



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC PETITION CASE NO. 02 OF 2019

IN THE MATTER OF AN APPLICATION UNDER ARTICLE 22 (1) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF CONTRAVENTION OF RIGHTS AND FUNDAMENTAL FREEDOMS ENSHRINED IN THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES (1, 2, 3, 10, 11, 23, 27, 28, 35, 44, 47, 48, 159, 165, 174 A, C, D, E & F, 184 (1)A & C, 196 1 A & B, 258) AND 259 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF INFRINGEMENT OF NON-DEROGABLE RIGHT TO PUBLIC PARTICIPATION ENSHRINED UNDER ARTICLES 1 & 10 OF THE CONSTITUTION

AND IN THE MATTER OF INFRINGEMENT OF THE RIGHT TO FAIR ADMINISTRATIVE ACTION ENSHRINED IN ARTICLES 47 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES

BETWEEN

CHUKA IGAMBANG'OMBE DEVELOPMENT ASSOCIATION.....PETITIONERS

VERSUS

THE COUNTY GOVERNMENT OF THARAKA NITHI COUNTY.....1ST RESPONDENT

THE COUNTY ASSEMBLY OF THARAKA NITHI COUNTY.....2ND RESPONDENT

VERSUS

NJURI NCHEKE COUNCIL OF ELDERS – MERU SOUTH.....1ST INTENDED INTERESTED PARTY

KATHANGARI PROFESSIONAL ASSOCIATION.....2ND INTENDED INTERESTED PARTY

ATIRIRI BURURI MAGUNDU MA CHUKA.....3RD INTENDED INTERESTED PARTY

THONA NA IBAGA CLAN.....4TH INTENDED INTERESTED PARTY

RULING

1. This application is dated **26th March, 2019** and seeks orders:

1. That this honourable court be pleased to grant leave and allow the intended interested parties be enjoined in the instant suit.
2. That subject to grant of prayer 1 herein above, this honourable court be pleased to grant leave to the intended interested party to file a response to the application and pleadings filed herein.
3. That the costs of this application be provided for.

2. It is supported by the following grounds:

1. That instant proceedings touch on the respondents decision to delineate new boundaries including the boundaries of Mariara Ward, its location and sub-locations and Itugururu area as part of Kathwana municipality and the intended gazettment of the same.
2. That there is a pending constitutional suit before the Chuka Environmental and Land Court being Chuka ELC Petition No. 2 of 2019; Chuka Igambang'ombe development association vs County Government of Tharaka Nithi County and County Assembly of Tharaka Nithi County where in the issue in dispute relates to the actions by the respondents to hive off 322 km square from Chuka tribe land by delineating new boundaries and in effect interfering with the Chuka sub tribe land in granting Kathwana township municipality status.
3. That under the new constitutional dispensation, any person or entity who feels aggrieved by the decision of any persons, body or entity touching on their fundamental rights is entitled to seek leave of the court to be enjoined in the matter.
4. That from the pleadings and documents filed herein by the petitioner, it is apparent that the respondents have put in motion a process to gazette Kathwana market as municipality under the urban areas and cities act having delineated new boundaries that stretch beyond the previously agreed delineation lines.
5. That the intended interested parties are residents and members of the Chuka tribe who are one of the four distinct sub tribes of the Meru South region or the greater Ameru people who are the Chuka, Muthambi, Mwimbi and the Tharaka.
6. That the sub-tribes are distinctly unique in both their cultures and heritage and have different homelands whose ancestral boundaries are well known and have been in existences for eons.
7. That the first county assembly had made a resolution conferring Kathwana township with municipality status with an area of 2km squared as it is the county headquarters of Tharaka Nithi County.
8. That the resolution hereinabove was borne out of intense deliberations and discussions which the interested parties as representative members of the community had taken a leading role including organizing public fora and making submissions in the public participation fora.
9. That the deliberations were cognizant of the legal requirement and stipulations of the Urban Areas and Cities Act which allows for a granting of special status of municipality of the headquarters of a county by the county governor.
10. That the 1st and 2nd respondents who make up the second government and assembly of Tharaka Nithi County have gone ahead to arbitrary delineate new boundaries including the boundaries of Mariara Ward, its location and sub-locations and Itugururu area as part of Kathwana municipality and the intended gazettment of the same with effect that 322 Km square from Chuka tribe land is being hived off and the new boundaries in effect interfere with the Chuka sub tribe land.
11. That there had been public participation in the county before the making of the resolution and in effect, this decision has the effect of altering the sub-tribe land of the Chuka to the sub-tribe's detriment.
12. That the intended interested parties are apprehensive that the Chuka sub-tribe and the community at large stands to lose out on their cultural heritage with their sacred shrines and traditional areas which will be to the disadvantage of the Chuka sub-tribe.
13. That the decision has the effect of affecting service delivery and the professional development of the Chuka area as it has the requisite facilities and infrastructure and fits the criteria of being a municipality under the law on its own rights.
14. That despite there being intense stakeholder concerns, no action has been taken to remedy the situation and this in essence disregards the opinions of the people and the decision effectively shrinks the Chuka sub-tribe boundaries. This decision was in blatant disregard of the intended interested parties interest and extremely prejudicial to the intended interested party in as far as the issues pending this court's determination.
15. That there are violations of the constitutional rights of the interested parties as residents and members of the area as this arbitrary decision has the potential to evoke sub-tribal tensions, undo decades of peaceful coexistence and impugn on the heritage and historical context of the residents who the interested parties are part of.
16. That any directions and/or orders issued in the instant matter will obviously impact on the intended interested parties interests.

17. That it is in the interest of justice and fairness that the intended interested parties be joined in these proceedings with a view of protecting their interest.

18. That unless this honourable court intervenes, the instant suit will soon proceed to hearing and grant orders that may be prejudicial to the interests and rights of the intended interested party.

19. That the intended interested parties have shown sufficient interest in the suit herein and is apprehensive that the respondents may misrepresent facts to the court and the court may grant further orders that may be averse to the interests of the intended interested parties.

20. That it is in the interest of justice that this honourable court do grant leave to the intended interested parties to be enjoined in the instant suit so that it can be given an opportunity to be heard.

21. That the orders sought will not in any way prejudice any of the parties herein, but will enable this honourable court to effectually and completely adjudicate upon and settle all questions in the instant suit.

3. When the matter was heard interpartes on 27.3.2019, the application was not opposed.

4. In the circumstances, the application is allowed with no costs.

5. It is so ordered.

Delivered in open Court at Chuka this 27th day of March, 2019 in the presence of:

CA: Ndegwa

Kamau Kuria for the Respondents

Kirimi Gituma for Interested Parties

Kinoti Kirera for the Interested Parties

Kirimi Muturi for the Petitioner

P. M. NJOROGE

JUDGE.