



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**

**ELC CASE NO. 106 OF 2015 (O.S)**

**BISHOP CORNELL WAGUMBA OPONDO.....1<sup>ST</sup> PLAINTIFF**

**GEORGE OWINO MURUKA.....2<sup>ND</sup> PLAINTIFF**

**JAMES KABANA AWICH.....3<sup>RD</sup> PLAINTIFF**

***(suing on behalf of themselves and on behalf of all the members of TRUE JESUS CHURCH)***

**TRUE JESUS CHURCH.....4<sup>TH</sup> PLAINTIFF**

**VERSUS**

**JOSEPH OSUMBA KOJO..... DEFENDANT**

**JUDGMENT**

1. The Plaintiffs commenced these proceedings through the originating summons dated 8<sup>th</sup> May 2015 against the Defendant, claiming proprietary interest by way of adverse possession of the whole of East Karachuonyo/Kobala/1347, registration with the said parcel as proprietors and costs. The originating summons was filed with the supporting affidavit sworn by the 1<sup>st</sup> Plaintiff, the national chairman of the 4<sup>th</sup> Plaintiff, among others deponing as follows;

a) That the Church, 4<sup>th</sup> Plaintiff, was registered on the 23<sup>rd</sup> April 1990 and issued with certificate of registration No. 14584. That by agreement dated 22<sup>nd</sup> October 1999, the church bought the whole of East Karachuonyo/Kobala/1347, the suit land, from the Defendant, who was the registered proprietor, as per the copy of the certificate of official search issued on 28<sup>th</sup> April 2015, for Kshs. 20,000/= which they paid in full.

b) That the money for the payment of the purchase price was contributed by church's missionaries from the United States of America and given to the one Romanus Juma Awich, the then church Vice Chairman, to hand over to the Defendant. That the Plaintiffs later learnt that the sale agreement over the suit land was expressed to be between Romanus Juma Awich as the purchaser, and Defendant as the vendor. That among the witness in the agreement was the 3<sup>rd</sup> Plaintiff who is the Secretary to the church.

c) That the Defendant signed transfer forms in favour of the church, and application for Land Control Board after the sale agreement, but they could not process the documents after the Defendant alleged that he had lost his national identity card.

d) That the church had taken possession of the suit land after the purchase in 2000, and constructed a permanent church house at Kshs. 1,000,000/=, a kitchen, pit latrine with two doors, bathroom with 2 doors and a shallow well for use by the congregation. That they have also since fenced the plot with barbed wire and planted trees which have matured.

e) That they have used the church house without any interference since 2000. That Romanus Juma Awich, the Vice Chairman of the church, started drifting from the church and after failing to change his ways after the meeting of 16<sup>th</sup> August 2008, he was stopped from his duties and subsequently ceased being a member of the church.

f) That in November 2008, Romanus Juma Awich started claiming ownership of the suit land, claiming he had bought it from the Defendant, but the latter confirmed he had sold the land to the church.

g) That the church then lodged a caution against the Land's title on 19<sup>th</sup> November 2008 after the Defendant declined to transfer the land to them.

h) That neither the Defendant nor Romanus Juma Awich have occupied the suit land since 2000 as it has been under the possession of the church. That the Defendant title has since been extinguished by operations of the law, and that he is holding the title in trust for the Plaintiffs. That the suit land should now be registered in the name of the church by virtue of their continuous peaceful, exclusive and uninterrupted occupation for over 16 years since 1999 to date.

2. The Defendant replied to the Plaintiffs' claim vide his replying affidavit sworn on the 9<sup>th</sup> November 2015, among others deponing as follows;

a) That the sale agreement was between himself as the owner and vendor, and Romanus Juma Awich as the purchaser.

b) That Romanus Juma Awich did not inform him that he was purchasing the land for the church.

c) That Romanus Juma Awich put up a church building on the land and allowed the 4<sup>th</sup> Plaintiff to carry out church functions from there.

d) That the occupation of the plot by the church has never been adverse to his title as he had sold his interest over the land, and the beneficial owner was Romanus Juma Awich.

e) That the Plaintiffs filed this suit after learning that he was preparing to transfer the land to Romanus Juma Awich.

3. The hearing commenced on the 6<sup>th</sup> February 2019 when 1<sup>st</sup> Plaintiff testified as PW1. He then called Joseph Otieno Otieno and Jackson Oduor Nyangau, who testified as PW2 and PW3, before closing the Plaintiff's case. The Defendant then testified as DW1 before closing his case. The learned Counsel for the Plaintiffs and Defendant then filed their written submissions dated the 12<sup>th</sup> March 2019 and 13<sup>th</sup> June 2019 respectively.

4. The following are the issues for the court's determinations;

a) Whether the Plaintiffs' possession of the suit land was adverse to the title of the Defendant as the registered proprietor, and if so from when.

b) Whether the Plaintiffs have been in adverse possession of the suit land for over twelve (12) years.

c) Who pays the costs.

5. The Court has considered the pleadings, affidavit and oral evidence presented, written submissions by both Counsel and come to the following conclusions;

a) That from the evidence adduced by PW1 and PW2, the church entered into a sale agreement over the suit land with the Defendant on the 27<sup>th</sup> October 1999. That the church was represented by its then Vice Chairman named Romanus Juma Awich, and PW2 was a witness. That the church took possession of the suit land, fenced it and in 2002 contracted PW3 to build a church house on it. That it was not until 2008 that Romanus Juma Awich, the church Vice Chairman, claimed that it was him, and not the church, that had bought the said land. The Defendant testimony is that he was all along selling the suit land to Romanus Juma Awich and not to the church, and that he was going to transfer it to him when this suit was filed. The Defendant however confirmed that he released the land in 1999 and that the church took possession of it and are still in possession.

b) That the finding in (a) above shows that though the church took possession of the suit land soon after the sale agreement of 27<sup>th</sup> October 1999, as a purchaser, no consent of the Land Control Board was obtained within six (6) months of the sale agreement, and in terms of Sections 6 (1) and 8 (1) of the Land Control Act Chapter 302 of Laws of Kenya, the sale agreement became void. That it follows that by the 28<sup>th</sup> April 2000, which is six months after 27<sup>th</sup> October 1999 when the sale agreement was entered into, that the church's continued possession of the suit land was not by virtue of being a purchaser. That from the 28<sup>th</sup> April 2000, the Church's occupation of the suit land became adverse to the title of the registered proprietor, the defendant.

c) That it has been confirmed by PW1, PW2 and the Defendant (DW1) that the church has been in possession of the whole suit land from 1999 to date. That the church has fenced the suit land, planted trees which are now mature and thereon is a church house and other structures. That other than in 2008, when Romanus Juma Awich brought in some worshippers who do not belong to 4<sup>th</sup> Plaintiff on three occasions to use the church house, the 4<sup>th</sup> Plaintiff has been using the whole land openly, uninterrupted and exclusively without the Defendant retaking, or trying to retake possession. That by the time this suit was filed on the 8<sup>th</sup> May 2015, the church had been in adverse possession of the suit land for about fifteen (15) years.

d) That by operations of Sections 7, 37 and 38 of the Limitations of Actions Act Chapter 22 of Laws of Kenya, the Defendant title to the suit land became extinguished on or about 29<sup>th</sup> April 2012, when twelve (12) years and one day lapsed with the church being in adverse possession of the suit land. That accordingly, the 4<sup>th</sup> Plaintiff acquired proprietary rights over the suit land, and should be registered as the proprietor.

e) That even though the church has succeeded in proving their case against the Defendant, the court has after considering the circumstances surrounding the initial relationship between the parties, and the role played by one Romanus Juma Awich, concluded that justice will better be served by ordering each party to bear their own costs.

6. That flowing from the foregoing, the court finds that the Plaintiffs have proved their case against the Defendant to the standard required. That Judgment is therefore entered for the Plaintiffs against the Defendant and the following orders issued;

- a) That the Defendant's proprietary interest over East Karachuonyo/Kobala/1347 has been extinguished by reason of the 4<sup>th</sup> Plaintiff being in adverse possession of the said land for more than twelve (12) years since April 2000.
- b) That the Defendant's registration with the said land is hereby revoked and the suit land's register be accordingly rectified.
- c) That the suit land, East Karachuonyo/Kobala/1347, be registered in the name of the 4<sup>th</sup> Plaintiff forthwith.
- d) Each party do bear their own costs.

It is so ordered..

**S.M. KIBUNJA**

**ENVIRONMENT & LAND**

**JUDGE**

**DATED AND DELIVERED THIS 31<sup>ST</sup> DAY OF JULY 2019**

In the presence of:

Plaintiffs	Absent
Defendant	Absent
Counsel	Mr. Ouma Njoga for Mr. Orengo for the Plaintiffs

**S.M. KIBUNJA**

**ENVIRONMENT & LAND**

**JUDGE**