



**Kariithi v Kariithi (Environment and Land Appeal E001 of 2024)  
[2025] KEELC 6596 (KLR) (24 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6596 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT AND LAND APPEAL E001 OF 2024  
JM KAMAU, J  
SEPTEMBER 24, 2025**

**BETWEEN**

**ALICE WANDIA KARIITHI ..... PLAINTIFF**

**AND**

**JOSEPH N KARIITHI ..... DEFENDANT**

*(This Appeal before the Court emanates from the Ruling of the Honourable E. Kanyiri, Principal Magistrate Karatina delivered on 5/4/2024 in Karatina PMMCE & L case No 23 of 20)*

**JUDGMENT**

1. The learned Honourable Trial Magistrate had before him an Application dated 19/10/2023 seeking for orders that: -
  - a. The Court be pleased to cancel the Title deeds Nos. Magutu/ Gagatei 1820, Magutu/ Gatei/1821, and Magutu Gatei 1822 all to revert to Magutu/Gatei/864.
2. This Application was premised on the grounds that:-
  - a. The Respondent in an attempt to frustrate the Orders of the Court had sub-divided the land i.e. Magutu/Gatei/864.
  - b. That Court should not make the Orders in vain.
3. The learned Trial Magistrate observed that the Titles sought to be cancelled were not the subject matter of the suit before him. He equally observed that the Respondent had acted against High Court Orders but was also quick to find that the Appellant ought to have filed a separate suit in order to cancel the said Titles. He accordingly dismissed the Application before him.



4. Consequently, the Appellant filed an Appeal on 22/5/2024 in which she asked this Court to set aside the Ruling of the lower Court and substitute it with one allowing the Application dated 19/10/2023. She based her Appeal on the following grounds: -
- a. That the Magistrate erred in law and in fact in finding that the Title Deeds Nos. Magutu/gagatei 1820, Magutu/Gatei/ 1821 and Magutu Gatei 1822 were not related to Magutu/ Gatei / 864 when the evidence showed otherwise.
  - b. The Honourable Magistrate erred in law and fact in refusing the orders sought while she appreciated that the Respondent went against the Orders of this Court.
  - c. That the Honourable Magistrate erred in law judiciously to avoid ridicule and contempt of Court orders by the Respondent through mischief.
  - d. That the Honourable Magistrate erred in law and fact in refusing to exercise her discretion to ensure that the ends of justice are met.
5. It is indeed unfortunate that while the Appellant in an Affidavit sworn on 19/10/2023 in support of her Motion of even date depones in paragraphs 2 and 3 that there was a Judgment of the Subordinate Court that gave her 0.177 Hectares from land parcel No Magutu/Gatei/864 and that before the execution of the said Judgment, the Respondent fraudulently sub-divided the land to try and divert the course of justice, such records were not availed in the Record of Appeal in spite of same being very crucial to her Application. She did not also attach the copies of the documents she submitted to the land registry save a copy of the Application for Registration and Certificates of official search. These would not help this Court to know what had transpired prior to the dismissed Application.
6. The Appellant has not shown any Pleadings filed in Court and it is quite apparent that she moved the Court by way of a Notice of Motion in a Miscellaneous Application. This cannot be allowed in a serious case such as where one seeks to cancel another or other Title Deeds in the names of another person. For such to happen, there has to be a substantive suit where evidence would have to be tendered and adduced in Court. It cannot be handled in such a simple and casual manner.
7. 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.
8. 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.”
9. 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 Appellant 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.



10. Before penning off I wish to advise the Appellant to pursue the other suit where the Orders were made i.e. Nyeri ELCA No 6 of 2020 to try her luck there.

**DATED AND DELIVERED VIRTUALLY AT NYANDARUA THIS 24TH DAY OF SEPTEMBER, 2025.**

**HON. MUGO KAMAU**

**JUDGE.**

In the presence of: -

Court Assistant –

Appellant-N/A.

Respondent– Present virtually in person.

