



**Seventh Day Adventist Church EA Ltd & 6 others v Ngari & 7 others; National Land Commission & another (Interested Parties) (Environment and Land Case 112 & 128 of 2017 (Consolidated)) [2025] KEELC 6688 (KLR) (16 September 2025) (Judgment)**

Neutral citation: [2025] KEELC 6688 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE 112 & 128 OF 2017 (CONSOLIDATED)  
EK WABWOTO, J  
SEPTEMBER 16, 2025**

**BETWEEN**

**SEVENTH DAY ADVENTIST CHURCH EA LTD ..... PLAINTIFF**

**AND**

**G NGARI ..... 1<sup>ST</sup> DEFENDANT  
DAVID NJOROGE ..... 2<sup>ND</sup> DEFENDANT  
OBADIAH KAMAU ..... 3<sup>RD</sup> DEFENDANT  
MOHAMED ALAMBO ..... 4<sup>TH</sup> DEFENDANT**

**AS CONSOLIDATED WITH**

**ENVIRONMENT AND LAND CASE 128 OF 2017**

**BETWEEN**

**MOHAMED ALAMBO ..... 1<sup>ST</sup> PLAINTIFF  
HARRIET OGOLA ..... 2<sup>ND</sup> PLAINTIFF  
FLORENCE WANYOIKE ..... 3<sup>RD</sup> PLAINTIFF  
CECILIA KANAKE ..... 4<sup>TH</sup> PLAINTIFF  
ISAAC MUTHAMA ..... 5<sup>TH</sup> PLAINTIFF  
LINUS ONGARO ..... 6<sup>TH</sup> PLAINTIFF**

**APPEARING ON THEIR OWN BEHALF AND ON BEHALF OF THE  
RESIDENTS OF NGOBIT/BAGAMOYO CLOSE/COURT**

**AND**



**THE SEVENTH DAY ADVENTIST CHURCH (EA) LTD ..... 1<sup>ST</sup> DEFENDANT**  
**THE PELICAN ENGINEERING & CONSTRUCTION CO**  
**LTD ..... 2<sup>ND</sup> DEFENDANT**  
**THE CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> DEFENDANT**  
**THE ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**AND**

**THE NATIONAL LAND COMMISSION ..... INTERESTED PARTY**  
**NAIROBI CITY COUNCIL ..... INTERESTED PARTY**

### **JUDGMENT**

1. On 12<sup>th</sup> July 2017, Justice Eboso issued an Order consolidating the suit ELC No. 112 of 2017 together with 128 of 2017. Vide the said Order suit ELC 112 of 2017 was made as the lead file.
2. In ELC 112 of 2017 the Plaintiff filed a plaint dated 16<sup>th</sup> February 2017 seeking for the following reliefs:-
  - i. A mandatory injunction restraining the Defendants either by themselves, their servants, agents, goons or otherwise howsoever, from entering upon, crossing, erecting structures upon or in any manner howsoever from interfering with the Plaintiff's possession, ownership and quiet enjoyment of the suit premises that is to say ALL THAT parcel of land known as NAIROBI/BLOCK 32/1226.
  - ii. The Defendants be held liable for the loss incurred to the tune of Kshs. 20,000/= when the goons took the five benches that the church had left on the premises.
  - iii. The Defendants be held liable for any losses in whatever that might be incurred in future in whatever manner as a result of any disruption of the activities of the Plaintiff on the plot.
3. The 1<sup>st</sup> to 4<sup>th</sup> Defendants filed ELC 128 of 2017 against the Plaintiff in ELC 112 of 2017 seeking for the following reliefs:-
  - i. A declaration that the suit property is and always has been public land.
  - ii. A declaration that the suit allotment of the suit property to the 2<sup>nd</sup> Defendant in ELC 128, Pelican Engineering Company was illegal, null and void.
  - iii. A declaration that the said Pelican Engineering Company was incapable of passing title to the 1<sup>st</sup> Defendant in ELC 128, the Seventh Day Adventist Church.
4. Both suits were contested by the Defendants.

#### **The case of Seventh Day Adventist Church E.A Ltd**

5. The Seventh Day Adventist Church E.A Limited shall be referred to as the Church for the purposes of these proceeding. It was their case that the Plaintiff purchased Title No. Nairobi Block32/1226 from Pelican Engineering and Construction Company Ltd on a willing seller willing buyer basis in 1998.



6. It was averred that they have not been able to develop the Plot because of disruptions by the residents who claimed that they had grabbed the said plot which claims according to them were false.
7. It was also averred that in the interest of peace, they filed a suit ELC No. 1068 of 2006 in which the Residents Association known as Greater Golf Course Welfare Association indicated that it had no interest in the plot and a Consent was entered into. Later the court adopted the Consent and the suit was settled.
8. However, some residents one of whom is the 4<sup>th</sup> Defendant, independent of the Residents Association, retained the services of Daly & Figgis Advocates. In the course of the hearing of the suit and before the Consent was adopted by the Court, the said advocates were given 60 days to put in documents on behalf of their clients. The period was extended beyond the 60 days but they were unable to file any documents.
9. It was also averred that just before the Consent was adopted by the Court, the residents referred the Church to the National Land Commission which has gave a decision in favour of the Church.
10. It was further averred that having been given ample time to put in their documents and having failed to do so, the Court finally adopted the Consent and the suit ELC 1068 of 2006 came to an end.
11. The Church averred that they had been accommodated by Kenya Railways Corporation [KRC] temporarily near the Forces Memorial Hospital and the accommodation came to an end on 3<sup>rd</sup> February 2017.
12. They took possession of the plot on 4<sup>th</sup> February 2017 and held its services on the ground. The 4<sup>th</sup> Defendant in company of a policeman in civilian clothes came to direct that the Church stops whatever it was doing and vacate the premises.
13. An exchange ensued between the 4<sup>th</sup> Defendant and the Counsel for the Plaintiff who had decided to attend church there. The 4<sup>th</sup> Defendant insisted that there was a directive from the Chief of the Area [2<sup>nd</sup> Defendant] for the Plaintiff not to carry out any development on the premises.
14. It was averred that on the fateful day, the plain clothes policeman issued threats but the Plaintiff stood its ground that anyone with a grievance should go to Court otherwise the Plaintiff would not stop its service.
15. It was also averred that prior to taking possession the Church obtained authority from Nairobi City County to put up a temporary structure on the Plot. On 5<sup>th</sup> February 2017 the Plaintiff's members cleared the bushes on the Plot. On 6<sup>th</sup> February 2017 the Church was set to level the ground in preparation for putting up the temporary structure.
16. It was stated that on 6<sup>th</sup> February 2017 at about 10:00a.m, the Member of the County Assembly [MCA] [1<sup>st</sup> Defendant] for the Golf Ward Area came accompanied by over fifty people [goons] and instructed them to disrupt the activities of the church: they took 5 church benches that were on the plot, beat up the seven [7] security guards [including the supervisor] the Church had hired from Radar Security Company to guard the plot.
17. The goons took the supervisor's phone. Later one of the security guards approached some goons and they allowed him to take the uniforms for the night guards and personal items that the guards had left behind in a bid to save their lives.
18. It was also stated that after scattering the guards, the 1<sup>st</sup> Defendant in company of the 3<sup>rd</sup> Defendant paid the goons publicly without hiding.



19. According to the Plaintiff, the matter was reported at Capital Hill Police Station under ref OB 34/6/2/2017 because the 1<sup>st</sup> Defendant and the 3<sup>rd</sup> Defendant had taken the law into their own hands. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants were abusing their public positions and authority.
20. During trial, six witnesses testified on their behalf. PW1 - Joash Abayo Onchacha adopted and relied on his witness statement dated 16<sup>th</sup> February 2017 in his evidence in chief.
21. It was his testimony that the Plaintiff purchased the property from Pelican Engineering Construction Company Limited in 1998. Due diligence was done and there was nothing showing that the same was a public utility. He also stated that the plot was not fenced at that time. They later started developing the same before they were stopped by some residents who were claiming that it was public land.
22. When cross-examined by Learned Counsel Ms. Jemator, he stated that he was not a party to the initial transaction that led to the acquisition of the property. The property was purchased in the year 1998 for a sum of Kshs. 6 Million with an intention of building a church.
23. On further cross-examination, he also stated that Block 32 is part of Golf Course. Due diligence was done before purchase, he did not have a map for Block 32/1226. He also did not have a search before court. He did not know when the land was surveyed.
24. On cross-examination by learned Counsel Mr. Onyango, he stated that he is an elder of the Church and the Church is the owner of the property. The approval that was granted was indicated as "Public Building - School." The National Land Commission had given a decision in favour of the Church. There was a consent which was dated 30<sup>th</sup> August 2016 between the Church and other individuals. He also stated that Golf Course Welfare Association was not a party to this case. The Plaintiff took possession of the property on 4<sup>th</sup> February 2017. He also stated that the facility is to be used for public use and the Church and Nursery School are for public use.
25. When cross-examined by learned Counsel Ms. Kerubo, he stated that he does not know the area Chief.
26. When cross-examined by learned Counsel Ms. Mumbi, he stated that due diligence was done prior to purchase and there were no issues with the property. He also stated that there was consent to transfer from the Commissioner of Lands and hence the government was a party to the transfer.
27. On re-examination, he stated that he had filed a copy of the search in the Plaintiff's bundle of documents before court. He also stated that the Church was denied access to the suit property by one of the Defendants. He did not sign the transfer because there was someone else authorized to do so. The Plaintiff's had obtained all the necessary approvals prior to commencing any construction on the property.
28. Silas Ojiambo Okelo testified as PW2. He stated that he works at Radar Security Limited which had been engaged by the Church to provide security on 4<sup>th</sup> February 2017. He adopted and relied on his witness statement dated 4<sup>th</sup> March 2020 in his evidence in chief.
29. Upon cross-examination by Learned Counsel Ms. Kiambiti, he stated that there were 4 guards on 4<sup>th</sup> February 2017 and 6 guards on 6<sup>th</sup> February 2017 at the property. It was his testimony that he was attacked on 6<sup>th</sup> February 2017. He was attacked by a group of about 50 people. The area MCA was one of them.
30. On cross-examination by Learned Counsel Mr. Onyango, he stated that he did not receive any ownership documents of the property when they were engaged by the Plaintiff even though the property belongs to the church. He also stated that he was not aware of any criminal case instituted in



- relation to the incident. He also stated that he is not aware that the National Land Commission had even stated that the property was public land.
31. When re-examined, he stated that they were attacked by over 50 people, the guards ran away for their safety. The incident was reported at Capitol Hill Police Station.
  32. Kibagendi Momanyi Job testified as PW3. He adopted and relied on his statement dated 16<sup>th</sup> February 2017 in his evidence in chief.
  33. When cross-examined by Mr. Onyango Advocate he stated that the school is a private school. He also stated that the National Land Commission had stated that the land was a public open space.
  34. When cross-examined by Learned Counsel Ms. Kiambati he stated that he was present on 4<sup>th</sup> February 2017 at the suit property. He also stated that he was not familiar with the history of the suit property. He also stated that the Church had the necessary approvals for construction of the school on the said property.
  35. When cross-examined by Learned Counsel Ms. Kerubo, he stated that he knew the area Chief and he could not have possibly resolved the dispute. He also stated that the Church had started by clearing the property when they were stopped by the residents.
  36. When re-examined, he stated that the service that was conducted at the Church on 4<sup>th</sup> February 2017 was open to all and equally the school that was to be managed by the Church was equally open to all.
  37. On further cross-examination he stated that the goons who attacked them were brought by the area MCA.
  38. Kerosi Elkana Sika testified as PW4. He stated that he was the Treasurer of the Church. He adopted and relied on his statement dated 6<sup>th</sup> October 2021 in his evidence in chief.
  39. On cross-examination by Learned Counsel Ms. Onyango he stated that the property was bought in 1998 for Kshs. 6,000,000/= The same was bought from Pelican Company. Due diligence was done before purchase and the title was confirmed to be free from any encumbrances. He also stated that the earlier case No. 1068 of 2006 was withdrawn. The said case did not fully settle the matter. He also stated that the National Land Commission agreed in favour of the Church.
  40. On cross-examination by learned Counsel Mr. Motari he stated that the land was not reserved for any public use. The complaint to Ndungu report was made by Bagamoyo Ngobit Close residents. The Ndungu report never made any finding that the property was set aside for public use. The title was never revoked by National Land Commission.
  41. On cross-examination by Learned Counsel Ms. Mumbi he stated that he was involved in the transaction. Due diligence was done before purchase. The title was clean and there was no indication that the land had been set aside as public land.
  42. When cross-examined by Learned Counsel Ms. Kiambati, he stated that in case No. 1068 of 2006, the Defendants had been listed as members of the Greater Golf Course Welfare Association. An amended plaint had been filed removing the names of Mr. Natabona and Mr. Itere. The two were not listed in the Consent.
  43. He also stated on further cross-examination that the property was vacant at the time of purchase and they had visited the site to confirm the same.



44. When re-examined, he stated that the land was purchased in 1998 and the Church took some time before it could develop the same. He also stated that there was an extension of use obtained and it had some conditions which were all fulfilled.
45. Esther Nyakio Ndwiga testified as PW5. She stated that she is an Advocate of the High Court. She relied on her statement dated 14<sup>th</sup> November 2017 in her evidence in chief. It was his testimony that she was engaged to act for the Church in the transfer. She drafted the transfer and also did due diligence.
46. It was also her testimony that if the property had any issues, she would not have advised the Church to proceed with the transaction. According to her, the property was clean and free from any encumbrances.
47. When cross-examined by Learned Counsel Mr. Richu she stated that she did not personally visit the land but she is aware of its location.
48. On cross-examination by Learned Counsel Mr. Onyango, she stated that she is aware of the procedure for transfer of land. She also stated that she did due diligence before purchase. She also stated that she had not produced a copy of the search before court. She further stated that she had not interacted with the Ndungu Land Report.
49. On cross-examination by Learned Counsel Mr. Motari, she stated that she was instructed to act for the Church during the transaction. She also stated that she was satisfied that Pelican was properly allocated the land before purchase. There were no encumbrances on the title. The Ndungu Report was published in June 2004.
50. When cross-examined by Learned Counsel Ms. Jemator, she stated that she conducted due diligence. She physically visited the Land Registry and perused the correspondence file. She also stated that she never visited the property. She also stated that she has not filed the P.D.P in court though the property had been surveyed.
51. When re-examined, she stated that there was no indication on the correspondence file that the property had any issues. She also stated that she had seen the survey plan and the P.D.P.
52. The last witness to testify on behalf of the church was Pastor Kennedy Daniel Onchara. He testified as PW6. He relied and adopted his witness statement dated 4<sup>th</sup> March 2020 in his evidence in chief. It was his testimony that he has served as a Pastor since 1<sup>st</sup> January 1999. The Church currently owns the property.
53. On cross-examination by Learned Counsel Mr. Richu he stated that he was not involved at the time of purchase of the property.
54. Upon cross-examination by Mr. Onyango Learned Counsel, he stated that he was aware of the previous case 1068 of 206 wherein a consent was recorded by the parties. He also stated that there is no permanent structure on the land.
55. When cross-examined by Learned Counsel Mr. Motari, he stated that he is aware that the church has title to the land.
56. On cross-examination by Learned Counsel Ms. Jemator, he stated that there was a change of use which sought to have a nursery school and houses for the workers. It also had a church building.
57. He also stated that the National Land Commission letter dated 27<sup>th</sup> October 2016 could not be read in isolation with other documents. It was stated that the Church has been allowed to retain the plot and allowed its nursery school to be opened to the public.



58. Upon re-examination, he stated that the allotment letter did not say anything about open spaces. The property was vacant at the time of purchase.

**The case of Mohammed Alambo & Others/Residents of Ngobit/Bagamoyo Close/Court situate within Golf Course Plot 1**

59. These were the Plaintiffs in ELC No. 128 of 2017.

60. It was their case that following the purported acquisition by the Church of the suit property the Church filed suit against an association going by the name “Greater Golf Course Welfare Association” on 6<sup>th</sup> October 2006 on the alleged basis that the said association was interfering with its use and occupation of the suit property.

61. The mentioned suit was HCCC No. 1068 of 2006 – The Seventh Day Adventist [East Africa] Limited v Greater Golf Course Welfare Association [“the SDA – Vs- Golf Course Association Suit”].

62. In the suit the, 1<sup>st</sup> Defendant claimed in its plaint [as amended] that the Residents of Bagamoyo Court, to wit: Plaintiffs in this present suit, were members of the Greater Golf Course Welfare Association.

63. The above mentioned allegation was false and it was so stated by even the Defendants in the SDA v Golf Course Association Suit.

64. It was stated that the residents of Bagamoyo Court have never been at any one time members of the Greater Golf Course Welfare Association. The said suit was fully compromised by way of a consent entered into between the parties to the said suit on 21<sup>st</sup> December 2015.

65. As per the terms of the Consent the Defendants in the SDA v Golf Course Association suit stated that they had no interest over the suit property and as a result thereof the Plaintiff therein The Seventh Day Adventist [East Africa] Limited – withdrew the suit.

66. It was averred that following the entering into the Consent as above mentioned the Church herein sought to enter onto the suit property on the alleged basis that the Residents of Bagamoyo Court purportedly consented [through the Consent] to the alleged fact that they have no interest over the suit property.

67. It was stated that the Residents of Bagamoyo Court never consented nor did they agree that they do not have an interest over the suit property.

68. It was also stated that before the suit was withdrawn the Residents of Bagamoyo Court sought to be substituted in place of the Defendants in the said SDA v Golf Course Association suit.

69. It was further stated that on or about 20.2.2017, the Church came to the suit property and set about erecting structures on it.

70. According to them, the Suit Property is public land. Following a Petition filed by them to the National Land Commission, the Commission affirmed the public nature status of the suit property.

71. It was further stated that pursuant to the above mentioned letter from the Commission herein, the Chief Land Registrar went ahead and registered a restriction against the title of the Suit Property.

72. It was also averred that the suit property has also been expressly mentioned in the Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land [“the Ndungu Land Report”].



73. Nairobi City County, had vide a letter dated 16.2.2017, revoked all authorization granted to the Church in respect of planned construction works on the property.
74. The Chief of the location where the Suit Property is, to wit: Golf Course Location had also condemned the activities of the 1<sup>st</sup> Church vis-à-vis the suit property in a letter dated 27.01.2017.
75. It was further averred that despite the ownership and possession of the suit property by the Church and the construction thereon being the subject of a clear and unequivocal controversy/dispute the Church defiantly continued to construct on the same.
76. It was also stated that suit property serves as a recreational ground for not only the residents but also the residents of the greater Golf Course, Woodley and Kenyatta areas and as such and the residents of the Golf course, Woodley and Kenyatta areas and indeed the wider general public and their progeny thereof face the real and palpable risk of being unfairly and illegally deprived of land that is constitutionally recognized as theirs.
77. Mohammed Alambo testified as DW1. He stated that he is a resident of the area. He adopted and relied on his witness statement dated 23<sup>rd</sup> April 2018 in his evidence in chief. He stated that he has been a resident since 2004.
78. It was his testimony that the suit parcel had been set aside for use as a playground before it was mysteriously acquired by a private firm which later sold it to the Church.
79. He also stated that there were several attempts to try and resolve the issue but they were unsuccessful. They later lodged a complaint to the National Land Commission and the then City Council of Nairobi.
80. In respect to the case of 1068 of 2006, he stated that the same did not involve the residents of the area.
81. When cross-examined by Learned Counsel Kitonga for the Church, he stated that when he moved into the Estate he was not aware that the Church owned the property. He became aware of case 1068 of 2006 just before the consent was filed. They did not raise any objection on the consent because they were advised to file their own suit. He also stated that the County had recommended that the land be used to set up a nursery school for the benefit and use of the public.
82. When asked about the letter of allotment, he stated that the same referred to an “unsurveyed plot” but did not talk about an open space. He had not seen any document showing that the land was a public utility plot.
83. On cross-examination by Learned Counsel Richu, he stated that the land was fraudulently transferred and acquired. The case had been brought on behalf of the residents. No action had been taken to acquire the land by the government. The land had been set aside for public use and was never available for allocation.
84. On cross-examination by Learned Counsel Mr. Motari, he stated that he is the Chairman of Ngobit Bagamoyo Court. He was not given any documents showing that the property is a public utility. National Land Commission had not made a recommendation that the title be revoked. National Land Commission had stated that the land should remain within the church.
85. When re-examined, he stated that when they attempted to join the proceedings in 1068 of 2006, they discovered that a consent had already been filed. The effect of the said consent was the withdrawal of the suit. The Defendants who had signed the said consent were not residents of their estate. National Land Commission adopted the said consent.



86. He also stated in re-examination that National Land Commission had confirmed that the land was public land and not available for allocation.

#### **The case of Pelican Engineering & Construction Co. Ltd**

87. It was their case that it was lawfully allotted the suit property on 16<sup>th</sup> March, 1992. It complied with the requirements for allotment and on 17<sup>th</sup> September 1992, it was issued with a Certificate of lease. Further, it sold the suit property to the Church on 24<sup>th</sup> July 1998 and transfer was effected in favour of the Church.
88. Eliud Njanji Bachia testified on their behalf as DW3. He adopted his witness statement sworn on 13<sup>th</sup> December 2023. It was his testimony that on 16<sup>th</sup> March, 1992 all that property known as Nairobi/Block 32/1226 the suit property was legally and properly allotted to the them by the Commissioner of Lands. That by an agreement for sale dated 24<sup>th</sup> July 1998 they sold the property to the Church. Consequently, transfer was effected in favour of the Church Defendant and a title issued.
89. He testified that the suit property had neither been set aside as public land nor as a playground as alleged by the residents. He testified that the sale was done legally and procedurally and confirmed that the Church was the rightful owner of the suit property.
90. During cross-examination, He stated that they sold the property to the Church. A consideration was paid for the same. There was compliance with the requirements for allotment including payment of Kshs. 322,863.35 being payment for among others, standard premium and annual rent.
91. When re-examined, he stated that the company Pelican would not have required consent from any person to transfer the property. He also stated that Pelican lawfully acquired the property and complied with all the conditions.

#### **The case of the Chief Land Registrar and the Attorney General and G. Ngari former area Chief**

92. G. Ngari was brought to this suit in his capacity as the area Chief. It was averred that there are no clear or specific substantive allegations and claim made against him. There are no prayers sought against him. The Church was not able to prove by evidence any wrong doing against him. What was produced was a letter dated 27<sup>th</sup> January 2017 advising the Church to stop developments until the ownership dispute was resolved.
93. The Chief Land Registrar and the Attorney General also fled a defence dated 3<sup>rd</sup> July 2017. It was their case that the suit land was an open space without any reservation hence remained un alienated government land that was available for allocation. It was also their case that the Church obtained approval for variation of terms for public purpose that entailed the user to a nursery school and religious activities hence making it public purposes.
94. During the hearing the 3<sup>rd</sup> and 4<sup>th</sup> Defendants called the following witnesses:-
- i. A surveyor from Director of Survey – Teddy Mulusa
  - ii. Assistant Director Land Administration – Patroba Omollo
  - iii. Principal Land Registrar – Mark W. Muigai
95. Teddy Mulusa produced his report dated 6<sup>th</sup> November 2024 together with its anenxtures. He testified that records held by Survey of Kenya indicate that the suit parcel is a sub-division of L.R No. 209/8259 [Golf Course Estate]. Survey of the suit parcel was submitted in the year 1974 and due to the large



number of parcels in the sub-division scheme, three survey plans were registered being F/R No. 125/78 – 80 and registered on computations file No. 15341. The resultant parcel number were retained as per the Approved Development Plan and subsequently the RIM since the area was under RLA. It was his evidence that the acreage of NRB/BLOCK 32/210 was 0.5112 Ha.

96. He further testified that a new grant was presented to the Director of Survey in the year 1992. Survey was duly processed, approved and authenticated and subsequently, the RIM was amended. In support of the new grant, he produced a letter of allotment in favour of Pelican Engineering & Construction Co. Ltd and an approved Development Plan. These are the documents forwarded to survey by the Commissioner of Lands. He testified that the acreage was 0.4612 Ha. It was also his testimony that there was change of user and that for land to be allocated by the Commissioner of Lands, it must be public land. The Commissioner could not allocate land that was not public land.
97. Patroba Omollo, Assistant Director Land Administration, appeared in Court and testified that he was not able to obtain records in respect of the suit parcel.
98. The Principal Land Registrar, Mark W. Muigai who testified as follows that there is clear allocation and compliance with all prerequisites on allocation of the land that was government land as per the existing regime then prevailing and there is a letter of allotment allocating the land to Pelican Engineering who sold the same to Seventh Day Adventist Church East Africa Union whom have put to use the said land for church and nursery school.
99. He further stated that there were several correspondences from the National Land Commission and the Nairobi City Council who confirmed that the suit land has been approved to be regular in the name of the Seventh Day Adventists Church East Africa Union.

#### **The case of the Residents of Ngoloit/Bagamoyo Close/Court**

100. Florence Wanyoike testified on their behalf. She stated that she has lived at Bagamoyo Estate since 1995 and owns property in the area upon which she has a title registered in her name.
101. It was her testimony that the dispute has been in existence for sometime now.
102. She also stated that she was aware that the land had been set aside for recreation but only realized later that it had been acquired for other use. She also stated that the same had been listed in Ndungu report as a public utility.
103. On cross-examination by Learned Counsel Kitonga she stated that the association came into operation in 2015 but she moved into the estate in 1995.
104. She also stated that she was aware of the previous suit ELC 1068 of 2006 but she was not a party to the same.
105. Upon cross-examination by Learned Counsel Mr. Richu she stated that she is a resident of the area. She also stated that according to her the land was acquired illegally.
106. On cross-examination by Learned Counsel Mr. Motari, she stated that she has not been denied access to the site. She was not part to the consent dated 30<sup>th</sup> August 2016.
107. When re-examined, she stated that she does not know how property No. 1226 came into existence. She is not a member of Greater Golf Course. She was not a party to the consent recorded in the previous case.
108. Kimani Gachuhi, also testified on their behalf and he relied on his witness statement dated 14<sup>th</sup> September 2020 in his evidence in chief.



109. When cross-examined by Learned Counsel Ms. Kitonga, he stated that he became a member of Ngobit/ Bagamoyo in 2016. He also stated that they were not part of the consent recorded in the previous case.
110. When cross-examined by Learned Counsel Mr. Richu, he stated that he had not indicated in his witness statement that the land had been erroneously transferred.
111. On cross-examination by Learned Counsel Mr. Motari, he stated that his statement does not state that the land was illegally acquired. The land was being used as a playground.

### **The submissions of Seventh Day Adventist Church E.A Limited**

112. They submitted on the following issues:-
  - i. Whether the church was a bonafide purchaser for value without notice.
  - ii. Challenge on the church's title and what were the outcomes.
  - iii. Whether the suit land is public land.
113. On their first issue, it was submitted that the church is a bonafide purchaser for value without notice. The church did due diligence before purchase and was satisfied that the property was free from any defect on its title. Reliance was placed on several cases including Joseph Kinyanjui Wanjiru v Silas Muriithi Nguchu & 2 Others [2020] eKLR, Dina Management Limited v County Government of Mombasa & 5 Others Petition 8 [E010 of 2021] [2023] KESC 30 KLR among others.
114. On their second issue, it was argued that when the Plaintiff started developing the suit property sometime in the year 2006, the residents of Ngobit Bagamoyo Court did not take their claim to court instead, they chose to take the law in their own hands and disrupt the development. In an effort to have the matter sorted out peacefully, the Plaintiff filed a suit ELC 1068 of 2006 in which it sued two individuals by the names Sammy Itemere and Stephen P. Natabona who appeared to be representatives of Ngobit Bagamoyo residents. They had stated that they were members of Greater Golf Course Welfare Association. The Plaintiff amended its plaint and substituted the two said individuals with the Association. In its defence the Association indicated that it had no interest in the suit property.
115. This ended up in the Plaintiff and the Association entering into a consent dated 17<sup>th</sup> December 2015 which was adopted by the court on 30<sup>th</sup> August 2016 the reason being that the residents of Ngobit Bagamoyo had appointed Daly & Figgis Advocates to represent them and the court chose to give them time to put in their papers but they failed to do so. The consent remains unchallenged and the residents failed to defend their claim in court at the time. ELC 1068 of 2006 was closed and the Plaintiff took possession of the suit property on 4<sup>th</sup> November 2017.
116. The residents again took the law into their hands and through the MCA of the area at the time, tried to use goons in order to force the Plaintiff to vacate the suit property. In accordance with the court order dated 14<sup>th</sup> September 2016 the Plaintiff was at liberty to take separate proceedings against anyone who denied the Plaintiff access to the suit property. Consequently, the Plaintiff filed ELC 112 of 2017 against the MCA David Kairu Njoroge, MCA's assistant – Obadiah Kamau, Chief of the Area – G. Ngari and the Chairman of Ngobit Bagamoyo residents – Mohamed Alambo. Prior to the filings of ELC 1068 of 2006, the residents of Ngobit Bagamoyo filed their claim with Ndungu Land Commission which commission was mandated to look into illegal/irregular allocation of public land. The Ndungu Land Commission recorded the source of the complaint as having been filed by Bagamoyo Ngobit Close residents. The property concerned was Nairobi/Block 32/210 and the planned user was not indicated. The summary of the resident's complaint was noted in the last



column. Other than the Commission noting the complaint, there was no finding by the Ndungu Land Commission where the title held by the Plaintiff was challenged.

117. It was also submitted that after the Plaintiff presented its case before the National Lands Commission, its title was not reversed by the National Land Commission. The Plaintiff is still the registered owner of the suit property as.
118. It was also submitted that the Residents reported the matter to Ndungu Lands Commission in the year 2004 and there were no findings by the said Commission that the title held by the Plaintiff be cancelled or reversed on account of being a Public Utility Plot.
119. The court was urged to grant the Church the prayers sought in its Plaintiff.

### **The submissions of the Plaintiffs in ELC 128 of 2018**

120. They submitted on the following issues:-
  - i. Whether the suit property is public land.
  - ii. Whether the suit property was illegally allotted to the Pelican Engineering Constructors and subsequently illegally transferred to the Plaintiff herein.
  - iii. Whether the Plaintiff in ELC 128 of 2017 are entitled to the prayers sought.
121. It was submitted that the suit property was initially an open field that was used as a play ground by the children of the residents Woodley, Kenyatta and Golf Course area. The property was not registered to any private entity making it public land that was meant for public utility as per Article 62 of *the Constitution* of Kenya, 2010 above. They made several reports to all stakeholders involved in their fight to reclaim the property including a Petition to the National Land Commission which is the government custodian of all public land in the republic and vide a letter dated the 28<sup>th</sup> of March 2016 the National Land Commission wrote to the Plaintiffs herein confirming that indeed the subject property now known as Nairobi/Block 32/1226 was an open space that was not available for any private use.
122. It was also submitted that the National Land Commission is established under Article 67 of *the Constitution* of Kenya, 2010 with the mandate to manage public land on behalf of both the County and the National Governments and this includes determining which land is public; the same having confirmed the status of the suit property as public land meant for public use, the Plaintiff and indeed any other person or entity cannot be heard to claim otherwise. The Plaintiff was invited by the NLC, vide the letter dated the 7<sup>th</sup> of March 2016 to make a representation of its position in response to the Petition by the Defendants herein.
123. It was argued that the National Land Commission, vide the letter dated the 29<sup>th</sup> of March 2016 directed the office of the Land Registrar to revert the suit property back to the public and register a restriction on the said title to prohibit any further dealings on the property by the Plaintiff and/or any other entities. The NLC directed the Plaintiff to surrender the title to the suit property for public use failure to which NLC would review the said title in compliance with Section 14 of the *National Land Commission Act* to revert the land back to the public. The Chief Land Registrar went ahead and indeed registered a restriction in line with the foregoing directions by the NCL.
124. The claim by the land registrars offices that the suit property was private land allocated to the Pelican Engineering Constructors, contradicting the records as confirmed by the NLC clearly indicates apparent bypass of proper channels of conversion of the said property from the initial public land that it was to what it is now claimed to be without the involvement of the NLC which is the mandated body.



125. The contraindications by the two government offices points to an issue of illegal acquisition of public land for private use and the same clearly undermines the integrity of the land management systems in the Republic of Kenya to the detriment of the public and particularly the residents of Bagamoyo for whom the subject property served in this case.
126. The suit property has also been severally mentioned in the Report of the Commission of Inquiry into the illegal/irregular allocation of Public Land.
127. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants have not shown any due process taken to convert the land from the public land that it was to private land to legalize the claim by the Plaintiff before this honourable court.
128. The Internal Memo addressed to the Commission of Lands confirms that the Nairobi City Commission indicated that the suit land was for development of a nursery school which rhymes with the public utility purpose that the property was for.
129. From the survey map Ref. Map/R.I.M 148/4, Nairobi Block32/1226 is an outlier from the numbering of neighbouring plots.
130. It was further submitted that the alleged allotment of the suit property to the Pelican Engineering Company was illegal and fraudulent in so far as the subject property was not available for allotment as the same had been set aside for the use of the public including the residents of the community around the suit property.
131. The Letter of Allotment dated the 16<sup>th</sup> of March, 1992 unlawfully grants to Pelican Engineering and Construction Company Limited an unsurveyed plot number Nairobi Block32/1229 which appropriation was irregular and illegal as it failed to adhere to the mandatory provisions of the Government Land Act.
132. The change of the suit land from Nairobi Block32/1229 to Nairobi Block32/1229 did not extinguish the 99 year lease to Alliance Development Company vide entry Number [1] of 1<sup>st</sup> November 1974 for a term of 99 years from 01.02.1973 which lease subsists to date.
133. The Pelican Engineering and Construction Limited, having no legal claim over the suit, could not have then transferred the same to the Plaintiff herein as they had no legitimate title to transfer.
134. The Plaintiff did not exercise due diligence when it purchased the said property by failing to trace its history from the mother title whereupon it would have noted the status of the property initially and that the same has never been procedurally converted to private land. The sale of the suit land was unlawful, null and void having been premised on a fraudulent allocation.
135. It was contended that the Plaintiff was not an innocent purchaser for value as depicted herein and it is apparent that it has participated in the illegal scheme to deprive the residents of Bagamoyo the suit property which is meant for public utility.
136. In respect to Suit No. 1068 of 2006, it was submitted that the Defendants in ELC 112 of 2017 were not party to ELC Case No. 1068 of 2006 which had four defendants lumped together as 2 defendants and did not therefore enter into any consent whatsoever as alleged by the Plaintiffs. The parties to the said suit were the Plaintiffs, the 2<sup>nd</sup> Defendant in ELC 128 and the Greater Gold Course Welfare which was added upon amendment of the same; the Bagamoyo community was never included in the case and hence did not participate in the making of the consent repeatedly referred to in this matter which resulted in the withdrawal of the said suit by the Plaintiff herein.



137. The Plaintiff then sought to enter possession of the suit property on the basis that the residents of Bagamoyo Court had allegedly consented to when they were not a party to the said suit and had not in any way consented to the Plaintiff taking possession of the property nor had they agreed that they did not have an interest in the suit property.
138. The Plaintiff cherry picked residents of the Greater Golf Course Area and filed a suit against them instead of suing the residents association. The residents of Bagamoyo Court, who are the Plaintiffs in ELC 128 have never been at any one time members of the Greater Golf Course Welfare Association.
139. In respect to the prayers sought, it was submitted that the Plaintiffs in ELC 128 who are the residents of Bagamoyo, seek for, inter alia:
  - a. A declaration that the purported transfer of the suit property from Pelican Engineering Construction Limited was illegal, null and void and incapable of ousting Section 143 of the Registered *Land Act*.
  - b. An order requiring the Land Registrar to rectify the Land Register by cancelling the Plaintiff in ELC 112 and have the suit property revert back to being public land under the Management of the National Land Commission.
  - c. A permanent injunction compelling the Plaintiff in ELC 112 to vacate the suit property and deliver vacant possession thereof to the 1<sup>st</sup> Interested Party.
140. The Plaintiffs in ELC 128 have demonstrated that the suit property was initially public land as confirmed by the National Land Commission and no due process was followed to convert such status to private land for the ownership of the Pelican Engineering Construction Limited.
141. There are no records of the cancellation of the lease to the 99 year lease to the Alliance Company that was involved in the development of the Greater Golf estate surrendered and set aside the suit property for public utility.
142. The court was urged to dismiss the Plaintiff's case in ELC 112 OF 2017 and grant the reliefs sought in ELC 128 of 2017.

### **The submissions of Pelican Engineering & Construction Company Limited**

143. They submitted on the following issues:-
  - a. Whether the allotment of the suit property to the 2<sup>nd</sup> Defendant was illegal?
  - b. Whether the 1<sup>st</sup> Defendant acquired a good title?
144. It was argued that at the time of being issued with an allotment letter for the suit property, the property was unalienated government land. They complied with the terms of the allotment letter including payment of Standard premium.
145. Citing the case of George Mutuma & another v Meru County Chief Executive Committee Member Department of Lands, Physical Planning housing, Urban Development & Public Works & another; Registered Trustees Ministry of Repentance & Holiness [Interested Party] [Petition E003 of 2024] [2024] it was submitted that the court observed that the Commissioner of Lands had the mandate to



allocate land on behalf of the County Council. Further that where an allottee met all the conditions of the allotment letter, it cannot be said that the land was irregularly allotted. The Court held as follows;

“The petitioners have produced a letter of allotment accompanied by a part development plan duly issued and approved by the Commissioner of Land. Under the defunct Government Lands Act, Section 117 of the retired Constitution, as read together with Section 53 of the Trust *Land Act*, the Commissioner of Lands had the mandate to alienate land on behalf of a county council. The essential documents required would include a request for a plot, inquiry of availability of the plot, letter of allotment, compliance thereof, part development plan beacons certificate, deed plans, and full council minutes.”

146. It was contended that prior to allotment, the suit property had not been set aside for any other purpose or allocated to any other person. The suit property was allotted as unsurveyed land for use as a residential property. Public land is used for public utility and not private use.
147. One of the special conditions under the allotment letter was that the 2<sup>nd</sup> Defendant develops the property. If the claim that the property was public land set aside for public utility were to be believed, then the Commissioner of Lands would not have required that the 2<sup>nd</sup> Defendant carries out development on the property of any residential buildings.
148. No evidence has been produced before this Court to demonstrate that the suit property was public land. The Ndung’u report at page 147 of the Plaintiff’s bundle does not indicate any planned user. Had the same been set aside for public utility, the same would have been very clear on the section for planned user.
149. On whether a good title was acquired; it was submitted that due process was followed in allocating the suit property to him by the Commissioner of Lands. The property was identified as available for allocation, the Commissioner determined and set term for the lease, the standard premium to be paid as Kshs. 260,000.00 annual rent as Kshs. 52,000.00. There were special conditions included in the allotment letter such as period for acceptance, requirement to develop the property among others. The 2<sup>nd</sup> Defendant applied and was issued with the allotment letter.
150. It was contended that an allotment letter has been held not to be capable of conferring an interest in land, being nothing more than an offer, awaiting the fulfilment of the conditions stipulated therein by the offeree. In order for an allotment letter to become operative, the allottee was required to comply with the conditions set out therein including the payment of stand premium and ground rent within the prescribed period as was held in *Mbau Saw Mills Ltd v Attorney General for and on behalf of the Commissioner of Lands] & 2 Others [2014] eKLR*.
151. It was further contended that upon being issued with the allotment letter, it complied with the requirements and/or conditions stipulated in the letter. It accepted the allotment and made payment of Kshs. 322,863.35 which was inclusive of the standard premium and annual rent.
152. It was also submitted that it applied for a Certificate of Lease. For a Certificate of Lease to be issued, a cadastral survey had to be conducted. The survey process precipitates the issuance of land reference numbers and finally the issuance of a certificate of lease. Reliance was placed on the case of *Nelson Kazungu Chai & 9 Others v Pwani University College [2014] eKLR* , where the court held as follows:

“It is only after the issuance of the letter of allotment, and the compliance of the terms therein, that a cadastral survey can be conducted for the purpose of issuance of a Certificate of Lease.”



153. It was contended that a survey was carried out. This position was confirmed by the land surveyor who stated that a new grant survey was done on the allocated number parcel number Nairobi/Block 32/1226. Having accepted the offer as stipulated in the letter of allotment and having met the required conditions in the letter of allotment, it acquired interest in the unsurveyed residential plot. It was issued with a certificate of lease as prima facie evidence of ownership of the suit property.
154. It was further submitted that the process for allocation of unalienated government land was followed. Further, it complied with all the requirements for allotment hence it had a good title. The title was not challenged at the time of sale and transfer to the Church and therefore the Church upon purchase of the suit property acquired a good title.
155. The court was urged to dismiss the Plaintiff's claim in ELC 128 of 2017 and grant the prayers sought in ELC 112 of 2017 with costs.

### **The submissions of the Attorney General**

156. The submissions were made on behalf of G. Ngari, the Chief Land Registrar and the Attorney General.
157. Their submissions were based on the following issues:
  - i. Whether land parcel number NRB/BLOCK 32/1226 [Originally LR. NO. NRB/BLOCK 32/210] is public land.
  - ii. Whether the Plaintiffs in ELC 128 of 2017 have proved the grounds to challenge the Plaintiff in ELC 112 of 2017 who is also the 1<sup>st</sup> Defendant's title set out under Section 26[1][a] and [b] of the *Land Registration Act*.
158. It was submitted that the National Land Commission upon receipt of a complaint from the residents reviewed the title to the suit land and found that the use of the suit land for church and nursery school had been approved by the county government of Nairobi then County Council of Nairobi and stated that the use of the suit land conforms with the use of public nature.
159. That further the National Land Commission vide letter dated 27<sup>th</sup> October 2016 upheld the suit land to be the property of the Seventh Day Adventist Church [East Africa Limited] and which shall be used for the use of religious and nursery school purpose. This decision has not been appealed by the Plaintiff in NRB ELC 128 of 2018 and hence it remains the true position.
160. It was further submitted that no evidence was provided to demonstrate that the letter of allotment was illegally and irregularly issued.

### **Analysis and Determination**

161. This court having considered the pleadings, evidence tendered and written submissions filed herein, proceeds to determine the suit on the following issues:-
  - i. Whether the suit parcel is public land.
  - ii. Whether the Church was a bonafide purchaser for value without notice.
  - iii. What are the appropriate reliefs to grant in respect to the consolidated cases.



**Issue No. [i]**

**Whether the Church is a bonafide purchaser for value without notice**

162. It was submitted by the Church that they were a bonafide purchaser for value without notice a position which was contested by the Residents but supported by Pelican Engineer Construction Co. Limited.
163. In Kenya, the question of whether a Defendant can become a bona fide purchaser for value of land with a riddled title is complex and highly dependent on the specific circumstances of the case and the interpretation of the law by the courts.
164. The Supreme Court's position in the case of *Dina Management Limited v County Government of Mombasa & 5 others* [2023] KESC 30 [KLR] adopted the Black's Law Dictionary 9th Edition's definition of a bona fide purchaser as;
- “one who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller's title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims.”
165. The definition of a bona fide purchaser is one who genuinely intends to purchase the property offered for sale and does not intend to acquire it wrongly. A bona fide purchaser may successfully rely on the bona fide doctrine if he proves that:
- i. He holds a certificate of Title.
  - ii. He purchased the Property in good faith;
  - iii. He had no knowledge of the fraud;
  - iv. The vendors had apparent valid title;
  - v. He purchased without notice of any fraud;
  - vi. He was not party to any fraud.
166. The Court of Appeal in *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR emphasized the duty of the holder of an impugned title in a claim such as the present one in the following words:
- “We state that when a registered proprietors' root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances, including any and all interests which need not be noted on the register”
167. For a party to successful plead and claim to have been an innocent purchaser for value, he or she must demonstrate the aforementioned factors.
168. In the instant case, PW4 Nyakio Ndwiga an Advocate of the High Court who did the transaction on behalf of the church testified that she did a search and found that the property was registered in the names of Pelican Engineering & Construction Co. Limited. She found that there were no encumbrances and the title was clean.



169. Eliud Njanji Bachia, a Director of Pelican equally testified and stated that they were the owners of the property before the same was sold to the church.
170. Wanderi Mark Muigai, the Chief Land Registrar equally testified and produced several documents being a green card, a transfer and a certificate of lease in the names of the church. It was also his testimony that the property was indicated as open space, the proprietor was free to use it for any purpose such as school, playground, church. No user was specified on the same. It was also his testimony that the green card shows the history of ownership of the suit property. The property was first owned by the Government of Kenya then allocated to Pelican on 7<sup>th</sup> July 1992 and later acquired by the church. The Commissioner of Lands was a party to the transfer of the property.
171. Upon analysis of the evidence tendered, it is evident that Pelican Engineering & Construction Co. Ltd upon being issued with an allotment letter, complied with the conditions stipulated in the letter, it accepted the allotment and made payment of Kshs. 322,863.35 which was inclusive of the standard premium and annual rent. It was also evident that survey was carried out and was allocated number parcel Nairobi/Block 32/1226. Thus the process for allocation of the land was duly followed. The Church therefore acquired a good title upon purchase. The property was not challenged at the time of sale and transfer to the Church.
172. In view of the foregoing, it is the finding of this court that church acquired good title and was a bonafide purchaser of the suit parcel for value without notice.

#### **Issue No. [ii]**

#### **Whether the suit parcel was public land**

173. The Residents challenged the acquisition of the property by the church on account of it being public land.
174. Public land in Kenya is defined by *the Constitution* and consists of all land not classified as private or community land. It is a national resource, held in trust for the people of Kenya by the National Land Commission [NLC] for the benefit of the public. The management and administration of public land are governed by *the Constitution*, the *Land Act*, 2012, and the *Community Land Act*, 2016, with the NLC responsible for its protection and proper use.
175. Teddy Mulusa, the Principal Land Surveyor he testified that the subdivision survey was submitted to the Survey of Kenya in 1974 by a surveyor named A. T Ongara. There was a development plan attached. The suit property changed numbers from the initial Nairobi/Block 32/210 to Nairobi/Block 32/1226 because a 5 meters road was allocated on the land.
176. It was his testimony that the numbering is not sequential. This is because there were other lands within the block, that were subdivided meaning that this land could not become sequential. According to the records, three survey plans were registered: FR 125/78; FR 125/79; and FR 125/80.
177. A communication file No. 15342 was opened at the Survey of Kenya. Registration was under the *Land Registration Act*. It was deemed necessary to retain the parcel numbers as submitted by the surveyor via the approved plan hence Parcel 32/210 is currently on the survey map and depicted on survey plan 125/79 measuring approximately 0.5112Ha.
178. According to the records, Nairobi/Block 32/1226 resulted from a new grant survey of Nairobi/Block 210. It was registered on the plan no FR/226/188 and File No. 227/661. The survey was submitted



by a Surveyor registered B. M. Okumu in 1992 and approved on 11<sup>th</sup> August 1992. A notification of approval was indicated on File No. 7/137/Vol.20.

179. He further testified that there was a Registry Index Map for the parcel of land. It was amended and the new number indicated. Subsequently, a letter of allotment REF 2587/9/279 dated 16<sup>th</sup> March 1992 from the Commissioner for Lands was given to Pelican Engineering P. O. Box 187551, the 2<sup>nd</sup> Defendant herein. The development plan was approved for residential use.
180. In the analysis of the evidence that was tendered during trial, it is worth noting that from the allotment letter that was tendered in evidence, the suit property was allotted as unsurveyed land and it was not for any public utility. The same was not public land prior to its allotment. The property was unalienated government land that was available for allocation.
181. The extract of the Ndungu report that was produced during trial did not indicate any planned user neither did it demonstrate that the same had been set aside for public utility.
182. No evidence was tendered to confirm that the suit parcel was public land. The National Land Commission upon receipt of a complaint from the residents reviewed the title and vide the letter dated 27<sup>th</sup> October 2016 which was also produced in evidence confirmed the same to be the property of the Church to be used for religious and nursery school purpose. This position was never controverted.
183. In view of the foregoing it is the finding of this court that there was no evidence tendered to confirm that indeed the suit parcel was a public utility.

#### **Issue No. [iii]**

#### **What are the appropriate reliefs to grant herein**

184. The Plaintiffs in ELC 112/2017 sought inter alia an order of a permanent injunction restraining the Defendants from interfering with its quiet possession, enjoyment and ownership of the suit parcel while the Plaintiffs in ELC No. 128 of 2017 sought the following reliefs:-
  - a. A declaration that the suit property is and always has been public land.
  - b. A declaration that the allotment of the same to Pelican Engineering Company was illegal, null and void.
  - c. A declaration that Pelican Engineering was incapable of passing title to the church.
  - d. A declaration that the transfer of the suit property to the church was illegal, null and void.
  - e. An order requiring the Land Registrar, Interested Party to cancel the church from the register and having the suit revert to being public land under the management of the Interested Party and the National Land Commission.
  - f. A permanent injunction compelling the church to vacate the property and deliver vacant possession.
185. It is trite law that It is trite law that whoever alleges must proof. Section 107 [1] of the *Evidence Act*, Cap 80 Laws of Kenya provides that:

“Whoever desires any court to give judgment as to any legal right or liability dependant on the existence of facts which he asserts must prove that those facts exist.”



On evidentiary burden of proof, Sections 109 and 112 of the *Evidence Act* provide as follows:

“109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of the fact shall lie on any particular person.”

112. in civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving the fact is upon him.”

186. In the instant case, the residents were unable to tender any evidence that could warrant the court to cancel the title owned by the Church. The court in pronouncing itself on the issues outlined did not find any fault in the acquisition of the suit property by the Church.

187. In view of the foregoing, it is the finding of this court that the Church has proved its case and demonstrated that it rightfully acquired the suit parcel and it is the bonafide owner and as such it is entitled to the reliefs sought. It therefore follows that this court shall proceed to dismiss the Plaintiff's claim in ELC 128 of 2017 and grant the prayers sought in ELC 112 of 2017.

188. In respect to costs, this court directs each party to bear own costs of the consolidated suits.

### **Final Orders**

189. In conclusion, this court proceeds to grant the following final orders in respect to the consolidated cases: -

- i. A mandatory injunction is hereby issued restraining the Defendants either by themselves, their servants, agents or howsoever from entering upon, erecting structures or interfering in any manner whatsoever with the Plaintiff in ELC No. 112 of 2017 possession, ownership and quiet enjoyment of the suit premises Nairobi/Block 32/1226.
- ii. The Plaintiffs suit in ELC No. 128 of 2017 be and is hereby dismissed.
- iii. Any other relief not expressly granted is deemed to be declined.
- iv. Each party to bear own costs of the consolidated suits.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 16<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**E. K. WABWOTO**

**JUDGE**

In the presence of:-

Ms. Kitonga for the Plaintiff in ELC 112 of 2017.

Mr. Mumbi for 2<sup>nd</sup> Defendant in ELC 128 of 2017.

Mr. Motari for 3<sup>rd</sup> and 4<sup>th</sup> Defendants in ELC 128 of 2017 and 2<sup>nd</sup> Defendant in ELC 112 of 2017.

No appearance for other parties.

Court Assistant: Mary Ngoira.

