



**Kopoa Developers Limited v Edesk Properties Limited & another (Environment and Land Appeal E043 of 2023) [2023] KEELC 21653 (KLR) (9 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21653 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E043 OF 2023  
EK WABWOTO, J  
NOVEMBER 9, 2023**

**BETWEEN**

**KOPOA DEVELOPERS LIMITED ..... APPELLANT**

**AND**

**EDESK PROPERTIES LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**THE DIRECTOR GENERAL, NATIONAL ENVIRONMENT MANAGEMENT  
AUTHORITY ..... 2<sup>ND</sup> RESPONDENT**

*(Being an Appeal from the decision made on 5th April 2023 by  
the National Environment Tribunal in Tribunal Appeal No 12 of  
2023 with regards to LR No 209/5574 off Riverside Drive Nairobi)*

**RULING**

(In respect of the Notice of Motion Application dated August 3, 2023 seeking an order of temporary injunction pending the hearing and determination of the Appeal)

1. Kopoa Developers Limited the Appellant herein being aggrieved by the decision of the National Environment Tribunal made on April 5, 2023 filed an Appeal before this court vide an Memorandum of Appeal dated April 25, 2023. Subsequent to the filing of the said Memorandum of Appeal, they filed an application dated August 3, 2023 under Certificate of Urgency seeking for the following orders:
  1. Spent...
  2. That this Honorable Court sets aside the orders of the Honorable National Environment Tribunal of April 5, 2023 in total;
  3. That this Honorable Court orders that the Applicant herein be allowed to continue with the construction of the proposed project at the proposed project



site pending the hearing and determination of the Appeal before the National Environment Tribunal;

4. That this Honorable Court orders that the Applicant herein be allowed to continue with the construction of the proposed project at the proposed project Site;
  5. That the Applicant's Appeal ELC E043 of 2023, be set down for hearing;
  6. That that costs of this Application be awarded to the Applicant;
  7. Any further orders which this Honorable Court may deem fit to grant be so granted.
2. The Appellant has enumerated the grounds upon which her application is premised. Primarily, the Appellant submitted that the Tribunal granted orders without affording the Applicant and opportunity to prepare and present written submissions in response to the 2<sup>nd</sup> Respondent's application which was contrary to express constitutional requirements.
  3. In submissions dated September 29, 2023, the Appellant relied on the provisions of Section 130 (1) and (2) of the *Environment Management and Coordination Act*, to emphasize that the appeal to this Court triggered an automatic stay and setting aside of the Tribunal's orders of 5<sup>th</sup> April 2023. It was also submitted that notwithstanding the automatic stay, the Tribunal proceeded to grant enforcement orders which further exacerbated the loss and damage to the Appellant.
  4. The Application was opposed by the 1<sup>st</sup> Respondent. Written submissions were filed in opposition and a Replying affidavit dated September 29, 2023. It was submitted that the present application was sub-judice to the application dated April 17, 2023 in NET Appeal No 12 of 2023. It was further submitted that the Applicant failed to exhaust remedies of review and therefore could seek another chance before the Court and in essence out of undeserving case.
  5. In determining this application, this court is alive to the fact it is still expected to deliver its judgment on the main appeal. The issues for determination in respect to this ruling is whether the Appellant has made a case for setting aside of the Tribunal's orders given on April 5, 2023.
  6. It must be stated that the Court has taken note that the prayers sought in this application mirror the exact prayers sought in the substantive appeal and it would not be justified to grant the same at this stage. It is only prudent that the said prayers be considered after the Appeal has been heard and determined on merit.
  7. For the foregoing reasons, I find that the application dated August 3, 2023 is unmerited and the same is hereby dismissed with an order that costs of the application shall abide the outcome of the main appeal.
  8. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9<sup>TH</sup> DAY OF NOVEMBER, 2023.**

**E.K. WABWOTO**

**JUDGE**

In the presence of;

Ms. Tanui for the Applicant/Appellant.

Ms. Jematia h/b for Ms. Ndalila for the 1<sup>st</sup> Respondent.



N/A for the 2<sup>nd</sup> Respondent.

