



KENYATTA UNIVERSITY SCHOOL OF LAW

**COMPROMIS FOR THE 7TH EDITION OF THE ALL KENYAN
MOOT COURT COMPETITION (2019)**

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Venue: Kenyatta University School of Law

**Theme: Business and Human Rights: Attaining Sustainable Development
while Respecting Human Rights**

REPUBLIC OF NETYA

IN THE HIGH COURT AT NARI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 1 OF 2019

**IN THE MATTER OF THE CONSTITUTIONAL RIGHTS OF THE
PEOPLE OF LINDI TOWN**

BETWEEN

TENDAHAKI APPLICANT

VERSUS

NETYA COAL MINING COMPANY.....1ST RESPONDENT

ATTORNEY GENERAL.....2ND RESPONDENT

1. Netya is a country situated at the East side of Kafri continent. It is adjacent to the Indian Ocean with a coastline of approximately 300 kilometers. Netya has a population of approximately 60 million people according to a census conducted earlier this year.
2. In the year, 2010 Netya adopted a new constitution with an expansive bill of rights, a devolved system of government and new value based principles of governance. The Constitution is an exact replica of Neighboring Kenya to the letter. In addition, all Laws of Netya are similar to those of Kenya.

3. Netya has a GDP of around \$ 70.53 USD according to a report released by the World Bank making it 4th largest economy in Kafri. Its economic growth has been attributed to consistent political stability over the recent years and its open market economy, which encourages foreign direct investment in line with national vision 2030, aimed at ensuring that it attains a strong economy by the year 2030. Part of the Vision 2030 entails making Netya an industrialized country and making Netya's environment cleaner.
4. Lindi Town is a small island urban Centre within the coastal Lindi County of Netya, it is located at the North Eastern side of Netya bordering Somalia a war torn country in Kafri. Lindi Town has a population of approximately 500,000 people and occupies an area of 212 km².
5. Lindi Town Island is the headquarters of Lindi County, which has a population of approximately 2 million people. Lindi town is a world-renowned tourist destination having been declared so by the UNESCO in 2001 as a World Heritage Site. Tourism contributes about a fifth of Netya's GDP.
6. The local populations in Lindi traditionally undertake fishing as the main economic activity and depend on the fish industry at the near sea as the main source of livelihood.
7. In 2013 following Netya's general elections, the President of Netya made public his vision to ensure that Vision 2030 launched by his predecessor would be achieved in time. He reduced corporate tax charged on Companies investing in Netya thus increasing direct foreign investment in Netya.

8. The President also announced that commercially viable quantities of coal deposits had been discovered in the coastal county of Lindi, and that the government in concert with multinational companies would commence mining of coal to meet the countries constitutional obligations of economic betterment of its populace.
9. This announcement saw one thing lead to another and eventually a company was established to mine the coal. Netya Coal Mining Company, 48% of the shares of Netya Coal Mining Company were sold to an international company from Federal Union of Dutce called Loca International Coal Company Limited (to be referred as Loca Ltd) who were to provide technical expertise, plant and machinery together with a predetermined amount of money as consideration for the shares, the State of Netya retained 52% of the shares of Netya Coal Mining through the Principal Secretary Ministry of finance.
10. Prior to commencement of mining activities, the government of Netya engaged the affected local communities through chief's barazas, meetings with community leaders, village elders, and community associations to sell the project to the communities in and around Lindi Town.
11. Government officials' swayed local leaders as the people were promised that the government would rehabilitate Lindi Town by building a bridge connecting Lindi Town Island to the mainland and other parts of Lindi County.

12. The government used its influence to obtain all necessary permits and approvals for Netya Coal Mining Company before commencement of mining operations as it was in the government's interest to fast track the same.
13. Netya Coal Mining Company began its mining operations in Lindi County after the community's acceptance, and mining has been ongoing for the past four years. The company has so far employed close to three thousand residents of Lindi Town. Only the local employees of the Company are allowed to give views on the Company's waste management processes.
14. Two years ago, the county government of Lindi reported to the County assembly an increase in reported cases of lung cancer and black lung diseases. These reports were obtained from several health centres which had been constructed by Netya Coal Mining Company as part of its community service responsibility within the County.
15. The County government commissioned a thorough investigation into the reports which revealed that the cases of lung cancer and black lung disease were prevalent among coal miners working underground and who were prone to getting extended periods of exposure to considerable quantities of coal dust and crystalline silica, found in the adjacent rock before reaching coal.
16. Medical researchers are unanimous that the noticeable increase of deaths especially for above middle-age persons working in the coal mines may be attributed to the exposure though the research findings have not reached a stage where they can be said to be conclusive.
17. The Members of Parliament from Lindi County have since taken a keen interest in the matter and sponsored a motion in Parliament to request for Parliamentary intervention. After deliberations in the house the Speaker

directed that the matter be further probed by the legal affairs committee. Since seizure of the matter the committee has received submissions from several interested actors and several queries have arisen.

18. In his response to parliamentary queries, the Cabinet Secretary responsible for justice and constitutional affairs stated that there had been an increase in public interest litigation where several parties were demanding that the government of Netya prove that there were no sufficient resources that could be exploited to meet its responsibility to realize economic and social rights.
19. The Cabinet Secretary pointed out to the National Assembly committee on legal affairs that the state had made considerable progress in providing economic and social rights in hither to marginalized areas like Lindi County, from proceeds of coal exports. He conceded that although much more needed to be done there was ample evidence that the state was progressively moving towards realization of the same by building schools, construction of health care centres, construction of houses for low-income earners etc.
20. The governor of Lindi in her annual report to the county Assembly reported that the bridge project was to be constructed through revenue proceeds from the coal industry and that the same would expand markets for various local cottage industries including a larger market for fishing industry.
21. She also reported that there was potential to increased revenue from the tourism industry in Lindi by 2% upon completion of the bridge due to the efficient connectivity to the mainland of Netya and better hoteling services all made possible through the coal industry.

22. On 3rd June 2017 during the Budget reading session at the Lindi County Assembly for the financial year 2017/2018, the County Executive Officer in charge of Finance announced that there was a massive decrease in revenue from the marine industry. The Finance Officer attributed the reduced revenue to lack of fish in the adjacent waters of Indian Ocean. Two weeks afterwards, the Netya Agriculture and Marine Research Institute (NAMRI) released a damning report that suggested that Lindi had lost more than three quarters of total number of fish within five miles of the surrounding waters of Indian Ocean. The report attributed the same to massive coal waste being dumped into the ocean that made the adjacent waters inhabitable for marine organisms and that the effect had gone round the island including even the so called untouched Northern side.

23. The report also warned against the use of the same water for domestic purposes, as it was polluted and unfit for human consumption or use. NAMRI recommended immediate rehabilitation of the water by the government and wrote to Netya Coal Mining Co. demanding the company to explain how they would change their waste dumping mechanism.

24. The company never responded to the letter by NAMRI. Anglers who depended on fishing as their only source of livelihood resorted to moving into the deep sea for fishing. The government, cognizant of the dangers lurking in the deep sea, banned fishing in those waters. However, on 1st July 2017, the boat of ten fishermen who had gone fishing into the deep sea capsized. Four of them were reported dead and the Netya Navy rescued six others.

25. The World Health Organization (WHO) in conjunction with United Nations Environment Programme (UNEP), which has its headquarters in Nari, conducted a research on Lindi in the period between March 2018 and

September 2018. It came up with a report that concluded that Lindi's birth mortality had increased by 20 % and the overall mortality rate increased by 10%. It suggested that Lindi's life expectancy was the lowest in Netya falling to below fifty years. It also emerged that people in Lindi were likely to contract lung cancer than any other form of cancer with two out of ten Lindi residents likely to show signs of cancer or black lung disease.

26. The report also alleged that company workers were not well protected from health hazards, as they were not given the required standard of protective gear. This exposed the coal workers to even more dangerous diseases. Further, it was stated that half of the initial employees of the company aged fifty years and above had quit either due to health complications or due to death inside the mines following lack of enough air in the caves underneath or diseases emanating from the work that they did. The WHO and UNEP questioned the Netya's government position as to why it was spending so much on green energy such as investing in wind power yet at the same working overtime to develop non-renewable and hazardous energy sources such as coal. The report concluded by saying that the coal industry was like small pieces of atomic bombs speedily moving towards the same point where they would collide causing a massive explosion.

27. The report was debated in Netya's national Parliament, which reached the conclusion that such health hazards were expected in such an industry but the good coming out of it surpassed the bad effect of the industry. The parliamentarians, however, ordered the State agency concerned with industrialization to oversee betterment of health protection of Lindi people.

28. On social media, a clip emerged of a foreigner, who is a company official at Netya Coal Mining Company, drunk in a tavern saying that the United

Nations report was neither here nor there. He went on to say that, it was foolishly typical for Kafrinians not to mind about their health needs so long as they were paid. The video clip went viral around Kafri with the public condemning it as a racial slur that could undermine the people of Kafri. The company, Netya Coal Mining Co, distanced itself from the comments made by the expatriate and announced that the official had been fired and deported back to Dutce.

29. The continuing disquiet invited concern that is even much more international. The government of Netya was condemned for its continued operation of coal mining. The government was accused for going against its international obligation to encourage use of green energy. Netya had recently signed the Paris Climate Accord of 2015 that focused on ensuring the globe moved towards climate and environmental conservation. Countries around the globe had moved from using non-renewable energy such as coal that caused pollution and health complications. However, the unveiled coal industry was turning against Netya's international commitments.
30. Tendahaki, a non-governmental organization registered in Netya, moved to Lindi to investigate the full-scale impact of the coal mining industry. On 3rd December 2018, a mission of ten officials from Tendahaki was sent to Lindi mines to conduct research on health effect of the mines. The mission gave a preliminary report as to the initial impression seen by the missionaries. The report cited that the air quality had significantly reduced to such low level that any person who intended to visit Lindi town ought to put on treated nose and mouth cover to prevent inhaling poisonous and hazardous gases.
31. The report also suggested and reaffirmed report by the WHO and UNEP that the community was deeply suffering from the exposures of the gases coming from the coal mines. The report was highly publicized at the

beginning of the month of December when Lindi prepared itself to receive cohorts of tourists both domestic and international. The effect was felt at the core of the tourism industry. The number of tourists reduced massively by more than half the expected number. This would reduce the income from around 2 billion shillings to less than 100 million shillings. The government's top officials called out the NGO for sabotaging the economy. Tendahaki claimed that it was only reporting the truth.

32. The Deputy President dismissed allegations of increased health hazards, citing those who proposed the same as enemies of progress. He stated that the same argument could not be substantiated since the coal mining only took place on the South side of Lindi Town and the community interested in tourism industry was located on the Northern side of Lindi Town.

33. In addition, Tendahaki aired concerns of people who had lost their land through compulsory acquisition by the government intended to expand the coalmines on behalf of Netya Coal Mining Company.

34. One Mr. Abdullahi claimed that in 2016 he had approximately 200 acres of land that he used to farm coconut trees. He claimed that the government forced them to sell their land and they were compensated with less than three quarters of the total value of the land. Mr. Abdullahi in tears went on to tell that when they demanded more money and refused to evacuate, the administration police officers guarding the company premises came in and threatened them that they would flush them out like nobody's business. He explained that one Friday afternoon in the month of May, during the Holy month of Ramadan, when he and his family had left for the mosque for prayers being Eid al-Fitr, people he suspects to be government agents went into their homestead and burnt to the ground their thatched houses and animal stead burning the animals alive.

35. When he came back to his farm with his family, in a happy mood, the horror and grief of the destruction that he met so shocked his wife who depended totally on their beautiful farm that she suffered heart attack resulting in a stroke that made her paralyzed on the right part of her body. The family slept out in the cold for days before they could finally get help from well-wishers.
36. Other cases of brutal beatings at night by Netya Police were recorded and posted on you tube. Tendahaki vowed that it would continue researching as to the full-scale effect of the coal industry in Lindi until the government owned up.
37. On 9 January 2019, five of Tendahaki officials decided to move into the mines unauthorized and speak to mineworkers underground. When they came out, Tendahaki released a message on its social media platform that what had been discovered that day was the climax of all climaxes. On the same day, the National Government sent out a notice to various company and county government officials inviting them to a meeting aimed at addressing issues arising from the mining of the coal in Lindi.
38. An invitation was also extended to the five Tendahaki officials who accepted the invitation and attended the meeting. Thereafter, the officials left Lindi Town for mainland Netya, in two different vehicles, where they intended to compile their report. Unaware that they were being trailed the vehicles drove across the three-kilometer long bridge. A four-wheel vehicle came from behind as if it was overtaking the vehicles; it swerved towards the first vehicle throwing it off-balance and blocking the second car. The hit vehicle rolled over the bridge and 30 meters down into the ocean crashed into the silent waters with three occupants. Witnesses say that black-masked men emerged

from the four-wheeled vehicle, bundled the occupants of the second car into the boot and drove the two vehicles away.

39. A few days after the said meeting, concerns were raised as to the whereabouts of the five officials. Tendahaki reported that it had not gotten in touch with the five officials since the day of the meeting. A missing persons report was made at the police station. Inquiries made by the police officers revealed that the security guard of the premises where the meeting was held indeed saw the five officials walking into the premises and heading towards the meeting.

40. The General Manager of the coal mining company provided a statement to the police that indeed, there was a meeting with the five officials of Tendahaki and he cannot state where they went after the meeting.

41. Weeks later, bodies of three men and a wrecked Tendahaki registered vehicle were recovered from the ocean. Later after DNA tests were carried out on the recovered bodies it was determined that, the three deceased men were the missing officials of Tendahaki. The whereabouts of the other two officials remain unknown. The government and the company strongly denied being involved in the death or enforced disappearance of the five officials. This incident led to widespread condemnation of the government, with human rights organizations terming these as extrajudicial methods of silencing critics intending to silence those who spoke out against government impunity.

42. Tendahaki vowed to move to the courts to seek redress. On January 14, Tendahaki received a notice of deregistration as a non-governmental organization, in the notice, Tendahaki was informed that it ceased to be a registered organization for non-compliance with tax laws.

43. On 28 January 2019, Tendahaki nevertheless filed a constitutional and human rights petition at Nari High Court Constitutional and Human Rights Division suing the government of Netya through its Attorney General and Netya Coal Mining Co for violation of constitutional provisions and human rights. The company instructed the office of the Attorney General, which filed a joint reply to the petition.

Tendahaki sought for the following orders of the Court;

- a. A declaration be and is hereby issued that the actions of the Respondents' were in violation of Article 43(a), (d) of the Constitution of Netya and all relevant international instruments Netya is party to.
- b. A declaration be and is hereby issued that the Respondents violated the Residents' right under Article 42 of the Constitution of Netya and all relevant international instruments Netya is party to.
- c. A declaration that the enforced disappearance and extra judicial killings of the five officials of Tendahaki by the respondents is a breach of the Constitution of Netya and all relevant international instruments Netya is party to.
- d. Any other relief that the Honorable Court may deem fit in the circumstances.