



IN THE COURT OF APPEAL

AT NAKURU

(Coram: Kwach, Tunoi & Shah JJ A)

CIVIL APPLICATION NO NAI 181 OF 2002

LAW SOCIETY OF KENYAPLAINTIFF

VERSUS

COMMISSIONER OF LANDS & 2 OTHERS.....DEFENDANTS

(Application for an injunction or stay of execution from a Ruling and order of

High Court at Nakuru and delivered at Nairobi (Ombija J) dated 19th December, 2001

in

High Court Civil Case No 464 of 2000.

RULING

We have before us an application brought under rule 5(2)(b) of the Rules of this Court whereby the applicant, the Law Society of Kenya, seeks maintenance of status quo in regard to plots numbered Eldoret Municipality Block 4/53 and 4/55. These two plots are apparently land upon which the Eldoret High Court buildings stand. The Law Society of Kenya (the Society) was aggrieved by the fact of allocation of these plots to Lima Limited, the second respondent herein.

When the suit filed by the Society came up for hearing the Superior Court (Ombija J) heard two preliminary objections which were worded as follows: -

- “1. That the plaintiff (that is the Society) has no *locus standi* to institute and or prosecute this suit either on its own behalf, or on behalf of its members and or on behalf of members of the public.
2. That the plaintiff’s suit is therefore a nonstarter and incompetent.”

The learned judge upon hearing of the preliminary objection reserved his ruling and eventually ruled that the Society had no *locus standi* to sue as it had done and that it was not a party whose rights were infringed or injured.

At this stage we only have to decide if the Society has an arguable appeal and whether success in the intended appeal would be rendered nugatory if the status quo sought is not granted.

It is clear that the Society is a statutory body created by an Act of Parliament, viz, the Law Society of Kenya Act, Cap 18, Laws of Kenya.

It is a body with a common seal. This is the first arguable point the Society has in that it need not sue as a society under the Societies Act. If it is an ordinary society it would of course have to invoke the provision of

Order 1 rule 8 of the Civil Procedure Rules.

It is also arguable that the Society's interests could well merge with those of the Judiciary and hence it is interested in the preservation of the land upon which the High Court building in Eldoret is situated. We need go no further into other arguable point or points. The two pointed out by us are enough.

As to whether success in the intended appeal would be rendered nugatory in the event that status quo order is not made is not a matter of problem.

If the parcels of land are alienated by the second respondent the High Court building will belong to someone else. That cannot be allowed to happen.

Considering all the circumstances of the matter before us we order that the status quo now obtaining do remain in force pending the hearing and determination of the intended appeal. The costs of this application will be costs in the intended appeal.

Dated and delivered at Nakuru this 28th day of February, 2003

R.O. KWACH

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JUDGE OF APPEAL

P.K.TUNOI

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JUDGE OF APPEAL

A.B.SHAH

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR