



**Alma v Verona Fathers Registered Trustees (Environment & Land Case E001 of 2022) [2022] KEELC 15207 (KLR) (8 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 15207 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE E001 OF 2022  
MN GICHERU, J  
NOVEMBER 8, 2022**

**BETWEEN**

**BISAGNI ALMA ..... PLAINTIFF**

**AND**

**VERONA FATHERS REGISTERED TRUSTEES ..... DEFENDANT**

**RULING**

1. This ruling is on the notice of motion dated December 16, 2021. The motion which is under order 40, rules 1 and 2 of the [Civil Procedure Rules](#) seeks an order compelling the defendant /respondent to unconditionally deliver vacant possession of the suit parcel known as Ngong/Ngong/35109 pending the hearing and determination of the suit.

2. The motion is supported by an affidavit by the plaintiff dated December 17, 2021 together with seven annexures and pleadings.

The gist of the above material is that the plaintiff is owner of the suit land while the defendant is the trustee. The only reason why the plaintiff is not the registered owner of the suit land is that at the time of purchase, she was not a Kenyan citizen.

She therefore had the defendant registered as trustee while she remained the owner. She personally bought the land from one George Keriga Malonyie.

3. The plaintiff was always in possession of the suit land from 2007 to November, 2021 when the defendant and its agents tried to unlawfully wrest that possession from her.

4. The motion is not opposed by a replying affidavit or grounds of opposition. There is however a notice of preliminary objection dated February 4, 2022 which states as follows. The application,

- (i) Is without merit for being commenced by way of plaint instead of an originating summons.
- (ii) Contravenes mandatory provisions of law.



- (iii) Is incurably defective and cannot stand in law.
  - (iv) Is an abuse of the court process.
  - (v) Is misconceived, misdirected and misled and therefore the prayers cannot stand in law.
  - (vi) Is an abuse of the court process and ought to be dismissed with costs.
5. Contrary to the directions given on May 24, 2022 that written submissions be filed by October 10, 2022, neither the plaintiff's nor the defendant's counsel filed any written submissions.
6. I have carefully considered the application in its entirety including the affidavits, annexures and the entire plaintiff's pleadings as against the preliminary objection dated February 4, 2022. I have taken the grounds on the preliminary objection as the reply to the notice of motion. I make the following findings.

Firstly, I find nothing wrong with the suit being commenced by way of plaintiff. The suit discloses a cause of action. The orders sought are all grantable in a plaintiff. The defendants are not in any way prejudiced by the manner in which the suit is presented. The plaintiff complies with order 2 *Civil Procedure Rules* generally. It also complies specifically with order 3, rules 1 and 2.

Secondly, the mandatory provisions of law that application has failed to comply with are not stated. I find that it is in strict compliance with order 51 *Civil Procedure Rules*.

Thirdly, I find no abuse of court process, no misconception, no misdirection, no misleading and no reason advanced by the defendants whatsoever to prove that there is anything wrong with the suit or the notice of motion.

In fact, I find that the notice of preliminary objection is in very general terms and it lacks specific details of the law breached.

Finally, I find that the averments in the applicant's application and the deposition in her affidavit are not controverted by any deposition or other credible material from the defendants.

For the above stated reasons, I allow the notice of motion dated December 16, 2021 in its entirety.

It is so ordered.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 8<sup>TH</sup> DAY OF NOVEMBER, 2022.**

**M.N. GICHERU**

**JUDGE**

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