



Republic v National Land Commission; Thiru & another (Joined as the Chairman and Secretary of Mbari Ya Thiru Welfare Group) (Interested Party); Talaki Limited (Exparte) (Environment and Land Civil Miscellaneous Application E025 of 2022) [2023] KEELC 16059 (KLR) (9 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16059 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CIVIL MISCELLANEOUS APPLICATION E025 OF 2022**

**LN MBUGUA, J
MARCH 9, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

THE NATIONAL LAND COMMISSION RESPONDENT

AND

PEMINUS KANGETHE THIRU & ELIUD NGA'NG'A THIRU (JOINED AS THE CHAIRMAN AND SECRETARY OF MBARI YA THIRU WELFARE GROUP) INTERESTED PARTY

AND

TALAKI LIMITED EXPARTE

RULING

1. On December 6, 2022, the *Ex Parte* Applicant was granted leave to apply for judicial review orders. This ruling concerns prayer 5 in the *Ex Parte* Applicant’s chamber summons application dated December 6, 2022. The said prayer seeks orders that leave granted herein operates as stay against the proceedings, actions or any decision in respect to admission, review, proceedings or determination of complaint No NLC/HLI/3665/2021 lodged on September 20, 2021 by the Interested Party before the Respondent or any such review by the Respondent of grant or disposition of or title to or affecting private land known as LR No. 1159/340 (Original 1149/112/3) and Title No 94978 registered in the name of the Ex parte –Applicant pending the hearing and determination of the judicial review suit.



2. The decision whether to grant a stay of this nature is discretionary. Order 53 Rule 1(4) of the Civil Procedure Rules provides:

“The grant of leave under this rule to apply for an order of prohibition or an order of certiorari shall, if the judge so directs, operate as a stay of the proceedings in question until the determination of the application, or until the judge orders otherwise: Provided that where the circumstances so require, the judge may direct that the application be served for hearing inter parties before grant of leave.....”

3. In Taib A. Taib v Minister for Local Government & 3 Others [2006] eKLR the court held;

“... The purpose of a stay order in judicial review proceedings is to prevent the decision maker from continuing with the decision making process if the decision has not been made or to suspend the validity and implementation of the decision that has been made... ”.

4. On December 6, 2022, the court declined to grant any stay orders and only allowed prayers No 2, 3 and 4. Further, the court directed the applicant to effect service of the substantive motion within 21 days. The nature of service conducted by the applicant was found wanting by this court on February 15, 2023.
5. In the final analysis, I decline to grant prayer no. 5 at this *exparte* stage. The issue of stay is to be dealt with once proper service has been effected upon all the parties.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF MARCH, 2023
THROUGH MICROSOFT TEAMS.**

LUCY N MBUGUA

JUDGE

In the presence of:-

Olala holding brief for Mr Litoro for Exparte Applicant

Court assistant: Vanilla

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