



REPUBLIC OF KENYA



KENYA LAW
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Halifax Limited v Laikipia & Nakuru Property Investments Company Limited; Kimani & 66 others (Applicant) (Environment & Land Case 26 of 2018) [2022] KEELC 3359 (KLR) (28 April 2022) (Ruling)

Neutral citation: [2022] KEELC 3359 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT & LAND CASE 26 OF 2018**

YM ANGIMA, J

APRIL 28, 2022

BETWEEN

HALIFAX LIMITED PLAINTIFF

AND

LAIKIPIA & NAKURU PROPERTY INVESTMENTS COMPANY LIMITED DEFENDANT

AND

PAUL THARU KIMANI & 66 OTHERS APPLICANT

RULING

1. By a chamber summons dated 10th June, 2021 expressed to be based upon Articles 22, 40, 50,(1) & 60 (1) (b) of the Constitution of Kenya, 2010, Rules 2 and 7 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, Order 1 Rules 10 (2) and 25 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act (Cap.21), and all other enabling provisions of the law the Intended Interested Parties (the Applicants) sought the following orders:
 - (a) ...spent
 - (b) ...spent
 - (c) That the honourable court be pleased to admit the Intended Interested Parties as parties to this proceedings.
 - (d) ...spent



- (e) That the Intended Interested Parties be granted leave to advertise notice of this application in 1 Radio and 1 Television Station broadcasting in the Thome/Rumuruti area, for the benefit of other purchasers of portions of the suit property, not before court.
 - (f) That the Intended Interested Parties be allowed to submit with leave of the court any other information it may deem important and relevant to allow for the just disposition of this application and suit.
 - (g) That the costs of this application be provided for.
2. The application was based upon the grounds set out on the face of the summons and the contents of the supporting affidavit sworn by Paul Thairu Kimani on 10th June, 2021 together with the exhibits thereto. It was contended that although the Applicants had purchased the suit property from the Defendant in the 1990's and taken possession thereof, the Defendant had later on purported to sell the same property to the Plaintiff in 2015 without reference to them. The Applicants claimed to be members of Chongoti Farm Cosmopolitan Community Based Organization (the CBO).
 3. The Applicants contended that upon purchase, they had taken possession of the suit property, constructed houses and settled thereon and that they were neither notified of the sale to the Plaintiff nor the filing of the instant suit which was settled by a consent between the parties directing the eviction of all persons in occupation of the suit property.
 4. The Plaintiff filed a replying affidavit sworn by Joloimat Lenengwesi a director of the Plaintiff, on 5th July, 2021 in opposition to the application. The Plaintiff contended that the CBO was a stranger to the sale and purchase of the suit property and that the Defendant had by resolution passed at an Annual General Meeting held on 22nd May, 2015 decided to sell the suit property to the Plaintiff. It was further contended that after due diligence was conducted the Plaintiff purchased the suit property at a sum of Kshs 198,180,000/= . It was further contended that part of the purchase price was financed by National Bank of Kenya Limited to which the suit property was charged.
 5. The Plaintiff denied any illegality, fraud or impropriety in the acquisition of the suit property. It was further contended that the Applicants had no legitimate interest in the suit property and that their claim as members of the Defendant Company was restricted to their shares and dividends and not the assets of the company generally. It was further contended that the Applicants had come to court after undue delay since the sale transaction was undertaken way back in 2016. The court was consequently urged to dismiss the application.
 6. The record shows that upon service of the replying affidavit, the Applicants filed a supplementary affidavit sworn by Paul Thairu Kimani on 20th December 2021. He annexed copies of various receipts and ballot papers issued by the Defendant between 1990 and 1993. It was contended that it was unfair and unjust for the Defendant to be allowed to dispose of the suit property to the Plaintiff whereas the Applicants were in occupation thereof. The court was consequently urged to allow the application.
 7. When the application was listed for inter partes hearing on 25th October, 2021, it was directed that the same shall be canvassed through written submissions. The concerned parties were granted 14 days each to file and exchange their written submissions. The record, however, shows that the Applicants filed their submissions on 17th January, 2022 whereas the Plaintiff filed its submissions on 15th February, 2022. The Defendant did not file any response or submissions in the matter.
 8. The court has considered the Applicants' chamber summons dated 10th June, 2021, the Plaintiff's replying affidavit, the Applicants' supplementary affidavit as well as the submissions on record. The



court is of the opinion that the main question for determination herein is whether or not the Applicants have made out a case for their joinder in the proceedings as Interested Parties.

9. There is no doubt from the material on record that the Plaintiff is the current registered proprietor of the suit property, having acquired it from the Defendant for valuable consideration in 2016 or thereabouts. There is no doubt from the material on record that the suit property is currently charged to the National Bank of Kenya which financed part of the purchase price.
10. In the case of *Kenya Medical Laboratory Technicians and Technologies Board & 6 Others* [2017] eKLR, it was held that the test of joinder of a person as an Interested Parties is whether or not such person has an identifiable stake, legal interest or duty in the proceedings. Although the Applicants contended that they had purchased the suit property from the Defendant in the 1990's, there were no copies of sale agreements or other legally binding documents which were exhibited by the Applicants to support their claim. Moreover, the copies of receipts annexed to their supplementary affidavit do not indicate that they were for payment of the purchase price but indicate that they were payments for "shares" or "share capital". It would, therefore, follow that in accordance with ordinary principles of company law, the Applicants can only lay claim upon their shares or the value thereof and not the assets of the company. In any event, the suit property is no longer the property of the Defendant Company since it was sold to the Plaintiff in 2016.
11. The court is thus of the opinion that since the suit property was sold and transferred to the Plaintiff in 2016 and subsequently charged to National Bank of Kenya, the Applicants have no legally identifiable stake or interest in the suit property and that they have no legally recognizable duty to participate in the instant proceedings over the suit property. Their remedy, if any, can only lie as against the Defendant Company in separate proceedings under the *Companies Act* and other applicable legislation.
12. The upshot of the foregoing is that the court finds no merit in the Applicants' chamber summons dated 10th June, 2021. Accordingly, the same is hereby dismissed with no orders as to costs

RULING DATED AND SIGNED AT NYAHURURU AND DELIVERED VIA MICROSOFT TEAMS PLATFORM THIS 28TH DAY OF APRIL, 2022.

In the presence of:

Mr. Nderitu for the Plaintiff

Mr. Muu for the Applicants

No appearance for the Defendant

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Y. M. ANGIMA

ELC JUDGE

