



A Civic Action on the LAPSSET Corridor

By L. Muthoni Wanyeki



Attention is shifting from this government's previous priorities to its new so-called 'Big Four' agenda. But a High Court judgement this past week placed the more serious problems surrounding those past priorities into sharp relief.

The Lamu-Port-South-Sudan-Ethiopia-Transport project, LAPSSET, is touted as east Africa's largest infrastructure project. It is designed to better connect us with two of our neighbours and facilitate outflows of (anticipated) crude oil from northern Kenya as well as inflows of product oil through northern Kenya into Ethiopia and South Sudan.

LAPSSET, in fact, incorporates seven projects. From the cornerstone project—the new Lamu port—through to road and rail services and pipelines from Lamu to Isiolo, extended to Addis Ababa and Juba. Lamu itself is one of the three Kenyan towns, including Isiolo and a site in the vast Turkana County, slated to receive a new airport, enabling the development of a new 'resort city.'

So far, so good.

But then we get to the contracting, which is hard to get a handle on because there are so many contracts involved. The lenders are a mixed bag, as varied as the African Development Bank, whose [US\\$1.93 million](#) loan for the Lamu Port Project is relatively small potatoes compared to the \$420 million Kenya Ports Authority-China Communication Construction Company contract for the Lamu port berths. We shudder to imagine what is going on with the negotiations of these contracts. That is

a big pot of money into which—without doubt—the sticky fingers of no small number of our tenderpreneurs will eventually be proven to have dipped. People are getting rich, and not from anything productive. Simply from cuts, deals and manoeuvres.

The lenders are a mixed bag, as varied as the African Development Bank, whose US\$1.93 million loan for the Lamu Port Project is relatively small potatoes compared to the \$420 million Kenya Ports Authority-China Communication Construction Company contract for the Lamu port berths. We shudder to imagine what is going on with the negotiations of these contracts.

We already know about the games on the fringes—the sudden influx of new ‘owners’ of land around the port site and along its intended road and rail links; the land speculation along the LAPSSET Corridor in anticipation of \$44.5 million of government compensation. But sticky fingers, big and small, are just one set of problems with LAPSSET. Many of us have felt helpless thinking of the impacts of LAPSSET on Lamu itself—the island on which no cars are allowed. Until recently, one of the most recurrent Lamu stories had to do with the vexation caused by its donkey dung—donkeys being used for transport of both people and goods on the island itself. One of the funniest solutions proposed—no doubt out of sheer frustration—was that the donkeys be made to wear diapers.

Donkey dung aside, Lamu is a World Heritage Site. Its past is a connection between the African hinterland, the Swahili Coast and the Arab and Asian world through the dhow. It is one of the oldest surviving settlements on the Swahili Coast — estimated to have been continually settled for at least seven centuries. Still home to important Muslim festivals, it’s also made a name for itself as a refuge for artists. Lamu Island - and neighbouring Shela as well as the smaller islands in the archipelago - are amongst Kenya’s most pristine, still sleepy and not over-run sites to slow down, relax—and remind ourselves just how beautiful Kenya is.

We shudder to imagine how that will change with the ‘resort city’ vision now in play.

This past week, the four-person bench sitting at the High Court in Malindi upheld traditional fishing rights as a right. It found the government had violated the rights to property, the right to earn a living, to culture and to a clean and healthy environment. It found the government to have breached the requirement for public participation and to have denied the fishing folk—and the Lamu County Government—the right to information about the planning for the new port.

But about 4,600 Lamu fishing folk have done more than shudder. They went to the High Court in Petition Number 22 of 2012—Mohamed Ali Baddi and Others versus the Attorney-General and Others. They challenged the government on its failure to protect cultural and environmental heritage. Noting what the dredging for the new port has already done to Lamu’s mangroves, sea grass and coral, the destruction of breeding nests for both fish - the Mkanda Channel is the main breeding ground for prawns on the Kenya Coast - and turtles, the complaints challenged the government’s failure to protect their traditional livelihoods. At least 25,000 fishermen have been directly affected. Despite numerous appeals, the government has for the past nine years, ignored their concerns. Further invoking the Environment Management and Coordination Act of 1999, whose legal centrepiece is government consultation with communities, the complainants challenged the government on its failure to consult and involve them—or even the county government that represents them.

They won!

This past week, the four-person bench sitting at the High Court in Malindi [upheld traditional fishing rights as a right](#). It found the government had violated the rights to property, the right to earn a living, to culture and to a clean and healthy environment. It found the government to have breached the requirement for public participation and to have denied the fishing folk—and the Lamu County Government—the right to information about the planning for the new port.

And more. It returned the relevant licence to the National Environmental Management Authority to ensure the judgement's findings are incorporated into conditions for the port's construction. It ordered the Attorney-General to report to the High Court in six months on its plans to conserve Lamu as a World Heritage Site, as well as on the external costs for the port. And, icing on the cake, it ordered the government to compensate the fishing folk—in the manner that land 'owners' are meant to be compensated—to the tune of USD17 million!

It was astonishing. It was good news amidst so much bad. It was a reminder that our courts can (and sometimes do) serve as a bulwark against the excesses of power. It was a reminder that the people always hold the power. Asanteni to the fishing folk who took this action— and hongera!

Published by the good folks at [The Elephant](#).

The Elephant is a platform for engaging citizens to reflect, re-member and re-envision their society by interrogating the past, the present, to fashion a future.

Follow us on [Twitter](#).



**THE
ELEPHANT**