

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Misc Civil Appli 808 of 2008

**IN THE MATTER OF: AN APPLICATION SEEKING LEAVE TO COMMENCE
JUDICIAL REVIEW PROCEEDINGS BY BLUESEA SHOPPING MALL LIMITED**

**INN THE MATTER OF: THE PUBLIC PROCUREMENT AND DISPOSAL ACT, 2005 (ACT
NO.3 OF 2005) AND PUBLIC PROCUREMENT AND DISPOSAL REGULATIONS, 2006.**

BLUESEA SHOPPING MALL LIMITED APPLICANT

VERSUS

THE CITY COUNCIL OF NAIROBI 1ST RESPONDENT

GOLDEN LIME INTERNATIONAL LIMITED 2ND RESPONDENT

RULING

On 17th December, 2008 this court gave leave to the Applicant Company to institute Judicial review proceedings. Part of the order of leave stated:-

“That the grant of leave to commence judicial review proceedings do operate as a stay of the award and implementation of the public Partnership Contract to the 2nd Respondent for redevelopment of Eastleigh Market erected on Plot LR No 36/vii/1037 for an initial period of 30 days and the parties be at liberty to contest this part when the matter comes up for mention on 15th January 2009 at 9.00 am.”

Following the mention as per the order, Counsel for the Applicant, the Respondents and the interested Party have presented arguments both for the extension of the stay and for its termination. By crafting this part of the order, the Court intended to create a window for it to terminate the stay on its own motion or if moved by any of the parties in situation such as the following:-

- (1) In the event of material non disclosure by the Applicant.
- (2) In the event of serious misrepresentation by the Applicant
- (3) In the event that the courts’ process was being abused e.g. the same matter having been placed before another competent court and either finalised or pending.
- (4) In a development oriented matter where substantial loss might occur, this option would give the court an opportunity for a speedy review of the situation and where necessary impose appropriate conditions in order to balance the scales of justice between the parties including for example imposing an undertaking as to damages or the furnishing of security.

From the mention contest which despite this Court’s capping, of time took over one hour, it is clear to the Court that the issue of jurisdiction is hotly canvassed and it is largely the same issue that titled the balance in granting stay.

It would not therefore be safe at this threshold stage for the court to go into the merits of the arguments

presented before it. The fact that the mentioned submissions took so long is itself an admission of the existence of a serious controversy. Unravelling the controversy and making final determinations is the task of the Court at the next stage. In this regard the Court understands that the substantive Notice of Motion has been filed and that it is the process of being served. In the circumstances the better option for the parties is to have the Notice of Motion fasttracked for hearing and all the issues determined on merit. Any other shortcut or premature determination of any single issue or a contention of issues would occasion prejudice to the final hearing.

In the result the order for leave to operate as stay is hereby extended until further orders of the Court. Matter to be mentioned on 27th February, 2009 at 9 00 am for further directions.

DATED and delivered at Nairobi this 20th day of February 2009.

J.G. NYAMU

JUDGE