



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C. MISCELLANEOUS APPLICATION NO. 88 OF 2017

IN THE MATTER OF: ARTICLE 40 OF THE CONSTITUTION ON THE PROTECTION OF THE RIGHT TO PROPERTY;

IN THE MATTER OF: ARTICLE 42 OF THE CONSTITUTION ON THE PROTECTION OF THE RIGHT TO A CLEAN AND HEALTHY ENVIRONMENT; AND

IN THE MATTER OF: ENFORCEMENT NOTICE UNDER THE PHYSICAL PLANNING ACT IN RESPECT OF STRUCTURES ERECTED ON L. R. NO. 9104/226.

BETWEEN

LINDA TELLES.....APPLICANT

AND

THE DIRECTOR OF PLANNING, COMPLIANCE AND ENFORCEMENT,

THE NAIROBI COUNTY GOVERNMENT.....RESPONDENT

WALTER KUONI.....1ST INTERESTED PARTY

ELENA KUONI.....2ND INTERESTED PARTY

GEORGE ROBINSON ORR.....3RD INTERESTED PARTY

NATIONAL ENVIRONMENT

MANAGEMENT AUTHORITY (NEMA).....4TH INTERESTED PARTY

NATIONAL CONSTRUCTION AUTHORITY...5TH INTERESTED PARTY

RULING

The Applicant filed the application dated 26/3/2018 seeking to have the court stay execution of orders 1 and 2 which were among the eight orders this court dismissed on 12/3/2018, pending appeal. Orders 1 and 2 sought the demolition of the 1st and 2nd Interested Parties' guard house and the main house comprising an eight bedroom maisonette on three levels.

The application is premised on the grounds that the court declined to grant the eight orders sought by Applicant which included those seeking the demolition of the 1st and 2nd Respondents' guardhouse and house yet the Applicant contends that the construction violated the Nairobi Development by-laws and will introduce a significant level of insecurity in the area once completed.

The Applicant depones in the supporting affidavit that the construction of the 1st and 2nd Respondents' guardhouse is in close proximity to her boundary wall and will compromise her personal safety and security. She also contends that the construction violates the physical planning laws.

The 1st Respondent swore the Replying Affidavit in opposition to the application for stay of execution. He maintains that the application lacks merit and that the Applicant has not shown that her appeal will be rendered nugatory if the stay is not granted. The 1st Respondent

tabulated the expenses he incurred and loss he suffered during the nine months when the Applicant obtained stay of further construction until this suit was heard and determined.

Parties filed submissions which the court has considered. To grant an order of stay, the court must be satisfied that substantial loss may result unless the order is made and that the application was made without unreasonable delay. The Applicant must also furnish security for the due performance of the decree. The Applicant made the application without delay. There was no positive order granted by this court which is capable of being stayed. The court is not satisfied that the Applicant will suffer substantial loss if the court does not grant the orders she seeks. If her appeal succeeds, the 1st and 2nd Respondents' guardhouse and dwelling house being developed on their property would be demolished.

The application dated 26/3/2018 lacks merit. It is dismissed with costs to the 1st, 2nd, 4th and 5th Interested Parties.

Dated and delivered at Nairobi this 30th day of August 2018.

K. BOR

JUDGE

In the presence of: -

Dr. Khaminwa for the Applicant

Ms. Effendy for the 1st and 2nd Interested Parties

Ms. Ogolla for the 5th Interested Party

No appearance for the Respondent, 3rd and 4th Interested Parties

Mr. V. Owuor- Court Assistant