

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC PETITION NO. 10 OF 2017

(Formerly Constitutional Petition No. 31 of 2012)

IN THE MATTER OF: ARTICLE 22 OF THE CONSTITUTION OF KENYA, 2010

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF THE BILL OF RIGHTS UNDER ARTICLES 10, 19, 20, 22, 23, 40, 64,
165 AND 258 OF THE CONSTITUTION OF KENYA 2010**

BETWEEN

KENYA URBAN ROADS AUTHORITY.....1ST PETITIONER/RESPONDENT

THE MINISTER FOR ROADS.....2ND PETITIONER/RESPONDENT

VERSUS

KISAUNI BRIDGE LIMITED.....RESPONDENT/APPLICANT

RULING

1. For determination is the notice of motion dated 10th January 2018 seeking for orders, that the Court be pleased to stay the proceedings herein pending the hearing and determination of the intended appeal to the Court of appeal. The reason for seeking stay of proceedings is premised on the fact that the Respondent/Applicant holds the opinion that the Environment and Land Court does not have jurisdiction to hear and determine the petition. The applicant submit that it has already filed a notice of appeal against the order which transferred the petition to this Court.

2. The petitioners have opposed the application vide their grounds of opposition dated 23.2.2018 and 27th February 2018. One of the grounds state that the applicant has not demonstrated why they are uncomfortable to proceed in the Environment and Land Court which Court is clothed with jurisdiction to hear land matters. Secondly that the petition is of public importance and any delay affects the public at large. That this is an old matter that should be expeditiously determined.

3. The order transferring the petition to this Court was made on 5th October 2017. The present application was filed on 10.1.2018 which is approximately 3 months from the date of the order being appealed against. Taking into consideration that there is Christmas break in between the 3 months, the present application was brought without undue delay.

4. It is a principle of law that a Court should down its tools where it finds that it has no jurisdiction. That in instances where proceedings are done without jurisdiction, the same are null and void ab initio. Consequently before this matter can proceed for determination on merits, it is imperative that the issue of jurisdiction raised by the applicant be resolved. Declaration of the proceedings as null and void in my view amounts to substantial loss as judicial time would have been wasted as well as the parties' time and attendant legal expenses. For this reason I find the application meets the threshold set under order 42 rule 6 for stay of execution.

5. Mr Nguyo Wachira in opposing the application asked the Court in the alternative to qualify the orders of stay being given the public interest involved as well the age of the case. I find his submissions reasonable in the circumstances. Consequently I do allow the application by issuing an order staying the proceedings subject to the applicant taking steps in ensuring the record of appeal to the Court of Appeal is prepared, filed and served within a period of 90 days of this ruling. In default, the order of stay shall lapse. I make an order that each party bears their costs of the application.

Dated, signed & delivered at Mombasa this 18th September 2018

A. OMOLLO

JUDGE