



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC JR NO. 17 OF 2017**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF**

**CERTIORARI, PROHIBITION AND MANDAMUS**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**=VERSUS=**

**CHIEF LAND REGISTRAR.....1<sup>ST</sup> RESPONDENT**

**THE REGISTRAR OF TITLES.....2<sup>ND</sup> RESPONDENT**

**HON. ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**THIKA WAX WORKS LIMITED.....INTERESTED PARTY**

**EX PARTE: BLOCK SEVEN DEVELOPERS LIMITED**

**RULING**

On 5<sup>th</sup> May, 2020 this court entered judgment for the ex-parte applicant against the respondents and the interested party on the following terms;

- (i) The decision made by the 1<sup>st</sup> and 2<sup>nd</sup> respondents on 17<sup>th</sup> January, 2017 to cancel the registration of transfer of L.R No. 9042/574, I.R 67346 in favour of the applicant through entry No. 5 in the register of the suit property is hereby removed into this court and quashed. For the avoidance of doubt entry No. 5 in the register of the suit property made pursuant to that decision is quashed.
- (ii) An order of prohibition is issued prohibiting the 1<sup>st</sup> and 2<sup>nd</sup> respondents from revoking the applicant's title over L.R. No. 9042/574, I.R 67346 in reliance on the said decision of 17<sup>th</sup> January, 2017.
- (iii) An order of mandamus is issued compelling the 1<sup>st</sup> and 2<sup>nd</sup> respondents to issue to the applicant forthwith a provisional certificate of title for L.R No. 9042/574, I.R 67346 if the interested party does not surrender to the 1<sup>st</sup> and 2<sup>nd</sup> respondents the original certificate of title for the said property in its possession.
- (iv) The applicant shall have the costs of the application to be paid by the interested party.

The interested party was aggrieved by the said judgment and filed a notice of intention to appeal against the same to the Court of Appeal on 15<sup>th</sup> May, 2020. What is now before me is a Notice of Motion application dated 12<sup>th</sup> June, 2020 seeking a stay of execution of the said judgment and decree extracted therefrom pending the hearing and determination of the interested party's intended appeal to the Court of Appeal. The application that was supported by the affidavit of Rohin Chandaria sworn on 12<sup>th</sup> June, 2020 was brought on the grounds that the interested party intended to appeal to the Court of Appeal against the decision of this court made on 5<sup>th</sup> May, 2020 and had already filed a notice of appeal and requested for typed proceedings which were yet to be provided by the court.

The interested party averred that it had an arguable appeal and that it would be highly prejudiced if the orders of the court were executed before the appeal was heard. The interested party averred that if the ex parte applicant was issued with a title before the interested party's

appeal was heard, there was a risk that the suit property could be sold or charged thereby rendering the appeal nugatory as the substratum of the appeal would have been lost. The interested party averred that the ex-parte applicant would not be prejudiced in any way if the orders sought were granted.

The application was opposed by the ex-parte applicant through a replying affidavit sworn by Jennifer Kimuge on 16<sup>th</sup> July, 2020. In the affidavit, the ex-parte applicant averred that it was not true that the interested party was the registered owner of the suit property. The ex-parte applicant averred that the suit property was sold by public auction after it was attached through a prohibitory order that was issued by the lower court in favour of the City Council of Nairobi which had obtained a decree for rates against the interested party. The ex-parte applicant averred that after the sale of the suit property, an order was made by the lower court vesting the property on the ex-parte applicant which was the auction purchaser. The ex-parte applicant averred that both the prohibitory order and vesting order remained registered against the title of the suit property. The ex-parte applicant averred that the interested party could not have an arguable appeal in the absence of Nairobi City County Government in such appeal. The ex-parte applicant averred that the interested party had lost all the cases that it had brought in respect of the suit property and that litigation must come to an end. The ex-parte applicant averred that having won the suit, it should be allowed to enjoy the fruits of its judgment. The ex-parte applicant averred that the orders sought by the interested party if granted would prejudice its interest.

The application was heard by way of written submissions. The interested party filed its submissions on 2<sup>nd</sup> September, 2020 while the ex parte applicant and the respondents did not file submissions. I have considered the interested party's application together with the affidavit filed in support thereof. I have also considered the affidavit filed by the ex-parte applicant in opposition to the application. Finally, I have considered the submissions by the interested party and the authorities cited in support thereof. The principles upon which the court exercises its discretion in applications for stay of execution are well settled. An applicant for stay of execution must satisfy the conditions set out in Order 42 Rule 6(2) of the Civil Procedure Rules. In the application before me, I am satisfied that the stay application was brought without unreasonable delay and that the applicant stands to suffer substantial loss if the orders that were made in the judgment delivered by the court on 5<sup>th</sup> May, 2020 are not stayed. On the issue of security, the applicant has not offered any. The court however has power to order such security as it may deem appropriate as a condition for granting a stay.

Due to the foregoing, I find merit in the interested party's application dated 12<sup>th</sup> June, 2020. The same is allowed on the following terms;

1. The execution of the judgment made on 5<sup>th</sup> May, 2020 and the decree issued on 19<sup>th</sup> June, 2020 is stayed for a period of 24 months or until the intended appeal is heard and determined whichever comes earlier.
2. The interested party shall deposit in an interest earning bank account in Nairobi in the joint names of the advocates on record for the interested party and the ex-parte applicant a sum of Kenya Shillings Five Hundred Thousand (Kshs. 500,000/=) as security within sixty (60) days from the date hereof in default of which the stay granted herein shall lapse automatically without any reference to the court.
3. In the event that the parties fail to agree on which bank to deposit the said amount, the same shall be deposited in court.
4. The costs of the application shall be in the cause.

**Delivered and Dated at Nairobi this 4<sup>th</sup> day of February 2021**

**S. OKONG'O**

**JUDGE**

**Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:**

Mr. Kamau for the 1<sup>st</sup> to 3<sup>rd</sup> Respondents

Mr. Obuya for the Interested Party

N/A for the Ex-parte applicant

Ms. C. Nyokabi-Court Assistant