



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY GENERAL AND DEPARTMENT OF JUSTICE

NOTICE OF INTENTION TO SINGLE SOURCE INDIVIDUAL LEGAL CONSULTANT IN RESPECT OF WALAM ENERGY INC VS REPUBLIC OF KENYA (ICSID ARB. 15/7) APPLICATION FOR ANNULMENT (R202000079)

Background

Walam Energy Inc Vs Republic of Kenya (ICSID ARB. 15/7)

1. The dispute was submitted to the International Centre for Settlement of Investment Disputes (“ICSID”) in January 2015 on the basis of the Geothermal Resources Licence No. 1/2007 (the Licence”) and the Convention on the settlement of Investment Disputes between States and Nationals of other states, which entered into force on the 14th October 1966 (“the ICSID Convention).
2. The Claimant, WalAm Energy Inc. (“WalAM”), is a company incorporated under the laws of Nevada, U.S. in 2017, and registered in Alberta, Canada. The respondent is the Republic of Kenya.
3. This case concerned a dispute relating to Kenya’s allegedly unlawful declaration of forfeiture, on the 1st November, 2012, of the Licence to explore and develop the Suswa Geothermal Concession, which had been obtained by WalAm from Kenya’s Ministry of Energy on the 5th September 2007.
4. WalAM sued the Government following the cancellation of its Geothermal Resources Licence. WalAm contended that the Government of Kenya unlawfully revoked the Geothermal Resources Licence thereby breaching its obligations under the Geothermal Resources License and the Geothermal Resources Act, including the unlawful expropriation and the violation of the minimum standard of treatment of foreign investors.
5. WalAm sought to have the Geothermal Resources Licence reinstated and also sought compensation amounting to US\$ 339.6 (Kshs. 37 Billion) and interests for expropriation.
6. Kenya, on the other hand, sought for dismissal of all of the Claimant’s claims; and an order that the Claimant pays all of the costs and expenses incurred by the Respondent in defending against the Claimants claim, including, but not limited to, the Arbitral Tribunal’s fees and expenses, ICSID’s fees, the fees and expenses of the Respondents counsel and experts, and interest on these sums.

Dispositive

7. The Tribunal issued the Award on the 10th July, 2020. In its Award, the Tribunal:

- a. *Dismissed all of WalAm Energy Inc. claims; and*
- b. *Ordered that WalAm Energy Inc. bear its legal fees and expenses and the entire costs of the arbitration. WalAm shall therefore pay the Government of Kenya US\$648,857.75 (Kshs. 70,067,637) corresponding to its share of the costs of the arbitration. WalAm shall also reimburse 75% of the Government of Kenya's legal fees and expenses in the amount of € 3,586,039.28 (Kshs. 441,082,797) and US\$252,262.82 (Kshs. 27,244,384.60).*

Annulment proceedings (R20200079) – Walam Energy Inc Vs Republic of Kenya

8. On 9th November 2020 the International Centre for Settlement of Investment Disputes (ICSID) transmitted to Kenya, WalAm Energy LLC's (WalAm) Application for Annulment of award rendered on July 10, 2020 in ICSID Case No. ARB/15/7, dated 6th November, 2020.

The application for annulment of the award was submitted pursuant to Article 52 of the 1965 ICSID Convention and Rule 50(1) of the 2006 Rules of procedure for Arbitration proceedings.

9. WalAm therefore seeks for:
 - a. *Stay of the enforcement of the Award pending the ad hoc Committee's decision on the Annulment Application or further order(s) of the ad hoc Committee;*
 - b. *Annulment of the Award in its entirety under Articles 52(1)(a) and/or 52(1)(d) of the ICSID Convention; and*
 - c. *The ad hoc Committee to Order Kenya to pay all costs of these annulment proceedings, including the costs of WalAm's legal representatives, plus interest.*

Scope of work

- (a) Working alongside the Office of the Attorney General in defending the Application for Annulment by WalAm Energy LLC's of the Award rendered on July 10, 2020 in ICSID Case No. ARB/15/7, dated 6th November, 2020.
- (b) Providing legal advice to the Client on substantive and procedural issues and on relevant processes involved in the matter including procedural preliminaries.
- (c) Providing legal advice to the Client on the strategic decisions that the Client will be required to make in connection with the annulment proceedings.

- (d) Reviewing the relevant documents and advising on the available options and the considered best way forward to safeguard the best interests of the Client.
- (e) Reviewing the Claimant's Application for Annulment and considering the grounds upon which the application is premised vis-a-vis the Award rendered by the Tribunal on July 10, 2020.
- (f) Preparing a memorandum of advice analyzing the merits of the Application and preparing the proposed legal strategy.
- (g) Review of the ICSID proposal on Appointment of Ad Hoc Committee Members (the "Committee"), including carrying out due diligence on the proposed Members and filing observations (if any).
- (h) Preparing for and attending to the Preliminary Meeting or conference call once a date is allocated by the Ad Hoc Committee.
- (i) Attending to necessary appearances before the Committee as may be necessary to secure effective representation to the Client.
- (j) Handling the issue of stay of execution and responding to the Claimant's application for continued suspension of enforcement of the Award before a determination is made as to whether the order of limited stay should be maintained pending the proceedings before the Committee.
- (k) The filing and exchange of pleadings in relation to the Claimant's grounds for annulment, the State's responses/Counter Memorial, the Claimant's Reply and the State's Rejoinder on annulment.
- (l) Handling of any preliminary procedural applications that may arise in the course of the proceedings before the Committee.
- (m) Reviewing and providing formal legal opinions on any documents to be served upon the Client or any internal authorizations and other documents relevant to the matter at hand.
- (n) Advising on and assisting with any logistical and coordination of tasks relating to the matter in close consultation with the Office of the Attorney General.
- (o) Attending to the substantive hearing of the annulment application before the Committee.
- (p) Preparing and filing of Post Hearing Briefs and Submissions on Costs.

9. This Notice is given pursuant to Section 124(14) of The Public Procurement and Asset Disposal Act 2015 as read together with Regulation 129(4) of The Public Procurement and Asset Disposal Regulation 2020 and constitutes an invitation to anyone who wishes to bid to indicate such intention through the address below:

The Solicitor General
Office of the Attorney General
& Department of Justice
P.O. Box 40112-00100
NAIROBI

10. The Notice shall remain valid for three days from the date hereof.

Kennedy Ogeto CBS
SOLICITOR GENERAL