



**Nyobambo (Suing as an Administrator of the Estate of Pitalis Opanga Nyobambo) v Opanga & 2 others (Environmental and Land Originating Summons 47 of 2022) [2025] KEELC 5318 (KLR) (17 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 5318 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MIGORI  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 47 OF 2022  
MN KULLOW, J  
MARCH 17, 2025**

**BETWEEN**

**DORCAS AKINYI ABICH ..... PLAINTIFF  
SUING AS AN ADMINISTRATOR OF THE ESTATE OF PITALIS OPANGA  
NYOBAMBO**

**AND**

**GEORGE EVANS OPANGA ..... 1<sup>ST</sup> RESPONDENT  
LAND REGISTRAR MIGORI COUNTY ..... 2<sup>ND</sup> RESPONDENT  
HON ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. 1<sup>st</sup> Respondent filed a Notice of Preliminary Objection dated 28/9/2023 on the following grounds:-
  - i. That the suit is incurably defective and base on wrong principles of law as it offends the provisions of order 37 Rule 8 of the Civil Procedures Rule.
  - ii. That the orders sought int he Originating Summons can only be obtained by way of a Plaintiff and not through an Originating Summons.
  - iii. That the Originating Summons is fatally defective and an abuse of the court proceedings.
2. The Preliminary Objections was canvassed by way of written submission. The 1st Respondent in his submission contends that the cause of action in the Originating Summons relates to the obtaining of title through fraud without going a succession process.
3. Whilst the main order is for the cancellation of a title, and pursuant to the provisions of order 37 of the Civil Procedures provided that one must first commence succession cause before applying for



cancellation of title and thus averse that the suit herein was commenced under the wrong provisions of the law.

4. The 1<sup>st</sup> Respondent also contends that taking into account the value of the suit property, the same ought to have been filed in the magistrate's court rather than the ELC as the value of the subject land does not exceed the sum of Kshs. 20 million.
5. The Plaintiff in response to the Respondents submissions contends since the court had issued directions on the matter before the filing of the Instant Preliminary Object, the court had deemed the Originating Summons as a Plaint and thus the Preliminary Objection as filed is misconceived.
6. Plaintiff further avers that the power of the court to strike out a suit must be exercised sparingly unless the suit looks so hopeless and no reasonable avenue of action exist.
7. I have considered the Preliminary Objection and the Submissions filed by the parties and the only issue for determination before me is whether the suit herein was commenced appropriately under the provisions of Order 37 of the Civil Procedures Rules.
8. The Plaintiff had commenced the suit hence by way of an Originating Summons and sought for a declaration that the 1<sup>st</sup> Respondent with the aid of the 2nd Respondent caused the transfer of land parcel Kamagambo/Kamwongo/314 through fraud and illegal falsification. He also sought for an order of rectification of the register.
9. Having read the provisions of 37 Rule 3 of the Civil Procedures, suits that can be commenced by way of an Originating Summons are outlined and these do not include the instant case and, in the circumstance, I find that the suit herein is not properly instituted before the court.
10. In the Plaintiff contentions that the Preliminary Objections was filed after directions were taken, it is now established that the Preliminary Objections can be filed anytime before the commencement of a hearing and since the matter has not proceeded for hearing, I find that the Preliminary Objections was properly filed.
11. The upshot of the above is that the Preliminary Objections dated 3/10/2023 is merited and the same is upheld and consequently the suit herein is struck out.
12. Each party to bear the costs

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 17<sup>TH</sup> DAY OF MARCH, 2025**

.....

**MOHAMMED N. KULLOW**

**JUDGE**

Vincent Court Assistant

No appearance For the Plaintiff

No appearance for the Defendant

