



REPUBLIC OF KENYA



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Registered Trustees Gospel of God Church v Mborothi & 7 others (Environment & Land Case 114 of 2011) [2023] KEELC 21626 (KLR) (15 November 2023) (Judgment)

Neutral citation: [2023] KEELC 21626 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 114 OF 2011
CK NZILI, J
NOVEMBER 15, 2023**

BETWEEN

REGISTERED TRUSTEES GOSPEL OF GOD CHURCH PLAINTIFF

AND

ELIAS RIMBERIA MBOROTHI 1ST DEFENDANT

ZAVERIO NGURU MBOROTHI 2ND DEFENDANT

MOSES KAMUNDI 3RD DEFENDANT

GEDIEL KIRIMI 4TH DEFENDANT

FRANCIS MUCHERU 5TH DEFENDANT

**REGISTERED TRUSTEES GOSPEL OF GOD CHURCH
INTERNATIONAL 6TH DEFENDANT**

NORA MUTAI NTUI 7TH DEFENDANT

THE HONOURABLE ATTORNEY GENERAL 8TH DEFENDANT

JUDGMENT

1. By a plaint dated 9.8.2011, the plaintiff, described as a body registered under *Trustees (Perpetual succession) Act* Cap 164 with effect from 25.9.1968, brought the suit as the registered trustees on behalf of the Gospel of God church and as the custodian of the church properties. The plaintiff averred it bought one acre of land out of LR No. Ntima/Igoki/1269 from the late M'Mborothi M'Rithara for Kshs.40,000/- and erected a church for use by its faithful. The plaintiff averred that the seller was the father of the 1st and 2nd defendants and passed on before the transfer could be effected. The plaintiff averred that the 1st and 2nd defendants sought and obtained a confirmation of grant in Meru H.C Succession Cause No. 108 of 1989, and an order was made by the probate court that they excise and



- transfer the one acre of land to the plaintiff. Further, the plaintiff averred that given its then subsisting leadership wrangles with the 6th defendant since 1985, the probate court ordered the suit-land once excised to be registered in the names of the 2nd & 3rd defendants and one Robert Nkonge Biugi in trust for the plaintiff.
2. Following the confirmed grant, it was averred that the initial land was subdivided, and the plaintiff's portion was identified as LR No. Ntima/Igoki/4485 (hereinafter the suit land). The plaintiff averred that on 7.2.2011, the 1st, 2nd, 3rd, 4th and 5th defendants, in breach of the existing court order and trusteeship colluded with the 6th defendant to fraudulently transfer and register the suit land to the 6th defendant, which later on transferred the land to the 7th defendant, with an intent of depriving the plaintiff of their property. The plaintiff averred that the title held by the 7th defendant was invalid since it was illegally and fraudulently transferred, and the 7th defendant knew and was privy to the fraud, illegality and irregularity in obtaining such title.
 3. The plaintiff prayed for the sale and transfer to the 6th and 7th defendants and the title to the land to be invalidated or cancelled, a permanent injunction, and the title to be rectified to reflect the church's name. The plaint was accompanied by an undated trustee resolution signed by Stephen Motsi, Mofat Ngabi Iddo Jobe Dube and Dickson Ncube, a list of witness statements and documents dated 9.8.2011, 21.10.2014, 16.1.2018, issues dated 16.4.2012.
 4. By a statement of defence dated 19.9.2012, the 1st and 2nd defendants denied the averments in the plaint and disputed if the plaintiff could sue in its capacity. The 1st and 2nd defendants admitted that their late father had sold and received total consideration for the suit land from the Gospel of God Church. Further, the 1st and 2nd defendants admitted they were appointed the administrators of the deceased estate and proceeded to transfer the one acre of their land to the 6th defendant. The 1st & 2nd defendants denied the alleged fraud, illegality and collusion levelled against them by the plaintiff, whom they termed as unknown to them. They denied the plaintiff had ever occupied the suit land at any time other than the 6th defendant. The defence was accompanied by a case summary, a list of issues, a witness statement dated 31.7.2017 and a list of documents.
 5. The 3rd, 4th, 5th and 6th defendants filed a statement of defence dated 13.9.2011, in which they denied the contents of the plaint and termed the plaintiff as non-existent or lacking the capacity to bring the suit. Further, the 3rd, 4th, 5th and 6th defendants denied being former members of the plaintiff church. The defendants averred that the exemption given to the church was rescinded by the Registrar of Societies in 1985, and attempts to reinstate it by them were rejected, following which its former members became the Glorious Gospel of God Church and later changed its name to Gospel of God Church International, the 6th defendant a duly registered church under the [Societies Act](#).
 6. The 3rd – 6th defendants averred that during their existence – as Gospel of God church, they had acquired many properties, including the suit land as a subdivision of LR No. Ntima/Igoki/1269, which, after the rescission of exemption and subsequent registration in the new outfit, was transmitted to them by the 1st and 2nd defendants and Robert Nkonge Baugi, as the then-appointed trustees by the court, since they were the purchasers of the land. In the alternative 3rd- 6th defendants averred that the judgment by Oguk J on 5.11.1990 was unenforceable due to limitation; hence, the plaintiff could not derive any benefit from it.
 7. The 3rd – 6th defendants averred that they lawfully sold and transferred the land to the 7th defendant as trustees of the 6th defendant. They denied the alleged fraud or illegality levelled against them. Further, the 3rd – 6th defendants termed the plaint as disclosing no cause of action against them. The 3rd – 6th



- defendant's defence was accompanied by an authority to swear and sign documents dated 1.9.2011, a list of witnesses' statements and documents dated 3.8.2017.
8. The 7th defendant opposed the suit by a statement of defence dated 29.8.2011, terming herself as a stranger to the allegations. She indicated that when she bought the suit land, it had no structures; she took vacant possession, fenced it off, and has been in possession since. Similarly, the 7th defendant denied knowledge of and being party to the alleged fraud or illegality in acquiring the land since she was an innocent purchaser for the value of which property was free from any encumbrances. The 7th defendant termed the claim as bad in law, frivolous, brought by a party with no capacity to sue as time-barred, based on an abated enforcement order and on a claim where the plaintiff never procured the necessary land control board consent to facilitate transfer to its name making the transaction null and void. The 7th defendant averred that the plaintiff failed to disclose the pendency of Meru CMCC No. 116 of 2011, where the plaintiff and the 7th defendant obtained orders of status quo, which were vacated, and the suit dismissed due to default of payment of costs by the plaintiff.
 9. By an application dated 9.8.2011, Lesiit J, as she then was now J.A, granted an inhibition and temporary injunction against the 1st – 7th defendants pending hearing and determination of the suit. Following directions given on 11.11.2021, this court took over the matter from where Hon. Lady Justice Lucy H. Mbugua had left it.
 10. Joseph Ntombura, a pastor with the plaintiff, testified as PW 1 and adopted his witness statement dated 16.1.2018 as his evidence in chief. He told the court that the church was registered in 1968. He produced the certificate of exemption from registration dated 20.8.1968 as P. Exh No. (1), copy of the trust deed dated 24.5.1974 as P. Exh No. (2), letter approving *the Constitution* from the registrar of societies dated 22.5.2005 as P. Exh No. (3), certificate of registration for 6th defendant dated 7.4.2004 as P. Exh No. (4), certificate of registration for 6th defendant dated 22.3.2005 as P. Exh No. (6), a letter from the registrar of societies dated 11.11.2009 reinstating the church registration as P. Exh No. (7), letter dated 31.3.2010 from the registrar of societies as P. Exh No. (8) confirming the trustee's court order dated 5.11.1990 as P. Exh no. (9), a court ruling dated 24.11.1989 as P. Exh No. (10), transfer form as P. Exh No. (11), copy of the record as P. Exh No. (12), valuation report as P. Exh No. (13), title deed as P. Exh No. (14), certificate of incorporation of the 6th defendant as P. Exh No. (15), trust deed for the 6th defendant dated 12.7.2005 as P. Exh No. (16), minutes for the meeting held on 18.3.2005 as P. Exh No. (17), a letter from the Registrar of Societies dated 8.6.2011 as P. Exh No. (18) and letter from the 6th defendant's advocate to the lands office dated 6.7.2011 as P. Exh No. (19). He told the court that in 1983, the plaintiff bought the Suitland for Kshs.40,000/= from the 1st & 2nd defendants' late father out of LR No. Ntima/Igoki/1269. He said that since the plaintiff was exempted from registration, the land was held by the 3rd – 4th defendants in trust for the church.
 11. In line with a court order by Ogok J, PW1 said that following church wrangles, the Registrar of Societies cancelled the exemption and that in 1985, the 3rd – 4th defendants, as former members of the plaintiff, who had instigated the wrangles registered another church in 2004 which they changed to the 6th defendant, save for the word international.
 12. PW 1 said that the changes were intentionally done to obtain properties belonging to the plaintiff. After an objection, PW1 said the Registrar of Societies ordered the 6th name to revert to Glorious Gospel of God Church, said the 3rd – 4th defendant illegally and fraudulently transferred the land to the 6th defendant and destroyed the plaintiff's church structure despite the court order dated 5.11.1990.
 13. PW 1 told the court that the plaintiff was re-registered in 2009 and unsuccessfully proceeded to block the sale by the 6th defendant in 2011 at the land registry. PW 1 told the court that they warned the 7th



- defendant not to purchase the land for it belonged to the plaintiff, only to learn later that she went ahead and bought it.
14. In cross-examination, PW 1 told the court that the 1st and 2nd defendant's late father was the one who sold the land to the church in 1983, and after obtaining a grant, the court ordered that they transfer the land to be held in trust, but unfortunately, they later transferred it to the 6th defendant who subsequently transferred it to the 7th defendant. In cross-examination by the 7th defendant, PW 1 told the court the church lodged a caution against the title held by the 7th defendant, who was eventually stopped from utilizing the land by the court. His evidence was that the 7th defendant was warned not to release the cheque but was persuaded otherwise by the 6th defendant to buy the land. PW 1 said the land was for a church building and not for business purposes; hence, they had erected it before the court stopped them.
 15. Michel Sibindi testified as PW 2 and adopted his witness statement dated 21.10.2014 as his evidence in chief. He told the court the land was bought in 1983, and they embarked on erecting a church building for its faithful, but before the transfer could be effected, the seller passed on, and his children, the 1st and 2nd defendants obtained letters of administration from Meru High Court. He said that the land came under the names of Zaverio Nguru Mborothi, Moses Kamundi Muguka and Robert Biugi as trustees for the church. PW 2 said that in 1985, the trustees registered a different church, Glorious Gospel of God, which they changed to Gospel of Gospel Church International, to deceive and allegedly take over the property belonging to the plaintiff.
 16. PW 2 told the court the plaintiff wrote an objection over the new outfit to the Registrar of Societies, who ordered the 6th defendant to revert to Glorious Gospel of God Church to avoid confusion. Further, PW 2 told the court that the trustees illegally and fraudulently transferred the land to the 6th defendant and destroyed the erected building. Cross-examined by Mr. Mwanzia advocate, PW 1 told the court the church was registered in 1968 as per the certificate produced before the court. In cross-examination, PW 2 told the court he was a pastor and trustee of the plaintiff. He said that the 7th defendant bought land from an entity which did not own the land, even though they were former members of his church who had established a splinter church. He told the court his name as a trustee was captured in P. Exh No's. 7 and 8, so he was properly before the court. PW 2 also said that the 6th defendant went against the court order in registering the land in its name.
 17. Elias Rimberia Mborothi, the 1st defendant, testified as DW 1. He told the court his late father sold the suit land to the plaintiff, who built a church using stones and timber in 1983. DW 1 said that after the succession cause, they resolved to give the church one acre of the estate. Regarding the 3rd and 6th defendants, DW 1 told the court they all came and told him they wanted the land, and while thinking that the 3rd – 6th defendants were the plaintiffs, they transferred the land. He said he never read the document shown to him during the transfer. He mistakenly believed the transfer was to the plaintiff, not the 6th defendant.
 18. Jeniffer Mukangeri Njeru testified as DW 2 and adopted her witness statement dated 31.7.2011 as her evidence in chief. Her evidence was that Zaverio Nguru, her late husband, was misled after converting to the muslim faith to transfer the land to the 3rd – 6th defendants, who had registered a rival church. Her testimony was that their late husband had erroneously signed the documents, thinking it was for the plaintiff and not the 6th defendant. She confirmed that her father-in-law had initially sold the land to the plaintiff, not the 6th defendant. She said her husband mistakenly signed the transfer form in favour of the 6th defendant, but after realizing the mistake, he never reported it to the police. She insisted the land belonged to the plaintiff, going by P. Exh No. 9 and not the 6th defendant.



19. Sullivan Musyoka testified as DW 3, as a pastor with the 6th defendant. He adopted his witness statement dated 31.7.2017. He told the court the 6th defendant initially was known as Gospel of God Church before it was deregistered, after which its members resolved to form Glorious Gospel of God Church, which the Registrar of Societies duly registered. Later on, DW 3 said the church changed its name to Gospel of God Church International. He told the court that the defunct Gospel of God church had bought the suit land. He believed the plaintiff was non-existent when the land was transferred to the 6th defendant. Further, DW 3 denied that the plaintiff was intentionally registered with a name similar to the deregistered church to aid it in acquiring the plaintiff's properties.
20. DW 3 produced a certificate dated 20.8.1968 as D. Ex No. (1), a notification from the registrar dated 33.8.1985 as D. Exh No. (2), copy of Kenya gazette as D. Exh No. (3), a copy of the certificate of registration of the 6th defendant dated 7.7.2004 as D. Exh No. (4), minutes dated 18.3.2005 as D. Exh No. (5), letter dated 12.3.2005 from the registrar acknowledging the amended Constitution as D. Exh No. (6), D. certificate of incorporation under Cap 164 as D. Exh No. (7), certificate No.23742 dated 22.5.2005 as D. Exh No. (8), trust deed as D. Exh No. (9) and sale agreement as D. Exh No. (10). In cross-examination, DW 3 told the court they registered another church since they had been told the plaintiff could no longer be reinstated or registered afresh. According to DW 3, the court order had directed the land to be held in trust for the plaintiff, and since the plaintiff was already deregistered or non-existent, the 3rd – 4th defendants remained the trustees. DW 3 said that after it took a while, they decided to register Glorious Church and eventually the 6th defendant and transfer the land to the 6th defendant. He believed they acquired the land when the plaintiff was non-existent in law.
21. Norah Mutai Ntui testified as DW 4 and produced his witness statement dated 29.8.2011, as her evidence in chief. She told the court that on 20.3.2011, three officials of the 6th defendant approached her, offering to sell the suit land to her. She said the 7th defendant said she went to view the land, bargained the price and on 23.3.2011 conducted an official search No. 801/3 showed that the land was under the 6th defendant's name and was free of encumbrances. DW 4 told the court that on 28.3.2011, she entered into a sale agreement with the sellers, eventually effected the land transfer into her name on 12.4.2011, acquired a title, and proceeded to fence and develop the land. DW 4 told the court that on 14.5.2011, pastor Koome Nguru visited her place seeking permission to hold a meeting on the land, which she declined and that on 16.5.2011, three men trespassed into the land, alleging they were conducting prayer. She said nobody had objected to the sale or transfer.
22. In cross-examination, DW 4 told the court she bought the land for Kshs.3,000,000 even though D. Exh No. (10) indicated a different figure of Kshs.1,000,000 which she termed erroneous. DW 4 admitted that elders from the plaintiff's church came to warn her before purchasing the land, which was too late because she had already signed the sale agreement. She acknowledged that she could not heed the elder's caution, for it came a minute too late.
23. DW 4 said she was not aware of the two factions of the church when she bought the land. In her view, she conducted due diligence before acquiring the land by conducting and obtaining an official search certificate, though she did not request the church's certificate of registration. DW 4 could not remember the lawyer who prepared the sale agreement or transfer forms. DW 4 said she was unaware of the letter dated 1.8.2005 indicating the reversion of the registration and stoppage of any transaction over the suit land by the Registrar of Societies. Asked about P. Exh no. 18 showing that Gospel of God church was non-existent with effect from 1.8.2005, DW 4 said if that be so, the mistake must have been by her lawyers who were supposed to have conducted due diligence for her. On evidence about the consideration paid, DW 4 told the court there was a bank statement that had not been supplied to the court. She believed the church was generally known as the 'Mwenje' group, but one could not



- differentiate the two factions. She denied that when she bought the suit land, the land was under some church use. She requested P. Exh no.1- 3, the valuation report, which showed a vandalized house. In re-examination, DW 4 said she never made the entries on the transfer and the copy of records.
24. Silas Thurania testified as DW 5 and adopted his witness statement dated 18.10.2017 as his evidence in chief. His evidence was that the 7th defendant bought the land and paid for the same through two bankers' cheques, each worth Kshs.750,000/=, but stopped the cheques until the title deed could be under her name but eventually paid the sum in cash after the transfer was effected.
 25. DW 5 told the court that some people had warned the 7th defendant not to buy the suit land and advised her to stop the cheques. He believed the church started in 1932, while the plaintiff church came later. He insisted the church started long before it was formally registered. He said he was the one who introduced the 7th defendant to the 3rd – 6th defendants to buy the suit land but never disclosed to her about the then-existing wrangles in the two churches. DW 5 admitted that as the custodian of the title deed, he was justified to receive the Kshs.300,000/= from the 6th defendant. He denied that the 3rd – 6th defendants had been stopped from utilizing the suit land when she sold it.
 26. Further, DW 5 denied any fraud or illegality. Additionally, DW 5 told the court that he was aware of D. Exh No. 18, though he never disclosed to the 7th defendant that the church was nonexistent as per the said letter. DW 5 said the church committee sold the land to the 7th defendant since the land registrar had authorized them. Further, DW 5 said the land came under the name of the 6th defendant on 7.2.2011 as per the green card.
 27. The 8th and 9th defendants failed to file any defence or participate in the matter despite services of summons and hearing notices. Therefore, their defence was ordered closed on 10.7.2023, and parties were directed to submit written submissions.
 28. By written submissions and a list of authorities dated 10.7.2023, the plaintiff isolated seven issues for the court's determination. On whether the 6th defendant had legal capacity to own property or enter into a contract, the plaintiff submitted that going by the Registrar of Societies ruling dated 1.8.2005 and a letter dated 8.6.2011, the 6th defendant ceased to exist in law and therefore could not own and transfer any properties. While aware of the law, the 3rd – 8th defendants purported to register the land in the 6th defendant's name to deceive members of the public that it was the plaintiff's transactions with the land. The plaintiff termed the 3rd – 8th defendants' action fraudulent since they were aware of the ruling made on 1.8.2005 and the subsequent reinstatement of the plaintiff. Without any rival evidence by the 3rd – 6th, 7th and 8th defendants, the plaintiff submitted that the 6th defendant lacked legal capacity to enter into any sale agreement with and transfer the land to the 7th defendant on 7.2.2011 and 7.7.2011.
 29. On whether the 7th defendant was a bona fide purchaser for value, the plaintiff submitted that the 6th defendant was registered on 7.7.2004, 24 years after the plaintiff bought the land and built a church while the land was held in trust.
 30. The plaintiff submitted, guided by *B. vs A.G (2004) 1KLR 431*, that court orders are not made in vain and since *J Oguk J* had made an order on 5.11.1990, which has not been set aside, the 6th defendant's right to land the suit if any extinguished by operation of the law. The plaintiff submitted that since the 6th defendant did not exist in law on 1.8.2005, its land registration on 7.2.2011 was inconsequential. On the transfer to the 7th defendant, since the 6th defendant, had no legal capacity any transaction by them was illegal as held in *Charles Karithe Kiarie vs Estate of John Wallace Mothare & others (2013) eKLR* as quoted in approval in *Flavemart Enterprises Ltd vs Kenya Railway Corporation (2009) eKLR*, *Beach Bay Holdings Ltd vs Ratim Relations Ltd and others (2014) eKLR* and *Black's Law Dictionary*



- 9th Edition, Arthi Highway Developers Ltd vs West End Butchery Ltd & others (2015) eKLR, Alice Chemutai Too vs Nickson Kipkumi Korir & others (2015) eKLR, Chege Kimotho & others vs Vesters & another (1988) KLR 48, Econet Wires (K) Ltd vs Member for Information and Communication of Kenya & another (2005) 1 KLR 828.
31. On whether the 7th defendant was an innocent purchaser for value without notice, the plaintiff submitted that the 7th defendant was warned by its witness, Silas Thurania. Reliance was placed on Katende vs Harindar and Co. (2008) 2 E.A 173, Elijah Mokeri Nyagwara vs Stephen Mungai Njuguna & another Eldoret ELC No. 609B of 2012, DTB vs Said Hamad Shamisi & 2 others (2015) eKLR, Samuel Kamere vs Land Registrar Kajiando C.A No. 28 of 2005, Lawrence P. Mukiri Muigai vs AG and others (2017) eKLR, Joseph Mulwa Mukima vs Jesse Nganga Gakobu & others Henry Muthe Kathurima vs Commissioner of Lands (2015) eKLR, Evanson Wambugu Gachugi vs Simon Wainaina Gatwiki & others (2014) eKLR and Kenya National Authority vs Shalien Masood Mughal 7 others.
 32. On trespass, the plaintiff submitted that it was the 7th defendant who trespassed on their land as per Section 3 (1) of the [Trespass Act](#) (Cap 294). Reliance was placed on John Kiragu Kimani vs REA (2018) eKLR, Isaac Gathungu Wanjohi & others (2012) eKLR, Econet Wireless Kenya Limited vs Minister for Information & Communication of Kenya & (2005) 1KLR 828
 33. On whether the 1st & 2nd defendants erroneously transferred the land to the 6th defendant, the plaintiff submitted that the 1st and 2nd defendants were mistaken and his transfer should be set aside. Reliance was placed on Solle vs Butcher (1949) 2 ALL ER 1107, commission for the New Towns vs Cooper (GB) Ltd (1995) 2 ALL ER 929, Mary Ruguru Njoroge vs AG (supra) and Dandi Kiptugen vs Commissioner for lands & others (2015) eKLR, Don Wood Co. Ltd vs Eric Mumo Mutisia & 3 others (2021) eKLR.
 34. On whether the actions by the 3rd – 8th defendants were fraudulent and illegal, the plaintiff submitted they acted with deceit and were fraudulent in their actions of disposing of the land to the 6th defendant, availed no evidence before the court as per Section 3 (3) of the [Law of Contract Act](#) and could not transfer the land. Reliance was placed on Luka Kibegwa Okara vs Nyakego Avega (2020) eKLR, Republic vs Minister for Transport & Communication Exparte Waa-ship Garbage Collector & others (2006) 1 KLR 563, Don wood (supra), Munyu Maina vs Hiram Gathiha Maina C.A NO. 239 of 2009.
 35. On the reliefs sought, the plaintiff submitted that its evidence had not been challenged, and the title deed held by the 7th defendant was tainted with illegalities and fraud; therefore, the court should allow its claim with costs.
 36. By written submissions dated 26.7.2023, the 3rd -6th defendants submitted that all the steps leading to the registration of the title were regular, lawful and sanctioned by the relevant office under the [Societies Act](#) since the plaintiff did not exist in law or were exempted from registration. Therefore, the 3rd to 6th defendants submitted they were entitled to the properties as the successor of the plaintiff, resolution its Constitution by the former members of the plaintiff who were entitled to an automatic transmission of the properties following its registration under Cap 164 on 19.9.2007. The 3rd to 6th defendants submitted that the defunct Gospel of God Church bought the property only from the members' contributions, offerings and tithes; hence, the plaintiff had no right over the property since the court ordered it to be held in trust. Further, it was submitted by the 3rd - 6th defendants that given that the land was never registered in the plaintiff's name for over 20 years, the sale and subsequent transfer were proper.
 37. The 7th defendant, by written submissions dated 27.7.2023, submitted that the plaintiff has no locus standi to sue. Reliance was placed on Black's Laws Dictionary, Rajesh Pranjivan Chundasama vs Sailesh



Pranjivan Chundasama (2014) eKLR, Halsbury's Law of England 3rd edition Vol. 18. Living Water International vs City Council of NRB (2008) eKLR, Kituo cha Sheria vs John Ndirangu Kariuki & another (2013) eKLR, David Kamau Njoroge (deceased) vs Savings and Loan (K) Ltd (2006) eKLR, Trustees of Kenya Redeemed Church and another vs Samuel M'Obuya Morara and others (2011) eKLR, African Orthodox Church of Kenya vs Charles Omuraki & another (2014) eKLR, Bridge Hotel Ltd vs Wilfred Mutiso Lai Jesus Celebration Centre (2016) eKLR.

38. The 7th defendant submitted that the registered trustees should have been named, the plaintiff had to be a body corporate as per Cap 164, and there was no good reason for the court to depart from the path in the above-cited authorities took. On bonafide purchaser, the 7th defendant submitted that she had met the conditions set in Black's Laws Dictionary, Katende vs Haridar (*supra*), for she conducted an official search, paid Kshs.3,000,000/=, and obtained all the requisite transfer forms. The 7th defendant urged the court to dismiss the suit against her with costs.
39. The issues calling for the court's determination are:
- i. If the plaintiff can sue the defendants.
 - ii. If the plaintiff has pleaded and approved fraud, illegality and procedural impropriety on the part of the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th & 9th defendants.
 - iii. If the 3rd – 5th defendants held the property in trust for the plaintiff, following the court orders dated in 1990
 - iv. If the 3rd, 4th and 5th defendants took advantage of the 1st and 2nd defendants to transfer the land to the 6th defendant.
 - v. If the 6th defendant could acquire and register the suit property under its name.
 - vi. If the 6th defendant could sell and transfer the suit land to the 7th defendant
 - vii. If the 7th defendant was an innocent purchaser for value without notice.
 - viii. Whether the plaintiff is entitled to the reliefs sought.
 - ix. What is the order as to costs?
40. The plaintiff brought this suit through registered trustees as a body corporate sui generis registered under cap 164 laws of Kenya. In the verifying affidavit, Stephen Motsi, a registered trustee of the church, mentioned the names of the trustees as Jeffrey Chimya Mukovu, Dickson Nceube Mofat Ngwabi, Jeremiah Kinga Korongi and Iddo Jube Dube, who had authorized him to swear and plead as per authority by way of a resolution attached as annexure SM dated 9.7.2011, filed alongside the plaint. The plaintiff also attached and later on produced P. Exh No's 1-19, among them the certificate of exemption dated 20.8.1968, certificate of incorporation of trustee dated 24.5.1974 letter reinstating it dated 11.11.2009 and the official P. Exh No. (7).
41. In the letter dated 1.8.2005, the 6th defendant was immediately ordered to revert to its former name. D. Exh No. (1) shows the plaintiff was exempted from registration on 20.8.1968. D. Exh No. (2) shows the rescission by the Registrar of Societies for the name of the plaintiff, which took place on 23.8.1095. This was gazetted as per P. Exh No. 3. The 6th plaintiff assumed Gospel of God Church International as per P. Exh No. (4) dated 7.7.2004. The 6th defendant was known as Glorious Gospel of God Church by then. It changed its name to Gospel of God Church International as per D. Exh No. (6) – (8) dated 22.5.2005.



42. The reinstatement of the plaintiff occurred on 11.11.2009. In *Newland Surgical Clinic Ply Ltd vs Peninsula Eye Clinic Ltd*, the issue was whether a company's reinstatement into the register after its previous deregistration operated retrospectively to validate actions performed on its behalf during its deregistration period. The court held that the reinstatement had a retrospective effect from the date of its deregistration, including the retrospective validation of its corporate activities during that period (accessed from <http://www.safii.org>). In *Atheists in Kenya and Another vs Registrar of Society and Others* (2018) eKLR, the court observed that a suspended society remains under a non-functional mode until its suspension is lifted or its registration cancelled under Section 12 (1) (b) of the *Societies Act*. In *Angute Bargoji Parmers vs David Kiptum Korir & others* (2020) eKLR, the court said the gazette notice to vacate the orders of deregistration was a testament to the capacity of the plaintiff to sue.
43. In *Duncan Nderitu and others t/a Trustees of African Club vs John Haruun* (1991) eKLR, the court said where a society is deregistered under Section 38 of Cap 105, the Minister responsible has a discretion either to appoint a receiver of the society or vest the properties of the society in the receiver. The court said that until the receiver was appointed, the vesting of the property remained with the registered trustees, who must receive and account for the properties.
44. In *Methodist Church vs TSC* (2015), eKLR at issue, among other things, was whether the petitioner had locus standi to sue. The court said *the Constitution* grants parties right to institute proceedings to claim a right or fundamental freedom in the Bill of Rights. In *Registered Trustees of Catholic Diocese of Muranga and another vs James Mwangi* (2014) eKLR, the court cited with approval *Jane Nyambura Joshua vs Apostolic Faith Mush NRB HC Civil case No. 2824 of 1997 (OS)*, that a church could sue through its registered trustees. The court also cited *Halsbury Laws England 3rd edition volume 18 paragraph 239*, that trustees of a registered society may bring or defend legal proceedings regarding its property, right or claim without any other description than the title of their office. See *Maurice Ooko Otieno vs Mater Misericordiae Hospital* (2004) eKLR. In *Grace Mwenda Munjuri vs Trustees of ACK* (2017) eKLR, the court said the burden was on the respondent to prove registration under the *Societies Act* and Cap 164. The court said a certificate of registration or evidence of registration of the officials would suffice. The court held, guided by *Leiyagu* and Article 159 (d) of *the Constitution*, that courts should sustain a suit and hear it on merits instead of striking it out.
45. Given the evidence produced by the plaintiff attaching the authority and names of the registered trustees and guided by the preceding case law, I find the plaintiff has locus standi to institute the suit, for its reinstatement had a retrospective effect.
46. The next issue is whether the plaintiff has proved its claim on fraud, illegality, misrepresentation and lack of capacity to transfer the land to the 6th defendant. In paragraph 10 of the plaint, the plaintiff pleaded that the 3rd, 4th, and 5th defendants were former members of the church who orchestrated wrangles in the church in 1985, leading to its cancellation of receipt with a view of taking over its properties and instead of taking leadership registered a similar church to deceive the Registrar of Societies that the plaintiff had changed its name to Glorious Gospel Church and later to Gospel of God Church International, which the Registrar of Societies upon protest by a ruling dated 1.8.2005 ordered the 6th defendant to revert to its former name Glorious of Gospel of God Church. In paragraph 14, the plaintiff pleaded that it acquired the suit land in 1983, paid consideration, took possession and erected a church building.
47. It was averred that the seller passed on, and by court order, Oguk J ordered the plaintiff to get one acre of land, later subdivided as LR 4485 and registered, since it was exempt from registration the land to be held for the plaintiff by the 2nd and 3rd defendants and Robert Nkonge Bing in trust for it. It confirmed that the order has not been appealed against. The plaintiff averred that on 7.2.2011, the



- 1st – 5th defendants, in cohorts with the 6th defendant, fraudulently and without any colour of right, transferred the suit property to the 6th defendant and later to the 7th defendant. The particulars of fraud and illegality were stated as illegally and unprocedurally transferring the land. It was against a court order; the land was illegally registered in the name of the 7th defendant, and the value of the suit land was understated.
48. In *Wambui vs Mwangi & others* (CA 465 of 2019) KECA 144 (KLR) 19th November 2021 (judgment), the court cited with approval the Black's Law Dictionary 9th Edition Page 131, on the definition of fraud as a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to their detriment. The court cited with approval *Railal Gordhanbhai Patel vs Lalji Makenji* (1957) E. A 314 and *Arithi Highway Developers Ltd vs West End Butchery Ltd and others* (2015) eKLR, that courts should not provide succor for any crook using forgery, deceit or any fraud to acquire a legal and valuable title deceitfully snatched from a legally registered innocent proprietor.
 49. Trust under the Black Laws Dictionary 9th Edition is defined as a right enforceable solely in equity to the beneficial enjoyment of property to which another person holds the legal title; a property interest held by one another (the trustee) at the request of another for the benefit of a third party.
 50. In *Mumo vs Makau* (2002) E.A 170, the court held that trust was a question of fact and had to be proved by evidence.
 51. In support of its averments on fraud, the plaintiff produced P. Exh No. 1 exemption from its registration dated 20.8.1968 certificate of incorporation dated 4.6.1974 as P. Exh No. (2) registration of Glorious Gospel of God Church dated 22.5.2005 as P. Exh No. (3), change to Gospel of God Church International certificate dated 7.7.2004 as P. Exh No. (4) and P. Exh No. (6) dated 22.3.2005, a certificate in the name of Gospel of God Church International, cancellation to revert, letter dated 1.8.2005 from the Registrar confirming that the plaintiff was registered on 23.8.1985 and the Gospel of God Church International was first registered on 7.7.2004 contrary to Section 11 of the *Societies Act* and therefore ordering the 6th defendant to immediately revert to its old name, letter dated 16.10.2009 from the registrar acknowledging an application for reinstatement P. Exh No. 7, a letter from the Registrar dated 11.11.2009 being a communication of reinstatement of the plaintiff and its officials among them Micah Sibindi, P. Exh No. (8) a letter dated 31.3.2010 from the registrar indicating the church trustees as Stephen Motsi, Dickson Ncube, Moffat Ngwabi, Iddo Jube Dube, Jeremiah Korongi and Jeffrey Ching Makobou, P. Exh No. (9), consent dated 5.11.1990 an order in Succession Case No. 108 of 1989, indicating that Zaverio Nguru Mborothi, Moses Kamundi M'Mugwika and Robert Nkonge Biugi would hold one acre out of the 1st and 2nd defendants land as trustees of Gospel of God Church, P. Exh No. 10, a ruling dated 24.11.1989 directing the one acre of land from LR No. Ntima/Igoki/1269 to be registered in the name of the Public trustee pending the succession to the Gospel of God Church.
 52. Ehx No. (11) being the transfer form dated 4.11.2011 for LR No. Ntima/Igoki/4485, where Moses Kamundi M'Mugwika Gediel Kirimi, Japhet Itirithia and Francis Mwangi Muchera of Gospel of God Church International transferred the land to the 7th defendant, P. Exh No. (12), A copy of the records showing a register for LR No. Ntima/Igoki/4485 was opened on 2.8.1991 in the name of Elias Rimberia Mborothi. Entry No. 4 shows the Gospel of God Church International became the registered owner on 7.2.2011 and acquired a title the same day, while entry number 6 shows the 7th defendant became registered owner on 7.4.2011 and acquired a title on 12.4.2011.
 53. Further, the plaintiff produced as P. Exh No. 15 & 16 a certificate of incorporation and trustee deed of Gospel of God Church International Trustees as Moses Kamundi Gediel Kirimi and Francis Mwangi



- Mucheru dated 19.9.2007 and registered on 21.9.2007. Additionally, the plaintiff produced P. exh No. (18), a letter by the Registrar communicating the directive to the 6th defendant to revert to the old name, outlawing the existence of the Gospel of God Church International and confirming the existence of the plaintiff SOC. No. 7670, and lastly, P. Exh No. (19), a protest letter that despite P. Exh No. (18), the 6th defendant fraudulently hijacked the sale process, registered the land in not its name and purported to sell and transfer it to the 7th defendant.
54. In opposition to the alleged fraud, the 3rd, 4th, 5th and 6th defendants by a defence dated 13.9.2011 in paragraph 3 admitted the contents of paragraphs 4, 5, 6, 7, 8 & 9 of the plaint admitted the rescission of the certificate of exemption for the plaintiff on 13.9.1985, the efforts to seek reinstatement. They admitted registration of the new outfit and change to the name of the 6th defendant.
 55. In paragraph 8 of the defence, the 3rd, 4th, 5th, and 6th defendants admitted that the plaintiff acquired the suit land, among other properties. However, they said that after rescission, the properties were transmitted to the 6th defendant following its registration, while acknowledging the existence of P. Exh No. 9, which was a consent order the 3rd, 4th, 5th and 6th defendants submitted the suit land was held in trust on behalf of the plaintiff but in the alternative said the order became unenforceable due Limitation of Action Act and that the plaintiff would not derive any benefit from it.
 56. The 3rd, 4th, 5th and 6th defendants averred they lawfully sold and transferred the suit land to the 7th defendant without any fraud in their capacity as the trustees of the 6th defendant.
 57. In support of their defence, the 3rd, 4th, 5th and 6th defendants produced D. Exh No. (1) a certificate in the name of the plaintiff, D. Exh No. (2) a notification of rescission of exemption dated 23.8.1985, gazette notice as D. Exh No. (3), certificate of registration of the 6th defendant dated 7.7.2004 as D. exh no. 4, minutes dated 18.3.2005 as D. Exh No. (5) where it was agreed to change from Glorious Gospel of God church to Gospel of God Church International, the certificate of incorporation and trust deed as D. Exh No. (8) & (9) and an agreement for sale with the 1st and 2nd defendants late father.
 58. On their part, the 1st and 2nd defendants averred the land was sold and acquired by the plaintiff in 1983 but was erroneously and mistakenly transferred to the 6th defendant, honestly believing they were the plaintiff, which mistake they only realized at the institution of this suit. The 1st and 2nd defendants testified that the family had consented in the succession cause through an order that the suit land be held by the 3rd, 4th, and 5th defendants in trust for the plaintiff. The 1st and 2nd defendants confirmed they were aware of the consent order dated 5.11.1990 and the grant issued to them on 23.6.2017.
 59. There is no doubt that a consent court order was made on 5.11.1990 P. Exh No. (8) & (9) made between the 1st defendant, the public trustee, Elias Rimberia Mborothi Jackson Rutere Gitonga Moses Kaundi M'Mugwika, Gediel Kirimi, Kimathi Samuel Mugwika and Enock Mututu Mubayiwa. The suit property was to be held by Moses Kamunde M'Mugwika, Gediel Kirima and Robert Ruigi as trustees for Gospel of God Church. D. Exh No. (10) confirmed the sale was to the Gospel of God Church, whose elders then were indicated as Musa Kaundi, Gediel Kirimi, Benson Dwiga, and Rufus Njiru.
 60. D. Exh No. (2) shows that the plaintiffs' exemption was rescinded on 23.8.1985 and gazetted as per D. Exh No. (3) on 30.8.1985. D. Exh No. (4) shows that the 6th defendant came into being on 7.7.2004 and changed to Gospel of God Church International as per D. Exh No's. 5, 6, 8 and 9. The trustee for the 6th defendant was registered and approved on 12.7.2006 by Moses Kamundi, Gediel Kirimi and Francis Mucheru.



61. From the trust deed, I do not find any clause showing that the trustees and the 6th defendant had irrevocably taken over or assumed all the properties (movable or immovable) belonging to the deregistered plaintiff church as of 12.7.2006.
62. There is no indication by way of documentary evidence that the three trustees applied to the court for the review of the court order produced as P. Exh No. 9 to assume and or take over the suit land for and on behalf of the plaintiff herein. On the basis that the reinstatement of it had become impossible.
63. There is no evidence of any approval by the Registrar of Societies and the High Court, which had decreed that the land be held in trust for the plaintiff to be registered in the name of the 6th defendant on 7.2.2011.
64. Again, going by P. Exh No. (7) dated 11.11.2009, the Registrar of Societies had already reinstated the plaintiff, and its registered trustees approved as per P. Exh No. (8), dated 31.3.2010.
65. On the other hand, as per P. Exh no. 18, the 6th defendant was no longer in existence as Gospel of God church international in the eyes of the law as communicated to them, that their certificate had been cancelled vide a letter by the Registrar of Societies dated 1.8.2005. Therefore, as of 7.2.2011, when the 6th defendant acquired a title for LR No. Ntima/Igoki/4485, no such entity existed in law as Gospel of God Church International with effect from 2.8.2005. The said church had not appealed against the decision by the Registrar of Societies as per Section 32 of the Societies Act.
66. Again, assuming that the 3rd, 4th and 5th defendants were the ones who transacted with the 1st and 2nd defendants to transfer the land to the 6th defendant, they have not, before this court, disclosed and produced any documents in support of the transactions such as transfer forms, land control board consents and registration payments to show that procedures for transfer and registration were followed.
67. To that extent, my finding is that the process of transfer and registration of the suit land from the names of Elias Rimberia Mborothi and Zaverio Nguru Mborothi to Gospel of God Church International on 7.2.2011, was tainted with illegalities irregularities and was null and void ab initio for going against the court order on trusteeship as well as registering the land to a non-existent entity.
68. Coming to the sale and transfer to the 7th defendant, P. Exh No. (11) indicates it was dated 4.4.2011. By this time, the plaintiff existed in the eyes of the law after its reinstatement with effect from November 2009. The transferee is indicated as Gospel of God Church International, which ceased to exist on 2.8.2005. The signatories on behalf of the 6th defendant were Moses Kamunde M'Mugwika, Gediel Kirimi, Japhet Itirithia and Francis Mwangi Mucheru.
69. From P. Exh No. (9) Robert Ruigi was not a party to the transfer. Even assuming that the transfer was for and on behalf of the plaintiff, the transfer is tainted with illegalities since one of the critical trustees was missing in the transaction. The trustees knew that the church purporting to transfer the land was not the owner, had ceased to exist in law and were misrepresenting themselves as owners of the land.
70. The transferees knew that the plaintiff had been reinstated. They knew of the court order. They knew that their outfit was no longer in existence in law. They knew that a non-existent entity held the suit land. They knew that the plaintiff owned the land. They concealed material facts from the 7th defendant and the land registrar. The 3rd, 4th, 5th and 6th defendants misrepresented themselves as the land owner and knew the title deed held lacked the legal imprimatur.
71. The 3rd, 4th, 5th and 6th defendants knew that a court order was subsisting directing them to hold the property in a fiduciary capacity. The validity of the documents used for sale and transfer was tainted with illegalities. See *Evanson Wambugu Gachugi vs Simon Gatwiki (supra)* eKLR, *Elijah Mokeri*



- Nyagwara vs Stephen Mungai Njuguna (supra) Nizar Hasham Virani vs Shamsudin Gulan Husein Nauji (2020) eKLR, Eldoret Express Ltd vs Tawai Ltd & NLC (2019) eKLR, Propwa Co. Ltd vs Justus Nyamo Gatondo & another (2020) eKLR.
72. In Elizabeth Wamboi Gichunja & others vs Kenya Urban Road Authority & others (2014) eKLR, fraud was defined as where a person obtains registration while aware of the existence of an unregistered interest on the part of some other person to defeat that registration. The court said such a title should be nullified.
 73. In Sapra Studio vs Kenya Properties Ltd (1989) KLR, the court cited Denning's LJ unless and until set aside on account of fraud or some equitable ground. In Alice Chemutai Too vs Nickson Kipkurui Korir & others (2015) eKLR, the court said a bonafide owner should not be deprived of his land by an artist, and courts should not protect an illegally or unprocedurally obtained title to land.
 74. In Arthi Highway (supra), the court said fraud has to be pleaded and proved by stating the facts with clear allegations and cogent evidence on a balance of probabilities. In Godfrey N. Nyaga vs Margaret W. Theuri and others (2015) eKLR, the court observed that a title unlawfully obtained cannot be protected under Article 40 (6) of *the Constitution*.
 75. In Esther Ndegi Njiru and another vs Leonard Gatei (2014) eKLR, the court said legal practitioners must do due diligence beyond obtaining a search certificate.
 76. In Juletabi African Adventure Ltd and others vs Christopher Michael Lockley (2017) eKLR, the court addressed itself on a trustee who takes advantage of his position or benefit.
 77. In VB vs VB 2019) eKLR, the court observed it has power under section 56 of the *Trustee Act* to rescind or vary an order on dealing with trust property.
 78. In Aon World Co, Ltd vs Eric Mumo Mutisya & others (2021) eKLR, the court held that the buyer had dealt with fraudsters without interest in the suit property. As held in *Macfoy vs United Africa Co. Ltd (1967) 3 ALL ER 1169*, a nullity is a nullity, and any proceeding founded on it is also wrong and incurably bad. The 7th defendant dwelt with the 3rd, 4th, 5th, and 6th defendants, who had nothing but a piece of paper illegally obtained in the first instance. The 6th defendant could not enter into any binding legal agreement. It was a non-existent entity in the eyes of the law with effect from 2.8.2005. The reinstatement of the plaintiff is related to the time of its registration. The land remained trust property in the eyes of the law, held by the defined trustees through a valid court order issued by a competent court, which had not been reviewed, appealed, or set aside. That order had pronounced the suit land as trust property.
 79. It could only have been dwelt with under the law on trusteeship and not as per the whims of the 3rd, 4th, 5th and 6th defendants. It did not matter that the 3rd – 5th defendants were former members of the plaintiff. There is no evidence that the 3rd – 5th defendants before 2011 had initiated the process of liquidation and sharing of the plaintiff's assets if they held the view that the church or entity would not be revived or reinstated.
 80. The 3rd – 5th defendants used deceitful means to cause the transfer by the 1st and 2nd defendants representing themselves as bonafide officials of the plaintiff. The 3rd – 6th defendants did not challenge the evidence of the 1st and 2nd defendants that they did not intend to transfer the land to the 6th defendant but to the plaintiff herein.
 81. Therefore, I find that the plaintiff has proved the claim on fraud, illegality, and irregularities to the required standards.



82. As to whether the 7th defendant was a bonafide purchaser, the bar on bonafide purchaser for value has been set by the Supreme Court in *Dima Management Ltd vs County Government of Mombasa & 5 others* (Petition 8 (E010) of 2021) (2023) KESC 30 (KLR) 21 April 2023) Judgment. The 7th defendant had to do more than merely conduct an official search. She had to ascertain the status of the land and that it onwed entity she was dealing with. Warning signs were given to her by the church elders.
83. In *Beach Bay Holdings Ltd vs Ratin Relations Ltd & another* (2014) eKLR, the court cited with approval *Newborn vs Sesolid (Great Britain) Ltd* (1953) ALL ER 708, where the court said the making of a contract with a non-existent entity rendered the same a nullity.
84. Nothing stopped the 7th defendant from visiting the Registrar of Societies to ascertain the status of the 6th defendant and establish whether the 3rd-6th defendants were the bonafide officials or registered trustees capable of selling and transferring the land to her. The 7th defendant was unclear on how much she paid for the land and through which means.
85. Besides the transfer form, the 7th defendant talked of a consideration of Kshs.3,000,000/= . Her witness talked of Kshs.1.5 million paid in two instalments.
86. The 7th defendant failed to produce the sale agreement or any other evidence showing that she paid a reasonable consideration or value to obtain the property. There were all signs that the 7th defendant was not dealing with genuine sellers or owners of the land. Her evidence was that she had long known the plaintiff as their neighbour and knew the officials. There is no evidence that she sought and obtained a resolution from the 7th defendant showing who the bona fide officials were. Other than demanding that a title deed be processed before she could pay the sum, no evidence was availed to show that the 7th defendant, as a bonafide purchaser, did more to establish the root of the title held by the 7th defendant. My finding is that she was not a bona fide purchaser for value without notice.
87. The plaintiff has proved its case to the required standards to be entitled to the reliefs sought. The court declares the suit land as held in trust for the plaintiff by the 3rd – 5th defendants. Any transfers to the 6th defendant and subsequently to the 7th defendant were a nullity ab initio. The title deed held by the 7th defendant is hereby recalled and cancelled. The suit land shall revert to the name of the plaintiff's registered trustees. A permanent injunction is hereby issued against the defendants.
88. Costs of the suit to be met by the 3rd – 7th defendants.

Orders accordingly.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 15TH DAY OF NOVEMBER 2023

In presence of

C.A Kananu/Mukami

Parties

Mr. Mugo for the plaintiff

Mwanzia for 5th & 6th defendants

Gikundi for 7th defendant

Miss Maina for 8th & 9th defendant

HON. CK NZILI



ELC JUDGE

