



**Full Gospel Churches of Kenya - Through its Registered Trustees v M’Ramare
& another (Being Sued as the Legal Representatives of M’Ramare Nkunga
alias Ramare Nkunga) (Enviromental and Land Originating Summons
E014 of 2023) [2024] KEELC 6592 (KLR) (2 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 6592 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E014 OF 2023**

CK NZILI, J

OCTOBER 2, 2024

BETWEEN

**FULL GOSPEL CHURCHES OF KENYA - THROUGH ITS REGISTERED
TRUSTEES PLAINTIFF**

AND

M’RUKARIA M’RAMARE 1ST DEFENDANT

M’MARETE M’RAMARE 2ND DEFENDANT

**BEING SUED AS THE LEGAL REPRESENTATIVES OF M’RAMARE NKUNGA
ALIAS RAMARE NKUNGA**

JUDGMENT

1. Through an originating summons dated 11.12.2023, the plaintiff claims to have acquired 0.202 ha, the suit portion- of L.R. No. Ntima/Ntakira/1129 the suit land-, by adverse possession. The originating summons is supported by an affidavit of Bishop Gerald Mugo Wachira sworn on the even date. He averred that he has the authority to act on behalf of the plaintiff, that the plaintiff is a registered entity, the defendants are the legal representatives of the late M’ramare Nkunga-deceased, and the suit land is registered in the name of M’Rukaria M’Ramare. The plaintiff further averred that the plaintiff bought 0.29 ha of the suit land from M’Rukaria M’ramare through a sale agreement dated 11.3.2011, immediately took possession and embarked on developing the 0.202 ha of the land with the knowledge of the defendants. That the difference in size was discovered during the succession cause when the land was surveyed and has since been in continuous, quiet and peaceful occupation of the suit portion for over 12 years.
2. The plaintiff also averred that the vendor failed to facilitate the transfer and instead, the beneficiary of the portion has surrendered it to his daughter. As part of the developments, the plaintiff averred



- that there was a school on the suit portion that had run for 12 years without any steps to evict it from the land. The plaintiff annexed copies of minutes dated 20.9.2023; certificate of incorporation, sale agreement; an official search; grant of administration; chamber summons for H.C. Succession Cause No.422 of 2011; valuation report and photographs as BGM 1-7.
3. In reply, the 1st defendant filed a statement of defence and counterclaim dated 19.12.2023, accompanied by a verifying affidavit of a similar date. He averred that the plaintiff had failed to make material disclosure that it was irregularly listed as a beneficiary in the succession cause, that the said grant was revoked, and that the sale amounted to intermeddling, was unlawful and fraudulent.
 4. The 1st defendant further averred that the suit was re judicata due to Meru High Court Succession Cause No. 422 of 2011, where the plaintiff had raised similar issues. Again, the 1st defendant averred that the plaintiff had admitted in the succession cause that its occupation was permissive and thus, averments of adverse possession were misguided. Further, the 1st defendant averred that the summons for revocation of the grant had interrupted the plaintiff's occupation, and it was out to disinherit the beneficiaries of the estate.
 5. The 1st defendant averred that any alleged sale agreement between the parties was illegal and that he could not have sold land as alleged since it belonged to a deceased owner.
 6. By way of a counterclaim, the 1st defendant, as the plaintiff, averred that he was the beneficiary of the portion of the suit land; the plaintiff, as the defendant to the counterclaim, was a trespasser. He sought an order of eviction against the plaintiff.
 7. The plaintiff filed a reply to the defence and defence to the counterclaim dated 29.5.2024. It averred that it was listed as a beneficiary since it had purchased and was occupying the suit portion, therefore not an intermeddler, but as an adverse owner since the defendants did not seek an eviction order against it for 12 years; the suit was not res judicata; the succession cause or the revocation of the grant did not affect its claim for adverse possession; the entry into the land though initially permissive, became hostile since no land control board consent was acquired on time or at all and that it was not true that the land belonged to the beneficiaries of the deceased's estate.
 8. As regards the counterclaim, the plaintiff averred that the defendants' rights over the suit portion had been extinguished in law since the beneficiaries had all been aware of its occupation and had never evicted it.
 9. At the hearing, Bishop Gerald Mugo testified as PW1. He adopted his witness statement and affidavit to the main motion, both dated 11.12.2023, as his evidence-in-chief. He also produced copies of minutes dated 20.9.2023; certificate of incorporation, sale agreement; an official search; grant of administration; chamber summons for H.C. Succession Cause No.422 of 2011; valuation report and photographs as P. Exh. No's 1-8, respectively. He confirmed that the plaintiff has exclusively, openly and continuously been on the suit portion for over 12 years, where it has erected permanent buildings and was running a school.
 10. In cross-examination, PW1 stated that he was a trustee of the plaintiff by virtue of his position and had the authority to act on its behalf. He confirmed that the entry to the suit portion was permissive upon execution of the sale agreement, but upon the revocation of the grant in the succession cause, the plaintiff was removed as a purchaser since some beneficiaries were aggrieved. Further, PW1 stated that they took vacant possession and put up a school in 2011 when adverse possession began to run. PW1 confirmed in re-examination that the school was constructed after they executed the sale agreement and cleared the agreed consideration.



11. PW2 was Bishop David Warui. He adopted his witness statement dated 11.12.2023 as his evidence-in-chief. He stated that they had mistakenly but in good faith been included as beneficiaries in the succession cause by the defendants, but the grant was later on revoked by the court so that they could move to a court with jurisdiction to handle the claim of third parties to the estate of a deceased person.
12. Silas Murega testified as PW3 and adopted his witness statement dated 11.12.2023 as his evidence-in-chief. He associated with the evidence of PW1 and PW2 and added that a land board consent was not obtained. PW4 was Reuben Thurania, who, after adopting his witness statement of 11.12.2023, stated in cross-examination that he was a bishop and trustee of the plaintiff. He added that at the time of the sale, there were no disputes over the suit land, but they arose later on. Similarly, PW4 stated that the seller, used the purchase price to acquire an alternative piece of land.
13. M'Rukaria M'Ramare testified as DW1. He adopted his replying affidavit and witness statement dated 18.12.2023 and 8.5.2024 as his evidence-in-chief. Additionally, he produced as exhibits documents in the list dated 6.5.2024, namely; a copy of the certificate of confirmation of grant; ruling dated 25.7.2017; replying affidavits dated 25.7.2023, 22.7.2016 as D. Exh. No's 1-4, respectively.
14. Cross-examined by Mr. Mutegi advocate, DW1 confirmed the sale of the portion to the plaintiff but did not obtain the land board's consent. He denied that the plaintiff had been included as a beneficiary in the succession cause but had allowed the construction of the school. DW1 denied knowledge of the contents of the D. Exh. No. (2). He also denied receiving the entire consideration. The court noted that he never mentioned the alleged balance or counterclaimed for it.
15. DW2 was Esther Mpinda. She adopted her witness statement dated 8.5.2024 as her evidence-in-chief. In cross-examination, she stated that she had filed a protest at the succession court. Additionally, DW2 stated that there had been an interruption of the plaintiff's occupation in 2017, which resulted in a stoppage of developments, though the defendants sought no legal proceedings for eviction orders against the plaintiff. DW2, however, admitted that out of the money paid by the plaintiff, her brother Cosmas had bought land in the Giaki area.
16. In the re-examination, DW2 said that other members of the family were not aware of the sale, and that was why they objected to it in 2015 in the protest proceedings, leading to the revocation of the grant.
17. At the close of the defence, the parties were directed to file and exchange written submissions. The plaintiff, on its part, submitted five issues for determination. On whether the plaintiff has been in actual possession and occupation of the suit portion, it submitted that it purchased the said portion on 11.3.2011, and thus, it has been on the land for more than 12 years. Regarding interruption by the defendants, it was submitted that the church has been running a school and extensively developed the suit portion with the full knowledge of the defendants.
18. Further, the plaintiff submitted that its occupation has not been permissive but adverse to the defendants, especially DW1, who, after receipt of the certificate of grant in 2015, declined to facilitate the transfer to the plaintiff only to purport to surrender the suit land to his daughter. Additionally, the plaintiff urged the court to interpret the terms and conditions of the sale agreement and find it was a purchaser for value without notice, more so when the defendants should not retain both the money and the land; otherwise, it would be contrary to Article 40 of *the Constitution*. On costs, it was submitted that costs follow the events. Reliance was placed on National Bank of Kenya Limited v Pipe Plastic Samkolit (K) Limited [2002] 2 E. A 503, Pius Kimaiyo Langat v Co-operative Bank of Kenya Limited [2017] eKLR, East Africa Pentecostal Church (suing through the registered trustees) v Kirimi Hezekiel Meru ELC OS No.E001 of 2023, Eunice Mwaronja & another v Nkunja M'Twerandu Meru ELC No.31 of 2020, James Maina Kinya vs Gerald Kwendaka [2018], Peter Kiruki M'Nkanata



- vs Sabela Ncekei Kirima (being sued as the legal representative of Riria Mboroki-deceased), Charles Ntiritu & 3 others v Stephen Robert Gitonga and Joseph Kithinji v Christine N. Mbiti [2021] eKLR.
19. The defendants, on the other hand, submitted that PW1, Bishop Gerald Mugo, was not among the registered trustees of the plaintiff and, therefore, lacked locus standi to represent the plaintiff. Further, it was submitted that there was no resolution in the minutes authorizing PW1 to act on behalf of the plaintiff.
 20. On adverse possession, the defendants submitted that by the time of executing the sale agreement in 2011, the succession cause was yet to be filed, which was subsequently filed, and the grant revoked, terming the sale as intermeddling, thus interrupting the plaintiff's permissive possession.
 21. The defendants also submitted that the plaintiff had not met the threshold in Sections 7 and 38 of the *Limitation of Actions Act*. Similarly, upon the sale being annulled vide the ruling of 2017, the time was only eight years, and thus, the counterclaim, as proved, should be allowed with costs. Reliance was placed on Registered Trustee of the Presbyterian Foundation & 2 others vs County Council of Meru South & another (2012) eKLR, Gabriel Mbui V Mukindia Maranya (1993) eKLR, Samuel Miki vs Jane Njeri Richu C. A No 122 of 2007 as cited in Christopher Kioi & Another vs Winnie Mukolwe & 4 others (2018) eKLR and Wilson Kazungu Katana vs Salim Abdalla Bakshwein (2015) eKLR.
 22. The court has carefully gone through the pleadings, evidence tendered, written submissions and the law. The issues calling for determination are:
 - i. Whether the plaintiffs can bring this suit.
 - ii. Whether the plaintiffs have proved adverse possession.
 - iii. Whether the plaintiffs are entitled to the reliefs sought
 - iv. Whether there is a valid counterclaim
 - v. If the defendants are entitled to eviction orders
 - vi. What is the order as to costs?
 23. The Full Gospel Churches of Kenya took out the originating summons dated 11.12.2023 through its registered trustees represented by Bishop Gerald Mugo Wachira. It was pleaded that the church is registered under the laws of Kenya under the Land (Perpetual Succession) Ordinance Cap 163 since 1969. In the attached certificate, bishops Silbanus Nyaga, Lawrence Kariuki, David Macharia, Richard Matei and Julius Winjenje Induli are listed as the new trustees with effect from 12.10.2017. In the minutes attached to the originating summons and produced before this court, it was stated that a board resolution had been passed to authorize file the suit. The maker of the document was bishop Gerald W. Mugo.
 24. PW2 confirmed that PW1 was an authorized representative of the plaintiff. Equally, PW4 told the court that he was a trustee of the plaintiff and testified before the court to confirm that the deponent to the originating summons was one of the registered trustees. The sale agreement, the subject matter before this court, was signed on 11.3.2011 with the defendants.
 25. In the statement of defence and counterclaim dated 19.12.2023, the 1st defendant has equally counterclaimed against the Full Gospel Churches of (K) Nchaure Branch through its registered trustee/officials for an eviction order. The legal capacity to be sued or sue was not raised in the statement of defence by the 1st defendant. The counterclaim was verified by an affidavit sworn on



- 19.12.2023. The witness statement dated 8.5.2024 by the 1st defendant similarly sought an eviction order against the church through its registered trustees.
26. Given the preceding and corroborative evidence of the church leadership through PW1 - PW4 and DW1, there is no doubt that the plaintiff's church is registered and can sue or be sued through its registered trustees. In *Veronica Wanjira Maringa and others v ACK Buxton Diocese & Taita Taveta & another* [2022] eKLR, the court said that a church as a registered society can only be sue or sued through its registered officials.
 27. In this suit, none of the defendants have disputed that PW 1 - 3 & are officials and a trustees of the church whom the church has authorized to represent them in court. The certificate of incorporation and minutes before this court have not been challenged. I therefore find the objection lacking merits.
 28. Adverse possession arises when an owner of land neglects or omits to remove or drive out an intruder who enters, remains, disposes and or discontinues possession of the true owner of the use of the soil for the purpose that he intended, with the intention to own for a period of 12 years. See *Mtana Lewa v Kahindi Mwangadi* [2015] eKLR, *Wambugu vs Njuguna* [1983] KLR and 173, *Maweu v Lin Ranching & Farming Society* [1985] eKLR.
 29. In *Samuel Miki Waweru v Jane Njeri Richu* [2017] eKLR, the court observed that the operation of law can terminate a sale agreement, especially Section 6 (1) of the *Land Control Act* and the continuation of possession by the purchaser would not be referable to the sale agreement or the permission of the owner but would be an independent possession adverse to the title of the original owner.
 30. In *Public Trustee v Wanduru Ndegwa* [1954] eKLR, the court observed that time for adverse possession starts to run after payment of the total purchase price. In *Wilson Kazungu Katana* (supra), the court said that there must be evidence of dispossession and discontinuance of possession in a continuous open, without secrecy, without force and in an interrupted manner. The court said that the identification of the land in possession of adverse possession was an essential and integral part of the process of proving adverse possession.
 31. Turning to interruption of adverse possession it occurs when the valid owner makes an effective entry into the land to drive out the adverse possessor's assertion of the recognition of the valid owner as the owner and by way of legal proceedings to evict the adverse possessor. See *Kipkoech Langat & another v Kipng'eno Arap Laboso* [2011] eKLR.
 32. The evidence by PW1 and PW4 was consistent and unchallenged that they entered into a sale agreement dated 11.3.2011, took vacant possession and erected a school therein with the knowledge of the defendants, which has been in operation since 2011 to the present. The plaintiff told the court that after they had cleared the purchase price, and at one time, the defendants willingly included them in the succession proceedings as beneficiaries to the estate of the deceased owner for only the grant to be revoked by a ruling dated 25.7.2017 and were directed to lodge a claim in a competent court.
 33. D.W. 2 and 3 also confirmed that the sale took place, and the defendants were yet to be evicted from the suit land. DW 2 confirmed that the occupation was allowed by the initial owner and his wife, who took away the purchase price to acquire land elsewhere. PW 4 told the court that it acquired the land both as a trustee and Bishop of the church.
 34. DW 1 admitted selling the land to the plaintiff, though there was a delay in obtaining a land control board's consent to subdivide and transfer the land. DW 1 similarly admitted the entry into and the development that the church has put on the suit land since 2011. DW 2, on his part, admitted the existence of a running school on the disputed land, belonging to the plaintiff, since 2011, without any



interruption by the valid owner. She equally admitted that the plaintiff had paid consideration for the land, which her father and brother utilized to acquire another land in the Giaki area.

35. From the evidence, it is clear that though the entry into the land was permissive due to a sale agreement dated 11.3.2011 the sale agreement became void once there was no land control board consent within 6 months. None of the defendants have denied receipt of the entire purchase price. There is no evidence that the defendants tried to evict the plaintiff from the land or made an effective entry to assert a better title. The filing of a succession cause did not amount to interruption of time from running for adverse possession.
36. The acts of the plaintiff amounted to a discontinued possession and dispossession of the actual owner from utilizing the land. The plaintiff's activities on the land are permanent in nature and consistent with the intention to use the land exclusively to the detriment of the rights of the valid owner. The change of ownership status of the land ownership after the confirmed grant of letters of administration did not interfere with the accrued rights of the plaintiff relating to adverse possession, as an overriding right that bound both the predecessor and successor of the title to the land.
37. The same has a titular heading and has defined the parties to it. Eviction orders are being sought when the overriding rights of the plaintiff have crystallized under Section 38 of the [Limitation of Actions Act](#). To retain both the money and the land would amount to unjust enrichment. The sale agreement became void; hence, the doctrine of proprietary estoppel stops the defendants from reneging from the sale agreement.
38. Consequently, I find the plaintiff has, on a balance of probability, proved its claim to be entitled to the relief sought. The defendants are ordered to sign and execute a transfer form for land measuring 0.202 ha out of L.R No. Ntima/Ntakira/1129 within two months from the date hereof in favour of the registered trustees of the plaintiff church in default of which the Deputy Registrar of the court shall undertake the execution of documents. Costs to the plaintiff.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU
ON THIS 2ND DAY OF OCTOBER, 2024**

In presence of

C.A Kananu

Parties

Miss Kerubo for Mutuma for the defendants

Mrs. Mutegi for the plaintiff

HON. C K NZILI

JUDGE

