



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

Misc Appli 792 of 2007

FARADAY LIMITED APPLICANT

VERSUS

NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY.....RESPONDENT

INTERIM RULING

The Applicant Faraday Ltd. filed Chamber summons under order LIII Rules 1 (1), (2), (3), and (4) of Civil Procedure Rules.

It sought for leave to apply for Judicial Review by way of certiorari, prohibition and mandamus in respect of Notice of Cancellation dated 20.7.07 of its licence No.000152.

The court on 25th July, 2007 certified the application as urgent but directed the Applicant to serve the Respondent, National Environment Management Authority (referred to as NEMA) and directed the same to be heard inter partes.

NEMA was served but did not attend the court during inter partes hearing on 30th July, 2007 and thus the leave was granted which was to operate as stay of the Notice of cancellation of licence of the Applicant.

On 7th August, 2007 Notice of Appointment on behalf of NEMA was filed by M/s Mereka & Co. Advocates who filed an application under Section 3A of Civil Procedure Act and all other enabling provisions of the law seeking to set aside the order that the leave shall operate as stay. It also sought specific order that the applicant camp any to stay the construction of the housing development on plot No.LR.No.209/11946, along Ring Road, Kileleshwa, Nairobi.

On the date of hearing, the counsel for all the parties consented to submit on the Chamber Summons dated 10th August 2007. The submissions were made and I have carefully considered the same as well as have strived to peruse the whole record, authorities and provisions of the Environmental Management and Co-ordination Act, 1999 (Act No. 8 of 1999).

The application was heard, despite the earlier orders, because the counsel of all the parties before me have failed to agree on the position of the status quo granted by Hon. Aganyanya J on 18th September, 2007. That was the reason the matter was brought before me for hearing.

The interested parties have filed replying affidavits on the necessity of further Environmental Impact Assessment on the project of the Applicant. More important were the averments that the Riparian Reserve along the suit land has been impeded by the project and there has arisen an Environmental issue which needs to be expeditiously looked at.

Hence this interim ruling in view of the fact that I shall be out of the country on an official study tour as a member of Rules Committee established under the Civil Procedure Act (Cap 21).

The application is based on the grounds that the stay granted, if allowed to be in place will make the judicial review proceedings nugatory.

It is also supported by a ground that the NEMA has only suspended the licence and has not cancelled the same as alleged by the Applicant which is misleading the court.

However, I shall have no hesitation to reject this ground simply because there exists two notices issued by NEMA.

1. Notice dated 20th July, 2007 – Ann TSC 12 annexed to the chamber summons dated 25th July, 2007; and
2. Notice dated 26th July, 2007 issued by NEMA on 26th July, 2007 speaks of suspension annexed to the present application.

This latter notice does not refer to the earlier notice of cancellation.

The body of both notices are similarly worded except the penultim paragraphs.

At this stage I only find that at the time the chamber summons dated 25th July, 2007 was filed the second notice was not in existence and I cannot find the applicant guilty of misleading the court as alleged. In my view it is NEMA who is doing so and I do find so.

With the finding of this obvious issue, I have also considered the replying affidavits filed by the interested parties (first sworn by Charity K. Maingi on 17th September, 2007 and second sworn by Patrick Oloo on 17th October, 2007), which raise environmental issues as well as deficiency in the procedure leading to the grant of licence to the Applicant.

Even if I have reservations on the present application filed by NEMA, I cannot close my eyes on the issues raised by the parties. This court has to protect and uphold the rights of all concerned to preserve and manage the environment.

In the premises I make the following orders:

1. The applicant and the Water Resource Management Authority (interested party) to file joint reports after surveying the riparian reserve area to indicate whether the project has interfered with the aforesaid reserve.
2. In case of failure to get a joint report, the said parties to file separate reports from their respective experts.
3. The said report/reports be filed within 15 days from the date hereof.
4. There shall be mention of the matter on 21st November, 2007
5. Till that date, the Applicant shall not develop the area of suit land along the Riparian Reserve.

6. NEMA to file and serve within 20 days, further affidavit to show that the applicant has made substantial change, or modification in the project, or in the manner in which the project is being operated, or the project poses environmental threat which could not be reasonably foreseen at the time of study, evaluation of the Environmental Impact Assessment report submitted by the Applicant before the licence in question was issued.

7. Further orders or directions be given on the mention date i.e. 21st November, 2007.

Dated and signed at Nairobi this 1st day of November, 2007.

K.H. RAWAL

JUDGE

1.11.07