

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ELCA NO. E008 OF 2024

SAMUEL KOSKE.....1ST
APPELLANT

SHADRACK LANGAT.....2ND
APPELLANT

ALFONCE LANGAT.....3RD
APPELLANT

PHILIP SIGEI.....4TH
APPELLANT

VERSUS

THE CHURCH OF LIVING
ELOHIM-OREIYET LOCAL CHURCH.....
.....RESPONDENT

(Being an appeal arising from the judgement of Hon. Boke delivered on 16th July, 2024 in Bomet CM ELC Case No. E021 of 2023)

JUDGEMENT.

INTRODUCTION.

1. By a Memorandum of Appeal dated 16th July, 2024 the Appellants challenge the decision of **Hon. Boke CM** in Bomet CM ELC Case No. E021 of 2023.

FACTUAL BACKGROUND.

2. In the subordinate Court, the Respondent filed a suit vide a
Plaint dated 11th July, 2023 and sought the following orders;

a. An order that the Plaintiff is the registered absolute proprietor of 0.15 acres of the parcel registered as Kericho/Sigor/121.

b. A permanent injunction restraining the Defendants by themselves, their agents, servants and/or anyone claiming under the Defendants from entering, trespassing onto, interfering with and/or or any other manner dealing with the church premises.

c. General damages for trespass.

d. Costs of the suit.

e. Interest on (b) (sic) and (c) above at Court rates.

f. Such other relief that this Honourable Court may deem fit to grant.

3. The Appellants filed their statement of Defence dated 7th August, 2023 wherein they denied the averments in the Plaintiff and sought that the Respondent's suit be dismissed with costs.

4. The Learned Trial Magistrate delivered judgement on 16th July, 2024. The judgement is in the following terms;

a. Prayer (a) not granted for no registration as owner has been proved thus Court cannot declare Plaintiff as the registered owner of the land as requested, and yet no title deed/lease hold title have been produced to prove registration as owner. (sic)

b. Prayer (b) on permanent injunction hereby (sic) granted as prayed, though not to stop Defendants from attending church services to fellowship/worship as normal church attendees/goers/worshippers.

c. Prayer c on general damages not granted for no general damages has been proved.

d. Cost of the suit and interest at Court rates granted from date of this judgment.

5. The Appellants being aggrieved by the said judgment approached this Court by way of Appeal.
6. The appeal was admitted for hearing on 17th September, 2025 and the Court issued directions that it be heard by way of written submissions.
7. On 25th September, 2025, the appeal was mentioned to confirm filing of submissions and then reserved for judgement.

THE APPEAL.

8. The grounds of appeal are as follows;

a. The Learned Trial Magistrate grossly misdirected herself in ignoring the principles and tenets of law applicable in regards to the principle of permanent injunction by granting the Respondents permanent injunction against the Appellants despite her own finding that they did not prove ownership of the land.

b. The Learned Trial Magistrate's decision is against the weight of evidence and the law applicable in the circumstances.

9. The Appellants pray for orders that;

a. This appeal be allowed and the judgement granting the Respondents permanent injunction as against the Appellants be set aside.

b. Costs of the subordinate Court's suit and this appeal be awarded to the Appellants.

c. Such other, or further, incidental, alternative or consequential orders

and reliefs as this Honourable Court may deem just and expedient.

ISSUES FOR DETERMINATION.

- 10.** The Appellants filed their submissions on 17th September, 2025 while the Respondents filed their submissions on 30th June, 2025.

The Appellants Submissions.

- 11.** The Appellants submit on the following issues;

a. Whether the Trial Court erred in law and fact by granting a permanent injunction to the Respondents herein.

b. Who should bear the cost both at the lower Court and at the High Court (sic).

- 12.** The Appellants submit that during the hearing, the Respondent produced the following documents;

a. Demand Letter - Exhibit 1

b. Receipt of Payment - Exhibit 2

c. Letter from the Senior State Counsel for registration of Society dated 9th may, 2024 - Exhibit 3

d. Copy of Annual Returns - Exhibit 4

e. Letter from Registrar which confirms the current leaders - Exhibit 5

f. Copy of Certificate to confirm that the Church is registered - Exhibit 6

- 13.** It is the Appellants submissions that the Respondent did not adduce any evidence to show that it was the registered owner of the suit parcel of land.
- 14.** It is also the Appellants submissions that the Respondent contends that it proved trespass through annexure **PR 4** attached to the affidavit in support of the application dated 17th July, 2023.
- 15.** It is further the Appellants submissions that the present appeal is in respect of the judgement delivered on 16th July, 2024 and not the application dated 17th July, 2023.

- 16.** The Appellants submit that the Respondent did not produce any evidence to prove its allegations of trespass.
- 17.** The Appellants reiterate that the Respondent did not prove the right to possess and/or own the suit parcel of land.
- 18.** The Appellants also submit that no sale agreement exists as the Respondent abandoned its quest to have the alleged sale agreement returned to it.
- 19.** The Appellants further submit that the Respondent pleaded trespass and it ought to have led evidence to prove that they unlawfully entered its land.
- 20.** The Appellants rely on **Sections 107 & 108** of the Evidence Act, the judicial decision of **Miller vs Minister of Pensions [1947] 2 ALL ER 372** and submit that the only issue that

was not disputed is the names of the officials of the Respondent.

- 21.** On the second issue, the Appellants submit that since the Respondent failed to prove its case to the required standard, they should be awarded costs of the trial Court and the present appeal.

The Respondent's Submissions.

- 22.** The Respondent submits on the following issues;
- a. Whether the trial Court erred in law and fact by granting the permanent injunction against the Appellants.***
 - b. Who should bear costs of this appeal.***
- 23.** On the first issue, the Respondent submits that the Learned Trial Magistrate held that it had the right to sue for trespass.
- 24.** The Respondent also submits that the fact that it purchased the suit parcel of land and occupied it was not controverted.

- 25.** The Respondent further submits that it proved trespass. This was as per the OB number attached to the affidavit in support of the application dated 17th July, 2023 and marked as **PR-4**.
- 26.** It is the Respondent's submissions that the Learned Trial Magistrate granted the said permanent injunction to protect the church property from wastage.
- 27.** It is also the Respondent's submissions that the said permanent injunction did not bar the Appellants from attending church services.
- 28.** The Respondent relies on the judicial decisions of **Jamal Salim v Yusuf Abdulahi Abdi & another [2018] KECA 14 (KLR), Swastic Holdings Limited versus Kimani [2023] KEELC 16296 (KLR)** and submits that it proved that it was in possession of the land.

- 29.** The Respondent submits that the trial Court found that the sale agreement it had entered into was valid.
- 30.** The Respondent also submits that a report was prepared which showed trespass and an OB number was provided as further proof of trespass.
- 31.** The Respondent further submits that the Learned Trial Magistrate did not therefore err in granting the permanent injunction.
- 32.** It is the Respondent's submissions that the 2nd, 3rd and 4th Appellants did not adduce any evidence to refute the claims against them.
- 33.** It is also the Respondent's submissions that it is only the 1st Appellant who testified and he had no authority to testify on their behalf.

34. The Respondent relies on the judicial decision of **Stephen Gachau Githaiga & another v Attorney General [2015] KEHC 655 (KLR)** and urges the Court to dismiss the appeal with costs.

ANALYSIS AND DETERMINATION.

35. The issues that arise for determination are as follows;

- a. Whether the Learned Trial Magistrate erred in issuing a permanent injunction against the Appellants.***
- b. Who should bear costs of the appeal.***

A. Whether the Learned Trial Magistrate erred in issuing a permanent injunction against the Appellants.

36. The role of the Appellate Court was stated by the Court of Appeal in the judicial decision of **Gitobu Imanyara & 2 others Vs Attorney General [2016] eKLR**. It was held as follows;

“An appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect.” (Emphasis mine)

37. In Abok James Odera T/A A.J Odera & Associates Vs John Patrick Machira T/A Machira & Co. Advocates [2013] eKLR the Court held as follows;

“This being a first appeal, we are reminded of our primary role as a first Appellate Court namely, to re-evaluate, re-assess and reanalyze the extracts on the record and then determine whether the conclusions reached by the learned

trial Judge are to stand or not and give reasons either way.” (Emphasis mine)

- 38.** The Appellants contend that the Learned Trial Magistrate erred in issuing an order of permanent injunction and yet she found that the Respondent had not proved ownership of the suit parcel of suit land.
- 39.** The Appellants submit that in addition to the Respondent failing to prove ownership, it failed to prove trespass and possession of the land.
- 40.** The Appellants also submit that the Learned Trial Magistrate therefore erred in issuing an order of permanent injunction.
- 41.** The Respondent on the other hand submits that it was not disputed that it purchased the suit parcel of land and this was the reason why the Learned Trial Magistrate found that it had the right to sue for trespass.

42. The Respondent also submits that it has always been in possession of the suit parcel of land and it proved trespass as confirmed the OB attached to the affidavit in support of the application dated 17th July, 2023.

43. The Respondents further submit that the Learned Trial Magistrate issued the permanent injunction to protect church property from wastage.

44. Under prayer (b) of the Plaint, the Respondent sought the following order;

“b. A permanent injunction restraining the Defendants by themselves, their agents, servants and/or anyone claiming under the Defendants from entering, trespassing onto, interfering with and/or or any other manner dealing with the church premises.”

45. The Learned Trial Magistrate at pages 3 and 4 of the judgement delivered on 16th July, 2024 observed and held as follows;

“Determination.

I have considered the Plaintiff and defence case, including written submissions. It is not in dispute that the church bought the land in issue for even DW1 has stated the same. Whether or not the church has title deed (sic) or land sale agreement we have not been told for none has been produced. It is clear then that no document has been availed to prove that plaintiff is the registered owner of the land in question. However, in cases of trespass one does not have to prove ownership in order to prove trespass. One has to prove trespass and right to sue. Plaintiff having purchased the land it has a right to sue for trespass. Having purchased land from a person who is deceased is not an

offence and is not the issue before Court now. (sic)

Defendants have denied trespass claims and have claimed that they are worshippers in the church and they do not hold leadership positions and that they only preach if the pastor of the church allows them to do so. It is also clear that from evidence on record there may be leadership wrangles in the church as PW2 the deacon put it in his evidence on record. But the case before Court is about land therefore Court will restrict itself to the orders sought. (sic)

Regarding prayer 1 that asks Court (sic) to declare that the Plaintiff is the registered owner of the land, it is not granted because no ownership document like title deed/lease hold has been produced in Court to prove that Plaintiff is the registered owner. That prayer is dismissed and not granted.

Prayer two, seeking for a permanent injunction, as I have already stated above, one does not have to prove ownership in order to prove case of trespass, so even if Plaintiff has not produced ownership documents and even if Defendants have denied that they have trespassed, I find it being in the interest of justice to grant that prayer, in order to protect the suit property from wastage in case someone would like to trespass or to continue trespassing. (sic)

That does not however mean that Defendants have been stopped from attending church services, for the deacon as PW2 (sic) told the Court that their intention is not to stop them from attending church services. But the church services should be the ones (sic) conducted by the people authorised by the Plaintiff as the owner/occupier of the land in issue, and not the ones

conducted by the people who are said to be trespassers.

As regards prayer 3 on general damages for trespass, no damage has been proved therefore I believe that once an injunction order is granted it will sort out the plaintiff. Cost of the suit will-follow the event. I therefore enter judgment in favour of the plaintiff against the defendants as follows:..."

46. I am inclined to first address the questions of proof of trespass and proof of ownership and their bearing on the orders of permanent injunction.

47. In her analysis the Learned Trial Magistrates observes as follows on the question of ownership;

"Regarding prayer 1 that asks Court (sic) to declare that the Plaintiff is the registered owner of the land, it is not granted because no ownership document like title

deed/lease hold has been produced in Court to prove that Plaintiff is the registered owner. That prayer is dismissed and not granted.

48. Essentially the magistrate found that ownership was not proved and she declined to grant orders declaring the Plaintiff as owner of the suit land.

49. On the question of trespass and permanent injunction, the learned Magistrate observed and found as follows:

“However, in cases of trespass one does not have to prove ownership in order to prove trespass. One has to prove trespass and right to sue. Plaintiff having purchased the land it has a right to sue for trespass....
...Prayer two, seeking for a permanent injunction, as I have already stated above, one does not have to prove ownership in order

to prove case of trespass, so even if Plaintiff has not produced ownership documents and even if Defendants have denied that they have trespassed, I find it being in the interest of justice to grant that prayer, in order to protect the suit property from wastage in case someone would like to trespass or to continue trespassing. (sic)

50. Therefore, on the twin issues of ownership and trespass, the Learned Magistrate found that one need not prove ownership so as to be entitled to sue for trespass.
51. It is therefore not correct to say that the order of permanent injunction issued by the Learned Trial Magistrate was founded on ownership. Page 4 of the judgment is as follows:

“Prayer two, seeking for a permanent injunction, as I have already stated above, one does not have to prove ownership in

order to prove case of trespass, so even if Plaintiff has not produced ownership documents and even if Defendants have denied that they have trespassed, I find it being in the interest of justice to grant that prayer, in order to protect the suit property from wastage in case someone would like to trespass or to continue trespassing. (sic)”

52. A further reading of this paragraph reveals that the Learned Trial Magistrate issued a permanent injunction ***“in the interest of justice in order to protect the suit property from wastage in case someone would like to trespass or to continue trespassing.”*** The question that follows is whether these were the proper considerations to be made in issuing orders of permanent injunction against the Appellants.

53. The Court of Appeal in **Mohamed Ndoge v Mohamed Golo Ndogo & 3 others [2015] KECA 184 (KLR)** held as follows;

“As opposed to an order of temporary injunction issued provisionally before the Court has had the opportunity to assess the merits of the application, a permanent injunction comes at the end of the trial after parties have presented evidence and been cross examined on their rival claims. A temporary injunction serves to preserve the subject matter in status quo during the pendency of a suit. It follows, therefore that the standard of proof in either case will be different. At the interlocutory stage the proof is on a prima facie plane (sic). Based on the evidence of the parties the Court may grant a permanent injunction if it is satisfied, on a preponderance of that evidence

that irreparable harm, loss or damage, not capable of being compensated by an award of damages, in the absence of injunction, will be occasioned. At the interlocutory stage the threshold (prima facie) is lower than that expected at the trial (on a balance of probabilities). See *Giella v Cassman Brown (1973) EA 358 and Mrao Ltd v First America Bank of Kenya and 2 others (2003) KLR 125.* (Emphasis mine)

54. In the above cited judicial decision, the Court of Appeal held that a permanent injunction is issued at the end of the trial and after parties have presented evidence. The Court of Appeal further stated that a permanent injunction is issued in instances where there is evidence that irreparable harm, loss or damage which cannot be compensated by an award of damages will be occasioned.

55. I find, therefore, that the Learned Trial Magistrate erred in issuing orders of permanent injunction in the ***interest of justice*** and according to her, so as to **protect the suit property from wastage in case someone would like to trespass or to continue trespassing. (sic).**
56. The law on when a permanent injunction is issued and the purpose for which it is issued have been set out succinctly in **Mohamed Ndoge v Mohamed Golo Ndogo & 3 others [2015] KECA 184 (KLR) Supra.**
57. This ground of appeal therefore succeeds.
58. Before penning of, I wish to state that I have taken note of the Appellants submissions that they should be awarded costs of the proceedings before the trial Court.
59. In the Memorandum of Appeal, the Appellants have not challenged the trial Court's finding on costs.

60. I decline to address the issue of costs before the trial court.

B. Who should bear costs of the appeal.

61. The general rule is that costs shall follow the event. This is in accordance with the provisions of **Section 27** of the Civil Procedure Act (Cap. 21). A successful party should ordinarily be awarded costs of an action unless the Court, for good reason, directs otherwise.

62. The Appellants and the Respondent are members of a church and a church respectively. For this reason, I do not find it fit to grant costs as this will continue to widen the rift between them and in turn affect the peaceful co-existence of the church and its members.

DISPOSITION.

63. In the result, the appeal succeeds and I find and order as follows;

- a. The permanent injunction issued in the judgement delivered in Bomet CM ELC Case No. E021 of 2023 on 16th July, 2024 as against the Appellants is hereby set aside.***
- b. Each party shall bear own costs of the Appeal.***

64. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO
THIS 26TH DAY OF FEBRUARY, 2026.**

**L. A. OMOLLO
JUDGE.**

In the presence of: -

Miss Langat for Mr. Kadet for the Appellants.

Mr. Jerry Nadi for Mugunya for the Respondent.

Court Assistant; Mr. Joseph Makori.

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