



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI

ELC SUIT NO. 60 OF 2020

ZOA LIMITED.....PLAINTIFF

=VERSUS=

ARVIND MANI.....1ST DEFENDANT

NAIROBI CITY COUNTY.....2ND DEFENDANT

NATIONAL ENVIRONMENT

MANAGEMENT AUTHORITY.....3RD DEFENDANT

RULING

1. The Plaintiff / Applicant filed a Notice of Motion dated 20th April 2020 in which it sought an injunction against the 1st Defendant/Respondent restraining him or his workers from continuing with construction on LR No.7158/447 . The Applicant is the registered owner of LR No.7158/81 which is adjacent to the property owned by the 1st Respondent.
2. The Applicant moved to court and filed a suit against the 1st Respondent and the Nairobi City County and National Environment Management Authority (NEMA) alleging that the 1st Respondent had not obtained all the requisite approvals and licenses to start construction.
3. The 1st Respondent entered into a consent with the Applicant which consent stated that the 1st Respondent was to stop construction until he obtained all the requisite approvals and licences . The 1st Respondent even paid throw away costs of Kshs. 261,000/= to the Applicant.
4. After the 1st Respondent obtained all the approvals and permissions, he continued with the construction. The consent which was meant to be adopted as the order of the court was never adopted as the Applicant's Advocate insisted on being shown the approvals which were obtained before they could agree to have it adopted as an order of the court.
5. The Applicant contends that the 1st Respondent did not obtain the requisite approvals and that even if the approvals were obtained, the same were obtained after the Applicant had filed the application for injunction and that the approval for construction by Nairobi City County did not follow the factors which were supposed to be considered such as zoning regulations in the area. It is on this basis that the Applicant wants an injunction stopping the construction which it alleges is being done at an alarming high speed.
6. The 1st Respondent opposed the Applicant's application arguing that he had obtained approval from the Nairobi City County in December 2019 and that when this suit was filed together with the present application, a consent was entered into in which the 1st Respondent agreed to stop construction until he obtained all the approvals which were required. The 1st Respondent states that following the consent, he obtained approval from NEMA and National Construction Authority and he continued with the construction.
7. The 1st Respondent argues that there was no need for applying for change of user as he was not constructing a house which required change of user. He stated that the application for change of user which had been made by the previous owner of the property was abandoned. He therefor argues that the Applicant's application is made in bad faith without material disclosure.
8. The 1st Respondent contends that contrary to the allegation by the Applicant that he is constructing single units (maisonettes and bungalows), he is actually constructing a residential one family house as confirmed by the approval from Nairobi City County and the signage at the construction site.

9. I have carefully considered the Applicant's application as well as the opposition thereto by the 1st Respondent. I have also considered the submissions filed by the two parties who took part in this application. The only issue for determination is whether the Applicant has demonstrated a prima facie case to warrant issuance of an injunction.

10. It is clear from the pleadings that the Applicant was complaining about failure by the 1st Respondent to obtain all the requisite approvals and permissions before commencing construction. Before this application was filed, the 1st Respondent had obtained approval from the Nairobi City County to undertake construction in December 2019. When this application was filed, the 1st Respondent and the Applicant reached a consent whereby the 1st Respondent stopped constructing until he obtained all the approvals.

11. It is clear that pursuant to the consent, the 1st Respondent obtained the approval from NEMA and the National Construction Authority. After this, he continued with his construction. Judicial Review proceedings in JR Application No.150 of 2016 quashed the grant of change of user which had been granted by Nairobi City County and ordered a fresh approval in accordance with the law. The 1st Respondent stated that the change of user which had been applied for by the previous owner of the property was abandoned. This is why he was granted approval in 2019 for construction of a single dwelling house.

12. As the 1st Respondent obtained all the requisite approvals, there is no basis upon which this court can stop the construction. It is true that the 1st Respondent commenced construction without obtaining all the approvals. He subsequently obtained the same and the only risk open to a person who commences construction without first obtaining development permission is a fine not exceeding 500,000/=or imprisonment for 2 months or both upon conviction. See section 57 of the Physical and Land Use Planning Act. If the authorities did not bring any charges against the 1st Respondent for flouting this section, it is not for this court to do so as the duty of this court is to address issues of a civil nature.

13. Whether the 2nd and 3rd Respondents applied the necessary criteria before granting approvals is not for this court to address at this stage and in any case, if the Applicant was dissatisfied with the grant of the approvals and licences, it was free to ventilate its grievances before the National Environment Tribunal and County Physical and Land Use Planning Liaison Committee as provided for under the Physical and Land Use Planning Act. This was the reasoning in **Deepak Harakch & another Vs Anmol Limited & 4 others (2018) e KLR** where Justice Eboso declined to grant an injunction where the Applicants had not exhausted the mechanisms under the then Physical Planning Act (Now repealed).

14. It is therefore clear that the Applicant's application lacks merit. the same is hereby dismissed with costs to the Respondent.

It is so ordered.

Dated, Signed and Delivered at Nairobi on this 15th day of October 2020.

E.O.OBAGA

JUDGE

In the Virtual Presence of :-

M/s Sadia for Applicant

Mr Shah for 1st Defendant/Respondent

Court Assistant: Hilda

E.O.OBAGA

JUDGE