



**Ngewa Community Centre Through its Officials Richard Kangethe Karanja  
and Simon Kinyanjui v Presbyterian Foundation & 2 others (Environment &  
Land Case 767 of 2002) [2023] KEELC 19171 (KLR) (26 July 2023) (Judgment)**

Neutral citation: [2023] KEELC 19171 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 767 OF 2002  
LC KOMINGOI, J  
JULY 26, 2023**

**BETWEEN**

**NGEWA COMMUNITY CENTRE THROUGH ITS OFFICIALS RICHARD  
KANGETHE KARANJA AND SIMON KINYANJUI ..... PLAINTIFF**

**AND**

**THE PRESBYTERIAN FOUNDATION ..... 1<sup>ST</sup> DEFENDANT**

**THE COMMISSIONER OF LANDS ..... 2<sup>ND</sup> DEFENDANT**

**THE REGISTRAR OF LAND KIAMBU ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. By a plaint dated 8<sup>th</sup> May 2002 and amended on 30<sup>th</sup> January 2005, the Plaintiff prays for judgement against the Defendants for;
  - a. Nullification of the registration of the 1<sup>st</sup> Defendant as proprietor of parcels of land LR Githunguri /Nyaga 1213,1214,1215 and 1216 and for cancellation of the titles thereof.
  - b. A declaration that the Plaintiff is the registered and legal owner of owner of parcel of land LR Githunguri / Nyaga / 1213.
  - c. Costs of this suit.
  - d. Interest at court rates.
2. The Plaintiff contends that it has since 1957 been in un-interrupted physical possession of the parcel of land previously known as Githunguri/Nyaga/529 and which has now been subdivided into parcels known as LR Githunguri /Nyaga 1213,1214,1215 and 1216 .It avers that through the years, it effected



developments thereon including a health centre, nursery, community social hall, borehole and water tank

3. It avers that it invited P.C.E.A Church to Ngewa and allowed it to hold services in the community hall. Subsequently, the 1<sup>st</sup> Defendant without consulting it applied to Kiambu County Council for allocation of the whole parcel of land known as Githunguri/Nyaga/529.
4. Its claims that after consultations with parties interested in Githunguri/Nyaga 529, Kiambu County Council re-planned the parcel and it was subdivided and allocated as follows; Githunguri/ Nyaga/ 1213-Ngewa Community Centre, Githunguri/nyaga/124-Ngewa Health Centre, Githunguri/Nyaga 1215-Ngewa Jua Kali, Githunguri/Nyaga /1216-Ngewa PCEA Church.
5. It is its case that on/or about 16<sup>th</sup> April 2002, the Defendants herein acting in cohort fraudulently and illegally effected transfer of the said four (4) parcels in favour of the 1<sup>st</sup> Defendant.
6. It contends that on 4<sup>th</sup> January 2002 at midnight, the parish minister of P.C.E.A church led other church members who invaded the community social hall and destroyed doors, windows and furniture belonging to the Plaintiff in an attempt to evict the Plaintiff.

#### **The 1st Defendant's case**

7. The 1<sup>st</sup> Defendant filed a statement of defence and counterclaim dated 13<sup>th</sup> March 2003. It admits that it applied to Kiambu County Council to be allocated the whole of LR No. Githunguri/Nyaga/529 and that LR No.s Githunguri/Nyaga/1213-1216 were transferred to it on 16<sup>th</sup> April 2002 but denies any acts of fraud or illegality on its part and/or that of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.
8. It counterclaims for orders;
  - a. General damages for trespass on LR No.Githunguri/Nyaga/1213-1216.
  - b. An order of eviction of the Plaintiff from LR No.Githunguri/Nyaga/1213-1216.
  - c. Mesne profits from 16<sup>th</sup> October 2002
  - d. Costs of this suit.

#### **The 2nd and 3rd Defendant's case**

9. Despite the Attorney General entering appearance for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, filing a bundle of documents and witness statements, it appears that he failed to file a defence for them

#### **Evidence of the Plaintiff.**

10. PW1; Richard Kang'ethe Karanja the Secretary of Ngewa Community, testified on 18<sup>th</sup> November 2021. He told the Court that he knows Simon Kinyanjui -his co-Plaintiff and the Chairman of the Plaintiff but now ails from dementia. His witness statement dated 24<sup>th</sup> April 2012 was adopted as part of his evidence in chief and the Plaintiff's bundle of documents of even date were produced as exhibits in this case.
11. He testified that the suit property measuring four acres was originally known as Githunguri/ Nyaga/529. In 1956, he took part in the demarcation and consolidation exercise which saw the suit land being set aside as a public utility plot. He added that he was a land owner, owning Githunguri/ Nyaga/528.



12. It was his testimony that during the consolidation exercise, a portion of land was taken from each owner in Ngewa to reconstruct the suit property which was reserved for a church not necessarily Presbyterian Church of East Africa as it had 100 acres less than 1 km from Ngewa. He testified that his grandfather controls 10 of the 100 acres which is now Kambui Parish. He added that the Catholic Church was also given land in Mugata and that currently, there are 7 denominations in the area.
13. He told the Court that after the land was set aside, it was idle for some time until the community decided to give it to Young Men Christian Association. He testified that he approached the Young Men Christian Association because he knew of the benefits to the community as he was a teacher then. In turn, the community embraced Young Men Christian Association and they started projects with the assistance of donors from overseas. He had gone to Denmark in 1960 for holidays where he made friends who gave them assistance.
14. It was his testimony that they constructed a community hall, nursery school, tenants houses, coffee trees, borehole and a health centre. The community hall was for the youths to have dances, games, seminars for agriculture, health, weddings among others. It would also be hired out for any activity that did not belong to the Ngewa Community. Parents paid the normal fees for nursery school which was managed by the County Council for a while before it gave it back to the community.
15. He testified that they used to get catholic relief services in form of food for the nursery school and the elderly and that the health centre was managed by the community until 1972 when it was handed over to the County Council of Kiambu. He added that there was a donor from Sweden who would assist with the basics at the health centre and that the Coffee would be taken to the CFS and the money would be banked in the accounts of the community. Rent from the rental units was also being received by the community.
16. He stated that the borehole was also managed by the community but it was destroyed by goons and it is not functional. It had been sank by Davis and Shirliff and there are receipts to confirm this. PW1 further stated that he was an employee of Young Men Christian Association in charge of Kiambu District and his interest was Ngewa Young Men Christian Association.
17. He testified that he has been a member of PCEA until 1998. He was a church elder for more than five (5) years and would sit in the KIRK session which is the Supreme body of Kambui Parish. He further stated that he was not representing the PCEA in the YMCA activities he was representing the community.
18. He testified that there was a management committee which would undertake the management of YMCA activities. The administration of YMCA would oversee the elections in Ngewa which were undertaken on the suit property. The area chief was a member of the management Committee. He stated that the 1<sup>st</sup> Chairman was Titus Mutu while he was the 1<sup>st</sup> Secretary and the treasurer was Rebecca Wahito who was a catholic as the community was a mixture of denominations.
19. It was his testimony that in 1995, as an elder of Kambui Parish, he introduced the idea that elderly people be allowed to use the community hall for prayers on Sunday as they could not get to the church since it was uphill. He further stated that later, some elders of PCEA Church applied to the County Council to give them a title deed to the suit land. The management Committee of the community raised an issue with the county council.
20. He testified that a meeting was held and it was resolved by the council that the suit land be subdivided into 4 portions; 1213-1216 and be given to four groups; PCEA, community centre, health centre and Jua Kali. He further testified that the health centre was being run by the management committee and



- the government and when he went to get the title deed for the health centre, he discovered that all the titles had been issued to the 1<sup>st</sup> Defendant.
21. He testified that the Plaintiff had earlier been issued with title to Githunguri/Nyaga/1213 and it was never asked to return the said original title to the lands registry and no explanation was given to by the Land Registrar.
  22. It was also his testimony that he has seen the transfer in favour of PCEA for parcels 1213-1216 and that the same is irregular as each plot ought to have its own transfer. He also pointed out that the transfer is signed by the Commissioner of Lands yet the County Council owns the land.
  23. PW1 also testified that the Plaintiff filed suit; JR 1417/2001 and that currently, the community is still preserving the community centre, health centre and Jua Kali Artisan's centre. He further testified that on 4.1.2002 the PCEA church went to the suit property to take over the rental property but when he showed them the pleadings in JR 1417/2001, they left. Later, the Plaintiffs obtained an injunction against them.
  24. He also told the Court that the 1<sup>st</sup> Defendant has never contributed anything to the developments on the suit land. He added that it has never managed the nursery school, health centre, bore hole and the coffee farm.
  25. When cross-examined, he stated that he has been a member of PCEA Kambui Parish since 1948 and that his wedding was conducted in the said church. He further stated that the elderly used the community centre on the suit land from 1995 to 1998 when the Community's management committee chased them from the hall.
  26. He stated that PCEA is governed by KIRK sessions and minutes and that the pastor is in charge of the session. He further stated that he knew DW2 and has seen her witness statement where she states that Githunguri/Nyaga/529 was set aside for a Church specifically PCEA but that wasn't the case.
  27. When referred to the green card for the suit property he stated that the 1<sup>st</sup> Defendant did not get interested in the suit property in 1956. Referred to correspondence dated 5<sup>th</sup> June 2000 at page 27 and 28 of the 1<sup>st</sup> Defendant's bundle he stated that he knows its author, Rev. Francis N. Kamunya and according to the letter, the suit land was transferred to the 1<sup>st</sup> Defendant. He added that at paragraph 7 of the said letter, he is mentioned as having been in the management committee of the 1<sup>st</sup> Defendant tasked with overseeing YMCA activities for the PCEA Church on the suit land.
  28. He also stated that Tirus Muti and Kairu Kimamama are also mentioned as being members of the management Committee. Referred to minutes of the Presbyterian church at page 20-27 of the 1<sup>st</sup> Defendant's bundle, he stated that the DC had no objection to the construction of a prayer house in 1957. He further stated that the PCEA had got big land where they have put up PCEA Kambui and it has a primary school, school for the deaf and PCEA headquarters
  29. When referred to page 40 of the 1<sup>st</sup> Defendant's bundle, he stated that the hall and health centre started as a maternity. Referred to minutes of 25.10.1969, he stated that minute 23/69; refers to dedication of YMCA plot belonging to the church and developments and THAT the dedication was on 8<sup>th</sup> June 1969. He further stated that he did not convince the committee to do the dedication.
  30. When referred to page 58 of the 1<sup>st</sup> Defendant's bundle he stated that it is a program for the opening ceremony of the new YMCA building Ngewa. He added that he was one of the people organising the said function. Referred to page 60-61 of the same bundle, he stated that it is authored by Timothy Wang'onduru-Parish Minister who was seeking registration of a day nursery school from the Chairman, Githunguri local council.



31. PW1 also stated that Ngewa Self Help Group was 1<sup>st</sup> Registered in 1993 and that he did not register it again in 1998. He further stated that having disagreed with the initial YMCA, Ngewa Community decided to have the original group. The initial YMCA was not happy that the group was receiving money directly from the donors. He added that according to minute 93/70 of the minutes of 29<sup>th</sup> December 1970 at page 51 of the 1<sup>st</sup> Defendant's bundle, he was taken to court but the case was dismissed though the General Secretary YMCA was asking that the matter be discussed locally.
32. When referred to the letter dated 14<sup>th</sup> October 1970 at page 54 of the 1<sup>st</sup> Defendant's bundle, he stated that it is addressed by Stephen Kamau Karanja-Chairman asking PCEA to takeover projects in the suit land. He further stated that he disagreed with the contents of the said letter and that the author is deceased.
33. When referred to JR No.1417/2001, he stated that he did not appeal against it. Referred to an extract of minutes of Kiambu County Council at page 59 of the 1<sup>st</sup> Defendant's bundle, he stated that the resolution led to subdivision of the suit land into 4 parcels hence 4 titles which are all in the name of the 1<sup>st</sup> Defendant as exhibited at page 29-35 of the 1<sup>st</sup> Defendant's bundle. He further stated that the Plaintiff has no letter applying for re-planning of the suit land. He added that the community started claiming the suit land when the titles were issued.
34. PW1 also stated that he is currently a member of PCEA, he has not been expelled but he does not participate in church activities and that the church ministers restrained him from participating in Holy Communion. He added that he is not interested in the suit property for personal reasons and that the matter of damages to the hall was reported to the police and none of the members was arrested.
35. When he was re-examined, he stated that from 1995 to 1997, the elderly were praying in the social hall on the suit land and they were there upto the year 2000. When referred to the letter dated 5<sup>th</sup> June 2000 authored by Reverend Francis N. Kamunya at page 27-28 of the 1<sup>st</sup> Defendant's bundle, he stated that when the dispute herein arose, the said Reverend had left the parish. He further stated that paragraphs 1 and 2 of the said letter which indicate that the suit land belonged to PCEA church as at 2<sup>nd</sup> September 1957 are incorrect as at the time, it was the council's land. He added that paragraph 7 insinuating that it is the church who invited Young Men Christian Association is incorrect.
36. When referred to the dedication program at page 57-58 of the 1<sup>st</sup> Defendant's bundle, he stated that the suit land did not belong to Young Men Christian Association, it belonged to the community and that the program at page 57 is undated and unsigned. He also stated that at the dedication, a catholic priest also took part alongside PCEA reverends.
37. When referred to the letter dated 29<sup>th</sup> October 1963 at page 60 of the Plaintiff's bundle, he stated that in 1963, there was already a building on the suit land but it was not the nursery. Referred to the letter at page 54 of the 1<sup>st</sup> Defendant's bundle, he stated that he disagrees with as it does not have the signature of the author who is listed as Stephen Kamau Karanja who was the Chairman of the Committee and a member of PCEA church and the letter would have been authored by the Secretary not the chairman.
38. He also stated that the Community Self Help Group was registered to take over the management of the centre and other projects but the 1<sup>st</sup> Defendant applied secretly to be issues with title and the dispute came about.

### **Evidence of the Defendants.**

39. The Defence called two witnesses. DW1 Stephen Kibathi Kinyanjui testified on 29<sup>th</sup> September 2021. His witness statement dated 5<sup>th</sup> July 2016 was adopted as his evidence testified on 29<sup>th</sup> September 2021.



He told the court that Githunguri Nyaga/529 is situated at Kwa Michael Ngewa. It was his testimony that he is a member of PCEA Kambui from 1947 and he is 91 years old.

40. He testified that the church can buy and sell land which it would ordinarily register in the 1<sup>st</sup> Defendant's name which is run by the moderator alongside a council of elders from the Church. He added that he has been serving as a deacon and treasurer of the church having been appointed by members and as such, he knows how the church operates.
41. It is his testimony that there was demarcation in 1956 and the suit property was set aside for a church. At the time, there were PCEA and catholic churches. The suit property was allocated to the PCEA church and the church dedicated it .Referred to page 36 of the 1<sup>st</sup> Defendant's bundle, he stated that it is an extract of the green card to the suit land while its map is at page 37 of the same bundle.
42. He testified that YMCA was permitted by PCEA church to use the suit land since the church was not using it at the time. YMCA held games and other activities on the suit land. It was his testimony that the church started using the land in 1963 by putting up a football pitch. He further stated that the social hall was misused by letting out for disco dances.
43. He testified that PW1 was employed by YMCA and he was a representative of Ngewa. He added that he is a member of Kambui PCEA and he was also an elder and that he sought permission from the church to use the suit land. He further testified that PW2 was later sacked by YMCA for misappropriation of funds and was to be charged but he was protected by James Gichuru.
44. He testified that PCEA Church Kambui took over the use of the social hall. Later, a nursery school was put up by the church. When YMCA pulled out, the church elders took over the land and minutes were taken down to this effect by DW2.Later, the PCEA Church started to pursue ownership of the suit land after starting a church. The church got a title for the suit land.
45. He testified that he was later surprised to see the subdivision of the suit land which was dedicated by the church leadership. He stated that PW1 was present at the dedication and that the maternity was started by him when he worked for YMCA but the government later took over.
46. He testified that the social hall was put up by the community while the borehole was dug by donors and members participated. He further stated that the coffee was planted by the community member's but the land belonged to PCEA.
47. When cross-examined, he stated that he was about 26 years in 1956 having been born in 1930 and that Simon Kinyanjui who is his age mate as his step brother. He stated that he served PCEA Kambui as Deacon from 1991 to 1994 then from 1994 to 2000.He further stated that the church is managed by the moderator and elders while a deacon serves in the sub district. He stated that since he was not an elder, he could not sit in the management team and that Nyaga is a sub location.
48. He stated that PCEA Kambui church is 4 acres and he does not know about social hall being allocated 2 acres or the nursery school being allocated some acreage as stated in his witness statement. He further stated he was attending PCEA Kambui parish which is about 100 acres and that from the suit property, the parish is about 5-6 kilometres. He also stated that the Catholic Church was given 6 acres in Mugutha and Raiyani 1 acre. Referred to page 37 and 52 of the 1<sup>st</sup> Defendant's bundle, he stated that the suit property was 'reserved for church' but it does not state that it was specifically reserved for PCEA Church.
49. He also stated that the Chairman, Mr.Gatoto was in the demarcation committee but he is not a member of the said committee. He further stated that, there was coffee, maternity, social hall, nursery and rental houses on the suit land.DW1 also stated that he does not know when the nursery was built



- but it was after independence. He added that he does not know when the borehall and social hall were put up and does not know when the coffee was planted.
50. He stated that he has not seen the receipts for the coffee or the rental houses issued by the PCEA Church and that neither did he see its minutes to that effect. He added that the community put up all the projects but with the permission of the church and there were various committees managing the projects.
  51. He stated that PW1 was an elder of PCEA Church but he was ex -communicated before he filed this suit and he does not know the reason for his ex-communication but he was not charged with a criminal offence further stated that Peter Gichuhi Njoroge was a headman but he does not know whether he was in the committee which had about 4 members running the projects. He added that he does not know Mutungi Waithaka but Titus Mbugua was in the committee. He further also stated that though Joseph Kinyanjui was known to him, he was not in the committee and that he does not know whether Rachael Wahito was in the Committee.
  52. He stated that later, the church was told to leave the social hall and that while he heard that it was broken into, he cannot confirm.
  53. When re-examined, he stated that the suit land was set aside for church use and that Ngewa Community and YMCA are not churches at all. He also stated that PCEA Church is ran by a committee comprising of moderator, elders, deacon and congregation and that he has served as a deacon for 3 terms.
  54. DW2; Mary Wambui Njoroge's witness statement dated 5<sup>th</sup> July 2016 was adopted as part of her evidence in chief. She told the court that she is a teacher by profession and an ordained church elder of the 1<sup>st</sup> Defendant. She stated that she was a session clerk of Kambui Parish Session from 2010 to 2012.
  55. She testified that the session clerk is the custodian of church records and minutes. He further testified that the minutes in the 1<sup>st</sup> Defendant's bundle are from the Parish and the Presbytery. She added that she found them written in Kikuyu Language and that she has extracted some minutes and translated some and filed a certificate and they range from 1950's to date.
  56. She produced documents from page 19-94 of the 1<sup>st</sup> Defendant's bundle. She told the court that she knows the land in dispute and that it was set aside for a church. She further stated that in February 1959, it was registered as Native Trust Land and later became a property of Kiambu County Council. In 1957, the DC Kiambu gave consent for the Church to use the land. In 1969, a dedication ceremony was done on the suit land with guests invited. There was also a borehole and maternity dedicated by the church elders.
  57. She testified that the Plaintiffs were elders of PCEA Kambui.YMCA requested to use the land for the youth as early as 1959 and initiated the projects on the suit land. In 1963 Kambui church applied for the nursery school. The Plaintiff was a member of the committee managing the project as an elder and employee of YMCA .
  58. It was her testimony that in 1969-1970, problems arose between Ngewa Community YMCA and the church as a result of funds embezzlement .The Church intervened and it was agreed that Ngewa Community opens several accounts so that the monies could be banked in those accounts.
  59. Thereafter, YMCA withdrew from the activities and projects and they reverted to the church. The church later got a lease for the suit property in 1982.After replanning, 4 parcels were created being 1213-1216 and titles were issued.PW1 then filed a suit challenging the



subdivision vide JR 1417 OF 2001. To date, the titles are held by the 1<sup>st</sup> Defendant. She testified that on 12<sup>th</sup> July 1999, there were attempts to register Ngewa Community but it has never gotten the suit land and does not own it.

60. When cross-examined, she stated that she was not born in Ngewa but got married there in 1988 and became a church elder in 2001. She further testified that the church records are kept properly. Referred to D.Exhibit 1C which she mentions at paragraph 3 of her witness statement (page 6) as being minutes of PCEA Chania Presbytery held on 5.9.1957, She stated that she has seen the letter where the church requested for the suit land but it is not in the 1<sup>st</sup> Defendant's bundle but she has the map which shows that the suit land was set aside for the church. She added that the map is not dated and that the original is in custody of the church.
61. When referred to D.Exhibit 1E which she stated at paragraph 7 of her witness statement that it is a letter dated 5<sup>th</sup> June 2000 written by Rev. Francis N. Kamunya, the Parish Minister of Kambui Parish giving the history of the suit land from acquisition to date and the map at page 37 of the same bundle, she stated that she cannot point out the land that PCEA was allocated. She further stated that the major denominations were Catholic and PCEA according to information she got from the Church.
62. She added that she is not aware that AIPCA had been started and that it constructed Ngewa Primary School. She stated that YMCA approached the church to be allowed to utilize the suit land. The church then invited YMCA and though she did not see any letter of invitation, there are minutes to that effect dated 24.10.1970. She added that PCEA Kambui Church has bank accounts and keeps all records but she was not given any records towards the activities in the suit property. She further stated that she does not have the account number of YMCA and she does not know whether PCEA was a signatory to that account.
63. When referred to paragraph 3 of her witness statement (page 8), she stated that activities at the suit land were managed by a committee which included 3 elders. Referred to the programme at page 58 of the 1<sup>st</sup> Defendant's bundle, she stated that as per item 3, prayers were led by Reverend Stephen Mwangi and the Father in Charge Migota H.G.M and as per item 9, prayers of dedication were led by the said father and Reverend Stephen but as per the minutes, the coordination was by PCEA and she was not present.
64. She stated that while there were coffee bushes on the suit land, there are no records of money spent and money received from the sale of the coffee. She further stated that there was a borehole sunk by Davis and Shircliff and no payments were made by the church for sinking it and there is no evidence to show that the houses on the suit land were let by Kambui Parish. She added that she is not aware of any relief food supplied by CRS Catholic Relief Services.
65. When referred to minutes of 10<sup>th</sup> September 1997 at page 61-62 of the 1<sup>st</sup> Defendant's bundle and to the letter dated 18<sup>th</sup> May 1999 addressed to the PS-Ministry of land page 62 and the Minutes of Kambui County Council at page 66, she stated that County Council of Kiambu approved allocation of the suit property to the 1<sup>st</sup> Defendant.
66. When referred to the transfer of the suit land at page 74 of the 1<sup>st</sup> Defendant's bundle, she stated that it is not signed, not dated save for an entry of the year 2002. It is not sealed as well and it is not witnessed by a lawyer.
67. When referred to the letter dated 12.2.2001 at page 70 of the 1<sup>st</sup> Defendant's bundle, she stated that she has not seen the letter by the Hon. Minister approving the allocation in 1997. Referred



to paragraph 3 thereof, she stated that it refers to Kiambu council's letter Ref.No.KCC/LG/5/13B Vol V/58 advising a stop to the transactions on the suit land.

68. She further stated that the maternity and self-help projects were taken over Government in 1972 but the 1<sup>st</sup> Defendant did not give up the health Centre to the government.
69. When re-examined and referred to the letter from the Ministry of Local Government dated 26<sup>th</sup> October 2001 addressed to the 1<sup>st</sup> Defendant, she stated that the then Minister For Local Government allocated the suit property to the 1<sup>st</sup> Defendant and that it is still the position.
70. At the close of the oral testimonies parties tendered final written submissions.

### **The Plaintiff's Submissions.**

71. They are dated 5<sup>th</sup> May 2022. They raise the following issues for determination;
  - a. Whether the Plaintiff has any legal capacity to sue.
  - b. Whether the Plaintiff has been in uninterrupted physical possession of the suit land since 1957.
  - c. Whether the Plaintiff was in occupation as a squatter.
  - d. Whether the 1<sup>st</sup> Defendant's entry into the suit land was by invitation by the Plaintiff.
  - e. Whether there was ministerial consent to the allocation of the suit land to the 1<sup>st</sup> Defendant.
  - f. Whether the titles issued to the 1<sup>st</sup> Defendant were lawfully issued.
  - g. Whether the Kiambu County Council had authority to re-plan the land and allocate as intended.
72. On the issue of its capacity to sue, the Plaintiff submits that it was first registered as a self-help group in 1969 and the suit is properly brought through its officials.
73. It further submits that it has been on the suit land since 1957 and the 1<sup>st</sup> Defendants contention that it was given the suit land by the District Commissioner in 1959-1960 are untrue since there was no letter authorising the allocation and in any case, the District Commissioner had no authority to allocate land that belonged to the Native Trust Board. It points out that DW2 had no records of PCEA's invitation of YMCA to the suit land and records to show the 1<sup>st</sup> Defendant's contribution to the developments on the suit land.
74. It also submits that the management committee which ran developments on the suit land was elected by Ngewa Community and it comprised of members from various denominations not only the PCEA Church. It adds that the suit land was donated by the people of Ngewa and though registered in the name of Native Land Trust Board, it was held in trust for the people of Ngewa.
75. It is also its submission that the 1<sup>st</sup> Defendant secretly applied to County Council of Kiambu to be allocated the suit land. The council through its planning and Markets Committee approved the application on 13<sup>th</sup> March 1997 which was ratified by the full council meeting held on 12<sup>th</sup> August 1997. The council then wrote to the Ministry of Local Government on 18<sup>th</sup> May 1999 for approval of the allocation under Section 144 of the Local Government Act (now repealed).
76. Before the approval could be actualized, the Plaintiff raised a compliant with the council which stopped the approval and after consultations, the council arrived at a decision to re-plan the suit land and allocate to various stakeholders. The Council's Planning and Markets Committee resolved to subdivide the suit land on 14.9.2000 and the said minutes were ratified by a full council meeting of 12<sup>th</sup> October



2000. The Council then wrote to the Ministry of Local Government on 2<sup>nd</sup> August 2001 seeking ministerial approval of the re-planning.

77. Vide a letter dated 26<sup>th</sup> October 2001, the Ministry of Lands stated that it did not approve the re-planning and what followed were irregular sub divisions of the suit land and transfer to the 1<sup>st</sup> Defendant despite the Plaintiff having been issued with title No.Githunguri/Nyaga/1213.

### **The 1st Defendant's Submissions**

78. They are dated 18<sup>th</sup> July 2022. They raise the following issues for determination;
- a. Whether the 1<sup>st</sup> Defendant is the legal and lawfully registered owner of the parcels of land LR Githunguri/Nyaga 1213,1214,1215 and 1216 which were created from the subdivision of the original land LR No.Githunguri/Nyaga/529.
  - b. Whether the Plaintiff has a justifiable claim over the ownership of the parcel of land LR Githunguri/Nyaga 1213.
79. The 1<sup>st</sup> Defendant submits that D.Exhibit 1 E (Page 27 and 28 of the 1<sup>st</sup> Defendant's bundle explains that PCEA church was invited to occupy the suit land by then DC Kiambu .It further submits that there is no evidence that the land was given to YMCA/Ngewa Community in 1957.
80. It submits that the official search of the suit land shows that it was registered on 23<sup>rd</sup> February 1959 and was reserved for church use. It adds that as per Exhibit 4H at page 55-57 of the 1<sup>st</sup> Defendant's bundle, the suit land was dedicated for use by the PCEA church on 8<sup>th</sup> July 1969 in an elaborate programme attended by PW1 and they contradict the Plaintiffs evidence that it owned the suit land since 1957.
81. It further submits that minutes of a committee meeting held on 24<sup>th</sup> October 1970 where it was reported that the National Committee of YMCA had resolved to disband the management of the Local Ngewa YMCA and had invited PCEA to take over management is proof the projects on the suit land belonged to PCEA.
82. It also submits that D.Exhibit 4B at page 50 of the 1<sup>st</sup> Defendants bundle as well as D.Exhibit 4C which is an extract of minutes held on 3<sup>rd</sup> November 1970 by Kambui North Presbytery is evidence that the 1<sup>st</sup> Defendant started the process of obtaining a lease over the suit land way back without the Plaintiff's objection.
83. The 1<sup>st</sup> Defendant also submits that its evidence shows that that the suit land was illegally registered in the name of the Plaintiff against the recommendation of the Minister for Local Government .It argues that it is not clear whether the Plaintiff was registered on 6<sup>th</sup> July 1993 or 12<sup>th</sup> July 1999 and even if its registration on both dates was regular, it has no consequences since the 1<sup>st</sup> Defendant had already started the process of being issued a lease.
84. It relies on Section 26(1) of the *Land Registration Act* as well as the case of *Gitwany Investment Limited v Tajmal Limited & 3 Others* [2006] eKLR to submit that LR Githunguri/Nyaga/1213 was illegally registered in the Plaintiff thus cancel the said title.
85. It relies on the case of *Faraj Maharus v SJB Martin glass and 3 others C.A and 3 others C.A 130/2003*(unreported) to submit that where 2 titles are issued in respect of the same parcel, the 1<sup>st</sup> in time must prevail. It points out that the original title issued to the church had not been cancelled when the Plaintiff was allegedly issued with title in 2001.
86. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants did not file written submissions.



## Analysis And Determination.

87. I have considered the pleadings and the evidence on record. I have also considered the written submissions and the authorities cited. The issues for determination are;
- a. Who between the Plaintiff and the 1<sup>st</sup> Defendant owns LR Githunguri/Nyaga/529?
  - b. Whether the 1<sup>st</sup> Defendant is lawfully registered owner of the parcels of land LR Githunguri/Nyaga 1213, 1214, 1215 and 1216 which were hived from LR No.Githunguri/ Nyaga/529.
  - c. Whether the Plaintiff has a valid claim over LR Githunguri/Nyaga 1213.
88. The Plaintiff and the 1<sup>st</sup> Defendant claim ownership of LR Githunguri/Nyaga/529 as from 1956. As things stand, LR Githunguri/Nyaga/529 was subdivided into four portions being LR Githunguri/1213, 1214, 1215 and 1216. These are titles issued to both the Plaintiff and the 1<sup>st</sup> Defendant in respect of one of the said parcels being LR Githunguri/Nyaga 1213.
89. The Court has to determine which of the parties herein was allocated the mother title in order to determine which party deserves LR. NO. Githunguri/Nyaga 1213. In a bid to prove ownership of the mother title, PW1 told the Court that it was allocated the land in 1956 by the Kiambu Native Trust which is the predecessor of Kiambu County Council. In the same breath, it claims to have been registered in 1969. The suit land would not have been allocated to a non-existent entity. Further, there is no tangible evidence that the suit land was allocated to the Plaintiff. PW1 also told the Court that the suit land was idle for some time before it allocated it to YMCA. While there is evidence that YMCA was on the suit land for a considerable period of time, there is no evidence that it was there pursuant to the Plaintiff's invitation.
90. In *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR, the Court of Appeal stated, “ we state that when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register”.
91. The 1<sup>st</sup> Defendant which has the four titles to the parcels that have since been hived from the mother title had the burden to establish by evidence the process of acquisition of the said titles. DW2 produced minutes of Chania Presbytery of 5<sup>th</sup> September 1957. At page 25 of its bundle, reference is made to the DC's letter dated 2<sup>nd</sup> September 1957 Ref ED/12/11/1/4/74 stating that the DC had no objection to PCEA putting up a church at Ngewa. The 1<sup>st</sup> Defendant would not be given consent to construct a church on the land if it had no interest in the suit land.
92. The Plaintiff and the 1<sup>st</sup> Defendant claim to have invited YMCA on the suit land. The 1<sup>st</sup> Defendant contended that in 1957, it invited YMCA to operate under management of the PCEA Church. At page 55 of the 1<sup>st</sup> Defendant's bundle, there is a program dated 8.6.1969 for dedication of a maternity on the suit land. This is evidence that as at 1969, YMCA was on the suit land carrying on developments. Additionally, PCEA Kambui sought consent for registration of a nursery school on the suit land on behalf of YMCA. This is evidenced by the letter dated 29.10.1963 at page 60 of the 1<sup>st</sup> Defendant's bundle. This is considerable evidence that there was collaboration between PCEA Kambui and YMCA and evidence that PCEA had an interest on the land as well.



93. The 1st Defendant's evidence that it had asserted its ownership rights on the suit land and requested Kiambu Council to issue it with a lease is evidenced by minutes of Kiambu County council of 29<sup>th</sup> January 1982.
94. At minute 7 of Ngewa YMCA meeting held on 24<sup>th</sup> October 1970(page 53) of the 1<sup>st</sup> Defendant's bundle, there is an admission that the suit land belongs to the 1<sup>st</sup> Defendant but the developments were done by the community. The said minutes are followed by a letter of even date addressed to PCEA by Stephen Kamau Karanja-Chairman of Ngewa YMCA requesting the church to take over developments in their suit land.
95. It is not disputed that there is a community hall, nursery school, tenants' houses coffee trees and a bore hole on the suit land. According to PW1, the developments were made by the Plaintiff. This evidence is at page 30-53 of the consolidated bundle.DW1 admitted on cross-examination that the developments on the suit land are courtesy of members of the Plaintiff.DW2 had no record of the money generated by the developments on the suit land since the 1st Defendant had no capacity to run them. They were managed by YMCA and all developed by the members of the Plaintiff alongside other donors.
96. The contention by the Plaintiff that it only allowed elders of PCEA Kambui to use the social hall at the suit land since they would not be able to reach the church that is about six (6) kilometres from Ngewa was not supported by any evidence.
97. The suit land was being used by the community and the church would take part as evidence has established. However, title never passed from Kiambu County Council to either the Plaintiff or the 1<sup>st</sup> Defendant. There is evidence that Githunguri/Ngaga 529 was re-planned by Kiambu County Council, subdivided and intended to be allocated as follows; Githunguri/ Nyaga/ 1213-Ngewa Community Centre, Githunguri/nyaga/124-Ngewa Health Centre, Githunguri/Nyaga 1215-Ngewa Jua Kali, Githunguri/Nyaga /1216-Ngewa PCEA Church.
98. A title deed was thereafter issued to the Plaintiff for the parcel of land known as LR Githunguri/Nyaga 1213 before the Minister of Local Government issued a consent. In my view the Title deed issued to the Plaintiff for LR Githunguri/Nyaga/1213 is irregular in the absence of a transfer and consent from the Minister of Local Government at the time. The transfers effected to the 1<sup>st</sup> Defendant were regular.
99. I agree with the 1<sup>st</sup> Defendant's submissions that the Commissioner for Land in a letter dated 11<sup>th</sup> April 2002 shows that the Commissioner of Lands transferred the Parcel Number Githunguri/Nyaga/529 to Presbyterian Church Foundation and created Parcel No.1213-1216 all registered in the name of the 1<sup>st</sup> Defendant.
100. The contents of Judgement on JR. Misc. NO.1417 of 2001 dated 29<sup>th</sup> May 2013, found the application to be unmerited and the same was dismissed. The said decision was never appealed against.  
It therefore means the Minister for Local Government had power to allocate Plot No. LR No. Githunguri/Nyaga/529 and the resultant subdivisions.
101. I find that the particulars of fraud particularized in the plaint have not been proved.
102. The upshot of the matter is that I find that the Plaintiff has failed to prove it's case against the Defendants on a balance of probabilities. The plaintiff's suit is hereby dismissed.
103. In essence the 1<sup>st</sup> Defendant counter claim succeeds. I have considered the circumstances of this case and I find that it is not a case where I would award any damages for trespass. The same goes for mesne profits.



104. Accordingly, judgment is entered for the 1<sup>st</sup> Defendant as against the Plaintiff as follows:

a. That the Plaintiff is hereby directed to vacate LR Nos. Githunguri/Nyaga/1213-1216 within Ninety (90) days from the date of this Judgement.

Failure to which the 1st Defendant shall be at liberty to use lawful means to evict the plaintiff from the suit properties.

b. The Plaintiff shall bear costs of this suit.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 26<sup>TH</sup> DAY OF JULY 2023.**

**L. KOMINGOI**

**JUDGE.**

**IN THE PRESENCE OF:**

N/A for the Plaintiff.

N/A for the 1<sup>st</sup> Defendant.

Ms. Nyawira for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.

Court Assistant – Mutisya.

***Judgement ELC No. 767/2002 Page 8 of 8***

