



Abuga v Land Registrar Nyamira County & 2 others (Environment & Land Miscellaneous Case E009 of 2023) [2023] KEELC 22414 (KLR) (13 December 2023) (Ruling)

Neutral citation: [2023] KEELC 22414 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND MISCELLANEOUS CASE E009 OF 2023**

**JM KAMAU, J
DECEMBER 13, 2023**

BETWEEN

PILLANCE NYAKERARIO ABUGA APPLICANT

AND

LAND REGISTRAR NYAMIRA COUNTY 1ST DEFENDANT

LAND SURVEYOR - NYAMIRA COUNTY 2ND DEFENDANT

**THE EXECUTIVE COMMITTEE MEMBER ROAD AND PUBLIC WORKS -
NYAMIRA COUNTY 3RD DEFENDANT**

RULING

1. The matter herein was commenced by a Notice of Motion dated 26/11/2023 where the Applicant sought for orders; -
 - a. That the 1st and 2nd Respondents do identify, reconstitute and fix the access road separating land parcels West Mugirango/Siamani/2239, 2238, 2584 and 3010 on one side and West Mugirango/ Siamani/3492, 8386,3009 on the opposite side.
 - b. That the 1st and 2nd Respondents having identified and fixed the said road the 3rd Respondent to re-open and place the necessary infrastructure to make the road usable.
 - c. Cost of the Application be in the cause.
2. The Applicant gave the grounds of her suit as the fact that she is the registered proprietor of the property known as West Mugirango/Siamani/8386 and there exists an access road in the cadastral map separating West Mugirango/Siamani /2239, 2238, 2584 and 3010 on one side and parcel numbers West Mugirango/Siamani /3492, 8386 and 3009 on the other. But that the same is not there on the ground. That the Applicant has no access to the main road and all her pleas have fallen on deaf ears. She



attached a copy of her ownership of the aforesaid parcel of land. The same was issued on 11/5/2023, a copy of the mutation form and sketch map of the land.

3. On their part, the 2nd and 3rd Respondents have opposed the claim on the ground that it is not properly before the court since it is not properly instituted as is required by law. The matter was commenced by way of Notice of Motion and not by way of Plaint as prescribed since the Applicant seeks substantive prayers which cannot be granted in a miscellaneous Application. They therefore urge that the “suit” is an abuse of the judicial function.
4. I have gone through both the Motion and the Notice of preliminary objection by the 2nd and 3rd Respondents.
5. Without going further with this matter, Order 3 Rule 1 (1) of the [Civil Procedure Rules](#) provides that:

“every suit shall be instituted by presenting a Plaint to the court, or in such other manner as may be prescribed.”

Other ways of presenting a suit in court are: -

Judicial Review. Originating Summons. Petition. Memorandum of Appeal. Originating Motion.

6. Notice of Motion is not one of them. In the Case of [Fidelity Bank Limited v John Joel Kanyali](#) (2014) eKLR the court held as follows: -

“....A Notice of Motion is not a manner prescribed for instituting a suit. It cannot be a pleading as defined in Cap 21 and its [Rules](#). Accordingly, there is no suit before court which suit can sustain the Notice of Motion.”

7. Similarly, there is no suit in court that is capable of ascertaining the rights of either party or how such rights have been trodden upon and this court cannot proceed with the matter as it is. In the instant Motion, it is difficult to determine the rights of either party and the Applicant is undeserving of the prayers sought. The Motion as filed is an abuse of the process of the court and the same is hereby struck out with costs.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 13TH DAY OF DECEMBER 2023.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: - Brenda

Mr. Nyariki for the Applicant:

Mr. Maronga for the Respondents:

