



**Anglican Church of Kenya v Jindwa (Environment & Land Case  
128 of 2017) [2023] KEELC 22272 (KLR) (7 December 2023) (Judgment)**

Neutral citation: [2023] KEELC 22272 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE 128 OF 2017  
EK MAKORI, J  
DECEMBER 7, 2023**

**BETWEEN**

**ANGLICAN CHURCH OF KENYA ..... PLAINTIFF**

**AND**

**SAMUEL JINDWA ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff vide plaint filed, amended, and dated 28<sup>th</sup> March 2023 sought the following relief(s):
  - i. Declaration that the plaintiff is the rightful owner of the suit property described as Plot No. L.R No. 205 A of 1894 - the suit property herein.
  - ii. Prohibitory injunction restraining the defendants, his agents, employees, or anyone claiming under him from trespassing, subdividing, selling, transferring, encroaching, alienating, undertaking any construction works or erecting any barriers/walls/fences or in any other way dealing with the suit property Plot No. L.R No. 205 A of 1894.
  - iii. Eviction order compelling the defendant to give vacant possession of the suit property to the plaintiff.
  - iv. Costs of the suit.
  - v. Interest on(c) above at Court rates until payment in full.
  - vi. Any other and such relief that the Court may deem fit to grant.
2. The defendant did not answer to the amended plaint or participate in the proceedings herein albeit regular service as can be seen from the affidavits of service filed.
3. At the hearing hereof the plaintiff through the three witnesses called - Venerable Samuel Nguma (PW1), Joseph Matoya Kombo (PW2) Michael Tsumbwa Mwarano (PW3) – a pastor with the



Anglican Church of Kenya at Jimba, and members of the church respectively, averred that Plot No. 205 A/1894 belongs to the church. It is the registered owner. Documents were filed in support of the plaintiff's case marked SN1 to SN9 and produced as plaintiff exhibits 1 -9.

4. Significant in the documents produced is a title document deeds of indenture for the suit property SN1 and SN2.
5. The witnesses stated that the defendant was a trespasser on the suit property. The matter had even been adjudicated in the Kaloleni Land Disputes Tribunal and the plaintiff was found to be the owner as shown by the attachment marked SN3, being the proceedings and findings of the tribunal. It was adopted at the Resident Magistrates Court at Kaloleni – SN4. The defendant even apologized to the church vide a letter dated 19<sup>th</sup> May 2008 – SN5.
6. The church donated 10 acres for the construction of Jimba Secondary School and the land is registered in the name of the School – SN6, the certificate of registration.
7. Despite all the documents, in February 2013, the defendant started fencing off part of the land belonging to Jimba Secondary School, preventing free access to the school by students and teachers. An application for restraining orders was made it was allowed on 24<sup>th</sup> April 2014.
8. The Defendant, did not file a defence to the amended plaint nor appear in court to controvert the allegations of trespass and the other indictments as stated by the plaintiff on the amended plaint. The defendant has therefore failed to demur what has been levelled against him in the amended plaint.
9. When one holds a title, under Section 26 of the *Land Registration Act* it is prima facie evidence that the person named therein is the proprietor of the land and the title is indefeasible unless shown it was fraudulently or unprocedurally acquired through corrupt schemes. (See *Bandi v Dzomo & 76 others* (Civil Appeal 16 of 2020) [2022] KECA 584 (KLR) (24 June 2022) (Judgment):  
  
“Section 26 of the *Land Registration Act* is categorical that a certificate of title is prima facie evidence that the person named therein is the proprietor of the land but the same can be challenged where the Certificate of title has been acquired fraudulently, unprocedurally or through corrupt practice. See *Elijah Makeri Nyangw vs Stephen Mungai Njuguna & another* [2013] eKLR, and *Chemei Investments Limited –vs- The Attorney General & others* Nairobi Petition No. 94 of 2005.”
10. As stated, the defendant failed to attend Court to impeach the title held by the plaintiff. The averments by the plaintiff in the plaint will succeed as follows:
  - i. Declaration be and is hereby issued that the plaintiff is the rightful owner of the suit property described as Plot No. L.R No. 205 A of 1894.
  - ii. Prohibitory injunction be and is hereby issued restraining the defendants, his agents, employees, or anyone claiming under him from trespassing, subdividing, selling, transferring, encroaching, alienating, undertaking any construction works or erecting any barriers/walls/fences or in any other way dealing with the suit property Plot No. L.R No. 205 A of 1894.
  - iii. Eviction order compelling the defendant to give vacant possession of the suit property to the plaintiff within the framework of 90 days hereof.
  - iv. A decree be extracted and served on the defendant to voluntarily vacate the suit property within 90 days hereof.
  - v. Costs of the suit and interest awarded to the plaintiff at Court rates until payment in full.



**DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY IN OPEN COURT ON THIS  
7<sup>TH</sup> DAY OF DECEMBER 2023.**

**E. K. MAKORI**

**JUDGE**

In the Presence of:

Mr. Karina

In the Absence of

Mr. Mwawasi

