

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

ELC CASE NO. E053 of 2023

REV. BENSON LENAYIA LOITEI (Suing on behalf of AFRICA INLAND CHURCH KENYA ILMASIN**PLAINTIFF**

VERSUS

DANIEL LONTUNO NTIMERI **1ST**
DEFENDANT

MEMBER OF DIVINE WINNERS INTERNATIONAL
..... **2ND**
DEFENDANT

J U D G M E N T

1. In the Complaint dated 16th June 2023 the Plaintiff claims that he is the regional Chairman of the plaintiff (African Inland Church -Ilmasin) which is the registered owner of Plot No. 493 Olchoro Onyore T. Centre measuring approximately 10 acres. However, sometime in the year 2022, the 1st Defendant who was a Pastor of the Plaintiff, trespassed upon the land and caused it to be registered in favour of the 2nd Defendant. The Plaintiff has therefore been unable to enjoy the quiet possession of the property which also hosts a school.
2. The Plaintiff therefore sought the following reliefs;

- i. A permanent injunction restraining the defendants from trespassing on the Plaintiff's parcel Plot No. 493 Olchoro Onyore T. Centre.**
 - ii. The Hon. Court do issue eviction notice against the Defendants from occupying the suit property Plot No. 493 Olchoro Onyore T. Centre.**
 - iii. Special damages**
 - iv. General damages.**
 - v. Costs and interest of the suit.**
3. The 1st and 2nd defendants in their statement of defence contested the allegation that the suit property was registered in the Plaintiff's name, that there was a school on the property sponsored by the Plaintiff or that they had trespassed on the said property.
4. They stated that the suit land was set aside for a church at the time of demarcation and planning of the Olchorro Onyore Trading Centre. And that the allotment letter taken out in the name of the Plaintiff was because members of the 2nd Defendant members welcomed the Plaintiff in their area. It is their case that the Plaintiff did not apply for allocation of the land or bought it. They went on to state that the developments on the suit land were undertaken by plaintiff, but through contributions of the members of the 2nd Defendant. Further that members of the 2nd Defendant had developed the land over the years they had been in occupation because the land is part of the

community notwithstanding the fact that the allotment letter was issued to the Plaintiff and that issuance did not mean the land was owned by the plaintiff. They pray that suit should therefore be dismissed with costs because the suit land does not belong to the Plaintiff.

EVIDENCE OF THE PLAINTIFF

5. PW1, Benson Lenaiya Loitei, adopted his witness statement as his evidence in chief and produced his bundle of documents as P. exhibit 1 to 8. He stated that the suit property Plot No. 493 Olchoro Onyore Trading Centre was registered in favour of Africa Inland Church as per the Allotment letter dated 9th October 2002 which was produced in court. He stated that they later discovered that the 1st defendant had unlawfully changed the registration in favour of the 2nd defendant. It was his testimony that the 1st defendant was able to access the suit property's documents because he was a pastor at the Plaintiff's church.
6. On cross examination he stated that he was the pastor in charge of African Inland church Kajiado West region and that the church had a Constitution and by-laws and that he had authority to institute the suit. He stated that the Plaintiff did not have a title deed for the plot in contention but the Letter of Allotment had been handed over to the Kajiado County for issuance of a title deed. It was his testimony that the 1st Defendant being a pastor of the

Plaintiff, was in possession of the Church documents such as the letter of allotment. He went on to state that having been born in that community, he was aware that the land was allotted to the Plaintiff in 1977. The church then put up a pastor's house and other developments from contributions made by the members. He stated that the 1st defendant left the Plaintiff and established his church, the 2nd defendant.

7. On re-examination he stated that the original documents regarding the suit property were in possession of the Board of Trustees and the original letter of allotment was given to the 1st defendant so as to deliver it to the Board of Trustees.

Evidence of the Defendants

8. DW1 William Kinati Lekuperi, adopted his witness statement dated 13th December 2024 as his evidence in chief.
9. On cross examination he stated that he was a registered owner of forty (40) acres of land in Kajiado. He stated that in the year 1979, they moved to the suit property as members of the Presbyterian Church of East Africa (PCEA) and the 1st defendant joined the church in 2002 which had been closed down by PW1. It was his testimony that the 1st defendant found the church closed and established his church and that before it was converted to AIC, it was initially Presbyterian Church of East Africa. He adduced no evidence to confirm this. He went on to state

that he saw the 1st defendant receiving some documents from African Inland church head office and confirmed that the 1st defendant was indeed a pastor with the Church. He also confirmed that the letter of allotment was in the name of the Plaintiff and it was members of the community as well as Non-Government Organization by the name Simooi who helped in developing the property by sinking a borehole. This project was then handed over to the Plaintiff to manage on behalf and for use by the community.

10. On re-examination he stated that the letter of allotment was given to the Plaintiff later and by that time, the church was already on the land.
11. DW2 Nancy Nameri Ngiroiya, adopted her witness statement as her evidence in chief. On cross examination she stated that she was a women leader of the 2nd defendant. It was her testimony that the 1st defendant joined African Inland church in 2002 as a Pastor. She went on to state that when the 1st defendant joined, the letter of allotment had not been issued. It was however issued later in favour of the Plaintiff and the 1st defendant was given the letter of allotment to keep since he was the pastor.
12. On re-examination she stated that it was the community that decided the land be issued in the name of African Inland Church.
13. DW3 Daniel Lotuno, the 1st defendant adopted his witness statement as his evidence in chief. On cross examination he confirmed that he was a Pastor at African Inland Church

and that the letter of allotment was in its favour. He also confirmed that the members of the church contributed to the construction of the Pulpit. He stated that at some point leadership wrangles arose and he forwarded the issue to the Ngong region. He did not have evidence to confirm this. He went on to state that he was the overseer of the 2nd defendant and they were on a different parcel of land.

14. On re-examination he stated that the letter of allotment was in favour of African Inland Church since it was on the suit property and that the land belonged to the community and not the Plaintiff.
15. DW4 Moro Ole Rekishor, adopted his witness statement as his evidence in chief. On cross examination he stated that he was the chairman of Ilmasin primary school for many years, and having been born in Ilmasin he was conversant with the dispute. He stated that he participated in the acquisition of the land for the church, and although he was not aware who was the registered owner. The Plaintiff was on the land.
16. On re-examination he stated that he was present when the ten (10) acres of land was demarcated for a church, although it was not demarcated for any particular church.
17. DW5 Solomon Ole Ngoitiko, also adopted his witness statement as his evidence in chief. On cross examination, he stated that he was a member of the 2nd defendant which was located at Ilmasin on the land demarcated for a church. It was his testimony that he was not aware of AIC's presence in Ilmasin. He stated that he was aware

that there was a dispute regarding the suit property. He however confirmed that he was among those who picked the letter of allotment registered in favour of African Inland Church and went on to acknowledge that there used to be the presence of African Inland Church in the area.

18. DW6 Katiana Ole Koitei, adopted his witness statement as his evidence in chief and stated that he was aware of the prevailing dispute on the suit property. On cross examination he acknowledged that the land was demarcated for a church but it was not for any particular church. It was his testimony that the land was given to the Plaintiff and consequently developed and that the 1st defendant was the pastor in charge. He also stated that the letter allotment for the suit land was in favour of African Inland Church, and it was the church occupying the land.
19. On re-examination he indicated that African Inland Church did not apply for allocation of the land, but it was the community's decision to have the land allotted to Africa Inland Church.
20. At the close of the oral testimonies, the parties tendered their final written submissions.

SUBMISSIONS OF THE PLAINTIFF

21. On whether the Plaintiff proved ownership of the suit property, it was submitted that as per **Section 26 of the**

Land Registration Act, the Plaintiff was absolute owner of the suit property.

22. It was submitted that the Defendants occupation of the suit property was an act of trespass with reference to ***Stima Sacco Society Ltd vs Kipsang Arap Langat & another [2009] eKLR*** and that improvements of land did not confer a person title citing ***Geoffrey Kiprotich Rugut vs Samuel Kibet Rotich [2014] eKLR***.
23. Counsel went on to submit that the conversion of the church from AIC to Divine Winners International was unlawful since the 1st defendant had fiduciary duty owed to the AIC.
24. As such, the Plaintiff was entitled to the orders of permanent injunction, eviction, general and special damages and costs of the suit.

SUBMISSIONS OF THE DEFENDANTS

25. The Defendant submitted that the Plaintiff did not have locus standi to sue since African Inland Church of Kenya was the lawful owner of the property and not African Inland Church Ilmasin and the Plaintiff had not shown how the suit property was acquired. It was further submitted that the land was registered in the name of AIC to hold on trust for the church community in Ilmasin citing ***Juletabi African Adventure Ltd & another v Christopher Micheal Lockley [2017] KECA 118 KLR, Twalib Hatayan & another vs Said Saggat Ahmed Al-Heidy & others [2015] eKLR*** and ***Willy Kimutai Kitilit vs***

Michael Kibet [2018] KECA 573 KLR. As such, the Plaintiff could not claim interest in the suit property due to the resultant constructive trust in favour of the defendants.

ANALYSIS AND DETERMINATION

26. I have considered the pleadings, the evidence on record, submissions, and the authorities cited. I find that the issues for determination are:

- i. Whether the Plaintiff is the lawful allottee and owner of property Plot No. 493 Olchoro Onyore Trading Centre.***
- ii. Whether the Defendants have committed acts of trespass and an order of eviction should issue.***
- iii. Whether the Plaintiff is entitled to the reliefs sought.***
- iv. Who should bear costs of the suit?***

27. The dispute at hand is the ownership of Plot No. 493 Olchoro Onyore Trading Centre measuring approximately ten (10) acres. The Plaintiff seeks, *inter alia*, a permanent injunction, an eviction order, special and general damages, and costs against the Defendants. The gravamen of this case is that the Plaintiff was the registered owner through a letter of allotment. However, sometime in the year 2022 when the 1st defendant illegally and unlawfully caused it to be registered in favour of the 2nd Defendant.

28. The Defendants denied this allegation on the grounds that when Olchoro Onyore was demarcated, that particular land was set aside for establishment of a church not specifically African Inland Church (AIC) and that the letter of Allotment issued to African Inland Church (AIC) did not constitute to ownership of the land by the said church.
29. The first issue for determination therefore is who the lawful allottee of the suit property.
30. The Plaintiff's claim is anchored on a Letter of Allotment dated 9th October 2002 in favour of the African Inland Church Ilmasin. While the Defendant contested that the letter of allotment does not constitute ownership, its existence was not disputed. In fact, several defence witnesses acknowledged that the letter of allotment letter was issued in favour of the Plaintiff.
31. While a Letter of Allotment is not a certificate of title, it creates a legitimate expectation and an equitable interest in land capable of protection by law. If the Plaintiff was issued with the letter of allotment in the year 2002, and the same has never been cancelled or revoked, it therefore means that there was no land available for allocation to any other person. He who alleges must prove as per **Section 107 of the Evidence Act**. The Defendants did not adduce any documentary evidence showing allocation of the land in their favour. Their assertion that the land belonged to the community does not defeat the legal effect of the letter of allotment issued

in favour of the Plaintiff. This therefore means, the Plaintiff is the beneficial owner of the suit property.

32. Evidence was adduced in Court to show that the Defendants interfered with the Plaintiff's possession and continued with construction activities on the suit property despite warnings from the Land Registrar. They also acknowledged in testimony that they were in physical possession of the suit property despite the letter of Allotment in favour of the Plaintiff. This conduct clearly amounts to an act of trespass.
33. Given the Court's finding that the Plaintiff has a lawful interest. In the suit property I find that the Plaintiff is entitled to protection of that interest. I also find that the Defendants have no legal right to remain on the suit property. Consequently, the plaintiff is entitled to the reliefs sought in the plaint.
34. On the issue of general damages, the Court having found that the Defendants trespassed on the suit property, I award general damages of Kshs.500,000 for the said trespass which I think is reasonable. However, it is trite law that special damages must not only be specifically pleaded but must also be strictly proved as held in ***Hahn vs Singh [1985] KECA 129 (KLR)***. Accordingly, the claim for special damages fails.
35. The defendants claim of the land was anchored under the doctrine of constructive trust as per their submissions. Without going into much depth on the issue of constructive trust since it was only raised in the

submissions, this Court wishes to state that a constructive trust is an equitable remedy that arises to prevent unjust enrichment, as held in **Maina & 87 others v Kagiri (Civil Appeal 6, 26 & 27 of 2011 (Consolidated)) [2014] KECA 880 (KLR)**:

“... Constructive trust is an equitable concept which acts on the conscience of the legal owner to prevent him from acting in an unconscionable manner by defeating the common intention ...”

36. The defendants therefore cannot use the doctrine of constructive trust to take over what belongs to the Plaintiff's. The 1st Defendant served as a Pastor hence an agent of the Plaintiff. Equity dictates that a person in a fiduciary position must not use that position for personal gain or to set up an interest adverse to their principal.
37. I find that the plaintiff has proved his case on a balance of probabilities as against the Defendants.
38. Accordingly, judgment is entered for the Plaintiff as against the Defendant's jointly and severally in the following terms;

(a) That a permanent injunction is hereby issued restraining the Defendants, their servants, agents or anyone claiming through them from trespassing upon or interfering with Plot No. 493 Olchoro Onyore Trading Centre.

- (b) That the Defendants are hereby ordered to vacate Plot No. 493 Olchoro Onyore Trading Centre within thirty (30) days from the date of this judgment.**
- (c) In default of compliance with order (b) above, the Plaintiff be at liberty to use lawful means to evict the defendants at the defendants' expense.**
- (d) General damages for trespass for Kshs. 500,000.**
- (e) Costs of the suit and interest.**

Judgment dated, signed and delivered virtually at Nakuru this 19th day of March 2026.

L KOMINGOI

JUDGE

In presence of:

No appearance for the Plaintiff

Mr. Kaingu for the Defendants

Court Assistant: Nelima