

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC APPEAL CASE NO. E15 OF 2021

APPEAL FROM CHUKA CM ELC 52 OF 2019

LOYD MUGAMBI MAINA & 19 OTHERS.....APPELLANTS

VERSUS

KIRUMI KIAMUJARI WATER PROJECT (SUED THROUGH ITS

REGISTERED TRUSTEES/OFFICIALS).....RESPONDENT

RULING

1. This matter is for inter-partes hearing of the Applicants application dated **29th November, 2021**. Although the Respondent was served on **30th November, 2021**, the Replying Affidavit was only filed by the Respondent's advocate this morning, and the same served on the Appellants' advocate in court. Mr. Muriithi counsel for the Appellants sought for time to go through the said replying affidavit and further sought for leave to file a supplementary affidavit in response to the same. He also sought for the grant of prayer 2 of the motion in the interim. On his part, Mr. Muthomi counsel for the Respondent apologized for the late filing which he attributed to the indisposition of the Respondent's chairman. The Respondent's counsel did not object to the leave being granted to the applicants to file and serve a supplementary affidavit. However, the Respondent's counsel strongly objected, to the request by the Applicants for the court to grant prayer 2 of the application in the interim.

2. I have considered the submissions made. Order 51 Rule 14 of the Civil Procedure Rules provides that any respondent who wishes to oppose any application may file and serve a response on the applicant not less than three days before the date of hearing. The Replying Affidavit herein was filed and served on **14th December, 2021** which was the day of hearing of the application. The same was not filed and served not less than three days as required. Nonetheless, the court will invoke Article 159 (2) (d) of the constitution and admit the said Replying Affidavit and deem it properly filed and served. Further, leave is granted to the Applicants to file and serve a supplementary affidavit in response to the said Replying Affidavit.

3. Regarding the application for the grant of interim order of injunction in terms of prayer 2 of the application, this court has noted that when the application came before me at the ex-parte stage, I was not satisfied that any interim order should be granted, and I declined to grant the same. I am still not persuaded that I should grant any interim order of injunction as requested. I therefore decline to grant the same.

4. However, with a view to have the application heard expeditiously, I direct that the application be canvassed by way of written submissions. The Applicants to file and serve their supplementary affidavit together with their written submissions within 14 days of today's date. Thereafter, the Respondent to file and serve their submissions within 14 days of service by the Applicants. The matter is fixed for mention and/or highlighting of submissions if necessary on **25th January 2022**.

5. It is so ordered.

DELIVERED IN OPEN COURT AT CHUKA THIS 14TH DAY OF DECEMBER, 2021 in the presence of:

CA: Ndegwa

Muriithi for Appellants

Muthomi for Respondent

C. K. YANO,

JUDGE.