

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA

ELCA NO E002 OF 2024

JULIUS KIMANI KINAGI.....APPELLANT

VERUS

TALENT INTERNATIONAL COMMUNITY ORGANIZATIONRESPONDENT

BEATRICE WANJIKU & 5 OTHERS.....INTERESTED PARTIES

JUDGMENT

In this Appeal, Talent International Community Organization, the Respondent, filed a suit in Nyahururu being CMCC ELC No. E059 of 2022 praying for orders against Julius Kimani Kinagi, the Appellant herein as follows: -

- a. An order for the Defendant (the Appellant) to give vacant possession of L.R NYANDARUA/ KIRIMA/4475 and in default he be forcefully evicted.
- b. General damages for Trespass.
- c. Any other or further relief that the Court may deem fit and just to grant.

Her case was that she was the registered proprietor of L.R. NYANDARUA/KIRIMA/4475, the suit property. And that in 2020 and without the consent and authority of the Plaintiff, the Appellant entered into the suit property and fenced it, constructed a temporary structure and started farming.

The Appellant had never been a member of the Respondent and has never contributed any money to the Respondent to enable him claim any entitlement to the suit land.

By a letter dated 10/6/2021, the Appellant requested for a 3 months extension to stay on the said parcel of land to enable him move his family to another location. At the expiry of the period, the Appellant failed, refused and/or neglected to vacate the land and instead demolished a fence, a temporary structure for the caretaker and a toilet that the Respondent had erected thereon which made the Respondent unable to proceed with constructing a children's home due to the Appellant's trespass.

Pursuant to Order 6 Rule 2 of the Civil Procedure Rules, 2010 the Interested Parties herein entered appearance alongside the Appellant. They all did so through Ndegwa Wahome & Co. Advocates. In an Application for such leave, the Interested Parties claimed to have jointly bought the property together with the Appellant.

In the Appellant's statement of Defence and Counter-claim dated 12/5/2023 and filed in Court the same date, he averred that the suit property was acquired through the joint efforts between himself, the Respondent and the Interested Parties who were all members of the Respondent and the latter was to hold the same in trust for their benefit and this is what gave the Appellant the authority to be on the suit property and that he did not ask for a 3 months extension to stay on the suit land.

He further held that it is with the Respondent's instructions that the fence was demolished together with other structures on the suit property. He also denied having trespassed on the suit land since he was a co-owner of the same. By way of a Counter-claim, the Appellant claimed to be a victim of the 2007 post-election violence and together with other people, he formed the Respondent Organization for purposes of buying land in order to settle the respective families. But the land they bought was by misrepresentation registered in the name of the Respondent. The Appellant therefore made the following prayers.

- a. A Declaration that the Defendant in the counter claim holds parcel number L.R NYANDARUA/KIRIMA/4475 upon trust for the Defendant and the interested parties.
- b. An order that the Plaintiffs in the Counter claim are entitled to a share of L.R NYANDARUA/KIRIMA/4475 by virtue of having contributed to its acquisition.
- c. An order that the Defendant in the counter claim transfers the suit property to the Defendant and interested parties forthwith failure to which the Executive Officer does sign the Transfer Documents in favour of the Defendants and Interested Parties.
- d. A permanent injunction restraining the Defendant in the Counter claim from evicting the Plaintiff in the counter claim and the interested parties, their relatives and/or any other person claiming under their names from the suit property.
- e. An Injunction restraining the Defendant in the Counter claim either in person, or through their servants, employees,

beneficiaries, relatives and or any other person claiming under their names from trespassing, encroaching, cultivating, alienating, disposing, demolishing structures, interfering and/ or in any other manner whatsoever dealing with parcel number L.R. NYANDARUA/KIRIMA/4475.

In the Reply to Defence and Defence to the Counter-claim, the Respondent repeated the contents of her Plaint and further that she is a legal entity capable of owning properties on its own and that is how she was registered as the sole and absolute proprietor of L.R No. NYANDARUA/KIRIMA/4475. She further said she had instituted suit in Nyahururu CMCELC No. 292 of 2018 against the 4 former members and a Judgment delivered on 27/5/2021 ordering the latter's eviction but the Appellant refused to vacate.

In the so-called Reply to Defence to the Counter-claim, the Appellant said he was aware that the Respondent was a legal entity and therefore capable of owning property.

The case commenced hearing before the Honourable Senior Resident Magistrate, Hon C. Muhoro with PW1 Karani bin Salim, a pastor and founder of the Respondent and chief Executive Director company taking to the witness box. He adopted his Statement dated 20/7/2022. He said the suit property was acquired by the Respondent on 29/12/2010 and the same registered on 22/1/2018. The land was to accommodate a children's home but since he did not have funds for immediate construction, he allowed some members to temporarily occupy the land.

The Respondent filed a suit - Nyahururu CMELC No. 292 of 2018 against Mary Njeri Kimani, Caroline Achista Kimani, Penninnah Wanjiru Mwangi and Virginia Achwa who were ordered to vacate the land in default of which they were to be evicted therefrom. Judgment was delivered on 27/5/2021.

In 2020 the Appellant also entered on the suit land yet he had never been a member of the Respondent and by a letter dated 10/6/2021 he requested for a 3 months period which was allowed but he later refused to vacate and he demolished a fence and a temporary structure for the caretaker and a toilet erected by the Respondent. He then produced the following documents: -

- a. Purported Respondent's Certificate of Incorporation.
- b. Constitution.
- c. Title Deed for L.R NYANDARUA/KIRIMA/4475.
- d. Annual returns for the for the Organization.
- e. Receipts for the returns.
- f. Judgment in Nyahururu CMC ELC No. 292 of 2018.
- g. Letter dated 11/6/2021 for the Appellant asking for extension of time to stay in the suit land.

He said that the Organization had 200 members and that others had failed to attend meetings for over 10 years. He further testified that the land had not been sub-divided and it could not be because their objective was to construct a children's home.

On cross-examination by Mr Ojare for the Appellant, the pastor said he had unsuccessfully appealed to join the Appellant in the Nyahururu case.

On re-examination, pastor Karani said they were 800 members initially but they were now only 200.

After the close of the Respondent's case, the Appellant, Julius Kimani took to the Witness stand and adopted his undated Statement. He said he was a victim of the 2007 post-election violence and he contributed towards the Respondent Organization. He and his wife Dorcas Waithera Karani live on the land which was bought by the Organization with their contributed money. The Respondent brought the suit in Court after he realized that the Title Deed issued in respect of the suit land does not correspond to the land on the ground.

He then produced the following documents to support his case: -

1. Minutes of the Meeting held on 7th August, 2010 by members of Talent International Community.
2. Minutes of the Meeting held on 14th July, 2022 at Sub-Chief's Ground by members of Talent International Community.
3. Minutes of the Meeting held on 10th August, 2017 at Taiwan Hotel Ol-kalou by members of Talent International Community.
4. Minutes of the Meeting held on 7th July, 2010 at Manyatta Chief's Ground by Members of Talent International Community.
5. Minutes of the Meeting held on 6th November, 2021 at Kariamu by Members of Talent International Community.

6. Minutes of the Meeting held on 30th June, 2018 at the Group's Land by the members of Talent International Community.
7. Minutes of the Meeting held on 19TH March, 2022 at Manyatta Chief's camp by Members of Talent International Community.
8. Minutes of the meeting held on 13th April, 2022.
9. Minutes of the Meeting held on 7th April, 2022 at the Sub-chief's Office.
10. Copies of Receipts issued by Talent International Community.
11. Copies of Membership Cards issued by Talent International Community.

He said he has been cultivating the land since 2011 and that he did not write a letter seeking extension of time. On cross-examination he said he was member No. 138 but that the Registrar indicated Dorcas Ochieng as member No. 138. He admitted that the Organization was formed in 2010 with 80 people and that they were to buy land, sub-divide it (5 Acres) and share it among the 80 people and that the whole group is cultivating the land. Salim was not a member but a pastor. He again said he lives on the land, about $\frac{1}{4}$ of an Acre but he is asking the Court to sub-divide the land so that each member gets a share.

On re-examination he said he has now lives on the land and that while the earlier case was going on he was still on the land.

DW2, Beatrice Wanjiku testified on behalf of the other interested parties with their authority. She said they contributed money in order to own land and they gave the land to the Appellant who lives

there now. She claimed they did not buy the land from the church. Karani was their pastor who told them that he had good plans for them.

On cross-examination the Witness said that Talent International is registered as a church and that she was a Director of the same. The Organization has 100 members and the land should be sub-divided among them and she cultivates $\frac{1}{4}$ Acre while others also cultivate the land.

On re-examination, Beatrice Wanjiku said they allowed Julius, the Appellant to live on the land to which they were contributing Kshs. 1,200/= and that they were on the land before the homes were demolished and Ann was Secretary of the Organization.

At the end of the Appellant's case the Court made its Decision as follows:-

“.....The issues that arise in this suit for determination are as follows:-

1. Whether the registration of the Plaintiff (Respondent) as proprietor of the suit land is regular.
2. What orders should issue.

From the above, section 26 of the Land Registration Act, Certificate of Title is to be taken as prima facie evidence that the person named therein is the proprietor of that land. Sections 24 and 25 above, in essence do provide that it is the Title holder who

is entitled to the proprietary rights comprised in the subject land.

The Defendant (Appellant) produced several minutes of previous meetings but none of the Document produced challenged the authenticity of the Title obtained by the Plaintiff (Respondent). The fraud was not proved. It is therefore my finding that as against the Defendant (Appellant), the Plaintiff (Respondent) is the absolute proprietor of the suit land. I am of the view that the Plaintiff (Respondent) has proved its case against the Defendant (Appellant) on a balance of probabilities.

In the end having found that the Plaintiff (Respondent) has proved its claim against the Defendant. I hereby enter Judgment in its favour against the Defendant (Appellant) and I issue the following orders: -

1. An Order is hereby issued directing the Defendant (Appellant) to give vacant possession of L.R No. NYANDARUA /KIRIMA/ 4475, and in default he be forcefully evicted. and;
2. The Defendant (Appellant) shall bear the costs of this suit.

It is so ordered.

This was on 18/12/2023 and this is the Judgment that is appealed against for orders that:

1. That the Judgment /orders of the Nyahururu Senior Resident magistrate's Court be set aside, vacated and/or reviewed.

2. A Declaration that the Appellants (sic) hold the suit land referenced as L.R NYANDARUA/KIRIMA/4475 upon trust for the Appellant and the interested parties.
3. An order do issue that the Appellant and the Interested Parties are entitled to a share of L.R NYANDARUA/KIRIMA/4475 by virtue of having contributed to its acquisition.
4. An order do issue that the Respondent transfers L.R. NYANDARUA/KIRIMA/4475 to the Appellant and Interested Parties forthwith without failure and in default the Deputy Registrar does execute the transfer documents in favour of the Appellant and Interested Parties.
5. An order for permanent Injunction be granted restraining the Respondent from evicting the Appellant, the Interested parties, their relatives and/or any person claiming under their names from the suit property.
6. An order for injunction do issue restraining the Respondent either in person or through its servants, employees, beneficiaries, relatives and/or any other person claiming under their names from trespassing, encroaching, cultivating, alienating or dealing with parcel No. L.R NYANDARUA/ KIRIMA /4475.
7. Cost of the suit.

On the following principal grounds: -

1. THAT the Trial Magistrate erred in fact and law by failing to appreciate the evidence tendered by the Appellant and Interested Parties demonstrating fraud on the part of the

Respondent as regards its registration with the fraudulent intent to build an orphanage as opposed to the original resolution by its members to establish a self-help group to purchase the suit land and subdivide it among its members.

2. THAT the trial magistrate occasioned a grave miscarriage of justice by failing to declare the Appellant and the Interested parties as absolute proprietors of the suit land referenced as L.R. NYANDARUA/KIRIMA/4475 by virtue of having contributed to its acquisition and having been issued with receipts towards its purchase.
3. That the trial magistrate fell in grave error of judgment by relying on the Respondent's fraudulent evidence that the Appellant and the Interested parties are not members of the Respondent despite tendering to Court duly signed membership cards proving their association.
4. That the trial magistrate fell in grave error of Judgment by failing to consider the genuine evidence presented by the Appellant thus occasioning him and the Interested Parties a grave injustice despite their efforts to prove ownership of L.R. NYANDARUA/ KIRIMA/4475.
5. THAT the trial magistrate erred in fact and law by failing to appraise the apparent mischief that occurred on the part of the Respondent which has no capacity to sue in its own name under the Societies Act and whose resolution to appoint the firm of M/s Nderitu Komu & Co. Advocates to act on its behalf was not approved by the board members.

6. THAT the trial Magistrate's Judgment in this matter was oppressive and not founded on sound principles of the law or otherwise.

This being a first appeal, I am duty bound to evaluate the evidence before arriving at a Decision either to overturn the Judgment of the lower Court or to leave it intact. From all the correspondences and minutes, it is not indicated that the suit land was ever meant to resettle the members of the society including the Appellant and/or the interested parties. Even the receipts given to the members which indicated that the money paid was being payment of land, do not suggest that the suit land was to be sub-divided and distributed amongst the members. In the minutes of 7/7/2010 attended by 41 people including the interested parties herein among others, those present decided to form the Respondent Organization herein and according to her constitution the objectives of the Society were: -

- i. To provide spiritual guidance to the children and elderly of the surrounding community and the community as a whole.
- ii. To host orphans from Nyandarua District.
- iii. Build a workshop to train the orphans and members of the community.
- iv. To provide lessons that will teach a child to become a fully functioning human being.
- v. Offering self help groups to uplift the living standard of the children and elderly people.
- vi. To provide counselling services to HIV/AIDS orphans.

- vii. To engage in income generating activities only for the purpose of supplementing the upkeep and maintenance of the home.
- viii. To establish children education exchange programs through volunteer workers.
- ix. To conduct feeding and community Health program among the children in the slums.
- x. To maintain and establish centers throughout the republic of Kenya and carry out charitable activities beneficial to children and the community as a whole.
- xi. A non-political.

Solely from these objectives, the Organization was a charitable Organization to help the Community and nowhere was buying land for its members spelt out. The closest to what the Appellant and the interested parties are agitating for is objective No. (vii)

“To engage in income generating activities only for the people of supplementing the upkeep and maintenance of the home.”

The Respondents testified that the Appellant and some other members were only allowed to stay on the suit land because they did not have anywhere else to stay. The Respondent produced in Court, a certificate by the National Aids Control Council for having accounted and achieved targets set in the implementation of the total war against HIV and AIDS (TOWA). Though the certificate does not indicate when. The same is signed by Dr. Nduku Kilonzo , the Director of National AIDS Control Council. This is what the Respondent christened as her Certificate of Incorporation. I am

surprised that the same could have escaped the attention of the learned trial Magistrate. However, I have seen the Annual returns for the year ending 31/12/2020 in the Supplementary Record of Appeal dated 20/8/2025 and filed in Court on 21/8/2025 suggesting the Organization is registered as a Society under the Societies Act CAP. Even assuming that the Society is properly registered an organization such as this one (a society) cannot own land in its own name.

In her Constitution paragraph 10 (a) "Trustees"

"All land, buildings and other immovable property and all investments and securities which shall be acquired by the Society shall be vested in the names of not less than 3 trustees who shall be members of the society and shall be appointed at an annual general meeting for a period of three years."

How come the property have known as L.R No. NYANDARUA /KIRIMA/4475 was registered in the name of the Organization? Could the Land Registrar, Nyandarua have been duped to register the Society as the owner of the suit property using the Certificate of Registration O.P 218/051/2008/0262/5457 and No. CE 072?

Even for filing suit such as the one before the Court, the Society cannot do so in its name. It can only file the suit through its registered official on behalf of the society.

In the circumstances I order the Land Registrar, Nyandarua to cancel the Title Deed for the property known as NYANDARUA/KIRIMA/4475

issued to the Respondent on 22/1/2018 and register the same in the names of at least 3 Trustees who shall be elected at a Special General Meeting to be held within the next 90 days from the date hereof under the supervision of the Registrar of Societies or a person of his own choice from the Department. The elected Trustees shall then be the custodians of the Society's Assets and properties for the benefit of the Community but not to distribute the land to her members. This is the least I can do in the circumstances. I make no orders as to costs.

Judgment dated, signed and delivered at Nyandarua this 11th Day of December 2025.

**MUGO KAMAU
JUDGE**

In the presence of: -

Court Assistant - Samson.

Appellant.....Mr. Ojale.

Respondent.....Mr. Komu.