



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
MISC CIV. APPLI. 295 OF 2008

SILVERCREST ENTERPRISES LTD.APPLICANT

VERSUS

NATIONAL ENVIRONMENT TRIBUNALRESPONDENT

JOEL LESALE.....1ST INTERESTED PARTY

DONATCO FONSECA2ND INTERESTED PARTY

MRS. BETH WAMBUI MUGO3RD INTERESTED PARTY

JOHN MBUVI4TH INTERESTED PARTY

MANGA MUGWE5TH INTERESTED PARTY

EUGENE CHERNEL6TH INTERESTED PARTY

NICK MUGO.....7TH INTERESTED PARTY

NATIONAL ENVIRONMENT MANAGEMENT

AUTHORITY (NEMA)8TH INTERESTED PARTY

RULING

Silvercrest Enterprises Ltd, the exparte applicant herein, took out a summons pursuant to Section 8(2) of the Law Reform Act and under Order LIII rule 1(1), (2), (3) AND (4) of the Civil Procedure Rules in which it sought for the following orders:

(i) *That leave be granted to apply for an order of prohibition directed to and prohibiting the National Environment Tribunal, its members, or agents from proceeding, hearing and/or otherwise*

further hearing the Tribunal Appeal No. NET 23/2007 of 2007

at Nairobi, Mrs. Beth Wambui Mugo, Nick Mugo, Joel Lesale,

Donatco Fonseca, John Mbuvi, Eugene Chernel, and Munga

Mugwe “versus” Director General, NEMA and Silvercrest

Enterprises Limited in its present form or in any variation

thereof akin to the Appeal arising from or in connection with the

same subject matter plot No. MN/1/5672.

(ii) *That leave be granted to apply for an Order of certiorari to remove into the High Court and quash the proceedings in the National Environment Tribunal No. NET.23 of 2007 at Nairobi, between Mrs. Beth Wambui Mugo, Nick Mugo, Joel Lesale, Donatco Fonseca, John Mbuvi, Eugene Chernel, and Munga Mugwe “versus” Director General NEMA and Silvercrest Enterprises Limited and all the proceedings therein and/or Rulings of the National Environment Tribunal in the said Appeal.*

(iii) *That the leave granted do operate as a stay of the proceedings and/or further hearing of the Appeal No. NET 23/2007 of 2007.*

Mrs. Beth Wambui Mugo, Nick Mugo, Joel Lesale, Donatco Fonseca, John Mbuvi, Eugene Chernel, and Munga Mugwe versus Director General NEMA and Silvercrest Enterprises Limited, Nairobi, pending hearing and determination of substantive application or until further orders of this Honourable Court.

The summons is accompanied by a statement of fact and the same is verified by the affidavit of George Dicks Atetwe sworn on 7th July 2008. The Deputy Registrar of this court has been served with a notice of the institution of these proceedings pursuant to the provisions of order LIII rule 1(3) of the Civil Procedure Rules.

The application is argued *ex parte* in terms of order LIII rule 1(2) of the Civil Procedure rules. Mr. Mogaka, learned advocate who appeared before this court argued the application as holding brief for Mr. Robson, learned advocate for the *ex parte* applicant. He beseeched this court to issue the orders as prayed. I have considered these oral submissions of learned counsel. I have also considered these grounds set out on the face of the summons and the facts enumerated in the statement of fact plus the facts deponed in the verifying affidavit. At the *ex parte* stage, the applicant needs to show the court that he has an arguable case. The court of Appeal restated this view **in the Matter of an application by Samuel M. W’Njuguna & 6 others and in the Matter of the Minister for Agriculture and in the Matter of the Tea Act and the Tea (Elections) Regulations 2000** C.A. No. 44 of 2000 (unreported) as follows:

“It cannot be denied that leave should be granted, if on the material available, the court considers, without going into the matter in depth, that there is an arguable case for granting leave.”

In the matter before this court, the *ex parte* applicant’s complaint is that the National Environment Tribunal may hear and determine appeal No. 23 of 2007 without jurisdiction. It is also alleged that the proceedings which have so far been heard by the tribunal are null and void because the tribunal had no jurisdiction to entertain the same. In my humble view I am convinced that the *ex parte* applicant has shown that it has an arguable case. Consequently I grant the applicant leave of 21 days from the date hereof to institute judicial review proceedings as prayed in prayers 1 and 2 of the summons. This is a case which is fit to stay further proceedings until the substantive application is filed, heard and determined. Consequently, I grant prayer 3 of the summons as prayed. Costs to the cause.

Dated and delivered at Mombasa this 24th day of July 2008.

J. K. SERGON

JUDGE