



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT CHUKA**  
**CHUKA ELC APPEAL CASE NO. 02 OF 2020**  
**REVELATION MISSION CENTRE.....APPELLANT**  
**VERSUS**  
**AFRICAN CHURCH OF THE HOLY SPIRIT.....RESPONDENT**  
**JUDGMENT**

(Being an appeal from the Judgment of Hon. J. M. Njoroge, C.M. in CMCC No. 99 of 2018 delivered on 5<sup>th</sup> February, 2020)

1. The Memorandum of Appeal in this suit states as follows:

**MEMORANDUM OF APPEAL**

The appellant herein being dissatisfied with the finding, holding and judgment of honorable J. M. NJOROGE- CM in CMCC NO 99 OF 2018 delivered on 5<sup>th</sup> February 2020 appeals to this honorable court and set forth the following grounds of appeal.

1. That the trial magistrate erred in law and fact by failing to distinguish between the respondents' church- African Church Of Holy Spirit -Rugala and African Church Of Holy Spirit - predecessor of RMC(Appellants) despite that African Church Of Holy Spirit – KIMURI had its own registration number to wit NO.2069.
2. That the trial magistrate erred in law and fact by failing to make a finding and hold that RMC-the appellant originally were referred to as African Church Of Holy Spirit –Kimuri and that the appellant followed all the processes in changing the name of African Church Of Holy Spirit-Kimuri to RMC herein.
3. That the trial magistrate erred in law and fact by not making a finding that the respondents' church African Church Of Holy Spirit and African Church Of Holy Spirit-Kimuri followed a different faith, procedures and different church attire making the trial magistrate to arrive to wrong findings.
4. That the trial magistrate erred in law and fact by ordering that land parcel LR:MUTHAMBI/EREGA/324 to be transferred back to its 'owners" African Church Of Holy Spirit when there is no single time right from adjudication that this land was ever registered in the name of the respondent rather the same was initially held in trust by the then Meru County Council and reserved for Muti-Iguru Nursery School.
5. That the trial magistrate erred in law and fact by ordering in his judgment that LR:MUTHAMBI/EREGA/326 be transferred to the respondents African Church Of Holy Spirit when initially the land was registered under meru county council and preserved for African Church Of Holy Spirit-Kimuri.
6. That the trial magistrate erred in law and fact by holding that the appellants did not follow the procedure in acquiring land parcels LR:MUTHAMBI/EREGA 324 and 326 when there was overwhelming evidence as to how the appellant acquired the two parcels of land from the then meru county council the predecessor of meru south county council.
7. The trial magistrate erred in law and fact by ignoring documentations showing the manner in which the appellant acquired land parcels LR:MUTHAMBI/EREGA/324 and 326 to wit application for issue of the parcels of land and the minutes of the full council of meru south county council.
8. The trial magistrate erred in law and fact by failing to make a finding and hold that the appellant RMC was a creature of African Church Of Holy Spirit-Kimuri.

9. The trial magistrate erred in law and fact by failing to make a finding that the period the appellants were on LR:MUTHAMBI/EREGA/324 and 326 the developments on nursery school, primary school and secondary school without complaint by the respondent was a clear indication that the land belonged to RMC the successors of African Church Of Holy Spirit-Kimuri.

10. That the evidence on record does not support the judgment of the trial magistrate.

**REASONS WHEREFORE:** The appellant will propose to the honorable court that:

- a. That the appeal be allowed.
- b. That the judgment of the trial magistrate be set aside and the same be replaced by an order that land parcels LR:MUTHAMBI/EREGA 324 AND 326 belong to the appellant.
- c. Cost of this appeal and the proceedings in the lower court.

DATED AT CHUKA THIS .....7<sup>TH</sup> .....DAY OF .....FEBRUARY...2020

**DRAWN AND FILED BY:**

**I.C MUGO & CO ADVOCATES FOR THE APPELLANT**

2. The Appeal was canvassed by way of written submissions.
3. To ensure that all issues raised by the parties are captured, I reproduce here-below the submissions proffered by the parties.
4. The appellant's submissions state as follows:

**APPELLANT'S FINAL SUBMISSION.**

1. Your lordship these are the appellant final submissions. The appellant have set out 10 ground of appeal as per the memorandum of appeal at page 2 to 4 of the record of appeal. We will submit on each and every singular grounds unless otherwise provided.

2. That the first ground of appeal is to the effect that the trial magistrates erred in law and fact by failing to distinguish between the respondent church African church of the holy spirit Lugala and African church of holy spirit –predecessor of RMC (appellants) despite that African church of the holy spiriti –kimuri had its own registration number to wit no.2069 SEE PAGE 108 of Record Of Appeal, Constitution see page 148 and 153 , trustees and trust deeds 118 to 126 and they made their annual returns to the registrar of societies independent of African church of holy spirit Kakamega . The African church of holy spirit lugala Kakamega had a distinct constitution from that of African Church of Holy Spirit Kimuri branch ,later named Revelation mission center see page 142 to 154 of the record of appeal for the constitution of the African Church of holy spirit Kimuri which was the predecessor of Revelation mission centre the appellant herein. The appellants Revelation Mission Centre the successor of African church of holy spirit - Kimuri had a clear registration number to wit 2069. The African Church Of Holy Spirit Lugara Kakamega and the African church of holy spirit Kimuri in Tharaka Nithi had separate trustees see page 118 of record of appeal.

3. That GILBERT M'REWA lodged Chuka civil principal magistrates no.57 of 2005 as the trustee of African church of holy Spirit Lugara Kakamega while the appellant were sued in their capacity as the trustees of Revelation Mission Centre being the successors of African Church of Holy Spirit kimuri.

The learned trial magistrates erred in law and fact by failing to make a distinction between the appellant church and the respondent church thereby arriving at the wrong decision and conclusion. Had the trial magistrates found out that Revelation Mission Centre formerly known as African church of Holy Spiriti Kimuri branch was a different church from African church of holy spirit Lugala Kakamega , the trial magistrates would not have made the wrong finding that the appellant had fraudulently and dishonestly change from the African church of the holy spirit Lugara in Kakamega to revelation mission centre. The change of name from African church of holy spirit kimuri to Revelation Mission Centre was legal and lawful ,no dishonesty or fraud was involved and the Revelation Mission centre followed the required procedure to change from African church of holy spirit kimuri to revelation mission centre. The independent between the African church of holy spirit lugala kakamega and RMC formally known as African church of holy spirit kimuri is compounded by RMC at it certificate of in cooperation and they make return to the registrar of societies on their own SEE PAGE 114 TO 115 of record of appeal.

It is true that the African church of holy spirit lugala kakamega provided for establishment of "branches". The envisaged branches in African church of holy spirit kakamega were not to be independent branches. Their constitution does not provided for establishment of independent branches with their constitution and independent registration. The brances were not to make thir independent annual return to the registrar of societies. The learned trial magistrates misdirected himself by holding that AFRICAN CHURCH OF HOLY SPIRIT KIMURI IN THARAKA NITHI was a branch of African church of holy spirit lugala kakamega. Even in the societies act , there are no provision of branches being registered independently.

Finally in this aspect of branches envisaged by the African church of holy spirit Kakamega constitution, we submit that the learned trial magistrates erred in law and fact by making a finding that the appellant church was formed by a group of disgrantoned

members of African church of holy spirit kimuri. The evidence on record is that the appellant church opted to change from African church of holy spirit kimuri through the guidance of holy spirit. If any thing it was GILBERT M'REWA one of the trustees of African church of holy spirit Kakamega through which the respondent sued, that was disgruntled member of African church of holy spirit KIMURI BRANCH and who decided to part with the larger membership of African church of holy spirit kimuri and joined the African church of holy spirit Kakamega. Right from the beginning GILBERT M'REWA was a member of African church of holy spirit. The change of African church of holy spirit to RMC was agreed unanimously by the elders of African church of holy spirit kimuri. See pages 109 to 112 of the record of appeal.

All activities development and improvement including the building of the church were carried out by the larger membership of revelation mission center formerly known as African church of holy spirit -kimuri. The follows of GILBERT M'REWA who were extremely few could not have constructed the church, nursery school, primary school and secondary school. African church of holy spirit kakamega have never claimed ownership or control of the said institution nor as the church in kakamega contributed in any way in their establishment. In light of the foregoing submission it is clear that African church of holy spirit kimuri who later change to appellant church were never part of African church of holy spirit kakamega, rather they were an independent church by themselves with a registration number, a constitution trustees and made annual returned to the registrar of societies a situation that was not envisaged in the constitution of African church of holy spirit Kakamega which provided for establishment of branches..

4. On account of our submission in number 2 and 3 herein above, we wish to forego submitting on ground 2 and 3 of the grounds of appeal. The claim and challenge of the judgement raised in those two grounds have been adequately addressed in our submissions at paragraph 2 and 3 herein above.

5. That the trial magistrates erred in law and fact by ordering that land parcel LR.MUTHAMBI/EREGA/324 to be transferred back to its 'owners' African church of holy spirit -kimuri branch, when there is no single time right from adjudication that this land was registered in the name of the respondent rather the same was initially held in trust by the then meru county council and reserved for muti-iguru nursery school. See green card page 128. LR.MUTHAMBI/EREGA/324 was initially registered with meru county council. The land was reserved for muti-iguru-nursery school, it was never at any time reserved for African church of holy spirit kakamega or African church of holy spirit -kimuri which later changed to revelation mission centre the appellant. This being the situation any church or any other interested public institution could apply to the successor of meru county council (meru south county council) for the allocation of the parcel for church or educational activities thereon. It was in these circumstances that the appellant RMC applied to meru south county council for the allocation of the land. The application was allowed and the said matter was referred to commissioner for lands for allocation. The land commissioner at the end of the day allowed the allocation and registration of the appellant as the owners of MUTHAMBI/EREGA/324. That neither African church of holy spirit kimuri branch or African church of holy spirit kakamega had anything to do with parcel number MUTHAMBI/EREGA/324. See page 131 and 135-136 of record of appeal.

The trial magistrates erred in law by ordering that LR.MUTHAMBI/EREGA/324 do revert to (mutiiguru nursery school) when the appellant had legally, lawfully and procedurally applied to meru south county council for the allocation and allotment of the said parcel to the appellant church. The respondent had nothing to do with this particular parcel of land. There is no time that the African church of holy spirit kimuri branch or African church of holy spirit kakamega ever had LR.MUTHAMBI/EREGA/324 reserved for either of them. We submit that ground 4 of appeal should be allowed.

6. That the trial magistrates erred in law and fact by ordering in his judgment that LR.MUTHAMBI/EREGA/326 be transferred to the respondents African Church of holy spirit when initially the land was registered under meru county council and preserved for African church of holy spirit -kimuri. In light of our submissions in number 2 and 3 herein above, we contend that the trial magistrates should not have directed that LR.MUTHAMBI/EREGA/326 to return to African church of holy spirit kimuri. Since African church of holy spirit kimuri had legally, lawfully and procedurally changed to Revelation Mission Centre. African church of holy spirit kakamega did not provide in its constitution the establishment of independent branches with their own properties. The trial magistrates judgment naturally interpreted meant that he was returning LR.MUTHAMBI/EREGA/326 to African church of holy spirit kakamega, but held by African church of holy spirit kimuri branch.

After African church of holy spirit changed to revelation mission centre, the latter applied to the then meru south county council for the allocation of LR.MUTHAMBI/EREGA/326, through the successor of meru county council, the appellant application was allowed. After the matter was referred to commission for land RMC the appellant herein were registered with LR.MUTHAMBI/EREGA/326. See pages 134 and 137 - 138 of the record of appeal. The appellant followed the laid down procedure in acquiring LR.MUTHAMBI/EREGA/326 and the trial magistrates erred in law and fact by faulting the ownership of the appellant as the owners of LR.MUTHAMBI/EREGA/326. GROUND 5 of the appeal should be allowed by this court.

7. That the trial magistrates erred in law and fact by holding that the appellants did not follow the procedure in acquiring land parcels LR.MUTHAMBI/EREGA/324 AND 236 when there was overwhelming evidence as to how the appellant acquired the two parcels of land from the then meru county council the predecessor of meru south county council. My lord we submit that the appellant followed the law and procedure in acquiring land parcels LR.MUTHAMBI/EREGA/324 AND MUTHAMBI/EREGA/326. We invite the court to look at pages 131 and 135-136 and pages 134 and 137 - 138 of record of appeal. The appeal should be allowed on this ground.

8. In light of our submission in paragraph 7 of this submission, we contend that we shall be repeating our selves if we submit on the content of ground number 7 of appeal in that the said ground as fully been discussed by our submissions regarding ground no.6. suffice it to say that the appellant legally and procedurally acquired LR.MUTHAMBI/EREGA/324 AND LR.MUTHAMBI/EREGA/326. Ground 7 of appeal should be allowed.

9. In light of our submissions in paragraph 1 and 2 herein above we shall not submit further on ground 8 of appeal. By so doing we shall be repeating ourselves.

10. The trial magistrates erred in law and fact by failing to make a finding that the period the appellants were on LR.MUTHAMBI/EREGA/324 and 326 the establishment of nursery school, primary school and secondary school without complaint by the respondent was a clear indication that the land belonged to RMC the successors of African church of holy spirit – kimuri. My lord the plaintiff suit was time barred ,yet the trial magistrates did not put this into account. The appellant started occupying the suit lands back in year 2000 after changing their name to RMC from African church of holy spirit. Before 2001 RMC then styled African church of holy spirit kimuri branch were occupying and making use of the suit land , they build a church on 326 , a nursery school ,primary school and secondary school on 324 without any complaints or participation by African church of holy spirit Kakamega. The respondent did not seek for extension of time to institute the suit appealed against . The complains by the respondent was that the appellant had taken over the suit lands after they had fraudulently changed African church of holy spirit to a revelation mission center. A suit based on a tort of fraud must be brought within 3 years, after the commission of such tort. The appellant changed African church of Holy Spiriti Kimuri Branch to revelation mission centre on or around the year 2001. By the end of 3 years (2004)African church of holy spirit Kakamega had not filed a suit based on the said ground. See section 4 (2) of the limitation of action act cap 22 laws of Kenya. the appeal should be allowed on ground 9.

11. Your lordship the cumulative evidence on record does not support the judgement of the trial magistrate delivered on 5<sup>th</sup> February 2020. We have already submitted that the trial magistrates errd in law and fact by holding that tafrican church of holy spirit kimuri and African church of holy spirit lugala kakamega were two separate churchs. From the evidence on record it is clear that African church of holy spirit kakamega constitution did not provide for independence branches with own registration, trustess properties and who were making independent returned to the registrar of society , the appellant were independent church with all the qualities of an independent church. The manner in which the appellant acquired the suit land were above board , in particular land parcel MUTHAMBI/EREGA/324 was never in any time reserved for African church of holy spirit kakamega or africam church of holy spirit kimuru branch . any church or any other public institution could apply for allocation of the said parcel to meru south county council who held the land intrust. The appellant followed the right procedure and they were allocated this particular land parcel MUTHAMBI/EREGA/324 as a registered religious institution. Why the trial magistrates directed that LR.MUTHAMBI/EREGA/324 do returned to muti iguru nursekly school was never explained by the trial magistrates.

12. Your lordship we urge this court to allow the appeal. That the judgment of the trial magistrates be set aside and the same be replaced by an order that land parcels LR.MUTHAMBI/EREGA/324 AND 326 belong to the appellant. The appellant shall be praying for cost of this appeal and lower court proceeding. We rest our submission and pray.

**DATED AT CHUKA THIS.....19<sup>TH</sup> .....DAY OF ... OCTOBER,...2020**

**DRAWN AND FILED BY**

**M/S I.C MUGO & CO ADVOCATES**

**ADVOCATES FOR THE APPELANT**

5. The Respondent's submissions state as follows:-

**SUBMISSIONS FOR THE RESPONDENT.**

Your Lordship, the following comprises the Respondent's submissions on the appeal preferred by the Appellant.

**Introduction.**

Your Lordship, in summary, the Respondent's claim against the Appellant in the lower court related to the irregular and fraudulent acquisition of L.R. Nos. MUTHAMBI/EREGA/ 324 & 326 by the latter entity.

Upon a full hearing, the trial magistrate found for the Respondent as prayed in the Complaint, a decision that has prompted this appeal.

The Appellant has preferred ten (10) grounds in his appeal which we shall consider herebelow dependent on how closely they are related in law and fact.

**The Submissions.**

- **Grounds 1, 2, 3 & 8 of the Memorandum of Appeal.**

Your Lordship, from the outset, we need to clarify a misconception for which the Appellant seems to have an insatiable obsession with. From the Appellant's witness statement and submissions, it is absolutely clear that the Appellant wants to draw a distinction between AFRICAN CHURCH OF THE HOLY SPIRIT- Kimuri branch and AFRICAN CHURCH OF THE HOLY SPIRIT- Lugala Headquarters.

This attempt to create the impression that there are two distinct entities is informed by the simplistic view that the Respondent availed a Constitution that bears the name "Lugala headquarters" as part of its evidence and a Certificate of Registration that bears the name "Kimuri Branch". Interestingly though, the same Constitution was produced as the Appellant's constitution in its list of documents filed on 22/05/2019.

The Appellant further sought to mislead the trial court in its submissions by declaring that the Respondent's trustees are actually those of Lugala headquarters. We invite the Court to look at paragraph 1 of the Certificate of Incorporation where the three are indicated simply as trustees of AFRICAN CHURCH OF THE HOLY SPIRIT.

In sum, it was easily explained that Kimuri Branch has its headquarters at Lugala and a perusal of the Respondent's Certificate of Incorporation and Certificate of Registration will reveal that nothing much turns on the argument advanced by the Appellant. The Respondent is duly registered and incorporated in accordance with the provisions of law.

Your Lordship, what was before the trial court was the issue whether the Appellant acquired the suit properties regularly. It is otherwise our humble submission that dwelling on semantics at the expense of substantive legal issues will not promote the quest for justice by the parties.

We hence urge this Honourable Court to reject grounds 1, 2, 3 and 8 of the memorandum.

- **Grounds 4, 5, 6, 7, 9 & 10 of the Memorandum of Appeal.**

Your Lordship, the Respondent's claim before the trial court was for a determination of the question whether the Appellant's acquisition of the suit lands was tainted by fraud.

The trial court, upon addressing its mind on the evidence on record found as a matter of fact that the transfer of the suit properties to the Appellant was irregular.

We reiterate that the scheme to fraudulently acquire the suit properties was initiated by the purported change of name from the Respondent to the Appellant. The trial court found that indeed the procedure for change of name as provided by statute was not followed.

This is informed by the following factors that emerged from the evidence presented at trial:-

- a. The Appellant's purported change of name bears all the hall marks of a fraudulent scheme for the reason that it failed to demonstrate that it adhered to the provisions of **Section 20 (1)(a) of the Societies Act** which provides:-

**No registered society shall—**

**(a) amend its name, or its constitution or rules; or except with the prior consent in writing of the Registrar, obtained upon written application to him signed by three of the officers of the society.**

Neither a Consent nor a written application was provided and hence the reason why the Certificate of Registration of REVELATION MISSION CENTRE does not bear an indication that it is as a result of a change of name.

Further, no evidence was brought forth to demonstrate that the registrar of societies published in the gazette the alleged change of name in accordance with **Rule 14 (b)** of the **Societies Rules**.

- b. The minutes produced by the Appellant relating to the Church meeting that passed the resolution to allegedly change the name bears a date of **2/9/2000** for a meeting that took place almost two months later on **22/10/2000**. It should be noted that these are the minutes the Appellant presented to the County Council to facilitate the change of ownership. This anomaly was not satisfactorily explained in cross-examination and is a further proof of fraudulent dealings.

- c. The minutes of the full council meeting held on **21/12/2001** indicate that the application to change the records relating to the parcels of land was made by AFRICAN CHURCH OF THE HOLY SPIRIT which in essence ought to have ceased to exist when REVELATION MISSION CENTRE was issued with a Certificate of Registration eight (8) months earlier on **04/05/2001**. This is if the allegation of there having been a change of name were factual. The Appellant simply presented itself as the Respondent to obtain proprietorship of the suit lands.

Further, the Appellant argued at the trial court that the two parcels were never reserved for AFRICAN CHURCH OF THE HOLY SPIRIT and hence any party could apply for their allocation. It is however intriguing that it is the same party who requested the Council to alter the allocation from AFRICAN CHURCH OF THE HOLY SPIRIT to REVELATION MISSION CENTRE.

This is a clear demonstration that the two properties were reserved for the Respondent and the Appellant was fully aware of that fact.

- d. The Appellant never demonstrated in any material way that the Respondent ceased to exist as a consequence of the alleged change of name.

We reiterate the following judicial pronouncements:-

In **Registered Trustees Full Gospel Churches Of Kenya v John Morwani Nyakundi & 3 others [2013] eKLR** the Court while dealing with a suspicious change of name had this to say:-

**The move by 1st and 2nd defendants to register the suit property that had been purchased by plaintiffs in the name of the 4th defendant on the allegation that the plaintiffs' name had been changed to Redeemed Gospel Church to me was nothing but an act of fraud. I do not see how the plaintiffs who had been in existence since pre-independence days could change their name to Redeemed Gospel Church which was already existing as a church as of the date of the purported change of name. What is even more intriguing is the fact that the purported change of name was effected pursuant to a resolution passed by the members of the plaintiffs' Keumbu"**

Your Lordship, flowing from the foregoing, we submit that the Appellant, through its officials applied dubious and fraudulent tactics to acquire the suit parcels of land.

We submit that a dispute of this nature is to be determined on the basis of the *Land Registration Act, 2012* which provides at *Section 106(1)* that:-

**“On the effective date, the repealed Acts shall cease to apply to a parcel of land to which this Act applies.”**

Hence, a proprietor's right to the absolute and indefeasible title to land is subject to a challenge where any of the issues set out in *Section 26 (1)* of the *Land Registration Act* are shown to exist. These are:-

**i. Fraud or Misrepresentation.**

**ii. Illegality, unprocedural conduct or corrupt scheme.**

An analysis of the evidence adduced by the parties will demonstrate that the acquisition of the two parcels of land by the Appellant was characterized by fraud, misrepresentation, illegality and a corrupt scheme thus making the proprietorship thereof susceptible to challenge.

The remedy for the aggrieved party is to be found at *Section 80 of the Land Registration Act* that grants the Court the power to rectify the register in instances where the registration was obtained by fraudulent means.

The trial court, upon consideration of all the evidence adduced by the parties found for the Respondent.

The Appellant has complained at grounds 4 and 5 of its memorandum of appeal that the trial court directed that the suit properties be transferred to the Respondent.

Nothing could be further from the truth. The decree provided by the Appellant in the record of appeal clearly demonstrates that no such orders were made.

In conclusion we urge the Court to find that the trial magistrate properly considered the evidence tendered by the parties, judiciously applied the relevant law to the facts and arrived at a sound conclusion.

We hence submit that the appeal before this court lacks merit and we pray that the same be dismissed with costs.

DATED AT CHUKA THIS...10<sup>TH</sup> .....DAY OF...NOVEMBER,.....2020

.....

**FOR: BASILIO GITONGA, MURIITHI & ASSOCIATES.**

**ADVOCATES FOR THE RESPONDENT.**

6. I have carefully gone through the proceedings in the lower court. I have also carefully gone through the judgment delivered by the lower court.

7. I have carefully considered the pleadings proffered by the parties in support of their veritably incongruent assertions.

8. In arriving at its decision, a court of law solely relies on the evidence adduced by the parties. In an appeal it is the duty of the court to check and verify that the decision of the lower court is supported by the evidence produced in that court. As the judgment of the lower court is rather succinct and deals with the issues raised in the Memorandum of Appeal, it is reproduced in full herebelow:

**JUDGMENT**

The plaintiff, REGISTERED TRUSTEES AFRICAN CHURCH OF HOLY SPIRIT has sued the Defendant REVELATION MISSION CENTRE THROUGH ITS SLATED TRUSTEES

• REUBEN KINYUA M'MUGA

- JOHN NJERU JOEL
- SARAH MUKWANJERU JOHN for
  - a. A declaration that the transfer and registration of land parcels numbers Muthambi/Erega /324 and 326 in the names of the defendants was done illegally and fraudulently.
  - b. An order for rectification of the lands register of the suit land cancelling the name of the defendants therein and reverting their ownership as it were before the 18<sup>th</sup> July 2005.
  - c. An order of permanent injunction restraining the defendants by themselves or through their agents or servants or any defendant claiming through if form ever interfering in any manner with the suit lands.
  - d. Costs and interest.

The plaintiffs state the African Church of the Holy Spirit is a Christian church registered under the societies Act and owned by a board of directors and owns among other properties, Muthambi/Erega/326 where the church sits and Muthambi/Erega/324, where the Muti-Iguru nursery and primary schools stand and blames the defendant of trying to grab the properties of the church since the year 2003, which led the properties being registered in the names of the defendant. The plaintiff didn't hold a meeting or consent to the transfer. He states that there is no relationship between the two churches.

The defendant testified that he is a member of Kimuri Branch and states that the defendant church emanates from Kimuri branch and states that the procedure was followed in the transfer of the parcels of land and there was no objection that was raised. The defendant, John Njeru Joel states that, Revelation Mission Centre was formerly African Church of the Holy Spirit, Kimuri Branch. Revelation Mission Centre has numerous other branches and have no association with the plaintiff church. He confirms that both parcels 324 and 326 was allocated to African Church of Holy spirit, and that there were official minutes as to how the church was allocated the land parcels. He refers to a dispute that was filed before the chief Mitheru location who ordered that the 2 parcels be allocated to the African church of Holy Spirit. He also claims to have minutes to show the RMC was allocated the two parcels of land by the ministry of lands.

The defendant describes the plaintiff as a busy body who is not a trustee of African Holy Spirit Rugara Headquarters.

The court has analysed the evidence and the submissions by both sides. The records show that the plots of land LR MUTHAMBI/EREKA/324 and 326, were allocated during the lands adjudication and settlement reserved in the names of Meru County Council for purposes of establishing.

- a. A church.
- b. Mutiiguru nursery and primary schools.

The records show that the plaintiff church is registered under societies Act, the same case applies to the defendant church.

The African church of the Holy Spirit is situated in Kakamega where the headquarters are in Lugala within Shinyalu Headquarters. The court notes that by a circular issued 30/1/1998 the ACHS headquarters cleared the way for the formation of branches and the same partly reads....

**“...It has been agreed that the church shall operate branches all over the country(Kenya) and outside Kenya where it has its members for Administrative purposes, the branches shall be allowed registration to take returns to the registrar of societies but answerable to the church headquarters Lugala accordingly with the effect from January 1960....”**

After the above circular was issued the records show that several regions/churches moved to form own or various branches. For example the African Church of the Spirit – KIAIBIO Branch was registered on 3/11/1961. Of relevance to the matter the AFRICAN CHURCH OF HOLY SPIRIT – KIMURI Branch was registered on 6/5/1974.

The defendants and some other worshippers were uncomfortable with the nature of operations in Kimuri Branch and decided to form a Splinter group which allocated itself a new name Revelation Mission centre. (the current defendant) In his letter dated 27/8/2014 the defendant trustee, John Njeru Joel cites the following reason

**“ John Njeru Joel the Revered in charge of the above named church do declare that Revelation Mission Centre church was formerly known by the name African Church of the Holy Spirit.**

**We changed the name due to great problems we had with the management by the former church, and for this reason I asked the government to allow us to change the name and we were allowed...”**

This fact, is further fortified by the letter dated 27/1/2003 by the registrar of societies addressed to the above defendant trustee and states: \_

**“it has been brought to the attention of the registrar that you have formed your own society called Revelation Mission Centre and that you are no longer minister for the above society. Please hand over the certificates of marriage and any other documents of the above branch to the officials of the branch. ...”**

The above letter is copied to the secretary, ACHS Kimuri Branch, P O Box 223 Nkubu. This clearly shows that the defendant church was formed by some members of ACHS, Kimuri branch who were not satisfied with the Management. It cannot be said that the ACHS was renamed to RMC. After Revelation Mission Centre was formed the African Church of Holy Spirit Kimuri branch, and the parent church based at Lugala didn't change.

The constitution of the church further provides that the property of the church was to be registered in the names of the Board of trustees, for the church. By the time that the defendant trustees were splitting from ACHS, there is no evidence to show that they had any mandate to Act as the trustees of the Board or that their decision of transferring the 2 parcels of land to Revelation Mission Centre was sanctioned by the African Church of Holy Spirit – Lugala Headquarters. The court has also seen the minutes of the church meeting held on 21/12/2001 which the change of name on the parcels in question was ratified. The African church of the Holy Spirit- Kimuri changed the name to read Revelation Mission Centre – Kimuri.

The court has confirmed that when Revelation Mission Centre was incorporated, the same was not as a change of name but as a totally new entity. As stated earlier, the RMC comprises of members who split from ACHS. The ACHS, was left intact together with remaining members, structures, and ownership rights. The RMC acts of commission by initiating a process of deregistering the ACHS as owners of the parcels of land, secretly and without their involvement, participation or consent smells of fraud and criminal activity.

I agree with the plaintiff that the process of registration of both land parcels into the names, of RMC was fraudulent and though the court observes that the defendant has carried out intensive improvements including building of the schools this does not validate their ownership rights.

I shall find that the plaintiff has proved the case on a balance of probabilities, and enter judgment for the plaintiff against the defendant as prayed, with costs.

**J. M. Njoroge – CM**

5/2/2020

**Court**

Judgment delivered in open court.

Murithi for plaintiff

Defendant present

Right of appeal 28 days.

**J. M Njoroge – CM**

5/2/2020

9. Regarding ground numbers 1, 2 and 3, on a careful scrutiny of the apposite proceedings, I find that the decision of the Chief Magistrate in Chuka CM CC No. 99 of 2018 was supported by the evidence before him. According to me, there is no way he would have arrived at a different determination. The main issue in contention was if or if not the appellant acquired the apposite land regularly. This issue was adequately and diligently addressed by the lower court. I, therefore, dismiss grounds 1, 2 and 3 in the Memorandum of Appeal. I also arrive at a similar finding regarding ground No. 8.

10. Regarding grounds 4, 5, 6,7, 9 and 10 of the Memorandum of Appeal, I note that although originally the suit land was registered in the name of Meru County Council, this did not mean that the land was not later on devolved to other parties in accordance with established law. I find that the trial magistrate's determinations regarding the issues raised in these grounds were predicated upon the evidence before him. I do not find any basis for my interfering with his findings.

11. I do not agree that the evidence proffered in the lower court did not support its judgment. Having carefully gone through the apposite proceedings, I find the lower court's judgment meritorious.

12. In the circumstances, I enter judgment for the respondent against the appellant in the following terms:

a. This appeal is dismissed.

b. Costs in this court and in the lower court shall follow the event and are awarded to the respondent.

**DELIVERED IN OPEN COURT AT CHUKA THIS 17<sup>TH</sup> DAY OF MARCH, 2021 IN THE PRESENCE OF:**

CA: Ndegwa

Njeru Ithiga h/b I.C. Mugo for the Appellant

Mark Muriithi present for the Respondent

**P. M. NJORGE,**

**JUDGE.**