

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

IN THE ENVIRONMENT AND LAND COURT AT MILIMANI

CIVIL SUIT NO. E132 OF 2021

WINGS OF LIFE GOSPEL CHURCH

INTERNATIONAL TRUSTEES.....PLAINTIFF

VERSUS

HUSSEIN ADAN SOMO..... 1ST DEFEDANT

NAIROBI CITY COUNTY..... 2ND DEFENDANT

CHIEF LAND REGISTRAR 3RD DEFENDANT

MINISTRY OF LAND AND PHYSICAL PLANNING 4TH DEFENDANT

DIRECTOR OF SURVEY 5TH DEFENDANT

ATTORNEY GENERAL..... 6TH DEFENDANT

JUDGMENT

1. The Plaintiff filed this suit against the 1st -6th Defendants vide Plaint dated 16th April 2021 seeking for the following orders;

a) Spent

b) General damages and aggravated damages.

- c) **A declaratory order to the effect that the 1st defendant's lease on the suit property Plot B, also referred to as LR No.209/16780(IR 211484), is null and void ab initio, and the lease to the 1st defendant over property LR NO.209/16780(IR 211484) stands cancelled.**
- d) **A declaration that the Plaintiff is the proprietor of LR NO.209/16780(IR 211484) also referred to as Plot B Racecourse and General Waruinge Road Nairobi and the 2nd,3rd and 4th Defendants register the plaintiff's names forthwith.**
- e) **Interest of court rates and costs of this suit.**
- f) **Any other relief that this court may deem fit and just to grant in the circumstances of the case.**
2. The Plaintiff asserts that it was lawfully allocated LR No. 209/16780 (IR 211484), also referred to as Plot B, off Racecourse and General Waruinge Roads, Nairobi, *herein referred to as “the suit property”* in April 1997. They were subsequently issued a lease in February 1999 upon payment of the requisite allotment premium and legal fees. They further state that they paid various statutory fees over the years, including survey fees, beacon certificate fees, deed plan charges, development permit fees, and extension of user charges, and that the suit property was earmarked for church use.

3. The Plaintiff asserts that the suit property was specifically designated for a church and that a neighbouring plot was similarly allocated to another church. They claim that despite fulfilling the allocation conditions and making ongoing payments, there were threats of eviction and interference with their possession of the property from the 1st and 2nd Defendants, which house church facilities and related developments.
4. The Plaintiff further alleges fraud, misrepresentation, collusion, and unlawful actions concerning the suit property by the Defendants. They specify these actions as the preparation and certification of a suspected fake deed plan and lease in the name of the 1st Defendant, handing over a certified deed plan to the 1st and 2nd Defendants by the 5th Defendant, fraudulent alteration of ownership records in favour of the 2nd Defendant, presentation of false documents to the land registry, and unlawful demolition of part of the property without a court order.
5. The Plaintiff argued that, without a court or eviction order, the 1st and 2nd Defendants demolished part of their suit property on the nights of 13th and 14th April 2021. As a result, the Plaintiff suffered significant loss, and the estimated damages amount to approximately Kshs. 50 million, plus the value of the property at Kshs. 150 million.

Defences:

6. The 1st Defendant filed a document headed as “1st Defendant’s witness statement” which gives a narration of his case. At paragraph 13 thereof, he sought five (5) prayers inter alia orders of permanent injunction against the Plaintiff restraining it from interfering with the suit property and a declaration that he was wrongly sued. Besides this document, I was not able to spot a statement of defence filed on behalf of the 1st Defendant.
7. Together with the witness statement, the 1st Defendant also filed a list of documents dated 27th February, 2025 containing 22 documents.
8. The 2nd Defendant filed a defence dated 14th June 2023 while the 3rd -6th Defendant filed a defence dated 30th June 2022. The 2nd Defendant denies the substantive allegations in paragraphs 8 to 19 of the Plaint, contending that the suit property was allocated to a third party and was never allocated, leased, or licensed to the Plaintiff. The 2nd Defendant denies any recognition of the Plaintiff as a licensee, denies allegations of fraud, collusion, trespass, eviction, or destruction of property, and asserts that no demand letter was received. The 2nd Defendant maintains that the Plaintiff’s claims are unsustainable and should be strictly proved.
9. Vide a statement of defence dated 30th June, 2022, the 3rd, 4th, 5th and 6th Defendants deny the allegations contained in paragraph 15 of the Plaint, including the particulars of fraud pleaded therein, and put the Plaintiff to strict proof. They aver that any registration undertaken by the 3rd Defendant in respect of the suit property,

if at all, was carried out in accordance with the law and upon presentation of all requisite documentation by the registered proprietor(s). They further state that they are strangers to the averments in paragraphs 16 and 17 of the Plaint and deny the contents of paragraph 18 thereof.

10. The said Defendants contend that the Plaint discloses no reasonable cause of action against them and urge that the suit be dismissed with costs. However, they admit the jurisdiction of this Honourable Court.

Evidence:

11. PW1, Arch. Bishop Garrison Kanori Njoroge, the general overseer and archbishop of the Plaintiff, testified in support of the Plaintiff's case. He adopted his witness statement dated 16th April 2021, which stated, inter alia, that the Plaintiff was allocated the suit property, Plot B, on 3rd April 1997, while African Christian School was given Plot A. That the Plaintiff was required to pay Ksh.40,000 which they paid.

12. He added that there is a sketch map attached to their allotment found on page 21 showing the location of the suit property, and the receipt of Ksh. 40,000 is on page 22. They further paid for an agreement fee, which agreement was signed by the mayor and the Town clerk of the 2nd Defendant, as per pages 24-27 of the Plaintiff's list of documents.

13. PW1 stated that the suit property was earmarked for a church, and after signing on behalf of the church, they received a letter from the Ministry of Lands clearing the land Plots A & B for churches as shown in page 29 of their bundle, which letter was copied to the Town Clerk of the 2nd Defendant. He added that he paid a survey fee for the land and Ksh. 2000 on 11.5.2017, when they changed their name from International Church of Christ to Wings of Life Gospel Church. He stated that they had been in occupation of the suit property under T.O.L in 1995, during which they constructed a timber structure that they were using for worship.
14. The witness continued that they started constructing a permanent building in the year 2020. PW1 stated that another group claimed an interest in the land. They sued them in 1999 and got a ruling in their favour in April 1996 in CMCC 697 of 1997. He added that for their development, they paid for the approvals in 2019, KShs 97,000. That they also paid KShs 81,000 for advertising for the development (pages 15-19) and obtained an EIA license from NEMA (pages 51-52).
15. PW1 testified that while preparing to roof the church, a valuer visited the property on instructions from a prospective purchaser claiming to have bought the land from the 1st Defendant, and expressed surprise that a church stood on the land. The following day, the 1st Defendant allegedly arrived with individuals who demolished the church structures, after previously sending emissaries expressing interest in purchasing the suit property.

16. The witness further stated that a surveyor requested the return of the original deed plan for rectification, but upon advice of counsel, he declined, demanding a formal written request, which was never issued. He maintains that the Plaintiff retains the original deed plan and questions how another deed plan could have been issued. He asserts that the 1st Defendant's allotment letter was obtained in 2022 despite the Plaintiff's long possession, and alleges collusion by the 2nd–5th Defendants. He referenced the Court of Appeal order at pages 68–69 of the bundle and documents evidencing collusion at pages 53–56.
17. The witness further testified that during the demolition, building materials were carted away and the Plaintiff's stones were used to construct a perimeter wall, and that the 1st Defendant subsequently erected a warehouse and drilled a borehole on the suit property. He stated that the value of the land is estimated at Kshs 150–200 million, while the demolished structures and removed materials are valued at approximately Kshs 50 million.
18. He asserted that the 1st Defendant was found in contempt of court and that his appeal was dismissed. He also stated that the Plaintiff relies on its bundle of documents dated 1.10.2024 as exhibits and seeks the revocation of the 1st Defendant's title, restoration of the plot, compensation of Kshs 50 million in damages, and the reliefs sought in the Plaintiff.
19. None of the Defendants called any witness.

Submissions:

20. The 1st Defendant and the office of the Attorney General did not file any submissions. The Plaintiff filed submissions dated 30th October 2025 while the 2nd Defendant filed submissions dated 3rd December 2025. The Plaintiff outlined the brief facts of the case and submitted that the central issue for determination of this dispute is whether the suit property was available for lease as at 14th June 2018. The Plaintiff maintains that it was lawfully allocated the property in 1997, issued with a lease in 1999, and complied with all procedural requirements under the repealed Government Lands Act, the Local Government Act, and the Physical Planning Act.

21. They argue that once the allotment was made, a Part Development Plan (PDP) approved, premiums paid, and the lease executed, the land ceased to be unalienated government land and was no longer available for reallocation. In support, they relied on the case of **African Line Transport Co Ltd v Attorney General [2007] KEHC 2621 (KLR)**, **Nelson Kazungu Chai & 9 Others v Pwani University [2014] eKLR**, and the Supreme Court decision in **Dina Management Ltd v County Government of Mombasa & 5 Others [2023] KESC 30 (KLR)**, all of which affirm that planning must precede allotment and that lawful allocation requires strict compliance with a sequential statutory process. The Plaintiff

contends that the 2018 lease was issued long after the land had been alienated and was therefore unlawful and void.

22. On whether the 1st Defendant's title is capable of protection, the Plaintiff invokes **Section 26(1) of the Land Registration Act, 2012**, which provides that title is indefeasible only where it is lawfully acquired. They argue that the presumption of indefeasibility collapses where fraud, illegality, or procedural impropriety is demonstrated. The Supreme Court in **Dina Management Ltd v County Government of Mombasa & 5 Others [2023] KESC 30 (KLR)** and the Court of Appeal in **Funzi Development Ltd & Others v County Council of Kwale [2014] eKLR** emphasized that courts cannot sanitize illegal allocations under the guise of indefeasibility of title.

23. Further, they cited **Republic v Minister for Transport & Communication & 5 Others ex parte Waa Ship Garbage Collector & 15 Others [2004] 1 KLR (E&L)**, where the court condemned the practice of waving a title deed to shield fraudulent acquisition of public land. The Plaintiff therefore urges the court, pursuant to Section 80(1) of the Land Registration Act, to cancel the impugned registration.

24. On liability for demolition and eviction, the Plaintiff asserts that the 1st Defendant forcibly entered the property without a court order, demolished existing structures, removed construction materials, and denied access to the premises. They contend

that such actions constitute unlawful trespass and warrant compensation in damages. The Plaintiff maintains that having demonstrated prior lawful interest and possession, and in the absence of any lawful justification for the demolition, the 1st Defendant is liable for general and aggravated damages arising from the destruction and loss occasioned.

25. On their part, the 2nd Defendant submits that the suit is fatally defective for want of legal capacity, as the Plaintiff is described as a society registered under the Societies Act and therefore lacks the capacity to sue or be sued in its own name. They argue that, being an unincorporated association, the Plaintiff ought to have instituted proceedings through its officials in a representative capacity and in support cited **Republic v Registrar of Societies & Another ex parte Narok Muslim Welfare Association, Judicial Review No. 3 of 2016 (High Court at Naivasha)** and **Islamia Madrassa Society v Zafar Niaz & 8 Others, Civil Case No. E034 of 2021 (High Court at Nairobi)**, where courts affirmed that societies lack independent legal personality.

26. The 2nd Defendant further contends that the sole witness did not demonstrate any written authority to plead or testify on behalf of the Plaintiff, rendering the proceedings incompetent and liable to be struck out.

27. Additionally, the 2nd Defendant challenges the Plaintiff's claim to ownership asserting that no proof of payment of land rates, ground rent, stand premium, or

compliance with allotment conditions was produced. They argued that the allotment terms required payment of standard premium within thirty days, yet the Plaintiff's alleged payments were made years later, casting doubt on the validity of their claim. The 2nd Defendant further maintains that their records show that the suit property was allocated to the 1st Defendant in March 2000 and that he is listed as the rateable owner in their official records.

Analysis and Determination:

28. I have considered the pleadings, the evidence offered by the Plaintiff and the submissions filed on behalf of the Plaintiff and the 2nd Defendant. Therefore, I frame the following questions for the determination of this dispute:

a. Whether the suit is defective.

b. If the answer to (a) is No, whether or not the Plaintiff has proved its case

c. Who bears the costs of this suit?

29. The 2nd Defendant filed a statement of defence dated 4th June 2023 comprised of 11 paragraphs denying the Plaintiff's claim and nowhere does it raise the defectiveness of the Plaintiff's suit. During oral hearing, none of the Defendants called any witness. Consequently, the 2nd Defendant filed brief written submissions dated 3rd December, 2025 in reply to the Plaintiff's submissions.

30. It is in the submissions that the 2nd Defendant states that the suit is fatally defective because the Plaintiff's witness did not show he had any authority from the Plaintiff to plead, sue or give evidence. It urged the court to strike out or dismiss the suit. The 2nd Defendant does not point this court to any provision of the law requiring the witness to produce authority to testify on behalf of the Plaintiff. The court takes cognizance of the fact that the 2nd Defendant did not give evidence to contradict the assertion by the witness that he was giving evidence as the chairman of the Plaintiff. Therefore, I hold that the objection on "absence of authority" is unmerited.

31. Further, the issue of defect of the suit was raised late in the day, and thus it denied the Plaintiff an opportunity to defend itself. In any event, the reason for the defect has not been supported by any law which allows for points of law to be raised at any stage of the proceedings. It is on this account that I give a negative answer to the first question I posed.

32. The main question is whether or not the Plaintiff has proved its case to warrant being granted the prayers sought in the plaint. It is a trite law that the Plaintiff always has a burden to prove the existence of the facts for the court to find in their favour even when a suit is undefended. This is provided for under **sections 107-109** of the Evidence Act, Cap 80.

33. The circumstances of this case are that both the Plaintiff and the 1st Defendant are holding title documents over the same parcel of land. Both claim to have acquired the land through allocation, implying that the land was initially unalienated public land. My task is to determine who, between the Plaintiff and the 1st Defendant, has demonstrated that their title was acquired following due process.
34. Starting with the Plaintiff's case as summarized above, it is asserted that the Plaintiff occupied the suit parcel from 1995, initially under a temporary occupation licence (T.O.L) granted to it by the 2nd Defendant. The Plaintiff stated that it was subsequently issued with a letter of allotment for the said property in 1997, and produced a copy of the letter dated 3.4.1997 as pex 5, together with a receipt dated 3.4.1997 for the sum of Kshs 40,000 paying for the stand premiums (in the bundle of documents filed before the court).
35. The Plaintiff also produced a copy of the lease executed on 19th February 1999 between International Church of Africa and the 2nd Defendant for **Plot B** off Racecourse and General Waruinge road, Nairobi. The plaintiff explained that the International Church of Africa is what changed its name to the current plaintiff. It also presented a copy of a **Ruling made in Nairobi CmCc No. 697 of 1999 between International Church of Africa versus Rev Margaret Wangari Ngugi**. In that case, the Applicant therein sought and was granted orders of

injunction restraining interference with the Church's premises situated on Plot B off Racecourse and General Waruinge Road.

36. So far, the Plaintiff has explained how it came into possession of the suit plot B and has provided evidence of physical possession through the lease document and a copy of the court ruling in CMCC No. 697 of 1999 and photographs. The 1st Defendant did not call any evidence, but it had filed a list of documents dated 27th February, 2025. Some of these documents were also included in the Plaintiff's list, so I will comment on them despite the 1st Defendant not having formally produced them as exhibits.

37. The documents by the 1st Defendant include a letter of allotment dated 20th March 2002 allocating him Plot B on Racecourse Road, Pumwani. Also included are payment receipts made by the 1st Defendant on 14th March 2006 for the stand premiums and 30th July 2008 for the ground rent. The 1st Defendant equally executed a 99-year lease with the 2nd Defendant on 14th June 2018. Subsequently, he had the lease registered/transferred to him on 8th October, 2019.

38. The dates on the 1st Defendant's documents came after the documents relied upon by the Plaintiff had been issued. As at the time the 1st Defendant was being issued with the allotment letter, the previous allottee were in actual possession (see paragraph 3(j) of Mr Abwao's replying affidavit). Although the 2nd Defendant submits that, according to their records, it is the 1st Defendant who owns the suit

property. The 2nd Defendant did not however plead or adduce evidence that would show that the Plaintiff's documents emanating from them are fraudulent.

39. In the case of **Kinyanjui Kamau vs George Kamau [2015] eKLR** the Court of Appeal expressed itself as follows;-

“...It is trite law that any allegations of fraud must be pleaded and strictly proved. See Ndolo vs Ndolo (2008) 1 KLR (G & F) 742 wherein the Court stated that: “...We start by saying that it was the Respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in criminal cases....”....In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”

40. Consequently, the suit plot, which was allocated to the International Christian Church between 1997 and 1999 and was not cancelled, was already committed and unavailable for allocation to the 1st Defendant in 2002. The 1st Defendant had annexed a replying affidavit of Mr. Erick Abwao sworn in **case no E115 of 2022** on behalf of the County Government, sued in that case as the 5th Defendant. In the

Replying Affidavit, the deponent stated at paragraph 3(g) that the owners of Plot A and B were issued with deed certificates after fulfilling the terms of the letters of allotment. That, as soon as this occurred, the deed certificates entirely superseded the Letters of Allotment.

41. This kind of deposition is incorrect as obtaining a deed of certificate does not legitimise a deed of certificate irregularly processed. This is in line with section 26 of the Land Registration Act of 2012 (with similar provisions in section 28 of Cap 300 (repealed) and the applicable law then). Section 26 states thus;

“(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

(a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or

(b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

35. The 1st Defendant was aware of the Plaintiff's claim over the suit property before he was issued with a title for the suit property. He mentions this in his witness statement when he says that in 2018, he learnt that Lydia Karumi, an employee of the 2nd Defendant mistakenly released the deed plan no 422387 for L.R 209/16780 to one Gerishone K. Njoroge who was not the rightful owner. Mr Njoroge testified as PW1 and he is also the one who signed the lease on behalf of the Plaintiff in February 1999.
36. This Lydia Karumi does not depose to how she attempted to reach the said Gerishom K. Njoroge. The 2nd Defendant's County Secretary, vide a letter dated 17th April 2018, to the Plaintiff's counsel on record, while confirming that the deed plan was picked by Gerishon K. Njoroge on 3rd April, 2018, on behalf of ICA, proceeded to state Mr Njoroge's phone number in the letter.
37. It means that the 2nd Defendant had phone details of the person who picked the deed plan, and the letter confirms the phone number went through, as it is Mr Njoroge who directed the Country Secretary to write to Kahuthu & K advocates as his counsel. The letter corroborated the evidence of PW1, who said he was requested to return the deed plan but insisted that the demand be made in writing.
38. Was the collection of the deed plan by Mr Njoroge on behalf of the Plaintiff in April 2018 in error/illegal? The Plaintiff produced a **PDP dated 21.3.1997**, prepared by the 2nd Respondent, approving the suit plot for a church site. This PDP was approved

by the Commissioner of Lands vide a letter dated 10th May 1999, and signed by S.K Wangila on behalf of the Commissioner of Lands. At paragraph (a) of this letter, the PDP forwarded to the Director of City Planning & Arch was the **“proposed Church Site – off Raxcecourse & General Waruinge Roads Ref. CP & ARCH/00210 of 21.3.1997.**

39. The Plaintiff also presented a receipt dated 11th May 2017, issued by the 2nd Defendant, for a plot transfer fee, which lists the customer as I.C.A Church of the Lord. The plot number is stated as Plot B - off Racecourse Road, and there is no evidence of two Plot B's in this location other than the suit property. The 1st Defendant has not indicated any connection with this I.C.A Church of the Lord, which the Plaintiff claims later changed its name to the Plaintiff. It is therefore incorrect for the 2nd Defendant to argue, without retracting the documents produced by the Plaintiff, that, according to their records, the suit property is owned by the 1st Defendant.

39. The 3rd, 4th, 5th and 6th Defendants pleaded that if any registration was effected by the 3rd Defendant in respect to the suit property, then the same was done in accordance with the statute and upon presentation of all relevant documentation from the registered proprietor/s. They left the battle between the Plaintiff and the 1st Defendant to prove their case, as they also did not call any oral evidence.

40. In light of my foregoing analysis, I safely conclude that the Plaintiff has proved its case on a balance of probabilities that the 1st Defendant was unlawfully issued with a letter of allotment over Plot B that was already committed to the Plaintiff. It follows that the certificate of lease issued to the 1st Defendant was based on irregular documents and process, and therefore it does not confer any rights on the 1st Defendant.
41. The 2nd Defendant is guilty of double allocating the suit plot to the 1st Defendant, which action led the 1st Defendant to destroy the Plaintiff's structures and dispossess them of the property. For this reason, I hold both the 1st and 2nd Defendants liable to the Plaintiff for the loss suffered. I order them to pay aggravated damages, which I assess at Kenyan shillings Ten million (KES 10,000,000).
42. Besides the declaratory orders and aggravated damages, the Plaintiff urged the court to award it special damages of Kshs 50 million for the destruction of buildings and installations. It is well established law that special damages must be specifically pleaded and clearly proved. In the case of **Coast Bus Service Ltd. v Sisco & Murunga Danii & 3 Others Civil Appeal No. 192 of 1992** (unreported), the Court of Appeal held thus;

"We would restate the position special damages must be pleaded with as much particularity as circumstances permit and in this connection, it is not enough to simply aver in the plaint as was done in this case that the

particulars of special damage were'to be supplied at the the time of the trial if at the time of filing the suit the particulars of special damages are not known with certainty, then those particulars can only be supplied at the time of trial by amending the plaint to include the particulars which were previously missing. It is only where the particulars of the special damage are pleaded in the plaint that a claimant will be allowed to proceed to the strict proof of those particulars. "

43. The Plaintiff in this case argued that the 1st Defendant destroyed its buildings and presented photographs of the building before the demolition and of the premises after. However, it did not provide evidence of the value of the destroyed buildings, and I find that the claim for special damages was not substantiated.

DISPOSITION:

44. In conclusion, I enter judgment in favour of the Plaintiff and against the 1st and 2nd Defendants jointly and severally as follows:

- a) General aggravated damages awarded at Kshs Ten (10) million.**
- b) A declaration is made that the 1st defendant's lease on the suit property Plot B, also referred to as LR No.209/16780 (IR 211484), is null and void ab initio, and is hereby ordered revoked/cancelled.**

- c) A declaration is given that the Plaintiff is the rightful proprietor of L.R. No. 209/16780(IR 211484), also referred to as Plot B, off Racecourse & General Waruinge Road, Nairobi.
- d) The 2nd,3rd and 4th Defendants are directed to enter the Plaintiff's name in the register of the suit title.
- e) Interest of court rates on (a) above
- f) Costs of the suit to the Plaintiff.

Dated, signed and delivered at Kisii virtually this 5th day of March, 2026.

A. OMOLLO
JUDGE