



Churu & 2 others ((Suing as the Trustees of PCEA Thindigua Church)) v Thuo (Environment & Land Case E159 of 2022) [2023] KEELC 20562 (KLR) (5 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20562 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E159 OF 2022**

**JG KEMEI, J
OCTOBER 5, 2023**

BETWEEN

**FAITH MUTHONI CHURU 1ST PLAINTIFF
JOSEPH NDUNGU NJOROGE 2ND PLAINTIFF
LUCY WAMBUI WAWERU 3RD PLAINTIFF
(SUING AS THE TRUSTEES OF PCEA THINDIGUA CHURCH)**

AND

GRACE MUTHONI THUO DEFENDANT

RULING

1. The applicants moved the Court by a way of Motion dated 20/12/2022 seeking the following orders:-
 - a. Spent.
 - b. A temporary injunction restraining Grace Muthoni Thuo (the Defendant/Respondent), her kin, servants, agents, any person, body or authority from interring, burying or in any way disposing of the body of the late Peter Thuo Kamau or any other person on the parcel of and comprised in L.R. No. [particulars withheld] pending the hearing and determination of this application.
 - c. A temporary injunction restraining Grace Muthoni Thuo (the Defendant/Respondent), her kin, servants, agents, any person, body or authority from interring, burying or in any way disposing of the body of the late Peter Thuo Kamau or any other person on the parcel of land comprised in L.R.No. [particulars withheld] pending the hearing and determination of this suit.
 - d. The OCS in-charge of Kiambu Police Station ensure compliance with the orders of this Honourable Court.



- e. Costs of this application be provided.
2. The Motion is anchored on the grounds annexed therewith together with Supporting Affidavit of Faith Muthoni Churu sworn on 20/12/2022. It is averred that the Plaintiff/Applicant is the registered proprietor of the suit land. That *vide* ELC No. 93 of 2015 Peter Thuo Kamau and Grace Muthoni Thuo sued the Applicants claiming the suit land by way of adverse possession.
3. In its Judgment delivered on 23/9/2021 the Court dismissed the Respondent's suit. That despite obtaining orders from the Court of Appeal to file an appeal out of time, the Respondent is yet to file the said appeal against the Judgment of the Court delivered on 23/9/2021.
4. The Respondent and her family have continued to legally occupy the Applicant's property despite Judgment having been rendered in favour of the Applicants.
5. It was further averred that Peter Thuo Kamau, the Respondent's husband passed away on 18/12/2022.
6. The Applicants are therefore apprehensive that the Respondent shall inter or bury the body of Peter Thuo Kamau on the Applicant's suit land. The Court has been urged to stop the burial to safeguard the suit property from illegal interment of the body of Peter Thuo Kamau.
7. The application is opposed *vide* the Replying Affidavit of Grace Muthoni Thuo sworn on 29/12/2022. The deponent states that the Applicants are not the legal trustees of PCEA Church Thindigua and are illegally and fraudulently representing themselves as such and have illegally registered themselves as owners of the title. *Inter alia*, that the application and the suit are not only incompetent, defective but bad in law as PCEA Thindigua Church is not a legal entity. The Court was urged to dismiss the application and the suit for among other things non-disclosure of material facts with respect to the existence of related suits being Succession Cause No. 221 of 2013 and ELC No. 108 of 2011 relating to the suit property. That there are existing prohibitory orders against the Applicants which bar the registration of title in the name of the Applicants.
8. In a Further Replying Affidavit sworn on 11/1/2023 the Respondent stated as follows; ELC No. 93 of 2015 was dismissed with costs on 15/9/2021; eviction orders were issued 25/2/2022 against the Respondent; she still resides on the suit land for the last 30 years; the appeal in the Court of Appeal is pending; the claim of the suit land by the Applicants is not supported hence it amounts into intermeddling with the Estate of a deceased person; the eviction orders issued in ELC No. 93 of 2015 are illegal and fraudulent.
9. Faith Muthoni Churu in a Further Affidavit filed on 30/1/2023 stated that Grace Muthoni Thuo and Peter Thuo Kamau were ordered to vacate the land *vide* Judgment delivered on 23/9/2021. In addition, she averred that the Respondent and her husband ignored the orders of the Court and refused to vacate the property. *Inter alia* she stated that Samuel Kiarie had the legal the right to sell the entire property to the Applicants. That the property was purchased through monetary contributions by members of PCEA Thindigua Church and registered in the names of the Applicants as Trustees of the Church. She denied the Respondent's allegation that the Applicants are imposters/fraudsters.
10. The Respondent averred that the body of Peter Thuo Kamau has already been interred in a public cemetery and that the Court should issue orders barring any other body from being buried on the suit land. On 16/5/2023 parties argued the application orally. They also relied on written submissions on record. The Respondents Counsel brought the attention of the Court that Peter Thuo Kamau was already buried in a public cemetery. Whilst admitting the interment of the deceased Mr. Njenga for the Applicants urged the Court to grant orders prohibiting any other body from being buried on the land.



11. Parties filed written submissions with respect to the application. The Applicants submission on 30/1/2023 while Respondents were filed on 6/2/2023. I have read and considered the submissions on record.
12. The gist of the Applicants application was to restrain the Respondent or her kin, servants/agents or any other person from burying the remains of Peter Thuo Kamau or any other person on the suit land.
13. Admittedly, it is common ground that Peter Thuo Kamau the subject of this application was buried in a public cemetery and to the extent that the application seeks stopping the interment of the body of Peter Thuo Kamau, the Court finds that the application is now spent.
14. With respect to the second limb of the application to wit that any other person be barred from being buried on the suit land, the Court finds that this prayer is speculative in its nature and cannot be granted. The reason being that a body must be identified and ascertained and therefore the Court cannot in the very nature of this application grant orders at large. Orders of the Court cannot be issued in vain.
15. In the upshot the application is spent and it is dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 5TH DAY OF OCTOBER, 2023 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of ;

Njenga for 1st, 2nd and 3rd Plaintiffs

Gatitu for Defendant

