



Kamiti Farmers Company Limited v Commissioner of Lands & another (Judicial Review Miscellaneous Application 103 of 2009) [2024] KEHC 6643 (KLR) (Civ) (7 June 2024) (Ruling)

Neutral citation: [2024] KEHC 6643 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
JUDICIAL REVIEW MISCELLANEOUS APPLICATION 103 OF 2009**

J NGAAH, J

JUNE 7, 2024

BETWEEN

KAMITI FARMERS COMPANY LIMITED APPLICANT

AND

COMMISSIONER OF LANDS 1ST RESPONDENT

PERMANENT SECRETARY MINISTRY OF ROADS 2ND RESPONDENT

RULING

1. The application before court is a motion dated 17 October 2023. It is filed by one Daniel Nderitu Gathenji. It is expressed to be bought under order LIII Rules 3 & 4 of the *Civil Procedure Rules*, Sections 8(2) and 9 of the *Law Reforms Act*, Cap 26, and section 3 A of the *Civil Procedure Act*, Cap 21. As far as I can gather, the applicant is seeking only one prayer which is couched in the following terms:

“1. THAT DANIEL NDERITU GATHENJI be enjoined (sic) herein as a bonified (sic) beneficiary with benefit equal to each shareholder, besides offsetting cost of expenses incurred in the process of prosecution assignment to establish that the land measuring approximately 40 Acres was irregularly used to construct the Road (Northern By Pass) on private property.”

2. The rest of what has been itemized in the application as prayers are, in fact, the grounds upon which the application is based. I would not take it on the applicant for this infraction considering that he is acting in person.
3. The application is said to be supported a “verifying affidavit of Daniel Nderitu Gathenji and witness statement by Peter Munene Ndegwa”.



4. Even before looking at these documents, the record shows that by a chamber summons dated 29 December 2009, Kamiti Farmers Company Limited applied for leave to file a judicial review application for the orders of mandamus and prohibition against the respondents.
5. Leave was granted on 7 January 2010. Apart from the applicant's instant application, there is no other application on record. Most importantly, there is no evidence that the motion which Kamiti Farmers company Limited sought to file and for which, as noted, leave was granted was ever filed.
6. The handwritten notes of Nambuye, J. (as she then was) of the proceedings in court on 7 January 2010, show that the substantive motion ought to have been filed within 21 days of the date of the grant of leave. This, however, is not captured in the order that was subsequently extracted and issued on the same date. But that is besides the point. The point is, there is no suit pending in this matter to which the applicant can be joined in any capacity. The application for leave which formed the foundation of the proceedings in this matter was spent upon the grant of leave.
7. It could be that the substantive motion for the judicial review orders may have been filed in a different file and given a different registration number since miscellaneous application no. 103 of 2009, in which the applicant has filed the instant application, was only meant for obtaining leave. If that be the case, proof of the substantive suit having been filed has not been brought to the attention of this Honourable Court.
8. It follows that the applicant's application is misconceived and an abuse of the process of this Honourable Court. It is hereby dismissed.

For completeness of record, this file is marked as closed. It is so ordered.

SIGNED, DATED AND DELIVERED ON 7 JUNE 2024

NGAAH JAIRUS

JUDGE

