

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 1348 OF 1972

ROBERT MACHARIA & OTHERS.....PLAINTIFF

VERSUS

KABIRO KARANJA & OTHERS.....DEFENDANT

R U L I N G

In this Application the applicant is asking for orders that Falcon Kenya Limited be joined as an interested party to the proceedings and that the order made by this Court on 26.10.1999 be vacated and set aside. A stay of further proceedings pending the hearing of this application is also asked for.

Mr. Thiongo, the Learned Counsel for the applicant in his submission contended that the applicant is a Limited Liability Company distinct from the Directors in particular from Mr.C.P. Waithaka. The applicant should have been given a chance to show that the documents were not a forgery. He further submitted that it is his client's case that it bought the land for valuable consideration from the Dandora Housing Scheme Limited.

The application is opposed and Mr. Njiru, the Learned Counsel for the Respondent in the application submitted that the documents, which are relied upon by the applicant, were all shown to be forgeries. This Court found as a fact that Mr. Waithaka was not a contributor to the purchase of the land in question and in any case the applicant has not shown how being joined as a third party to the proceedings would assist. The Applicant Company belongs to Mr. Waithaka, his son and a Mr. Mwaura. They have not shown who the other directors are and who are the the shareholders.

This application is supported by an affidavit of Mr. C.P. Waithaka in which he attempts to go into the issues, which were considered in the review application whose ruling was delivered on 26.10.1999.

In that application the respondents were Kibiro Karanja and 4 others. Mr. C.P. Waithaka swore the supporting affidavit dated 1st March, 1999 and filed on 2nd March, 1999. The matters raised in this application were all gone into during the hearing of the application and were adequately addressed to in the Ruling of this Court of 26.10.1999.

In the supporting affidavit by Mr. C.P. Waithaka filed on 29.2.2000 the same issues as those in the affidavit of 2nd March, 1999 are revisited only in more details this round. He now claims that in the earlier suit he was a plaintiff in his own capacity thereby distancing himself from Falcon Kenya Limited which he says had substantial interest in the suit land and was not afforded a chance to be heard. What Mr. Waithaka forgets is that what was before the court in the application was a review application and not a suit. Falcon Kenya Limited was not a party to the proceedings, which were subject of the Review, and in any case the court was reviewing a matter which had been concluded in 1983. How then and under what law is Falcon Kenya Limited is to be made a party to those proceedings? It will be seen from the Ruling of this court of 26.10.1999 that Mr. Waithaka repeatedly filed a number of applications whose aim was to circumvent the court finding of 1983 all without success. The application before the court is yet another attempt to try to undo the court finding of 1983. In the Ruling of 26.10.1999 the court reviewed the history of this case and made its finding. The applicant cannot come at this stage asking to be made a party through a review application.

This is simply stretching the application of the Rules too far and clearly amounts to total abuse of the court process. Even if the Applicant Company had absolutely nothing to do with Mr. Waithaka let a lone

where it is apparent that the company is his, one fails to see how the company by any stretch of imagination could be made a party to these proceedings.

I find the application with no merits and the same is dismissed with costs.

Delivered and dated this 5th day of March, 2001.

KASANGA MULWA

JUDGE