



REPUBLIC OF KENYA



**KENYA LAW**  
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**Boru & 4 others v Registered Trustees of Reedemed Gospel Church & another (Environment and Land Appeal E020 of 2021) [2023] KEELC 16591 (KLR) (28 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 16591 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND APPEAL E020 OF 2021  
MN GICHERU, J  
MARCH 28, 2023**

**BETWEEN**

**ILO ISSACFO BORU ..... 1<sup>ST</sup> APPELLANT  
ILO ISAACK BORU ..... 2<sup>ND</sup> APPELLANT  
MOHAMED ALI HASSAN ..... 3<sup>RD</sup> APPELLANT  
SCOLA TUKAI ..... 4<sup>TH</sup> APPELLANT  
ABDI NOOR ADAN MOHAMED ..... 5<sup>TH</sup> APPELLANT**

**AND**

**THE REGISTERED TRUSTEES OF REEDEMED GOSPEL  
CHURCH ..... 1<sup>ST</sup> RESPONDENT  
THE KAJIADO COUNTY GOVERNMENT ..... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal against the judgment of Hon Kabuya, Principal Magistrate in CMCC No 171 of 2014 delivered on June 23, 2021.)*

**JUDGMENT**

1. This appeal is against the judgment of Hon Kahuya, Principal Magistrate, dated June 23, 2021. In the judgment in Kajiado CMCC No 171 of 2014, the Learned Magistrate found that the suit parcels namely Plot Numbers 2058 Business/Namanga Trading Centre and Plot Numbers 545, 554, 890 and 571 Residential Namanga Trading Centre did not belong to the Appellants who were the Plaintiffs in the lower court case. The court found in favour of the Respondents.
2. Dissatisfied with the decision of the lower court, the Appellants filed a memorandum of appeal dated 29/6/2021 raising four grounds of appeal as follows. The learned trial Magistrate erred in law and fact by;



- i. Failing to hold that the Appellants had proved their case on a balance of probabilities.
- ii. Failing to analyze the entire evidence on record.
- iii. Failing to consider evidence tendered by the parties.
- iv. Failing to give reasons for her judgment.

For those reasons, the Appellants prayed that their appeal be allowed.

3. There were three issues identified by the trial court for determination. They were.
  - a. Whether the Plaintiffs were the legal proprietors of the suit parcels and in turn Plot No 26959 Redeemed Gospel Church?
  - b. Whether the first Defendant's certificate of lease No 26959 is null and void?
  - c. Whether the first Defendant's counterclaim should be allowed?

In the end, the trial court found in favour of the Defendant and against the Plaintiffs.

4. Counsel for the parties filed written submissions on 28/1/2022 and 5/4/2022. While the Appellants' counsel faults the lower court's decision, the Respondents' counsel supports it fully.
5. I have carefully considered the appeal in its entirety including the grounds of appeal, the memorandum, the submissions by learned counsel and the law cited therein. This being a first appeal, it is the duty of the court to review the evidence before the lower court and satisfy itself that the decision was well founded. In *Selle and another v Associated Motor Boat Co Limited and others* (1968) EA 123, this principle was enunciated thus;

“...this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court... is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect...”

6. Bearing in mind everything in paragraph 5 above, I make the following findings on the four grounds of appeal dated 29/6/2021.
7. On the first ground, I find that the trial Magistrate did not err. It was incumbent upon the Plaintiffs to preponderate their case on a balance of probabilities. To do so, they had to prove that their letters of allotment for the suit plots were superior to the lease granted to Respondents.

I find that they did not prove that they had a better title to the land than the Respondent. The trial Magistrate was right in her finding that the Respondent's lease was superior to the Appellants' letters of allotment and that the lease should prevail over the allotment letters.

In addition to the above finding, the Appellants were unable to prove that they complied with the conditions in the letters of allotment. Condition Number 2 of the said letters provided as follows.

“The council may repossess (without compensation) any plot that remains underdeveloped two (2) years after allocation”.

From the evidence and the pleadings, the only thing that the Appellants had on the land was the live fence. They had not developed them as required by the letter of allotment. Without complying with the letter of allotment, they have not proved their case to the required standard.



8. On the second ground of appeal, I find that the trial Magistrate did not err. The evidence on record was very scanty. All that the Plaintiffs did at the trial was to produce their letters of allotment and receipts to show that they paid rates. There was no other evidence from their end. This evidence is analyzed at page 2 of the Judgment especially in paragraphs 2 and 3. This evidence is also analyzed at pages 3, 4 and 5 of the judgment. This finding also covers the third and fourth grounds.

In summary, I find that the judgment by trial Magistrate was well balanced as it considered all the relevant issues and the Magistrate made the right conclusions both in law and in fact.

For the above stated reasons, I find no merit in the appeal and I dismiss it with costs to the respondents.

It is so ordered.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 28<sup>TH</sup> DAY OF MARCH, 2023.**

**M.N. GICHERU**

**JUDGE**

