



Registered Trustees Catholic Archdiocese of Mombasa v Kariithi & 4 others (Environment and Land Case 70 of 2021) [2026] KEELC 421 (KLR) (2 February 2026) (Judgment)

Neutral citation: [2026] KEELC 421 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND CASE 70 OF 2021**

**AE DENA, J
FEBRUARY 2, 2026**

BETWEEN

**REGISTERED TRUSTEES CATHOLIC ARCHDIOCESE OF
MOMBASA PLAINTIFF**

AND

**JOSEPH P. KARIITHI 1ST DEFENDANT
MISHECK MUNYIRI KARIITHI 2ND DEFENDANT
LAND REGISTRAR KWALE COUNTY 3RD DEFENDANT
LAND ADJUDICATION AND SETTLEMENT OFFICER KWALE
COUNTY 4TH DEFENDANT
THE HONOURABLE ATTORNEY GENERAL 5TH DEFENDANT**

JUDGMENT

1. The Plaintiffs instituted this suit against the Defendants herein vide a Plaint dated 20th November, 2019 and amended on 7th June, 2022 seeking the following reliefs:
 - a. Order for a permanent injunction restraining the Defendants by themselves their servants and/or agents from ever laying claim on the suit parcel of land, disrupting operations, interfering, sub-dividing, alienating, transferring, leasing, encumbering, intermeddling or selling and/or in any other manner dealing with Land Parcel Number Kwale/Kidimu/12 measuring 71.1 Ha or thereabout without first acquiring rights over it from the Plaintiffs.
 - b. Order of revocation and/or cancellation of the title document registered and in possession of the 1st and 2nd Defendants; and consequently, the Land Registrar - Kwale County to issue a new title over the parcel of land, Land Parcel Number Kwale/Kidimu/12 measuring 71.1Ha in the name of the Plaintiffs.



- c. Render a declaration that the title document purported to be registered and in possession of the Defendants was obtained fraudulently and that the Defendants do not have a legitimate claim of Land Parcel Kwale/Kidimu/12 measuring 71.1Ha and that the suit parcel of land belongs to the Plaintiffs or any of its assigns or successors in title.
 - d. Order the Land Registrar, Kwale County to ensure that any registrable interests acquired by the 1st and 2nd Defendants, their agents, representatives, assigns or any other third parties over Land Parcel Number Kwale/Kidimu/12 measuring 71.1Ha are cancelled or struck off the register pertaining to the suit property.
 - e. Order the eviction of the 1st and 2nd Defendants or any of their servants, assigns, agents, successors in title, proxies or any other third parties who may claim an interest from the suit property.
 - f. Award the Plaintiff general damages for trespass and mesne profits for the 1st and 2nd Defendants' unlawful possession of the suit property.
 - g. Order payment of interest on such general damages and mesne profits as may be awarded from the date of the judgment until payment in full.
 - h. Grant the Plaintiffs such further and/or any other relief as this Honourable Court may deem fit, just and convenient in an endeavour to do justice to the Plaintiffs.
 - i. Award costs and incidentals of the suit thereon in favour of the Plaintiffs.
2. In the Plaint, the Plaintiff's aver that they are the legal, bonafide, beneficial and equitable owners of Land Parcel Kwale/Kidimu/12 measuring 71.1 Ha (herein the suit property), which they acquired for value in the 1980s and have been in possession thereof to date. They averred that at adjudication the land was known as Kwale Adjudication Area, Kidimu Section Parcel No. 12 measuring approximately 71.0Ha. They alleged that the land was acquired by Bishop Nicodemus Kariithi and Father Alois Ngoma as trustees for the church, as was its practice then, from George Kagume Chiuri and Francis Waigwa Kihagi.
 3. The Plaintiffs aver that Bishop Nicodemus Kariithi died on 27th November, 2007 leaving no spouse or children, however, the 1st and 2nd Defendants filed Embu High Court Succession Cause No. 236 of 2013 falsely claiming that they were his sons. The Plaintiffs explained that the 1st and 2nd Defendants were initially issued a Certificate of Confirmation of Grant on 24th July, 2014 where the suit property was not listed as an asset of the deceased. That Father Alois Ngoma, the remaining registered owner of the land, died on 24th September, 2016. That on 16th October, 2017 the 1st and 2nd Defendants petitioned for rectification of the Grant where the 2nd Defendant misled the court that he was the brother of the deceased.
 4. The Plaintiffs aver that the Certificate of Confirmation of Grant was amended on 2nd November, 2017 after the 1st and 2nd Defendants caused the adjudication and demarcation books to be amended to expunge the name of Father Alois Ngoma, yet a search dated 21st September, 2017 showed otherwise. It is the Plaintiffs' case that the 1st and 2nd Defendants in collusion with the 3rd, 4th and 5th Defendants caused the land to be maliciously, illegally, unlawfully and fraudulently transferred to them and the Plaintiffs set forth the particulars of the alleged fraud. The Plaintiffs claim that the Defendants have attempted to dispose of the land, and between August and September, 2019 a number of potential buyers visited the suit land.



5. The Plaintiffs averred that they had never disposed of the land to the 1st and 2nd Defendants or any third party whatsoever, nor are they aware of any competing interests thereon from any other persons. The Plaintiffs asserted that the suit land does not belong to the 1st and 2nd Defendant and neither had they authorised them to deal with the land in any manner. The Plaintiffs alleged that the Defendants have threatened and attempted to dispose of the land to the detriment of the Plaintiffs and other lawful beneficiaries.
6. The 1st and 2nd Defendants filed a Joint Statement of Defence dated 25th May, 2022 denying the averments set out in the Plaint. The Defendants claimed that the suit is misconceived, an abuse of court process, incompetent and bad in law for want of particulars of fraud and illegality, as well as frivolous and vexatious for disclosing no cause of action and should be struck out. They claimed that the Plaintiffs are strangers to the suit as well as intermeddlers, interlopers and busy bodies with no locus standi to institute the suit. The 1st and 2nd Defendants averred that they are the bonafide, legal registered owners who acquired registration over the suit property procedurally and legally without notice of any defects or adverse claims on the title.
7. They explained that they acquired the land by way of succession and vesting orders issued by a competent court, which were never challenged. They claimed that the Plaintiffs had not demonstrated that the Defendants had acquired the land through fraud, misrepresentation or non-disclosure of facts to warrant cancellation of the title. They further averred that the Plaintiffs have never been the legal and/or registered owners of the suit property as alleged. The 1st and 2nd Defendants prayed that the suit against them be dismissed with costs.
8. The 3rd, 4th and 5th Defendants also filed a joint statement of defence dated 9th February, 2023 denying the Plaintiffs' allegations in the Plaint. They claimed ignorance of the matters relating to ownership of the suit land raised in the Plaint, but nevertheless denied the same. They also denied the particulars of fraud pleaded or that Demand and Notice to sue the Government was issued. They therefore claimed that the suit is bad in law and the prayers sought are neither available or merited. They prayed that the suit be dismissed with costs.

Hearing and Evidence

The Plaintiffs' Case

9. The hearing of the case commenced on 24th January, 2024 with Father Marsalius Okello testifying on behalf of the Plaintiffs as PW1. He adopted his witness statement dated 16/06/2022 as his evidence-in-chief and his bundle of documents dated 7/6/2022 as his evidence in court. His testimony is that the property was acquired around August, 1980 under the names of Bishop Nicodemus Kirima & Father Alois Ngoma as trustees of the Plaintiffs. He explained that the church allowed them to buy the land in the name of the trustees and later transfer to the church as had been done for other parcels purchased in the area. He testified that the funds for purchase came from the church, and the neighbours knew that the land belonged to the church. That they realised however that the title to the suit property had been issued to the 1st & 2nd Defendant in 2019.
10. PW1 testified that after purchase they used to farm/till the land and the church would conduct searches to ensure the land was still in its hands and especially before undertaking any improvements. He stated that they conducted a search on 21/9/2017 when Bishop Kirima died and it still showed him and Father Alois as registered owners, though they died in 2007 and 2016 respectively. He testified that he was aware the 1st & 2nd Defendants were currently registered as owners of the land and have a title. He pointed out that in the succession proceedings over Bishop Kirima's estate, the Defendants indicated



that they were his sons, but by virtue of his calling as a catholic father, Bishop Kirima did not have children.

11. PW1 testified that the Defendants had not included the suit property during the Application for Letters of Administration in 2013, but they amended the grant in 2017 to include it after Father Alois died and he was expunged from the adjudication record. He claimed that there was collusion between the Lands office and the 1st & 2nd Defendants in expunging the name of Father Alois to enable them inherit the property. He pointed out that the estate of Father Alois never made a claim on the land since they knew whatever he had belonged to the church. PW1 pointed out that in any event, Father Alois would still own ½ share.
12. He explained that the church had plans to develop the land into an agricultural farm for the community. That the Plaintiff got a partner but had to show proof of ownership, and this is when they discovered of the different registration herein. He testified that they wanted the title issued to the 1st and 2nd Defendants to be cancelled and a title issued in the name of the church so that the project can continue for the benefit of the community.
13. PW1 was cross-examined by Mr. Mungai counsel on record for the 1st and 2nd Defendant and testified that he is familiar with the canon laws that guide the church on acquiring property in its own name. He testified that Kenyan laws do not limit any individual priest from owning land in their own name. He told this court that the church is required under canon laws to keep records of expenditure. He admitted that save for the search showing Bishop Kirima and Father Alois, they did not have records of purchase, receipts or agreement for the suit property. He testified that Bishop Kirima and Father Alois were registered on behalf of the church vide an internal understanding and they had several parcels of lands under this arrangement.
14. PW1 claimed he was not aware of the 12 year limit to recover land. PW1 acknowledged that from the adjudication records, there was no indication that the land was to be held in trust. He claimed he was unaware of the procedure of objecting to the confirmation of grant. He told this court that the rectification of the grant to include the suit property was done correctly and legally, save that the wrong information was given. He explained that he had produced several titles acquired in the name of Bishop Kirima which are now owned by the church. PW1 said that he did not know if the land was registered as ½ share in common or a joint tenancy. He testified that the fraud was on the removal of father Alois to only retain Bishop Kirima, and the claim that they were his sons.
15. PW1 was then cross-examined by Mrs. Waswa for the 3rd, 4th and 5th Defendant and he admitted that they don't have a title to the suit property. He testified that he got the adjudication search dated 21/09/2017 from the land's office in Kwale. He added that the change done in 2017 removed the name of Father Alois giving rise to the entries done in 2018, and that the church was not involved in this change. He reiterated that there was collusion between the Registrar and the Defendants to remove the names of the trustee. He stated that they were not satisfied with the Land Registrar's explanation as to why the initial documents had two names and how the changes thereon came about.
16. On re-examination, PW1 testified that canon laws allow the church to own property. He acknowledged that the laws of Kenya are superior to canon law. He testified that according to his understanding of joint ownership, since Bishop Kirima died first, Father Alois would have inherited the property. He explained that Father Alois lived for over 20 years after he ceased being a trustee and never lay claim on the suit land. He testified that there are other titles all in Kwale County, which the Defendants had not claimed.



17. PW1 clarified that the Plaintiff's adjudication search came first and showed both Bishop Kirima and Father Alois Ngoma, thus the title issued in 2018 ought to have had his name. He reiterated that Bishop Kirima, being a catholic father, had no children. He was repeated that in one Affidavit, Misheck claimed to be Bishop Kirima's son, but in a later affidavit the same person claimed to be a brother. PW1 concluded that the 2nd Defendant lied and misled the court. He asserted that the church has been taking care of and farming on the suit land since its purchase, with the community benefiting from its proceeds.
18. The Plaintiffs case was marked as closed with the above.

The 1st and 2nd Defendant's Case

19. The 2nd Defendant, Misheck Muniyiri Kariithi, testified in support of the 1st & 2nd Defendants' case, adopting his witness statement dated 25/5/2022 as his evidence-in-chief. He produced the documents in his List of Documents dated 25/5/2022 as his evidence, and they were marked as DW1 Ex. 1 - 4. He asserted that he did not acquire the title unprocedurally. He denied being involved in any illegality in obtaining ownership. He testified that Nicodemus Kirima was the registered owner and that he did not own the land jointly with the Catholic Diocese of Mombasa. He asked that the title remains as registered and the restriction registered thereon removed at the Plaintiffs' cost.
20. DW1 was cross-examined by Mr. Remington counsel on record for the Plaintiffs. He testified that he and the 1st Defendants are brothers to Nicodemus Kirima and he got the land through succession. He claimed that he was unaware the late Nicodemus was a trustee of the Plaintiff. He explained that Nicodemus died in 2007 and he filed for succession in 2013. That Nicodemus told him about his interest in the suit property in 2002, but they did not include it in the 2013 succession proceedings because they did not have the documents. He further explained that he was not aware he had referred to Nicodemus as his uncle in the Affidavit. He was referred to the Affidavit in support of the summons which states that they are surviving children and confirmed that he was his brother.
21. DW1 testified that he included the suit property in the estate of Nicodemus on the strength of the adjudication search dated 23/5/2018. PW1 admitted that his search contradicts the adjudication search dated 21/9/2017 showing the land was owned jointly by Bishop Nicodemus Kirima and Father Alois Ngoma. He testified that he was not aware the land was owned alongside another person. He told the court that when he visited the land, it was occupied by squatters. He further testified that he did not know who between Bishop Kirima and Father Alois Ngoma died first. He denied working with anyone to remove Father Alois from the title. He asserted that the land belonged to Nicodemus and no one should have a claim on it.
22. On cross-examination by Mrs. Waswa, DW1 testified that the adjudication records dated 21/9/2017 and 4/10/2017 have the names of both Bishop Nicodemus and Father Alois, however the one dated 23/5/2018 has only Nicodemus. He admitted that since Nicodemus died in 2007, he could not have done the variations. He testified that after he obtained the grant, he lodged the forms at the Land Registry and got title and the he never mentioned to the Registrar the property was in the two names initially. He testified that he has never occupied the suit land but only visited it.
23. DW1 re-examined indicated that the Affidavit for amendment of grant does not bear a court stamp or case number, and also did not refer to any annexures and that it was not filed in any court. That he only came to know of the adjudication search of 21/9/2017 after the filing of this suit. He testified that he did the Petition for rectification of grant himself without the help of a lawyer, but could not recall whether he attached any documents. He stated that he had never met Alois Ngoma. Further, that there has been no proceedings seeking revocation of the grant. He pointed out that the Plaintiffs filed



suit for themselves and not on behalf of Father Alois. He confirmed that he relied on the Adjudication record of 23/5/2018 in his bundle which was the latest search.

The 3rd, 4th and 5th Defendants' Case

24. On behalf of the 3rd, 4th and 5th Defendants' case, Susan Mweni, a Land Registrar employee No. 2015000474 testified as DW2. She produced the documents in her List of Documents filed in court as DW2 Ex. 1-42. She testified that adjudication was in 1980 and in the adjudication record dated 3/8/1980, the property was allocated to Bishop Nicodemus Kariithi and a green card was opened on 26/8/1993 in his name. A transfer by way of transmission vide Embu High Court Succession Cause No. 236 of 2013, the land was registered in favour of Joseph P. Kariithi and Misheck Munyiri Kariithi as administrator and beneficiaries. That later on 6/5/2019 a P/A was registered in the name of Misheck Munyiri Kariithi, and thereafter a restriction was placed pending determination of this suit.
25. DW2 testified that there are cancellations on the adjudication record. She noted that the name of Father Alois Ngoma was cancelled but she did not know the reason for the said cancellations. She confirmed that the adjudication record in favour of Bishop Nicodemus Kariithi and Father Alois Ngoma is part of the record. She confirmed that the Certificate of Official Search issued on 14th November, 2017 showed proprietorship in common, ½ undivided share. DW2 testified that there must have been another green card with the two registered owners but she did not have it in her record.
26. DW2 further testified that the green card produced at pages 23 & 24 of her bundle was opened later but it was not gazetted and neither did it have a green card number. DW2 was referred to page 18-22 of the bundle and she testified that it was a registration of a trust registering trustees for the catholic Church. DW2 pointed out that Bishop Nicodemus Kirima was one of the trustees of the Catholic Diocese of Mombasa. DW2 testified that the person doing the adjudication ought to have noted that Bishop Nicodemus Kariithi was a trustee of the Plaintiff per the trust document produced herein. She also clarified that there was no partition to show that the two names were separated or that there was a sub-division.
27. DW2 was cross-examined by Mr. Remingtone, and she testified that the documents produced as DW2 Ex 1-42 are what is in the file at the Land Registry. She testified that she had taken notice of the existence of the trust as it spoke to the relationship between the registered proprietors and the Catholic Archdiocese of Mombasa. The witness was referred to page 42 of the AG's bundle and page 10 of the Plaintiff's bundle and noted that the handwriting is different. She further testified that since both are dated 28/2/1981 the entry number is the same, then the document ought to be the same with those in Nairobi.
28. DW2 noted that there was an alteration in favour of Nicodemus Kariithi but which does not show where the changes were done. She further testified that the Amended Certificate of Confirmation of Grant refers to the property as LR Alaso/Kwale/Kidimu/12 and not Kwale/Kidimu/12. DW2 could not tell why the name of Father Alois was removed before the application for transmission. DW2 concluded by testifying that there were discrepancies in the title that needed to be looked into.
29. DW2 was then cross-examined by Mr. Mungai and she testified that she did not know how the Certificate of Incorporation got into their parcel file as there is no forwarding letter or booking letter. She could not tell if the trust documents were in the parcel file when the 1st and 2nd Defendant acquired registration. She could not tell whether the certificate of incorporation alone was sufficient to indicate the role and/or power of the trustee in the absence of a trust deed and whether it touched on the suit property. She however admitted that a trust deed ought to exist for the certificate of incorporation to



- been issued. She also testified that the certificate of incorporation produced in her bundle did not refer to the suit property.
30. DW2 testified that the green card is opened on the basis of the adjudication record received as well as the accountability list once forwarded to them. She explained that for an initial registration, a gazette notice is not required and that it is only required when the green card is missing. She stood by her earlier testimony that the green card produced ought to have been gazetted since there is evidence that it was not the original green card. She testified that they opened the green card in the names of Nicodemus and Alois. She confirmed that the 1st and 2nd Defendants acquired the land through succession after availing all supporting documents and following due process. She testified that Father Alois was a foreigner and that she could not have owned land in Kenya.
 31. On re-examination, DW2 testified that the adjudication records in their file are forwarded to them by the Adjudication Office on completion of the adjudication process. She testified that page 2 of her bundle is the same document as that at page 11 of the Plaintiff's bundle save that her document had cancellations. She testified that she had never received any complaint from the Catholic Diocese disowning the certificate of incorporation.
 32. The 1st and 2nd defendants case was marked as closed.
 33. John Mwangi Karanja, a Land Adjudication Officer at Kwale employee no. 20060480, testified as DW3. He testified that the suit property is recorded under 2 people, Bishop Nicodemus Kirima Kariithi and Father Alois Ngoma. DW3 disowned the 1st and 2nd Defendants' search dated 23/5/2018 showing only the name of Bishop Nicodemus Kariithi and testified that it is not a true reflection of their records. He testified that it is not a true picture and explained that the rightful owners are reflected in the record and not a search. He noted that a name had been crossed out and further explained that the original record differs from the duplicate record.
 34. DW3 testified that any deletion from the record must be supported with an objection number. He clarified that in the documents, there is only one number, which is no. 155/55/86 that allowed the transfer of the suit property from George Kagume and Francis Waigwa to Bishop Nicodemus and Father Alois. He clarified that there is no other objection number in their records to support the deletion of Father Alois Ngoma. He asserted that the deletion was not done by their office, and that the letter dated 5/5/2021 bears the true picture of their record. He clarified that in the event the duplicate adjudication record and the original differed, the duplicate would take precedence. He insisted that the record shows both Bishop Nicodemus and Father Alois.
 35. On cross-examination by Remington DW3 testified that if a title produced differed from the duplicate record, the same would have been wrongly procured. He explained that transactions such as sales and subdivisions do not interfere with the duplicate record. He reiterated that any change in the adjudication record must be supported by an objection. He testified that in case of death of one party, the objection time is limited to 60 days after which no dealings are allowed on the land.
 36. DW3 testified that where a party dies and there is no objection, then at the lapse of the 60 days, the title once produced will still bear the name of the deceased party as appears in the duplicate adjudication record, and any change thereon must be done through the court. He stated that where there is apparent interference in the records, he would impute fraud. That to ensure the integrity of its records, the Lands Adjudication Office, has power to correct the error based on the true adjudication record. He clarified that if a party approached him with a certified duplicate, he would be in a position to deal.
 37. DW3 was also cross-examined by Mr. Mungai and he reiterated that the duplicate and the original should match, and if they do not, the duplicate carries the day. He reiterated that the search dated



23/5/2018 was erroneous. He testified that Nicodemus and Alois are the correct persons per the record, but had no record to show that they own the property on behalf of the church. He further testified that he had nothing in his record to confirm father Alois's nationality. He testified that the alterations were in the original adjudication record.

38. DW3 also testified that the Registrar is the custodian of the Original Adjudication record but could not tell if that is where the cancellations were done. He testified that in view of the never ending transactions, it is not automatic that the persons named in the adjudication record will get title, but he asserted that the adjudication record remains constant. He did not know the current registered owner of the land neither was he aware of the catholic church, but testified that the Catholic Church did not feature on their records.
39. On re-examination, DW3 testified that his testimony is based on the records in his office. He explained that when objection hearings are done, they are recorded on both records, thus the two records must be the same. He acknowledged that priests have a right under the Constitution to own property.
40. With the above the 3rd 4th and 5th defendants case was closed.

Submissions

41. At the close of the hearing, the court directed parties to file their written submissions. In compliance with the court's directions, the Plaintiffs filed their submissions dated 21st August, 2022. The 1st and 2nd Defendants also complied and filed their submissions dated 2nd November, 2025. The 3rd 4th and 5th defendants did not file submissions.

Confirm if AG filed submissions?

Analysis and Determination

42. I have considered the pleadings, the witness testimonies, evidence produced before this court as well as the written submissions, the authorities cited and the applicable law. Save for the preliminary issues that have been raised by the 1st and 2nd defendants, the main issue for consideration is whether the Plaintiff has proved their claim to the required standard of proof. In answering that question I will also endeavour to answer the following questions which I find necessary to resolve or clarify.
 - i. Whether this court has jurisdiction to hear and determine the case
 - ii. Whether the Plaintiff has locus standi
 - iii. Whether the land was held in trust for the Plaintiffs
 - iv. Whether the Plaintiffs are entitled to the reliefs sought
 - v. Who shall bear the costs of this suit

Preliminary Issues

43. I will first resolve two preliminary issues that have been raised by the 1st and 2nd Defendant.
44. Reviewing the plaintiffs claim vis a vis the evidence produced it has been submitted on behalf of the 1st and 2nd defendant inter alia that since the Plaintiffs have failed to prove any beneficial interest and or legal interest in the suit property, it does not have locus standi to file the suit herein seeking the orders sought.



45. The term locus standi was defined in the case of Law Society of Kenya ...Vs... Commissioner of Lands & Others, Nakuru High Court Civil Case No.464 of 2000, as follows: -
- “ the term Locus Standi means a right to appear in Court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings”.
46. Guided by the above definition, I have keenly read the submissions made in this regard, it is my considered view that the matters raised are evidentiary issues. They are all matters that ought to be considered under the question of whether the plaintiff has proved its case to the required standard. Infact counsel on record for the 1st and 2nd Defendants while submitting on the issue of locus has drawn the courts attention to the provisions of section 107 and 109 of the Evidence Act. For me the issue of locus standi is not properly raised to warrant pre-empting the hearing of the Plaintiffs claim on merits.
47. It is the finding of this court that the issue of locus standi as raised is misplaced.
48. The jurisdiction of this court to determine this suit has been brought into question by the 1st and 2nd Defendants on the basis that the Plaintiff is seeking to challenge the vesting order issued by the Family Court, vesting the suit property in the joint names of the 1st and 2nd Defendants in this Court, as opposed to moving the Family Court that issued the vesting orders. I have also noted the legal provisions cited in support of this view as well as the judicial precedents.
49. I’m aware that jurisdiction is everything and without it the court cannot do anything with regard to adjudicating the suit. And I also agree that I cannot confer jurisdiction on the court except by the Constitution or statute. I do not need to cite authorities in this regard, the matter is established.
50. I have keenly considered the issue and firstly based on the prayers sought I have not seen any invitation to nullify the succession proceedings and which I agree I cannot for the reason that I have no powers to review the orders of a court of concurrent jurisdiction.
51. It has been pointed by counsel for the 1st and 2nd Defendants that a church cannot simply sidestep succession proceedings; its claim to a deceased’s property must be made within the context of the deceased’s estate administration and not by filing a separate civil suit. I think this proposition looks at the claim before court from a narrow point of view as the case goes beyond this. It is not about the church’s right as a beneficiary of the estate of Father Alois or even Bishop Kariithi. The issue must be looked at from the totality of the entire claim and not in isolation. It is not the only ground upon which the court must determine the case. Allegations of a constructive trust have also been raised by the Plaintiffs. The matter before me is on ownership and acquisition of title which I have jurisdiction under the ELC Act to entertain.
52. Consequently, it is the finding of this court that this court has jurisdiction to hear and determine this suit. What the court can pronounce itself on within these proceedings it shall proceed to do so within the confines of the law.
53. Having resolved the preliminary issues I will now focus on the whether the Plaintiffs have proved their claim to the required standard of proof.
54. The legal framework applicable is the Evidence Act. Section 107(1)(2) of the Evidence Act, which provides as follows:
- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.



- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.
55. Sections 109 and 112 of the same Act provides that:
- “ 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 that fact shall lie on any particular person.
56. Section 112 of the same act provides;-
- “ 112. In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.”
57. Briefly the plaintiffs are suing on behalf of the Catholic Church Archdiocese of Mombasa. They claim to be the legal, bona fide, beneficial, and or equitable owners of the suit property herein. The basis of their claim is that the Catholic Church asked two of its members/trustees, Bishop Nicodemus Kariithi and Father Alois Ngoma, to acquire the suit property on behalf of the Church, and the two purchased it from its previous owners. That this was a common and established institutional practice for the Plaintiffs to acquire property through its trusted officials, who would be registered as legal owners with the clear and common understanding that they held the property in trust for the church. This practice was a strategic response to a growing reluctance within some coastal communities to sell land directly to the institution.
58. The burden of proof lay on the plaintiffs to prove their interest in the suit property. Firstly, the plaintiffs did not produce any title to the suit property issued in their names and this is well understood since based on the facts, it was not expected that they would abnatio have the property registered under their names. As submitted by counsel appearing on their behalf they plead a resulting/constructive trust. It is trite that a constructive trust is one way of conferring a legal interest in land by operation of the law.
59. It has been submitted on behalf of the plaintiff that a resulting trust is presumed to have arisen in 1980 and that the evidence shows that the Plaintiffs provided the direction and purpose for the acquisition, making it the true provider of the impetus for the purchase.
60. Again, I will emphasise that the legal burden to prove the existence of the trust rests with the one who is asserting the trust. Before I delve into a discussion of the evidence tendered. I find it necessary to recall the legal perspectives of the concept of trusts and how trusts may arise to lay a basis upon which the court will be guided.
61. The Court of Appeal in the case of James Archer & Another Vs. Inger Christine Archer & 2 Others Civil Appeal No. 39 of 2020 in its judgement delivered on 17/3/2023 discussed trusts at length as follows;-
23. Black’s Law Dictionary, 9th Edition; defines a trust as “The right, enforceable solely in equity, to the beneficial enjoyment of property to which another holds legal title; a property interest held by one person (trustee) at the request of another (settlor) for the benefit of a third party (beneficiary).” There are three types of trusts that can arise with respect to land, as explained



in Elements of Land Law, 5th Edition by Kevin Gray and Susan Francis Gray at page 824 paragraph 7.1.11:

“Trusts relating to land can be classified as either express trusts or implied trusts, the latter category subdividing into further categories of resulting and constructive trusts ... Consistently with the characteristic preoccupation of equity, the primacy of intention is exemplified in each of these three cases of trust. The trust is the express very embodiment of an intention explicitly formulated by a legal owner regarding the beneficial ownership of his land. Implied trusts arise by operation of law, but do so against a background of actual or presumed beneficial intentions as to beneficial title. Yet, although premised alike upon intended beneficial ownership, the resulting trust and the constructive trust have traditionally enjoyed distinct spheres of operation.”

24. This position was confirmed by this Court (Makhandia, Ouko & M’inoi, JJ.A.) in *Twalib Hatayan & Another vs. Said Saggah Ahmed Al-Heidy & 5 Others* [2015] eKLR as follows:

“Trusts are created either expressly (by the parties) or by operation of law. An express trust arises where the trust property, its purpose and beneficiaries have been clearly identified (see. Halsbury’s Laws of England vol 16 Butterworths 1976 at para 1452). In this case, we have a definite property and beneficiary. The purpose/intent for which the property was bought remains in dispute. This negates the existence of an express trust herein. In the absence of an express trust, we have trusts created by operation of the law. These fall within two categories; constructive and resulting trusts...”

25. It is not contested that there was no express trust created with respect to the suit properties in this appeal, and no evidence of such an express trust was provided by the Appellants. The Appellants’ case therefore turns on whether a trust can be implied from the facts of the appeal. The authors of Elements of Land Law (supra) explain when a resulting trust arises as follows at page 825 in paragraphs 7.1.12:

“Resulting trusts are intrinsically concerned with the money contributions laid out in the purchase of an estate in land. The beneficial ownership implied under a resulting trust gives effect to the intention presumptively disclosed by the pattern of money purchase. Thus, in the absence of any evidence of countervailing intention, a financial contribution towards the acquisition of a legal estate in the name of another normally generates a resulting trust in favour of the contributor, the latter’s beneficial entitlement being directly proportional to his or her cash contribution.”

26. The two main requirements for a resulting trust to arise are firstly, the intention and contribution to the purchase of the property must be contemporaneous with the taking of legal title, as was held in *Pettit vs Pettit* (1970) AC 777 and in *Gissing vs Gissing* (1971) AC 886. The relevant time frame for the existence of the required intention and contribution is therefore at the point of purchase of the land, which is the time the beneficial entitlement crystallises, and resulting trusts cannot in principle be founded on intentions, events or circumstances which arise after the date of purchase. Secondly, the clearest instances of resulting trust emerge from direct cash or other forms of financial contributions to the purchase of property at the point of purchase.



27. This Court has also held in *Twalib Hatayan & Another vs. Said Saggar Ahmed Al-Heidy & 5 Others* (supra) and in *Juletabi African Adventure Limited & another vs. Christopher Michael Lockley* [2017] eKLR that the general rule here is that a resulting trust will automatically arise in favour of the person who advances the purchase money, whether or not the property is registered in his or her name.....
28. On the other hand, there has been a pragmatic shift in English law towards recognising constructive trusts as the primary phenomenon in the area of implied trusts, as illustrated by the decisions in *Lloyds Bank PLC vs Rosset* (supra), *Stokes vs Anderson* (supra), *Oxley v Hiscock* (supra) and *Stack vs Dowden* (supra) which were relied on by the Appellants. There may however be instances when the two forms of implied trusts overlap arising from their common feature of the existence of demonstrated intention as regards the beneficial ownership of property which may exist from the time of purchase and thereafter, and as a result both forms of implied trusts are often simultaneously pleaded for this reason.’
62. Arising from the above I have decanted the elements to be present for a resulting/constructive trust to arise firstly Intention of the parties and secondly who advances the purchase monies at the point of purchase. It does not matter whether the property is registered in their name or not.
63. Applying the above I will dispense with the express trust for the simple reason that there was no evidence led before this court by the Plaintiffs of such an express trust. I say so because there is no evidence that the intention of the church was documented as between Bishop Nicodemus Kariithi and Father Alois Ngoma, to acquire the land on behalf of the Church. This will become clearer later in this judgement.
64. In view of the above I will therefore proceed from the premise of resulting trust and or constructive trust which we have seen can be pleaded concurrently due to their overlapping nature.
65. The Supreme Court of Kenya in the case of *Shah & 7 Others vs Mombasa Bricks & Tiles Limited & 5 Others* (2023) KESC 106 (KLR) expounded further on Constructive Trust as follows;-
- “64. On the other hand, the respondents submit that a constructive trust overrides the registered title where a party has exerted undue influence when obtaining and retaining the property transferred to him, as was in the instant case. Furthermore, section 25 (2) of the *Land Registration Act* provides for overriding interests, which include trusts, which can be imposed to defeat the title of a registered proprietor. The respondents further urge that, equity will impose a ... trust in an agreement for the sale of land and the resultant registration whenever it is shown that the claimant obtained the ... title while standing as a fiduciary ...
85. While Sections 25, 26 and 28 of the *Land Registration Act* recognize that the rights of a registered proprietor of land are absolute and indefeasible, these are only subject to rights and encumbrances noted in the register and overriding interests. The overriding interests include trusts. In our view, and in the absence of any limitation as to the trusts, this includes constructive trusts. Applying the provisions of Article 24 of the *Constitution* therefore, the limitation of the right to property is provided under law, and includes a constructive trust.



86. We have found that the doctrines of equity are part of our laws by virtue of Section 3 of the *Judicature Act*. And while the *Constitution* entitles every person to the right to property at Article 40, this right is not absolute. Article 24 provides that a right cannot be limited except by law. We have also established that, while Sections 25 and 26 of the *Land Registration Act* provide for the rights of a proprietor and that the certificate of title is conclusive evidence of proprietorship, Section 28 provides that the registration is subject to overriding interests. One of these overriding interests is trust ...
87. ... Trust is an equitable remedy which is an intervention against unconscionable conduct. Where the circumstances of the case are such that it would demand that equity treats the legal owner as a trustee, the law will impose a trust. It is imposed by law whenever justice and good conscience require it. On this issue and for the reasons given above, we therefore find that a constructive trust can be imported into a land sale agreement to defeat a registered title.”
66. PW1 produced the Certificate of Incorporation of Trust dated 5th March, 1959 incorporated under the Land (Perpetual Succession) Ordinance now repealed. The powers of the trustees under this instrument include the ownership of land vested in them by way of purchase, acquisition, donation, gift or any other lawful means.
67. The aforesaid Certificate of Incorporation of Trust was duly registered at the Land Titles Registry at Mombasa and is dated 5th March, 1959. It shows that the late Father Alois Ngoma was appointed as trustee of the catholic Archdiocese of Mombasa Registered Trustee, the Plaintiffs herein, on 12th June, 1967. The late Bishop Nicodemus Kirima was vide the same instrument appointed as Trustee of the Plaintiff on 11th April, 1979. He was removed as a trustee on 14th September, 1989. This document perse is not sufficient.
68. It is important to note based on the evidence led by the plaintiffs the suit property is not a donation nor a gift to the Plaintiff. According to the Plaintiffs the same was purchased through the two trustees above from its previous owners, George Kagume Chiuri and Francis Waigwa Kihagi, The plaintiffs produced adjudication record (page 10 of the Plaintiffs’ bundle) as well as the Certificate of Official Search dated 14th November, 2017. These documents clearly indicate the suit property is held by the two as proprietors in common, each holding ½ undivided share. The Adjudication Officer DW3 was very clear that the records at his office still showed that the land was registered to both Bishop Nicodemus and Father Alois Ngoma.
69. From my review of the adjudication register as well as the Certificate of Official Search above they do not reveal that the trust was noted on the register of the suit property. This confirms there was no entry on the adjudication records and that the two trustees were holding the suit property in trust for the Plaintiff. I have already noted there is no express trust.
70. I note that the parcel file for the suit property produced herein included a copy of the Certificate of Incorporation of Trust referred to hereinabove. This document was also produced by the Plaintiff as part of their evidence. The Land Registrar who gave evidence as DW2 could not explain in her testimony during cross examination how the Certificate of Incorporation of Trust landed in the parcel file without a booking letter. She confirmed there was no forwarding letter to the same. DW2 testified that the person doing the adjudication ought to have noted that Bishop Nicodemus Kariithi was a trustee of the Plaintiff per the trust document produced herein. Indeed, this did not happen. For me



the presence of this document alone cannot qualify or pass as proof that the persons named in the title were holding the land in trust for the Plaintiff.

71. I will now deal with the issue of the purchase money. From the case law cited the purchase arrangements are pertinent in terms of who advanced or paid the purchase price. Further that the same must be at the point of purchase. PW1 evidence in chief was that the funds for purchase came from the church, and that the neighbours knew that the land belonged to the church. No evidence was led to show the movement of the alleged moneys either to the two trustees or directly to the vendors George Kagume Chiuri and Francis Waigwa Kihagi. Cross examined by Mr. Mungai PW1 confirmed that the church is required under canon laws to keep records of expenditure. Even in the absence of Canon Law under normal financial practice the church is expected to keep records for accountability among other legal requirements. PW1 admitted that they did not have records of purchase, receipts or agreement for the suit property.
72. In view of the above then the court agrees with the submission of the 1st and 2 Defendants that the Plaintiff was unable to connect any nexus of the suit property to the Catholic Church by way of any documentary evidence that it was purchased by the Church and registered in the names of the Plaintiffs as trustees except for the oral evidence of the Plaintiff.
73. Was there other evidence led that could have assisted in establishing the Plaintiffs interest in the property? PW1 testimony is that the entire neighbourhood and catholic congregation knew that the land belonged to the church. None of the neighbours or members of the local congregation of the area were called as witnesses to corroborate the Plaintiffs Claim.
74. It has been submitted by the Plaintiff that the objection proceedings in 1986 concerning the transfer (Objection No. 155/85/86), Father Alois Ngoma, while defending the acquisition, stated on record that he and Bishop Kariithi had acquired the Suit Property on behalf of the church, with the intention of using it for future charitable purposes. I have already noted that DW3 was very categorical that the Church does not feature anywhere in their records. He clarified that in the documents, there is only one number, which is no. 155/55/86 that allowed the transfer of the suit property from George Kagume and Francis Waigwa who sold the land to Bishop Nicodemus and father Alois.
75. The Plaintiffs produced other titles which were initially owned by the late Bishop Nicodemus Kirima and which they claimed in evidence have since been transferred to the church. These titles are for Kwale/Ukunda/2805 dated 22/5/1986; Kwale Majoreni/93 dated 17/09/1984. However, the corresponding transfers by Bishop Kirima were not produced. PW1 confirmed he had no evidence the bishop had signed anything.
76. While it is trite that a constructive trust need not be registered against the title the plaintiffs did also not lead any evidence of actual possession. PW1 testified that they used to till the land on and off during rainy seasons. No evidence was led in this regard. It would further be expected that the local Catholic church would be using the land but one was called as a witness.
77. PW1 testified that the church had plans to develop the land into an agricultural farm for the benefit of the community. He adduced in evidence copies of a Masterplan and proposal for funding a mixed project at the suit property. I have seen the proposal but it has no specific reference to the suit property.
78. In the circumstances, the question would be whether this court ought to impose a constructive trust on the property for the benefit of the Plaintiffs. I think I have demonstrated why the answer ought to be in the negative.
79. This judgement would be incomplete without a comment on the allegations of fraud and irregularities raised by the Plaintiffs. It is not disputed that the suit land is currently registered in the name of the 1st



and 2nd Defendants. They acquired the land by way of succession as the beneficiaries of the estate of the late Bishop Nicodemus Kirima Kariithi who was allegedly their brother. The 1st and 2nd Defendants case is that they followed all the procedures and submitted all the documents to have the land transmitted to them legally.

80. The Plaintiffs case is that the fraud was committed largely during the succession proceedings in the High Court. This then is a question of whether the current registered proprietors were rightly conferred as beneficiaries of the deceased. This is a probate issue. The courts hands are tied as it has no jurisdiction to determine this issue. Moreover the proceedings were undertaken by the High Court. This court is a court of equal status pursuant to Article 162(2) b. There is no law allowing this court to sit on appeal on a decision rendered by a judge of equal jurisdiction. To make a finding on the issues raised with regard to the succession proceedings would be to enter a forbidden arena. Section 76 of the [Law of Succession Act](#) is instructive.

81. Section 76 above provides interalia that

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

- (a) that the proceedings to obtain the grant were defective in substance;
- (b) that the grant was obtained fraudulently by the making of a false
- (c) that the grant was obtained by means of an untrue allegation of a statement or by the concealment from the court of something material to the case;

fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently

82. In Joel Arusei Kipsaina & Ano. Vs. Zipporah Jepketer Kipsaina & Another (2014) eKLR the court held that ELC has no jurisdiction to re – distribute an estate. It has no jurisdiction to declare null and void succession proceedings that led to the distribution of a suit land to any of the parties.

83. The court has confined itself to the claim of constructive trusts and having declined to make a finding of constructive trust, the plaintiffs have no basis to impeach the 1st and 2nd defendants title. Moreover, they have failed to demonstrate an overriding interest on the suit property.

84. The upshot of the foregoing is that the Plaintiff has failed to prove its case against the defendants to the required standard.

85. In view of the above findings it goes without say that the Plaintiffs are not entitled to the orders sought.

86. On the issue of costs, Section 27 of the [Civil Procedure Act](#) provides that:-

27. Costs

- (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that



the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

87. From the above extract, one of the fundamental principles underlying the award of costs is that costs is a matter for which the court is given discretion, but this being judicial discretion, it must be exercised reasonably. I think using my discretion I will be inclined to spare the church the burden of paying the costs of these proceedings. Consequently, each party shall bear their costs.

88. The Plaintiffs suit is hereby dismissed and each party shall bear their own costs.

DELIVERED AND DATED THIS 2ND OF FEBRUARY 2026

HON. LADY JUSTICE A.E. DENA

JUDGE

02/02/2026

Judgement delivered virtually through Microsoft teams Video Conferencing Platform in the presence of:

Mr. Remington Otieno for Plaintiff

Mr. Mungai for 1st and 2nd Defendants

No appearance for 3rd -5th Defendants

Court Assistant: Disii Merishai

