



**Colfax Holding Limited v Sharifow & 5 others (Environment and Land Constitutional  
Petition 15 of 2020) [2024] KEELC 4725 (KLR) (19 June 2024) (Judgment)**

Neutral citation: [2024] KEELC 4725 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND CONSTITUTIONAL PETITION 15 OF 2020  
SM KIBUNJA, J  
JUNE 19, 2024**

**BETWEEN**

**COLFAX HOLDING LIMITED ..... PETITIONER**

**AND**

**ABDIRASHID ABDUL SHARIFOW ..... 1<sup>ST</sup> RESPONDENT**

**MINISTRY OF LANDS, HOUSING & URBAN DEVELOPMENT .... 2<sup>ND</sup>  
RESPONDENT**

**CHIEF LANDS REGISTRAR ..... 3<sup>RD</sup> RESPONDENT**

**COUNTY LAND REGISTRAR, MOMBASA ..... 4<sup>TH</sup> RESPONDENT**

**NATIONAL LAND COMMISSION ..... 5<sup>TH</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 6<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. The petitioner moved the court through the petition dated the 9<sup>th</sup> June 2020, seeking for the following prayers:
  - a. A declaration that the petitioner’s rights to protection of their property and from arbitrary deprivation thereof and right to fair administrative action, access to information and fair hearing have been breached;
  - b. A declaration that the 2<sup>nd</sup> to 5<sup>th</sup> respondents had no jurisdiction nor powers in law or under the *constitution* of Kenya to purport to alienate and lease the property known as L.R No. 4526 as delineated on the Land Survey Plan number 34915 deposited in the Survey records office at Nairobi on the basis of the said Deed Plan No. 34915 or any other way deal with it given not only that the subject land is not Government of [sic] public land but privately owned land



but also the fact that the same has been consolidated and sub-divided in portions that are the property of the petitioner;

- c. A declaration that the purported lease in respect of L.R No. 4526 and the purported title No. CR 75061 premised thereon purporting to lease to the 1<sup>st</sup> respondent and confer upon him alleged proprietary interest over the land delineated in Deed Plan No. 34915 deposited in the Survey records office at Nairobi is a nullity and void and of no effect whatsoever in law and cannot be relied upon to grant nor assert any rights to property in law or otherwise particularly when the subject property is purported to still be in existence in its original form when, in fact, it is not;
- d. Consequently, an order that the aforesaid lease purportedly granted to the 1<sup>st</sup> respondent in respect of L.R No. 4526 is incapable of registration under the provisions of the Land Registration Act and stands voided and nullified'
- e. An order directing the Land Titles Registrar, Mombasa County, to restrain him from registering the purported lease in respect of L.R No. 4526 in favour of Abdirashid Abdul Sharifow as CR 75061 or at all and to rectify his records in the register to reflect a cancellation of the aforesaid titles if registration has already taken place;
- f. Consequently, an order prohibiting the 1<sup>st</sup> to 5<sup>th</sup> respondents whether by themselves or through any other person purporting to derive title through or under them from interfering with the petitioner's proprietary and or possessory rights or enjoyment of the suit property;
- g. A conservatory and permanent order restraining the 1<sup>st</sup> to 5<sup>th</sup> respondents from interfering with the petitioner's property or use, occupation and development thereof as well as all the rights prescribed and attendant thereto in law in any way or manner whatsoever being sub-divisions of the consolidated property L.E.Nos. 4325/1-88 and 4526 now registered as title No. 60201 being 214.7 hectares and L.R No. 29437 as delineated in Land Survey Plan Number 345788;
- h. A permanent order prohibiting the 1<sup>st</sup> to 5<sup>th</sup> respondents from engaging in any conduct which is inconsistent with the petitioner's proprietary rights and interest in the property comprised in and now registered as title No. 60201 being 214.7 hectares and L.R. No. 29437 as delineated in Land Survey Plan Number 345788 and or treating the subject property L.R No.4526 previously belonging to the petitioner and presently sub-divided as though it were public land available for allocation;
- i. Compensation by way of damages for unlawful interference with the petitioner's proprietary rights and development of its property and or use and occupation thereof;
- j. The costs and consequent upon this petition be paid and borne by the respondents; and
- k. All other or such orders or relief as the court may deem just and fit or appropriate to grant.

The petition is said to be supported by the annexed affidavit of Harji Govind Ruda, but none was attached. However, there is the affidavit sworn on 9<sup>th</sup> June 2020, by the same person that is attached to the notice of motion of even date, which I have considered. From the said deposition, the petitioner's case is inter alia that it is the registered proprietor of C.R 8727 [L.R No. 4526] measuring about 314 acres, the suit property, within County Government of Kwale, from 10<sup>th</sup> May 2007; that the petitioner has always been in occupation and possession of the said land, and has carried out levelling and other works thereon after obtaining all necessary approvals; that the said land was subsequently consolidated with L.R 4525/1-18, and thereafter sub-divided; that the sub-division scheme was approved as L.R Nos.29437/2-72; that the 1<sup>st</sup> respondent colluded with 2<sup>nd</sup>, 3<sup>rd</sup>, and 5<sup>th</sup> respondents and utilized the



Deed Plan No. 34915 for L.R No. 4526, which no longer exists after the above consolidation and subdivision, to issue him with a purported lease and title No. C.R 75061; that the purported lease to 1<sup>st</sup> respondent was presented to 4<sup>th</sup> respondent on 29<sup>th</sup> May 2020, and a draft certificate of lease prepared but has not been signed or registered; that the said purported lease to 1<sup>st</sup> respondent was fraudulently and unlawfully issued, and amounts to a contravention of its proprietary rights by the 1<sup>st</sup> to the 5<sup>th</sup> respondents.

2. That though service was effected through advertisement in the Daily Nation newspaper whose date is cut off from the annexed copy, the 1<sup>st</sup> respondent did not enter appearance, file any reply or participate in the hearing of the petition.
3. The Attorney General entered appearances for the 2<sup>nd</sup> to the 6<sup>th</sup> respondents vide the memorandum of appearance dated the 18<sup>th</sup> August 2020. On the 23<sup>rd</sup> January 2024, Mrs Waswa, learned counsel for the Attorney General, sought for and was granted last opportunity to file replies in 14 days. Then on the 13<sup>th</sup> May 2024, the said counsel informed the court that they had filed their replies and that they will not be filing submissions. The court has perused the court record, both manual and on the Case Tracking System, and no reply by the Attorney General in respect of this petition has been traced as of today, the 12<sup>th</sup> June 2024, when I am preparing this judgement.
4. The court gave directions on filing and exchanging submissions on the petition on the 23<sup>rd</sup> January 2024 and 11<sup>th</sup> April 2024. The learned counsel for the petitioner filed theirs dated the 6<sup>th</sup> May 2024, which the court has considered.
5. The following are the issues for the court's determinations:
  - a. Who is the registered proprietor of the suit property?
  - b. Whether the purported lease and registration of title No. C.R 75061 in favour of the 1<sup>st</sup> respondent was lawfully, regularly and procedurally done.
  - c. Whether the purported lease and certificate of title No. C.R 75061 in favour of the 1<sup>st</sup> respondent infringes on the petitioner's rights to property.
  - d. Whether the petitioner is entitled to any of the prayers sought in the petition.
  - e. Who pays the costs.
6. The court has carefully considered the grounds on the petition, affidavit evidence by the petitioner, submissions by the petitioner's counsel and come to the following conclusions:
  - a. That having noted as in 2 and 3 above that no replies have been filed in opposition to the petition by all the respondents, the petitioner's averments and depositions remain unchallenged or unrebutted. That however, the court has the duty to consider the factual materials presented before it and determine whether the petitioner has established or proved its claim on a balance of probabilities.
  - b. The petitioner has attached to the supporting affidavit copies of documents of ownership over the suit property. Those documents were served upon the 2<sup>nd</sup> to the 6<sup>th</sup> respondents who are represented by the Attorney General and there is no documentary evidence tendered to contradict them or suggest the said documents do not exist or are not genuine.
  - c. The petitioner's affidavit and documentary evidence terms the use by the 1<sup>st</sup> to 5<sup>th</sup> respondents of L.R No. 4526, that did not exist as it had been consolidated with L.R No. 4525/1-18 and subsequently subdivided into several portions, to purport to create a lease in favour of the 1<sup>st</sup>



respondent, and register it as title C.R No. 75061, as an act of collusion and fraudulent. The petitioner has annexed a copy of the unsigned Certificate of Title No. CR. 75061 dated 29<sup>th</sup> May 2020 in the name of Abdirashid Abdul Sharifow, to the supporting affidavit. That even though there is no evidence to show it had been registered, the respondents have not disputed that they were involved in processing it, as alleged.

- d. Though there is no evidence presented to show that the respondents, or any one of them, had actually taken over the suit property from the petitioner, or interfered with its use, the evidence tendered show the existence of concerted attempts by the 1<sup>st</sup> to 5<sup>th</sup> respondents, of unlawfully and irregularly creating a title over a portion of the suit property belonging to the Petitioner, in favour of the 1<sup>st</sup> respondent, without the consent of the petitioner, who is the registered proprietor. The petitioner has therefore shown it deserves the protection of the court in terms of prayers (a), (c), (e), (f) and (j), suffices in the circumstances of this petition.
7. Flowing from the above determinations, the court finds in favour of the petitioner and the petition is allowed in terms of prayers (a), (c), (e) (f) and (j) only.

Orders accordingly.

**DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 19<sup>TH</sup> DAY OF JUNE 2024.**

**S. M. KIBUNJA, J.**

**ELC MOMBASA.**

In The Presence Of:

Petitioner : No Appearance.

Respondents : No Appearance.

Leakey – Court Assistant.

**S. M. KIBUNJA, J.**

**ELC MOMBASA.**

