

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Misc. Civ. Appli. ELC 49 of 2008

GEM VILLAS LIMITED.....APPLICANT

VERSUS

THE NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY.....RESPONDENT

R U L I N G

The applicant by way of this Chamber Summons seeks:

1. Leave to apply for Judicial Review orders namely:-

(a) An order of *certiorari* to move into the High Court for purposes of its being quashed the decision of the Respondent made on 4th June 2008 to stop the applicant from constructing or carrying out any other activities on PLOT No. 1160/663/KAREN until the Environmental Impact Assessment Licence is issued by the Respondent.

(b) An order of *Prohibition* to preclude the Respondent stopping the Applicant from constructing or carrying out any other activities on PLOT No. 1160/663 KAREN on account of Environmental Impact Assessment Licence.

(2) That grant of leave herein does hereby operate as a stay of the decision made on 4th June 2008 by the Respondent to stop the Applicant from constructing or carrying out any other activities on Plot No. 1160/663 KAREN until the Environmental Impact Assessment Licence.

The application is based on the grounds that the decision is ultra vires Section 58 of the Environment Management and Co-ordination Act 1999, unlawful arbitrary and oppressive and it unlawfully and unjustifiably infringes and vitiates the Applicant's fundamental and inalienable right to own, use, dispose and or otherwise deal with its property.

The facts which gave rise to this litigation briefly may be stated.

On 2nd August 2007 in compliance with the provisions of the Physical Planning Act and other relevant laws, the Applicant applied to the City Council of Nairobi for approval of change of user of the suit property from single dwelling units to multiple town houses. The City Council of Nairobi following the procedure for approving change of user published a notice of intended change of user in the Standard Newspaper of 4th August 2007. The notice invited valid objections to the change of user from members of the public. No objections were raised against the Applicant's intended change of user. There being no objections to change of user, the Applicant submitted professionally drawn building plans for approval as a condition for grant of the Application for change of user.

On 10th April 2008 the Applicant acting purely ex abundanti cautela submitted a Project Report to the Respondent on the intended development of town houses on the suit property. The Respondent did not communicate its decision on the Project Report within 45 days as required by Regulation 10 of the Environment (Impact Assessment and Audit) Regulations 2003. Having not received any comments from

the Respondent, and since the Applicant's project did not require the submission of a project report in the first place, the Applicant commenced construction of town houses on the suit property. On 4th June 2008 the Respondent through one Njoki Muchiri visited the suit property and issued a stop order precluding the Applicant from undertaking any construction or any other activity until an Environment Impact Assessment Licence is issued by the Respondent. Miss Muthoni for the Applicant submitted that it is against the above background that the Applicant has come to this Honourable Court for the orders sought.

The provisions of the Environment Management And Co-ordination Act 1999 is clear of the procedure to access the High Court in the event of refusal of Environment Impact Assessment Licence.

Section 129 (1) of the Act provides that any person who is aggrieved by a refusal to grant a licence may appeal within 60 days to the Tribunal; and Section 130 (1) of the Act provides that any person aggrieved by the decision of the Tribunal may within 30 days of such decision appeal to the High Court. Since the Act provides for the right of appeal and the procedure to access the High Court, the applicant ought to stick to that laid down procedure.

Accordingly, I decline to grant the leave sought by Applicant to apply for Judicial Review and dismiss the application.

Dated and Delivered at Nairobi this 17th day of October 2008.

J. L. A. OSIEMO

JUDGE