



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: WARSAME, MUSINGA & SICHALE, JJA.)

CIVIL APPLICATION NO. 138 OF 2020

BETWEEN

REAL ENERGY LIMITED.....APPLICANT

AND

NATIONAL OIL CORPORATION OF KENYA LIMITED.....RESPONDENT

(An application for injunction pending the hearing and final determination of an intended pending appeal from the Judgment and Decree/Order of the Environment and Land Court at Nairobi (E.Obaga, J.) dated 7th May, 2020 in **E.L.C. Civil Appeal No. 54 of 2016.**)

RULING OF THE COURT

1. **UPON** perusing the Notice of Motion dated 29th May 2020 by the applicant brought under **sections 3, 3A and 3B of the Appellate Jurisdiction Act** and **rules 5(2)(b) and 47 of the Court of Appeal Rules**, where the applicant seeks an injunction to restrain the respondent, its servants and/or agents from taking over premises known as **L.R 209/6776, Ngong Road, Nairobi**, (“**suit premises**”) leasing or evicting the applicant pending the lodging, hearing and determination of an intended appeal from the order/decree and judgment of the High Court in **Environment and Land Court Civil Appeal No. 54 of 2016** delivered by **Obaga, J.** on 7th May, 2020 as well as an order of stay of execution of the said judgment pending hearing and determination of an intended appeal; and

2. **UPON** reading the affidavit of **Rajab Ahmed Karume** sworn on 29th May 2020 in support of the application; and

3. **UPON** perusing the replying affidavit of **Lilian Waweru**, sworn on 25th June 2020 on behalf of the respondent; and

4. **UPON** perusing the applicant’s submissions where it is deponed, *inter alia*, that the applicant has filed a notice of appeal; that the applicant has an arguable appeal in that upon execution of a Dealer Licence Agreement it deposited a cash guarantee of Kshs.5,000,000/; and upon expiry of the said agreement it has been paying a monthly rent of Kshs.200,000/ and therefore there is in existence a landlord/tenant relationship between the parties; that unless the orders sought are granted the applicant shall suffer

“untold loss of business and business reputation” and will be forced to lay off many of its employees; and

5. **UPON** perusing the respondent’s submissions in which it is submitted, *inter alia*, that the applicant has no arguable appeal because the respondent is the registered proprietor of the suit premises; that the Dealer Licence Agreement that enabled the applicant to operate the Petro Station at the suit premises expired in 2016; that the orders sought have been overtaken by events because the Petro Station in the suit premises has been leased to a new dealer since 8th May 2020 and the new dealer has already taken possession of the same; and

6. **HAVING** considered the principles that guide this Court in determination of rule 5(2)(b) applications as summarised in **Stanley Kang’ethe Kinyanjui v Tony Ketter & Others [2013] eKLR**, and noting that the applicant has not demonstrated that it has an arguable appeal which may be rendered nugatory unless the orders sought are granted, given that the Dealer Licence Agreement between the parties has expired and the suit premises have been leased to a third party who has taken possession; having reached this conclusion, we make the following orders:

- i. The Notice of Motion dated 29th May 2020 is disallowed.
- ii. The applicant shall bear the costs of the application.

Dated and Made at Nairobi this 2nd day of October, 2020

M. WARSAME

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JUDGE OF APPEAL

D. MUSINGA

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JUDGE OF APPEAL

F. SICHALE

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR