



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: OUKO, (P), KIAGE & SICHALE J.J.A.)

CIVIL APPLICATION NO. 29 OF 2019

BETWEEN

MARA NORTH HOLDINGS LIMITED.....1ST APPELLANT
MARA NABOISHO CONSERVANCY.....2ND APPELLANT
GREATER MARA MANAGEMENT LIMITED.....3RD APPELLANT

AND

MARA NORTH CONSERVANCY LAND OWNERS ASSOCIATION.....1ST RESPONDENT
MARA NABOISHO CONSERVANCY LAND OWNERS ASSOCIATION...2ND RESPONDENT
DENNIS TIPIRA MAKO.....3RD RESPONDENT
LEKURITO OLE KETUIYO.....4TH RESPONDENT
KINANTA OLE SOPIA..... 5TH RESPONDENT
NGUSHE OLE KIRETO.....6TH RESPONDENT
MILTON OLE KOOL.....7TH RESPONDENT
SAMAU OLE TOMPOI8TH RESPONDENT
TOMPOYA OLE KIRETO.....9TH RESPONDENT
RUPEN OLE SOIT.....10TH RESPONDENT
TULETO OLE TAEK.....11TH RESPONDENT
SEIYA LIMITED.....12TH RESPONDENT
NAROK COUNTY GOVERNMENT & 285 OTHERS.....13TH RESPONDENT

(An application for injunction and stay of execution of the order of the Narok Environment and Land Court

(M. Kullow, J.) dated 17th January, 2019 pending the hearing and determination of an intended appeal

from the Ruling and Order (M. Kullow, J.) delivered on 17th January, 2019

RULING OF THE COURT

Because of the manner this application was canvassed, we are compelled to start this ruling by reminding practitioners that in considering an application brought under **Rule 5(2)(b)** of the Court’s Rules, the Court cannot make definitive or final findings of either fact or law as doing so at that stage may embarrass the ultimate hearing of the main appeal. See **Damji Pragji Mandavia V. Sara Lee Household & Body Care (K) Ltd.** Civil Application No. Nai. 345 of 2004. This application was canvassed as though it was the petition that is still pending in the court below. In that petition, the respondents seek to stop the applicant from replacing the 12th respondent who has served for over 10 years as the conservation manager with the 3rd applicant without consultation with the respondents. Contemporaneous with the petition, the respondents took out a motion on notice in which they asked the court to issue conservatory orders to restrain the applicants from changing the conservation manager until the *inter partes* hearing of the motion. After considering the motion, the Judge, after finding that it was urgent, granted the above prayer *ex parte*. When the matter came up for *inter partes* hearing, the learned Judge, in the impugned order of 17th January, 2019, after hearing all counsel on an oral application for adjournment by one counsel, simply said;

“Taking into account the reasons given, I find the application for adjournment is merited and I will grant the 2nd Interested Party 7 days within which to file and serve their response.

The petitioners and the respondents shall be at liberty to respond within 7 days of service by the Interested Party.

In respect of the ex parte orders I will extend the same until the hearing of the application on 7th February,2019 at 11am”
(Our own emphasis).

It is the highlighted part of the order that the applicant intends to challenge on appeal to this Court. In the meantime, the applicant has prayed that we stay “*the execution of the order*” and to issue an order of injunction to restrain the respondents;

“...from entering in, trespassing on, remaining upon, managing, dealing with...the 1st and 2nd applicant’s private conservancy situate in Narok County pending the hearing and determination of the intended appeal.”

And so, to this day, nearly 8 months later, the application before the court below has not been set down for hearing *inter partes* as directed by the learned Judge.

Instead, this Court, with its heavy caseload and shortage of Judges, has been engaged and expected to determine this application and subsequently the intended appeal.

Considering that in extending the contested order the Judge was exercising a judicial discretion, we entertain no doubt that the intended appeal is frivolous.

The intended appeal will not be rendered nugatory because the applicants’ application dated 2nd January, 2019 to set aside the original *ex parte* orders is pending before the court below, as is the main motion which should have been heard on 7th February, 2019 at 11am, but for this unnecessary application. Besides, the 12th respondent, it has been stated without rebuttal, has been managing the conservancy for over 10 years.

Both **sections 1A** and **1B** of the Civil Procedure Act enjoin the courts to facilitate the just, expeditious, proportionate and affordable resolution of disputes and counsel to assist the Court in the furtherance of this objective in order to achieve the timely disposal of the proceedings.

This application, for the foregoing reasons, lacks substance. It is accordingly dismissed with costs to the respondents.

Dated and delivered at Nairobi this 27th day of September, 2019.

W. OUKO, (P)

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JUDGE OF APPEAL

P.O. KIAGE

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JUDGE OF APPEAL

F. SICHALE

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR