



**Gori Investment Limited v Apostolic Faith Church & another (Environment & Land Case E004 of 2022) [2025] KEELC 5198 (KLR) (14 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5198 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT & LAND CASE E004 OF 2022**

**DO OHUNGO, J**

**JULY 14, 2025**

**BETWEEN**

**GORI INVESTMENT LIMITED ..... PLAINTIFF**

**AND**

**THE APOSTOLIC FAITH CHURCH ..... 1<sup>ST</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff moved the Court through Plaint dated 22<sup>nd</sup> February 2022 in which it averred that it was the registered proprietor of the parcel of land known as Kakamega/Municipality/Block II/42 (the suit property) and that the First Defendant trespassed into the suit property and claimed a portion thereof. It further averred that the First Defendant procured title documents in respect of the suit property through fraud and that the Second Defendant negligently allowed a double registration.
2. The Plaintiff therefore prayed for judgment against the Defendants for:
  - a. A prohibitory injunction restraining the 1<sup>st</sup> Defendant by himself, his agents, officers, representatives, assignees, servants or anybody acting on their behalf from selling, auctioning, disposing of, advertising for sale, offering for sale, transferring or in any way divesting, and/or in any other manner whatsoever interfering with or otherwise dealing with all that land known as Title No. Kakamega/Municipality /Block 11/42.
  - b. An order directing the 2<sup>nd</sup> Defendant to cancel the Certificate of Lease dated 8<sup>th</sup> July, 2007 issued to the 1<sup>st</sup> Defendant and the subsequent closure of the land register related to the same.
  - c. General damages.
  - d. Costs of this suit.



- e. Interest on (c) above at court rates from the institution of the suit.
3. The First Defendant filed Statement of Defence dated 15<sup>th</sup> March 2022 through which it denied the Plaintiff's allegations of proprietorship and trespass. It averred that it was the legal and rightful proprietor of the suit property and prayed for:
  - a. Dismissal of the plaintiff's suit.
  - b. A declaration that the 1<sup>st</sup> defendant is the rightful and legal proprietor to land parcel Kakamega Municipality Block 2/42.
  - c. Cancellation of the plaintiff's lease certificate to land parcel Kakamega Municipality Block 2/42.
  - d. Costs of the suit.
4. Lastly, the Second Defendant filed Statement of Defence dated 30<sup>th</sup> May 2022. He denied the Plaintiff's allegations and prayed that the suit be dismissed with costs.
5. Patel Gopal Dhanji Velji testified as the sole witness in respect of the Plaintiff's case and stated that he was the Managing Director and a shareholder of the Plaintiff. He adopted his witness statement dated 22<sup>nd</sup> February 2022. He stated in the statement that the Plaintiff was the registered proprietor of the parcel of land known as Kakamega/Municipality/Block II/42 (the suit property) which it acquired from Raphael Mengisian Lekool in the year 1996. That the Plaintiff was registered as proprietor on 22<sup>nd</sup> November 1996 following a transfer of the suit property to it and that a Certificate of Lease was issued to it on 16<sup>th</sup> November 2011.
6. Mr Velji went on to state that upon being informed around 2018 that some persons were claiming an interest in the suit property, they lodged a complaint with the Ministry of Lands after which they received a copy of a letter from the Director of Land Administration asking the Land Registrar Kakamega for an investigation and a comprehensive report on the registration status of the suit property. That they attended meetings with the District Land Registrar where they learnt that the First Defendant was claiming an interest in the suit property. That both parties produced their documents at a meeting on 13<sup>th</sup> July 2018 soon after which the First Defendant trespassed into the suit property by constructing a wall and using a portion of it for its activities.
7. Mr Velji referred the Court to the documents listed as item number 1 to 11 in the Plaintiff's list of documents dated 8<sup>th</sup> June 2022 and asked that they be marked for identification (PMFI 1 to 11, respectively). He then produced PMFI 6 (copy of letter dated 30<sup>th</sup> January 2013 from Kipkenda & Company Advocates to the Chief Land Registrar) as PExb. 6 and PMFI 7 (copy of letter dated 16<sup>th</sup> November 2018 from the Plaintiff to the Director of Land Administration) as PExb. 7 and stated that Kakamega Municipality Block 2/42 and the suit property are two different properties.
8. Under cross-examination and re-examination, Mr Velji testified that the Plaintiff purchased the suit property at a consideration of about KShs 500,000 and that he could not recall if they had any transfer form or how much was paid as stamp duty. He did not produce any allotment letter or current certificate of search and added that although the vendor was Raphael Mengisian Lekool, his father Francis Lekool was the real seller. He further stated that the Plaintiff paid the purchase price by cheque but did not however produce a copy of the cheque.
9. The Plaintiff's case was thereafter closed.



10. David Masila Kimauro (DW1), the Deputy County Land Registrar, Kakamega County testified that they have at the registry two original registers in respect of Kakamega Municipality Block II/42 and that entry No. 1 dated 8<sup>th</sup> February 2007 in one of the registers is in favour of the Apostolic Faith Church Registered Box 48 Kakamega. He added that the First Defendant is the legitimate owner of the land and that a certificate of lease was issued to the First Defendant on 8<sup>th</sup> February 2007. He produced a certified copy of the register (DExb. 5) among other documents and stated that he did not have any records showing transfer of the suit property to the Plaintiff. He also produced a certified copy of a reconstructed register (DExb. 6A) showing that the Plaintiff was registered as proprietor on 22<sup>nd</sup> November 1996.
11. Under cross-examination and re-examination, DW1 stated that in his parcel file which he had in court, the parcel number was captured as KK/Town/BIk II/42 and that Kakamega/Municipality/Block II/42 and Kakamega Municipality Block 2/42 refer to the same parcel since in the registry they are allowed to use either “II” or “2”. That DExb. 5 was original without any alterations while DExb. 6A was a reconstruction which had handwritten alterations. He further stated that DExb. 6A did not state any Gazette Notice number pursuant to which any reconstruction was done. He reiterated that according to him, the First Defendant’s title documents were genuine and added that after enquiries the Chief Land Registrar determined that the Plaintiff’s documents were forgeries.
12. James Macharia Gitu (DW2) testified that he was a businessman and Development Chairman of the First Defendant. He adopted his witness statement dated 15<sup>th</sup> March 2022 in which he stated that the First Defendant was registered proprietor of land parcel number Kakamega Municipality Block 2/42 following a letter of allotment dated 11<sup>th</sup> January 1997 which it accepted and paid KShs 6,150 through a banker’s cheque. That a lease was registered in favour of the First Defendant on 8<sup>th</sup> February 2007 after which a certificate of lease was issued in the First Defendant’s name. He also stated that the First Defendant’s proprietorship was affirmed by the County Land Registrar through correspondence dated 18<sup>th</sup> March 2019 following a complaint by the Plaintiff.
13. DW2 produced copies of the documents listed as item numbers 1 to 10 in the First Defendant’s list of documents dated 15<sup>th</sup> March 2022 and stated that the First Defendant had initially erected an iron sheet structure in the parcel then later a concrete one. He added that the First Defendant was in occupation as of the date of his testimony and was using the parcel for worship.
14. Under cross-examination and re-examination, DW2 stated that the First Defendant had paid rates for ten years and that the Plaintiff was not in occupation. That the First Defendant’s banker’s cheque in respect of the sums specified in the letter of allotment was dated 19<sup>th</sup> April 2006 which was some nine years after the letter of allotment. The First Defendant’s case was then closed.
15. The Second Defendant closed his case without calling any witness. Nevertheless, it is important to note that the Deputy County Land Registrar, Kakamega County testified as DW1 during the First Defendant’s case.
16. Thereafter, directions for filing and exchange of written submissions were issued. The First Defendant filed submissions dated 18<sup>th</sup> November 2024 while the Second Defendant filed submissions dated 2<sup>nd</sup> December 2024. After several adjournments, the Plaintiff finally filed submissions dated 23<sup>rd</sup> May 2025. In response, the First Defendant filed further submissions dated 26<sup>th</sup> June 2025.
17. I have carefully considered the pleadings, evidence and submissions. The issues that arise for determination are whether Kakamega/Municipality/Block II/42 and Kakamega Municipality Block



- 2/42 refer to the same parcel; if so, who between the Plaintiff and the First Defendant has a valid title to the parcel? Lastly, whether the reliefs sought should issue.
18. There is no dispute that the Plaintiff holds a certificate of lease in respect of parcel of land known as Kakamega/Municipality/Block II/42. The said certificate is dated 16<sup>th</sup> November 2011, and it indicates that the Plaintiff was registered as proprietor on 22<sup>nd</sup> November 1996. On the other hand, the First Defendant holds a certificate of lease in respect of parcel of land known as Kakamega Municipality Block 2/42 which is dated and issued on 8<sup>th</sup> February 2007. Both certificates state on their faces that they were issued under the Registered *Land Act* (repealed). The title numbers are the same, save for “Block II” and “Block 2”. The Land Registrar stated in his testimony that Kakamega/Municipality/Block II/42 and Kakamega Municipality Block 2/42 refer to the same parcel since in the registry they are use either “II” or “2” to mean the same thing.
  19. The Plaintiff’s case as pleaded is that the First Defendant trespassed into Kakamega/Municipality/Block II/42 and procured title documents in respect of the parcel through fraud. Among other reliefs, it is seeking cancellation of the First Defendant’s certificate of lease. On the other hand, the First Defendant’s case as pleaded and supported by the evidence of its witness is that it is the registered proprietor of Kakamega/Municipality/Block II/42 and that it is in occupation and use of the parcel. Arising from the position taken by the Plaintiff, the First Defendant and even the Land Registrar, I am satisfied that Kakamega/Municipality/Block II/42 and Kakamega Municipality Block 2/42 refer to one and the same parcel on the ground: the one that the First Defendant is in occupation of and in respect of which the Plaintiff is accusing it of trespass.
  20. The next issue for determination is who between the Plaintiff and the First Defendant has a valid title to the parcel. The Land Registrar testified that both the Plaintiff and the First Defendant have title documents in respect of the suit property. Suffice it to restate that that the right to property is a matter that is firmly protected in law. In our domestic law, Article 40 of *the Constitution* stipulates that every person has the right, either individually or in association with others, to acquire and own property of any description and in any part of Kenya. It bars the State from depriving a person of property of any description or of any interest in property unless the conditions stated therein are satisfied.
  21. At the statutory level, a registered proprietor of land is assured of further protection through Section 24 of the *Land Registration Act* which provides as follows:  
Subject to this Act—
    - (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
    - (b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.
  22. The law goes even further to place a specific obligation on the Court as regards how it should view a certificate of title. Section 26 of the *Land Registration Act* obligates the Court to accept the registered proprietor’s certificate of title as prima facie evidence of proprietorship unless the provisos under Section 26 (1) (a) or (b) are established. Thus, the grounds on which a title can be nullified are fraud or misrepresentation to which the registered proprietor is proved to be a party and where it is shown that the certificate of title has been acquired illegally, un-procedurally or through a corrupt scheme.



23. The Plaintiff averred in the Plaint that the First Defendant procured title documents in respect of the suit property through fraud. It bears repeating that fraud is a serious allegation and the party alleging it must plead it, particularise it, and strictly prove it to standard higher than the usual one in civil cases of proof on a balance of probabilities but lower than the criminal law standard of proof beyond reasonable doubt. See *Kuria Kiarie & 2 others v Sammy Magera* [2018] eKLR and *John Mbogua Getao v Simon Parkoyiet Mokare & 4 others* [2017] eKLR. In cases where fraud is alleged, it is not enough to simply infer fraud from the facts. See *Kinyanjui Kamau v George Kamau Njoroge* [2015] eKLR.
24. In *John Mbogua Getao v Simon Parkoyiet Mokare & 4 others* (supra), the Court of Appeal elaborated on the standard of proof as follows:
- “The standard or burden of proof where fraud is alleged in civil matters has been held in decided cases to be of higher than the ordinary standard of balance of probabilities... Indeed, allegations of fraud are of serious nature that may carry with them penal consequences that may further infringe on a person’s right to liberty hence the insistence that fraud ought to be specifically pleaded, with particulars thereof, and proved. It would be foolhardy for the appellant to dismiss allegations carrying such far reaching consequences as merely procedural. In *Emfil Ltd v Registrar of Titles Mombasa* (supra), this Court pronounced itself as follows on the issue:-
- “Allegations of fraud are allegations of a serious nature normally required to be strictly pleaded and proved on a higher standard than the ordinary standard of balance of probabilities. Although Article 159 enjoins the court to administer substantial justice without undue regard to procedural technicalities, Article 159 does not allow the respondents to totally ignore the rules of evidence.”
25. Among the particulars of fraud that the Plaintiff pleaded against the First Defendant is that it caused a double registration over the same parcel through nefarious means. The First Defendant is equally seeking cancellation of the Plaintiff’s title.
26. In its submissions, the Plaintiff has argued that it was registered as proprietor on 22<sup>nd</sup> November 1996 long before the First Defendant was issued with allotment letter dated 11<sup>th</sup> January 1997 and later registered as proprietor on 8<sup>th</sup> February 2007. It has also contended that Raphael Mengisian was registered as proprietor in the year 1994 before he later transferred the parcel to it and that in the circumstances, there was no land to allot to the First Defendant as of 11<sup>th</sup> January 1997. It is on that basis that it contends that the allotment of the land to the First Defendant was a nullity.
27. On the other hand, the First Defendant has submitted that it is the true proprietor of the parcel and in that regard it has referred the Court to letter dated 18<sup>th</sup> March 2019 from Director Land Administration to the County Land Registrar (DExb 19) which affirmed its title. It has further argued that that the root of its title is valid and is supported by letter of allotment dated 11<sup>th</sup> January 1997, banker’s cheque dated 19<sup>th</sup> April 2004, payment receipt. It contended that in contrast, the Plaintiff did not produce any sale agreement, transfer form or evidence of payment of stamp duty. The First Defendant further sought to rely on the evidence of the Land Registrar confirmed that it is the true proprietor of the parcel.
28. I have perused the documents that the parties have produced and weighed them against the oral testimonies of the witnesses. Both titles are leaseholds and claim their root to letters of allotment. Although the Plaintiff had marked a total of eleven documents for identification, it ultimately only produced two: copy of letter dated 30<sup>th</sup> January 2013 from Kipkenda & Company Advocates to the



- Chief Land Registrar and copy of letter dated 16<sup>th</sup> November 2018 from the Plaintiff to the Director of Land Administration. Further, although the Plaintiff's witness testified that the Plaintiff purchased the suit property from Raphael Lekool Mingisian at a consideration of about KShs 500,000, the Plaintiff did not produce any letter of allotment issued to the said seller or any sale agreement with the seller.
29. On the other hand, the First Defendant produced a copy of a letter of allotment dated 11<sup>th</sup> January 1997 and a copy of a banker's cheque in settlement of the amounts specified in the allotment letter. Importantly, the Director Land Administration, which is the office that keeps records of public land in respect of which leasehold interests have been issued, specifically stated in a letter dated 18<sup>th</sup> March 2019 to County Land Registrar Kakamega that the First Defendant is the legal owner of the suit property. The Director Land Administration, in the context of the dispute herein, stands in the position of the lessor. A lessor's word as to who between two disputants is his true lessee is of significant weight.
30. In his testimony, the Land Registrar stated that the register in respect of the Plaintiff's title is a reconstructed one while the First Defendant's register is an original one. The Plaintiff knew at the point of filing its Plaint that the First Defendant had a rival title. In those circumstances, it was incumbent upon the Plaintiff to establish the root of its title. Particularly, the Plaintiff was bound to demonstrate the circumstances and reasons for reconstruction of its register. It not only failed to do so but even failed to produce elementary documents in support of its case. It merely marked them for identification and left it at that. In those circumstances, the Plaintiff's claims of having an earlier allotment and title compared to the First Defendant's remain unsupported.
31. In view of foregoing, I find that the Plaintiff has failed to prove its allegations of fraud to the required standard. Based on the material on record, including the evidence of the Land Registrar, I find that the Plaintiff's title is unsupported and is invalid. On the other hand, the First Defendant has established a valid title to the suit property. It follows therefore that the Plaintiff is not entitled to the reliefs that it sought.
32. The Plaintiff argued that the First Defendant does not have a valid counterclaim. I have perused the prayers in the First Defendant's defence. They leave no doubt as to what the First Defendant is seeking. The Plaintiff both knew the case it was facing from the First Defendant and had ample opportunity to respond to it. In fact, at paragraph 2 of its submissions, the Plaintiff stated that the First Defendant "filed a statement of defence and counterclaim.." The power of the Court to do substantive justice is today wider than before. See *Gulam Miriam Noordin v Julius Charo Karisa* [2015] eKLR. In the context of this case, the justice of the case requires that the situation of double titles be ended, in view of the prayers in the First Defendant's defence.
33. In the end, I find no merit in the Plaintiff's case, and I therefore dismiss it. I further make the following orders:
- a. A declaration is hereby made that the First Defendant is the rightful and legal proprietor of the parcel of land known as Kakamega Municipality Block 2/42.
  - b. The Plaintiff's certificate of lease in respect of the parcel of land known as Kakamega/ Municipality/Block II/42 and/or Kakamega Municipality Block 2/42 is hereby cancelled.
  - c. The Plaintiff shall bear the Defendants' costs of the suit.

**DATED, SIGNED, AND DELIVERED THROUGH MICROSOFT TEAMS, AT NYAMIRA, THIS 14<sup>TH</sup> DAY OF JULY 2025.**

**D. O. OHUNGO**

**JUDGE**



Delivered in open court in the presence of:

Mr Michuki for the Plaintiff

Mr Mulama holding brief for Mr Abok for the First Defendant

No appearance for the Second Defendant

Court Assistant: B Kerubo

