



**Kuhunya & 2 others ((suing on behalf of ACK Church Good Samaritan
– Kiairegi)) v Kimani (Environment & Land Case 708 of 2017)
[2022] KEELC 4779 (KLR) (15 September 2022) (Judgment)**

Neutral citation: [2022] KEELC 4779 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 708 OF 2017
JG KEMEL, J
SEPTEMBER 15, 2022**

BETWEEN

**DAVID GITAU KUHUNYA 1ST PLAINTIFF
SIMON MUTURI MWANGI 2ND PLAINTIFF
JOEL IRUNGU GITAU (SUING ON BEHALF OF ACK CHURCH GOOD
SAMARITAN – KIAIREGI) 3RD PLAINTIFF
(SUING ON BEHALF OF ACK CHURCH GOOD SAMARITAN – KIAIREGI)**

AND

JOSEPH MWANGI KIMANI DEFENDANT

JUDGMENT

1. The plaintiff filed suit on the August 18, 2017 against the defendant. the plaint was later amended with the leave of court on the October 29, 2017. They sought the following orders;
 - a. The defendant do give vacant possession of LR Thika/Municipality/Block38/435 (suit land) and remove the structure constructed thereon and recover the amounts spent from the defendant.
 - b. A permanent injunction restraining the defendant whether by himself his agents employees servants assigns persons claiming under him or under his authority from interfering with the plaintiffs ownership quiet possession enjoyment and or user of the suit land.
 - c. Cost of the suit
2. The Plaintiffs aver that they are the beneficial owners of the suit land having purchased the same for and on behalf of the church from one Joseph Mungai Ndungu in 2013. That in 2017 they discovered



- that the defendant had entered the suit land, deposited materials and commenced the construction of a building thus interfering with the quiet possession and ownership of the plaintiff's suit land. That they immediately filed a report at Makongeni police station *vide* OB 41/20/7/2017.
3. The defendant failed to file a defence against the plaintiffs' claims.
 4. At the hearing the plaintiffs evidence was led by David Gitau Kuhunya who stated that he is a member of the ACK church Kairegi and has been authorized as such to file the suit. He produced a copy of the minutes of the church council dated the May 10, 2019 as PEX No1. He relied on his witness statement dated the October 29, 2019 as his evidence in chief and produced the documents in the list of documents dated the October 29, 2019 and supplementary list dated the August 18, 2020.
 5. The witness stated that the church purchased the property from Joseph Mungai Ndungu in the year 2013. That the defendant entered the suit land in 2017 deposited materials and commenced construction of the structures on the suit land.
 6. The witness stated that the suit land is registered in the name of the church trustees and produced a title registered on the January 9, 2020. He asked the court to grant their prayers set out in the amended plaint.
 7. With that the plaintiffs closed their case.
 8. The plaintiffs have filed written submission in support of their claim which I have read and considered.
 9. The key issue for determination is whether the plaintiffs have proved their case.
 10. The defendant filed a notice of motion on the October 12, 2020 seeking orders to be allowed to file a defence out of time. I have perused the record and I find that the said application was not prosecuted. The defendant therefore failed to file a defence prompting the plaintiff to file a request for judgement on the March 16, 2022. The plaintiffs suit therefore proceeded by way of formal proof.
 11. According to the record, the title of the suit land registered on the January 9, 2020 is in the names of David Gitau Kuhunya, Eliezer Wambugu Chege, Solomon Muturi Mwangi and Joel Irungu Gitau.
 12. The plaintiffs in this case are David Gitau Kuhunya, Simon Muturi Mwangi and Joel Irungu Gitau suing on behalf of ACK church good samaritan Kiairegi. The plaintiffs aver that they are suing on behalf of the ACK church and have relied on the church council minutes dated the May 10, 2019. Under Min 3/5/19 the trustees appointed are listed as Solomon Mbuthia Kimani, David Gitau Kuhunya, Eliezer Wambugu Chege, Simon Muturi Mwangi and Joel Irungu Gitau. The council resolved that any three of the above trustees could transact any business on behalf of the church.
 13. I find that the plaintiffs are properly before the court agitating for the church.
 14. Section 24 of the *Land Registration Act* No 3 of 2012 states that the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.
 15. Section 25 of the said Act provides that the rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject to encumbrances charges or leases shown on the register and the overriding interests as stated in section 28 of the Act.



16. Section 26 of the *Land Registration Act*, 2012 provides that the certificate of title issued by the registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as *prima facie* evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate and permissible in law.
17. The *Trespass Act* cap 294 defines trespass over land to mean any person who without reasonable excuse, enters, is or remains upon, or erects any structure on, or cultivates or tills, or grazes stock or permits stock to be on, private land without the consent of the occupier thereof shall be guilty of an offence.
18. The ownership of the land is not in dispute. Having proved ownership the plaintiffs have a right to enjoy their proprietorship, quiet enjoyment and the action of the defendant in entering the land, depositing building, materials and constructing a structure are actions that clearly are interfering with the ownership and possession of the property of the plaintiffs.
19. I find that the plaintiffs have proved their case and I enter judgement as follows;
 - a. The defendant is ordered to give vacant possession of LR Thika/Municipality/Block38/435 (suit land) and remove the structure constructed thereon within a period of 30 days from the date of this judgment.
 - b. In default the plaintiffs to forcefully evict him and demolish the structures and recover the costs as a civil debt from the defendant.
 - c. Thereafter a permanent injunction restraining the defendant whether by himself his agents employees servants assigns persons claiming under him or under his authority from interfering with the plaintiffs ownership quiet possession enjoyment and or user of the suit land.
 - d. I make no orders as to costs.
20. It is so ordered.

DELIVERED, DATED AND SIGNED AT THIKA THIS 15TH DAY OF SEPTEMBER 2022 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of;

Ms. Gakii Nyamu for 1st, 2nd and 3rd Plaintiffs

Defendant – Absent

Court Assistant – Phyllis Mwangi

