



Revelation Mission Centre (Sued Through its Registered Trustees) v African Church of the Holy Spirit (Suing Through its Registered Trustees) (Environment and Land Appeal E052 of 2023) [2024] KEELC 6748 (KLR) (9 October 2024) (Judgment)

Neutral citation: [2024] KEELC 6748 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E052 OF 2023
CK NZILI, J
OCTOBER 9, 2024**

BETWEEN

REVELATION MISSION CENTRE (SUED THROUGH ITS REGISTERED TRUSTEES) APPELLANT

AND

AFRICAN CHURCH OF THE HOLY SPIRIT (SUING THROUGH ITS REGISTERED TRUSTEES) RESPONDENT

(Being an appeal from the judgment of S.K Ng’etich – PM in Nkubu SPM ELC No. 66 of 2019 delivered on 6.12.2023)

JUDGMENT

1. What is before the court is a memorandum of appeal dated 19.12.2023 in which the appellant, who was the defendant at the lower court, faults the judgment delivered on 6.12.2023 for:
 - i. Allowing the suit against it.
 - ii. For holding that it had not proved ownership of LR No Abogeta/Kiungone/3444 of the suit land despite the availability of uncontested evidence.
 - iii. For finding the respondent was a lawful allottee of the suit land.
 - iv. For not appreciating that occupation and use of the suit land by it was a fundamental requirement.
 - v. For not addressing and resolving all the issues raised by the parties, especially where the respondent had not proved how it acquired the suit land by way of documents.
 - vi. For entering judgment against it and dismissing its counterclaim.



- vii. For misapprehending the issues canvassed by it and misapplying the law, thereby reaching an erroneous decision.
2. The mandate of this court is to relook at the record of the trial court and come up with independent findings on facts and the law, while mindful that the trial court had the benefit of seeing and hearing the witnesses firsthand. See *Selle v Associated Motor Boat Co. Ltd* (1968) E.A 123.
3. At the lower court, the respondent had come to court through a plaint dated 14.6.2019 averring that it was a registered church under the *Societies Act* since 06.5.1974 while the appellant was a splinter group that left its church in 2001 to register its religious organization.
4. The respondent averred that the defunct county council of Meru allocated and reserved a portion measuring 0.3 acres in LR No Abogeta/U-Kiungone/1801 for its use and benefit. It was averred that the said County Council of Meru caused the subdivision in order to allocate the beneficiaries their respective portions, leading to a portion registered as LR No Abogeta/U-Kiungone/3444 reserved for it on 14.6.2012 and upon the appellant's move to register a new and independent church, the respondents averred that it forcefully took over the property measuring 0.30 acres in the former parcel before subdivision and presently registered as LR Abogeta/U-Kiungone/3444.
5. It termed the occupation as illegal, unlawful and amounted to outright trespass. Save for Nkubu PMCC No 108 of 2014 instituted by the appellant and dismissed for want of prosecution, the respondent averred that there was no other suit pending or otherwise. The respondent, therefore, prayed for an order directing the registered trustees of the appellant to surrender vacant possession of LR No Abogeta/U-Kiungone/3444, to it, in default execution to issue.
6. A list of documents accompanied the plaint, a witness statement dated 14.6.2019, a case summary, and issues for determination dated 25.2.2020. The appellant opposed the suit through a statement of defense and counterclaim dated 12.7.2022. It was averred that the appellant had been in existence as a religious organization since the 1970s, and at no time did its member sever form another group to join any other religious organization and had occupied the suit land since the 1970s, where its members have been worshipping.
7. The appellants averred that the subdivisions to LR No Abogeta/-Kiungone/1801 to LR No 3444 was purposely done to give absolute ownership of the suit land to it and other occupying beneficiaries. The appellant averred that any reservation and or registration of the suit land in the name of the respondent was through fraud and any ownership claim of the suit land to the respondent was a scheme meant to win a judicial match through a back door and evict the appellant from its church.
8. Again, the appellant denied the alleged illegality, for it had been in occupation of the land since 1970, where it had erected its church premises only for the respondent to purportedly hijack the registration process of the suit land to its name and fraudulently register the land in its name otherwise it averred that any forced entry by the respondent would be defended with vigor to protect its right of ownership of the suit land. The appellant averred that the PMCC No 108 of 2014 related to LR No Abogeta/U-Kiungone/1045, which was never heard and determined on merits.
9. By way of a counterclaim, the appellant averred that it had occupied the suit land since 1970, where it duly constructed a permanent church, branded in its name and where members had been worshipping. The appellant averred that the respondent fraudulently caused the reservation of the suit land to register under its name, illegally hijacked the exercise, failed to involve it, in the registration, attempted to take away its permanent church, attempted to possess the land illegally.



10. The appellant averred that the respondent had no developments on the suit land; otherwise, the structures on the land belonged to it since its construction way back in 1970 and hence were in absolute and undisputed possession and development of the suit land. The appellant prayed for the cancellation of the respondent's name as the proprietor of the suit land and registration of the land to its name and a permanent injunction. The statement of the defense and counterclaim was accompanied by a list of witness statements and documents dated 12.7.2022 and a further list of witness statements dated 2.6.2023.
11. By a reply to the defense and defense to the counterclaim dated 25.7.2022, the respondent termed the appellant as dishonest, a perennial liar, and unacceptable entity since it was a recent establishment registered in 2001, it could not be termed as a stranger to its property, that the intended beneficiary to the subdivision of LR No Abogeta/U-Kiungone/1801 to 3444 was undoubtedly the respondent; the registration was procedural, all the developments on the land belonged to it; the former suit was litigating on the same subject matter, as in this suit, and it never hijacked any registration of the land as alleged or at all.
12. At the trial, Gilbert Miriti M'Irerwa testified as PW1. PW1 told the court that he was a Bishop and trustee in country African Church of the Holy Spirit, which acquired its registration on 6.5.1974 and established various churches dispensaries and schools on properties set aside or reserved by local authorities for purposes of benefiting the local communities, one of which was LR Abogeta/U-Kiungo/3444 measuring 0.30 acres as a sub-division of LR Abogeta/U-Kiungone/1801, PW1 added that it applied for and was allocated the portion by the defunct County Council of Meru, who eventually by a resolution of the council formalized the reservation and an entry in respect of the reservation made in the register. Further, PW1 told the court that in 2001 some worshippers had left the plaintiff church as a registered entity known as Revelation Mission Centre and forcefully declined to vacate the property reserved for it and employed violence, to forcefully retain possession of the property despite numerous attempts to have the appellant vacate the land peacefully.
13. PW1 told the court that the continued occupation of the suit property by the appellant was denying its worshippers access to the place of worship of their choice, which amounts to an infringement of the constitutional right to freedom of worship.
14. PW1 produced a copy of the certificate of registration certificate of incorporation, full council meeting minutes of 20.12.2011, a letter from the registrar of societies letter dated 23.5.2002, and a green card for LR No Abogeta/upper Kiungone/1801 and 3444 as P. Exh No 1-6 respectively. Shown the appellant's document number 7 PW1 said that by a letter dated 26.9.2007, the appellant was applying for parcel LR No 1045.
15. In cross-examination PW1 told the court he became a trustee in 2007. He said that the church in defense document number 1 was illegally erected by the appellant in 1984 on their land in an attempt to grab it. He said that entry into the land was in 2003 otherwise before changing the church name. PW1 said that since they do not have another church in the vicinity its members had been forced to worship in the appellant's church. He termed the appellant registration as a church fraudulent. Similarly, PW1 said that the land was theirs while the church's structure belonged to or was being used by the appellant church.
16. Henry Kaburu Magiri testified as PW2. He confirmed that after the appellant forcefully took over its church in 2003, its worshippers were displaced. He said what the appellants did was to convert an existing church to another church, which acts they resisted, and even reported the appellant to the area, D.O. PW2 said that his request for a church plot to the Meru County Council began in 1980.



17. Josephat Mwiti testified as PW3. He relied on his witness statement dated 25.7.2022, he told the court that the church premise in the suit land was built by its membership only for the same to be converted to the appellant's name by some splinter group who chased those against the move way leaving the breakaway group occupying the land. PW3 said that the respondent had been on the land for 1.5 years before they were chased away by the splinter group which they have been unable to evict. PW3 denied that they voluntarily surrendered to the appellant.
18. Samuel Kithinji M'Arithi testified as DW1. He adopted a witness statement dated 6.6.2023 as his evidence in chief. DW1 and subsequently stated that he was the secretary of the appellant church that started operation on public land in the 1970s while he was still a minor aged ten years.
19. In addition, DW1 stated that in 1993, Josephat Mwiti M'Inoti joined them and became their priest in 1995, and as a result, they trusted him with church documents. After flouting the church rules, DW1 said that they relieved Josephat M'Inoti of his priestly duties, who vacated the church with all the documents and instruments to found the respondent church by changing all those documents from Revelation Mission Church to African Church of the Holy Spirit without the community people or the area manager noticing it DW1 said using pretenses the said Joseph was able to obtain the green card and minutes from the local community whom he duped.
20. DW1 relied on a bundle of photographs of green cards for LR No's. Abogeta/U-Kiungone/1045, 1800 & 1801, letter dated 1.5.2011, certificate of registration of the church application or plot allocation dated 25.7.2001; payment receipt and extract for full council meeting minutes dated 9.5.2008 as D. Exh No 1-9.
21. In cross-examination, DW1 told the court that he was born in 1978 and was initially a member of the respondent church but became an official of the appellant church in July 2022 which was registered between 2007 – 2008. DW1 again stated that Joel Njeru left the respondent church and sought a piece of the land measuring 1/2 an acre, Plot No 2045 as per D. Exh No (7).
22. DW2 was Tabitha Maiga. She said that according to her the church was started in 1983 and became registered in May 2001 as per D. Exh No's. (6) through Joel Njeru and erected the building of the houses church in 2009 after acquiring ½ an acre of the land housing the church. DW2 said that Josephat Mwiti M'Inoti was Kicked from the church after he breached its constitution. Similarly, she denied that it was he who had initially sought for the land housing the appellant's church.
23. Samuel Gatobu Mugira testified as DW3. He told the court that he was a priest at the church, having joined it in 2014. According to him, the initial church building was made of wooden structures until a stone structure was erected in 2004. Further, DW3 said that he was the one who replaced Josephat Mwiti M'Inoti as a priest after he was dethroned due to misconduct.
24. DW3 said that since the said the former priest had been entrusted with church documents, including the ones on land that the church had been using since the 1970s along with other neighboring churches such as Kionyo AIPCA, PCEA, and K.A.G., which documents he used after he had been dethroned, to change the same and register the respondent's church as the owner of the land. DW3 said that the respondent's church had never used or occupied LR No Abogeta/U-Kiungone/3444, for it has all along been under the possession of the appellant's members. Further, DW3 said that after the respondent brought the suit despite the fact that it has no church or members in the Kionyo area with the intention of taking over their land simply because it unlawfully and fraudulently registered the land as theirs.
25. The appeal was canvassed through written submissions pursuant to directions issued under Order 42 Rule 18 of the [Civil Procedure Rules](#). The appellant relied on written submissions dated 29.8.2024 that



- the respondent did not prove allocation and or ownership of the suit land by tendering an application form or letter for allocation of the land, a receipt for payment of allocation, and minutes allocating it the land other than P. Exh No (3). In the absence of a trail of such documents for parcel LR No 3444, showing the manner of reservations, minutes number, or year is the most straightforward section, as well as showing whether due process was followed in the reservations the trial court fell in error in finding that he respondent was a bonafide owner of the suit land. Reliance was placed on [*Dr. Joseph Ngok v Moiijo Ole Keiwua* \(1997\) eKLR.](#)
26. The appellant submitted that since the respondent had no title deed for the suit land to grant the proprietary power to evict, the court was wrong in allowing the claim. The appellant submitted that on its part, it had shown that it applied for the plot, paid for it, obtained approval and the same was acknowledged by the full council meeting of the defunct County Council of Meru. Reliance was placed on the [*County Council of Meru and others v PCEA* \(2020\) eKLR.](#)
 27. The respondents relied on written submissions dated 29.8.2024. It was submitted that D. Exh No (6) was clear on the date of registration of the appellant church in 2001, while in D. Exh No (7), the application made on 25.9.2017 was by an entity that is not the appellant.
 28. As to D. Exh No (9), the respondent submitted that the acreage was different from their land, measuring 0.298 acres. Additionally, the respondent submitted that the failure to join the Meru County Council was fatal to the appellant's case, which would have shed light on the alleged fraud. The respondent submitted that based on the evidence the trial court deeply and comprehensively understood the issue before it and applied the law correctly on the issues and the evidence before it.
 29. Again, the respondent submitted that the appellant could not forcefully and illegally occupy property belonging to another group and invoke the doctrine of occupation to claim illegal ownership over the property when they were intruders and a splinter group. It was submitted that the appellant could not have constructed or occupied the suit land from 1970's long before it was registered in 2001.
 30. Moreso, the respondent submitted that the trial court was proper to take note of a similar suit, namely [*Revelation Mission Centre v African Church of the Holy Spirit* \(2023\) KECA 1020 \(K.L.R.\) \(16th June 2023\).](#)
 31. The respondent submitted that it rebutted the appellant's counterclaim for the land as per P. exh No (4) and (7). On ownership, the respondent submitted that it produced P. Exh No (3) as conclusive proof of reservations of the plot, which was not rebutted by the appellant or evidence tendered that it was fraudulently obtained.
 32. The court has carefully gone through the pleadings, evidence tendered grounds of appeal written submissions and the law. The issues calling for my determination are:
 - i. Whether the respondent had the capacity to sue.
 - ii. Who was the bonafide allottee of the suit land?
 - iii. Who was in occupation and possession of the suit land with effect from 1970 – 2001.
 - iv. Whether the appeal has merits.
 - v. What is the order as to costs?
 33. The respondent's claim at the lower court was that the bonafide allottee of the land as reserved by the defunct County Council of Meru was then registered as an entity with effect from 6.5.1974. The respondent averred that the appellants was a splinter group within its church who only got registered



- in 2001, and instead of vacating the church or handing over the land to it forcefully, continued to use it and assured a new name.
34. The respondent, in paragraph 12 of the plaint, averred that the initial land was LR No Abogeta/U-Kiungone/1801, which was subdivided into several portions for each of the beneficiaries generating LR No Abogeta/upper Kiungone/3444 on 14.6.2012. The respondent averred that the occupation of the land by the appellant was an act of trespass, unlawful and illegal.
 35. Trespass refers to unlawful entry into and commission of acts inconsistent with or without the consent or approval of the owner. In the statement of defense and counterclaim, the appellant averred that at all material times it had been on the suit land, since 1970 as worshippers, users, and developers of the land running a church and its activities, which was also reserved to it only for the respondent to fraudulently hijack the documentation and the registration process of the suit land and falsely register them as if the land belonged to it, with a view of denying them what rightfully belongs to them.
 36. It is trite law that parties are bound by their pleadings and issues for the court's determination flow from those pleadings. The respondent had pleaded that it was an incorporated church suing through registered trustees. In support of those pleadings, PW1 testified and produced P. Exh No (1) showing the registered trustees as Andrea Molenjo Wanguji, Alex Misigo Matishia and Gilbert Miriti M'rewa. The document was signed by the Minister for Lands on 22.11.2007. The exhibit was not certified. There is no evidence that in 1974, PW1 was a trustee of the church and the church had capacity to own land or any of its trustees had applied for the land in 1974, and the land that they had applied for was under their occupation, then known as LR No Abogeta/U-Kiungone/1801, later subdivided to parcel LR No 3444.
 37. The respondent produced nothing to show that it was the earlier one in time due to its registration in 1974 to apply for occupying the land. The application for the parcel, and receipt paid for the acknowledgment of the payments was critical, especially between 1974 and 2011, when P. Exh No (3) alleged to have been approved. P. Exh No (3) & (4) were not certified as true copies of the original.
 38. The copy of records produced by PW1 was equally not certified. As and when the entry was made at the land office showing the respondent as the beneficiaries, it was not indicated. The respondent needed to produce a paper trail to show that before registering for LR No Abogeta/U-Kiungone/1801 was closed for subdivision to the resultant titles on 14.6.2012 it had applied for. There was a pending application duly paid and approved by the defunct county council in the name of the respondent church. There is evidence that one Josephat Mwiti, by a letter dated 1.5.2011, had been relieved of his duties as a high priest.
 39. An application for plot allocation by the appellant, which went through the local leadership who approved it, was produced before the trial court accompanied by a payment receipt dated 25.9.2007 and which was approved by minutes dated 9.5.2008, which were certified on 14.7.2011. Compared to the minutes by the respondent dated 12.10.2011 and 20.12.2011, it is apparent that the application by the appellant and its approval was earlier in time.
 40. Other than the minutes, the respondent produced nothing else to show that its allocation was lawful, procedural, and regular.
 41. In the *County Council of Meru & others v PCEA* (2020) eKLR, the court said that minutes per se do not confirm any proprietary interest in the land since there is a mere expression of an intention to allocate land. In *Registered Trustees of Anglican Church of Kenya Mbeere Diocese v Rev. David Waweru Njoroge* (2207) KECA 448 KLR, the court observed that the transfer of land is concluded upon the registration of the transferee as the proprietor of the land and that all beneficial interest and rights relating to the



- transferred land vest on the transferee as the sole proprietor. In *Kitale Pentecostal Church v Bernard Ayeka & others* (2019) eKLR, the court said that the relationship between the appellants and the P.A.G. (K) was a relevant consideration.
42. In this appeal, the issues for determination turn on who made the application for the allocation of the land and who was in occupation of the land when the application was made. The respondent take the view that the appellant was a splinter group within its church that was incorporated in 2001 after its membership rebelled but remained in occupation of its property.
43. On the other hand, the appellant argues that it was Josephat M'Inoti who walked away after he was defrocked but left with the documents without surrendering them and instead hijacked a process of allocation that was underway, falsified the documents and inserted the name of the respondent who had never been "owners" of the church premises. The appellant, therefore, maintained that they could not be trespassers on their own land, church, and property, which for all intents and purposes remains theirs save for the name in the copy of the register obtained by misrepresentation.
44. Fraud is defined under Black's Law Dictionary 11th Edition PP 802 as a knowing misrepresentation or concealment of a material fact made to induce another to act to his detriment. In reply to the defense and defense to counterclaim in paragraph 10, the respondent averred that it was lawfully and procedurally reserved and allowed to be the owner, upon an application to the relevant allocating authority. It denied hijacking the registration and denied all the allegations of fraud. There was no evidence of an application or payment for the application form.
45. PW3 confirmed that he left the appellant church in 2007. The plot allocation minutes in favor of the respondent are dated 2011. If the respondent had left the compound of the church in 2007, there is no evidence that, before then, it had any proprietary right by way of an allotment for the land. If there was such a document showing ownership or nexus with the suit land the same was not produced before the trial court. Similarly, if the appellant broke away and stayed put on the land or premises belonging to the respondent and therefore were trespassers therein, the respondents failed to tender any evidence to show that it complained to any authority, demanded in writing for the appellant to vacate its land used legal means to eject them out of the land and or asserted superior title to recover the land before the expiry of 12 years.
46. DW2, in her evidence, told the court that she was a faithful in the church by 1983, while it was going by its present name, though not registered until May 2001 as per D. Exh No (6).
47. She told the court that they built a stone structure in 2009. She confirmed that PW3 was defrocked and left the church in 2007. DW3 denied that PW3 made the application for the plot on behalf of the respondent. She told the court that Joel Njeru was their high priest. In the letter from the registrar of societies, there is no indication that the said Joel Njeru was ordered out of the church if at all the land and the church building belonged to the respondent. DW3 confirmed that he joined the appellant in 2014. He said that PW3 never demanded the church land and its structures before 2019. He also confirmed that the stone building was erected in 2004.
48. In *Kitale Pentecostal* (*supra*), the court observed that there was no nexus between K.P.C to whom the certificate of title to the suit property was issued and the registered society or K.P.C and that the two could not be presumed to be the same. Further, the court made a finding that the society, having been registered in 2012, it was not possible to own property in 1997, long before it was registered.
49. In this appeal, there is evidence that the appellant had been in possession and occupation of the suit land as Revelation Mission Centre by 2001. They became registered as a church in May 2001. There is no evidence that it was the respondent who owned the land at the time as African Church of



the Holy Spirit. Whoever desires any court to give judgment as to any legal right dependent on the existence of facts which he asserts must prove that those facts exist. The respondent failed to produce any communication from or with the allotting authority that the defunct County Council of Meru had identified the plot for its occupation, and it had approved the same between 1974 to 2007 when it alleges that the appellant drove it out as a splinter group and forcefully assumed ownership by another name. See *Harrison Mwangi Nyutu v Naivasha Municipal Council & others* (2019) eKLR.

50. The respondent failed to produce any approved plan by the defunct County Council of Meru showing that it was allowed to put up a church on the suit land between 1974 and 2007 or up to 2011 on the suit land based on an approved application of the plot. See *Nelson Kazungu Chai & others v Pwani University College* (2014) eKLR. Above all, the respondent failed to produce any photographic evidence showing that, as of 2007, it had built structures on the suit land. The respondent's plaint was silent on the date of the alleged trespass. Evidence that the respondent complained of a forceable detainer soon after approval of the application for allocation in 2011, is lacking. The explanation for the delay in filing the suit until 2019, assuming that the plot was allocated correctly in 2011, was also lacking.
51. To my mind the appellant could not have been a trespasser on the land since it had applied for and obtained an acknowledgment of the same by the allocating authority going by their exhibits. By the time the respondent allegedly reserved the land as per the minutes by the County Council in 2011 and the copy of records, it knew that the appellant had been in occupation since 2007. In *Kenya Hotel Properties Ltd v Willesden Investments Ltd* (2009) eKLR, the court found that the appellant had no right at all or justification to be on the land. The respondents admitted in evidence that the initial parcel before the subdivision was large and reserved for other beneficiaries.
52. If the respondent knew the appellant was in occupation, acquiesced to it, and turned around to apply for a reservation, it cannot purport to say there was trespass when it had no better title to the land in 2001. All these facts were known to the respondent, but were concealed from the allocating authority. The cause of action for recovery of land under Section 7 of the *Limitation of Actions Act* (Cap 22) required the respondent to do so within 12 years from 2001. It was time-barred by 2019. See *Mehra v Shah* (1965) E.A 321 *Gathoni v KCC* (1982) KLR (104) and *Iga v Makerere University* (1972) eKLR.
53. When a title is under challenge, all paper trail to its acquisition has to be availed. See *Dr. Joseph Ngok v Moiwo Ole Keiwua & 4 others* Civil Application No 60 of 1997. I think the respondent's suit was not proved to the required standards. Similarly, the appellant had justified its existence on the suit land. It was the first in time to be offered the land by the allocating authority. Equally, the respondent tendered enough evidence that PW3 concealed and misrepresented documents to the allocating authority to mislead it into issuing a reservation in the name of an entity that was not entitled to, was not in occupation and possession of the land between 2001 and 2009.
54. The appeal is allowed. The holding of the lower court is set aside and the counterclaim is allowed with costs. Costs of the appeal to the appellant.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 9TH DAY OF OCTOBER, 2024

HON. C K NZILI

JUDGE

In presence of

C.A Kananu



Parties

Mwirigi for the appellant

Gitonga for the respondent

