



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC 1147 OF 2015

EMROSE ACADEMY LTD.....PLAINTIFF/APPLICANT

=VERSUS=

DIRECTOR OF SURVEYS & 4 OTHERS.....DEFENDANTS/RESPONDENTS

RULING

1. This is a ruling in respect of a Notice of Motion dated 29th June 2017. The application which is brought by the Plaintiff/Applicant seeks stay of proceedings in this case pending hearing and determination of an appeal against a ruling delivered on 6th April 2017.
2. The applicant had filed an application in which it sought orders of injunction against the respondents herein. This application was dismissed on 6th April 2017. The applicant has now moved the court under the present application seeking to stay proceedings in this case. The applicant contends that it has preferred an appeal against the ruling and if stay of proceedings is not granted, the appeal will be rendered nugatory.
3. The applicant's application is opposed by the third respondent through a replying affidavit sworn on 27th November 2017. The third respondent contends that the reason which informed the dismissal of the applicant's application dated 9th November 2015 was that the entire suit as well as the application were found to be sub-judice. The third respondent therefore argues that the import of the ruling dismissing that application was that the entire suit stood dismissed and as such there are no proceedings to be stayed. The application by the applicant is therefore frivolous, vexatious and an abuse of the process of the court.
4. I have considered the applicant's application as well as the opposition to the same by the third respondent. I have also considered the submissions by the parties herein. The only issue for determination in this suit is whether the proceedings herein should be stayed or not. The application dated 9th November 2015 which is now the subject of appeal was not decided on the basis of the principle of subjudice or res-judicata. It was decided on the basis that the court could not give orders in vain and besides this the applicant had not demonstrated any prima facie case with probability of success. The application was also dismissed on the grounds that no title could be ordered revoked at interlocutory stage.
5. The applicant is claiming that if proceedings herein are not stayed, the appeal which it has preferred will be rendered nugatory. The applicant's suit seeks orders of revocation of titles held by the third respondent. What was dismissed is an application for temporary injunction. The appeal will not be rendered nugatory if these proceedings are not stayed. If the court of appeal sets aside this court's ruling and grants injunctive reliefs as the case goes on, this will be in favour of the applicant and would not have

any negative impact on the case. The argument that the appeal will be rendered nugatory does not therefore arise. If the applicant makes out a case for revocation of titles in the main hearing, this will still not render its intended appeal nugatory. I therefore find that the applicant's application lacks merit. The same is hereby dismissed with costs to the third respondent.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 28th day of June 2018.

E.O.OBAGA

JUDGE

In the presence of :-

Mr Abdullahi for Mr Njenga for applicant

Mr Ayieko for respondent for 3rd respondent

Ms Suna for M/s Omesa for 4th respondent

Court Clerk: Hilda

E.O.OBAGA

JUDGE