



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: WAKI, JA (IN CHAMBERS))**

**CIVIL APPLICATION NO. 244 OF 2018 (UR 196/2018)**

**BETWEEN**

**ZARA PROPERTIES LIMITED (CPR/2010/24490).....APPLICANT**

**AND**

**ZARA PROPERTIES LIMITED (C.106174).....1ST RESPONDENT**

**THE ATTORNEY GENERAL .....2ND RESPONDENT**

*(An application for injunction pending hearing and determination of*

*Civil appeal No. 216 of 2018 against the Judgment and Decree of the*

*High Court of Kenya at Nairobi (F. Tuiyott, J) dated 8<sup>th</sup> June, 2017*

*in*

*H. C. C. No. 700 of 2010)*

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**RULING**

On 29<sup>th</sup> August 2018, I declined a request by the applicant to certify the application dated 16<sup>th</sup> August, 2018 as urgent. The applicant now returns under **Rule 47 (5)** of the Court's Rules to urge the same matter in the presence of the other parties. The Attorney General, however, did not appear despite service of hearing notice.

The applicant and the 1<sup>st</sup> respondent appeared before me and made their submissions on urgency. Learned counsel for the applicant, **Mr. Gachie Mwanza**, informed me that there is already an appeal filed to challenge the decision of the lower court being Civil appeal No. 216 of 2018. For some unclear reason however, this application was not filed within that appeal. It is also common ground that the main appeal will come up for case management and therefore imminent hearing thereafter, on 9<sup>th</sup> October, 2018, which is a few days away. Furthermore, I am informed by counsel that there is already an order for stay granted by this Court on 24<sup>th</sup> November 2017, pending the hearing of the main appeal. In Mr. Mwanza's view, however, that order is not capable of addressing the issue of construction and development of LR No. 209/12261 which is at the centre of the dispute between the two companies. Some photographs of a

fully developed wall and godowns are exhibited.

For her part, learned counsel for the 1<sup>st</sup> respondent, **Ms. Bridgitte Ndong**, finds no urgency in the application precisely for the reasons advanced by Mr. Mwanza, namely: that the main appeal has already been filed and is coming up for case management shortly, and that this Court has already granted a stay of the orders of the lower court. As for developments being made on LR 209/12261, counsel pointed out that there is a different suit pending before the Environment and Land Court in respect of that matter, and it would be an abuse of court process to drag it into this appeal.

I have considered the application and the submissions of counsel. In the end, I find nothing in the record or the submissions to change my decision not to issue the certificate sought. There is already an order issued by this Court for stay of execution of the decision of the lower court and it is baffling why another application has to be filed. It is not claimed that the matters in issue now were not in existence when the first application was filed. On the face of it, developments were already made on the property, and if the applicant needed an order covering such developments, it would have been sought at the time of the first application for stay and considered by the Court. But it was not. It seems however that the issue of ownership of the property is live in other proceedings where other parties are also involved. There is no urgency in dealing with it here when it is peripheral. At any rate, the hearing of the main appeal is imminent.

It is for those reasons that I do not certify the matter urgent. It may be listed for hearing *inter partes* when the main appeal is ripe for hearing.

The application for urgency is rejected. Costs in the application.

**Dated and delivered at Nairobi this 5<sup>th</sup> day of October, 2018.**

**P. N. WAKI**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**