



REPUBLIC OF KENYA



KENYA LAW
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**Kenya Church of Christ v Mwasaro & 5 others (Environment & Land Case
147 of 2014) [2025] KEELC 1317 (KLR) (19 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1317 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

ENVIRONMENT & LAND CASE 147 OF 2014

SM KIBUNJA, J

MARCH 19, 2025

BETWEEN

KENYA CHURCH OF CHRIST PLAINTIFF

AND

GIVAN TONNY MWASARO 1ST DEFENDANT

VINCENT O ONDARO 2ND DEFENDANT

ADAM KWEYU 3RD DEFENDANT

ALICE WAEMA MUINDE 4TH DEFENDANT

STEPHEN M MJOMBA 5TH DEFENDANT

SAID SALIM 6TH DEFENDANT

JUDGMENT

1. The plaintiff commenced this suit through the plaint dated 10th June 2014, seeking for the following prayers against the defendants:
 - a. An order of injunction restraining the defendants from encroaching, trespassing, erecting structures, meddling and/or otherwise interfering with the plaintiff's proprietary rights on its property known as plot no. 3754/VI/MN situated at Miritini.
 - b. An order compelling the defendants illegally erected structures to be demolished.
 - c. Any other relief this Honourable Court may deem fit and just to grant.



- d. Costs and incidentals in (a) and (b).”

The plaintiff among others averred that it is the registered proprietor of a plot no. 3754/VI/MN, suit property, situated at Miritini. That the defendants have without colour of right illegally encroached onto the suit property, erected structures, and are barring the plaintiff from accessing it. That despite demand the defendants have refused to vacate and hence this suit.

2. The defendants opposed the plaintiff’s claim through their amended defence and counterclaim dated 28th June 2022, in which they inter alia averred that they have built on their own parcels of land; that they have not encroached onto the plaintiff’s land; that the plaintiff illegally acquired the suit property through one Danson Mwandoto, an official of the plaintiff, whom the police have recommended be charged inter alia with the offence of forgery contrary to section 349 of the [Penal Code](#). In their counterclaim, they prayed for:

- a. A permanent order of injunction against the plaintiff, their agents, employees and/or servants and any persons claiming under them from interfering, trespassing, fencing, clearing, remaining on, selling, subdividing, transferring or in any way dealing with the suit property where the defendants and their family are in occupation of plot number MN/VI/3754 and have built permanent structures/houses.
- b. An order directing the registrar of titles Mombasa to cancel the Title Deed issued to the plaintiff for parcel known as MN/VI/3754 and replace the same with respective names of the defendants.
- c. A declaration that the defendants by virtue of staying in the said plot for many years, have a valid proprietary interest in the property better than the plaintiff and alternatively the plaintiff to compensate the defendants fully the value of each of their respective houses situated on the suit premises.
- d. Costs of the suit and the counterclaim.
- e. Any other relief this court may deem just to grant.”

3. In their reply to defence & defence to counterclaim dated 29th September 2022 the plaintiff denied the contents of the defence and counterclaim and reiterated that it had legally acquired the suit property. It further averred that one Keya Baya who reportedly sold the land to the defendants lacked capacity to sell land that was registered in their name. The plaintiff sought for the defendants’ counterclaim to be dismissed with costs.

4. During the hearing, Danson Kidai Mwandoto, a preacher and farmer in Wundanyi, Taita Taveta, testified as PW1. He adopted his statement dated 27th March 2017. He testified that he was given the responsibility of scouting for land for the plaintiff. He was then a minister in the plaintiff’s church at Changamwe. They engaged Edward Kiguru of the firm of Edward Kiguru Land Surveyors, who introduced them to Bishop Chrispus Nzano as the owner of the suit land. He gave them some documents including an allotment letter and a deed plan which they verified and subsequently went to their advocates’ offices and drew up a sale agreement on 8th November 2004. They engaged the provincial surveyor who established the beacons but later they faced some resistance from the area youth and had to seek assistance from the provincial administration. The boundary was then defined by surveyors upon which the plaintiff took possession and fenced the suit property. There were two squatters who were in the land who were compensated and they left. In cross examination he denied



- knowing the 2nd & 6th defendant but remembered that they paid the 2 squatters on the land Kshs. 300,000 and they left their houses without demolishing. He stated that one Keya Marumbio was operating under the umbrella of the chief purporting to sell land that he did not own, and that they complained to the police. He emphasized that he was never charged with forgery of title, and that he is not a church minister anymore as he now resides in Taita Taveta. He blamed the said Keya for selling the suit land to other people.
5. Edward Malenye Kiguru, a licensed surveyor since 1973, testified as PW2, that he surveyed the suit property in 1992 on behalf of the allottee after alienation through a letter of allotment. Then in February 2006 he was instructed by the plaintiff to conduct a boundary reallocation and prepare a survey report thereof. He prepared the report and forwarded it to the plaintiff's advocate through the letter dated 10th September 2020, which he produced as exhibit. He produced a beacon certificate of 2001 and correspondence between provincial surveyor and then District officer Changamwe on reallocation of beacons. He stated that the plaintiff's church and other buildings are within the suit property, and that there are structures by squatters on the upper part of the suit land. On cross-examination he testified that in 1991 he was acting under instructions from the allottee, but in 2006, he was conducting survey as there was a boundary issue and there was need to identify the encroaching structures. He admitted that his said report did not talk about the other structures that were on the suit land. He also stated that he did not contact neighbours during the beacon survey in 2006 as he was repositioning the beacons of a precise boundary. He explained that his report is dated 10th September 2020 after the plaintiff requested for it despite the survey having been done in 2006.
 6. George Onchangwa Morara Matanga, an ordained current minister of the plaintiff, testified as PW3. He adopted his statement dated 16th June 2014 and list of documents of even date. He produced a sale agreement filed with the list of documents dated 9th November 2016. He stated that the defendants came onto the suit land sometime in 2014 and erected structures. That at the time of purchase of the suit property, none of the defendants lodged a claim over the suit property. He was also categorical that when the defendants put up structures, the plaintiff had sought the help of the District Officer, but got no assistance. He told the court that he was not aware that the defendants had trees and graves of their relatives on the suit property. On cross-examination he stated that he was not aware that one Danson was reported by the defendants to the police who recommended that he be charged for forging title over the property. He admitted that there were some mud houses when they were purchasing the suit land, but they have since been upgraded to permanent structures, and that the last house was upgraded in 2014. He stated that the defendants have been claiming ownership of the suit property where their houses are. That during his first visit to the suit land in 2006, he saw some structures belonging to the defendants and two others, who have since left after the plaintiff compensated them. However, he could not tell which of the six defendants was on the land by the time the church bought the suit property. He blamed Keya Mbaya for making claims on the land without title to the suit property.
 7. Zacharia Musongu Ndege, Principal Land Administration officer, with National Land Commission, testified as PW4. He took the court through the process of applying for a plot. The process of allotment started with an application to the Commissioner of Lands, who if in agreement, directs the Director of Planning to do the planning of the plot, considering the acreage and use of the land. Thereafter the documents are forwarded to the Director of Valuation to determine the annual rent and stand premium payable. He testified that the survey of the plot gives the exact acreage and georeferencing and a deed plan is prepared. He said after the valuation, a letter of allotment is then prepared. He told the court that after the letter of allotment is issued, the allottee must accept the offer in writing within 30 days, and pay all the fees payable. Thereafter the deed plan is issued and after approval it is forwarded to the Land Registrar for registration. He produced a letter of allotment issued herein as exhibit, and explained that the said allotment resulted in grant 3754/VI/MN and was registered as



title CR. 39328. On cross-examination, he explained that his duties involve processing applications for allocation of lands, renewal of leases as well as issuing letters of allotment. He testified that the suit land was initially public land, but upon registration, it became private land. He acknowledged that the letter of allotment dated 6th March 1991 was issued to the said Crispus, but could not tell whether the payments of fees was made within the 30 days. He confirmed that the grant was issued in the name of the plaintiff. He explained that a allottee can transfer his rights to another person through a sale. He denied that a grant can be issued where payment of fees in the letter of allotment were not paid.

8. Inspector No. 236555 Chris Charo, of Regional D.C.I. Coast, testified as DW1. He testified that Keya Mbaya had reported being denied access to the land. That two police officers/colleagues, named Waruibe and Karisa, who have since retired investigated the matter and recommended that one George Mwandoto and Land Registrar to be charged, with forgery and other related charges. That he and his boss forwarded the file to the ODPP with a charge sheet, and the ODPP directed that they search for and arrest the said George, but have been unable to locate him for the last ten years. During cross-examination, DW1 stated that he could not tell whether his former colleagues conducted a search over the said land. That he was also not aware whether Kiguru, a surveyor, was interviewed by his former colleagues. That the report he produced had no statements attached for the people interviewed and was undated and unsigned. He also admitted that he did not know whether Mr. Mwandoto was registered a proprietor of the suit property. He further admitted that he did not avail a copy of the report they forwarded to the ODPP. That though they wanted to charge Mr. Mwandoto for registering the title, he did not know in whose name the land was registered.
9. Vincent Okoko Ondara, the 2nd defendant, testified as DW2 and adopted his statements dated 7th November 2016 and 28th June 2022 as his evidence in chief. He also produced all the documents in the list of documents dated 31st October 2014, 23rd September 2019 and 12th May 2021. He told the court how one Mruchu informed him about the structure on the suit property in 2005, and when he went there he found an incomplete structure. In 2006 he moved into the incomplete structure after being taken to Mrs. Adriano, by her agent, one Makau. They discussed with Mrs. Adriano and she agreed to sell the structure to him. He later learnt that the land belonged to one Keya Mbaya who informed him that the suit property is a graveyard for his kin. He paid Kshs 130,000 out of Kshs 160,000 of the purchase price and started expanding the structures he found. He stated that it is only in 2007 that the plaintiff started construction at the rear of the plot, and they reported through Mr Mbaya to the EACC and the D.C.I. That in 2014, the plaintiff informed him that they had encroached onto its plot, and one Ojangua approached him for negotiations. Later, the plaintiff paid Mr. Mbaya to destroy the graves of his kin and he did so and left. He stated that the D.C.I informed them that one George Mwandoto, a senior official of the plaintiff had committed forgery and had run to Taita Taveta. In support of their counterclaim, he stated that he had developed his land to the tune of Kshs. 5.4 million. In cross-examination, DW2 admitted that the plaintiff had title to the suit land. That though he had bought the land from Mrs. Adriano, no title to the land was shown to him even by the said Mbaya. That none of the defendants reported the matter to the D.C.I, and that Mr. Keya was paid Kshs. 300,000 to remove the graves. He also added that he has no evidence that Mr. Mwandoto forged title to the suit property. Further that when the plaintiff was issued with title on 14th May 2002, he was not on the suit land as he only came there in 2006. He also admitted that he did get building approvals for his developments on the suit property. That the plaintiff had indicated that they wanted to access the church through the back, and did not require demolition of their structures. That the plaintiff had engaged them for an out of court settlement but they could not agree on the compensation amount. That the suit land was the ancestral land of Mr. Keya Mbaya, from whom Mrs. Adriano had bought the suit land that she sold to him. He added that he was willing to be compensated with Kshs. 5.4 million by the plaintiff.



10. Salim Saidi Idd testified as DW3 and adopted his statement dated 7th November 2016 as his evidence in chief. He told the court that his friend, Erick Gitau, introduced him to Mr. Keya Mbaya and he paid Ksh. 6,000 to buy a plot on the suit property, where he built a Swahili house. He finished paying the purchase price in 2003 and stayed on the suit property until 2006, when the plaintiff came and fenced off the road they were using. He stated that Mr. Keya reported the incident and the plaintiff's title was found to be fake, and the fence was removed. That EACC investigated the case and one Nasoro told them to wait for the outcome. That they later learnt that Mr. Mwandoto had forged the title document of the plaintiff. He alleged that his house had been valued at around Kshs. 4,300,000, and though the plaintiff had promised to compensate them, it did not do so, but one Meshack was compensated. During cross-examination, DW3 reiterated that he bought his plot from Mr. Keya Mbaya. That the plot was on a land that was previously a grave yard, but rituals were performed for them to settle there. He admitted that he does not have title for the land he bought and that a survey that was done by the plaintiff must have been done when he was away.
11. The plaintiff filed their submissions dated 28th November 2024 while the defendants filed undated submissions. The court has considered the two submissions.
12. The following are the issues for determinations by the court:
 - a. Who between the plaintiff and defendants has the legal and or beneficial interest to the suit property.
 - b. Whether the plaintiff's title to the suit property is valid.
 - c. Who bears the costs?
13. The court has carefully considered the pleadings, the oral and documentary evidence tendered by the parties, submissions by the learned counsel, superior courts decisions cited thereon, and come to the following determinations:
 - i. Though, from the testimony of DW1, and the covering or forwarding report he brought to court, a report concerning the suit property had been made to the DCI, investigations reportedly carried out and recommendations made to charge one Mr. Mwandoto and the Land Registrar over alleged forgery offences over ten years ago, it is strange that no further steps to actualize the said recommendations was ever taken. The reason given that Mr. Mwandoto disappeared to Taita Taveta and police are yet to trace him can only be taken as a lame excuse, as the said person not only recorded a statement with the plaintiff's counsel that was filed in court, but also physically came to court and testified. Further, no reasons were given why the recommendations against Land Registrar, who is a public officer that has not been reported to have gone into hiding, has not been executed. The court is not convinced as to the seriousness of the DCI officers who investigated the alleged forgery and or subsequently handled the matter.
 - ii. Be that as it may, the law is clear on the effect of registration of title to land as is provided in section 24 of the [Land Registration Act](#) Cap 300 of the Laws of Kenya, which states as follows:

“ Subject to this Act—

 - a. the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
 - b. the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all



implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.”

In the case of Johnson Kinyua versus Simon Gitura Civil Appeal No. 265 of 2005, the Court of Appeal found that the existence and proprietorship of land can be proved either by an extract copy of title or certificate of official search. In the Registration Titles Act Cap 281 (repealed) under which the title of the land subject herein was registered section 23 (1) stated as follows:

“The certificate of title issued by the registrar to a purchaser of land upon a transfer or transmission by the proprietor thereof shall be taken by all courts as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof subject to the encumbrances, easements, restrictions and condition contained therein or endorsed thereon, and the title of that proprietor shall not be subject to challenge, except on the ground of fraud or misrepresentation to which he is proved to be a party.”

From the reading of the provisions of the law as reproduced herein above, the title issued to the plaintiff was conclusive evidence of proprietorship of the suit property.

- iii. It is also important to note that the letter of allotment is what was in dispute. The defendants indirectly dispute that the said Chrispus Nzano was properly issued with a letter of allotment as they have all claimed that Mr. Keya Mbaya is the owner as the suit property that was his ancestral land. In Kenyan law, there is a presumption of regularity when a letter of allotment is issued, meaning the then Commissioner of Lands is presumed to have followed the correct procedure before issuing a letter of allotment. But, since it is not the procedure being questioned, but the decision of who was to be allocated the land in dispute, the court will focus squarely on that. PW4 explained the procedure of applying for a plot. He told the court that it start with an application being made. The fact that the said Chrispus Nzano was issued with a letter of allotment can only be taken to mean that he had applied. Had the said Mr. Keya Mbaya testified before the court, he would probably have told the court whether he had also applied for a plot over the suit property, but he was not availed by the defendants, and was not a party herein. He also never challenged the Commissioner of Lands issuance of letter of allotment over the suit property, which was reportedly his kin’s burial place.
- iv. The defendants have raised the ground of fraudulent acquisition of title over the suit property, and the investigations report DW1 relied on recommended inter alia that PW1 be charged for forgery. Section 109 of the *Evidence Act* Chapter 80 of Laws of Kenya required that the defendants prove their fraud/forgery allegations. In the case of *Vijay Morjaria vs Nansingh Madhusingh Darbar & Another* [2000] eKLR, where the Court of Appeal held that:

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”



In this proceedings I find no evidence of fraud implicating the plaintiff in the acquisition of title to the suit property was availed to the court by the defendants. Evidence of presence of mango trees and the fact that both the plaintiff and the defendants agree that there were some structures on the suit property, and negotiations on out of court settlement had taken place is not evidence of fraud.

- v. PW1 and PW3 admitted that the plaintiff compensated some two squatters who were on the suit land. DW4 described the two squatters as Mr. Keya Mbaya and one Meshack. The out of court negotiations and or settlement is always a welcome way of parties settling or attempting to settle their disputes and should be encouraged by all and sundry, even where there are no active court cases. I therefore commend the plaintiff for that successful initiative that resulted in settling the dispute with the two persons who were on the suit property, but have since left. That fact of out of court settlement or the negotiations that failed should not be taken as a pointer of the weakness of the plaintiff's case, or held against such a party in subsequent litigation or proceeding.
 - vi. There is overwhelming evidence that the suit land was not vacant at the time of issuance of grant, but that does not translate to evidence of fraud. The survey report dated 15th January 2021 produced as evidence by DW2 brings out another perspective, which is that Mr. Ondaro's property is not synonymous with the suit property. Based on the evidence by DW3, his property and that of Mr. Ondaro are outside the suit property, and could be blocking access to the suit property, probably due to a boundary misalignment. That is an issue to be settled through the Land Registrar and parties could agree on the issue of access as it is an overriding interest under section 28 of the [Land Registration Act](#).
 - vii. The plaintiff has proved proprietorship/ownership of the suit property, and are entitled to the orders sought. The defendants have failed to prove their counterclaim to the standard require and it is for dismissal.
 - viii. Section 27 of the [Civil Procedure Act](#) states that costs follow the event unless where the court for good reasons orders otherwise. In this matter, the plaintiff has successfully prosecuted its suit and defended the counterclaim. It is therefore, entitled to costs in its suit as well as costs for defending counterclaim.
14. From the foregoing conclusions, the court finds and orders as follows:
- a. That the plaintiff has proved its case against the defendants to the standard required of balance of probabilities, and judgement is entered in its favour as follows:
 - i. That so as to confirm who among the defendants has encroached onto the plaintiff's land parcel No. 3754/V1/MN, suit property, an order is hereby issued, directing the Land Registrar and Surveyor, Mombasa to visit the said land to confirm and reposition its boundaries within sixty (60) days from today.
 - ii. That any of the defendants' structures that will be found through the Land Registrar's and Surveyor's exercise to have encroached onto the suit property to be removed by its owner and the plaintiff given vacant possession in ninety (90) days from today, and in default eviction and demolition orders to issue.
 - iii. That after expiry of ninety (90) days from today or after the defendants vacate or are evicted, whichever comes first, the defendants be permanently restrained from encroaching, trespassing, erecting structures, meddling and/or otherwise interfering



with the plaintiff's proprietary rights on its property known as plot no. 3754/VI/MN situate at Miritini.

- b. That the defendants have failed to prove their counterclaim to the standard required and the same is dismissed in its entirety.
- c. The defendants to bear the plaintiff's costs in the suit and the counterclaim.

It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 19TH DAY OF MARCH 2025.

S. M. KIBUNJA, J.

ELC MOMBASA.

In the presence of:

Plaintiff : M/s Okumu

Defendants : Mr. Awanda

Shitemi – Court Assistant.

S. M. KIBUNJA, J.

ELC MOMBASA.

