



**REPUBLIC OF KENYA**

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

**CHUKA ELC CASE NO. 16 OF 2019**

**CHUKA IGAMBA NG'OMBE DEVELOPMENT ASSOCIATION.....PLAINTIFF**

**VERSUS**

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

**RULING**

1. This application is dated **23<sup>rd</sup> July, 2019** and is brought to court under Order 40 Rules 1 and 4(1), of the Civil Procedure Rules, Sections 3A and 63 (c) of the Civil Procedure Act, Cap. 21 Laws of Kenya, Articles 22 (b), (c) and (d), 23, 40, 159 2 (a), (b), (d) and (e) of the Constitution of Kenya, 2010, and all other enabling provisions of the law.

2. The application **seeks** the following **orders:-**

1. **THAT** this application be certified urgent, service be dispensed with and the same be heard exparte in the first instance for the interim orders sought.

2. **THAT** pending interpartes hearing of the application herein this Honorable Court be pleased to issue interim Injunction orders restraining the Defendant herein either by themselves, their servants, agents proxies or by anybody whomsoever acting at their behest from in any manner whatsoever interfering with the Centenary Celebrations Monument erected at Chuka town, adjacent to the Gulf Petrol Station, the developments thereof and the grounds within which it is erected.

3. **THAT** pending hearing and determination of the application herein this Honorable Court do grant such other others (sic) as it may deem fit, expedient and justifiable in the circumstances and in the interest of the rule of law and justice.

4. **THAT** the costs of this application be provided for.

3. The application has got the following grounds:

1. **THAT** the Centenary Celebrations Monument at Chuka town was initiated and erected by the Chuka Igamba Ng'ombe Development Association courtesy of/vide the Chuka Town Centenary Celebrations Committee. (Annexed hereto and marked "CIDA 1 (A), (B), (C), (D), (E) & (F) are copies of minutes for meetings for initiation and implementation of the plans for the erection/construction of the said monument.)

2. **THAT** the Chuka Town Centenary Celebrations Committee converted itself into Chuka Igamba Ng'ombe Development Association (CIDA) vide minute MIN.131/4Cs/2014 of the meeting held on 12<sup>th</sup> June, 2014 of the Chuka Town Centenary Celebrations Committee, annexure marked "CIDA 1 (F).

3. **THAT** the purpose for erecting the said monument was, and still is, to mark and commemorate 100 years of existence of Chuka Town.

4. **THAT** any interference with the monument as initially conceived and erected and the grounds upon which it is erected will fundamentally affect, distort, devalue and misrepresent the essence and purpose for which it was erected thereby occasioning prejudice, irreparable suffering, loss and/or damages against the applicant/plaintiff and the general public at large.

5. **THAT** the County Government of Tharaka Nithi has without caring to undertake any of requisite public participation as provided for under the law embarked on suspicious acts of redesigning, remodeling, defacing, disfiguring and/or tampering with the said monument, thereby causing the structure to lose it's core value, purpose and essence for which it was conceived, erected and maintained. This structure was conceived and intended to be perpetual.

6. **THAT** although the parties had held a meeting under the mediation of the Tharaka Nithi County Commissioner whereby the Defendant undertook to cease any further actions/work on the structure, the defendants have refused, failed and/or neglected to honor their words and have been continuing works at the site at night against the interests of the Applicant.

7. **THAT** the Defendant has been acting arbitrarily with sheer arrogance and impunity.

8. **THAT** the grounds on which the monument is constructed are for public utility and the applicant has undertaken immense environment upgrading through routine maintenance and conservation which the defendants have been destroying through dumping and escalated wasteful stone use.

9. **THAT** any untoward interference with the structure fundamentally affects and changes the purpose for which the structure was erected and maintained.

4. The **application is supported** by the **affidavit** of **GITARI KEA** which states:-

**I, GITARI KEA**, an adult male of sound mind, a resident of Chuka within Tharaka Nithi County do make oath and state as follows:-

1. **THAT** I am a member of the Applicant/Plaintiff herein with the knowledge of the facts hereof and therefore competent to make and swear this affidavit.

2. **THAT** I have the authority of the other members of the Applicant to make and execute documents in respect of this matter on their behalf and that of mine. (See attached )

3. **THAT** the Centenary Celebrations Monument at Chuka town was initiated and erected by the Chuka Igamba Ng'ombe Development Association courtesy of/vide the Chuka Town Centenary Celebrations Committee. (Annexed hereto and marked "CIDA 1 (A), (B), (C), (D), (E) & (F) are copies of minutes for meetings for initiation and implementation of the plans for the erection/construction of the said monument.)

4. **THAT** the Chuka Town Centenary Celebrations Committee converted itself into Chuka Igamba Ng'ombe Development Association (CIDA) vide minute MIN.131/4Cs/2014 of the meeting held on 12<sup>th</sup> June, 2014 of the Chuka Town Centenary Celebrations Committee, annexure marked "CIDA 1 (F).

5. **THAT** the purpose for erecting the said monument was, and still is, to mark and commemorate 100 years of existence of Chuka Town.

6. **THAT** our Association together with other stakeholders and well wishers conceived the erection of the Chuka Centenary Celebrations Monument, mobilized resources and oversaw construction of the said monument.

7. **THAT** the said monument was unveiled by HE the President, Uhuru Kenyatta during an event to mark and commemorate 100 years of Chuka town's existence.

8. **THAT** our Association has undertaken, and has been undertaking vast ecological and environmental development, upgrading, maintenance and sustenance of the grounds around which and upon which the structure is erected.

9. **THAT** the defendant has heinously, with no justifiable cause, reason or excuse and with impunity been interfering with the monument which acts are disfiguring, defacing and/or destroying the said structure thereby fundamentally affecting the essence for which the structure was conceived and erected. (Annexed hereto and marked "CIDA 2" are photographs of the said monument indicating how the structure was initially and how it appears after the said interference.)

10. **THAT** the acts of the defendant are heinous, arbitrary and driven by nothing but sheer malice, contempt, arrogance and impunity.

11. **THAT** it is only fair that the purpose for which the structure was conceived and erected be preserved and protected by an order of this Honorable Court.

12. **THAT** the applicant and other stakeholders have invested heavily on the structure and the environment thereof.

13. **THAT** I swear this affidavit in support of the application herein.

14. **THAT** what is deponed hereto is true to the best of my knowledge, belief and understanding.

5. At the exparte stage, the plaintiff's advocate urged the court to grant prayers 1, 2 and 3. He told the court that despite a commitment by one Njue Njagi, the County Executive member for Lands, Environment, Physical Planning and Urban development, during a meeting of the parties at the County Commissioner's Office on **17<sup>th</sup> July, 2019**, that the impugned construction would cease pending a possible resolution of apposite issues, the defendant had during the nights of **19<sup>th</sup>, 20<sup>th</sup> and 21<sup>st</sup> of July, 2019** embarked on a hurried construction of the same. He told the court that unless the sought orders are granted, this suit would be rendered nugatory.

6. Upon consideration of the application at this ex parte stage, the following orders are issued:-

1. Matter is **NOT** certified urgent but is to be heard on priority basis.

2. **Prayer 2 is granted pending hearing and determination** of this application in terms of Section 63(e) of the **Civil Procedure Act** in view of the fact that the **court goes on recess next week**.

3. The plaintiff is ordered to serve the application and the orders issued herein **within 2 days of today**.

4. The parties will come to court for hearing of this application and/or other **directions on 30<sup>th</sup> July, 2019**.

**Delivered in open court at Chuka this 23<sup>rd</sup> day of July, 2019 in the presence of:**

CA: Ndegwa

Kirimi Muturi for the plaintiff

**P.M. NJOROGI**

**JUDGE**