



Danson v County Physical Planner Taita Taveta County & 3 others; Ethics & Anti Corruption Commission & 2 others (Interested Parties) (Environment & Land Petition E003 of 2025) [2025] KEELC 2925 (KLR) (Environment and Land) (27 March 2025) (Ruling)

Neutral citation: [2025] KEELC 2925 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT & LAND PETITION E003 OF 2025
EK WABWOTO, J
MARCH 27, 2025**

BETWEEN

MWASARU DANSON PETITIONER

AND

**COUNTY PHYSICAL PLANNER TAITA TAVETA COUNTY ... 1ST
RESPONDENT**

THE LAND REGISTRAR, TAITA TAVETA COUNTY 2ND RESPONDENT

VOI POINT LIMITED 3RD RESPONDENT

DIAMOND TRUST BANK KENYA LIMITED 4TH RESPONDENT

AND

THE ETHICS & ANTI CORRUPTION COMMISSION INTERESTED PARTY

**THE DIRECTORATE OF CRIMINAL INVESTIGATIONS INTERESTED
PARTY**

COUNTY GOVERNMENT OF TAITA TAVETA INTERESTED PARTY

RULING

1. This Ruling is in respect to the Petitioner’s application dated 24th February 2025 which application seeks the following reliefs:-
 - i. A declaration that the decision in approving the change of user by the 1st Respondent and 4th Interested Party of L.R No. 28683 Taita Taveta County was opaque, clandestine, capricious,



whimsical and contrary to Articles 42, 47, 66 and 68 of *the Constitution* of Kenya hence unconstitutional and consequently null and void.

- ii. A declaration that the approval by the 1st Respondent and the 4th Interested Party of change of user of the suit property amounted to dereliction of its obligations and was therefore a violation of Article 42 of *the Constitution* of Kenya.
 - iii. A declaration that upon breach of special condition 7 of original grant and interest in the suit property reverted to the County Government of Taita Taveta which now holds now holds the property in trust for the residents of the County.
 - iv. An order of certiorari to remove into this court the decision of the Land Control Board and the 2nd Respondent dated 29th March 2019, 13th March 2019 and that of the 2nd Respondent of 9th September 2022 respectively approving the change of user in respect of L.R No. 28663 from agricultural use to mixed use.
 - v. An order that the 1st Respondent do surrender to the Land Registrars the certificate of lease held by it in respect of the suit property.
 - vi. An order of Mandamus be issued to the 4th Interested Party to establish a County Physical and Land Use Planning Liaison Committee pursuant to Section 61(3) of the Physical Planning act.
 - vii. A declaration that all subsequent Third Party purchasers and or holders of any title to land emanating from the original grant No. CR51725 giving to L.R 28663 be compensated their purchase price in full by the 3rd Respondent.
 - viii. A declaration that the 2nd and 4th Respondents association and subsequent registered charges upon contravention of the special conditions are not enforceable upon reversion of the Land Reference alternative avenue for enforcement due to possible collusion, intend to defraud, insider trading and or a potential money laundering scheme oblivious of the original grant condition.
 - ix. Costs of and incidental to this Petition.
 - x. Any other order that the court may deem necessary for the ends of justice.
2. The application was premised on the grounds on the face of the application and also supported by the affidavit sworn by the Petitioner on 24th February 2025. The Petitioner also filed a further affidavit sworn on 11th March 2025.
 3. The application was opposed by the 3rd and 4th Respondents. The 3rd Respondent filed a Replying Affidavit sworn on 5th March 2025 by Mohamedali Kassamali Madhani while the 4th Respondent filed grounds of opposition dated 11th March 2025.
 4. During the plenary hearing of the application, Learned Counsel Mr. Owino and Chahilu appeared and made oral submissions on behalf of the Petitioner while Learned Counsel Mr. Kemei appeared on behalf of the 2nd Respondent Learned Counsel Mr. Mbugua made oral submissions for the 3rd Respondent while Learned Counsel Mr. Kisinga made oral submissions on behalf of the 4th Respondent.
 5. It was the Petitioner's case that that the present application concerns all that parcel of land known as LR No. 28683 situated in the South West of Voi Township and measuring approximately four thousand eight hundred and twenty-five (4,825) acres. The 3rd Respondent is currently the registered proprietor of the lease over the suit land having purchased it from Voi Plantation Limited.



6. According to the Petitioner, the said parcel of land was registered as a Grant No. CR. 51725 in pursuance of a surrender registered as CR. 8814137 in the name of Voi Sisal Estates Limited for 99 years with effect from 1st January, 1993 at an annual Rent of Kshs.3S3,79S/=(Revisable).
7. The grant was executed on the 23rd February, 2012 by the then Commissioner for Lands and the lease registered pursuant to some special conditions.
8. It was averred that special condition 7 provides that "if the land or any part thereof should cease to be used for agricultural purposes, the land or any part thereof shall be deemed to have automatically reverted to the government of Kenya without the necessity of any formal surrender thereof and the term created shall de facto determine in respect of the Land or the part u the case may be."
9. It was stated that an advert appeared on the Daily Nation Friday, 25th January 2019 inviting the public to give comments on a change of user over L.R No. 28683. The said notice appears to be an afterthought to as there are no records nor folio showing a requisition to the said newspaper by the County Government as is the norm. It was further averred that a change of user advertisement originates from the office of the 1st Respondent or the 3rd Interested Party's representative upon request by the Bona fide owner of the property in question.
10. It was stated that on 13th March 2019, the Voi Land Control Board purportedly gave its approval for the change of user and subdivision pursuant to an application that had been made on 28th February 2019 by the 3rd Respondent and that the said consent is suspect as there are no records of the board minutes and the submitted documents in the archives with the 1st and 2nd Respondents.
11. It was further stated that the Voi Land Control Board as then constituted never sat to deliberate over the said change of user and as such it was a blatant forgery and from the onset the process was fraudulent and casts serious aspersions on the conduct of the 3rd Respondent in cahoots with public officers.
12. It was contended that the provisions of the now repealed Physical Planning Act, 1996 which was the law in force were not adhered to. The Act did provide that for any application that did not conform to the conditions registered against the title had to be served on every occupier adjacent to the parcel of land and other persons as the local authority would deem fit. This fundamental provision was disregarded as the change of user was shrouded in secrecy and illegalities. Notices were to be published for a specified duration, typically giving the public a minimum period (usually around 21 to 30 days) to respond or provide feedback on the proposed change. The notice in question gave 14 days for comments to be addressed to a given address. The public notice was required to include essential details such as the location of the property, the nature of the proposed change of user, and instructions on how to provide comments or objections.
13. It was further contended that every notice was to be published in the Gazette, two local dailies, one in English and the other in Kiswahili and should have also been displayed at the office of the chief. No single administrative unit was notified of this process and as such a pointer to gross abuse and secrecy as is always the case with other fraudulent dealings.
14. According to the Petitioner, the proposed change of user was only published in the daily Nation of 25th January 2019 and there is nothing to suggest that the provisions of the Physical Planning Act, 1996 were adhered to.
15. The Petitioner averred that the parcel of land was subdivided into three blocks namely Voi Municipality, blocks 1, 2, and 3 effectively, and plots of various sizes held by the 3rd Respondent given new numbers, for example, 28683/27, 28683/28683/53, 28683/172, 28683/235, 28683/236, 28683/234 and in a flagrant breach and disregard of the original special condition 7 and provisions



of the law, the 3rd Respondent in collusion with the rogue officers effected an illegal change of user whereby the land's use was converted to mixed use.

16. It was averred that the Voi Land Control Board is believed to have given an approval for a change of user and subdivision on 13th March 2019. An inquisition with the board failed to field appropriate documentation in support of the approval. The law provides that all land transactions be recorded and all documents well-kept for public scrutiny as well. A further enquiry as to minutes of the board meeting that ratified the approval are missing nor is there a standard request for such a meeting or even special board meeting.
17. It was contended that the 3rd Respondent has subdivided the suit land severally charged it to the 4th defendant and is in the process of entering into agreements of sale for pieces of the land. In fact as a result of an illegal change of user, new leases have been prepared and fraud perpetuated at will.
18. It was also contended that there was no public participation at all and the local community that relies on the parcel of land for grazing and farming activities was not involved in the entire process of effecting the change of user or subdivisions.
19. It was further contended that the said parcel of land has been severally charged for huge sums to the 4th Respondent who through its directors has aided and abetted the illegalities. The same points to a potential money laundering scheme.
20. The Petitioner contended that as at 14th December 2018, Mr. Mohammed Ali Kassmali Madhani was the sole director of the 3rd Respondent who also happens to be the proprietor of Madhani Advocates LLP which said firm provides legal services to the 4th Respondent. A case for outright conflict of interest,
21. Learned Counsel Owino reiterated the contents of the supporting affidavit and grounds made in support of the application while making his oral submissions. He also added that the court has jurisdiction to hear the matter since the County Physical and Land Use Planning Liaison Committee is yet to be set up pursuant to the provisions of Section 61(3) of the Physical Planning Act.
22. Learned Counsel Mr. Chahilu submitted that while the ownership of the suit property is not in dispute, the subdivision of the original parcel and the use was suspicious. It was submitted that there were some conditions which were not adhered to since the land was not free from any encumbrances when the subdivision was done. Counsel urged the court to grant the prayers sought.
23. The 3rd Respondent averred that the Petitioner sought to have challenged the issue of change of user to the County Physical and Land Use Planning Liaison Committee and as such the court did not have jurisdiction to hear the matter.
24. It was also averred that the Petition is an abuse of the court process since there have been surrogate petitions which were filed and subsequently withdrawn. The said petitions included the following:-
 - a. Mombasa ELC Petition No. E004 of 2023 Mary Wakesho & Another (suing on behalf of Iko Kitu Women Group) v Voi Point Limited, The Chief Land Registrar & County Government of Taita Taveta.
 - b. Mombasa ELC Petition No. E013 of 2023 Etoke John Akaran v Voi Point Limited & 10 Others.
 - c. Voi ELC Petition No. E002 of 2024 (Formerly Mombasa ELC Petition No. E002 of 2024) Solomon Bernard Ogai Owango v Voi Point Limited & 7 Others.



- d. Voi ELC Petition No. E013 of 2024 (Formerly Mombasa ELC Petition No. E029 of 2024) Edward Kighala Mwakisima v Voi Point Limited & 7 Others.
25. It was also averred that the 3rd Respondent followed all the due process in acquiring the suit property and obtained all the necessary approvals in subdividing the same.
26. It was also averred that subsequently, the company applied to the 1st and 2nd Respondents to have the use of some land parcels to wit Land Reference Numbers 28683/5, 28683/7, 28683/8, 28683/11, 28683/16, 28683/17, 28683/19, 28683/21, 28683/22 and 28683/26 within Voi Sub County changed from agricultural to mixed use and subsequent subdivisions pursuant to the express and mandatory provisions of the *Physical and Land Use Planning Act*, No. 13 of 2019. This was done vide a letter dated 2nd June 2022.
27. That in compliance with the mandatory provisions of Section 58(7) and (8) of the *Physical and Land Use Planning act*, 2019, the Company notified members of the public of the intended development and invited members of the public to submit any objections to the proposed development plans by publishing a Notice in the Standard Newspaper edition of 21st June 2022 and Taifa Leo newspaper edition of 12th July 2022.
28. It was also averred that the 3rd Respondent obtained consent from the National Land Commission and also complied with the mandatory provisions of the *Physical and Land Use Planning Act* of 2019, it also sought the necessary consent from the relevant authorities which were granted without any objection.
29. Learned Counsel Mbugua submitted that the issue of surrender should await the determination of other matters before this court pending for determination. The DCI had also investigated the issues affecting this property. The granter of the lease was the Commissioner of Lands. National Land Commission decided to vary the terms of the said lease and this court cannot dictate how National Land Commission conducts its mandate and neither can it interfere with the same. Counsel also submitted that the threshold for grant of the said orders had not been met. The court was urged to dismiss the said application with costs.
30. Learned Counsel Kisinga also opposed the application and submitted that the Applicant had not met the threshold for grant of the orders sought. The said property is private property and the Petitioner has not indicated his tangible interest in the said property. It was also submitted that the orders sought have been overtaken by events since the property was successfully subdivided into 28 parcels. The court was equally urged to dismiss the Petition.
31. The court has considered the Replying Affidavit and grounds of opposition filed by the 3rd and 4th Respondents respectively together with the oral submissions made by Counsel for the Petitioners, 3rd and 4th Respondents. The main issue for consideration is whether the Petitioner has made a case for grant of the reliefs sought in his application.
32. The principles of grant of conservatory orders were laid down by the Supreme Court in *Gitaru Peter Munya – Vs Dickson Mwenda Kithinji & 2 others* [2014] eKLR. The judges of the Supreme Court in the said case held that conservatory orders bear a more decided public law connotation: For these are orders to facilitate ordered functioning within public interest. Conservatory orders, therefore are not unlike interlocutory injunctions, linked to such private party issues as the “prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the applicant’s case for orders of stay. Conservatory orders consequently, should be granted on the inherent merit of the case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.



33. In considering whether or not to grant conservatory order, the principle of proportionality ought also to be considered. As was stated by Ojwang, AJ (as he then was) in *Suleiman Vs Amboseli Resort Limited* [2004] 2 KLR 590 the court, in responding to prayers, should also opt for the lower rather than the higher risk of injustice.

34. The principle guiding the decision whether or not to grant conservatory orders were succinctly set out by Onguto J. in *Board of Management of Uhuru Secondary School v City County Director of Education and 2 others* [2015] eKLR who set out the same as hereunder:

“(i)The applicant ought to demonstrate an arguable prima facie case with a likelihood of success, and that in the absence of the conservatory orders sought, he is likely to suffer prejudice as a result of the violation or threatened violation of *the constitution*;

(ii)Once the applicant has established to the court’s satisfaction a prima facie case with a likelihood of success, the court is then to decide whether a grant or denial of the conservatory relief will enhance the constitutional values and objects of the specific right or freedom of Bill of rights;

(iii)Thirdly, flowing from the first two principles is whether if an interim conservatory order is not granted, the petition or its substratum will be rendered nugatory. It is indeed the business of the court to ensure and secure as far as possible that any transitional motions before the court to do not render nugatory the ultimate end of justice;

(iv)The court must consider conservatory orders also in the face of public interest dogma; and

(v)Finally, the court is to exercise its discretion in deciding whether to grant or deny a conservatory order. The court must consequently consider all relevant material facts and avoid immaterial matters. The court will consider the applicant’s credentials, the prima facie correctness of the availed information, whether the grievances are genuine, legitimate, and deserving, and finally, whether the grievances and allegations are grave and serious or merely vague and reckless.”

35. In the instant case, the events made and or referred to by the Petitioner occurred from 2019 to 2023, it is also evident that while the Petitioner seeks conservatory and injunctive orders, he has not demonstrated any loss and prejudice that he may suffer if the said orders are not granted.

36. While the Petitioner has not disputed ownership of the suit property, he has sought to challenge the subdivision and how the change of use of the said property and or other approvals were granted. In view of the foregoing, these are issues that can be considered conclusively during trial. The Petitioner has also not provided and or demonstrated any evidence of transfer or sale of the said property to any third parties and how they are likely to be affected. No affidavit was sworn by any third party and availed to this court for consideration. In considering this issue, this court wishes to make reference to the case of *Martin Nyaga Wambora v Speaker of the County Assembly of Embu & 3 others* [2014] eKLR, where the court expressed itself as follows-;

“To those erudite words I would only highlight the importance of demonstration of “real danger”. The danger must be imminent and evident, true and actual and not fictitious; so much so that it deserves immediate remedial attention or redress by the court. Thus, an allegedly threatened violation that is remote and unlikely will not attract the court’s attention.”



37. In this case, the court is of the opinion that no prejudice will be suffered if the conservatory orders are not granted.
38. The other requirement is whether if an interim conservatory order is not granted, the petition or its substratum will be rendered nugatory. It is the applicants' submission that if the conservatory orders are not granted, the petition will be rendered nugatory. This court is not persuaded so. This is because the land will still be there since no evidence of any transfer or its disposal has been demonstrated to this court by the Petitioner.
39. Applying the principles espoused in the above cited cases and text to the instant application, this court is inclined not to grant the conservatory orders sought.
40. In the circumstances it is the finding of this court that the Petitioner's application dated 24th February 2025 has not met the threshold for grant of the reliefs sought, the same is unmerited and is subsequently dismissed with an order that each party to bear own costs of the said application.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 27TH DAY OF MARCH 2025.

E. K. WABWOTO

JUDGE

In the presence of:-

Mr. Owino for the Petitioner.

Mr. Mbugua for 3rd Respondent.

Kisinga for 4th Respondent.

Mr. Kemei for the 2nd Respondent and 2nd Interested Party.

Court Assistant: Mary Ngoira

