



**Omonge v Samuel & another (Land Case Appeal E003 of 2025)
[2026] KEELC 692 (KLR) (13 January 2026) (Judgment)**

Neutral citation: [2026] KEELC 692 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
LAND CASE APPEAL E003 OF 2025
FO NYAGAKA, J
JANUARY 13, 2026**

BETWEEN

SNR PASTOR REV SAMSON VITAL BEN OMONGE APPELLANT

AND

BISHOP SYLUS SAMUEL 1ST RESPONDENT

TRUSTEES OF LIFE CELEBRATION MINISTRIES 2ND RESPONDENT

*(Being an appeal from the decision and Judgment of the Honourable
Naomi Wairimu SPM delivered in the Chief Magistrate's Court
in Migori No. MCELC/E019/2023, on 06th February 2025)*

JUDGMENT

Facts as per the Trial Court

1. By a Plaint dated 6th April 2023 the Appellant who was then the Plaintiff sued the Respondents, namely Bishop Silas Samwel Ochieng and the Trustees of Life Celebration Ministries, who were then Defendants, claiming several reliefs. Two parties as plaintiffs and two defendants.
2. The plaintiffs pleaded that in 2016, the Registrar of Societies indefinitely stopped the registration of churches and security firms. The 1st Plaintiff (sic) approached the 1st Defendant to assist (sic) and take root as a new church. Further, the 1st Defendant allowed the Plaintiffs to start a church under one umbrella of his church, Life Celebration Ministries, pending the approval and registration of the plaintiffs' own church whose proposed name was Grace Fellowship Pentecostal Church. It was further agreed between them that the Plaintiff would operate and manage his church independently.
3. Pursuant to the agreement, the Plaintiff found premises. Even though he operated under the umbrella of the Life Celebration Ministries, the name, signboard, banner and stamps they used were, all along, in the name of Grace Fellowship Pentecostal Church. Subsequently, the registration of the church was



approved, and it was registered on 7th February 2023. Similarly, the Plaintiff was in the process of obtaining a title to the parcel where the premises were situated. However, even though the plaintiffs had managed to register their own church, the Defendants were hellbent on frustrating their independence and wanted to storm the Church during Easter Service of that year and take over the church.

4. They pleaded that they would suffer irreparable damage, which they particularized as follows:
 1. Our good name for the last seven years would disappear.
 2. Members who have never heard of Life Celebration Ministries would think we had changed church.
 3. The physical forceful takeover would injure our spiritual standing and growth.
 4. My church assets are threatened.
 5. They averred further that the said parcel and church solely belonged to Grace Fellowship Pentecostal Church and not the defendants or anybody claiming through them or otherwise. They then prayed for the following reliefs:
 1. An injunction to issue restraining the Defendants by themselves or their agents and all those claiming through them, servants or otherwise, howsoever from storming, the plaintiffs' church situate on parcel No. Kamagambo/Kabuoro/1173 during the Easter or any other day for takeover and to make it take (sic) as belonging to Life Celebration Ministries and/ or interfering with the plaintiffs' possession of parcel No. Kamagambo/Kabuoru/1173 in any way.
 2. The OCS Kamagambo Police Station do ensure compliance and to provide security during worship.
 3. Costs of this suit.
6. The Defendants filed a Defense dated 1st May 2023 by which they averred that they were strangers to the Plaintiff's averments regarding the indefinite suspension by the Registrar of Societies of registration of churches and security firms. They pleaded that the religious organization headed by the 1st plaintiff in Rongo had always been known as Life Celebration Ministries and at no point had the 2nd Plaintiff sought to be admitted as an umbrella church of the 2nd Defendant. They averred further that the 1st Plaintiff being the Secretary General, appointed by the National Office of Life Celebration Ministries, knew or ought to have known that Life Celebration Ministries had never given any umbrella cover to any church nor did it intend to do so, as that would contravene the law.
7. Further, in response to paragraph 5 of the Plaintiff, the Defendants pleaded that when the 1st Plaintiff approached the 1st Defendant in 2016, they agreed that the 2nd Plaintiff's church would be a branch church of Life Celebration Ministries. At that time, the first Plaintiff was the pastor in charge of Grace Fellowship Pentecostal Church. It was mutually agreed between the parties that the 1st Plaintiff would be allowed to fold up his church and integrate it with Life Celebration Ministries, Rongo Branch, an act he sought time to do.
8. It was agreed further that as a branch of Life Celebration Ministry the 2nd Plaintiff would adhere to the laid down principles of the 2nd Defendant's Constitution which were, among others;
 1. Registering or land buildings and other immovable. Registering or land buildings and other immovable properties in the name of not less than three trustees would be members of the church to hold on behalf of the church.



2. Distinguish between all properties of the branch church from those owned by its leaders those properties owned by the branch church shall be registered in the name of Life Celebration Ministries.
 3. Changing all existing bank accounts to bear the name of Life celebration ministries while retaining the signatories to the respective accounts.
 4. Proceeds to fix the name and the logo of Life Celebration Ministries on all billboards, letter heads, vehicles, schools and all.
 5. In consultation with the Bishop's office, set a date to inaugurate the branch church officially.
 6. Ensure that on a monthly basis at 10th of their total monthly collection comprising of tides and offerings is remitted to the Bishop's office.
9. They added that in conformity with the dictates of life celebration Ministry Constitution, the church was inaugurated sometime in May 2016 and two bank accounts were opened in the name of Life Celebration Ministries church on 3rd August 2016. Further, in 2016, the members of Life Celebration Ministry Rongo Branch acquired a property in Rongo Town, which they leased from the owner and proceeded to settle thereon by paying rent. The member's intention to acquire absolute title to the property in the long run ended in naught because, eventually, the owners of the property ordered them to vacate the land. Upon vacating the land, they proceeded to initiate two major funding drives which raised approximately Kenyan Shillings 2 million, which was used to purchase the suit land. It was their claim that land parcel No. Kamagambo/ Kabuoro/ 1173 was the property of Life Celebration Ministries, Rongo Branch for which their congregants contributed funds to acquire and not by any stroke of chalk could be registered in the name of an individual.
10. They pleaded that *the Constitution* of Life celebration ministries clearly distinguished personal property and the property of the church, and the latter which must be registered in the name of not less than three trustees to hold it in trust for the church.
11. It was their contention that their descendants were in no way interested in interfering with the independence of the plaintiffs. Rather the defendants pleaded that the Court does declare that parcel No. 1173 on which the church was situate was a branch of Life Celebration Ministries, Rongo and the Plaintiffs could either agree to abide by it as a branch of Life Celebration Ministries, Rongo, by *the constitution* peace or peacefully leave it. They denied the particulars of their damages pleaded by the plaintiffs.
12. They then raised a Counterclaim, after reiterating all the contents of the defence. In it they pleaded that sometime in 2016 the 1st Plaintiff approached the 1st Defendant with a proposal to make the second defendant a branch of Life Celebration Ministries. One of the conditions that the first defendant outlined was that the first defendant had to be, among other things, change its name to Life Celebration Ministries, Rongo Branch and open a bank account in the name of Life Celebration Ministries and abide by *the constitution* of Life Celebration Ministries. The first plaintiff agreed to all the conditions save that he suggested that he be given time to effect the change of the name of the church.
13. Further, in the meantime, all its banners, billboards and bulletins would bear the name of Life Celebration Ministries alongside the name of his Church during the transition process, which conditions were accepted by the 1st defendant since both the parties were workers in God's Kingdom.
14. Further, upon holding two major front drives on 4th November 2018 and 3rd November 2019 at Life Celebration Ministries, Rongo Branch members of the church agreed to purchase the suit land,



namely Kamagambo/Kabuoro/1173. Two other fund drives were held on 7th November 2022 and 11th December 2022 for the purpose of constructing the church.

15. Sometime between 2018 and 2019 the 1st Plaintiff as a signatory to the Church Development Account held at Cooperative Bank unethically and unilaterally withdrew huge sums of money amounting to approximately KShs, 2, 200,000/= without consulting the Board of the church and used it to directly pay the purchase price of the suit land which he now wants everyone to believe was to be in his name.
16. Sometime in 2022. Sometime in 2022. When the 1st Defendant sought that the 1st Plaintiff changes his church's name as earlier promised, he became adamant and insisted that he would wish to continue with the name of his church. In further breach of the trust between them, the first plaintiff commenced registration of this church without the approval of Life Celebration Ministries International office, contrary to its Constitution and the approval of the 2nd Defendant.
17. It was claimed further that meetings had been held by the leadership of the Branch Church, at Rongo, and the leaders and members had unanimously decided that they do not wish to be referred to by any other name except Life Celebration Ministries. Rongo Branch. The Defendants, therefore prayed for a declaration the issue that the church sitting on parcel No. Kamagambo/Kabuoro/1173 was Life celebration ministries Church, Rongo, and a permanent injunction be issued against the 1st plaintiff by himself, his agents, proxies from interfering with the worship in the church at any other time or the peaceful occupation by the members of the church.
18. They pleaded further in that they had incurred special damages in defending the suit, which put at KShs 2,100/= in total. They then sought the following reliefs:
 1. The plaintiffs against them be dismissed with costs.
 2. Judgment entered against the plaintiffs in favor of the defendants as follows:
 1. A declaration does issue that the church sitting on land parcel No. Kamagambo/Kabuoro/1173 is known as Life Celebration Ministries, Rongo.
 2. A declaration does issue that land parcel number Kamgambo/Kabuoro/1173 was purchased by funds belonging to Life Celebration Ministries, Rongo Branch and the land cannot be registered in the name of an individual but in accordance with the registered Constitution of Life Celebration Ministries.
 3. Subsequent to (ii) above, an Order do issue that the land registrar does proceed and register, land parcel No. Kamagambo/Kabuoro/1173 in favor of the registered trustees of the second Defendant upon proof of payment of the purchase price.
 4. A permanent injunction to issue against the plaintiffs by themselves, proxies, servants, employees or anyone instructed by them from interfering with the occupation of, registration in favour of, and or the worship of members of Life Celebration Ministries with respect to land parcel No. Kamagambo/Kabuoro/1173.
 5. Special damages articulation is 2100/=.
 6. Costs of the suit and interest that court rates from the date of judgment to payment in full.
 7. Any other relief that this court deems fit to grant.
19. The suit proceeded to hearing. The parties testified as hereunder.



- The 1st Plaintiff, Samson Vital Ben Omonge Owino testified as PW1. He stated that he was a Civil Servant who also ran business and hailed from Rongo. He adopted his written Statement dated 06/04/2023. He also relied on the documents he filed on 06/04/2023. These were a Registration Certificate, exhibit – 1; an Application for consent, exhibit – 2; a Photo of church Structure, exhibit 3; a copy of Identity Card exhibit 4. He marked as PMFI a Sale agreement dated 31/05/2021 as MFI -5 and a Spousal consent dated 23/06/2022 as MFI 6.
20. He added that he purchased the land at KShs 2 million which he paid in full. He was in the process of transferring the land to his name. He was not aware that the money used to purchase the land belonged to the 2nd Defendant. The money was from his Account. He took a loan and added money from his savings.
 21. He denied that the property belonged to Life Celebration Ministries. It had no connection at all. Further, the person claiming the land lived in Kisumu. He added that they have a Board which ought to have raised any issues.
 22. He denied having been given a consent by Life Celebration Ministries. He also denied the accusations that he did not follow the agreements they had. He denied that they were members of Life Celebration Ministries.
 23. On cross examination he denied he was the general secretary of Life Celebration Ministries. On being referred to the Defendant's bundle Minutes, he admitted the signature on it was his. It was a notice of an Annual General Meeting (AGM). He admitted signing the documents as the National Secretary. He admitted he was the National Secretary of Life Celebration Ministries and that he not forced to be the secretary. He admitted he attended the AGM's, it was my duty to compile reports from various branches.
 24. On being referred to the document which contained reference of the Life Celebration Ministries Rongo, he admitted he was a signatory of the bank account at National Bank. He could not, however, recall the name of the bank account. He was referred to ACC NO. 0XXXXXXXXXXXX00 which he admitted he was a signatory to it. He admitted he knew the other signatories but he added that the document did not say the Account was for Life Celebration Ministries.
 25. He admitted he was ordination as servant of God but could not recall when that happened. Further, he admitted the document (form) at page 141 was in his handwriting and contained his signature. Further, the name of the church on it was Life Celebration Ministries. Also, the letter dated 08/01/2018 was written by George Owuonda who was the treasurer.
 26. He denied being aware that the Societies account provided for Registration of Umbrella bodies. He denied seeking registration. He admitted the deposit was made to Philip Okoth Okundi whose son was Edward Kenneth Okundi, and the suit land belonged to them. He admitted the payment was made towards the purchase of the land. A deposit of Kshs 600,000/- was made by Grace Anyango Rondo who was the secretary in the church. He acknowledged the agreement was made on 31/05/2021 (on 02/08/2021) when the purchase price paid in full. He could not prove that the purchase price was paid by me in full on that date. He denied that he was required to show he took a loan towards the payment or the land. He stated that they had several funds raisings and money was put in the Cooperative bank account.
 27. He admitted that the accounts referred to related to the defendants account, Life Celebration Ministries which it had. The money was for building/buying land as at 21/03/2023 the closing balance was 876,141/- and the said Grace Orondo made a deposit of it. He added that it was Grace who could be in a position to explain where the money came from. I am not certain.



28. He added that they had a utility account at Co-Operative bank whose account number he could not recall. When he was referred to copies of the cheques dated 19/09/2022 to November 2022 drawn on the account, he stated that Grace withdrew the money from the account because we were in the process of building. He admitted the account name was of Life Celebration Ministries, Rongo. He admitted further that one could not withdraw money from an account to which did not belong to them.
29. When he was referred to the name on the certificate produced as exhibit 1 he admitted it was Grace Fellowship Pentecostal Church. He added that there was a society registered on 03/08/2011 known as Paraclete Gospel Church and its chairman was Samson Vital Ben Omonge Owino. It changed the name on 07/02/2023. He added the 2nd plaintiff was a trustee of Grace Fellowship Pentecostal Church. He denied that allegation that the said church does not exist. He admitted he did not attach the list of officials to the certificate.
30. He admitted he had not expressed desire to disassociate with Life Celebration Ministries and neither was there any that he was to disassociate Life Celebration Ministries from Grace Paraclete.
31. On reexamination, PW1 stated that he never ever joined Life Celebration Ministries Account to the procedure in *the Constitution* before Court. He added that *the constitution* was of the Defendant. He added that for a church can join the Ministry there had to be a takeover document signed. He denied they ever became part of Life Celebration Ministries. He stated that he became an official (of LCM) on 07/02/2023.
32. He added that as at 03/02/2019 they had done a gentleman agreement that we were part of the Life Celebration. They assured they were members. They were not registered as a branch of Life Celebration Ministries.
33. Regarding the monies referred to he added he knew they were to build the Church but nowhere did it show the deposit was for buying the land. He added he bought the land from Edward Kenneth Okundi who was the legal owner of the land. He denied there being any other owner. With that the Plaintiff closed his case.
34. The Defendants called two witnesses. DW1 was Sulus Samuel Ochieng who testified that he hailed from from Kisumu. He was a pastor at Life Celebration Ministries. He adopted his statement dated 01/05/2023. He also produced the documents on the List dated 01/05/2023, as D-exhibit 1 to 32.
35. He stated that the take over documents were not signed; the plaintiff kept saying he would sign but he didn't. he added the Plaintiff was ordained under Life Celebration Ministries in Kisumu.
36. His further testimony was that the plaintiff was a signatory to the church account under the basis that he was the General Secretary of Life Celebration Ministries. Further, the Church, under land parcel Kamagambo Kabuoro/1173 hosted the Life Celebration Ministries, Rongo Branch. My prayer is that the church on the land is Life Celebration Ministries.
37. The plaintiff had a church in Rongo at a place called Goshen. He approached us to have his church become a branch of Life Celebration Ministries. It did. He referred to the Church's Constitution regarding branch churches.
38. He added there was a procedure of a church becoming a branch. He added that they did not have the official documents but the plaintiff became a member of Life Celebration Ministries and that was why he became a General Secretary. The parties honoured all other aspects and they became one fellowship.
39. Regarding the payments through cheques, DW1 testified that all cheques which were supposed to be signed by 2 signatories were addressed to Grace Onyango to pay the seller, Philip Okundi. The



- church did not have an agreement with him. The plaintiff was advised orally that the church pays Mr. Philip Okundi. The deposit slip did not state the purpose of the money paid. He added that purchase of land was part of church development for Administration purposes. The church had fund raisers by which the funds were generated. He added that for administration purposes are funded by tithes and offerings. Further, the account was for development purposes. His further testimony was that the moneys used were not those which the Rongo Church generated from tithes and offerings.
40. He added that the plaintiff's election as General Secretary was done according to the church Constitution. He was elected by the AGM because it was anticipated because the church would grow to have overseers from several branches of which it had only four. he added that the election of the Plaintiff was not unconstitutional since he took office and the church registered it with the Registrar of Societies. Lastly at the time the church filed the documents Grace Anyango was a member of Life Celebration Ministries Rongo.
 41. On re examination, DW1 stated that the reason they paid Philip Okundi was because they were buying land from him.
 42. DW-2, Grace Anyango Orando testified that she was a Social Worker by profession. She worked in Homa Bay but lived in Rongo. She adopted her written statement as her evidence in Chief. She was referred to a document which she affirmed was an invite for a fund drive for continuation of the construction the church in Rongo Town on land no. Kamagambo/Kabuoro/1173. She added that the land did not belong to the plaintiff but the Okundi family. The church members conducted funds drives and raised money to buy it. Cheques were drawn in her name, DW2, as the Church Secretary and signatory. She added, the money was for construction of the church. Her evidence was that the account for Life Celebration Ministries Rongo and its purpose was for members to contribute money for construction of the church. The church had two (2) accounts, one for development and the other for church utilities and salaries. She referred to a SWIFT payment from Life Celebration Ministries to Mechai Int. Construction for 1,446,540/-, which was for the church being built in Rongo on parcel No. Kamagambo Kabuoro/1173. Her evidence was that the parcel of land belonged to the church. She also referred to Minutes of a Board meeting of which she was the secretary. She added that later she resigned from the Board because the plaintiff said the name of the church was going to be changed, after the case was brought to Court. Her testimony was that the church on Kamagambo/Kabuoro/1173 was Life Celebration Ministries.
 43. On cross- examination, DW2 stated that the invitation for fundraisers bore two names. The name Grace Fellowship Pentecostal Church was a slogan.
 44. Her evidence was that Life Celebration Ministries and Grace Fellowship Pentecostal Church were different. The logo on the invoice was that of Life Celebration Ministries. The fund raisers were for construction of the church which had leased land adjacent to parcel No. 1173. It raised Ksh. 1,210,000/= . The money was for development and deposited in the bank on Monday 8th August. It was not part of the tithe and offerings. The signatories were four and on instructions any two could sign.
 45. One cheque was signed by the Chair of the church Board, the plaintiff. It did not go through since it was signed by only one signatory. The cheques were usually addressed to her since she was given the responsibility through the Development Committee to manage the church construction. She added that had documents in the church file to show that she actually paid the money. The money signed in her name was for construction of the church not running of the church. Some of the money was transferred directly to recipients. The Board members were in charge of purchase of the land. She had documents to show how the members were elected by the plaintiff to be the board members.



46. She added there was a sale agreement for purchase of the land. It was with the 1st plaintiff. The purchase money was paid to engineer Philip Okundi who was the owner of the land. She however did not have the official search in Court to show it. The church had a contract with Muchai for the Construction.
47. Her evidence was that utilities account was not included in the case. Lastly, she stated that there was no Grace Fellowship Pentecostal Church from the onset. It was Life Celebration Ministry. Grace Fellowship Pentecostal Church was only a slogan.
48. On re-examination, she stated that the registered owner of the land was Edward Otieno Okundi but she paid the money to Philip Okoth Okundi who was the father to Edward.
49. She was appointed to the Board by the 1st plaintiff, in a volunteer position. It did not require being given an appointment letter to serve.
50. That evidence closed the Defence case.
51. Upon the parties filing submissions and the court considering the evidence, it entered judgment on 6th day of February 2025 as follows. The upshot is that the plaintiff has failed to prove his case to the required standard of on a balance of probabilities and the plaintiffs' case is therefore dismissed. The defendants counter claim succeeds and the defendant is entitled to the prayers sought. The learned trial magistrate gave the following reliefs:
- a. A declaration is and is hereby issued that the church in which land parcel number Kamagambo/Kabuoro/1173 sits is a branch of Life Celebration Ministries Rongo.
 - b. A declaration is hereby issued that land parcel Kamagambo/ Kabuoro/ 1173 was purchased by funds belonging to Life Celebration Ministries, Rongo Branch members and the land cannot be registered in the name of an individual but in accordance with the registered Constitution of Life Celebration Ministries.
 - c. Subsequently, an order be and is hereby issued to the Land Registrar Migori to proceed and register Kamagambo/Kabuoro/1173 in favor of the Registered Trustees of Life Celebration Ministries (the 2nd defendant).
 - d. A permanent injunction be and is hereby issued against the plaintiffs by themselves, proxies, servants, employees or anyone instructed by them from interfering with the occupation of, registration in favour of and/or worship of members of Life Celebration Ministries with respect to land parcel number Kamagambo/Kabuoro/1173.
- Special damages of Kshs. 2,100/- be paid to the defendants by the plaintiff.
- Since costs follow the cause, the defendants shall have costs of the suit and interest at court rates from the date of judgement herein.
52. The Plaintiffs being aggrieved by the judgment appealed to this Court on the following grounds,
1. The Learned Magistrate erred in law and fact by inferring the Appellant's membership from a single reference in an ordination application, while disregarding procedural requirements for membership.
 2. The Learned Magistrate erred in law and fact by disregarding key evidence, including a formal letter from the Respondent formally releasing the Appellant from Life Celebration Ministries.



3. The Learned Magistrate erred in law and fact by failing to recognize that the Appellant ceased to be a member of Life Celebration Ministries upon realizing constitutional differences, never attending meetings, and subsequently receiving a formal release letter.
4. The Learned Magistrate erred in law and fact by inconsistently and selectively applying the principle of estoppel to infer membership based on initial actions, while disregarding the Appellant's subsequent clear disassociation.
5. The Learned Magistrate erred in law and fact by misinterpreting the chronology of events, leading to incorrect findings regarding the Appellant's membership status and land purchase process.
6. The Learned Magistrate erred in law and fact by failing to appreciate that the suit land Kamagambo/Kabuoro/1173 was purchased by the Appellant in his personal capacity and not as part of Life Celebration Ministries.
7. The Learned Magistrate erred in law and fact in holding that the Appellant failed to prove his entitlement to the suit land despite a valid sale agreement and completion documents presented in court by the Appellant.
8. The Learned Magistrate erred in law and fact by relying on the Respondents' claim that the land was purchased from Philip Okundi, contrary to clear evidence showing Edward Okundi as the vendor.
9. The Learned Magistrate erred in law and fact by accepting the Respondents' contention that the land was bought using the Respondents' funds, ignoring the Appellant's assertion of purchase through a loan and savings.
10. The Learned Magistrate erred in law and fact by relying on claims that periodic monetary contributions were for the land purchase, despite the absence of documentary proof linking them to the transaction.
11. The Learned Magistrate erred in law and fact by holding that the suit land belonged to the Respondents despite their failure to provide a sale agreement between themselves and Edward Okundi.
12. The Learned Magistrate erred in law and fact in failing to consider that the funds allegedly given to the Appellant predated the sale agreement and were designated for church development, not land purchase
13. The Learned Magistrate erred in law by imposing a higher burden of proof on the Appellant while failing to subject the Respondents to the same standard in proving ownership of the suit land.
14. The Learned Magistrate erred in law and fact by relying on the testimony of a witness who provided an incorrect date of resignation and referenced cheques allegedly issued to the Appellant without establishing any direct connection to the purchase of the suit land.
15. The Learned Magistrate erred in law and fact by basing her findings on fabricated minutes and other extraneous material that were neither formally admitted into evidence nor subjected to cross-examination, thereby prejudicing the Appellant's case.



16. The Learned Magistrate erred in fact by ignoring material inconsistencies in the Respondents' case, including the lack of connection between the 2nd Respondent's Kisumu trustees and the Life Celebration Ministries Rongo Account.
17. The Learned Magistrate erred in law and fact in issuing a permanent injunction against the Appellant despite his continuous possession and exercise of ownership rights over the suit land.

Submissions

53. The appeal proceeded to hearing by way of written submissions.
54. By his submissions dated the 13th October 2025, the Appellant submitted that the judgment constituted a grave miscarriage of justice in that it erroneously declared that the church in which land parcel number Kamagambo/Kabuoro/1173 sits is a branch of Life Celebration Ministries, effectively dismissing the Appellant's proprietary claim to the said land parcel, and granting injunctive reliefs against him despite his long-standing possession and demonstrated ownership, they gave four issues for determination. These were;
 - i. Whether the Learned Magistrate erred in law and fact in finding that the Appellant remained a member of the 2nd Respondent despite overwhelming evidence of disassociation;
 - ii. Whether the Learned Magistrate erred in holding that land parcel
 - iii. Kamagambo/Kabuoro/1173 belonged to the Respondents;
 - iv. Whether the trial court misapplied evidentiary rules, imposed an unequal burden of proof, and relied on inadmissible material; and
 - v. Whether the permanent injunction issued against the Appellant was justified in light of his demonstrated possession and ownership rights.
55. On the first issue they submitted that the trial Magistrate erred gravely by inferring the Appellant's continuing membership and fiduciary duties from a singular, historical reference in an ordination application, while wholly disregarding and failing to make any finding on the conclusive and contemporaneous evidence of a formal release letter issued by the Respondents themselves. The letter, a formal act of disassociation, legally and practically severed any ties of membership or agency and as such, the doctrine of estoppel, could not resurrect a relationship that was formally terminated by the Respondent's own hand. That what began in 2016 as a gentleman's agreement, grounded in mutual faith and goodwill, was meant to culminate in a formal branch recognition through the signing of a takeover document as required under Clause 9 of the Ministry's Constitution. However, that critical constitutional step was never taken during the entire period. The Appellant's participation in ministry activities was thus based on fellowship, not legal membership. Therefore, without the execution of the takeover document, Life Celebration Ministries failed to "recognize, receive, and assimilate" the Appellant's church as a branch, leaving the relationship informal and legally non-existent. The Respondents' prolonged inaction, followed by their own express termination letter confirms that the relationship remained an informal fellowship, never maturing into a constitutional branch relationship. Consequently, the Respondents could not, in law or fact, claim that the Appellant's church was ever a branch of Life Celebration Ministries. They argued that the court to applies the principles established in the case of Arthur Gatungu Gathuna v. African Orthodox Church of Kenya



[1982] eKLR, where Kneller Ag. JA articulated the principle that guides this Court's intervention in such a situation:

“There are, however, various churches in Kenya with their own Constitutions, regulations and tribunals for those who voluntarily submit to them. If the church or a member of it complains in correct form to a court of law of any injury to a right in any matter of a temporal character or mixed spiritual and temporal character, the Court may ascertain whether the judgment or sentence pronounced was regular and by a competent authority and then give redress if justice so demands.”

56. They also relied on *Forbes v. Eden* [1867] L.R. 1 S.C. & Div. Ac. 568, as cited with approval in *Mbugua v. Olang* [1979] eKLR, where the court held that civil courts may intervene in ecclesiastical disputes only to ensure that civil rights are not infringed and that church constitutions are lawfully applied. They also relied on the case of *Susan Munyi v. Keshar Shiani* [2013] eKLR. They concluded that the findings by the trial court were unsupported by the evidence as a whole.
57. On the issue of ownership of the suit land, they argued that the Appellant produced a valid Sale Agreement duly executed with the vendor - Edward Okundi, accompanied by completion documents as contemplated in the *Land Registration Act* thereby prima facie establishing ownership under Section 3(3) of the *Law of Contract Act* and Section 26 of the *Land Registration Act*. Further, that the Respondents, in contrast, produced no sale agreement linking themselves to the vendor. That the Respondents' claim that the land was purchased with their funds is a positive assertion that demanded rigorous proof. They relied on the decision of Michael J.C.K. *Kapsot v Kotut arap Too* [2020] eKLR to the effect that he who alleges proves, and that a party seeking the court's judgment on the basis of facts it asserts, bears the burden of proving those facts. They relied on the case of *Alfred Kioko Muteti v Timothy Miheso & Another* [2015] eKLR and reinforced in the dictum of Madan JA in *CMC Aviation Ltd v Cruis Air Ltd (No. 1)* [1978] KLR 103. They added that the lower Court accepted the Respondents' pleaded claims without proof but it rested on conjecture and internal inconsistencies. They illustrated these inconstancies as below:
- a) **Vague Allegations of Periodic Contributions:** here they contended that the Respondents failed to produce any financial record specifically designated for the purchase of this particular parcel of land, Kamagambo/Kabuoro/1173. Further, general contributions for "church development" could not, without more, be transmitted into specific contributions for a land purchase executed by an individual in his own name. Additionally, the alleged funds claimed to have been contributed predated the sale agreement and were not contemporaneous with the transaction.
 - b) **Incorrect Vendor and Lack of Agreement:** on he argued that the Respondents' witness testified that the land was bought from one Philip Okundi, whereas the Appellant's incontrovertible Sale Agreement was with Edward Okundi. To him, this inconsistency was ignored by the trial court. Most damningly, the Respondents could not produce their own sale agreement, which would be the most elementary evidence if they were the true purchasers.
 - c) **Unsubstantiated Testimony:** on this he argues that the testimony regarding cheques was not backed by any bank statements or evidence of actual transaction. Thus, the court relied on the said hearsay evidence, which was not subjected to the requisite level of scrutiny, to arrive at a finding that dispossessed a title holder.
58. He cited the Court of Appeal decision in *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR, where the court stated that when the root of a registered proprietor's title is under challenge, it is not



sufficient merely to dangle the instrument of title; the proprietor must demonstrate that the process of acquisition was legal, formal, and free from encumbrances. In this matter, the Appellant did precisely that by producing a lawful sale agreement and transfer documents, thereby evidencing the integrity of his title. They relied on the case of *Lwangu v Ndote* (Environment & Land Case 79 of 2010) [2021] KEELC 2 (KLR) where it was stated thus:

“The relevant section of the *Evidence Act*, 65(1), then stipulates that primary evidence is the document itself produced for inspection by the court. This is the best type of evidence. It is called the best evidence rule. Therefore, a party in any proceedings should endeavour, at all times, to rely on primary evidence.....Section 67 of the Act is couched in such a manner as to make it mandatory for documentary evidence to be produced in its primary form.....It therefore follows that where a party fails to produce primary evidence, the document, however crucial it to his case, any other form thereof should neither be accepted in evidence nor relied on by the court.”

59. He added that the trial court erred in law and fact by disregarding clear documentary evidence of ownership, rewarding speculative allegations, and thereby subverting settled principles of property and evidentiary law.
60. Regarding Evidentiary and Procedural Errors, he submitted that the court imposed a higher burden of proof upon the Appellant while excusing the Respondents from meeting the same standard contrary to sections 107–109 of the *Evidence Act*. Further, the Appellant’s financial capacity to buy the land in his personal capacity was never challenged, nor controverted by any evidence, and it imposed upon him the onus of disproving vague and undocumented claims of collective church funding. Further, the court relied on minutes and extraneous material neither produced formally in evidence nor tested in cross-examination. He relied on the Court of Appeal case of *Kenneth Nyaga Mwigye v Austin Kiguta & 2 Others* [2015] eKLR, which outlaws unproduced documents as evidence.
61. The appellant added that the Respondents’ evidence was riddled with inconsistencies and contradictions. These were the misstated date of resignation; cheques relied on without proving their nexus to the land transaction; no trustee linked the alleged Rongo Church account to the Respondent. He argued that the Appellant failed to prove his case.
62. On the reliefs granted he submitted that the court arbitrarily deprived the Appellant of land lawfully acquired and uprooted a congregation from its spiritual home thereby undermining Article 40 and Article 32 of *the Constitution*. He also relied Court of Appeal observed in *Nguruman Limited v Jan Bonde Nielsen & 2 Others* [2014] eKLR on principles injunctive and equity and justice. He prayed that judgment be set aside because it was riddled with errors of law and fact.

Respondent’s Submissions

63. The Respondent filed submissions dated at Kisumu this 15th day of October 2025. He gave the background of the appeal and set forth a number of issues for determination. These were, first, who the owner of land parcel number Kamagambo/Kabuoro/1173 is. Counsel submitted that the suit land was not yet in the name of any party to this Appeal. Therefore, the sanctity of title as espoused under section 26 of the *Land Registration Act* was not applicable. They added that the land was yet to be registered under the Appellant’s name. that the land sale agreement produced in evidence was not “primary evidence” as envisioned by Section 67 of the *Evidence Act*.
64. They submitted that the suit land was purchased by members of Life Celebrations Ministries Rongo Branch and not the 1st Appellant. They raised money through various fundraisers as DW 2 stated on



page 80 of and bought it. They relied on a bank statement of an account held by Life Celebration Ministries Rongo and the deposits made by Grace Orondo, DW 1 on the 3rd of November 2018 for KShs.753,520/= was deposited besides large amounts continuously deposited into the account throughout 2019 and 2020. They referred to the evidence by way of minutes of the Annual General Meeting held on the 14th of March 2020 wherein the fifth agenda was “Life CM Reports” and the reference to the Rongo Branch’s successful fundraisings geared towards the purchase of a church plot. Further, that the current account statements also showed that the account was in the name of Life Celebration Ministries Rongo wherefrom these fund raisings would be deposited into the accounts and further be used to acquire the suit property. That they Respondents also produced a bank slip dated 2nd August 2021 showing a payment of KShs.600,000/= made to Philip Okoth Okundi who, according to the 1st Appellant, received the money on behalf of the registered owner was Edward Otieno Okundi who held it as family land.

65. They added that the 1st Appellant’s copy of the sale agreement bore inconsistencies, the effect of which its legality was impugned. It was dated 31st of May 2021 yet the consent from the Land Control Board predated as 5th of February 2021 and were contrary to Section 8 (1) of the *land Control Act*. Again, they argues that the 1st Appellant had no proof of payment of the purchase price yet he should have produced it. This was contrary to Section 112 of the *Evidence Act* as was stated in Kenya Akiba Micro Financing Limited v Ezekiel Chebii & 14 Others [2012] KEHC 5590 (KLR).
66. On the issue as to which church is on land parcel number Kanyamkago/Kabuoro/1173, they submitted that it was Life Celebration Ministries Rongo, and not Grace Fellowship Pentecostal Church. They then submitted that the Appellants were not entitled to the orders sought as their evidence fell short of the import of Section 107 as read together with section 109 of the *Evidence Act*. They prayed that this Honourable Court upholds the trial court’s judgment and dismisses the instant appeal with costs.
67. It is upon that background that this court was called upon to determine the instant appeal.

ISSUES, ANALYSIS AND DETERMINATION

68. This Court has carefully considered the appeal. It began by analyzing the grounds in the Memorandum of Appeal to consider which ones were relevant which ones were not. It then went to the law, and then the facts as per the contents of the Record of Appeal as borne by the parties’ statements adopted in evidence in chief and the oral testimonies. It has also given due regard to the submissions of the parties on the appeal. It is of the humble opinion that the following issues arise for determination:
 - a. Whether the court has jurisdiction to determine the membership of the plaintiffs vis-à-vis the Defendants
 - b. Whether the appeal is merited
 - c. Whether the Appeal is competent
 - d. Who to bear the costs of the appeal
69. I will analyze the issues sequentially, not necessarily beginning with the merits or otherwise of the appeal. The first one is whether the Court has jurisdiction in some of the issues raised on appeal.



Whether the court has jurisdiction to determine the membership of the plaintiffs vis-à-vis the Defendants

70. On the first issue, being jurisdiction to determine some grounds of appeal, this court is of the view that where any court does not have jurisdiction, that it the very first point at which it swiftly downs its tools. In the Owners of the Motor Vessel Lilian 'S' v. Caltex Kenya Limited (1989) KLR 1, the Court of Appeal held as follows;

“Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.... Where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given.”

71. The appellant invited this court to make a determination, under the first five grounds of the appeal, on the issue of membership of the two contending church(es) organizations. The grounds are summarized that the learned trial magistrate erred in law and fact by inferring the Appellant’s membership from a single reference in an ordination application; by disregarding key evidence such as a formal letter from the Respondent formally releasing the Appellant from Life Celebration Ministries; failing to recognize that the Appellant ceased to be a member of Life Celebration Ministries; by inconsistently and selectively applying the principle of estoppel to infer membership; and by misinterpreting the chronology of events leading to incorrect findings on the Appellant’s membership status.

72. The issue of membership of the two churches and even their status has no correlation with this court’s jurisdiction as provided for under Article 162(2)(b) of *the Constitution* of Kenya 2010 and Section 13 of the *Environment and Land Court Act*. Thus, I respectively decline to be invited to make a finding on these first five grounds of appeal.

Whether the appeal is merited

73. In so doing must state that this being a first appeal, this court must be guided by the principles as set out in *Selle and another v Associated Motor Boat Company Ltd and others* [1968] 1 EA 123 wherein the Court of Appeal held:

“...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 allowance in this respect. In particular this court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence ...”

74. Further, in *Williamson Diamonds Ltd and another v Brown* [1970] EA 1, it held that:

“The appellate court when hearing an appeal by way of a retrial, is not bound necessarily to accept the findings of fact by the trial court below, but must reconsider the evidence and make its own evaluation and draw its own conclusion.”



75. Also, in *PIL Kenya Limited v Oppong* [2009] KLR 442, it was held that:

“It is the duty...of a first appellate court to analyse and evaluate the evidence on record afresh and to reach its own independent decision, but always bearing in mind that the trial court had the advantage of hearing and seeking the witnesses and their demeanour and giving allowance for that”.

76. In a related issue of how the appellate court ought to proceed where evidence was considered at the trial stage, it was restated in *Abok James Odera t/a A.J Odera & Associates v John Patrick Machira t/a Machira & Co Advocates* [2013] eKLR 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 re-analyse 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.”

77. Additionally, the Court the of Appeal, in the case of *Susan Munyi v Keshar Shiani* (2013) eKLR stated as follows:

“As a first appellate court our duty of course is to approach the whole of the evidence on record from a fresh perspective and with an open mind. We are to analyse, evaluate, assess, weigh, interrogate and scrutinize all of the evidence and arrive at our own independent conclusions”

78. Similarly, 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.”

79. Where the decision of the lower court is based on discretion, the principles upon which the appellant court proceeds are slightly different. To be clear, for the appellate court to interfere with the decision of a trial court the judge on the appeal must take care as not to substitute his decision with the that of the trial court. But a successful appellant must show that while exercising discretion the learned trial decision maker failed to act judiciously; was plainly wrong on some of the principles he acted on; or he considered or failed to consider factors which he ought not or ought to have considered, respectively. In arriving at such a view, this court is guided decisions of various courts, some which are binding and others persuasive. For instance, in *Supermarine Handling Services Ltd versus Kenya Revenue Authority* [2010] eKLR (Civil Appeal 85 of 2006) the Court stated:-

“... Thus, where a trial Court has exercised its discretion on costs, an appellate Court should not interfere unless the discretion has been exercised injudiciously or on wrong principles. Where it gives no reason for its decision the Appellate Court will interfere if it is satisfied that the order is wrong. It will also interfere where reasons are given if it considers that those reasons do not constitute “good reason” within the meaning of the rule”.



80. This legal principle was also emphasized by the Court of Appeal in *Farah Awad Gullet v CMC Motors Group Limited* [2018] eKLR where it held that

“...the Court of Appeal, in interfering with the exercise of discretion of the trial Judge appealed from, ought to satisfy itself that the exercise of that discretion either way was improper and therefore warrants interference.”

81. Again, in *Edward Sargent versus Chotabha Jhaverbhat Patel* [1949] 16 EACA 63, it was held that there is no bar to an appeal lying to an Appellate Court against an order made in the exercise of judicial discretion, but for the Appeal Court to interfere only if it be shown that the discretion was exercised injudiciously.

82. The seminal case of *Mbogo and Another v Shah* [1968] EA 93, at 96 illustrates this point thus:

“For myself I like to put it in the words that a Court of Appeal should not interfere with the exercise of the discretion of a judge unless it is satisfied that the judge in exercising his discretion has misdirected himself in some matter and as a result has arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge has been clearly wrong in the exercise of his discretion and that as a result there has been mis-justice.”

83. Also, in *Agola v Ngodhe (An administrator to the Estate of Zakayo Ngodhe) (Environment and Land Appeal E025 of 2024)* [2025] KEELC 1367 (KLR) (6 March 2025) (Judgment), this court stated;

“As for the instant appeal, it is clear that it arose from the low court’s exercise of discretion. Regarding appeals of such nature, the appellate court will not normally interfere with the discretion of the trial court unless the trial magistrate or judge exercised the discretion wrongly, injudiciously or misdirected himself in some matter thereby arriving at a wrong decision, the decision clearly wrong.”

84. In the instant case, I ought to look at the law and evidence and the reasoning of the trial court. The central issue in this case is that there was a land parcel known as Kamagambo/Kabuoro/1173. Historically, it used to belong to the family of Onkundi. But specifically, there was a son whose name was one Edward who owned and sold it on behalf the family. When the sale agreement was entered into some of the payments were made to him and others to the father towards the completion of the transaction. There was an agreement which was supposed to be produced in evidence regarding the transaction. It was supposed to be produced by the plaintiffs. This is by virtue of Section 3(3) of the *Law of Contract Act* which provides that;

“No suit shall be brought upon a contract for the disposition of an interest in land unless—

- (a) the contract upon which the suit is founded—
 - (i) is in writing;
 - (ii) is signed by all the parties thereto; and
- (b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party:

Provided that this subsection shall not apply to a contract made in the course of a public auction by an auctioneer within the meaning of the *Auctioneers Act*



(Cap. 526), nor shall anything in it affect the creation of a resulting, implied or constructive trust.”

85. The onus lay on the plaintiffs, under Sections 107 and 108 of the *Evidence Act* to prove the existence of the contract. The burden as usual, as stipulated under Section 107, is on the party who wishes to rely on the facts he asserts to support the existence or non existence of a fact to prove them to the required standard. Only in cases where the law specifically shifts the burden to another party are the exceptions to where he who alleges must prove. The Plaintiffs, specifically the appellant, bore this burden of proving that he bought the land or were the owners of the parcel No. 1173. How would they prove it? They were required to produce an agreement to the effect that the parcel was bought by them and not any other party who was claiming it.
86. I have looked at the evidence adduced by the plaintiffs. The plaintiffs produced a These were a Registration Certificate as exhibit – 1; an Application for consent, exhibit – 2; a Photo of church Structure, exhibit 3; a copy of Identity Card as exhibit 4. Then he marked for identification as PMFI the alleged Sale agreement dated 31/05/2021 as MFI -5 and a Spousal consent dated 23/06/2022 as MFI 6. The two PMFI documents were never ultimately produced in evidence at any point later. The law on documentary evidence is clear. A party must satisfy the relevance and admissibility tests on production of the evidence.
87. Therefore, in the case of *Kenneth Nyaga Mwige v Austin Kiguta & 2 others* [2015] eKLR the Court of Appeal expressed itself as follows;

“ 18. The mere marking of a document for identification does not dispense with the formal proof thereof. How does a document become part of the evidence for the case? Any document filed and/or marked for identification by either party, passes through three stages before it is held proved or disproved. First, when the document is filed, the document though on file does not become part of the judicial record. Second, when the documents are tendered or produced in evidence as an exhibit by either party and the court admits the documents in evidence, it becomes part of the judicial record of the case and constitutes evidence; mere admission of a document in evidence does not amount to its proof; admission of a document in evidence as an exhibit should not be confused with proof of the document. Third, the document becomes proved, not proved or disproved when the court applies its judicial mind to determine the relevance and veracity of the contents - this is at the final hearing of the case. When the court is called upon to examine the admissibility of a document, it concentrates only on the document. When called upon to form a judicial opinion whether a document has been proved or disproved or not proved, the Court would look not at the document alone but it would take into consideration all facts and evidence on record.

19. The marking of a document is only for purposes of identification and is not proof of the contents of the document. The reason for marking is that while reading the record, the parties and the court should be able to identify and know which was the document before the witness. The marking of a document for identification has no relation to its proof; a document is not proved merely because it has been marked for identification.
20. Once a document has been marked for identification, it must be proved. A witness must produce the document and tender it in evidence as an exhibit and



lay foundation for its authenticity and relevance to the facts of the case. Once this foundation is laid, the witness must move the court to have the document produced as an exhibit and be part of the court record. If the document is not marked as an exhibit, it is not part of the record. If admitted into evidence and not formally produced and proved, the document would only be hearsay, untested and an unauthenticated account.

21. In *Des Raj Sharma -v- Reginam* (1953) 19 EACA 310, it was held that there is a distinction between exhibits and articles marked for identification; and that the term “exhibit” should be confined to articles which have been formally proved and admitted in evidence. In the Nigerian case of *Michael Hausa -v- The State* (1994) 7-8 SCNJ 144, it was held that if a document is not admitted in evidence but is marked for identification only, then it is not part of the evidence that is properly before the trial judge and the judge cannot use the document as evidence.”

88. Additionally, in *Lwangu v Ndote* (Environment & Land Case 79 of 2010) [2021] KEELC 2 (KLR) (10th November 2021) (Ruling), this court held as follows:-

“20. It is worth explaining here the four stages of the production of secondary evidence (for example the photocopy in this case). Before a document is produced to show its contents, its existence or state/physical appearance (whichever is relevant to the proceedings before the court), it passes through three stages if it is the original or four if it is the secondary thereof that is available.

1. First, the document is filed in court (according to the rules or legal requirements. In civil cases, refer to order 3 rule 2 and order 11 of the Civil Procedure Rules and rule 28 of the Practice Directions on Proceedings in the Environment and Land Courts, and on Proceedings Relating to the Environment and the Use and Occupation of, and Title to Land and Proceedings in other Courts (herein referred to as the “Mutunga Rules”). Worth noting here is that if the party has not complied with the rules of filing the documents, he has to seek leave of the court to be permitted to file them out of time. The court has to be satisfied on the reasons why the party failed to comply with the rules. In *Mansukhalal Jesang Maru v Frank Wafula* [2021] EKLR, this court held as follows “Essentially, I am saying here that the bar at which the court gets convinced that there is need of filing and relying on an additional document or witness statement should be very high, higher than the fifty-fifty chance. This is because by the time the parties are having the pre-trial conference, they shall have weighed their case and become satisfied that all is ready for the ship of trial to unhook from the anchor and sail. “This means that it is not a walk in the park for a party who fails to comply with the timelines set by law or an order of the Court. Even Article 159(2) (d) that parties often rely to does not come to the aid of all parties in all situations. Each case has to be treated on its own merits. Even so, the bar for convincing the court to exercise its



discretion to permit documents to be filed out of time is higher than the usual standard.

2. Second, if the document is not the original, that is to say, it is secondary evidence, the party has to show the copy to the other parties and the court first. Then he will proceed to lay the basis for the production of the copy and not the original. This has to fall within the usual standard of satisfaction of the requirements of reliance on secondary evidence.
3. Third, once the Court is satisfied that the party has laid a proper basis for producing secondary evidence of the document, it then permits the party to lay further basis for production of the document. This has to be in accordance with the rules of relevance and admissibility in the law of evidence.
4. Once, the above is complete, then the party has to prove the contents, state or physical appearance of the document.”

89. As is clear from the decisions above, there are four stages of leading to proof of documentary evidence, being, the stage of filing the copies of the documents in a List as a foreground of what the party will rely on, then the stage of laying the copies or documents before the court for production, the third one is the production of the same, and then the proof thereof as the fourth stage. The appellants only attempted to produce the documents by they did not. Thus, the documents could not be relied on in evidence by this court. Any evidence relating to their content is, at best, inadmissible hearsay. Therefore, the documents produced as PExhibits 1, 2, 3 and 4 were not sufficient to prove or to make the court make a finding, that the Plaintiff was the owner of the parcel of land.
90. There was even evidence given by the defendants on how the funds were raised towards the purchase of the suit land. It was even admitted, not once but severally, by the plaintiff particularly during the cross examination of PW1, that indeed the accounts from which money used to buy the land were of the Church, namely, Life Ministries Church. That was notwithstanding that PW1 purported to state that the agreement was in his name. There was no other evidence he led to show that the money that went into the purchase of the plot came from any other (his private or Grace Fellowship Pentecostal Church) sources than the source which DW1 and DW2 specifically identified as belonging to the church through funds collected from time to time for the purpose and deposited in the Church account.
91. The trial court carefully analyzed the evidence and arrived at a reasoned and proper finding that indeed the parcel of land was purchased by the members of Life Ministries’ Church members.
92. In his testimony PW1 stated that he purchased the land at KShs 2 million and was in the process of transferring it to his name. He denied being aware that the money used to purchase the land belonged to the 2nd Defendant. He only stated without any documentary proof that the money was from his Account, of which he took a loan and added some from his savings. But on cross examination he admitted he was a signatory of the bank account No. 0XXXXXXXXXX00 held by the Life Celebration Ministries Rongo, at National Bank. He also admitted that a deposit of KShs 600,000/- was made by Grace Anyango Rondo who was the secretary of the Life Celebration Ministries Church. This evidence was corroborated by Grace herself in her evidence at the trial. He admitted further that the money in the account was for building/buying land. Further, that Grace withdrew the money from the account because they were in the process of building.



93. On the Defendants' part DW1 stated in evidence that the Life Ministries Church operated the accounts from where the money was withdrawn and paid for the purchase of the parcel of land. Grace Anyango Orando's evidence was clear and precise that she was the treasurer of the Life Celebration Ministries Church and she often withdrew money from its accounts to pay for the purchase price of the suit land.
94. Also, the finding of the trial magistrate on Promissory Estoppel in relation to the purchase of the suit land comes into focus, and I must make a finding as to whether she was correct or wrong in her finding on its application in the instant case. I must emphasize here that by thus finding I am not venturing into making a finding on the membership of the plaintiff but only his conduct in relation to the purchase of the suit property.
95. While agreeing with the Defendants' submissions on the principle, as summarized by them in the decisions below, the learned trial Magistrate found that Section 120 of the *Evidence Act* was relevant. The decisions were, Lord Denman CJ's holding in *Pickard v. Sears* 112 E.R. 179 which was that;
- “But the rule of law is clear, that where one by his words or conduct wilfully causes another to believe the existence of a certain state of things, and induces him to act on that belief, so as to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at the time.”
96. Also, the learned trial magistrate also reproduced the submission on the above principle as enunciated in *Serah Njeri Mwobi v. John Kimani Njoroge* (2013) eKLR. She then arrived at the finding that Section 120 of the *Evidence Act* which provides on promissory estoppel was on all fours regarding the defendants' arguments in support of their case.
97. The doctrine is an equitable one which applies in circumstances where a party by their conduct makes another to believe that the things he holds out to that other are proper or as portrayed and the other party acts on the things as they are held out, to his detriment, they are estopped from resiling from that position. In *Central London Property Trust Ltd vs High Trees House Ltd* [1947] KB 130, Justice Denning gave the applicable principles in cases of promissory estoppel. He stated as follows:
- “... a promise was made which was intended to create legal relations and which, to the knowledge of the person making the promise, was going to be acted on by the person to whom it was made and which was in fact so acted on.”
98. If promisor resiles, there are consequences that follow his latter actions. Promissory estoppel acts to prevent a promisor from reneging on a promise he made prior on which the promisee has relied to his detriment. It is a shield for a defendant sued over an alleged action or failure. It is not a sword available to a claimant or plaintiff. As an equitable remedy, promissory estoppel will not be enforced if it would result in unfairness or injustice but it will be enforced where a claimant wants to escape the consequences of his actions where they result in unfairness or injustice to the defendant.
99. In *Mjengo Limited v Menengai Oil Refineries Limited* (Civil Appeal 80 of 2019) [2025] KECA 85 (KLR) (24 January 2025) (Judgment) the Court of Appeal held that,
- “Promissory estoppel as we understand it is the legal principle that a promise is enforceable by law, even if made without formal consideration when a promisor has made a promise to a promisee who then relies on that promise to his subsequent detriment. In order to seek damages based on promissory estoppel, a plaintiff must show that:



- (a) the promisor made a promise, with the intention that a reasonable person would act on it;
- (b) the promisee believed the promisor, and acted on that promise in good faith;
- (c) the promisor later reneged on that promise causing financial harm to the promisee; and
- (d) the nature of the promise is such that the only way to avoid injustice is by enforcing the promise. (See Hughes vs. Metropolitan Railway Co. 1877 2 AC 439).”

100. The trial court found that when the Plaintiff joined the church which DW2 was sitting as a Board Member, that is Life Celebration Ministries, and for which she made payments for the purchase of the property in issue and which when the Plaintiff sought to her to change from she tendered a resignation, his conduct fitted that envisaged in promissory estoppel. Furthermore, the trial magistrate found that by his actions the Plaintiff led the defendants to treat him as member of the Life Celebration Ministries and he agreed to it and even became a signatory to their accounts and he could not now turn against them to argue that his presence in the said church was not that of a member.

101. This brings me back to the evidence of the parties that initially there were two churches, namely Grace Fellowship Pentecostal Church and Life Celebration Ministries. The pleadings and evidence by the Plaintiff were that at one time the Plaintiff and his church sought to be part of the Life Celebration Ministries and for a while its members and his actions were deeply subsumed in those of the Life Celebration Ministries. In so far as the purchase of the suit property was concerned the plaintiff, in evidence, sought to lead the court to belief that the Grace Fellowship Pentecostal Church retained its identity and independence or autonomy and he as its leader purchased the property in his name. I respectively disagree. The evidence adduced even by him in cross examination shows clearly that he was part of the congregation that bought the land through the money they raised and paid through their accounts and officials. The Plaintiff is thus estopped through his promises, express and by conduct, from denying the state of things as they were that it was Life Celebration Ministries that bought the suit land. I, thus, agree with the learned trial magistrate on this issue.

102. The upshot the plaintiffs failed to prove their case on a balance of probabilities and its dismissal was proper. Therefore, from the entire analysis above, this appeal is not merited. It too is dismissed with costs to the Respondents.

103. Orders accordingly.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY VIA THE TEAMS PLATFORM
THIS 13TH DAY OF JANUARY 2026.**

HON. DR. IUR NYAGAKA

JUDGE

From 12:22 PM, in the presence of ,

Md. Lola court Assistant

Ms. Kimberly for the Appellants

Mr. Mbeka for the Respondents

Mbeka: I have filed a Notice Change Advocate since Mr. Otieno has been appointed to the Bench.

