



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC. CASE NO. 1139 OF 2015

ARCHDIOCESE OF NAIROBI KENYA REGISTERED TRUSTEES....PLAINTIFF

VERSUS

AFRICAN INDEPENDENT PENTECOSTAL

CHURCH OF AFRICA REGISTERED TRUSTEES.....DEFENDANT

JUDGMENT

1. On 10/11/2015, the Archdiocese of Nairobi Kenya Registered Trustees (**the plaintiff**) brought this suit against African Independent Pentecostal Church of Africa Registered Trustees, contending that its land, **Title Number Ruiru/Mugutha Block 1/T15323**, measuring approximately 0.6.227 (the **suit property**), had been fraudulently registered in the name of the defendant. It averred that it acquired the suit property from M/s Nyakinyua Investment Limited in 1989, took possession and developed the suit property and has been in possession of the property since then.

2. Consequently, the plaintiff sought the following orders:

a) A declaration that the plaintiff is the sole legal and rightful owner and or proprietor of that piece or parcel of land known as Plot Number RUIRU/MUGUTHA BLOCK 1/T.5323 situated within Ruiru, Kiambu County.

b) A permanent injunction to issue against the defendant restraining it from in any way whatsoever either by itself and or through its agents, representatives, servants or employees from entering, interfering, selling, transferring, transacting and or disposing off Plot Number RUIRU/MUGUTHA BLOCK 1/T.5323.

c) An order directing the Land Registrar, Kiambu Land Registry to cancel and or revoke the title deed Number RUIRU/MUGUTHA BLOCK 1/T.5323 held by the defendant and issued on 5th March 1993 and issue a new title deed in favour of the plaintiff.

d) An order directing the defendant to immediately surrender the title deed in respect of RUIRU/MUGUTHA BLOCK 1/T.5323 issued to it to the said land registrar to facilitate the said cancelation and or revocation.

e) An order directing that in the event the defendant refuses to execute the transfer forms in favour of the plaintiff, the Deputy Registrar, High Court, ELC Division executes them on its behalf.

f) Costs of this suit plus interest thereon at court rate.

3. On 30/3/2016, the plaintiff filed an affidavit of service by Moses Onyango Otongo (process server) indicating that the process server had served summons and plaint on the defendant on 6/2/2016. On 20/11/2017, the court directed the plaintiff to serve summons afresh through a notice in either the Daily Nation or the Standard Newspaper. Substituted service was effected on 23/10/2018. The defendant neither entered appearance nor filed defence. Consequently, this case proceeded to hearing as an undefended cause. The plaintiff called three witness: (i) Ndua Ndirangu Chege - PW 1; (ii) Arcadius Mwangi - PW 2; and (iii) Joseph Sifuna Bukanja - PW3.

4. PW1 testified that she was the Chairlady of Nyakinyua Investment Limited. She confirmed that the company allocated the suit property to Ruiru Catholic Church. She stated that the company was surprised to learn that the suit property had been erroneously registered in the name of the defendant. She further testified that on the ground, the suit property is fully developed by the plaintiff and has a church on it. PW 2 testified that he was the area councillor when the plaintiff acquired the suit property. He confirmed that the plaintiff was allocated the suit property by the company and built a sanctuary (**St Michael Catholic Church**) on it. PW 3 similarly testified that the suit property belongs

to the Parish which falls within the Archdiocese of Nairobi.

5. PW 1 produced the following 14 documents as plaintiff exhibits 1 to 14.

- a) Letter dated 25th February 1988 written by councilor Arcadius Mwangi to Nyakinyua Investment Limited;*
- b) Letter dated 25th February 1989 written by Rev. Fr. George Bezzina to Nyakinyua Investments Limited;*
- c) Receipt number 1879 for Kshs 470/- issued by Nyakinyua Investments Limited to the Plaintiff and dated 9th June 1993;*
- d) Receipt Number 2839 for Kshs 530/= issued by Nyakinya Investments Limited to the plaintiff and dated 28th February 1995;*
- e) Title deed Number Ruiru/Mugutha Block 1/T.5323 issued on 5th March 1993 to the defendant;*
- f) Letter dated 14th November 1995 from Nyakinyua Investments Limited to the defendant;*
- g) Letter dated 18th January 1996 from Nyakinyua Investments to the defendant;*
- h) Letter dated 2nd July 1996 from Nyakinyua investments Limited to the defendant;*
- i) Letter dated 1st July 1999 from the plaintiff to the defendant;*
- j) Letter dated 23rd March 2000 from the District Officer Ruiru Division to the defendant;*
- k) Letter dated 15th May 2000 from the District Officer Ruiru Division to the defendant;*
- l) Letter dated 12th June 2000 from the District Officer Ruiru Division to the Land Registrar Thika District;*
- m) Letter dated 18th January 2001 from St. Francis of Assisi Catholic Church to Nyakinyua Investments Limited;*
- n) Official Search on Ruiru/Mugutha Block 1/T.5323 and receipt.*

6. I have considered the plaintiffs pleadings and evidence. I have also considered counsel's submissions. The documents presented in evidence indicate that Ruiru Catholic Church acquired the suit property from Nyakinyua Investment Limited in 1989. There is also evidence that the Parish took possession, developed the suit property, and has been in possession since then. The defendant has not contested the plaintiff's claim. Consequently, I am satisfied that a proper evidential basis has been laid to warrant rectification of the parcel register for **Land Parcel Number Ruiru/Mugutha 1/T5323** to reflect the plaintiff as the legitimate proprietor of the parcel.

7. Accordingly, I am satisfied that the plaintiff has proved its case on a balance of probabilities. The plaintiff's claim is therefore allowed in the following terms:

- a) It is hereby declared that the plaintiff is the sole legal and rightful owner and or proprietor of that piece or parcel of land known as Parcel Number RUIRU/MUGUTHA BLOCK 1/T.5323 situated within Ruiru, Kiambu County.*
- b) A permanent injunction hereby issues against the defendant restraining it from, in any way whatsoever, either by itself and or through its agents, representatives, servants or employees entering, interfering, selling, transferring, transacting and or disposing off Parcel Number RUIRU/MUGUTHA BLOCK 1/T.5323.*
- c) An order is hereby issued directing the Land Registrar, Thika Land Registry, to cancel and or revoke the title deed Number RUIRU/MUGUTHA BLOCK 1/T.5323 held by the defendant and issued on 5th March 1993 and issue a new title deed in favour of the plaintiff.*
- d) An order is hereby issued directing the defendant to immediately surrender the title deed in respect of RUIRU/MUGUTHA BLOCK 1/T.5323 issued to it to the said land registrar to facilitate the said cancelation and or revocation.*
- e) An order is hereby issued directing that in the event the defendant refuses to execute the transfer forms in favour of the plaintiff, the Deputy Registrar of the Environment and Land Court at Nairobi shall execute them on its behalf.*

8. Because the defendant did not contest the claim, there will be no order as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 7TH DAY OF MAY 2019.

B M EBOSO

JUDGE

In the presence of:-

Mrs Beacco Advocate for the plaintiff

June Nafula - Court Clerk