



**Methodist Church in Kenya -Ikana Church v Kiunga & 5 others (Environment & Land Case 288 of 2013) [2024] KEELC 6436 (KLR) (3 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 6436 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE 288 OF 2013**

**CK YANO, J**

**OCTOBER 3, 2024**

**BETWEEN**

**METHODIST CHURCH IN KENYA -IKANA CHURCH ..... PLAINTIFF**

**AND**

**PETER KIUNGA ..... 1<sup>ST</sup> DEFENDANT**

**PETER MURIRI ..... 2<sup>ND</sup> DEFENDANT**

**JACKSON KIRUGI ..... 3<sup>RD</sup> DEFENDANT**

**PATRICK KOBIA ..... 4<sup>TH</sup> DEFENDANT**

**AYUB KINYUA ..... 5<sup>TH</sup> DEFENDANT**

**METHODIST CHURCH IN KENYA (IKANA CHURCH REGISTERED  
TRUSTEE ..... 6<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. Methodist Church in Kenya – Ikana Church, the plaintiff herein instituted ELC Case No. 288 of 2013 vide a plaint dated 25<sup>th</sup> October, 2013 seeking for judgment against the defendants jointly and severally for an order of permanent injunction restraining them and anyone else working at their behest from interfering with the plaintiff's ownership, occupation and utilization of land parcel No. 5703 Giithu Adjudication Section as well as costs and interests.
2. Peter Kiunga and Jackson Kirugi, the 1<sup>st</sup> and 3<sup>rd</sup> defendants herein filed Tigania PMC civil suit No. 134 of 2013 vide a plaint dated 28<sup>th</sup> October, 2013 seeking an order of permanent injunction restraining the church from entering or interfering in any way with unregistered land measuring 50 – 60 acres at Kiyuthire village, Kunati sub location, Thangatha location plus costs and interest.



3. Pursuant to a consent order dated 17<sup>th</sup> December, 2013 between the parties, the court ordered that the Tigania PMCC No. 134 of 2013 be transferred to this court, and upon the transfer, the two suits were consolidated and heard together with ELC Case No. 288 of 2013 being the lead file.

#### Plaintiff's Case.

4. The plaintiff averred that it has since 1985 been the registered owner of land parcel No. 5703 within Giithu Adjudication Section which was gifted to them by one M'Imaria Nduara (deceased), Kibua Mirugara (deceased) and Kabea Manja (deceased) prior to commencement of adjudication process. That the plaintiffs have freely and openly occupied the said parcel of land wherein they have built a church, Primary school, Secondary School, a polytechnic, a child development centre among other developments. That despite being gifted by three different donors, the whole expansive portion of land was registered as one portion in the name of the plaintiff as proprietor. It is the plaintiff's case that the defendants have without any shade or colour of justification entered a portion of the suit land, planted seasonal crops and purported to lease the same to other people hence the filing of the suit. The plaintiff averred that it has obtained the requisite consent from the Adjudication Officer as provided by Section 8(1) of Cap 283 and Section 30 of Cap 284 Laws of Kenya.
5. At the hearing, the plaintiff called four (4) witnesses. P.W. 1 was Reverend James Kahumbura who is the Reverend in Charge of Ikana Methodist church. He adopted his statement dated 25<sup>th</sup> October, 2013 as his evidence in chief and produced a demand letter dated 27<sup>th</sup> August 2013, a reply dated 2<sup>nd</sup> September, 2013, Agreement dated 7<sup>th</sup> June 1985, Demarcation Officer record for parcel No 5703, bundle of photographs and consent order filed on 16<sup>th</sup> December, 2013 as P exhibit 1 – 6 respectively. He was cross-examined and re-examined. He stated that he found the land issues still pending and tried to settle the ones he could out of court with parties who were willing to have the same settled amicably. That the defendants refused to vacate from the church land despite various notices and pleas to leave therefrom. P.W. 1 testified that the land is registered in the name of the church.
6. When he was cross examined by Mr. Ayub Anampiu, learned counsel for the defendants P.W. 1 stated that he went there in 2013 as a superintendent minister and by then there was no case. That they found the defendants farming on the land, but had not built on it. That two of the defendants are still farming thereon miraa and maize. The witness could not tell the age of the miraa.
7. 1 stated that he was just a pastor and not a trustee of the church. That the trustees are one Joseph M'Mbura who is the Presiding Bishop and 7 others, including Peter Mithiga. P.W 1 admitted that P exhibit 1 did not mention the parcel number. He stated that he never did a case at the Njuri Ncheke over the suit land, and was not told of any such case.
8. 1 testified that they have trees on the land and have a house thereon which was being used by NCKK who left it to the Methodist Church in Kenya. That the people who used the land are Ayub and Kiugu and others who have since left.
9. 2 was Raphael Gitonga Muthamia, the current chairman of the plaintiff church. He adopted his statement dated 16<sup>th</sup> November, 2012 as his evidence in chief and was cross examined and re-examined. His evidence was that Ikana Methodist Church is the registered owner of the suit land parcel No. 5703 within Giithu Adjudication Section where it has carried out various developments. That the parcels of land were donated by the three deceased elders mentioned herein above for construction of facilities that would assist the entire community. That the primary School was in existence and had its own land.
10. 2 stated that when the land adjudication process started in the area, the original school land and the other donated portions were all registered in the name of Methodist Church in Kenya, Ikana Church.



That the defendants herein who are from the neighborhood have been entering the church land and that the church has on several occasions dealt with trespassers and despite many pleas and notices issued, the trespassers failed to vacate the land, hence the filing of suit.

11. 2 stated that he became chairman of the plaintiff church in 2018 when this case was already before court. That he knew the dispute as he was a committee member of the church. He reiterated that the land was donated to the church by three elders, namely M’Imaria Nduara, Kibua Mirugara and Kabea M’Amanja. He stated that he saw the agreements. He further stated that in 2018, the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants forcefully, entered the suit lands though the dispute between them and the plaintiff started in 2016. P.W. 2 denied that the land belongs to the 1<sup>st</sup> defendant. He stated that the land is now at A/R stage. That the 1<sup>st</sup> defendant occupies one portion while the church occupies the other portion measuring 49 acres. He stated that there was no case done at Njuri Ncheke since the defendants never attended. That adjudication process has begun but no one has brought an objection against the church.
12. 3 was Erick Odemba, the Deputy District Land Adjudication and Settlement Officer (DLASO) Tigania East. He testified that the adjudication process was commenced in the area in 2012. He stated that anybody who had a complaint was required to file a case with the committee but none did so over parcel No. 5703. He however stated that Peter Kiunga filed an objection in 2022 which has not been heard. He stated that according to the letter of confirmation dated 23<sup>rd</sup> August 2013, which he produced as P exhibit 6, land parcel No. 5703 is owned by MCK Ikana Church. He also produced the letter of consent from their office as P exhibit 1. He stated that the existing rights do not have the name of the defendants.
13. When he was cross examined, P.W. 3 stated that he was posted to Tigania East in 2021. That adjudication for Giithu area started in 2012 and the process is still ongoing. That A/R disputes are still being heard and therefore the adjudication process is not yet complete. That the 1<sup>st</sup> defendant filed<sup>rd</sup> August 2013 which was written by one S.A Nyasani emanated from their office.  
A/R objection No. 8 of 2022 against the church which objection is still pending. P.W. 3 stated that the parties should have waited for those cases to be heard and determined before coming to court. He However, confirmed that the letter of confirmation dated 23
14. Obadia Muriuki Erugura testified as P.W 4. He adopted his statement dated 18<sup>th</sup> November, 2018 as his evidence in chief and was cross examined and re-examined. He stated that he was the head teacher of Ikana Primary school from 1978 to 1994. That he was aware that in 1985, three elders, namely, M’Imaria Nduara (deceased), Kibua M’Rugara (deceased) and Kabea M’Amanja (deceased) donated portions of their lands to MCK Ikana Church. P.W 4 stated that he was the one who worked with the reverend in charge, Joe Keys who was the superintendent minister Mikinduri Circuit, to mark the land boundaries. He stated that the school was in existence even before 1985 and had some land before the said elders gave additional land to the church to expand and carry out more developments. He testified that the church is the registered owner of land No. 5703 Githuu Adjudication section which comprises of a church, a primary school, an academy, a child development centre among other developments. P.W 4 stated that when the land was being fenced, he as the head of the school gave out school children to assist the church in planting trees which he said are now mature. He stated that the defendants had no justification in entering the church land No. 5703.
15. In their submissions dated 11<sup>th</sup> July, 2024, it was submitted on behalf of the plaintiff that the dispute herein is different from the provisions of Section 10(1) of the Land Adjudication Act. That the same relates to intrusion of the plaintiff’s land by the defendants and for which the plaintiff seeks for an injunction order. That the suit does not in any way relate to ownership of the land. It is submitted that as per the letter of confirmation dated 23<sup>rd</sup> August 2013, it is not in dispute that parcel No. 5703 is



registered in the name of the plaintiff. That an injunction order against a trespasser can only be issued by a court of law and not the adjudication officer. That the issue in dispute herein is a preserve of the court. The plaintiff's counsel relied on the case of Daniel Murungi Mwirabua Anampiu V Jeremiah John; Benard Muthaura M'chokera (interested party) [2019] eKLR, Judicial Review No. 13 of 14 Nakuru Josephh Lesaloh Lekitoi & others ex parte applicant vs Musanka Ole Runtos Tarakwa & others, [Tobia Achola Osindi & 13 others Vs Cyprianus Otieno Ogola & 6 others HCCC No. 4 of 2011](#), Kisii, and submitted that this court has the necessary jurisdiction to deal with this matter.

16. The plaintiff's counsel cited section 107 of the [Evidence Act](#) and submitted that the plaintiff has been able to demonstrate how it acquired the suit land and that it is the registered owner of the said land and therefore is entitled to the prayers sought herein. It is also the plaintiff's submission that the defendants have not proved their case, Tigania PMC Civil case No. 134 of 2013 on a balance of probabilities and therefore their claim should be dismissed with costs to the plaintiff. The plaintiff's counsel cited Section 27 of the [Civil Procedure Act](#) and submitted that the plaintiff is entitled to the costs for both suits.

### **Defendants' Case**

17. In their plaint dated 28<sup>th</sup> October, 2013, in Tigania PMCC No. 134 of 2013, the 1<sup>st</sup> and 3<sup>rd</sup> defendants pleaded that they are the owners of unregistered land measuring approximately 50 – 60 acres at Kunati sub – location, Thangatha location which they have been occupying since their childhood after inheriting the same from their parents. That they extensively developed the said land by putting up semi-permanent houses, planting grevillea trees, miraa, bananas and other assorted crops. That the land has boundaries which are clearly marked.
18. It is their case that the church without any colour of right, and without their consent or authority, forcefully and wrongfully, entered the said land and erected a structure thereon. That they protested through the area chief, but the church refused to cease from interfering with the said land. It is pleaded that the church has been claiming the said land through a fake agreement dated 17<sup>th</sup> June 1985. That the matter was heard by Njuri Ncheke elders who gave a Nthenge oath which the church refused to undertake.
19. Peter Kiunga Kaburugi testified as D.W 1. He adopted his statement filed on 7<sup>th</sup> May 2019 as his evidence in chief and was cross-examined and re-examined. D.W 1 stated that adjudication process has not started in Thangatha location. That the land described as Giithu 5703 does not exist. D.W 1 stated that the land claimed by the plaintiff is his and his family. That he inherited the land from his grandfather one Ndware Kauria who gave it to the father to the witness, one John Kaburuki. That the land measures about 50 acres. That all the defendants live and cultivate on the unadjudicated land. That they did a case against the plaintiff before the chief, sub chief, and the D.O. That the D.O Tigania East decided that the land belongs to the defendants and their families. That the matter was heard before the D.C who ordered Njuri Ncheke elders to visit the land and that the elders decided in favour of the defendants. D.W 1 produced a letter by the D.O dated 4<sup>th</sup> February, 2018, two summons by the D.C's office, undated letter from the D.O, decision by Njuri Ncheke, Summons by chief, Thangatha, Letters dated 28<sup>th</sup> September, 2012, and 12<sup>th</sup> June 2012 by Njuri Ncheke, letter dated 29<sup>th</sup> August 2012 by council of elders and decision dated 6<sup>th</sup> October, 2012 by Njuri Ncheke council of elders as D exhibits 1 – 9 respectively.
20. On being cross-examined, D.W 1 stated that adjudication was done in Giithu Location but that he did not see any adjudication over the suit land. He reiterated that the land in question is their family land. That the plaintiff has put up a church elsewhere, and not on their land. He stated that he had no problem with the church land. That none of the defendants have been adjudicated land in their



area. That he had no record of existing rights. D.W 1 stated that on 5<sup>th</sup> May 2022, he filed an objection over parcel No. 5703.

21. D.W 2 was Jackson Kirugi who associated himself with the statement and evidence tendered by D.W 1. He confirmed that the plaintiff had put up a primary school and a secondary school. That there is a river between where the church is and the defendants land. That they had no interest with the plaintiff's land. In their submissions dated 6<sup>th</sup> July, 2024, learned counsel for the defendants submitted that the plaintiff has not made out a case against the defendants to the required standards. That it was incumbent upon the plaintiff to prove their case. That the defendants deny entering the plaintiff's land and state that the land they are occupying belongs to them.
22. It was also submitted on behalf of the defendants that this matter was brought prematurely as objections to ascertain ownership rights in Giithu adjudication section is ongoing. It was submitted that the defendants herein gave credible evidence and produced documents, and the court was urged to find in favour of the defendants.

### **Determination**

23. I have considered the pleadings, the evidence adduced and the submissions filed. In my view, the issues for determination are whether the court has jurisdiction over the matter, whether the plaintiff has proved its case to the required standard, whether the defendants have proved their case to the required standard and whether the parties are entitled to the prayers sought.
24. The defendants have submitted that this matter was brought prematurely as objections to ascertain ownership rights in Giithu Adjudication section is ongoing. It appears therefore that the defendants are challenging the jurisdiction of this court over the matter.
25. In this case, it is not in dispute that the dispute herein concerns an interest in land in an adjudication section. Under the provisions of section 30 (1) of the *Land Adjudication Act*, Cap 284 Laws of Kenya, no person shall institute and no court shall entertain any civil proceedings concerning an interest in land in an adjudication section until the adjudication register for that Adjudication Section has become final in all respects under Section 29 of the said Act, except with the consent in writing of the adjudication officer. In this case, the plaintiff, through P.W 3 who is the Deputy District Land Adjudication and Settlement Officer, Tigania East, produced a consent by the Adjudication officer dated 23<sup>rd</sup> August 2013 as P exhibit 1. The same was issued under the Provisions of Section 8(1) of the *Land Consolidation Act* Cap 283 and Section 30 of the *Land Adjudication Act* Cap 284. The said consent was for the institution or continuation of proceedings related to land parcel No. 5703 within Giithu Adjudication Section. It follows therefore that the plaintiff complied with the provisions of Section 30(1) of the *Land Adjudication Act*, and the plaintiff's suit is properly before the court. Further Section 13 (7) (a) of the *Environment and Land Court Act* No. 19 of 2011 provides that in exercise of its jurisdiction under the Act, this court shall have power to make any order and grant any relief as the court deems fit and just including interim or permanent preservation orders including injunctions. In this case, both parties are claiming orders of injunction against the other. It is therefore my finding that based on the above provisions of law and consent having been issued to the plaintiff to institute the suit as required by the relevant statute, it is my finding that the court has the requisite jurisdiction to deal with the matter.
26. The next issue to consider is which of the parties have proved their case on a balance of probabilities, and whether they are entitled to the prayers sought. It is the plaintiff's case that the suit land was variously donated to the church by three elders, M'Imaria Nduara, Kibua M'Rugara and Kabea M'Amanja (all deceased). The plaintiff produced an agreement (P exhibit 4) to support their case. On



their part, the defendants alleged that they inherited their land from their parents and grandparent. In their evidence, the defendants admit that the plaintiff owns land which they state is distinct from that of the defendants.

27. Besides the agreement, the plaintiff also produced a confirmation of ownership dated 23<sup>rd</sup> August 2013, and a demarcation officer record for parcel No. 5703. The plaintiff also produced photographs (P exhibit 6) showing the various developments undertaken by the plaintiff in the suit land. No doubt, those extensive developments must have been undertaken over a prolonged period of time. P.W 3 was categorical that the letter of confirmation dated 23<sup>rd</sup> August 2013 (P exhibit 6) confirmed the owner of parcel No. 5703 to be the plaintiff. He testified that the existing rights do not have the name of the defendants. That the defendants only filed an objection in 2022. Of course, the said objection was filed way after the suits herein were filed in 2013. As already observed the extensive developments on the suit land exhibited by the plaintiff must have been undertaken over a long period of time. It has not been explained by the defendants why they allowed the plaintiff to carry out those developments on the land if at all the land belonged to them. In my considered view, the plaintiff has adduced credible evidence to demonstrate how it acquired the suit land. The plaintiff has also shown the extensive developments that it has undertaken on the land. The plaintiff has been able to demonstrate that it is the owner of Parcel No. 5703 Giithu Adjudication Section. On the other hand, the defendants, in my view, have not tendered sufficient evidence to support their claim that the plaintiff has trespassed on their land.
28. From the evidence adduced by the parties, it is my finding that the plaintiff has proved its case on a balance of probabilities and is entitled to the orders sought in ELC case no. 288 of 2013. On the other hand, it is my finding that the defendants have not proved their case Tigania PMCC No. 134 of 2013 to the required standard. Consequently, the court enters judgment for the plaintiff against the defendants jointly and severally as follows-;
1. The plaintiff's suit ELC case No. 288 of 2013 is allowed in terms of prayer (a) of the plaint.
  2. The defendants' suit, Tigania PMCC No. 134 of 2013 is dismissed.
  3. Costs of the consolidated suits are awarded to the plaintiff.
29. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MERU THIS 3<sup>rd</sup> DAY OF OCTOBER, 2024.**

**IN THE PRESENCE OF**

Court Assistant – Tupet

Miss Mugo for plaintiff

**C.K YANO**

**ELC JUDGE**

