



**Falcon Kenya Limited v Chief Land Registrar & another; Muigai & 5 others
(Interested Parties); Dandora Housing Schemes Ltd (Applicant) (Environment &
Land Petition 614 of 2013) [2023] KEELC 17297 (KLR) (11 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17297 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION 614 OF 2013
SO OKONG'O, J
MAY 11, 2023**

BETWEEN

FALCON KENYA LIMITED PETITIONER

AND

CHIEF LAND REGISTRAR 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

AND

ABDULLAHI MUIRURI MUIGAI INTERESTED PARTY

RAYMOND MWANGI WAWERU INTERESTED PARTY

KARIUKI NJOROGE INTERESTED PARTY

AND

DANDORA HOUSING SCHEMES LTD APPLICANT

AND

PETER KARUMBI KEINGATI INTERESTED PARTY

JOSEPH NDUATI NGENDO INTERESTED PARTY

KIAMBU DANDORA FARMERS CO. LIMITED INTERESTED PARTY

RULING

1. The petitioner brought this petition on May 14, 2013 against the respondents seeking;



1. An order of *mandamus* directing the respondents to release to the petitioner forthwith all documents of title relating to LR No 13379/3(hereinafter referred to as “the suit property”) submitted to them by the petitioner for purposes of discharge of charge.
 2. An order that the respondents do unconditionally register the discharge of charge on the title of the suit property within such time frame as may be deemed appropriate by the court.
 3. That the court does make, issue and give further and/or such further consequential orders, directions and/or findings as it may find fair and just to grant for the purposes of restoring the dignity and integrity of the respondents’ offices and further for the purposes of enforcing or securing the enforcement of the mandatory provisions of the law as envisaged in the *Constitution* of Kenya and the orders of the court.
 4. An award of aggravated, exemplary and/or general damages together with mesne profits for the loss of user of the suit property.
 5. Costs and interest.
2. In its petition, the petitioner averred that LR No 11379/3 (the suit property) was transferred to it by Dandora Housing Schemes Ltd. (hereinafter referred to only as “the applicant”) in 1981. The petitioner averred that sometime in 1998, it charged the suit property and that on January 9, 2011, it presented its title for the property together with a discharge of charge to the 1st respondent for registration. The petitioner averred that its title to the suit property together with the said discharge of charge were confiscated by the 1st respondent without any explanation and the same had not been returned to it. The petitioner averred that the decision by the 1st respondent not to return the said documents without giving reason amounted to a violation of its right to a fair administrative action guaranteed under article 47(2) of the *Constitution*. The petitioner averred that from the time it lodged the said title document and discharge of charge for registration, the 1st respondent had not communicated to it as to what had happened to the documents which was a violation of its right under article 47(1) of the *Constitution* to expeditious, efficient, lawful, reasonable and procedurally fair administrative action. The petitioner averred that the aim of the respondents was to dispossess the petitioner of the suit property in violation of article 40 of the *Constitution*. The petitioner averred that it had absolute right over the suit property and was entitled to get back its title.
3. There is no response on record by the respondents to the petitioner’s petition. On July 23, 2015, the interested parties were added to the petition as parties. The interested parties responded to the petition through a replying affidavit sworn by the 6th interested party’s director, Joseph Mwangi Karanja on October 15, 2015. In their affidavit, the interested parties contended that the suit property was owned solely by the 6th interested party and that the title to the suit property was being held on behalf of the 6th interested party by its trustees. The interested parties contended that the original title for the suit property was in their possession and that they had produced the same in court for inspection. The interested parties averred that the said original title was neither lost nor was it being kept by the 1st respondent, the commissioner of lands or any other authority. The interested parties contended that the allegations contained in the petitioner’s petition were all false and amounted to perjury. The interested parties termed the petitioner’s director, Cornelius Peterson Waithaka “a fraudulent character” who had been engaged in fraud and forgery involving the suit property that belonged to the 6th interested party. The interested parties averred that the dispute over the ownership of the suit property between the interested parties, Cornelius Peterson Waithaka (hereinafter referred to only as “C.P.Waithaka”) and the petitioner was heard and conclusively determined in Nairobi HCCC No



1348 of 1972 and Nairobi HCCC No 1088 of 2000 in which the 6th interested party's title to the suit property was upheld.

4. The interested parties averred that C.P.Waithaka forged a provisional certificate of title for the suit property and made entries therein transferring the suit property to Dandara Housing Schemes Ltd. (the applicant) on December 16, 1997 and thereafter to the petitioner on December 11, 1998 before charging the property to a company known as Simply Perfect Development Company Limited on the same day (the chargee). The interested parties averred that the acquisition of the said provisional title and the entries made on the title thereafter were fraudulent and that C.P.Waithaka was arrested on account thereof and charged at Makadara Senior Principal Magistrate's Court in Criminal Case No 516 of 1999. The Interested parties averred that the title for the suit property was not lost and that the purported gazette notice that was issued by the 1st respondent over the alleged loss of the said title and its intention to issue a provisional certificate of title to the petitioner was a further act of fraud on the part of C.P.Waithaka for which he should be arrested. The interested parties contended that the issues raised in the petition were *res judicata* since the same were fully and finally determined in Nairobi HCCC No 1348 of 1972.
5. On August 20, 2015, the interested parties' brought an application by way of a notice of motion of the same date seeking to strike out the petitioner's petition with costs as an abuse of the process of the court. The interested parties' application was dismissed by the court on November 12, 2018. In its ruling, the court stated as follows in part:

"I am in agreement with the petitioner that this is not an appropriate case for summary determination. I have at the beginning of this ruling summarised each party's case. What is in contention in the petition before the court is the ownership of the suit property and the whereabouts of the valid certificate of title for the property. The interested parties have contended that they are the bona fide owners of the suit property and that they have in their custody the original certificate of title in respect thereof. The petitioner has also contended that it is the lawful proprietor of the suit property and that its certificate of title for the suit property is in the custody of the 1st respondent who has declined to release the same. The petitioner has termed the alleged original certificate of title held by the interested parties as fraudulent. The interested parties have likewise accused the petitioner of holding a fraudulent title over the suit property. Both the petitioner and the interested parties have admitted that they have been involved in several suits in which the issue of the ownership of the suit property has been determined. They are however not in agreement as to the decisions that were made on the issue in the said suits. The petitioner has contended that the court in Nairobi HCCC No 1348 of 1972 determined the issue of ownership of the suit property in its favour. The interested parties have contended to the contrary. The 1st and 2nd respondents who are the custodians of land records have kept mum. I am unable to determine the issue of the ownership of the suit property and the whereabouts of its valid certificate of title on the conflicting affidavit evidence before me. I have looked at the copy of the certificate of title that was produced by the interested parties in court on July 23, 2015. The title has the interested parties as the owners of the suit property. According to the title, the suit property has never been transferred to any other party since April 8, 1970 when the title was issued. There is no doubt that this is not the same title the subject of the petitioner's complaint before this court. The title which the petitioner claims to have given to the 1st respondent was in its name and had a charge registered on it. It is clear that the petitioner and the interested parties are talking of different certificates of titles albeit for the same property. It will take a plenary hearing to determine the ownership of the suit property



and the holder of a valid title as between the petitioner and the interested parties. This court cannot determine the issues of fraud and forgery raised by both parties on affidavit evidence.”

6. What is now before me is a notice of motion application dated June 24, 2019 by Dandora Housing Schemes Limited (the applicant) seeking an order that it be joined in this petition as an interested party and that in the alternative, this petition be consolidated with ELC Petition No 25 of 2019. The applicant has also sought the costs of the application. The application was brought on several grounds. The applicant contended that it was the owner of the suit property having acquired the same through a decision that was made by the High Court in HCCC No 1348 of 1972. The applicant averred that it became aware of the existence of this petition when it filed ELC Petition No 25 of 2019 in which the court directed that the issues that it had raised in the petition be ventilated in this petition. The application was supported by the affidavit of the applicant’s director, Peter Kangethe Murua. In the affidavit, the applicant’s said director stated that HCCC No 1348 of 1972 was filed by among others, the applicant against five (5) trustees who were holding the title for the suit property and who were planning to transfer the property to their personal names. He stated that in a judgment that was delivered in 1985, the court held that the suit property belonged to the applicant. The applicant’s said director stated that the said judgment was not implemented by the 1st respondent who claimed that the original title was missing. He stated that after learning that the petitioner had filed this petition claiming the suit property, the applicant also decided to file ELC Petition No 25 of 2019 to forestall any order that could be made adverse to the applicant in this petition. He averred that in ELC petition No 25 of 2019, the court directed that the issues that the applicant had raised in the petition be ventilated in this petition. He stated that it was important that the applicant was joined in this petition or alternatively, this petition be consolidated with ELC Petition No 25 of 2019.
7. The application was opposed by the petitioner through a replying affidavit, further replying affidavit and a further further replying affidavit sworn by Samuel Mwaura Waweru. In its replying affidavit sworn on October 1, 2021, the petitioner termed the applicant’s application frivolous, vexatious and a waste of the court’s time. The petitioner averred that the suit property had been the subject of several suits in which the courts were unanimous that the suit property was owned by the applicant, Dandora Housing Schemes Limited. The petitioner averred that it acquired the suit property from the legitimate officials and directors of the applicant in 1998. The petitioner averred that upon acquiring the suit property, it charged the property to SimpLy Perfect Development Company Limited. The petitioner averred that Simply Perfect Development Company Limited discharged the charge that it had over the suit property. The petitioner averred that when it presented the said discharge of charge together with the original title for the suit property for registration, the said title together with the said discharge of charge were confiscated by the 1st respondent at the behest of the illegal claimants of the suit property without any explanation. The Petitioner averred that it was after that event that the interested parties also came up claiming the suit property. The petitioner averred that the list of directors of the applicant that was filed by the applicant in support of its application was a forgery. The petitioner averred that from the information received from Cornelius Peterson Waithaka (C.P.Waithaka) deceased, Peter Kangethe Murua and his colleagues had never been directors of the applicant. The petitioner averred that the application by the applicant was brought by Peter Kangethe Murua who was an imposter since he had never been a director of the applicant. The petitioner averred that Peter Kangethe Murua and his group were proxies of the interested parties herein who were against the orders sought in the petition by the petitioner.
8. The petitioner’s further replying affidavit was sworn by Samuel Mwaura Waweru on February 15, 2022. The Petitioner contended that the applicant’s application was fatally defective on account of the applicant’s failure to describe the parties properly in the affidavit in support of the application. The



petitioner reiterated that Peter Kangethe Murua who swore the affidavit in support of the application was not a director of the applicant. The petitioner averred that the said Peter Kangethe Murua and his cohorts had held themselves out as bona fide directors of the applicant and had even purported to conduct elections of the officials of the company in a bid to unlawfully take over the affairs of the applicant. The petitioner averred that Peter Kangethe Murua and his cohorts were strangers seeking to hijack the leadership of the applicant. The petitioner reiterated that Peter Kangethe Murua was an imposter and that he was being used by the interested parties to cause confusion and mislead the court into not granting the reliefs sought by the petitioner herein.

9. The applicant filed a further affidavit sworn by Peter Kangethe Murua on April 25, 2022. In the further affidavit, the applicant stated that C.P.Waithaka and one Nelson Muchai did not contribute to the purchase of the suit property. The applicant averred that the decree that C.P.Waithaka used to procure a provisional certificate of title for the suit property was reviewed and set aside on October 26, 1999 by Kasanga Mulwa J. The applicant stated that it was upon obtaining the said provisional title which was fraudulent that C.P.Waithaka purported to transfer the suit property to the petitioner. The applicant stated that C.P. Waithaka who was also a director of the petitioner had not produced any document showing that the shareholders and/or directors of the applicant had approved the sale of the suit property to the petitioner. The applicant averred that the list of directors of the applicant annexed to the affidavit in support of the application showed the true directors of the applicant and that C.P.Waithaka was not a director of the applicant in 2018. The applicant averred that if the application was not allowed, over 200 shareholders of the applicant would be dispossessed of the suit property.
10. The petitioner's further further replying affidavit was sworn by Samuel Mwaura Waweru on July 22, 2022. The petitioner averred that the proceedings of HCCC No 1384 of 1972 annexed to the applicant's affidavit were fraudulent since the applicant was not a party to that suit. The Petitioner denied the applicant's claim that C.P. Waithaka, deceased did not contribute money towards the purchase of the suit property. The petitioner contended that Cornelius P. Waithaka (C.P. Waithaka) was a member and chairman of the applicant. The petitioner denied also that C.P.Waithaka forged a certificate of title for the suit property. The petitioner contended that allowing the applicant's application would open a pandora's box of litigation which will delay the conclusion of this petition that had been pending in court for several years.
11. The application was argued by way of written submissions. The applicant filed its submissions dated April 25, 2022. In its submissions, the applicant reiterated the contents of its affidavits filed in support of the application. The applicant submitted that it had demonstrated sufficient interest in the subject matter of the petition to justify its joinder in the petition as an interested party.
12. The petitioner filed its submissions dated July 22, 2022. Like the applicant, the petitioner also reiterated the contents of its three affidavits filed in opposition to the application. The petitioner reiterated that the deponent of the affidavit in support of the applicant's application was not a director of the applicant and as such was not competent to swear an affidavit on behalf of the applicant. The petitioner submitted that the applicant was the original owner of the suit property and that the applicant's shareholders transferred the suit property to the petitioner. The petitioner submitted that the issue of the ownership of the suit property had been raised in a suit between the parties herein and determined by a competent court. The petitioner submitted that the applicant was trying to re-litigate the issue through the backdoor. The petitioner submitted that it was the bona fide owner of the suit property. The petitioner submitted that the applicant had not laid a basis to warrant its joinder to the suit.



Analysis And Determination

13. The application before me has two limbs. The first limb seeks the joinder of the applicant in the suit as an interested party. The second limb is an alternative prayer that in the event that the court does not deem it fit to join the applicant as a party to the suit, the court should order the consolidation of this petition with ELC Petition No 25 of 2019. I will consider both limbs of the application together.
14. This suit was brought as a constitutional petition. Rule 2 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013*, defines an interested party as:
- “ a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation”.

Rule 7 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013* provides as follows:

- 7.
- (1) A person, with leave of the court, may make an oral or written application to be joined as an interested party.
- (2) A court may on its own motion join any interested party to the proceedings before it.”
15. The court’s power to join a party to a suit as an interested party is discretionary and as such must be exercised judiciously. That means that an applicant seeking to be joined in a suit as an interested party must satisfy the court that he has a stake or an interest in the subject matter of the suit. The applicant and the petitioner which has opposed the application are in agreement at least as between themselves that the suit property was at one time registered in the name of the applicant. The petitioner has contended that the applicant transferred the suit property to the petitioner in 1998. The applicant on the other hand has denied the alleged transfer which it has termed fraudulent. Whether the petitioner acquired the suit property lawfully from the applicant assuming that the applicant owned the property in the first place cannot be determined in the present application. As I mentioned earlier in the ruling, the interested parties have also claimed that the suit property is registered in the name of the 6th interested party. What I need to determine at this stage is whether the applicant has demonstrated that it has some interest in the property the subject of this suit. The petitioner has argued at length that Peter Kangethe Murua who has sworn the affidavits filed in support of the application is a fraudster and an imposter who had no authority from the applicant to file the application. The petitioner and the said Peter Kangethe Murua have both placed before the court conflicting documents in proof of the genuine directors of the applicant. Again, I must say that I am unable to determine on affidavit evidence the genuine list of the directors of the applicant.
16. On the material before me, I am satisfied that the applicant has demonstrated that it has an interest in the suit property which is the subject matter of this suit. The applicant has therefore met the threshold for joinder in the suit as an interested party. The petitioner has claimed that the applicant and Peter Kangethe Murua are working in collusion with the 1st to 6th interested parties to frustrate this petition. The 1st to 6th interested parties are already parties to the suit. I cannot see the prejudice that the petitioner will suffer if the applicant is also added to the suit as an interested party.
17. For the foregoing reasons, it is my finding that the applicant’s application has merit. Since the applicant has succeeded in its main prayer, it is not necessary for the court to consider the alternative prayer.



Conclusion:

18. In conclusion, the applicant, Dandora Housing Schemes Limited is added to this suit as the 7th interested party. The petitioner shall amend the petition within 14 days from the date hereof to effect the joinder of the 7th interested party and the 1st to 6th interested parties who were joined in the suit earlier, as interested parties in the suit. The 7th interested party shall be at liberty to file a reply to the amended petition and a cross-petition within 14 days of service of the amended petition. Upon the filing of the cross-petition, ELC Petition No 25 of 2019 shall stand withdrawn. The costs of the application dated June 24, 2019 shall be in the cause.

DELIVERED AND DATED AT KISUMU ON THIS 11TH DAY OF MAY 2023

S. OKONG'O

JUDGE

**RULING DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO
CONFERENCING PLATFORM IN THE PRESENCE OF:**

Mr. C.N.Kihara for the Petitioner

N/A for the 1st Respondent

N/A for the 2nd Respondent

N/A for the Interested Parties

Mr. Mugu for the Applicant

Ms. J.Omondi - Court Assistant

