



**Kimuma (Suing as Trustees for Oldonyorok Church of God) v Chairman, Board of Management Oldonyorok Secondary School & 3 others (Environment and Land Appeal 33 of 2021) [2023] KEELC 16064 (KLR) (13 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 16064 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
ENVIRONMENT AND LAND APPEAL 33 OF 2021  
EM WASHE, J  
MARCH 13, 2023  
(FORMERLY NAROK ELC APPEAL NO. 36 OF 2019)**

**BETWEEN**

**JACKSON SHIUNTU KIMUMA (SUING AS TRUSTEES FOR OLDONYOROK CHURCH OF GOD) ..... APPELLANT**

**AND**

**CHAIRMAN, BOARD OF MANAGEMENT OLDONYOROK SECONDARY SCHOOL ..... 1<sup>ST</sup> RESPONDENT  
PAUL RUTO (CHIEF) ..... 2<sup>ND</sup> RESPONDENT  
LAND REGISTRAR, TRANSMARA ..... 3<sup>RD</sup> RESPONDENT  
HON.ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. The appellant herein filed a Memorandum of Appeal dated December 23, 2019 (hereinafter referred as “the present Appeal”) seeking for the following prayers; -
  - a. The Appeal herein be allowed.
  - b. The dismissal order by the Trial Magistrate be set-aside.
  - c. That the Honourable court do preserve the original acreage for the church and the school that is 1 Hectare and 2.15 Hectares respectively.
  - d. Costs of the Appeal be granted.



2. The grounds relied upon in seeking the above prayers are outlined in the Memorandum of Appeal dated December 23, 2019 as follows; -
  - i. That the trial court erred in law and fact by failing to note that the land of the church Oldonyorok Church of God forms Land parcel No. Transmara/Angata Bargo/247 measuring 1 Hectare.
  - ii. That the trial court failed to understand the conspiracy between the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents geared towards hiving off 0.33 Hectare from Land Parcel No. Transmara/Angata Bargo/247 thereby reducing the same to 0.67 Hectares without any court Order allocating the same to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondent.
  - iii. That the trial court erred in law by allowing the 3<sup>rd</sup> respondent to submit an embarrassing Report in support of the hiving of 0.33 Hectares from the property known as Transmara/Angata Bargo/247 without following the rules of natural justice as required of his office.
  - iv. That the trial court erred in law by accepting to dismiss the suit against the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents yet amendment of the RIM affecting the boundaries of Land Parcel No. Transmara/Angata Bargo/247 had been done without a court Order.
  - v. That the trial court erred in law by accepting the 3<sup>rd</sup> respondent's report which had been irregularly prepared purportedly to resolve a boundary dispute.
  - vi. That the trial court erred in law by allowing the 3<sup>rd</sup> respondent to excise part of Land Parcel No. Transmara/Angata Bargo/247 and adding it into Land Reference No. Transmara/Angata Bargo/248 instead of reducing the same from the property owned by the Secondary School and retaining the original measurements thereof.
  - vii. That the respondents herein did not make any complaint during adjudication process and there is no appeal to the Minister and therefore the actions of the 3<sup>rd</sup> respondents were purely influenced by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents.
3. The judgement being appealed against by the appellant emanated from proceedings instituted by way of a Plaint dated 16<sup>th</sup> January 2017 (hereinafter referred to as "the Plaint")
4. The Plaint filed by the appellant in the trial court sought for the following Orders; -
  - a. A permanent injunction be issued restraining the Defendants, their agents and/or servants from entering onto or in any manner interfering with the quiet and peaceful possession of the plot known as L.R.NO. Transmara/Angata Bargo/247.
  - b. Costs of this suit be provided.
5. The Plaint was duly served on all the respondents but its only the 1<sup>st</sup> and 2<sup>nd</sup> respondent that filed their statement of Defence dated 22<sup>nd</sup> February 2017.
6. According to the proceedings contained in the Record of Appeal filed herein, the hearing at the trial court commenced on the 22/11/2018.
7. The appellant herein testified as PW 1.
8. PW 1 introduced himself as a Reverend in the Church of God, East Africa in charge of the Maasai region.
9. PW 1 confirmed to be familiar with the Chair of the Board in Oldonyorok Secondary School.



10. PW 1 further testified that he knows where Oldonyorok Secondary School is located.
11. According to PW 1 testimony, Oldonyorok Secondary School has partially been built of the Church's property.
12. This is the reason that PW 1 instituted the trial court proceedings against Oldonyorok Secondary School.
13. PW 1 stated that the land which the church owns is known as L.R.NO. Transmara/Angata Bargoi/247 measuring approximately 1 Hectare.
14. PW 1 further stated that the parcel for Oldonyorok Secondary School was L.R.NO. Transmara/Angata Bargoi/248.
15. PW 1 informed the court that between parcels L.R.NO. Transmara/Angata Bargoi/247 and L.R.NO. Transmara/Angata Bargoi/248 was a road which divided the two properties.
16. However, the year 2013, the 1<sup>st</sup> respondent encroached on the appellants suit property and constructed a dormitory on the same.
17. After this encroachment, PW 1 sought to have the issue resolved amicably but the 1<sup>st</sup> respondent refused to participate.
18. As result of this conflict, the appellant herein filed the suit at the trial court seeking for orders of eviction and a declaration that the suit property was for his exclusive possession.
19. PW 1 then produced various documents contained in the List of Documents as Plaintiff's Exhibit 1-10.
20. In cross-examination, PW 1 reiterated that he was the Reverend of the Church of God overseeing the Maasai region.
21. PW 1 however stated that he did not have any identification document to confirm the role he plays in church.
22. Similarly, PW 1 indicated that he did not have any resolution by the church for him to institute this suit.
23. PW 1 testified that the suit property was registered in the name of the church and not himself.
24. Nevertheless, PW 1 reiterated that the 1<sup>st</sup> respondent had encroached the suit property.
25. PW 1 stated that he was a Reverend and not a surveyor.
26. PW 1 further confirmed coming across the Report from the Lands department which was referred as Defence Document No.5.
27. PW 1 further indicated that if he was not satisfied by the Report of the Land Office, he was to Appeal.
28. Finally, PW 1 stated that the church was also a public institution.
29. In re-examination, PW 1 stated that he visited the Land Registrar but they did not respond.
30. According to PW 1, the people who were encroaching on the suit property was the 1<sup>st</sup> respondent and not the appellants.
31. Lastly, PW 1 indicated that he would furnish the court with the minutes and/or resolution for him to file the suit if required.
32. The Defence hearing proceeded on the 25/04/2019.



33. The 1<sup>st</sup> Defence Witness was one Julious Kiprotich Chepkwony.
34. DW1 introduced himself as a farmer and resident of Oldonyorok.
35. DW 1 further confirmed to the court that he had prepared a witness statement dated 11/02/2017 and wished to adopt the same as his evidence in chief.
36. DW 1 informed the court that he was aware of the dispute between the appellant and the 1<sup>st</sup> respondent.
37. Similarly, DW 1 testified that he personally knew the appellant as the Reverend of the Church.
38. According to DW 1, Parcel No. 247 was allocated to the hospital and Parcel No. 249 was allocated to the school.
39. DW 1 produced the documents in his List of Documents dated 22<sup>nd</sup> February 2022 as Defence Exhibit No. 1- 5.
40. In concluding his evidence in chief, DW 1 stated that 1<sup>st</sup> respondent did not take the land of the appellant and therefore the case before the trial court should be dismissed.
41. In cross-examination, DW 1 reiterated that he was a farmer.
42. DW 1 indicated that he was in court to testify on behalf of the 1<sup>st</sup> respondent.
43. It was DW 1's testimony that Parcel No. 248 was allocated to the 1<sup>st</sup> respondent and Parcel No. 247 to the hospital.
44. DW 1 informed the court that the allocation of the various properties was done in the year 1986 and not 1/11/2002.
45. DW 1 testified that the Primary School started earlier than the secondary school.
46. In Re-examination, DW 1 reiterated that the adjudication happened in the year 1986.
47. DW 1 stated that three portions were created to be allocated to a primary school, a secondary school and the church.
48. At the end of this re-examination, the witness was discharged from the dock.
49. The Second Defence Witness was SAMUEL KABOSO.
50. DW 2 introduced himself as a resident of Oldonyorok.
51. DW 2 confirmed to the trial court that he personally knew that the appellant herein was the Reverend in charge of the Church of God.
52. DW 2 sought to rely on the witness statement he had prepared in the year 2007 as his evidence in chief.
53. DW 2 testified that he was aware of the dispute between the 1<sup>st</sup> respondent and appellant.
54. According to DW 2, the two properties had been surveyed and there was no encroachment by the 1<sup>st</sup> respondent into the appellant's property.
55. Consequently, DW 2 prayer was that the court should dismiss the suit before the trial court.
56. In cross-examination, DW 2 stated that he was a committee member of the primary school.
57. According to his knowledge, the primary school was allocated Parcel No. 248.



58. The Dispensary on the other hand was allocated Parcel No.242.
59. Both Parcels of land were allocated on the same day although he could not remember the said date.
60. Similarly, DW 2 could not state when the Title Deeds were duly issued.
61. Nevertheless, DW 2 confirmed to the trial court that there was no appeal lodged as appertains the allocations of the various parcels.
62. In DW 2 testimony, the primary school was the first one to be developed, followed by the secondary school, the church and lastly the clinic.
63. There was no re-examination of this witness and he was consequently discharged from the dock.
64. The third Defence witness was Michael Kirui Situmia.
65. DW3 introduced himself as a resident of Oldonyorok.
66. DW 3 informed the trial court that he was a retired Senior Chief of Oldonyorok Location.
67. In addition to the above, DW 3 further testified that he was the headteacher of the primary school up to the year 1993.
68. DW 3 stated that he had prepared a witness statement and adopted the same as his evidence in chief.
69. According to DW 3, three parcels of land namely Plot.No. 242, 248 and 249 were duly created during the adjudication.
70. The boundary demarcating these three parcels of land was marked by the planting of trees in the year 1997.
71. Consequently, when the dispute arose, the Land Registrar visited the ground and was able to establish the boundaries.
72. The Land Registrar, Transmara thereafter prepared a Ground Report dated 23/01/2013 and the same had been produced as Defence Exhibit 5 by the DW 1.
73. DW 3 informed the court that no appeal was ever raised by the appellant in regard to the said Group Report dated 23/01/2013.
74. DW 3 therefore sought the trial court to dismiss the suit before it with costs.
75. In cross-examination, DW reiterated that three entities exist on the ground.
76. There was Parcel No. 247 measuring 0.72 Ha, then Parcel No.248 measuring 0.72 Ha and lastly Parcel No. 249 measuring 0.72 Ha.
77. All these parcels of land were issued with their appropriate Title Deeds.
78. According to DW 3, there was no appeal arising out of the adjudication of these three parcels.
79. DW 3 denied knowledge of any order that was issued by the court to rectify any boundary.
80. DW 3 concluded his cross-examination by reiterating that he was the headmaster of Oldonyorok Primary School.
81. In re-examination, DW 3 stated that all the three parcels share common boundaries.



82. DW 3 stated that it was the appellant who had lodged a complaint seeking to have his boundary extended.
83. DW 3 pointed out to the court that the size of land on the Title Deed was not commensurate with what is available on the ground.
84. DW 3 referred the trial court to Defence Exhibit 3 which had been produced to confirm this fact.
85. At the end of this re-examination, the DW 3 was discharged from the dock and the Defence closed its case.
86. The trial court directed parties to file their submissions which was done and the judgement was pronounced on the 05/12/2019.
87. This court, having gone through the pleadings filed herein, the proceedings of the testimonies adduced by the witnesses, the documentary evidence produced, the submission of the parties and the judgement pronounced on the 05/12/2019, the issues for determination are as follows; -
  - Issue No. 1 Is the appellant the lawful owner of the Suit Property?
  - Issue No. 2 What size of land is the appellant entitled to in the Suit Property?
  - Issue No. 3 Has the 1<sup>st</sup> respondent encroached on the appellant's Suit Property?
  - Issue No. 4 Did the appellant have locus standi and/or capacity to institute the proceedings at the trial court?
  - Issue No. 5 Was the appellant entitled to the Reliefs sought in the trial court?
  - Issue No. 6 Is the appellant entitled to the Reliefs sought in this Appeal?
  - Issue No. 7 Who bears the Costs of this Appeal?
88. The court having identified the issues for determination as outlined hereinabove, it will now proceed to discuss the same as below.

**Issue No. 1. Is the appellant the lawful owner of the Suit Property?**

89. The first issue for determination regards the ownership of the suit property.
90. According to the Plaintiff's Exhibit 1 which is the Green Card of the property known as L.R. Transmara/Angata Bargoi/247 and Plaintiff's Exhibit 3 which is a copy of the Official Search of Transmara/Angata Bargoi/247 dated 13<sup>th</sup> December 2016, the entries on the proprietorship of the suit property is Transmara County Council.
91. According to Plaintiff's Exhibit No. 3, Transmara County Council had reserved the suit property for the use and/or allocation to Oldonyorok Church Of God & Clinic.
92. Looking at the Plaintiff's Exhibit 1 and 3, it is clear in the mind of the court that the suit property is not legally owned by the appellant herein as no document was produced at the trial court in the form of a Letter of Allotment and/or lawful Certificate of Lease from Transmara County Council to Oldonyorok Church Of God.
93. In the absence of either the Letter of Allotment and/or a Certificate of Lease from Transmara County Council, then the appellant can not be deemed to be the lawful owner of the suit property in law.



### **Issue No.2. What size of land is the appellant entitled to in the Suit Property?**

94. According to Page 14 of the Record of Appeal, the appellant in his statement claims that the suit property is approximately 1 Hectare.
95. During his testimony at the trial court, the appellant reiterated that the suit property is approximately 1 Hectare.
96. The Plaintiff's Exhibits 1 and 3 also confirm that the approximate size of the suit property is 1 Hectare.
97. However, according to Plaintiff's Exhibit 3, it is clearly indicated that the suit property had two users namely, the appellant and the clinic.
98. This fact has been confirmed by the Defence Exhibit No. 5 which is the Ground Report dated October 23, 2013 by the Land Registrar, Transmara who is the 3<sup>rd</sup> respondent in this Appeal.
99. The Ground Report dated October 23, 2013 reiterated the fact that the suit property was reserved for two users namely Oldonyorok Church of God and Clinic.
100. The 3<sup>rd</sup> respondent in the Report dated October 23, 2013 went further to determine the portion within the suit property occurred by the appellant to be 0.67 of Hectare.
101. This finding was officially communicated to the appellants and the neighbours through a letter dated November 27, 2013 which is contained in Page 55 of the Record of Appeal.
102. It is therefore clear from the appellants Exhibit No. 3 and the 1<sup>st</sup> respondent's Exhibit No. 5 at the trial court that the suit property was to be divided between Oldonyorok Church of God and The Clinic.
103. Referring to the 1<sup>st</sup> respondent's Exhibit No. 5 which is a Ground Report dated 23<sup>rd</sup> of October 2013 by the 3<sup>rd</sup> respondent, the actual area supposed to be occupied by the Oldonyorok Church Of God is 0.67 of a Hectare.
104. In essence therefore, the appellant is not entitled to the entire suit property measuring approximately 1 Hectare as alleged.

### **Issue No.3. Has the 1<sup>st</sup> respondent encroached on the appellant's Suit Property?**

105. The appellant herein alleged that the 1<sup>st</sup> respondent has encroached into the suit property and thereby depriving him of land which should be occupied by Oldonyorok Church of God.
106. The 1<sup>st</sup> respondent has denied this allegation and stated that it located within the neighbouring parcel of land known as L.R.NO. Transmara/Angata Bargoi/248.
107. The 1<sup>st</sup> respondent produced a copy of the Green Card relating to L.R.NO. Transmara/angata Barigoi/248 which indeed confirmed them as the lawful owners.
108. According to the Ground Report dated October 23, 2013, the 3<sup>rd</sup> respondent with the concurrence of the stakeholders confirmed that there was an existing boundary with demarcated the suit property with the 1<sup>st</sup> respondent's property known as L.R.NO. Transmara/Angata Barigoi/248.
109. It was also observed in the Ground Report dated 23<sup>rd</sup> October 2013 by the 3<sup>rd</sup> respondent that the Pastor of Oldonyorok Church of God has built his house in the 1<sup>st</sup> respondent's compound which is L.R.NO. Transmara/Oldonyorok/248.



110. Based on this finding by the 3<sup>rd</sup> respondent and the other stakeholders, the Pastor of Oldonyorok Church of God was directed to relocate the house to the confirmed area demarcated for the appellant's use.
111. Looking at the above determinations contained in the Ground Report dated October 23, 2013, there is no evidence that the 1<sup>st</sup> appellant had encroached on the suit property using the natural demarcations identified by the stakeholders as well as the 3<sup>rd</sup> respondent.
112. The evidence contained in the Ground Report dated October 23, 2013 and the conclusions by the 3<sup>rd</sup> respondent in his capacity as the Land Registrar point to the fact that it's the appellant that had failed to observe the natural demarcation boundaries by building his house on a portion of L.R.NO. Transmara/Angata Barigo/248 belonging to the 1<sup>st</sup> respondent.
113. In essence therefore, the appellant herein has failed to demonstrate the purported encroachment by the 1<sup>st</sup> respondent as required by law.

**Issue No. 4. Did the appellant have locus standi and/or capacity to institute the proceedings at the trial court?**

114. The 1<sup>st</sup> respondent in their Defence raised the issue of the appellant lacking locus standi to institute the suit in the trial court.
115. According to the 1<sup>st</sup> respondent's submission, Mr. Jackson Shiuntu Kimuma did not have the Locus Standi to file any suit on behalf of Oldonyorok Church of God as there was no resolution presented to court and/or authority to institute any legal proceedings in court.
116. The 1<sup>st</sup> respondent's submission was that any legal proceedings in the name of Oldonyorok Church of God would have to be sanctioned by the Governing Council of the Church Of God supported with appropriate minutes and specifying the person or people authorised to swear and/or represent the entity in court.
117. Indeed, the issue of locus standi is key as it also touches on the jurisdiction of the court.
118. In instances where the person instituting the legal proceedings does not have locus standi to do so, then the proceedings are unlawful and the court lacks jurisdiction to even entertain such proceedings.
119. Turning back to this case, Paragraph 6 of the Plaintiff described the appellant suing as a Trustee of Oldonyorok Church of God.
120. In the appellant's Exhibit's produced in court, the Certificate of Registration of Oldonyorok Church of God has not been produced.
121. The absence of this Certificate of Registration of Oldonyorok Church Of God is that the court cannot verify if Mr. Jackson Shiuntu Kimuma is truly the registered Trustee or not.
122. Referring to the appellant's Exhibit No.7 which is the KRA pin Certificate, Oldonyorok Church of God is described as a "non-individual".
123. In other words, Oldonyorok Church of God is a body corporate or a society under section 4 of the [Societies Act](#).
124. Whichever way you look at the legal status of Oldonyorok Church of God, it is clear that any legal proceedings instituted in its name must be supported by proper and lawful minutes and/or resolutions from the general membership of the organisation.



125. The appellants Exhibits produced in the trial court did not contain any minutes, resolutions and/or authority by the general membership of Oldonyorok Church of God for Mr. Jackson Shiuntu Kimuma to institute and sustain the proceedings in the trial court.

126. In essence therefore, Mr. Jackson Shiuntu Kimuma did not have the locus standi to institute the proceedings against the respondents herein on behalf of Oldonyorok Church of God.

**Issue No. 5. Was the appellant entitled to the Reliefs sought in the trial court?**

127. Based on the determinations of the issues hereinabove, the court is of the considered opinion that the appellant was not entitled to the reliefs sought in the Plaint dated January 16, 2017.

**Issue No. 6. Is the appellant entitled to the Reliefs sought in this Appeal?**

128. The court upon re-evaluating the facts of the case before the trial court and making its own independent determinations under issues No. 1, 2, 3 and 4 hereinabove, it is clear in the mind of the court that the appellant has failed to prove any ground upon which this court can set-aside, review and/or discharge the judgement pronounced on December 5, 2019.

129. In essence, this Appeal is not merited.

**Issue No. 7. Who bears the Costs of this Appeal?**

130. It is clear that in litigation, the costs of the proceedings follow the outcome thereof.

131. In this case, the Appeal is not merited and the costs will therefore be borne by the appellant.

132. In conclusion, the court makes the following Orders as appertains the Memorandum of Appeal filed on the December 23, 2019; -

A. The Memorandum of Appeal dated December 23, 2019 be and is hereby Dismissed.

B. The Costs of the Appeal as well as the trial court shall be borne by one Mr. Jackson Shiuntu Kimuma personally and not the Organisation known as Oldonyorok Church of God.

**DATED, SIGNED & DELIVERED Virtually in KILGORIS ELC court on the 13<sup>TH</sup> OF MARCH 2023.**

**EMMANUEL.M.WASHE**

**JUDGE**

**In the presence of:**

Advocates for the appellant: Sagwe (N/A)

Advocates for the respondents: Opondo

