



REPUBLIC OF KENYA



**KENYA LAW**  
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**G.E. Karachiwalla (Properties) Limited v National Land Commission & 8 others (Civil Application E062 of 2022) [2022] KECA 1298 (KLR) (2 December 2022) (Ruling)**

Neutral citation: [2022] KECA 1298 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT MOMBASA  
CIVIL APPLICATION E062 OF 2022  
SG KAIRU, JW LESSIT & GV ODUNGA, JJA  
DECEMBER 2, 2022**

**BETWEEN**

**G.E. KARACHIWALLA (PROPERTIES) LIMITED ..... APPLICANT**

**AND**

**NATIONAL LAND COMMISSION & 8 OTHERS ..... RESPONDENT**

*(An application for injunction pending the lodging and hearing of an intended appeal from the judgment and order of the Environment & Land Court at Kwale (Dena, J.) delivered on 1st July 2022 in ELC Constitutional Petition No. 17 of 2021)*

**RULING**

1. In its judgment delivered on July 1, 2022, the Environment and Land Court (ELC) (AE Dena, J) dismissed the applicant's constitutional petition No 17 of 2021 (originally Mombasa Constitutional petition No 14 of 2019) in which the applicant had sought, among other reliefs, declarations: that it is the registered proprietor of a property known as plot number 1041, West of Mombasa measuring 93 acres; that the respondents have no right to dispose or deal or interfere with that property; that any adjudication, subdivision or issuance of any titles with respect to that property to any third parties is null and void. Also sought was an order directing the respondents to exclude the said property from a scheme known as Tsunza settlement scheme.
2. Aggrieved by that judgment, on July 13, 2022, the applicant lodged a notice of appeal with the ELC dated July 12, 2022 on the basis of which it has moved this court, by an application dated September 26, 2022 and lodged on September 27, 2022 under rule 5(2)(b) of the [Court of Appeal Rules, 2022](#) seeking an order of injunction to restrain the respondents from including the said property in Tsunza settlement scheme or from carrying out any adjudication and interfering with the applicant's occupation, possession and use or dealing further in any manner with the property pending the determination of its intended appeal.



3. We heard the application on November 1, 2022 when learned counsel Mr F Anjarwalla virtually appeared before us on behalf of the applicant and highlighted his written submissions dated October 28, 2022. Although the respondents were served with notice of hearing, they did not appear during the hearing.
4. The principles that guide this court in its exercise of discretion in applications of this nature are settled. Counsel cited a number decisions of the court in that regard including *Stanley Kangethe Kinyanjui v Tony Ketter & 5 others* [2013] eKLR. According to counsel, the intended appeal is arguable and has high chances of success. He submitted that it will be demonstrated during the hearing of the appeal that despite demonstration by the applicant that its said property was illegally included in the Tsunza settlement scheme, the judge erred in holding otherwise. One arguable point is sufficient. We are persuaded that the intended appeal is not frivolous.
5. As to whether the intended appeal will be rendered nugatory unless we grant the order sought, it was submitted without contest that if the injunction is not granted, there is a risk that the respondents will proceed and continue to allocate the property or parts of it to third parties in which event the property will be out of reach of the applicant should the appeal ultimately succeed. There is, we think, merit in that argument.
6. We are therefore satisfied that this is a proper case for us to exercise the court’s discretion in favour of the applicant. Accordingly, we allow the application dated September 26, 2022 in terms of prayer 3 thereof and grant an order of injunction restraining the respondents from including the applicant’s property known as plot no. 1041, situated in the west of Mombasa comprising 93 acres and as delineated in deed plan number 1342 and being the premises comprised in an indenture of title dated November 10, 1964 in the Tsunza settlement scheme and from carrying out any adjudication and from interfering with the applicant’s occupation, possession and use or howsoever else in dealing further in any manner whatsoever with the said property pending the determination of the applicant’s intended appeal herein.
7. The costs of the application shall abide the outcome of the intended appeal.

**DATED AND DELIVERED AT MOMBASA THIS 2<sup>ND</sup> DAY OF DECEMBER 2022**

**S. GATEMBU KAIRU, FCIArb**

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**JUDGE OF APPEAL**

**J. LESIIT**

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**JUDGE OF APPEAL**

**G.V. ODUNGA**

.....

**JUDGE OF APPEAL**

*I certify that this is a true copy of the original.*

*Signed*

**DEPUTY REGISTRAR**

