



Case Number:	Civil Case 106 of 2009
Date Delivered:	09 Dec 2010
Case Class:	Civil
Court:	High Court at Embu
Case Action:	Ruling
Judge:	Wanjiru Karanja
Citation:	ALOISE KARIUKI IRERI v JACKSON NGARI NTHIA & another [2010] eKLR
Advocates:	-
Case Summary:	-
Court Division:	-
History Magistrates:	-
County:	-
Docket Number:	-
History Docket Number:	-
Case Outcome:	-
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
<p>The information contained in the above segment is not part of the judicial opinion delivered by the Court. The metadata has been prepared by Kenya Law as a guide in understanding the subject of the judicial opinion. Kenya Law makes no warranties as to the comprehensiveness or accuracy of the information.</p>	

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**CIVIL CASE NO. 106 OF 2009 (OS)**

ALOISE KARIUKI IRERI.....  
.....PLAINTIFF

**VERSUS**

JACKSON NGARI NTHIA.....  
.....1<sup>ST</sup> DEFENDANT

JOHN MUNGUNGUU.....  
.....2<sup>ND</sup> DEFENDANT

**R U L I N G**

The Applicant in the originating summons dated 30.06.09 filed the same against the 2 Respondents claiming Title by way of Adverse possession. They annexed 2 copies of certificates of official search in place of extracts of Titles to the parcels of land in question. This prompted counsel for the Respondent to file the notice of motion dated 1.02.2010 where he is asking that the originating summons be struck out with costs. The Respondent to the application filed a replying Affidavit stating that he has complied with the law and the originating summons should not therefore be struck out.

The law is very clear on this point and I will therefore be very precise. Order XXXVI Rule 3D(2) which is applicable in this case clearly states:-

***“The summons shall be supported by an affidavit to which a certified extract of the Title to the***

***land in question has been annexed”.***

The requirement is couched in mandatory terms. It has no place for certificates of search. The law requires a certified extract of Title to be annexed to the affidavit – not a certificate of official search. This position has been expounded in several Court of appeal decisions e.g. **KYEU VS OMUTO (Civil Appeal NO.8 of 1990) (unreported)**;

**PATRICK ODAKO & ANOTHER VS WILLIAM KIREW (ALSO KISUMU COURT OF APPEAL 202 OF 1998)** where the court of Appeal again stated:-

***“Order 36 Rule 3D of the same Rules prescribes the manner for starting a suit for adverse possession ...such a claim is to be started by way of an originating summons, supported by an affidavit and a copy of the title to the land adversely claimed has to be annexed to the affidavit”.***

See also **KASUVE VS MWAANI INVESTMENTS LIMITED & 4 OTHERS (2004) KLR at page 184** where the Court of Appeal held that certified copies of the extract of Title had to be annexed to the originating summons and certificates of Title annexed there to could not suffice.

From the express provisions of Order XXXVI Rule 3D(2) and the above Court of Appeal decisions, it is clear that the application before me has merit and the same must therefore carry the day. I allow the same and strike out the originating summons dated 1.02.2010 with costs to the Respondents.

**W. KARANJA**

**JUDGE**

Delivered, signed and dated at Embu this 9<sup>th</sup> of December 2010

**In presence of:- Ms. Muthoni for Mr. Okwaro & Gachuba for Applicant.**



While the design, structure and metadata of the Case Search database are licensed by [Kenya Law](#) under a [Creative Commons Attribution-ShareAlike 4.0 International](#), the texts of the judicial opinions contained in it are in the [public domain](#) and are free from any copyright restrictions. Read our [Privacy Policy](#) | [Disclaimer](#)