



Registered Trustees Redeemed Gospel Church v Gichana; National Land Commission & another (Defendant to the Counterclaim) (Environment & Land Case 32 of 2008) [2025] KEELC 1063 (KLR) (4 March 2025) (Judgment)

Neutral citation: [2025] KEELC 1063 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE 32 OF 2008**

M SILA, J

MARCH 4, 2025

BETWEEN

THE REGISTERED TRUSTEES REDEEMED GOSPEL CHURCH PLAINTIFF

AND

KENNEDY BOSIRE GICHANA DEFENDANT

AND

NATIONAL LAND COMMISSION ... DEFENDANT TO THE COUNTERCLAIM

ATTORNEY GENERAL DEFENDANT TO THE COUNTERCLAIM

JUDGMENT

(Both plaintiff and defendant asserting title to the same land; analysis of the documentation pointing to fact that it is the plaintiff with the better title; defendant not having any of the requisite documents to demonstrate to support his title to the suit property; judgment entered for the plaintiff).

1. The bone of contention in this suit relates to the ownership of the land parcel Kisii Municipality/Block II/224 (hereinafter referred to as the suit property). Both the plaintiff and the defendant claim to have title to the suit property and each asserts that it is his title which the genuine one.
2. The plaintiff, a church organization, commenced this suit through a plaint filed on 15 May 2008. In the plaint, the plaintiff pleaded that on 7 May 2001, through a public auction conducted by Omwoyo Auctioneers under instructions from National Bank of Kenya Limited as chargee, she purchased the land parcel Kisii Town/Block II/42 (plot No.42). This plot No. 42 had been described by the auctioneer as being fully developed with two permanent residential units but it was later established that one of the residential units lay on an adjoining parcel of land which had not been alienated. The plaintiff pleaded that she subsequently applied to the Municipal Council of Kisii to be allotted



this adjoining plot. She pleaded that the Municipal Council of Kisii, all relevant Departmental heads, the Minister for Local Government, the Minister for Lands & Settlement, and the Commissioner of Lands, duly approved the application, upon which the plaintiff was allotted this adjoining parcel. It is pleaded that on 27 July 2007, the Commissioner of Lands issued to the plaintiff an allotment letter. Subsequently the plaintiff was issued with a lease which was registered and she was then issued with a Certificate of Lease for this adjoining plot which is now the suit property. It is pleaded that prior to the issuance of the lease and certificate of lease, it was discovered by the Commissioner of Lands, that the suit property had been fraudulently/illegally and/or irregularly been allocated to the defendant and on 12 October 2007, the Commissioner of Lands expunged the title documents of the defendant. The defendant then moved to court and filed a judicial review motion for certiorari and prohibition through the case Kisii HCCC Miscellaneous Application No. 6 of 2008 which was pending when the plaint was filed. The plaintiff pleaded that despite being owner the defendant had refused to give vacant possession hence the suit.

3. The plaintiff thus seeks the following orders :

- i. Declaration that the plaintiff is the lawful registered owner of the suit property;
- ii. A permanent injunction to restrain the defendant from the suit property;
- iii. Eviction of the defendant;
- iv. Costs;
- v. Such further order as the court may deem fit to grant.

4. The defendant filed defence which he later amended inter alia to include a counterclaim. He pleaded that if the plaintiff applied for extension of the Plot No. 42, then this number was 'to die' and a new number issued. He also pleaded that the Commissioner of Lands had no power to annul his title. He pleaded that he did file the suit Kisii HCCC Miscellaneous Application No. 6 of 2008 and that the court made a finding that the Land Registrar and Commissioner of Lands did not have jurisdiction to revoke his title. He contended to be the rightful owner of the suit property. In the counterclaim, he sued the plaintiff, the National Land Commission and the Attorney General. He pleaded that in 2004, the plaintiff destroyed his barbed wire fence separating the Plot No. 42 and the suit property and one Pastor Moses Chengo was arrested but he was later released after he dropped his complaint. He pleaded that in November 2008, the plaintiff wrongly entered the suit land, took possession, and evicted his tenant after obtaining orders of injunction. He averred that as a result he is incurring loss of Kshs. 20,000/= per month as mesne profits. He pleaded that in 2014, the plaintiff demolished the permanent structure therein, which was a two bedroomed house and commenced construction of another house. In his counterclaim, he seeks the following orders :

- a. Declaration that issuance of the lease and title to the plaintiff is illegal, null and void;
- b. Declaration that the suit property belongs to him (defendant) and the registration of the plaintiff be cancelled;
- c. A permanent injunction to restrain the plaintiff from the suit property;
- d. Eviction of the plaintiff;
- e. Damages and/or mesne profits at Kshs. 20,000/= per month for the period of deprivation;
- f. Costs.



5. Hearing commenced on 3 May 2021 before Onyango J when the plaintiff called her witness one Moses Chengo. He described himself as the Bishop, Nyanza Region, of the plaintiff church. He relied on a witness statement which more or less outlines what is pleaded in the plaint and he produced various documents in support of his case. I will elaborate on these documents later in my analysis of the case.
6. In cross-examination he explained that they had thought that what they were buying included the suit plot, but when they did survey, they realized that the suit property was not part of the title that they purchased in the auction. According to him the suit property had not been surveyed nor had it been allocated to anyone. They therefore started the process of its acquisition. He testified that the land was gazetted vide Gazette Notice No. 4714 and they also got a letter dated 10 September 2003 indicating that the plot has no record and is not owned by anyone. He acknowledged that the documents of the defendant appear to show that he got title earlier but stated that it is a controversial title. He pointed out that the letter of allotment of the defendant was issued on a Sunday yet Government offices do not work on Sundays. He admitted that the church pulled down the fence, separating the plot No. 42 which they had purchased in the auction and the suit property, which led to his arrest. He was later released without being charged. He was not aware that the defendant had a lease. He testified that when they got the allotment letter on 1 July 2006, the plot No. 224 (the suit plot) was not existing. He was not aware that the Registry Index Map was amended on 13 June 2003 to create the parcel No. 224. He stated that they were granted an extension of their existing plot to encompass the suit property and issued with a Certificate of Lease on 28 April 2008. They got their title after cancellation of the defendant's title. He denied collusion in order to have the defendant's title cancelled. He stated that they issued an eviction notice to the tenant who was in the house on the suit property and they later demolished it.
7. With the above evidence the plaintiff closed her case.
8. The defendant also testified and called one witness in support his case. The defendant is an advocate having become admitted to the bar in 1996. He relied on a witness statement which elaborated what is in the defence. His evidence was that he was issued with an allotment letter to the suit property by the Commissioner of Lands as an unsurveyed plot. He explained that one Cleophas Kebati Ondieki (Mr. Ondieki) was actually the one who was being allotted the plot but he was intent on selling it. He stated that Mr. Ondieki had been given minutes of allocation of the land by the Municipal Council, and since Mr. Ondieki had not paid the monies in the allotment letter, they agreed that he could purchase the land from him. He proceeded to Nairobi with Mr. Ondieki and they spoke to an officer who advised that they can do an agreement and he issues a consent to transfer which was done. They then proceeded to an advocate who drew an agreement between himself and Mr. Ondieki. They went back to the Lands office and Mr. Ondieki surrendered his original allotment letter. They were told to wait for his (defendant's) allotment letter to be prepared. In other words, Mr. Ondieki surrendered his allotment letter and new one in name of the defendant was to be prepared. He came back to Kisii and received the allotment letter through post. The allotment letter was a replica of that given to Mr. Ondieki with the only change being in the name. After some time the survey of the land was done and he got a copy of a letter dated 13 June 2003 from the Survey office to the Commissioner of Lands confirming that position. He also had a letter to show that the RIM had been amended. He testified that the Land Registrar personally went to Nairobi and collected the Lease which he came with to Kisii and he signed it. He was later given a Certificate of Lease on 6 July 2004. He testified that he took possession of the land in 1999 after receiving the letter of allotment. He found one Omurwa had constructed a two bedroomed house. The said Omurwa had no problem vacating subject to being compensated for the structure he had built. Omurwa was otherwise living on the next plot which was the Plot No. 42 that was eventually purchased by the plaintiff in the auction. He testified that he took over the house and



renovated it around 2000-2001. He put a tenant who was paying him rent. He fenced the land and it is this fence which was pulled down by Pastor Chengo leading to his arrest in 2003. He stated that at the time the Church got an allotment letter in 2006 he already had title in his name. In 2007, he received a letter dated 12 October 2007 from the Commissioner of Lands contending that his title is fake and was to be expunged. He stated that in 2009/2010 the plaintiff destroyed the house on the suit property after they obtained an order of injunction. Now there is construction of a storey building.

9. He testified that he had the original PDP which was annexed to his letter of allotment, the original lease and receipts that he paid for the letter of allotment which he kept in a file. He explained that this file was in the offices of M/s Nyamweya Osoro & Nyamweya Advocates, where he was partner. He testified that there were orders issued in a suit, Nairobi HCCC No. 368 of 2008, relating to a dispute over the partnership in the said law firm which led him to being evicted from the said offices. He stated that given the manner in which he was evicted he was unable to obtain these documents that had been left in the said offices and that is why he does not have the originals. He asserted that the PDP drawn to allocate the land to the plaintiff was a replica of his PDP and is calculated to take away his land. In his view, if what was being done was to extend the Plot No. 42 then they ought to have issued a new parcel number and according to him the two plots remain distinct.
10. Cross-examined, he acknowledged that his allotment letter and that of his predecessor, Mr. Ondieki were the same save for the names. They are both dated 1 August 1999 which is a Sunday. He did not have evidence of Mr. Ondieki having paid for his allotment letter. He elaborated that he did not wish to have any issues and he asked to be given a distinct allotment letter in his name which he could then pay for. He asserted that he paid the sum of Kshs. 37,200/= indicated in the allotment letter though he had nothing to exhibit such payment. He testified that he saw the minutes allocating the land to Mr. Ondieki though he did not have a copy of the same. He acknowledged that there was no communication from the Municipal Council to the Commissioner of Lands directing that he could be allocated the suit property. He stated that Mr. Ondieki wrote a letter to the Commissioner of Lands surrendering his allotment letter so that one could be issued to him but he did not have a copy of this letter written by Mr. Ondieki. He testified that at the Lands office they met one Mr. Mochoge. He did not get clearance from the Municipal Council of Kisii before proceeding to Nairobi. He conceded that the copy of allotment letter he produced did not have a PDP and does not indicate a Plan number. He acknowledged that the Commissioner of Lands wrote the letter dated 12 October 2007 to the District Land Registrar informing him that the lease and certificate of lease issued to him were forgeries and did not come from his office. Similarly there was also a letter dated 30 January 2004 from the Director, Physical Planning stating that the PDP used to allocate land to Mr. Ondieki was a forgery. He had no document to confirm that he paid stamp duty nor any receipt showing payment for registration of the Lease.
11. In re-examination he testified that he could not have gotten registration without making the requisite payments.
12. DW- 2 was Rael Otundo, a practising valuer in Kisii. Her evidence was that she was instructed by the defendant to do a valuation report which she did. She valued the suit property at Kshs. 20 million pursuant to an inspection done on 14 July 2020 and the rent payable at Kshs. 20,000/=.
13. With the above evidence, the defendant closed his case. I invited counsel to file submissions but only counsel for the defendant filed submissions. I have taken the submissions filed into account before arriving at my decision.
14. This is a case where two parties claim to have good title to the same land with each party claiming that what is held by the other party is the false title. Cases such as this will mainly be decided based on the



documentation provided to support the genuineness of the title in issue. The root of title also needs to be considered since if a title does not have a legitimate source then it cannot be said to be a good one. I will therefore straight away embark on an analysis of the root of the two titles and I will start with that of the plaintiff before going to that of the defendant.

15. The plaintiff's witness testified that their relationship with the suit property started after they saw an advertisement for the Plot No. 42 which was being sold by way of public auction. According to the auctioneer's advertisement, the plot that was subject to the auction was described as one having two houses. The plaintiff developed interest in purchasing, attended the auction, and was declared the highest bidder. After purchasing the plot, they engaged the services of a surveyor to confirm its dimensions. It was after the survey was done that it was discovered that the Plot No. 42 did not actually have two houses as one of the houses thought to form part of the Plot No. 42 was actually outside it on adjacent land. The plaintiff contends that this land was unalienated and she therefore made an application to the Municipal Council of Kisii to be allocated this land as an extension of what they had already purchased. I have seen several documents supporting the fact that the plaintiff applied for the suit plot. One such document is the letter dated 2 July 2003 from the District Physical Planning Officer addressed inter alia to the Commissioner of Lands and the Town Clerk, Kisii Municipal Council, confirming that a Part Development Plan No. KSI/37/2003/01 has been prepared for the 'proposed extension to Block II/42 for Redeemed Gospel Church.' The completion of the Part Development Plan (PD) was published vide Gazette Notice No. 4714 dated 4 July 2003. The proposal to allocate this land to the plaintiff was circulated to other departments who had no objection. I have seen no objection letters from the Minister of Local Government and the Minister of Lands, the District Commissioner and the District Land Officer. An allotment letter dated 27 July 2006 was prepared in favour of the plaintiff. I have seen the allotment letter which identifies what is being allocated as an extension to the land parcel Kisii Municipality/Block II/42 and the plot is identified in the attached PDP No. KSI/37/2000/01. Eventually, the plaintiff was issued with a Lease and Certificate of Lease and she became registered as proprietor on 25 April 2008.
16. Let me now turn to the documents and evidence of the defendant. He of course stated that the plot was not one that was allotted to him directly but was allotted to Mr. Cleophas Ondieki. The defendant did not have any minutes of allocation of this plot to Mr. Ondieki or indeed any other document from the Municipal Council of Kisii to demonstrate that the Municipal Council had allocated this plot to Mr. Ondieki. He nevertheless displayed the copy of allotment letter of Mr. Ondieki. It does not have any PDP number indicated and no PDP was availed. The defendant testified that Mr. Ondieki had paid the monies in the allotment letter but no receipt indicating such payment was produced. The defendant's testimony was that Mr. Ondieki sold to him his interest in this allotment letter and he (defendant) therefore asked that he be issued with an allotment letter in his name which was done. The allotment letter is dated 1 August 1999 and it was conceded that this is a Sunday. Moreover, despite stating that he made payment as required in the allotment letter, no such receipt was produced by the defendant. The defendant did state that his Lease was collected personally by the Land Registrar meaning that he has no letter forwarding the lease for registration from the Commissioner of Lands. Unfortunately for the defendant that means that he has no proof that there was any lease emanating from the Commissioner of Lands in his favour and nothing from the Commissioner of Lands confirming that he may be registered as lessee. The defendant also had no receipt to show that he paid for registration of this lease. He however displayed a Certificate of Lease in his name which is dated 6 July 2004. He did exhibit a letter dated 2003 from the Director of Surveys to the Commissioner of Lands informing him that the plot has been surveyed through F/R No. 418/38 and the Registry Index Map duly amended.
17. This Lease and Certificate of Lease of the defendant was never acknowledged by the Commissioner of Lands. When it came to the attention of the Commissioner of Lands, the Commissioner of Lands



reacted through a letter dated 12 October 2007 to the District Land Registrar, Kisii, informing him that the lease and certificate of lease of the defendant are forgeries and did not emanate from his office. This letter further directed the Land Registrar to expunge the forged documents from the records. The same letter informs the Land Registrar that a lease in favour of the church, which was rightfully allocated the land, was being prepared.

18. When I compare the documentation presented, it is clear to me that it is the title of the plaintiff which demonstrates a proper root and is the genuine title. As elaborated above, the defendant has no minutes of allocation; no receipt to show payment for the allotment letter; no PDP; and nothing to show that his lease emanated from the Commissioner of Lands and was duly registered. He did of course explain in his evidence that these documents were lost when he was evicted from his former offices but I am not persuaded that not even one copy of the documents could have been made available. Some of these copies could be availed from other offices such as the office of the Physical Planner, for the PDP, and the County Government on account of the minutes of allocation. The agreement demonstrating that he bought the land from Mr. Ondieki could also have been obtained from the advocate who prepared it. Even Mr. Ondieki, who was alleged to have been the first proprietor of the land was never called as a witness, and not a single document was produced to confirm that he was allotted the suit property and that he made payment of it as indicated in the allotment letter. Fortunately, or unfortunately, depending on what end of the stick finds you, a case is decided on the basis of evidence and the defendant has no evidence to bolster the claim that his title is genuine.
19. I regret to inform the defendant that what he holds has absolutely no support from any quarter and he has not availed any evidence that bolsters his title. And what I am saying is not new. The dubious nature of the title of the defendant has been apparent to all judges who have handled his title. When the plaintiff commenced this suit, he filed an application for injunction. One of the factors that the court needed to consider is whether the plaintiff had demonstrated a prima facie case and a preliminary assessment of the two titles was made. Mwera J, who heard the application for injunction, found that the lease held by the defendant had been expunged, and allowed the application for injunction, in a ruling delivered on 22 September 2008. The defendant appealed that ruling to the Court of Appeal and asked for stay pending appeal. In a ruling delivered on 8 May 2009, the learned judges of the Court of Appeal were not impressed. They did not think that the defendant had demonstrated an appeal that was arguable and dismissed the application. The defendant had also filed the suit Kisii HCCC Miscellaneous Application No. 6 of 2008 which was a judicial review motion for certiorari to quash the letter dated 12 October 2007 written by the Commissioner of Lands directing that his title be expunged. That suit was heard by Okong'o J who delivered judgment on 20 February 2015. He found that there was indeed failure by the Commissioner of Lands to first hear the defendant before proceeding to order that his title be expunged but he could not bring himself to issue the order of certiorari as he was not particularly impressed by the title of the defendant. This is what the good judge stated in his judgment regarding the allotment letter and title of the defendant :

“I have however perused the letter of allotment dated 1st August 1999 that forms the basis or foundation of the applicant’s title which is the subject of these proceedings. I have noted that 1st August 1999 was not a working day. It was a Sunday. This court takes judicial notice of the fact that Government offices are not open for business on Sundays. It is not possible therefore that the 1st respondent could have presided over the issuance of a letter of allotment to the applicant on a Sunday. The 1st respondent’s contention is its letter dated 12th October 2007 that the applicant’s title over the suit property originated from forged documents that did not originate from its office is therefore not farfetched. This court cannot close its eyes to this apparent anomaly in the letter of allotment that the applicant has put forward in



support of the present application. It is a principle of public policy that no court shall lend its aid to a man who has found his cause of action upon an illegal act.”

20. Thus, thrice before, it has been held by different judges that there is a problem with the defendant’s title.
21. In his submissions, Mr. Momanyi Aunga, learned counsel for the defendant made a spirited attempt to disparage the case of the plaintiff. He urged inter alia that the plaintiff’s suit is a non-starter as Pastor Chengo who signed the verifying affidavit displayed no authority from the plaintiff church to commence the suit. He also argued that the court in the judicial review matter found that it was illegal for the Commissioner of Lands to direct that the documents of the defendant be expunged. Further, he submitted that it was wrong for the PDP which led to issuance of title to the plaintiff to have been created as it ignored the fact that the defendant already had a title. I am not persuaded by these arguments. On the issue of authority, this is a mere red herring. If authority was doubted, it ought to have been raised and tested at the preliminary stages of the suit. I have not heard the plaintiff complain that Pastor Chengo did not have authority to file the suit and I would think that as Bishop of Nyanza region he would have authority to commence such suit. On the issue relating to the judicial review matter, the learned judge indeed found that there was a procedural mis-step but as I have demonstrated above, he never found the title of the defendant to be authentic. Regarding the PDP, it is true that it ignored the title of the defendant but that was to be expected since no quarter appears to have been aware of any title issued to the defendant. They could not therefore acknowledge it when preparing the PDP.
22. The long and short of it is that I find that the plaintiff is the party that has demonstrated good title to the suit land. I declare that it is the plaintiff who is the genuine title holder of the suit property. I also order that the title of the defendant be nullified and be expunged from the records of the District Land Registry in Kisii. The defendant is permanently restrained from interfering with the quiet possession of the plaintiff in the suit land or entering into any dealings over the suit land. I need not issue the order of eviction as prayed since it is the plaintiff who has been in possession upon obtaining the order of injunction. I find no merit in the counterclaim and it is dismissed. The costs will follow the event, i.e the defendant will pay the costs of the suit and the dismissed counterclaim.
23. Judgment accordingly.

DATED AND DELIVERED THIS 4TH DAY OF MARCH 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of :

Mr. Odero for the plaintiff

Mr. Momanyi Aunga for the defendant

Mr. Wabwire, State Counsel, for 3rd defendant in counterclaim

N/A for National Land Commission, 2nd defendant in counterclaim

Court Assistant : Michael Oyuko.

