy technologies;
- o) collaborate with institutions that collect, analyse and prepare policy papers in order to access energy sector specific information;
- p) enhance research linkages between industry and academia in matters relating to energy;
- q) continuously train and upgrade human resource capacity in the energy sector to keep up with the changing technological issues in collaboration with training institutions;
- r) advise on training curriculum and training needs targeting key areas in the energy sector;
- s) direct, monitor, conduct and implement energy research and technology development in all fields of energy;
- t) promote energy research and technology innovation;
- u) provide for—
 - (i) training and development in the field of energy and petroleum, research and technology development; and
 - (ii) commercialization of energy technologies resulting from energy research and development programmes;
- v) register patents and intellectual property in its name resulting from its activities;
- w) authorize other persons for the use of its patents and intellectual property on such terms as the Agency may deem fit,
- x) publish its research findings and other research materials;

- y) establish facilities for the collection and dissemination of information in connection with research, development and innovation in the energy sector;
 - z) undertake any other energy technology development related activity as directed by the Cabinet Secretary;
 - aa) collaborate with relevant training centres to ensure synergy in matters relating to energy; (aa)promote relevant energy research through cooperation with any entity, institution or person equipped with the relevant skills and expertise;
 - bb) make grants to educational and scientific institutions in aid of research in energy issues or for the establishment of facilities for such research;
 - cc) promote the training of research workers in the energy sector by granting bursaries or grants-in-aid for research;
 - dd) undertake the investigations or research that the Cabinet Secretary, after consultation with relevant institutions, may assign to it;
 - ee) advise the Cabinet Secretary on research in the field of energy technology;
 - ff) create awareness and disseminate information on the efficient use of energy and its conservation; and
 - gg) undertake any other functions as may be necessary for the execution of its mandate under this Act.
12. **THAT** the 1st Respondent are currently engaged in a sham, unlawful, illegal and unprocedural process of establishment of a nuclear power plant in total disregard of the law.
 13. **THAT** the 1st Respondent's evident casual approach, wrongful and inadequate application of the provisions of the law in their planned establishment of a nuclear power plant amounts to a contravention of the law and portends a serious environmental risk to residents of Kilifi county and Kenyans at large.
 14. **THAT** in the absence of a defined policy and clear legal framework guiding the identification of a proposed site for the establishment of a nuclear power plant in Kenya, the 1st and 2nd Respondent cannot legally proceed to identify potential sites for the establishment of a nuclear power plant.
 15. **THAT** there is skewed, callous and clandestine meetings in the name of public participation currently being conducted by the 1st Respondent not sanctioned by law and glaring general lack of awareness by the residents of Kilifi County about the potential impact of the nuclear power plant.
 16. **THAT** in conducting its mandate, the 1st and 2nd Respondents are required to develop policies and legislation, undertake effective public education, effective public participation, and effective awareness, conduct investigation, development and innovation on energy technologies and capacity building for the energy sector in accordance with the law.
 17. **THAT** the 1st Respondent's actions and processes in contravention of the law and total disregard of the law has already resulted in a report uploaded on its website dated January

2023 titled “Strategic to Build & Social Assessment Report (SESA report) for Kenya’s nuclear to build programme”, which indicates to have carried out consultation workshops in Kwale, Mombasa, Kilifi, Kisumu, Siaya, Busia, Homa Bay, Migori, Turkana, Uasin Gishu, Nandi, Kericho, Bomet, Nakuru, Muranga, Nyeri, Meru, Embu, Kitui, Garissa, Lamu, Tana River and Nairobi to inform the general public of its plans as well as establish the most suitable area to build a nuclear power plant.

(Annexed herewith and marked as “MNI” is Strategic Environmental and Social Assessment Report dated January 2023)

18. **THAT** the SESA report obscurely indicates that a public participation exercise was carried out in Kilifi County on the 19th of January 2018 where the county executive, county assembly, county university, environment/water marine related NGOs, the water basin authority and the 3rd Respondent were invited, which report evidently fails to demonstrate the issues discussed during the public participation exercise and the concerns raised by the residents of Kilifi, calling to question whether there was any public participation done and if there was, it is clearly evident that it was done in contravention of the law and the same inadequate.
19. **THAT** from the reports available, the above questionable Kilifi County meetings failed to meet the minimum requirements on public participation as there was no clear plan presented on the criteria used to identify the “Site B” in Kilifi county, the policy and legal protections to govern the implementation of the project, the policy measures in place to govern safety and waste management measures, and the cost benefit analysis of constructing a nuclear power plant in Kilifi at a conservative estimated budget of Kenya Shillings 500billion, which translates to approximately one third of Kenya’s total revenue.
20. **THAT** the SESA report acknowledges contravention of the law by the 1st Respondent in that it identifies three fundamental issues lacking; the lack of nuclear knowledge management, inadequate nuclear research and development and the need to build capacity as necessary measures all of which are by law must be complied with before establishment of a nuclear power plant. Despite the above shortcomings, the report proceeds to identify “site B” located in Kilifi County as the most suitable to set up a nuclear power plant.
21. **THAT** the processes leading to the SESA report’s identification of “site B” in Kilifi County is skewed, piece mealy served as though it is medically prescribed and shrouded in legally unsanctioned secrecy for example the said report in the 1st Respondent’s website is not signed, there is no evidence of the public participants, the specific site location is not indicated in the report. Nevertheless, the 1st Respondent continues to hold selective

meetings in Kilifi County thus evidently pushing their own “selfish” agenda and narrative denying stakeholders the opportunity to effectively participate.

22. **THAT** reflecting on the disaster preparedness capacity to deal with a nuclear power plant disaster, there is need to apply caution and safe approach and implementation of the law in the development of a nuclear power plant borrowing from world renown countries with nuclear power plants. In March of 2011, Japan experienced the Tohoku earthquake and tsunami of which led to equipment failures of the Fukushima Nuclear Power Plant. This led to a nuclear meltdown that released radioactive materials into the atmosphere. It is reported that more than 570 deaths were as a direct result of the nuclear meltdown and the harmful effects to the environment are still evident to date. The SESA report indicates that Kilifi County is prone to flooding and at risk of a tsunami, insecurity and terrorism, thus evidencing an up-hazard process that disregarded the need for a clear disaster preparedness strategy.
23. **THAT** the establishment of a nuclear safety policy and capacity building of the 3rd Respondent is necessary to oversee environmental impact assessments since the establishment of a nuclear power plant is not your usual project and specific expertise to create a radiation assessment report is necessary.
24. **THAT** there is no law governing the liability of nuclear power plant operators and government agencies tasked with monitoring their activities.
25. **THAT** the Petitioners further state that the International Atomic Energy Agency (IAEA), a United Nations affiliate body that works with member states to promote the safe, secure, and peaceful use of nuclear technologies found that further work was needed in the areas of development of a nuclear leadership programme and ratification of international conventions on the area of nuclear safety before Kenya can embark on the development of a nuclear power plant.

(Annexed herewith and marked as “MN2” is a media report on the website of International Atomic Energy Agency titled “IAEA reviews progress of Kenya’s Nuclear Infrastructure Development dated 11th June 2021)

26. **THAT** the lack of awareness regarding the handling of nuclear waste and the potential risks it poses not only violates the residents' right to information but also puts their lives, health, and the environment at risk.
27. **THAT** the decision of the 1st Respondent to establish the nuclear plant without ensuring adequate awareness and understanding among the residents is arbitrary, unreasonable,

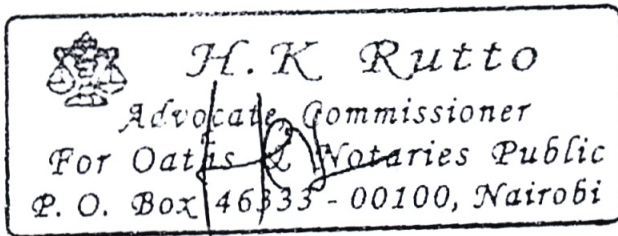
unlawful, insensitive and contrary to the principles of sustainable development and protection of public welfare.

28. **THAT** in the above circumstances, this petition is necessary to address the concerns surrounding the establishment of a nuclear power plant in Kilifi, which portends a serious and possible human catastrophic risk if established without legal sanctions.
29. **THAT** the petitioners pray that this honorable court grants the orders and declarations sought in the Petition to ensure that any further exploration of nuclear energy sources in the Kenya is conducted within a specific legal framework in compliance with the law.
30. **THAT** what I have stated herein is true and correct to the best of my knowledge save what has been deponed to based on information and belief sources whereof have been disclosed.

SWORN at KILIFI by the said MKOBA NGOLO}

This 13th day of July 2023 }

Before me }



Commissioner of Oaths }

Deponent

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OCEANS ALIVE TRUST

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ROTARY CLUB OF KILIFI

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(12)

PETITION TO THE SENATE BY RESIDENTS OF UYOMBO VILLAGE IN
KILIFI COUNTY CONCERNING THE PROTECTION OF THE RIGHT TO
LIFE, HEALTH AND A CLEAN ENVIRONMENT AND OTHER
CONSTITUTIONALLY PROTECTED RIGHTS AND FUNDAMENTAL
FREEDOMS

[After the Order for Petitions is read, Sen. Andrew Omtatah Okoiti, MP, will rise and present the petition before the House, pursuant to Standing Order 236(2)(a).

1. Honourable Senators, pursuant to standing order 237, I shall now allow comments, observations or clarifications in relation to the petition for not more than thirty minutes.

[after comments by Senators]

2. Honourable Senators, pursuant to standing order 238(1), the Petition should be committed to the relevant standing committee for its consideration. In this case, I direct that the Petition be committed to the Standing Committee on Energy for consideration. The Committee may work jointly with the Standing Committee on Land, Environment and Natural Resources in preparing its report to the Senate.
3. In terms of standing order 238(2), the Committee is required, in not more than sixty calendar days from the time of reading the Prayer, to respond to the Petitioner by way of a Report addressed to the Petitioner, and laid on the Table of the Senate.
4. I thank you.

PETITION FOR THE PROTECTION OF THE RIGHT TO LIFE, HEALTH AND A CLEAN ENVIRONMENT AND OTHER CONSTITUTIONALLY PROTECTED RIGHTS AND FUNDAMENTAL FREEDOMS OF THE RESIDENTS OF UYOMBO VILLAGE IN MATSANGONI WARD, MATSANGONI CONSTITUENCY, KILIFI COUNTY

THE CLERK OF THE SENATE 1 NOV 2023
 PARLIAMENT BUILDINGS
 P BOX 41842 – 00100
 NAIROBI.
 Email clerk.senate@parliament.go.ke

THE SENATE RECEIVED
 DEPUTY CLERK (M.A.)

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 01 NOV 2023

WPS
Please deal with 1/11/23

REF: PETITION FOR THE PROTECTION OF THE RIGHT TO LIFE, HEALTH AND A CLEAN ENVIRONMENT AND OTHER CONSTITUTIONALLY PROTECTED RIGHTS AND FUNDAMENTAL FREEDOMS OF THE RESIDENTS OF UYOMBO VILLAGE IN MATSANGONI WARD, MATSANGONI CONSTITUENCY, KILIFI COUNTY

We, the undersigned citizens of the Republic of Kenya and Residents of Uyombo Village in Matsangoni Ward, Kilifi South Constituency, Kilifi County,

Draw the attention of the Senate of the Republic of Kenya to the following:

1. THAT, Kilifi County has a population of 1,453,787 according to the census of 2019 and is home to 4,153 fishermen and has a total of 199,674 families practicing agriculture on 112,879 ha of land. The county has continued to support education programs with 1550 ECDE centers, 41 vocational training centers, 538 primary schools and 86 secondary schools.
2. THAT, Uyombo Village in Matsangoni ward (in Kilifi County, the North Coast region of Kenya) has been earmarked to play host to a Nuclear Reactor by the Nuclear Power and Energy Agency (NUPEA).
3. THAT, NUPEA is a State Corporation established under section 54 of the Energy Act of 2019 and tasked with the responsibility to promote and implement Kenya's Nuclear Power Program.
4. THAT, NUPEA is mandated by law and under Section 56 of the Energy Act to:
 - a) Carry out research, development and dissemination activities in the energy and nuclear power sector.
 - b) Propose policies and legislation necessary for the successful implementation of a nuclear power program.

APPROVED
 SENATOR J. KIN
 14/11/23

*4 DNs - Maclana
 Kindly review and facilitate
 15 - Chawera
 22/11/2023*

② Mr. Moger (DPP)
ps process

③ Mr. Chawera
please process

1/11/23

⑤ Ms. Matasha
Kindly process

*201
 02.11.23*

PETITION FOR THE PROTECTION OF THE RIGHT TO LIFE, HEALTH AND A CLEAN ENVIRONMENT AND OTHER CONSTITUTIONALLY PROTECTED RIGHTS AND FUNDAMENTAL FREEDOMS OF THE RESIDENTS OF UYOMBO VILLAGE IN MATSANGONI WARD, MATSANGONI CONSTITUENCY, KILIFI COUNTY

- c) Undertake extensive public education and awareness on Kenya's nuclear power program
- d) Identify, prepare and facilitate implementation of an approved roadmap for a nuclear power program.
- e) In collaboration with the relevant government agencies, develop a comprehensive legal and regulatory framework for nuclear electricity generation in Kenya;
- f) Develop a human resource capacity to ensure Kenya has the requisite manpower to successfully establish and maintain a nuclear power program;
- g) Identify appropriate sites in Kenya for the construction of nuclear power plants and their related amenities;
- h) Enter into collaborative programs with other countries, international and national organizations in relation to nuclear electricity research and development;
- i) Identify a suitable operator for nuclear power plants;
- j) Establish a well-stocked library and information Centre on nuclear science and technology;
- k) Promote local, regional and international participation in research activities, particularly in technology-oriented research;
- l) Put in place mechanisms to attract private sector funding in research and human resource development for matters relating to nuclear energy;
- m) Undertake a national research and human resource development road-mapping to assess the status of research in key energy technologies;
- n) Promote local production of energy technologies;
- o) Collaborate with institutions that collect, analyze and prepare policy papers in order to access energy sector specific information;
- p) Enhance research linkages between industry and academia in matters relating to energy;
- q) Continuously train and upgrade human resource capacity in the energy sector to keep up with the changing technological issues in collaboration with training institutions;
- r) Advise on training curriculum and training needs targeting key areas in the energy sector;
- s) Direct, monitor, conduct and implement energy research and technology development in all fields of energy;
- t) Promote energy research and technology innovation;
- u) Provide for—
 - i. Training and development in the field of energy and petroleum, research and technology development; and

PETITION FOR THE PROTECTION OF THE RIGHT TO LIFE, HEALTH AND A
CLEAN ENVIRONMENT AND OTHER CONSTITUTIONALLY PROTECTED
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VILLAGE IN MATSANGONI WARD, MATSANGONI CONSTITUENCY, KILIFI
COUNTY

- ii. Commercialization of energy technologies resulting from energy research and development programs.
 - v) Register patents and intellectual property in its name resulting from its activities;
 - w) Authorize other persons for the use of its patents and intellectual property on such terms as the Agency may deem fit,
 - x) Publish its research findings and other research materials;
 - y) Establish facilities for the collection and dissemination of information in connection with research, development and innovation in the energy sector;
 - z) Undertake any other energy technology development related activity as directed by the Cabinet Secretary;
 - aa) Collaborate with relevant training centers to ensure synergy in matters relating to energy;
 - bb) Promote relevant energy research through cooperation with any entity, institution or person equipped with the relevant skills and expertise;
 - cc) Make grants to educational and scientific institutions in aid of research in energy issues or for the establishment of facilities for such research;
 - dd) Promote the training of research workers in the energy sector by granting bursaries or grants-in-aid for research;
 - ee) Undertake the investigations or research that the Cabinet Secretary, after consultation with relevant institutions, may assign to it;
 - ff) Advise the Cabinet Secretary on research in the field of energy technology;
 - gg) Create awareness and disseminate information on the efficient use of energy and its conservation; and
 - hh) Undertake any other functions as may be necessary for the execution of its mandate under this Act.
5. THAT, the preservation and realization of the right to a clean and healthy environment for all is greatly anchored in the strict adherence to procedural environmental rights i.e access to information, public participation, and access to effective remedy in cases of violation. In ensuring the right to a clean and healthy environment, therefore, it is pertinent that all procedural rights are upheld without compromise
6. THAT, the people of Uyombo have been denied access to information regarding the nuclear reactor and have been excluded from the decision-making process

PETITION FOR THE PROTECTION OF THE RIGHT TO LIFE, HEALTH AND A CLEAN ENVIRONMENT AND OTHER CONSTITUTIONALLY PROTECTED RIGHTS AND FUNDAMENTAL FREEDOMS OF THE RESIDENTS OF UYOMBO VILLAGE IN MATSANGONI WARD, MATSANGONI CONSTITUENCY, KILIFI COUNTY

7. THAT, the Uyombo community have been excluded in the participation that lead to choosing this site
8. THAT, no measures have been put in place for effective remedies or access to justice in case of a nuclear spill for the people of Kilifi county
9. THAT, the Nuclear Modular Reactors will use uranium in their processes
10. THAT, this uranium will produce radioactive waste
11. THAT, the half-life of uranium is 4.5 billion years
12. THAT, this makes the project highly sensitive, risky, extremely toxic, and dangerous for the county and beyond, for people, the land, flora and fauna into future generations.
13. THAT, the report of the presidential task force on the review of Power Purchase
14. Agreements (PPAS) section 5.10 pg 63 referring to NUPEA concluded that:
5.10.1 Findings
"According to the 2020B2040 LCPDP, it is unlikely that the country will go into nuclear power production in the foreseeable future. A separate entity to promote and implement a nuclear program in Kenya is therefore not necessary at this point, and this high-level non-generation role could be played by MOE. The Taskforce established that the scope of NUPEA's mandate involves aspects not related to nuclear energy such as research in other forms of energy and capacity building in other utilities. The envisaged role, which is not nuclear related, can be performed efficiently by the respective entities. "The cost implication of running NUPEA as a distinct entity cannot be justified."
15. THAT, the Ministry of Finance therefore erred in allocating Ksh.2 billion to NUPEA
16. THAT, sustainable development calls for prioritizing sustainability and community well-being and environmentally-friendly projects to avoid social and cultural disruption

PETITION FOR THE PROTECTION OF THE RIGHT TO LIFE, HEALTH AND A
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COUNTY

17. THAT, nuclear energy is an extremely sensitive venture that requires high levels of professionalism and strict due diligence and fidelity to the rule of law
18. THAT, NUPEA has exhibited a high level of mediocrity and unprofessionalism in choosing the location for the Nuclear Power Plant
19. THAT, Uyombo Reef and Mida Creek with its mangrove system, part of the Watamu Marine National Park and Reserve, is home to many endangered species of marine life and is included in the Watamu/Malindi UNESCO biosphere reserve. The area attracts many special interest conservationists, scientists and tourists who are opposed to the location of the project. This area is known as a biodiversity hotspot and must be protected at all costs.
20. THAT, Uyombo community also borders the Arabuko-Sokoke Forest. Nature Kenya states, "Arabuko-Sokoke Forest is the last large, protected fragment of East African Coastal forest, and home to four endangered mammals and six threatened birds. The forest also provides sources of livelihood for neighbouring communities and ecological services for the country; it must be conserved for the people of Kenya."
21. THAT, the area is a home to coral reefs, mangroves, dolphins and whales which attract many tourists, researchers and special interest groups
22. THAT, the area, therefore, is a very sensitive and unique ecosystem deserving of protection for Kenya's future generations and that Kenya's tourism with its socioeconomic benefits must not be exposed to such high-risk ventures
23. THAT, this therefore disqualifies the location chosen by NUPEA and calls for further research into a new location for the reactor
24. THAT, choosing Uyombo increases the cost on the taxpayer for risk mitigation
25. THAT, NUPEA has failed to perform a risk assessment analysis in choosing the proposed location.
26. THAT, Kenya has not signed the Vienna Convention on Civil Liability for nuclear damage that covers liability and compensation.

PETITION FOR THE PROTECTION OF THE RIGHT TO LIFE, HEALTH AND A CLEAN ENVIRONMENT AND OTHER CONSTITUTIONALLY PROTECTED RIGHTS AND FUNDAMENTAL FREEDOMS OF THE RESIDENTS OF UYOMBO VILLAGE IN MATSANGONI WARD, MATSANGONI CONSTITUENCY, KILIFI COUNTY

27. THAT, Kenya is yet to ratify the Pelindaba Treaty making it possible grounds for suspicion of setting up nuclear weapons by any mischievous regime in power, which could cause instability in the region.
28. THAT, the legal framework for management of nuclear power plants in Kenya is not adequate: EMCA is weak on risks assessment, liability and compensation.
29. THAT, there is no effective legal framework for disaster management in Kenya, based on how floods, drought, the Owino-Uhuru lead contamination case and other disasters have been managed.
30. THAT, there are no existing guidelines on health impact assessment with respect to projects and related disasters
31. THAT, there is no existing policy framework for radioactive waste management
32. THAT, there is no remediation policy in Kenya and NEMA is unable even to deal with the Owino-Uhuru lead contamination and poisoning that happened in 2009 and is fighting in court against remediation to the affected community
33. THAT, Japan's Ministry of Economy, Trade and Industry estimated the total cost of remediating the Fukushima site at ¥21.5 trillion (US\$187 billion), almost twice the previous estimate of ¥11 trillion (US\$96 billion).
34. THAT, the Kenyan taxpayer cannot be made to take such a risk as the taxpayer cannot afford such remediation costs
35. THAT, there is no proven need for nuclear power as Kenya suffers no energy deficit and in addition Kenya has geothermal/wind and solar resources which offers renewable energy with less risk
36. THAT, the SESA report was not done by professionals in nuclear energy and radioactive waste management
37. THAT, in parallel, through omission or commission, NEMA has failed to respect laws and procedures related to licensing as the research project was allowed to be implemented in a location that is contrary to the rules and regulations on the requirements related to the environmental impacts

PETITION FOR THE PROTECTION OF THE RIGHT TO LIFE, HEALTH AND A
CLEAN ENVIRONMENT AND OTHER CONSTITUTIONALLY PROTECTED
RIGHTS AND FUNDAMENTAL FREEDOMS OF THE RESIDENTS OF UYOMBO
VILLAGE IN MATSANGONI WARD, MATSANGONI CONSTITUENCY, KILIFI
COUNTY

38. THAT, NEMA is also legitimizing the illegal work of NUPEA by being part of the presentation and defence of the SESA report
39. THAT, the county government of Kilifi has failed in its mandate to control toxic industries producing toxic waste by either providing suitable infrastructure, or if the infrastructure is inadequate, to advise against the commissioning of such projects
40. THAT, the PS of Energy, during a visit to endorse the site, ignored the issues raised by the community and went ahead to rubber stamp NUPEA's decision on the location, signifying the groundbreaking of the project activities in the community, despite the concerns posed by the community
41. THAT, we raised our issues before the relevant institutions and organizations, i.e. the Ministry of Energy and Petroleum, the Ministry of Environment and Forestry and Kilifi County Government but were ignored.
42. THAT, the issues raised above are not pending in any court of law or any other legal body.

WHEREFORE, your HUMBLE PETITIONERS PRAY that the Parliament of the Republic of Kenya, through the Senate, urgently consider this an economic, environmental and moral issue for the country and that they act with a view of: -

1. Ordering all responsible state agencies to remove Uyombo from the list of possible sites for a Nuclear Reactor
2. Ordering NUPEA to immediately explain evidence-based research and the science that lead them to choosing Uyombo as their preferred site
3. Ordering the EACC institute mechanisms to prosecute individual NUPEA officials found culpable of wasting taxpayers' funds by recommending Uyombo as their preferred site
4. Ordering NUPEA to stop interfering in the issuance of title deeds to the Uyombo community

PETITION FOR THE PROTECTION OF THE RIGHT TO LIFE, HEALTH AND A CLEAN ENVIRONMENT AND OTHER CONSTITUTIONALLY PROTECTED RIGHTS AND FUNDAMENTAL FREEDOMS OF THE RESIDENTS OF UYOMBO VILLAGE IN MATSANGONI WARD, MATSANGONI CONSTITUENCY, KILIFI COUNTY

5. Ordering PS Ministry of Energy to cease and desist from lying to and misleading the community that the Nuclear Reactor will employ locals to clean and keep the grounds, will educate their children for free from primary to university level and will build schools for the community.
6. Ordering compel NUPEA to work firstly on developing local legislation and policy in regards to nuclear energy and ensure that the country is compliant with all international treaties and laws governing nuclear energy processes
7. Compelling NUPEA to ensure that measures to access remedies in case of a nuclear accident are first put in place countrywide to create confidence for citizens and for tourists visiting the coast and the rest of the country.
8. Compelling NUPEA to partner with Kilifi County administration to prepare a land use plan for possible sites
9. Ordering NUPEA to partner with the counties to prepare approved implementation plans
10. Ordering NUPEA to partner with the Ministry of Finance to prepare a substantial transactions assessment report ahead of the billions of shillings of investments expected in the sector.
11. Compelling NUPEA to do a comprehensive SESA report in partnership with actual nuclear experts and not novices masquerading as experts but depending on desktop research. The SESA should cover a human rights assessment and a social governance plan. The SESA should also encompass the impacts on marine and mangrove ecosystems, Mida Creek and the Watamu Marine Park and preserve the Arabuko-Sokoke Forest, the flora and fauna of these ecosystems, security, agriculture, tourism in the Watamu region, and the cultural, legal and socioeconomic impact of the proposed plant and its displacement of local residents so that the country's decision makers are fully aware of what this means for the country.
12. Ordering NUPEA to carry out geological and soil surveys for the different proposed sites and choose the site with the least ecological importance in case of a radioactive accident
13. Ordering NEMA to strictly ensure due diligence.

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COUNTY

14. Ordering NUPEA to make an inquiry regarding other possible sites that are not as vulnerable as Uyombo and would not be putting so many ecological and human assets at risk
15. Declaring the Petitioners' rights to a clean and healthy environment guaranteed by Article 42 of the constitution, Article 12(2)(b) of the International Covenant on Economic, Social and Cultural Rights (ICESR) and Article 24 of the African Charter on Humans and People's Rights (ACHPR) have been contravened by the actions and omissions of the NUPEA
16. Declaring the Petitioners' rights to the highest attainable standard of health and their rights to clean and safe water as guaranteed by Article 43(1)(a) and (d), Article 12 (1) and (2)(a) of the International Covenant of Economic, Social and Cultural Rights (ICESR), Article 24 of the Convention of the Rights of the Child (CRC) and Article 16 of the African Charter on Humans and People's Rights (ACHPR) have been violated by the actions and omissions of NUPEA
17. Ordering to make a declaration that the systematic denial of access to information to the Petitioners by NUPEA about how exposure to radioactive waste would affect them and what precautionary measures must be taken, violated the Petitioners' right to information as provided under Article 35(1)(a), (b) and (3).
18. An order of compensation to the Petitioners for general damages against the Respondents for the damage of the Petitioners' mental health and the threat to their environment and homes, including the threat of loss of life.
19. An order to be issued against NUPEA directing them to carry out a comprehensive participatory scientific study within 60 days to ascertain the levels of risk to water, soil, animals and human bodies of the residents of Uyombo village and nearby settlements and villages, the Mida Creek area, Watamu and the Watamu Marine Park and Reserve, the UNESCO biosphere reserve and the Arabuko-Sokoke forest, including the flora and fauna of all the preceding areas. This should include the impact caused by the release of warmed water into the marine environment.
20. Any further orders and/or reliefs that the Honorable House will deem fit, just and expedient to uphold the Rule of Law and protect the rights and fundamental

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COUNTY

freedoms of the residents of Uyombo Village and of other Kenyans under the
Constitution of the Republic of Kenya.

And your Petitioners will ever pray

Dated 12TH day of OCTOBER 2023

PETITION PRESENTED TO THE SENATE BY:

ANDREW OMTATAH OKOITI, MP
(senator Busia County)

On this 30TH Day of OCTOBER 2023

Signature: 

WE SAY NO NUCLEAR POWER PLANT IN UYOMBO.

NAME	ID. NO	TEL.	ORG./VILLAGE	SIGNATURE
JOSEPH KARISA ALI	32391224	0703316261	UYOMBO	[Signature]
MAHENZO K. ZIMBA	26215081		UYOMBO	[Signature]
PAHE CHAI CHIVATSI	2154365		UYOMBO	[Signature]
MARY EUCKER	9229437	0718745643	UYOMBO	[Signature]
MURINE S. CHARO	31548553	0714678690	UYOMBO	[Signature]
MWANYANTA MUSUKO	1381245	0700803394	UYOMBO	[Signature]
NDAMA M. MUSUKO	2155270	0723317002	UYOMBO	[Signature]
MARIAMU KAINGU	30918710	0712950551	UYOMBO	[Signature]
Bendera Charo	33608620	0718698079	UYOMBO	[Signature]
NAZI CHALOVU NGUMA	3908575	36347591	UYOMBO	[Signature]
DICKSON CHALOVU	13754747	0746143216	UYOMBO	[Signature]
CRESCINE ZABIBU	28719785	0718370658	UYOMBO	[Signature]
KATHASO CHANGAVUA	13143499		UYOMBO	[Signature]
LINDA K. KARISA	42505729		UYOMBO	[Signature]
MBEYO CHAI CHIVATSI	20508501		UYOMBO	[Signature]
ELIAS JOSEPH CHAI	34335953	0737361014	UYOMBO	[Signature]
KADZO ZIMBA	3894300		UYOMBO	[Signature]
Beatrice K. Zimba	30548025		UYOMBO	[Signature]
Lytick C. Zimba	35326249		UYOMBO	[Signature]
Jackson F. Ngunyambo	21047574	0746795521	UYOMBO	[Signature]
Janet POLA Karisa	30130591		UYOMBO	[Signature]
ASHFOD K. ALI	36624048	0707292912	UYOMBO	[Signature]
Shadrack K. Keingo	25491203	0710167340	UYOMBO	[Signature]
BENNET CHARAO	5457884	0722480440	UYOMBO	[Signature]
Pius Kazungu Makamsha	36479973		UYOMBO	[Signature]
Fabunga K. Mwakamsha	20703387		UYOMBO/madeteni	[Signature]
Caroline S. Janet	25501353		UYOMBO	[Signature]
Nixon K. Mrambo	11760678		UYOMBO/madeteni	[Signature]
Eunice T. Mwanza	31134289	0793841968	UYOMBO/MADE	[Signature]
MOSES KALU JEFA	9475228		UYOMBO	[Signature]
Katsale J. Kalu	20703370	0759531383	UYOMBO	[Signature]
Loice A. Karisa	31785909		UYOMBO	[Signature]
Winy S. Charo	11497441	0114392424	UYOMBO	[Signature]
Wanda S. THEIDE	07239093		UYOMBO	[Signature]
ROSE D. VITHOLE	27265302	0721220571	UYOMBO	[Signature]
Amuna K. POKHA	23847105	011584	UYOMBO	[Signature]
DAMA M. MUKATELE	5021706		UYOMBO	[Signature]
MAPENZI DAVIN	30549424	0729202741	UYOMBO	[Signature]
Kengo Karisa Kinoo	8657969		UYOMBO	[Signature]
ESTERINE SHICHOH	10726019	0729922285	UYOMBO	[Signature]
KAMALI HANISI KARABU	20116502	0797093982	UYOMBO	[Signature]
NADMI ZAWADI MWANDORO	28130727	0706391918	UYOMBO	[Signature]
HORRACE JILANI CHIRAO	4992653	0729215806	UYOMBO	[Signature]

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WE SAY NO NUCLEAR POWER PLANT IN UYOMBO.

NAME	ID. NO	TEL.	ORG./VILLAGE	SIGNATURE
JAMES KARISA KESI	21037076	0733389213	UYOMBO B.M.U	
DUMR.M. KAMBI	13625076	072469380	UYOMBO	
EMILY MWENDAR	13624444	0705040190	UYOMBO	
CAREN HAWA MENZA	42584022	0719470053	UYOMBO	
DAMA KESI MWENI	5039971	0704891383	UYOMBO	
LUYA D. CHAZO	37174882	0768731523	UYOMBO	
MERIAN KADZA	22063919	0723981975	UYOMBO	
CHONGA DZOMBO	10092704	0723448818	UYOMBO	
CHIBIRI FOMBO	25016101	0712407109	UYOMBO	
EUNICE KAZUNGU	23588639	0723895380	UYOMBO	
DIRET KALELA	24378202	0712246322	UYOMBO	
ANNA KESI	29121500	0700397435	UYOMBO	
KESI AIPA	41822254	0765222679	UYOMBO	
JOSEPHINE MAUNGI	23848881	0757566553	UYOMBO	
Amari Kombe	29777272	0742158715	UYOMBO B.M.U	
MARGRET KADENCE	39278894		UYOMBO	
DMAR SARD	16132932	0768250704	UYOMBO	
ALPHONSE MATUA	32529782	0114052287	UYOMBO	
HILWA KAZUNGU	21700753	0746365608	UYOMBO	
KAZUNGU HARRISON	29079069	0702352584	UYOMBO	
STEPHEN MWALIMU	39754063	0702781055	UYOMBO	
CYNTHIA KADZO SAFARI	41027321	0759451194	UYOMBO	
BADAKA NOORO	34801545	0	UYOMBO	
DAMA MWALIMU	20427369		UYOMBO	
THABU MWALIMU	2269319	0758766865	UYOMBO	
KAJENI THOYA	25466425	0797070890	UYOMBO	
NAOMI KISTAO	38197883	0759142566	UYOMBO	
FURAH KATANA	30549577		UYOMBO	
SAMUEL SAIN CHAZO	22459580	0758077920	UYOMBO	
JOYCE KASIBI CHAZO	24291101	0714781396	UYOMBO	
ERICK ZIRO SARD	4021961616	07183109720	UYOMBO	
MOSES AMANI	34342396	0769843802	UYOMBO	
DICKSON FOMBO	34335238	0708091784	UYOMBO	
KARAN MASTA	3161051	0711865433	UYOMBO	
CLAYTON KAZUNGU	49774099	0714468734	UYOMBO	
MICHAEL S. SARD	20422384	0729663573	UYOMBO	
WILLIAM KOMBE	6720077	0705834851	UYOMBO	
MURRAY JONATHAN JAMES	6459119	0723012350	UYOMBO	
DICKSON KAHUNDI BAYA	23146882	0709643602	UYOMBO	
DONALD KATANGA	201435443	0726646901	UYOMBO	
ISAH MUMBERA	24041767	0718256976	UYOMBO	
ROSELYN SARD	34066421	0758741971	UYOMBO	
MWALIMU KAZUNGU	11760703	0713881850	UYOMBO	
KARISA KATANA KOMBE	18552805	0725219492	UYOMBO	

