



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: KIAGE, M'INOTI & MURGOR, J.J.A.)**

**CIVIL APPEAL (APPLICATION) NO. 526 OF 2019**

**BETWEEN**

**METRO PLAZA LIMITED.....APPELLANT**

**AND**

**DUBAI BANK KENYA LIMITED (in liquidation).....1ST RESPONDENT**

**SEO & SONS LIMITED.....2ND RESPONDENT**

*(An application for stay of further proceedings and injunction*

*pending the hearing and determination of the appeal)*

**RULING OF THE COURT**

We have perused the notice of motion dated 20th January 2020 by the applicant **Metro Plaza Limited** presented under **Rule 5(2)(b)** of the **Court of Appeal Rules** seeking various orders but the live and relevant one being for an injunction to restrain the respondents **Dubai Bank Kenya Limited** (in liquidation) and **SE & Sons Limited**, whether jointly or severally and whether by themselves or by their servants, agents or assigns, from selling, transferring, charging or otherwise dealing with the property known as **LR NO. 209/2379** pending the hearing and determination of the appeal herein.

We have also perused the supporting affidavit of **Justus Tito** sworn on 20th January 2020 and the opposing replying affidavit of **Samon Edwin Osman**, a director of the 2nd respondent.

We have considered the said supporting affidavit and the grounds on the face of the application in which it is asserted that the court below erred in not setting aside the sale of the suit property to the 2nd respondent by the 1st, which was unlawful and contemptuous of injunctive orders issued in the presence of all parties; that there is a clearly arguable appeal; and, that the subject matter being valuable land, it would render the appeal nugatory were it to be allowed to “escape to third parties” under such circumstances.

We have also considered the response by the 2nd respondent admitting to certain orders having been issued by Olga Sawe. J. against sale but going on to say that at the time the suit property was bought by it at a public auction, it had no notice of court proceedings. The deponent also states that the validity of the sale is one that should be interrogated in a full trial.

We have borne in mind the principles upon which this Court intervenes under **Rule 5(2)(b)**, namely; a demonstration by the applicant of *an arguable appeal* and, further, that such appeal would be *rendered nugatory* unless the relief of stay of execution or injunction sought is granted in the meantime.

Upon full consideration of the application and the contentions for and against it in light of the established principles as succinctly captured in **STANLEY KANGETHE KINYANJUI vs. TONY KETER & 5 OTHERS [2013]eKLR**, we have come to the conclusion that the applicant has made out an arguable appeal which is in peril of being rendered nugatory unless we grant the injunction sought to preserve the subject matter of the appeal pending the hearing and determination thereof.

The application is accordingly granted in terms of prayer (5) thereof with the costs abiding the outcome of the appeal.

**Dated and delivered at Nairobi this 18th day of December, 2020.**

**P.O. KIAGE**

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**JUDGE OF APPEAL**

**K. M'INOTI**

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**JUDGE OF APPEAL**

**A.K. MURGOR**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**