



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT CHUKA**

**CHUKA ELC CASE NO. 07 OF 2018 (OS)**

**METHODIST CHURCH IN KENYA TRUSTEES REGISTERED**

**(FOR MCK KARWAMBA CHURCH.....PLAINTIFF/APPLICANT**

**VERSUS.**

**HAND OF GOD MINISTRIES (K) CHURCH.....DEFENDANT/RESPONDENT**

**JUDGMENT**

1. This suit has been brought to court by way of Originating Summons dated 12th July, 2019. The summons reads as follows:

**ORIGINATING SUMMONS**

**(UNDER SECTION 37 AND 38 OF THE LAW OF LIMITATION OF ACTIONS ACT – CAP 22 LAWS OF KENYA AND ORDER 37 OF CIVIL PROCEDURE RULES)**

LET HAND OF God ministries (K) Church of Nairobi Kenya the defendant/respondent herein within 15 days after service of this summons on them, inclusive of the day of such service, cause an appearance to be entered for them (it) in this summons, which is issued upon the application of Methodist Church in Kenya Trustees Registered of Kenya who pray for orders:

1. An order that the plaintiff Methodist Church in Kenya Trustees Registered have become entitled by adverse possession to Land Reference No. Tharaka/Nkondi 'A'/386 which is registered in the name of the defendant/respondent.
2. An order that the plaintiff/applicant be registered as the proprietor of L.R. No. Tharaka/Nkondi 'A'/386.
3. The costs of this application be provided for

Which application is supported by the annexed affidavit of Bishop Lawi Imathiu a Registered Trustee of the plaintiff/applicant the nature of the case and other reasons to be adduced at the hearing hereof.

**DATED AT MERU THIS 12<sup>TH</sup> DAY OF JULY, 2018**

**MAITAI RIMITA & CO.**

**ADVOCATES FOR THE PLAINTIFF/APPLICANT**

2. The Originating Summons is supported by the affidavit of Bishop Lawi Imathiu, sworn on **12<sup>th</sup> July, 2019** which states:

I, Bishop Lawi Imathiu of Meru County make oath and state as follows:

1. That I am a trustee of the plaintiff herein and therefore competent to make and swear this affidavit.
2. That when Land Reference No. Tharaka/Nkondi 'A'/386 was under adjudication about 15 years ago the same was held and occupied by Hand of God Ministries (K) church.
3. That the said church wanted to go out of Tharaka and the plaintiff was interested in the land but nothing was concluded.

4. That in the year 2002 – 2003 the plaintiff's church known as MCK Karwamba entered the land, developed the same and uses the same to this day.
5. That when the land was registered the same came out in the name of the respondent [annexed is a copy of the register marked BLI 'a']
6. That our MCK Karwamba Church has been using the land openly and apart from the developments, the same is fully fenced.
7. That I am advised by my advocates which advice I verily believe to be true that the defendant's title to the said land has been extinguished since the church has been in possession adversely for over 12 years.
8. That now I pray that the said land be registered in the name of Methodist Church in Kenya Trustees Registered in terms of the law.
9. That the contents of this affidavit are true to the best of my knowledge, information and belief.

3. Service was done by way of substituted service which appeared in the Daily Nation Newspaper on 20<sup>th</sup> November, 2018.

4. PW1, Stephen Kanyaru M'Impwi, asked the court to adopt his witness statement dated 9<sup>th</sup> May, 2019 as his evidence in this suit. The statement states as follows:

**STATEMENT OF STEPHEN KANYARU M'IMPWII ID NO. 3136962**

I hail at Nkondi.

I wish to state that there was one missionary from the United States on the suit land who started the Hand of God Ministries (K) Church.

In the year 2002 – 2003 when I was the Presiding Bishop with the Methodist Church, the said Missionary came to my office and told me that she had a parcel of land that she wished me to buy personally or for the church because she wanted to go back home.

I explained to her that I did not have money to buy the land. She then insisted that if I won't buy the land for my personal use I then buy the said land for the church.

We came to an agreement and I bought the said land for the church. The missionary gave me all the necessary documents pertaining to the land and I gave the same to the secretary of Karwamba MCK who misplaced the same.

That is when I approached an advocate for advice. I was then advised that we can go through the court process to have the land registered in the name of the church.

That is all I wish to state.

**SIGNED.....**

**DATED AT MERU THIS 9<sup>TH</sup> DAY OF MAY, 2019**

5. PW1 told the court that the church had buildings on the suit land and that the last time he saw the American Missinary who sold the land to the church was around the year 2003. He told the court that the church had buildings on the land and also cultivated the rest of the land.
6. PW1 asked the court to declare that the church was owner of land parcel No. Tharaka/Nkondi 'A'/386 through the doctrine of adverse possession.
7. PW2, Justus Mwenda Murithi, asked the court to adopt his witness statement dated 9<sup>th</sup> May, 2019 as his evidence in this suit.
8. PW2 told the court that he was the minister (pastor) in charge of MCK Karwamba circuit which occupies the suit land. He confirmed the evidence of PW1.
9. I opine that the only issue for determination in this suit is if or if not the plaintiff has proved on a balance of probabilities that it has acquired, through the doctrine of adverse possession, ownership of Land Parcel No. Tharaka/Nkondi 'A'/386.
10. I find that time for the threshold of counting the period required for adverse possession to accrue started running around the year 2003. This is 16 years ago and far beyond the period of 12 years necessary for adverse possession to crystallize.
11. Judgment is entered for the plaintiff against the defendant in the following terms:

- a) The plaintiff, METHODIST CHURCH IN KENYA TRUSTEES REGISTERED, has become entitled to proprietorship by adverse possession to Land Reference No. THARAKA/NKONDI 'A'/386 which is currently registered in the name of the

defendant/respondent.

b) The Land Registrar, Chuka is ordered to cancel the name of the defendant /respondent from the register and register METHODIST CHURCH IN KENYA TRUSTEES REGISTERED as proprietor of Land Reference No. THARAKA/NKONDI 'A'/386 forthwith.

c) I issue no order as to costs.

d) Orders accordingly.

Delivered in open Court at Chuka this **29<sup>th</sup> day of May, 2019** in the presence of:

CA: Ndegwa

Rimita for the plaintiff

**P.M. NJORGE**

**JUDGE**