



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC CASE NO.115 of 2015

MUTHAIGA NORTH RESIDENT'S ASSOCIATION.....PETITIONER

=VERSUS=

NYARI HOUSE LIMITED.....RESPONDENT

AND

THE NATIONAL LAND COMMISSION.....1ST INTERESTED PARTY

THE NATIONAL ENVIRONMENTAL

MANAGEMENT AUTHORITY.....2ND INTERESTED PARTY

RULING

1. This is a ruling in respect of a Notice of Motion dated 2nd February 2018. The application which is brought by the Respondent/Applicant seeks stay of proceedings pending appeal against the order of Court made on 15th January 2018. The Petitioner/Respondent had filed a Constitutional Petition against the applicant in which it sought conservatory orders pending hearing of the petition.
2. The interlocutory application which had been filed together with the petition was heard and in a ruling delivered on 25th April 2017, the application was allowed. The applicant filed an application seeking review of the orders granted on 25th April 2017. This application was dismissed on 15th January, 2018. It is against the ruling of 15th January 2018 that the applicant has moved to the Court of Appeal. The applicant has now come to this Court seeking stay of proceedings pending the hearing and determination of the Appeal against the order of 15th January 2018.
3. The applicant contends that if stay of proceedings is not granted, the appeal will be rendered nugatory.
4. The applicant's application is opposed based on grounds of opposition dated 26th February 2018. The Respondent contends that the application has no merit and that applicant has failed to demonstrate how the appeal will be rendered nugatory should proceedings not be stayed. The respondent further urges that the petition should be heard expeditiously.
5. I have considered the applicant's application as well as the opposition to the same by the respondent. I have also considered the written submissions filed by the parties herein. The only issue for determination is whether the applicant has demonstrated that there should be stay of proceedings in this case as the applicant pursues its appeal.
6. It is important to be clear from the beginning that in this case, we are dealing with stay of proceedings and not stay of execution. The decisions cited which were based on stay of execution are therefore not applicable in this case. In considering whether to grant stay of proceedings or not, I find the guiding principles as set out in the case of **Global Tours & Travels Ltd, Nairobi HC winding up cause No 43 of 2000** to be useful. Ringera J as he then was had this to say:-

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of justice.....the sole question is whether it is in the interest of justice to order a stay of proceedings and it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal; in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of

judicial time and whether the application has been brought expeditiously”.

7. In the instant case, the applicant is seeking stay of proceedings pending appeal from a decision of this court refusing to grant a review which if successful would have set aside the conservatory orders which were granted on 25th April 2017. Even if the court were to decline to stay these proceedings, that action would not render the appeal nugatory. If the court of appeal was to set aside the order of 15th January 2018, it will mean that the conservatory order granted on 25th April 2017 would be vacated. This would then mean that the petition would still be there to be heard.

8. There is absolutely no ground shown why the proceedings herein should be stayed. As I have demonstrated in paragraph 7 hereinabove the appeal by the applicant will not be rendered nugatory. This petition was filed in 2015. It should not be put in limbo just because there is an appeal which appeal will not prejudice the hearing of the main petition. I therefore find no merit in this application which is hereby dismissed with costs to the respondent.

It is so ordered.

Dated, Signed and delivered at *Nairobi* on this 26th day of November, 2018

E.O.OBAGA

JUDGE

In the presence of:

M/s Njagi for Mr Njega for Respondent: Present

Court Assistant: Hilda

E.O.OBAGA

JUDGE