



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC CASE NO. 72 OF 2019**

**CHUKA IGAMBA NGO'MBE DEVELOPMENT ASSOCIATION...PLAINTIFF**

**VERSUS**

**COUNTY GOVERNMENT OF THARAKA NITHI.....DEFENDANT**

**RULING/DIRECTIONS**

1. The subject matter herein is the erection of a monument within Chuka town. The plaintiffs desired to put up the said monument as one of key ways of marking and actualizing Chuka Town centenary celebrations of which the plaintiffs claimed that the defendant (County Government of Tharaka Nithi) was interfering with the exercise.

2. The plaintiff's had contemporaneously filed an application on 23.7.2019 seeking injunctive orders against defendant restraining the latter from interfering with the aforementioned celebrations and erection of the monument. The injunctive orders were granted on temporary basis pending the hearing of the application inter-parties.

3. However, before the hearing of the application, defendant filed a notice of preliminary objection seeking to have the application and suit dismissed where it was contended that the plaintiffs had no legal capacity to sue.

4. In a ruling delivered on 22.10.2019 by Judge P.M Njoroge of Chuka ELC, the court dismissed the preliminary objection and also referred the matter for arbitration. The court also directed parties to comply with order II.

5. On 26.11.2019, counsel for defendant sought for a stay of proceedings averring that they had filed a notice of appeal at the court of appeal. The court did not give directions on issue of stay since at that point the matter was transferred to this court.

6. On the issue of stay of proceedings, I find that defence counsel had addressed the court on 26.11.2019 as follows:

**“We are requesting for a stay of these proceedings at least for 60 days to enable us pursue the appeal.....”**. 60 days lapsed on 26.1.2020. There is nothing presented to this court to indicate that a substantive appeal was filed. As such, the prayer for stay of proceedings has lapsed by affluxion of time.

7. I note that the arbitration proceedings had given rise to a report filed by the county commissioner. The report was also availed to the parties. It can be discerned from the report that both parties want the monument but disagree on design and logistics. It is essential that the settled issues be captured as part of the record and the contentious issues be subjected to a full trial. It is against this background that I direct parties to take a hearing date to hear the case in lieu of the application which is marked as SPENT but the status quo to be maintained.

**DATED, SIGNED AND DELIVERED AT MERU THIS 30<sup>TH</sup> DAY OF APRIL, 2020**

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**

**ORDER**

The date of delivery of this ruling was given to the parties at the conclusion of the hearing and by a fresh notice by the Deputy Registrar. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17<sup>th</sup> March, 2020 and published in the Kenya Gazette of 17<sup>th</sup> April 2020 as Gazette Notice no.3137, this ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the *Civil Procedure Rules* which requires that all judgments and rulings be pronounced in open court.

**HON. L. MBUGUA**

**ELC JUDGE**