



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CIVIL SUIT NO.11 OF 2008 (O.S)

IN THE MATTER OF ADVERSE POSSESSION OF PLOT MEASURING 0.23 ACRES OF LAND
PARCEL NO. IGOJI/KINORO/1352 MEASURING ABOUT 3.151 HECTARES REGISTERED IN
THE NAME OF JEDIEL MBIUKI MUTHARA

PRESBYTERIAN CHURCH OF EAST AFRICA

RIGIRI CHURCH SUING THRO

JOHN KABURU MURITHI - CHAIRMAN

MRS. CHRISTINE GAITI - SECRETARY

MRS. JANE MUTEGI - TREASURER.....APPLICANT

VERSUS

JEDIEL MBIUKI MUTHARA.....RESPONDENT

J U D G M E N T

1. Through an Originating Summons dated 1st February, 2008, the Plaintiff Church states as follows:-

“LET JADIEL MBIUKI MUTHARA of Kinoro, Igoji, South District in the Republic of Kenya within 15 days after service of this summons on him enter appearance to this summons which is issued to PCEA RIGIRI CHURCH through JOHN KABURU MURITHI , CHAIRMAN, MRS CHRISTINE GAITI, SECRETARY AND MRS. JAMES MUTEGI, TREASURER, which claims to be entitled to be registered proprietor of a plot measuring about 3.151 hectares by way of adverse possession for the determination of the following:-

(1) Whether in or about 1992 the Respondent of his own free will donated to the applicant 0.23 acres of his land reference No. IGOJI/KINORO/1352?.

(2) Subsequent to that donation , did applicant construct on that plot a permanent church measuring about 30ftx80ft, worth Kshs. 900,000/= which was completed and opened in February , 1995 and has since been exclusive in possession and use of the applicant?.

(3) If issue No. 2 is affirmative, is the applicant entitled to be registered the sole proprietor of that plot to be excised from L.R NO. IGOJI/KINORO/1352 by way of adverse possession having been in peaceful, rightful and uninterrupted possession for a period of over 12 years since 1995?.

(4) Whether the Respondent should be ordered to sign all relevant documents to subdivide and transfer that plot to the Applicant and in default the Executive Officer of this Honourable Court be empowered to sign the same on behalf of the Respondent?.

(5) Is the Applicant entitled to costs of this suit?.

Which Application is based on the following Supporting grounds and is supported by the annexed affidavit of John Kaburu Muriithi, Chairman, Christian Gaiti, Secretary and Jane Mutegi, Treasurer and other grounds and reasons to be adduced at the hearing.

SUPPORTING GROUNDS

(a) The Respondent is registered proprietor of land parcel No. IGOJI/KINOR0/1352 and has been a member of Applicant Church.

(b) In 1992 the Respondent and his wife, donated to the Applicant 0.23 acres of that their land.

(c) Consequent to that donation the Applicant's members constructed a permanent church worth Kshs. 900,000/= which was opened and occupied in 1995 and since then the Applicant's members have been in peaceful and uninterrupted possession of the plot.

(d) Now the Respondent wants to grab the church and hand it over to his new found religion, Methodist Church.

2. On 29th November, 2016, the parties proffered a duly signed consent dated 10th November, 2016 which they asked the Court to adopt as its order and Judgment.

3. The Consent is in the following terms: -

“BY CONSENT

(1) That the Applicant is entitled to 0.23 acres in Land Reference Number IGOJI/KINORO/1352.

(2) That the Respondent undertakes to subdivide to hive-off 0.23 acres in such a manner as to configure to the area that is occupied by the Applicant's Church and thereafter transfer to the Applicant.

(3) To facilitate the Respondent to undertake subdivision and transfer, the Consent Order placing an Inhibition over L.R. No IGOJI/KINORO/1352 is vacated and the inhibition be lifted forthwith.

(4) The caution placed over L.R NO. IGOJI/KINORO/1352 by JOHN KABURU MURITHI be and is hereby withdrawn.

(5) That this suit be marked as settled with no orders as to costs.

4. The Consent is adopted as an order and Judgment of this Court.

5. This suit is deemed to have been heard and determined and I, therefore, direct that it be removed from the inventory of pending cases.

6. It is so ordered.

DELIVERED IN OPEN COURT AT MERU THIS 30TH DAY OF NOVEMBER, 2016 IN THE PRESENCE OF:-

CA: James/Daniel

Mburugu for Applicant

Kimaita for the Respondent

P.M NJOROGE

JUDGE