



IN THE COURT OF APPEAL

AT NAIROBI

[CORAM: WARSAME, MUSINGA & SICHALE, J.J.A.]

CIVIL APPLICATION NO. 161 OF 2017

BETWEEN

EMROSE ACADEMY LTD.....1ST APPELLANT/APPLICANT

AND

DIRECTOR OF SURVEYS.....1ST RESPONDENT

NATIONAL LAND COMMISSION.....2ND RESPONDENT

JOHN MWNAGI NDUTA/JOSEPH KAMANDE T/A

HUMANA KOMAROCK SELF HELP GROUP.....3RD RESPONDENT

NAIROBI CITY COUNTY.....4TH RESPONDENT

(Appeal from the ruling of the Environment and Land Court of Kenya

at Nairobi (Elijah Obaga, J.) dated 6th April, 2017

IN

ELC NO. 1147 OF 2015

RULING OF THE COURT

The applicant's Notice of Motion dated 27th June, 2019 came up for consideration "on written submissions with no appearance of counsel on 21st September, 2020". In the motion, the applicant seeks the following orders:

“

- 1. ...(spent)**
- 2. That this Honourable Court be pleased to issue an order staying all proceedings in the Environment and Land Court Civil Suit No. 1147 of 2015 pending hearing and final determination of this Application;**
- 3. That this Honourable Court be pleased to issue an order staying all proceedings in the Environment and Land Court Civil Suit No. 1147 of 2015 pending hearing and final determination of this Appeal; and**
- 4. Costs of this application be provided for.”**

The motion is supported by an undated affidavit of **Simon Maina**, the applicant's Director, in which he deponed that he filed Civil Suit No.

1147 of 2015 in the ELC on **9th November, 2015**; that on the same day (**9th November, 2015**), he filed an application seeking injunctive orders against the respondents *inter alia* to cease subdivision of his property known as LR NO. NAIROBI/BLOCK 121/245 into two parcels known as LR NO. NAIROBI/BLOCK/121/246 and LR NO. NAIROBI/BLOCK 121/247; that on **6th April, 2017**, the ELC dismissed his application; that he is desirous of appealing against the ruling of **6th April, 2017**. Secondly, that unless an order of stay is granted, the substance of the dispute is likely to dissipate.

There was opposition to the motion vide a replying affidavit sworn by **Geoffrey Cheruiyot**, the Acting Director Survey and GIS Nairobi City County dated **17th September, 2019** in which he deponed that LR No. NAIROBI/BLOCK 121/245 does not exist, and hence the motion is overtaken by events.

Having considered the application, the grounds in support thereof, the replying affidavit and the law, we are of the considered view that the twin principles for the grant of a stay of execution have been satisfied (see *Stanley Kang'ethe Kinyanjui vs. Tony Keter & 5 Others [2013] eKLR*). The applicant may have an arguable appeal as there is contestation as to the ownership of the land, the subject matter of the dispute and further the subject of the dispute being land, unless stay is granted, the dynamics on the land may change.

The upshot of the above is that we grant an order of stay in terms of prayers 2 and 3 of the Notice of Motion dated **27th June, 2019**. Costs shall abide the outcome of the intended appeal.

Dated and Delivered in Nairobi this 23rd Day of October, 2020.

M. WARSAME

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JUDGE OF APPEAL

D.K. MUSINGA

.....

JUDGE OF APPEAL

F. SICHALE

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR