



IN THE COURT OF APPEAL

AT NAKURU

(CORAM: OKWENGU, SICHALE & J. MOHAMMED, J.J.A)

CIVIL APPLICATION NO. E008 OF 2020

BETWEEN

BISHOP PETER IKATWA INANGA.....1ST APPLICANT

WORLD HOUSE OF PRAYER MINISTRIES.....2ND APPLICANT

AND

ILA P. KARIA.....1ST RESPONDENT

SUSHILA R. SHAH.....2ND RESPONDENT

(An application for an order for stay of proceedings in Nakuru ELC No. 158 of 2019 pending the hearing of an appeal against the Ruling of the Environment and Land Court at Nakuru (**Mutungi, J.**) delivered on 24th September, 2020

in

ELC Petition No 158 of 2019)

RULING OF THE COURT

[1] By a notice of motion dated 15th October 2020, the applicants urge this Court to exercise its jurisdiction under **Rule 5(2)(b)** of the **Court of Appeal Rules** and grant him orders of stay of proceedings in **Nakuru ELC No. 158 of 2019** pending the hearing and determination of an appeal that they intend to file against the Ruling. The applicants have already filed a notice of appeal.

[2] The background to the application is that the applicants and the respondents entered into a sale agreement for immovable property known as LR. No. 12573/5 and LR. No. 12573/12 (**suit property**). A dispute arose and the respondents filed a suit against the applicants before the Environment and Land Court (ELC). The applicants entered appearance and filed a preliminary objection to the jurisdiction of the court, faulting the respondents for filing the suit in the ELC, when the terms of the sale agreement provided that all disputes regarding the agreement should be referred to arbitration, and therefore, the ELC lacked jurisdiction.

[3] The ELC upon hearing the preliminary objection dismissed the same, and directed the applicants to file their defence within 21 days. The applicants filed a notice of appeal against the ruling of the ELC, followed by the motion before us.

[4] This being an application under Rule 5(2)(b) of this Court's Rules, the applicants must satisfy the Court that their intended appeal is arguable and not frivolous, and secondly, that, if the stay order is not granted, the appeal would be rendered nugatory, if it eventually succeeds. As was as stated by this Court in **National Bank of Kenya Limited v Leonard G. Kamweti [2015] eKLR:-**

“The object of the provisions of rule 5(2)(b) of this Court's Rules to, inter alia, stay proceedings, is to preserve the

substratum of the appeal so that the appeal is not rendered nugatory should it, once heard, succeed. The dual limbs of arguability of appeal and the nugatory aspect must be shown to co-exist, in default of which an order under rule 5(2)(b) of the Court of Appeal rules shall be declined.”

[5] In the instant motion, the applicants have raised a question of jurisdiction of the ELC to handle a dispute arising from a contract that provides for arbitration as the mode of dispute resolution. Jurisdiction of a Court is a central issue in all cases, as without it a court acts in vain – (see **Owners of the Motor Vessel “Lillian’s” V Caltex Oil (Kenya) Ltd [1989] KLR1.**) It is evident that the applicants have demonstrated that they intend to canvass in the appeal, the issue of jurisdiction. The applicants have met the first limb of the requirement under **Rule 5(2)(b) Court of Appeal Rules**, as a single arguable point is sufficient (**Kenya Railways Corporation V Ederman Properties Ltd, (CA No. Nai. 176 of 2012) – [2012] eKLR**). At this stage, it is enough that the intended appeal raises an issue that merits consideration (**Kenya Tea Growers Association & Another V Kenya Planters & Agricultural Workers Union (CA No. 72 of 2001) - [2012] eKLR**).

[6] As to the nugatory aspect, this Court stated in **Stanley Kangethe Kinyanjui V Tony Ketter & 5 Others, (CA No. 31 of 2012) – [2013] eKLR**, that;

“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”

[7] If the proceedings in ELC No. 158 of 2019 were to proceed, and eventually the appeal succeeds to the effect that the ELC lacked the requisite jurisdiction, then the success of that appeal would amount to naught, as the suit would have been determined by a court bereft of jurisdiction whose proceedings would amount to nothing, thereby exposing the parties and the Court to a waste of judicial time. It is appropriate that in accordance with **section 3B(c) of Appellate Jurisdiction Act**, the issue of jurisdiction is determined before further proceedings to facilitate efficient use of judicial time.

[8] The upshot of the above is that the applicants have satisfied the two limbs of **Rule 5(2)(b)** of this Court’s Rules. Accordingly, we allow the applicants’ motion and issue an order for stay of proceedings in Nakuru ELC No. 158 of 2019 pending the hearing and determination of the applicants’ intended appeal. The costs of this motion shall be in the appeal.

DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF APRIL, 2021

HANNAH OKWENGU

.....

JUDGE OF APPEAL

F. SICHALE

.....

JUDGE OF APPEAL

J. MOHAMMED

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR