



**Tatu City Limited v Home Bridge Limited (Civil Application E511 of 2024) [2025] KECA 64 (KLR) (24 January 2025) (Ruling)**

Neutral citation: [2025] KECA 64 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E511 OF 2024  
SG KAIRU, F TUIYOTT & P NYAMWEYA, JJA  
JANUARY 24, 2025**

**BETWEEN**

**TATU CITY LIMITED ..... APPLICANT**

**AND**

**HOME BRIDGE LIMITED ..... RESPONDENT**

*(An application for stay of execution of the Ruling of the Environment and Land Court (G. Kemei J.) delivered on 30th September 2024 in ELC Case No. E046 of 2023)*

**RULING**

1. Tatu City Limited is seeking a stay of proceedings of the Environment and Land Court (ELC) at Thika in ELC Case No. E046 of 2023, and an order restraining Home Bridge Limited (hereinafter “Home Bridge”) from constructing on and developing the property known as Unit Number L4-02 being a portion of Precinct 4B-2 within LR No 28867/1 (hereinafter “the suit property”), pending the hearing and determination of its intended appeal against a ruling delivered by the ELC (G. Kemei J.) on 30<sup>th</sup> September 2024. The said prayers are in an application dated 9<sup>th</sup> October 2024 lodged in this Court by Tatu City Limited, which is supported by an affidavit sworn on even date by Perminas Marisi, its Senior Manager.
2. The main grounds for the application are that the learned Judge of the ELC misapplied the law and facts in holding that Tatu City’s application did not satisfy the test for grant of an interim injunction and effectively granted Home Bridge permission to resume construction on the suit property with no regard to Tatu City’s development control regulations. Reference was made to Tatu City’s draft memorandum of appeal, and Tatu City asserts that its appeal would be rendered nugatory if the orders sought are not granted, as construction is ongoing on the suit property without the required approvals and the appeal will be a mere academic exercise if the orders sought are not granted, since Home Bridge will have completed construction by the time the appeal is heard and determined. Further,



the unauthorized construction will be irreversible should the Court decline to issue an order staying execution and allow Home Bridge to complete the construction.

3. The application is opposed by Home Bridge, who, in a replying affidavit sworn on 16<sup>th</sup> October 2024 by its director Peter Karoki, averred that the ruling of 30<sup>th</sup> September 2024 by the ELC was on two applications. The first application by Tatu City, dated 4<sup>th</sup> October 2023, sought inter alia injunction orders restraining Home Bridge from developing the suit property; while the second application dated 8<sup>th</sup> December 2023 was filed by Home Bridge, and sought an order to set aside the interim ex parte orders issued by the ELC on 12<sup>th</sup> October 2023 on the grounds that the said orders were obtained irregularly and without full disclosure of material facts.
4. Home Bridge stated that Tatu City, by only making reference to their application, presented a skewed narrative with the intent of misleading this Court that the impugned ruling was only in respect of the injunction application, whereas the issue of its material non-disclosure that it participated in the approval process raised in the application by Home Bridge weighed heavily in ELC's decision to dismiss the injunction application. Therefore, that the assertion by Tatu City that Home Bridge had not obtained the requisite development permission was a deliberate attempt to mislead the Court and was not only factually incorrect, but also intended to frustrate Home Bridge's lawful development rather than address any genuine or legitimate claims. Home Bridge averred in this respect that they held a valid development approval issued by the Cabinet Secretary, Ministry of Lands, Housing and Urban Development in accordance with the *Physical and Land Use Planning Act* and the Physical and Land Use Planning (Development Control for Strategic National Projects) Regulations, 2021.
5. The context of the respective cases by Tatu City and Home Bridge are set out in their affidavits. On the part of Tatu City, it claims to be the proprietor of the parcels of land known as L.R. No. 28867/1 together with L.R.No. 31327 in Kiambu County (jointly referred to as Tatu City), which were declared as a Special Economic Zone by Gazette Notice 4892 which was published on 22<sup>nd</sup> May 2017 by the Cabinet Secretary for Industry, Trade and Cooperatives. Further, that Tatu City was designated a Special Planning Area under section 23 (1) of the Physical Planning Act (since repealed) by Gazette Notice No. 4975 published on 7<sup>th</sup> June 2019 to facilitate the realization of Tatu City as a Special Economic Zone. Upon designation as a Special Planning Area, the Applicant prepared a Local Physical Development Plan (LPDP) which provided for an extensive framework for mixed use development that included low, medium and high density residential, commercial, light industrial, public purpose and well developed infrastructure.
6. It is Tatu City's case that arising from the designation as a Special Planning Area, any building or structure erected in the area was to be strictly in accordance with the development codes applicable within Tatu City, and the building plans submitted and approved in writing by the proponents of Tatu City Development. Further, Tatu City was divided onto several precincts, as a reflection of the planning zones created to accommodate industrial, commercial, residential and mixed use development which were put up for sale. Accordingly, on 22<sup>nd</sup> August 2016, Tatu City entered into a lease agreement with Home Bridge in respect of the property known as Unit Number L4-02 measuring 20 acres, being a portion of Precinct 4B-2, which was purchased with the intention of developing a housing project comprising of apartments and town houses together with a commercial centre.
7. Tatu City made reference to various clauses of the lease, which it averred required Home Bridge to comply with the conditions and restrictions in the Master Declaration of Covenant, Conditions and Restrictions for Tatu City which was validated by the Ministry of Lands on 19<sup>th</sup> October 2021, including the terms of the Structure and Precinct Plans, the Environment Management Plan and the Planning Standards of Tatu City. Further, that Home Bridge was under an obligation to first



obtain approval from Tatu City's Development Control Company before obtaining any development permission under the Physical Land Use Planning Act, since the area was a Special Planning Area where Tatu City provided shared infrastructure such as roads, sewer, electricity which was to be utilized in a responsible, environmentally conscious and sustainable manner. However, that Home Bridge, without obtaining the necessary approvals from Tatu City, commenced construction on the suit property after obtaining conditional approval from the Ministry of Lands, Public Works, Housing and Physical Planning on 20<sup>th</sup> March 2023, and therefore failed to comply with the terms of the lease. Tatu City asserted that the Ministry's approval was subject to strict compliance by Home Bridge of its planning, building, and development regulations and control protocols.

8. Home Bridge on its part asserts that the approval was granted following a consultative process in which Tatu City, among other stakeholders, provided their views and recommendation, and the approval remains in force and had not been set aside, and it was misleading to claim that it was proceedings with an unlawful development. Home Bridge averred that it secured a loan facility of Kshs 320,000,000/- from Kenya Commercial Bank to finance the acquisition of two parcels of land within Tatu City namely Unit Number L4-01 measuring 10 acres and Unit number L4-02 measuring 20 acres in Land Reference Number 28867/1, for the sole purpose of development of a high density residential housing project comprising of apartments and town houses with a commercial centre.
9. As such from the onset, Tatu City was fully aware of the nature and the extent of developments Home Bridge intended to undertake on the suit property, and that it submitted building plans for the entire precinct to Tatu City's Development Control Committee (DCC) for approval as provided under the lease agreement as read together with the Master Declaration. Further, that the DCC, by a letter dated 15<sup>th</sup> November 2016, approved the construction of the proposed apartment units on both Unit L4-01 and Unit L4-02, which plans were also approved by the County Government of Kiambu. Home Bridge thereupon commenced phase 1 of the development on Unit L4-01 and part of L4-02, which project was financed through additional loan facilities of Kshs 2.4 Billion from the Kenya Commercial Bank. Home Bridge averred that phase 1 of the development consisting of 562 apartments is fully completed and all units sold to third parties, and the apartments were now fully occupied.
10. According to Home Bridge, after Tatu City was gazetted as a Special Economic Zone under the [Special Economic Zones Act](#) in 2017, among the areas affected by this change was the approval process of the building plans, specifically, developers within Tatu City, who were required to seek final approval of the building plans from the Ministry of Lands, Housing and Urban Development under the National Director of Physical Planning. In order to assist in streamlining the building approval process, pursuant to Gazette Notice No. 4975 dated 30<sup>th</sup> May 2019, Tatu City was required to formulate harmonized building standards and guidelines to provide a single reference framework for developers and regulatory agencies with regards to development control. Additionally, Tatu City was required to liaise with the Special Economic Zone Authority to establish a one stop shop within Tatu City to facilitate the processing and issuance of development and construction permits and certificate of occupancy.
11. However, that Tatu City did not establish the one stop shop as required under the Special Economic Zone Act or formulate the harmonized building guidelines as contemplated in the Gazette Notice, and instead, unilaterally amended the Master Declaration by formulating multiple development guidelines and policies as evidenced in the Deed of Variation and Restatement of the Master Declaration and Covenants Conditions and Condition's dated 1<sup>st</sup> November 2021, and established a private entity known as the Development Control Company (DCC) and gave it the mandate that ought to have been carried out by the 'one stop shop'. In addition, that in July 2022, Home Bridge was desirous of commencing the development of Phase 2 on Parcel L4-02 which mirrored Phase 1 of the development



- in all material aspects, and submitted building plans to the DCC for approval and over the course of nearly six (6) months its team of professionals including architects, engineers and lawyers engaged extensively with the DCC in reviewing the building plans. Despite these engagements Home Bridge submitting revised drawings that incorporated the amendments discussed in the various meetings, the DCC adamantly decline to grant approval. Instead, the DCC insisted that Home Bridge must merge the two parcels L4-01 and L4-02 before approval could be considered, which requirement Home Bridge successfully challenged after seeking advice from the Ministry; and the DCC thereafter introduced an entirely new and unreasonable demand not set out in the approval protocols, namely that Home Bridge should pay Kshs 46,957,567.11 as a condition for review and grant of approval.
12. With the new demand, it became evident to Home Bridge that the DCC was determined to obstruct the approval process and that on 19<sup>th</sup> and 28<sup>th</sup> January 2023, it submitted the architectural, civil and structural drawings that had been reviewed by the DCC to the National Director of Physical Planning for review in accordance with the Regulations. Following a comprehensive review process involving input from among others, Tatu City through the DCC, the Ministry proceeded to grant approval by a letter dated 20<sup>th</sup> March 2023, Reference No. NSP/5/49/2023/163. After approval by the Ministry, Home Bridge avers that it engaged a contractor to commence development at a contract sum of Kshs 4,612,858,600.00 and secured a loan of Kshs 970,000,000.00/- from Kenya Commercial Bank for the construction of the first 248 apartments. The works continued in full sight of the Tatu City from May 2023 until 13<sup>th</sup> October 2023 when Home Bridge was served with an order stopping further construction on its property, and that after the injunction order was lifted by the ELC on 30<sup>th</sup> September 2024, the Respondent mobilized the contractor and equipment to the site, and excavation works were ongoing.
  13. The above averments were reiterated by the parties' advocates at the hearing of the application, which was held on this Court's virtual platform on 17<sup>th</sup> December 2024. Learned Senior Counsel Mr. Ahmednadir Abdullahi appeared for Tatu City, while learned Senior Counsel Mr. Kamau Karori, appeared for Home Bridge. The Senior Counsel highlighted their respective written submissions dated 31<sup>st</sup> October 2024 and 8<sup>th</sup> November 2024 during the hearing. In commencing our determination, we are mindful of principles that guide the grant of a stay under Rule 5(2)(b) of the Court of Appeal Rules. These principles, which are well established by various decisions of the Court, are that an applicant has to demonstrate that the appeal is arguable, and, that if the stay sought is not granted, the appeal or the intended appeal, as the case may be, will be rendered nugatory (see Stanley Kangethe Kinyanjui vs. Tony Keter & 5 Others [2013] eKLR).
  14. By the term "arguable", it is not meant an appeal or an intended appeal that will succeed, but one which raises a bona fide issue worth of consideration by the Court (see Kenya Tea Growers Association & Another vs Kenya Planters Agricultural Workers Union, Civil Application No. Nai. 72 of 2011 UR). The appeal need not raise a multiplicity or any number of such points, and demonstration of one arguable point will suffice (see Kenya Railways Corporation vs Ederman Properties Ltd Civil Appeal No.Nai. 176 of 2012). As for the second requirement, an appeal or intended appeal is said to be rendered nugatory where the resulting effect is likely to be irreversible or, if it is not reversible, whether damages will reasonably compensate the party aggrieved (see Stanley Kangethe Kinyanjui vs Tony Keter & 5 others Civil (supra)). Both limbs must be demonstrated before a party can obtain a relief under rule 5(2) (b) (see Republic vs Kenya Anti- Corruption Commission & 2 others (2009) KLR 31; Reliance Bank Ltd vs Norlake investments Ltd (2002) I EA 227; and Githunguri vs Jimba Credit Corporation No (2) (1988) KLR 838).
  15. On the arguability of the appeal, SC Ahmednadir Abdullahi urged that the learned ELC Judge failed to recognize that the Ministry's approval was conditional on strict compliance by Home Bridge with



the Physical Planning Regulations and Standards of Tatu City, and misapplied the law on the grant of injunctions when she found that Tatu City had not satisfied the Court on the existence of a prima facie case. Senior Counsel submitted that a prima facie case was demonstrable by the undisputed conditions and restrictions in the Master Declaration of Covenants, Conditions and Restrictions for Tatu City, which the Respondent was contractually obligated to comply with under the terms of its lease, as Tatu City having been designated as a Special Planning Area, was to provide an extensive framework for a comprehensive mixed-use development in the designated area.

16. In reply, Kamau Karori SC submitted that the intended Appeal did not raise any bona fide arguable grounds of appeal for the reason that: the Respondent commenced construction after seeking and obtaining approval from the Ministry of Lands Housing and Urban Development on 20<sup>th</sup> March 2023 which was still valid and in effect; the Ministry and not DCC was the final approving authority; the Ministry's approval was issued after seeking and obtaining comments from all stakeholders including Tatu City; the sufficiency or otherwise of the Ministry's approval and whether it was subject to further approval by the DCC was yet to be determined by the trial Court and could therefore not be determined in an interlocutory appeal; in any event, Home Bridge was required to complete construction within sixty (60) months from the date of approval by the Ministry and lastly, Tatu City had not explained or shown any legitimate ground for seeking a stay of proceedings in the ELC.
17. We have considered the pleadings and legal arguments made by both parties. It is not disputed that Tatu City filed a Notice of Appeal dated 1<sup>st</sup> October 2024 against the impugned ruling. We have also perused the draft memorandum of appeal annexed by Tatu City, wherein thirteen grounds have been raised as follows:
  1. The Learned Judge erred in law and in fact by failing to properly consider that the Appellant has established a prima facie with a high likelihood of success. The Learned Judge misapplied the law by failing to recognize that the Appellant had not given its approval to the Respondent and that the Respondent had not complied with the regulations as set out in the Physical Planning standards specifically in accordance with the Building Plans of Tatu City which have been submitted to and approved of writing firstly the Development Control Company and thereafter by the relevant local authorities
  2. The Learned Judge misapplied the facts of the case when the Court held that the Appellant had delayed in filing the suit for a period of close to seven (7) months. The Court ignores the fact that the Ministry's approval was conditional on the Respondent obtaining approval from the Appellant which it failed to do till date. The Court failed to appreciate that the period it cited was to allow the Respondent to obtain the necessary approvals from the Appellant as set out in the Ministry's conditional approval.
  3. The Learned Judge erred in law and fact by failing to consider the irreparable harm likely to be suffered by the Appellant due to the ongoing unvetted and unapproved construction on the suit property which may have a direct impact on the other lessees and the shared infrastructure in Tatu City. The Learned Judge failed to appreciate that the Physical Planning Regulations and Standard of Tatu City were put in place as the Development in Tatu City have a direct impact on other lessees and the shared infrastructure in Tatu City.
  4. The Learned Judge failed to appreciate the facts of the case by failing to consider the irreparable harm that the Appellant would suffer as a result of the non-compliance by the Respondent who commenced construction on the suit property without complying with the Appellant's condition. Restriction and Plans and the damage that the development would cause as the



same would not be compliant with the Environmental Management Plan in accordance with Clause 6.2 of the Lease.

5. The Learned Judge was misguided in fact and law by failing to consider the balance of convenience and the gross ramification of the Respondent's irregular construction without requisite approvals. The Learned Judge tilted the balance of convenience towards the Respondent even after the Appellant fully established how the blatant failure to comply with the Appellant's development approvals continues to affect the integrity of the Planning area and further the other lessees in the shared areas.
6. The Learned Judge erred in law and fact by holding that the Appellant had not met the required legal threshold for the grant of a temporary injunction, notwithstanding the evidence provided that the Respondent had commenced construction on the suit property without the required development approval from the Appellant.
7. The Learned Judge committed a grave misapplication of the law when she lifted the ex parte orders issued on 12<sup>th</sup> October despite the sufficient evidence provided where the Respondent had commenced construction on the suit property without the required development approvals from the Appellant.
8. The Learned Judge misguided herself and erred in law and in fact by failing to appreciate the contractual basis of the requirement for the Respondent to obtain the development approvals from the Appellant prior to commencing construction on the property.
9. The Learned Judge failed to appreciate Clause 6.7.4 of the Lease agreement between the Appellant and the Respondent which provided that any building that was to be erected on Tatu City shall be erected strictly in compliance with the Physical Planning Standards specifically in accordance with Building plans which had been submitted to and approved of in writing by the Development Control Company and thereafter by the relevant County Government, Local Authority and any other competent authority. The Respondent's disregard for this obligation should have been a critical factor in the Court's decision.
10. The Learned Judge erred in law and fact in failing to appreciate the covenant set by the Appellant and ratified by the Respondent in prospect of the Specific development approvals for development on the Special Planning Area. This is a derogatory opinion by the Learned Judge in respect of an agreement that is yet to be varied or discharge by the either party. The Learned Judge failed to fully appreciate the legal obligation of the agreement with the specific binding requirement as to the development permissions.
11. The Learned Judge erred in finding that the Appellant failed to establish that the Ministry's approval from the Appellant came first before the approval from the Ministry. The Lease was categorical that upon designation of Tatu City as a Special Planning Area, the Respondent was under obligation to first obtain approvals from the Appellant's Development Control Company before obtaining approval from the Ministry.
12. The Learned Judge misapplied the evidence before her in holding that the Ministry's approval was enough for the Respondent to commence construction the suit property. the Learned Judge failed to appreciate that the development approval granted by the Ministry of Lands, Public Works and Physical Planning was unequivocal and categorical that it was conditional on the Respondent's strict compliance with the Physical Planning Regulations and Standards of Tatu City which the Respondent had not complied with.



13. The Learned Judge misguided and misdirected herself on fundamental points of law, particularly in relation to the Requirement for obtaining developments approval and the established principles governing temporary injunctions. The Ruling and the Orders issued on 30<sup>th</sup> September 2024 are plainly wrong when juxtapose against the factual matrix of the matter and as such, they ought to be set aside.
18. In answering the question whether the intended appeal arguable, we are persuaded by the holding in *National Industrial Credit Bank Ltd vs. Aquinas Francis Wasike; Lantech Ltd* [2006] eKLR that:

“It is to be remembered that in an application such as this the grounds are not to be argued; all an applicant is required to do is to point out to the Court the ground or grounds which he believes are arguable and leave it to the Court to decide on the issue of whether or not the matters raised are arguable.”
19. From the pleadings placed before the Court, we are satisfied that the intended appeal is arguable, arising from the contestation on the propriety of the findings by the ELC on the approvals required with respect to the developments being carried out by Home Bridge. We need not say more least we embarrass the bench that will eventually be tasked with hearing the intended appeal.
20. Will the intended appeal be rendered nugatory if the stay is not granted? Tatu City’s primary contention is that Home Bridge will proceed to construct unapproved, unplanned and unvetted structures on a Special Planning Area. Further, that the construction does not only entail the building of the units alone, but it also entails infrastructure such as storm water drainage, water connection, sewerage connection and such other amenities which if Home Bridge is allowed to build “haphazardly”, will occasion damage with far reaching consequences and irreparable injury to the rest of Tatu City development. The decisions in *David Morton Silverstein vs Atsango Chesoni*, Civil Application No. Nai 189 of 2009 and *Equity Bank Limited vs West Link Mbo Limited*, Civil Application No. Nai 78 of 2011 were cited by Senior Counsel in support of this submission.
21. In opposition, Kamau Karori SC submitted that that save for making allegations that the intended development will devalue Tatu City and pose environmental risks, no material has been placed before this Court to show how the development would lead to these consequences, and the claims are therefore speculative. Senior Counsel pointed out that phase 2 of Home Bridge’s development is identical in all aspects to the completed phase 1 and aligns fully with the agreed purpose and intent for the use of the suit property, and that the allegation that the development will result in irreversible damage to Tatu City is therefore baseless.
22. Senior Counsel also submitted on the extent of prejudice Home Bridge stands to suffer if a stay is granted, and in particular, that Home Bridge has cumulatively borrowed a sum of Kshs 2.4 billion to finance the project, and if the development is stopped, will be compelled to continue servicing the loan which will render the entire project not viable; it has already sold and continues to sell the units on an off-plan basis to third parties; it has engaged and entered into contracts with various professionals and the contractor involved in the development; and bought the suit property for the sole purpose of constructing high density residential apartments for sale. Therefore, that an order stopping the completion of the project or delaying its completion risks exposing Home Bridge to irreparable loss which cannot be compensated by way of damages. On the other hand, that Tatu City retains the right to supervise and oversee the entire development under the provisions of the Lease and Master Declaration and has built-in mechanisms to address any violations of development controls that may occur, and does not therefore stand to suffer any irreparable loss if the development is allowed to proceed.



23. In Stanley Kangethe Kinyanjui vs. Tony Keter & 5 Others [supra] the factors to be considered in determining whether an appeal would be rendered nugatory were outlined as follows:
- “ix) The term “nugatory” has to be given its full meaning. It does not only mean worthless, futile or invalid. It also means trifling. Reliance Bank Ltd vs. Norlake Investments Ltd [2002] 1 EA 227 at page 232.
  - x) Whether or not an appeal will be rendered nugatory depends on whether or not what is sought to be stayed if allowed to happen is reversible; or if it is not reversible whether damages will reasonably compensate the party aggrieved.”
24. A number of uncontested factors have persuaded us that the appeal by Tatu City will not be rendered nugatory, key being that it had previously approved an identical construction by Home Bridge; no evidence of the nature of irreversible damage that will be caused by the subject development was provided by Tatu City; the developments made by Home Bridge are reversible; there are third parties who will be affected by an order staying the developments; and the financial losses that are likely to be suffered by Home Bridge, for which Tatu City has not indicated that it is willing or able to compensate by way of damages. We are also not persuaded that the prejudice, if any, that will be suffered by Tatu City will be of a similar or greater magnitude.
25. In the circumstances, given that Tatu City has not demonstrated that its appeal will be rendered nugatory if the stay it seeks is not granted, we find that it has not met the threshold for grant of a stay of proceedings in ELC Case No. E046 of 2023, or of execution of the ruling of the ELC delivered therein on 30<sup>th</sup> September 2024. Its application dated 9<sup>th</sup> October 2024 is accordingly hereby dismissed with costs to Home Bridge.
26. Orders accordingly.

**DATED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF JANUARY, 2025**

**S. GATEMBU KAIRU, FCIArb**

.....

**JUDGE OF APPEAL**

**F. TUIYOTT**

.....

**JUDGE OF APPEAL**

**P. NYAMWEYA**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original,

Signed

**DEPUTY REGISTRAR.**

