



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Case 487 of 2005**

**ENKASITI FLOWER GROWERS LTD.....**  
**.....PLAINTIFF**

**VERSUS**

**IN THE MATTER OF THE LAND CONTROL ACT.....**  
**DEFENDANT**

**RULING**

By Originating Motion dated 11<sup>th</sup> April 2005 and expressed to be brought under Section 8(1) of the Land Control Act (Cap 302) Enkasiti Flower Growers Ltd applied for an order that the period for the making an application for consent to the KAKUZI/THIKA LAND CONTROL BOARD consent regarding the transfer of LR NO. 10871/1. Title I.R.58576 containing 32.74 hectares actuate in Gatanga Road, Thika in Thika County Council be extended until expiry of 21 days from the date of the order sought, or such other order as the court may consider appropriate. The affidavit in support of the applicant was sworn by M.S. Patel in which he averred that he on behalf of his company and Mr. Patrick Mwaura of Protein & Fruits Processors Ltd had signed on behalf of their respective companies. Application for consent of the Land Control Board addressed to the KAKUZI/THIKA LAND CONTROL BOARD. But which forms were not submitted to the KAKUZI/THIKA LAND CONTROL BOARD because the applicant expected to obtain from the President an exemption from the Land Control Board consent under Section 24 OF THE land Control Board Act.

The exemption was granted but was not gazetted and therefore it become ineffective. The matter came before Kubo J who granted the order in his ruling delivered on 7<sup>th</sup> February 2006.

The objector company Protein & Fruits Processors Ltd filed this application by way of Notice of Motion expressed to be brought under Section 3A of the Civil Procedure Act and Order XLI Rule 4 of the Civil Procedure Rules seeking orders that there be stay of execution pending the hearing and determination of the Appeal by the Objector.

The application is based on the grounds that the Objector has complied with the conditions set per the orders issued on 7<sup>th</sup> February 2006, that the Objector has paid deposit as security for costs, that the Appeal shall be rendered nugatory if this application is not heard and the orders prayed for granted, that the Respondent shall not suffer prejudice should the orders prayed for granted and that the Objector stands to suffer damage and irreparable loss if the stay is not granted.

The application is opposed by Enkasiti Flower Growers Ltd the Applicant on the grounds that this Honourable Court has no jurisdiction to grant the Respondent the reliefs sought in the said application either under the provisions cited or at all as there is no right of Appeal against the ruling and orders by this Honourable Court on 7<sup>th</sup> February 2006, that the said application is frivolous vexatious, and an abuse of the process of the court, that no sufficient grounds have been presented to warrant the reliefs sought in the said application and lastly that in any event, the Respondent has failed to satisfy any of the mandatory three successive threshold prerequisites upon which a stay of execution may be granted.

The judge in allowing the application said this:

“Accordingly, the application is allowed and the Applicant is given 21 days to apply for the Land Control Board consent for consideration by the relevant Board on merit”.

After delivering the ruling there was an application for stay of execution on the ground that the Respondent wanted to appeal against that ruling and the judge made the following order:

**“I think it would be unfair to deny the Respondent company a chance of challenging the Ruling.**

**I am of the view that the wider interest of justice demand that the respondent company be given a chance to contest the courts Ruling. Accordingly, stay of execution of the courts Ruling is granted for 30 days pending appeal against the said Ruling. If the appeal fails, the 21 days extension granted to the Applicant company shall run from the date of determination of the Appeal. If no appeal is filed within 30 days, the 21 days shall begin to run from the expiry of the 30 days.”.**

The Objector having filed the appeal being Civil Appeal No. 27 of 2006, I think from the wording of the Order, stay was granted until the hearing and determination of the appeal and the 21 days shall start to run from the date the appeal is determined.

The instant application therefore was not necessary and the same is dismissed. Costs will be costs in the Appeal. It is so ordered.

DATED and delivered at Nairobi this 2<sup>nd</sup> day of May 2006.

**J.L.A. OSIEMO**

**JUDGE**