



**Salamba & 2 others (Suing as Trustees of Pentecostal Assemblies of God (P.A.G)) v Misigo & 3 others (Suing as Trustees of Calvary Pentecostal Assemblies of God) (Environment and Land Case 612 of 2016) [2025] KEELC 7864 (KLR) (6 November 2025) (Judgment)**

Neutral citation: [2025] KEELC 7864 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE 612 OF 2016  
AA OMOLLO, J  
NOVEMBER 6, 2025**

**BETWEEN**

**ELKANA SALAMBA ..... 1<sup>ST</sup> PLAINTIFF  
JOSHUA KIMKEMEI ..... 2<sup>ND</sup> PLAINTIFF  
JOTHAM MATIVA ..... 3<sup>RD</sup> PLAINTIFF  
SUING AS TRUSTEES OF PENTECOSTAL ASSEMBLIES OF GOD (P.A.G)**

**AND**

**ALLAN MISIGO ..... 1<sup>ST</sup> DEFENDANT  
KEN KEYA ..... 2<sup>ND</sup> DEFENDANT  
GEOFFREY RODENYO ..... 3<sup>RD</sup> DEFENDANT  
VINCENT MANANI WENDO ..... 4<sup>TH</sup> DEFENDANT  
SUING AS TRUSTEES OF CALVARY PENTECOSTAL ASSEMBLIES OF GOD**

**JUDGMENT**

1. The Plaintiff filed a plaint dated 8<sup>th</sup> June 2016, amended on 13 5 2024, against the Defendants seeking the following prayers;
  - a. An order of injunction restraining the Defendants whether by themselves, their agents, servants, employees, invitees and or otherwise whomsoever from entering upon or trespassing, constructing or continuing with the construction of any structures, offering for sale, selling, disposing of, charging, sub-dividing, dealing, alienating, occupying, managing, letting or otherwise using, residing and remaining or representing any person otherwise using, residing



and remaining or representing any person and or interfering with LR No.23240 (JR No.124997) situate in the city of Nairobi.

- b. An order declaring that L.R No.23240 belongs to the Plaintiffs.
  - c. General damages.
  - d. Costs of this suit.
2. The Plaintiff averred that at all material times they are the legitimate registered trustees of Pentecostal Assemblies of God Kangemi, which owns the property LR No. 23240 Nairobi, hereafter referred to as the suit property. They plead that the suit property was given to them by the Government of Kenya on 1<sup>st</sup> January 1998. A deed plan of the suit property is registered with the Survey of Kenya under No. 217395, and it houses a church and operates a nursery school.
  3. They stated that on 28<sup>th</sup> May 2016, the Defendants without their authority descended on and occupied part of the suit property constructing temporary structures. When the defendants were confronted, they became violent and brought goons who chased the Plaintiffs away from the suit property.
  4. The Plaintiffs stated that they reported to the area chief who said that he cannot help them without a court order. That the Defendants' acts are intended to deprive the Plaintiff of the right to the suit property, noting that they have no title to the suit property.
  5. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants filed a joint statement of defence dated 21<sup>st</sup> June 2016 denying the Plaintiffs claim. The 1<sup>st</sup> -3<sup>rd</sup> Defendants stated that the land they occupy is not part of the suit property and that at no time did they construct any temporary structures on it as alleged. Further, they demanded that the Plaintiff confirm that the space the Defendants occupied, together with 500 other people, was part of the suit property. Still, the Plaintiffs have refused to bring a surveyor to re-establish the boundary to their land. These Defendants denied attacking the Plaintiffs or hiring goons to chase them away or any way interfering with their property rights to the suit property.
  6. The 1<sup>st</sup> and 4<sup>th</sup> Defendants filed a statement of defence dated 26<sup>th</sup> September 2022 and amended on 12<sup>th</sup> June 2024. The 1<sup>st</sup> and 4<sup>th</sup> Defendants contend that both the Plaintiff and itself are members of the same Society and adhere to the tenets and constitution of the Pentecostal Assemblies of God and that the suit is premature, having not exhausted its arbitration as per their constitution. Further, they contend that the Trustees of the Plaintiff have not been authorized to sue or to swear any affidavit on their behalf.

#### **Evidence presented:**

7. Rev Charles Adenya testified on behalf of the Plaintiff as PW1. He adopted his statement dated 23 5 2017 as his evidence in chief and produced the documents filed in the list dated 3 10 2018 as PExh1-17. He stated that he does not know Vincent of Calvary P.A.G and that they have a title to the suit property measuring 2 acres where they have built a church. He stated that the pictures on pages 15-17 are structures built on the suit land by the Defendants.
8. On cross examination he clarified that Calvary P.A.G is not part of the P.A.G group. That they have not filed a survey report to confirm the Defendants have invaded their 2 acres of land. He affirmed that the allotment letter given to the Plaintiffs show the area as 0.012 ha but the title deed gives the size of the land as 1.012 ha. he admitted that it appears there was a typing error.
9. The witness asserts that the 4<sup>th</sup> Defendant has constructed a school and church. That a surveyor has not visited the suit property over the boundary dispute.



10. Ernest Kabagi Jeremiah gave evidence as DW1 in support of the 4<sup>th</sup> Defendants' case. He adopted his witness statement dated 3 6 2024 as his evidence in chief and produced documents filed in the list dated 29 5 2024. The documents consist of, a letter dated 16<sup>th</sup> December 2020 from Moindi & Co Advocates, letter from the Regional Surveyor dated 25<sup>th</sup> November, 2021, letter from Njiru Boniface dated 24<sup>th</sup> September, 2021, letter from Njiru Boniface dated 23<sup>rd</sup> October, 2021 to the plaintiff, letter from the Regional Surveyor dated the 15<sup>th</sup> of November, 2021, letter from Moindi & Co Advocates dated 9<sup>th</sup> December, 2021, letter from the regional surveyor dated 24<sup>th</sup> November, 2022, constitution of the Pentecostal Assemblies of God Kenya, bankers Cheque issued to Ministry of Lands and Physical Planning, receipt no. 2755180 from Directorate of Survey, certificate of Registration of a Self-help Group project and documents used by the 4<sup>th</sup> defendant in church.
11. He stated that he is a member of and leads the men's fellowship of the 4<sup>th</sup> Defendant, which applied to be joined after they were served with an order in this case in April 2022. He said their headquarters are in Nyang'ori, Kisumu, and that the local administration gave them the land on which they have built a church. He denied that the 4<sup>th</sup> Defendant had encroached on the Plaintiffs' land.
12. On cross-examination, he testified that Calvary church, whose pastor is Allan Msigo, is a member of P.A.G., under the leadership of Gusare, the District Overseer. He produced a membership card from P.A.G Kenya, adding that he has worshipped in that church since 2008.
13. It is his further evidence that the 4<sup>th</sup> Defendant is occupying riparian land as shown in DExh7 and clarified that they do not belong to the Plaintiffs' church. That under *akn ke act 2010 constitution the constitution* of P.A.G, he has authority to represent the church in this case. There is also no set-up for how negotiations are to be conducted, but they have engaged the District overseer by phone.

### Submissions

14. The Plaintiffs filed their written submissions dated 28th July 2025, while the 4<sup>th</sup> Defendant filed theirs dated 24th June 2025. The Plaintiff, Pentecostal Assemblies of God (PAG) Kangemi, asserts that it is a distinct and separate entity from Calvary Pentecostal Assemblies of God (Calvary PAG). Through the testimony of Reverend Adenya and supporting documentary evidence, they submit that the two churches have no legal, administrative, or constitutional connection.
15. It is the Plaintiff's submission that the 4<sup>th</sup> Defendant also failed to produce any document proving affiliation or ownership of the suit land or any land as alleged. Further, the Defendant admitted to using the Plaintiff's constitution and baptismal certificates, which underscores the absence of its own institutional identity.
16. On ownership of the suit property, the Plaintiffs submitted that they have produced conclusive documentary evidence, including an allotment letter from the Nairobi City Council and a valid title deed confirming their ownership of the suit property. That the 4<sup>th</sup> Defendant has not produced any ownership documents nor challenged the Plaintiff's title, instead they claim they are occupying a riparian land.
17. They assert that sections 24, 25, and 26 of the *akn ke act 2012 3 Land Registration Act, 2012*, establish that registration confers absolute ownership and privileges onto the registered proprietor unless proof of fraud or illegality is presented. Therefore, with the Plaintiff's title unchallenged and its basis of ownership confirmed, the court is urged to uphold its proprietary rights. They argued that the principle from *Ricks v Chebet & Another (ELC Case E232 of 2023) [2025] KEELC 4247 (KLR)* supports the view that a holder of a valid title deed is entitled to full legal protection and exclusive possession of their property.



18. The Plaintiffs submitted that the 4<sup>th</sup> Defendant unlawfully encroached upon its land, constructed structures and thereby deprived it of quiet enjoyment. They stated that this amounts to trespass as was held in the case of Kenya Power & Lighting Co. Ltd v Sheriff Molana Habib [2018] Eklr that a permanent injunction is appropriate where a party's rights are established on merit to prevent continued violation.
19. On the other hand, the 4<sup>th</sup> Defendant argues that the Plaintiff's title to the suit property is defective and cannot be protected under Sections 24 and 26 of the *akn ke act 2012 3 Land Registration Act, 2012*. They argue that the Plaintiff relies on an allotment letter stating the size as 0.012 hectares and a title deed indicating a size of 1.012 hectares.
20. They submit that the discrepancy between these two documents raises doubt as to the legitimacy of the title. Citing the case of Wreck Motors Enterprises v Commissioner of Lands & 3 Others (1997) Eklr, the 4<sup>th</sup> Defendant submits that a letter of allotment does not confer proprietary rights, and under Section 26(1)(b), a title obtained illegally or unprocedurally cannot be deemed indefeasible.
21. The Defendant further relies on the case of Munyu Maina v Hiram Gathiha Maina [2013] Eklr, which held that a proprietor must defend the root of his title when challenged and the case of Daudi Kiptugen v Commissioner of Lands & 4 Others [2015] Eklr, reinforcing that ownership must be shown to have been lawfully acquired. The 4<sup>th</sup> Defendant also cited the Supreme Court decisions in Dina Management Ltd v County Government of Mombasa & 5 Others [2023] KESC 30 (KLR) and Torino Enterprises Ltd v Attorney General [2023] KESC 79 (KLR), both affirming that titles derived from unlawful processes are null and void.
22. They additionally submit that the Plaintiff failed to prove lawful ownership or trespass, since a report from the Survey of Kenya confirmed that they had not encroached on the Plaintiff's property. Further, this suit was filed prematurely, in violation of the doctrine of exhaustion of alternative remedies. Citing Speaker of the National Assembly v Karume [1992] KLR, Geoffrey Muthiga Kabiru & 2 Others v Samuel Munga Henry & 1756 Others [2015] Eklr, and Republic v Firearms Licensing Board & Another ex parte Jimi Wanjigi [2019] Eklr, the 4<sup>th</sup> Defendant argues that parties must first pursue available internal or administrative dispute resolution mechanisms before approaching the courts.
23. The 4<sup>th</sup> Defendant emphasized that both parties are governed by the PAG Constitution, which under Articles 18-22 provide for internal arbitration and reconciliation through a Disciplinary and Arbitration Committee. Hence this court lacks jurisdiction as the Plaintiff has not exhausted the internal dispute resolution processes. In support of this argument, the 4<sup>th</sup> Defendant relied on Article 159(2)(c) of *akn ke act 2010 constitution the Constitution of Kenya* and the case of Jeremiah Memba Ocharo v Evaline Njoka & 3 Others (Const. Petition No. 169 of 2020).

#### **Analysis and Determination:**

24. I have read the pleadings of both parties, considered the evidence tendered and submissions filed in support thereof. From my readings, I note the main questions for determination are:
  - a. whether this suit offends the doctrine of exhaustion.
  - b. Whether or not the Plaintiff has a valid title to the suit property.
  - c. whether the Defendants have occupied the Plaintiffs' land, L.R. No.23240 (I.R. No.124997).
  - d. what reliefs should this court grant.



25. The 4<sup>th</sup> Defendant argued that they all belong to the P.A.G church with its headquarters in Nyang'ori, Kakamega County therefore governed by *akn ke act 2010 constitution the Constitution* of the mother church. On their part, the Plaintiff denied any connection with the 4<sup>th</sup> Defendant. Consequently, for the burden of proof was on the shoulders of the 4<sup>th</sup> Defendant to discharge and invoke the provisions of section 18-22 of *akn ke act 2010 constitution the Constitution* they have produced and rely on.
26. The excerpts of the copy of *akn ke act 2010 constitution the Constitution* produced does not contain a list of names of the churches of P.A.G of Kenya. The 4<sup>th</sup> Defendant relied on the evidence of a sole witness who asserted that the two parties belong to the same assembly without producing any correspondence or document from their said headquarter to corroborate his evidence. From the documents produced and relied on by the 4<sup>th</sup> Defendant, there is nothing that prove the alleged fact that the Plaintiff and the the 4<sup>th</sup> Defendant are governed by the same constitution hence extensive the submissions on the doctrine of exhaustion are unsupported with evidence.
27. The second question is whether the Plaintiff has a valid title to the suit. There is no dispute that the Plaintiff is the registered proprietor of the suit title as shown by the copy of title deed produced in evidence. The 4<sup>th</sup> Defendant challenges this title stating that its root is doubtful by virtue of copy of allotment which gives a difference size from what is in the title.
28. Order 2 rule 10 of the Civil Procedure Rules 2010 states as follows;

“Subject to subrule (2), every pleading shall contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing—(a)particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies.”
29. The 4<sup>th</sup> Defendant did not file a counter-claim to claim the land titled in the name of the Plaintiff. They have not pleaded any particulars of fraud challenging the process of how the Plaintiff acquired its title and raised the issue of fraud (talking about the root of the Plaintiff's title) in their evidence to court. Thus, the 4<sup>th</sup> Defendant's line of defence does not comply with the provisions of Order 2 Rule 10 of CPR.
30. Despite this, I have proceeded to consider whether the variation of the sizes in the letter of allotment and the title voids the Plaintiff's title. The Plaintiff said that after they were allocated the land, they paid for the survey and obtained a beacon certificate. The fact of surveying is confirmed by the survey report produced by the 4<sup>th</sup> Defendant which states that the beacons of the suit land are in place. The Plaintiff also produced a deed plan showing the geographical location of their title.
31. Section 26(1) of the same Act provides that a certificate of title shall be taken as prima facie evidence that the person named as proprietor is the absolute and indefeasible owner thereof, and the title shall not be subject to challenge except on grounds of fraud or misrepresentation to which the proprietor is proved to be a party, or where the title has been acquired illegally, unprocedurally, or through a corrupt scheme.
32. The Court of Appeal in *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR clarified that where the root of a registered proprietor's title is challenged, the proprietor must demonstrate the legality of the acquisition. In the present case, the Plaintiffs have done so by producing a duly registered title deed and deed plan No. 217395, whose authenticity has not been rebutted.
33. Therefore, the size of land stated in the allotment letter, although smaller, is not sufficient evidence to vitiate the Plaintiff's title. Additionally, the 4<sup>th</sup> Defendant's allegation that the suit land occupies part



of the riparian land was not corroborated with any documentary evidence. When the time comes for marking out the riparian reserves in that area, the relevant institutions will exercise their mandate to determine whether the Plaintiff title has encroached.

34. In any case, the issue of encroachment on the riparian reserve is not the matter before this court. In light of the above analysis, I find that the 4<sup>th</sup> Defendant has provided no grounds that would cause this court to annul the Plaintiff's title and so I answer the second question positively.
35. Thirdly, is the question whether the 4<sup>th</sup> Defendant is unlawfully in occupation of the Plaintiff's land. The 4<sup>th</sup> Defendant argues that they are occupying riparian land, relying on the survey report dated 24<sup>th</sup> November, 2022 and produced as Dexh7. The report says that the suit land is not encroached and its beacons have not been interfered with. The report also stated that the activities carried out along the riverbanks do not affect the river's nomenclature.
36. However, the report does not specify whether the visit was conducted in the presence of the Plaintiff, nor does it clarify who owns the structures on the suit land. The Plaintiff stated that the 4<sup>th</sup> Defendant built a church on their suit land, which is the subject of dispute. Their claim is not a boundary dispute but rather allegations of unlawful occupation and or trespass.
37. The survey report does not specify the position of the 4<sup>th</sup> Defendant's structures relative to the geographical location of the suit land. There is no sketch map attached to delineate the plot that the 4<sup>th</sup> Defendant is occupying, separating it from the suit parcel.
38. The Defendants have not produced any documentary evidence to substantiate their claim to the land allegedly given by the "local administration" and whether the said local administration had legal authority to allocate public or private land. In *Wreck Motor Enterprises v Commissioner of Lands & 3 others* [1997] KECA 391 (KLR), the court held that any alienation of land without authority from the Commissioner of Lands or other legally empowered officer is null and void.
39. The Plaintiffs' photographic evidence, PExh 15–17, depicts temporary structures erected on the suit land. The Defendants have not denied that those structures exist but rather claimed that they are built on adjacent "riparian land." However, without a survey report or boundary re-establishment to prove that the structures fall outside the suit land the presumption must favor the registered proprietor's boundary as reflected in the title and deed plan.
40. Having established ownership and the presence of the Defendants' structures on the land, the issue amounts to trespass under Section 3(1) of the *akn ke act 1962 48 Trespass Act* (Cap 294), which prohibits unlawful entry upon private land without the consent of the owner. The Court in *Kenya Electricity Transmission Company Limited v Kibotu Limited* [2019] KEELC 113 (KLR) affirmed that once trespass is proved, a registered owner is entitled to protection through injunctive relief and, where appropriate, eviction orders.
41. The 1<sup>st</sup> to 3<sup>rd</sup> Defendants, besides filing a statement of defence, did not offer any evidence challenging the claim. The evidence tendered by the 4<sup>th</sup> Defendant was insufficient to deny the Plaintiff from being granted the relief sought. Accordingly, I hold that the Plaintiffs have proved their case on a balance of probabilities and should be issued with the reliefs as sought in their amended plaint.
42. The result is I enter judgment for the Plaintiffs against the Defendants jointly and severally and grant the following orders:
  - a. An order of injunction is hereby issued restraining the Defendants whether by themselves, their agents, servants, employees, invitees and or otherwise whomsoever from entering upon or trespassing, constructing or continuing with the construction of any structures, offering



for sale, selling, disposing of, charging, sub-dividing, dealing, alienating, occupying, managing, letting or otherwise using, residing and remaining or representing any person otherwise using, residing and remaining or representing any person and or interfering with L.R. No.23240 (JR No.124997) situate in the city of Nairobi.

- b. The 4<sup>th</sup> Defendant is granted a period of 120 days from the date of this judgment to remove their offending structures from the suit parcel L.R. No.23240, which belongs to the Plaintiffs.
- c. Costs of the suit to the Plaintiffs to be paid by the 4<sup>th</sup> Defendant

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**A. OMOLLO**

**JUDGE**

