



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**CIVIL CASE NO 216 OF 2006**

**RACHEL LOIS WANJIKU KINYANJUI.....PLAINTIFF**

**V E R S U S**

- 1. REV SILAS YEGO**
- 2. DAVID KAMAU THIIYI**
- 3. JOHN ANYOL ODAA (Sued as Trustees of Mai Mahiu Village Polytechnic)**
- 4. GEOFFREY GICHURE**
- 5. REV BERNARD NGUYO**
- 6. REV. DAVID MULWA (Sued with 1<sup>st</sup> Defendant as Trustees of African Inland Church) .....DEFENDANTS**

**D I R E C T I O N S**

- 1.** When this matter came up for mention before me on 30<sup>th</sup> January 2014 learned counsel for the Plaintiff stated that the case was fully heard before Ang’awa, J. Learned counsel further stated that he understood that Ang’awa, J prepared judgment “but was transferred before she delivered it”. As far as he was concerned mention of the case was “to see if the judgment had been typed so that it can be delivered”. Learned counsel for the Defendants stated that mention was to see if the proceedings had been typed.
- 2.** I have now perused the record of this case. Happily the proceedings have been typed.
- 3.** Trial of the case commenced before Ang’awa, J on 22/09/2008, apparently when the learned judge was in the *Environment and Land Division* of this court. All parties were represented by counsel. The Plaintiff testified and closed her case the same day. She called no other witness.
- 4.** The defence case started on 23/09/2008. The 6<sup>th</sup> Defendant testified on behalf of the Defendants. No other Defendant or witness testified. The defence case closed the same day.
- 5.** The court then directed as follows-

**“The next step of this trial is that of submissions. I nonetheless order that the district land surveyor, Nakuru in charge Mai-Mahiu area to go on the ground and identify the area covered by land title L.R. Kijabe/Kijabe Block 1/4059 (and) L.R. Kijabe/Kijabe Block 1/13299.**

**That the actual demarcation and survey be done and findings be brought to this court on or before 10/11/2008. This case be mentioned on 10/11/2008 at 9.00 am.”**

6. On 26/02/2010 (before Mbogholi Msagah, J) it was reported to court by the parties’ advocates that “the report is ready and filed”.

7. The court then ordered –

**“By consent mention on 12/03/2010 to confirm if Defendants will have moved from the disputed suit property, Kijabe/Kijabe Block 1/4059”.**

8. On 19/4/2010 the court (Mbogholi Msagha, J) ordered –

**“Let proceedings be typed to facilitate further steps in this matter.**

**Further mention on 20/05/2010”.**

9. That is where the matter is now at.

10. If I were to deal with this case further, I would direct that the trial do start *de novo* because I would, with respect, find it very difficult to prepare a judgment upon the evidence as recorded by the trial judge. This is because there is not a continuous narrative of the testimonies of the two witnesses who testified that would enable me to properly understand the respective cases of the parties.

11. But the Plaintiff’s suit is a claim in trespass. The main reliefs sought are an order for eviction of the Defendants, an appropriate permanent injunction and *mesne* as well as general damages for trespass. The Defendants have a counterclaim for a declaration that the suit land belongs to the ***Trustees of Africa Inland Church*** “in trust for the public”.

12. The suit now belongs in the ***Environment and Land Court***. It is hereby transferred to that court for appropriate disposal. It is so ordered. Costs will be in the cause.

**DATED AND SIGNED AT NAIROBI THIS 13<sup>th</sup> DAY OF FEBRUARY 2014**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED THIS 14<sup>TH</sup> DAY OF FEBRUARY 2014.**