

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT ELDORET**  
**ELC CASE NO. E049 OF 2021**

**THE REGISTERED TRUSTEES**  
**OF THE EPISCOPAL CONFERENCE**  
**.....PLAINTIFF**

***-VERSUS-***

**KENYA PIPELINE COMPANY LIMITED .....**  
**DEFENDANT**

***AND***

**THE CATHOLIC UNIVERSITY OF**  
**EASTERN AFRICA .....THIRD PARTY**

**J U D G E M E N T**

1. The Plaintiff herein did file a Complaint dated 29.09.2021 (hereinafter referred to as the **'present suit'**) against the Defendant seeking the following ORDERS: -
  - a. **A declaration that the entirety of Land Parcel Eldoret Municipality Block 14/19 including the portion known as the suit land belongs and is owned by the Plaintiff.**
  - b. **A declaration that the Defendant has violated the Plaintiff's right to ownership of property as protected under Article 40 and the Plaintiff's right to clean environment as protected under Article 42 of the Constitution 2010.**
  - c. **A declaration that the Defendant has trespassed on Parcel Eldoret Municipality Block 14/19 without the Plaintiff's consent and caused permanent and irreparable damages thereto.**



- iii. The Plaintiff herein as the registered and beneficial owner of the suit property has given permission for the establishment of Third-Party institution and Gaba Pastoral Institute on the suit property.
- iv. According to the Plaintiff, the Third Party and Gaba Pastoral Institute were only to undertake specific mandates which are academic and pastoral in nature respectively.
- v. The Plaintiff was therefore of the view that any alienation of any portions of land within the area assigned to the Third Party and Gaba Pastoral Institute and/or any structural adjustments from the original designs that would require use of more portions of land within the suit property was to be done only upon obtaining express approval from the Plaintiff.
- vi. The Plaintiff states that the Defendant herein without any colour of right, permission, authority and/or consent from it, did encroach the suit property and unlawfully installed oil transporting pipelines on a portion of the suit property.
- vii. The Plaintiff further states that the Defendant has now threatened to cut down various trees, various developments and/or structures that it alleges to be within the buffer zone of the oil transportation pipelines.
- viii. The Plaintiff did plead that the claim by the Defendant over a portion of the suit property did significantly reduce the space available for its use and therefore unlawfully dispossessing it of its lawful property.
- ix. In addition to the above, the Plaintiff did further plead that the use of the portion of land occupied by the Defendant was not consistent with the intentions of the Plaintiff and there was no environmental and/or social impact assessment undertaken by the Defendant before

the oil transportation pipelines were installed on the suit property.

- x. As a consequence, the population that is hosted within the suit property by the Plaintiff which includes priests and college students are potentially exposed to serious environmental hazards including potential oil and/or gas leaks from the oil transportation pipelines installed therein.
  - xi. As such, the Defendant's unlawful occupation of a portion of the suit property by installing the oil transportation pipelines infringes on the Plaintiff's right to a clean and healthy environment as provided by the Constitution of Kenya, 2010.
  - xii. In conclusion thereof, the Plaintiff did state that the Defendant's occupation on the suit property did amount to trespass, forceful use of its property and a violation of its fundamental rights as provided by the Constitution of Kenya, 2010 and the prayers sought in the present suit should be granted as sought.
3. The present suit was duly served on the Defendant herein who did oppose the same through a Statement of Defence dated 20.01.2022.
4. In the Statement of Defence dated 20.01.2022, the Defendant did plead the following facts in response to the facts pleaded by the Plaintiff herein; -
- i. To begin with, the Defendant did deny the allegation that its occupation on a portion of the suit property owned by the Plaintiff did amount to trespass and/or unlawful use of the same.
  - ii. The Defendant did plead that while it did recognise the Plaintiff to be the lawful owner of the suit property, it did state that it had a valid Easement Agreement for the use of a portion of the same for a period of 99 years.

- iii. The Defendant did further give the Particulars of the Easement Agreement in its Paragraph 5 of the Statement of Defence dated 20.01.2022.
- iv. In essence therefore, the Defendant did plead that the installation of the oil transportation pipelines on the suit property was lawful, legal and in line with the Easement Agreement.
- v. As regards the allegations of cutting down trees and/or demolishing any developments erected by the Plaintiff, the Defendant did plead that the same had been done to enable easy access to the oil transportation pipelines erected within a portion of the suit property in case of any emergency as well as maintenance during the period of the Easement.
- vi. The Defendant did further plead that all the relevant approvals for the installation of the oil transportation pipelines were duly obtained from all the relevant Government entities and therefore the allegation that the oil transportation pipelines did pose any environmental and/or social hazards was not true.
- vii. The Defendant was therefore of the view that its entry, use and/or installation of the oil transportation pipelines on a portion of the suit property was with the knowledge, consent and authority of the Plaintiff herein.
- viii. Further to the above, the Defendant herein did plead that the Defendant being a public entity undertaking a public function had an overriding interest over a portion of the suit property keeping in mind that the oil transportation pipelines installed on the Plaintiff's suit property were for a public good or benefit of the citizens of Kenya.
- ix. In conclusion, the Defendant sought this Court to dismiss the present suit with costs.

5. The Statement of Defence dated 20.01.2022 was duly served on the Plaintiff.
6. However, from the Court record, the Plaintiff herein did not file any Reply to Defence upon service of the Statement of Defence dated 20.01.2022.
7. On the 03.03.2022, the Defendant herein made an Application for Joinder of CATHOLIC UNIVERSITY OF EASTERN AFRICA as a Third Party in the present suit.
8. The Application dated 03.03.2022 was duly served on all the parties and upon hearing the same on its merit, a Ruling was pronounced on the 21.04.2022 allowing the joinder of CATHOLIC UNIVERSITY OF EASTERN AFRICA as a Third Party and the Defendant to issue the relevant Third Party Notice thereof.
9. Based on the Ruling pronounced on the 21.04.2022, the Defendant did issue a Third-Party Notice dated 22.04.2022 to the Third Party herein.
10. In the Third-Party Notice dated 22.04.2022, the Defendant herein sought to be indemnified by the Third Party against any judgement and/or orders that may be pronounced by this Court at the end of the hearing based on the following grounds; -
  - a) The Third Party did represent itself as the lawful owner of the suit property and/or in a position to offer the portion of the suit property which the Defendant required for the installation of the oil transportation pipelines.
  - b) Based on this representation by the Third Party, the Defendant did enter into an Easement Agreement with the

Third Party for a portion of land measuring 3 meters wide and 343 meters long within the suit property.

c) The consideration paid to the Third Party for the use of the portion of land measuring 3 meters wide and 343 metres long was Kenya Shillings Two Million Three Hundred and Five Thousand Eight Hundred (KShs.2,305,800/-).

d) In essence therefore, the Defendant sought to be indemnified against any liability that may be decreed by this Court in favour of the Plaintiff based on the Easement Agreement with the Third Party.

11. The Third-Party Notice dated 22.04.2022 was duly served on the Third Party herein.

12. The Third Party did oppose the Third-Party Notice dated 22.04.2022 by filing a Third-Party Statement of Defence dated 03.12.2022.

13. In the Third-Party Statement of Defence dated 03.12.2022, the Third Party did plead the following facts; -

- i. The Third Party did state that it was a tenant on the suit property which is registered in the name of the Plaintiff herein.
- ii. The Third Party did plead that its occupation on the suit property was for academic purposes only having been granted permission to develop one of its campus on the suit property by the Plaintiff.
- iii. The Third Party therefore did plead that it does not have any authority and/or permission to transact and/or deal with the suit property herein.

- iv. The Third Party did deny knowledge and/or entering into any Easement Agreement with the Defendant herein for a portion of the suit property as alleged by the Defendant.
  - v. Further to the above, the Third Party did deny any knowledge of any Easement Agreement over a portion of the suit property with the Defendant herein.
  - vi. The Third Party did plead that if any Easement Agreement was ever executed with the Defendant, then such an Agreement was null and void as it was not sanctioned by the management including the University Council.
  - vii. Consequently, the Third Defendant did deny receiving any consideration amounting to Kenya Shillings Two Million Three Hundred and Five Thousand Eight Hundred (KShs.2,305,800/-).
  - viii. Lastly, the Third Party did state that the signatures appended on the purported Easement Agreement relied upon by the Defendant herein were not of the authorised officers under the Charter for the Catholic University of Eastern Africa.
  - ix. In conclusion, the Third Party sought the Third-Party Notice dated 22.04.2022 be dismissed with costs.
14. Despite being served with the Statement of Defence in response to the Third-Party Notice, the Defendant did not file any response thereto.
15. Upon service of the Third-Party Statement of Defence on the Defendant, there was no Reply to the Statement of Defence filed and the pleadings were subsequently closed.

### **PLAINTIFF'S TESTIMONIES & DOCUMENTARY EVIDENCE**

16. The Plaintiff's case began with the testimony of one AUREPHENA NASIMIYU WANJALA who was marked as PW 1.

17. PW 1 did introduce herself as the Legal Officer of the Plaintiff and had been given Authority to appear and testify on behalf of the Plaintiff.
18. PW 1 did inform the Court that she had prepared, signed and filed a witness statement dated 15.10.2024 which she did adopt as her evidence in chief.
19. In support of the evidence in chief, PW 1 did produce the following exhibits; -
  - PW1 EXHIBIT 1-A Copy of the Certificate of Lease dated 17.11.2017 in favour of the Plaintiff over the suit property.
  - PW1 EXHIBIT2-A Copy of a Letter dated 04.07.2021 from the Plaintiff's Counsel to the 1<sup>st</sup> Defendant.
  - PW1 EXHIBIT3- A Copy of a Letter dated 01.03.2021 from the 3<sup>rd</sup> Party to the Plaintiff.
  - PW1 Exhibit 4- A Copy of a Letter dated 16.07.2021 from the Defendant to the Plaintiff's counsel.
  - PW1 Exhibit 5- A Copy of a Letter dated 29.07.2021 from the Plaintiff's counsel to the Defendant.
20. According to PW 1, the suit property herein is registered in the name of the Plaintiff.
21. However, the Defendant did encroach and/or trespass into the suit property without the consent and/or authority of the Plaintiff and installed oil transportation pipelines thereon.
22. During the unlawful entry and installation of the oil transportation pipelines on the suit property, the Defendant did cut down various trees and demolished a number of developments without the consent and authority of the Plaintiff herein.

23. PW 1 did further testify that the installation of the oil transportation pipelines on a portion of the suit property was not in line with the user of the suit property and therefore had an adverse effect on the environment and social wellbeing of the occupants therein.
24. PW 1 did aver that the Defendant had not undertaken any environmental impact assessment exercise on the suit property prior to the installation of the oil transportation pipelines to evaluate the impact of this development on the students and/or priests who were daily using the suit property and how to mitigate any adverse effects or exposures thereof.
25. In conclusion thereof, PW 1 sought the Court to grant the prayers sought in the present suit as well as costs of the proceeding.
26. On cross-examination by the Defendant, PW 1 did reiterate that she was the Legal Officer of the Plaintiff and an Advocate of the High Court of Kenya.
27. PW 1 did explain that currently, the Plaintiff herein is known as KENYA CONFERENCE OF CATHOLICS BISHOPS and is one of the members of the ASSOCIATION OF EPISCOPAL CONFERENCE OF EAST AFRICA.
28. According to PW 1, the Third Party is an institution partially owned ASSOCIATION OF EPISCOPAL CONFERENCE OF EAST AFRICA.
29. On being referred to PW 1 EXHIBIT 3, PW 1 did inform the Court that it was the Third Party who wrote the Letter to the Plaintiff informing them of the existing oil transportation pipeline of the suit property.
30. According to this Letter, the oil transportation pipelines had been discovered on the suit property by the Third Party in the year 2020 although they had been placed in the year 2014.

31. PW 1 did inform the Court that the oil transportation pipeline was not visible on the surface of the ground because they were underground oil transportation pipelines.
32. However, PW 1 did aver that the Third Party had no authority and/or mandate from the Plaintiff to deal with ownership and/or alienate any rights over the suit property.
33. PW 1 did acknowledge that the Third Party was a licensee of the Plaintiff although she did not have any written document to confirm the same.
34. On being referred to the Third-Party Statement of Defence dated 26.03.2025, PW 1 did admit that the Third Party was also a tenant within the suit property.
35. PW 1 did testify that the Plaintiff herein was never aware of the oil transportation pipelines until the year 2020.
36. On being referred to PW 1 EXHIBIT 1, PW 1 did state that the ownership document over the suit property was issued on the 17.11.2017.
37. On the other hand, the oil transportation pipelines had been placed in the suit property in the year 2014.
38. Based on the above scenario, PW 1 was of the view that under Section 30 of the Registered Land Act, the oil transportation pipeline would be deemed to be an overriding interest on the Plaintiff's title.
39. PW 1 did nevertheless aver that the placement of the oil transportation pipelines on the suit property had restricted the use and enjoyment of the Plaintiff's ownership rights.

40. PW 1 did admit that there had been no written threat by the Defendant to cut down trees on the suit property.
41. PW 1 did insist that the oil transportation pipelines within the suit property did create a hazardous environment of the suit property although there was no document filed by the Plaintiff to confirm the same.
42. According to the Court proceedings, the Third Party did not have any questions for cross-examination relating to PW 1.
43. On re-examination, PW 1 did reiterate that the suit property was registered in the name of the Plaintiff.
44. PW 1 did refer to PW 1 EXHIBIT 1 which did indicate that the ownership of the Plaintiff over the suit property had been from the year 2008 for a period of 99 years thereafter.
45. However, the actual Certificate of Lease of the suit property was issued to the Plaintiff in the year 2017.
46. PW 1 did further clarify that the ASSOCIATION OF EPISCOPAL CONFERENCE OF EAST AFRICA was an association and not a legal entity capable of owning immovable property.
47. On being referred to PW 1 EXHIBIT 3, PW 1 stated that the Third Party was seeking permission from the Plaintiff to engage the Defendant for an amicable solution.
48. However, the Plaintiff did not give the said permission but instead took over the matter through their lawyers as the lawful owners of the suit property.
49. In essence, PW 1 did reiterate that the Third Party had no legal powers and/or authority to deal with ownership rights of the suit property as they were either tenants and/or licensees of the Plaintiff only.

50. At the end of this re-examination, PW 1 was discharged from the witness box and the Plaintiff did thereafter close its case.

### **DEFENDANTS TESTIMONIES & DOCUMENTARY EVIDENCE**

51. The first Defence witness was one ELIZABETH ROP who was marked as DW 1.

52. DW 1 did introduce herself as the Chief Legal Officer of the Defendant herein in charge of Property and Contracts.

53. DW 1 did inform the Court that she had the authority from the Defendant to make pleadings and testify on its behalf.

54. DW 1 did testify that she had prepared, executed and filed a Witness Statement dated 25.01.2024 of which she did adopt as her evidence in chief.

55. Thereafter, DW 1 did produce the following documents in support of her testimony in chief; -

DW1 EXHIBIT 1- A Copy of the Letter dated 21.06.2010 from the Defendant to the Third Party.

DW1 EXHIBIT 2-A Copy of the Letter dated 13.07.2010 from the Third Party to the Defendant.

DW1 EXHIBIT 3- A Copy of an Easement Agreement dated 25.06.2013 between the Defendant and the Third Party.

DW1Exhibit4- An Extract of payment confirmation for Easement Compensation for the suit property made to AMECEA Pastoral Institute.

DW1 Exhibit 5- A Copy of a letter dated 01.03.2021 from the Third Party to the Plaintiff.

DW1 Exhibit 6- A Printout of the website of the AMECEA.

DW1 Exhibit 7- A Copy of a Print out from the website of AMECEA about the Third Party.

DW1 Exhibit 8- A Copy of a print out of the website of the Third Party.

DW1 Exhibit 9- A Copy of a debt advice from NCBA Bank confirming remittance of Kshs. 2,305,800/= from the defendant to AMECEA Pastoral Institute on 27.02.2012.

56. Upon production of the documents mentioned hereinabove, DW 1 did inform the Court that the portion of the suit property that was being used by the Defendant had been lawfully acquired through the Easement Agreement dated 25.06.2013.
57. DW 1 did inform the Court that the oil transportation pipelines were buried underground and therefore did not have any emission or exposure to the people within the suit property as alleged by the Plaintiff.
58. DW 1 did testify that the Plaintiff's ownership documents had been procured after the Defendant had already placed the oil transportation pipelines on the suit property.
59. In conclusion, DW 1 did seek the Court to dismiss the present suit and find that the Defendant was lawfully in occupation and use of the portion within which the oil transportation pipeline was located.
60. On cross-examination by the Plaintiff, DW 1 did reiterate that she had been a legal officer with the Defendant since the year 2016.
61. DW 1 did admit that at the time of preparing the Easement Agreement, she had not been employed by the Defendant.

62. On being referred to DW 1 EXHIBIT 3, DW 1 did point out that at the time the Defendant did pay Kenya Shillings Two Million Three Hundred and Five Thousand Eight Hundred (KShs 2,305,800/-) to the Third Party on the 27.02.2012, the Easement Agreement had not been executed yet.
63. On being referred to DW 1 EXHIBIT 4, DW 1 did state that the same was sent from one officer to another office of the Defendant on the 15.07.2021.
64. DW 1 did insist that the document produced as DW 1 EXHIBIT 4 was confirming the process of payment to the Third Party.
65. DW 1 did testify that the amount processed and paid to the Third party was based on due diligence that had been undertaken as well as a Valuation Report agreed with the Third Party.
66. On being referred to DW 1 EXHIBIT 9, DW 1 did aver that this was one of the documents which confirms that payment to the Third Party was done on the 27.02.2012.
67. DW 1 did state that none of the individuals that had executed the Easement Agreement had been called as a witness in this suit.
68. DW 1 did further inform the Court that the document produced as DW 1 EXHIBIT 1 was never copied to the Plaintiff herein.
69. DW 1 did state that the Defendant was not in receipt or possession of any Resolutions made by the Plaintiff in approving the preparation and/or execution of the Easement Agreement over the suit property.
70. Consequently, DW 1 did admit that the Easement Agreement produced as DW 1 EXHIBIT 3 was between the Third Party and the Defendant and not the Plaintiff who was the registered owner of the suit property.

71. DW 1 did further admit that the payment made under the Easement Agreement was paid to a Third Party and not the registered owner of the suit property.
72. DW 1 did however clarify that according to the Defendant, the Third Party was part of the Plaintiff organisation.
73. On cross-examination by Counsel for the Third Party, DW 1 did confirm that she was a Chief Legal Officer with the Defendant organisation.
74. DW 1 did state that usually, an easement right is one that is given by a registered owner.
75. DW 1 did confirm that the registered owner of the suit property was the Plaintiff.
76. DW 1 did reiterate that according to the Defendant, the Third Party was part of the Plaintiff although there was no Letter of Authority issued by the Plaintiff allowing the Defendant to deal with the suit property on matters of easement on its behalf.
77. DW 1 did inform the Court that due diligence on the ownership of the suit property was undertaken by the Land Department before the Easement Agreement was executed.
78. On being referred to DW 1 EXHIBIT 3, DW 1 did testify that the said document did not indicate who the drawer was.
79. Nevertheless, DW 1 did confirm that the entity described therein as the registered owner of the suit property was the Third Party who is not the registered owner of the same.
80. DW 1 did aver that the Easement Agreement is alleged to have been executed by the Vice Chancellor although the

name was not indicated and the signature thereof was not witnessed by an Advocate or any person authorised to do so.

81. According to DW 1, the Third Party was a member of the Association of Member Episcopal Conferences of Eastern Africa which was the recipient of the consideration based on the Easement Agreement as contained in DW 1 EXHIBIT 9.
82. DW 1 did however admit that the Defendant had taken out a Third-Party Notice against the Third Party and not the Association of Member Episcopal Conferences of Eastern Africa.
83. On being referred to DW 1 EXHIBIT 1, DW 1 did testify that a meeting had been requested but unfortunately there were no Minutes to confirm that the meeting did actually take place.
84. On being referred to DW 1 EXHIBIT 2, DW 1 did confirm that the Letter under reference was not supported by any Resolution from the Third Party.
85. On re-examination, DW 1 did reiterate that the payment relating to the Easement Agreement was processed on the 19.01.2012 but the actual payment was effected on the 27.02.2012.
86. As regards the Valuation Report which had been prepared by the Department of Lands, DW 1 did inform the Court that the same was never filed because the Valuation was not in dispute.
87. On being referred to DW 1 EXHIBIT 2, DW 1 was of the considered opinion that the Letter under reference was confirming the Third Party's authority to enter into an Easement Agreement with the Defendant herein.

88. In conclusion, DW 1 was of the view that the document produced as DW 1 EXHIBIT 2 did give powers to the Third Party to ratify the Easement Agreement with the Defendant.
89. At the end of the re-examination, DW1 was discharged and the Defence thereafter did close its case.

### **THIRD PARTY'S TESTIMONIES AND DOCUMENTARY EVIDENCE**

90. The first witness called on behalf of the Third Party was one DR. GILBERT ARAP BOR who was marked as PI 1.
91. PI 1 did introduce himself as resident of Uasin Gishu and a Lecturer at the Third Party's institution.
92. PI 1 did also inform the Court that he had also served as a the Eldoret Campus Management Board Member of the Third Party.
93. PI 1 did inform the Court that he had prepared and executed a witness statement dated 26.03.2025 of which he did adopt as his evidence in chief.
94. PI 1 did not have any documentary evidence to tender before the Court on behalf of the Third Party.
95. On cross-examination by the Defendant, PI 1 did reiterate that he was a lecturer of the Third-Party lecturing in the School of Business.
96. The Third Party did state that he had been in the employment of the Third Party for the last 16 years.
97. In the course of his employment with the Third Party, PI 1 did aver that he had been a member of the Campus Management Board for the period between 2010 and 2012 and Chairman of the Marketing Committee between the years 2014-2016.

98. PI 1 did testify that according to his knowledge, the ASSOCIATION OF MEMBER EPISCOPAL CONFERENCES OF EASTERN AFRICA is the organ that founded the Third Party.
99. On being referred to the Third Party's Statement of Defence dated 03.12.2022, PI 1 did admit that the Third Party was a tenant and/or licenses of the Plaintiff herein within the suit property.
100. However, PI 1 did not have any Tenancy Agreement between the ASSOCIATION OF MEMBER EPISCOPAL CONFERENCES OF EASTERN AFRICA and the Plaintiff over the suit property.
101. On being referred to the Easement Agreement produced as DW 1 EXHIBIT 3, PI 1 did concede that the same had not been approved and/or ratified by the Third Party's Council.
102. On being referred to DW 1 EXHIBIT 5, PI 1 did inform the Court that the author of the Letter did not have the authority to hold any negotiations with the Defendant over the suit property.
103. On being referred to DW 1 EXHIBIT 2, PI 1 did state that the same originated from the Managing Director of the Defendant and with a comment that the Third Party's Management had ratified the transaction on the suit property as requested by the Defendant.
104. PI 1 did inform the Court that under the University Act, it was the Council of the University that had the mandate to deal with immovable assets.
105. On being referred to DW 1 EXHIBIT 3, PI 1 did confirm that the Easement Agreement produced as DW 1 EXHIBIT 3 had been affixed with the Common Seal of the Third Party in the section assigned for the Vice Chancellor.
106. PI 1 therefore did dismiss the allegation that the Easement Agreement was a fraud and/or not legitimate.

- 107.PI 1 did further state that there was no document which had been produced in Court to prove any fraud and/or forgery on the part of the Third Party.
- 108.PI 1 did reiterate that the ASSOCIATION OF MEMBER EPISCOPAL CONFERENCES OF EASTERN AFRICA and the Third Party were one and the same family.
- 109.On being referred to the Third Party's witness statement, PI 1 did confirm that a payment was made by the Defendant and received by the ASSOCIATION OF MEMBER EPISCOPAL CONFERENCES OF EASTERN AFRICA on the 27.02.2012.
- 110.On further cross-examination by the Plaintiff, PI 1 did testify that the Third Party was a Chartered University but could not state when it had acquired its own Charter.
- 111.On being referred to PW 1 EXHIBIT 3, PI 1 did insist that the said document was being done on behalf of the Plaintiff.
- 112.On re-examination, PI 1 did confirm that the registered owner of the suit property was the Plaintiff but the Third Party and the ASSOCIATION OF MEMBER EPISCOPAL CONFERENCES OF EASTERN AFRICA are also in occupation of the suit property.
- 113.On being referred to DW 1 EXHIBIT 5, PI 1 did aver that there was an acknowledgement of encroachment by the Defendant.
- 114.On being referred to DW 1 EXHIBIT 2, PI 1 was of the view that the Easement Agreement although ratified by the Third-Party ought to have been signed by the Vice Chancellor.
- 115.On being referred to DW 1 EXHIBIT 3, PI 1 could not identify the person who had executed the Easement Agreement on behalf of the Third Party.

116. Nevertheless, PI 1 did confirm that the payment made by the Defendant herein was received by ASSOCIATION OF MEMBER EPISCOPAL CONFERENCES OF EASTERN AFRICA and not the Third Party herein.
117. At the end of the re-examination, PI 1 was discharged and the Third Party did close its case thereof.
118. Upon closure of the Third Party's case, the Court did direct the parties to file their final submissions herein.
119. The Plaintiff did file its submissions dated 18.12.2025 While the Defendant did file its submissions dated 4.02.2026 and the Third Party did file its submissions dated 17.02.2026.
120. The Court has carefully perused the pleadings herein, evaluated the testimonies of the witnesses, gone through the documentary evidence tabled in Court and the final submissions and identifies the following issues for determination; -

**ISSUE NO.1- WHO IS THE LAWFUL REGISTERED OWNER OF THE SUIT PROPERTY?**

**ISSUE NO.2- WAS THE EASEMENT AGREEMENT BETWEEN THE DEFENDANT & THE THIRD PARTY LAWFUL & LEGITIMATE?**

**ISSUE NO.3- WAS THE DEFENDANT'S OCCUPATION ON THE SUIT PROPERTY LAWFUL AND LEGAL?**

**ISSUE NO.4- DID THE DEFENDANT'S OCCUPATION ON THE SUIT PROPERTY INFRINGE THE**

**PLAINTIFF'S RIGHT TO A CLEAN AND SAFE ENVIRONMENT AS PROVIDED BY THE CONSTITUTION?**

**ISSUE NO.5- IS THE PLAINTIFF ENTITLED TO THE RELIEFS SOUGHT IN THE PRESENT SUIT?**

**ISSUE NO.6- IS THE THIRD-PARTY NOTICE ISSUED BY THE DEFENDANT AGAINST THE THIRD PARTY MERITED OR NOT?**

**ISSUE NO.7- WHO BEARS THE COSTS OF THE PRESENT SUIT?**

121. The Court having duly identified the above-mentioned issues for determination, the same will be discussed as provided below.

**ISSUE NO.1- WHO IS THE LAWFUL REGISTERED OWNER OF THE SUIT PROPERTY?**

122. The first issue for determination in the present suit is who is the lawful and registered owner of the suit property.

123. The Plaintiff in his pleadings did state that it was the registered and lawful owner of the suit property.

124. The Plaintiff did produce a Certificate of Lease dated 17.11.2017 for the suit property in its name as PW 1 EXHIBIT 1.

125. The Defendant and the Third Party herein did not dispute the registration of the Plaintiff herein based on the Certificate of Lease dated 17.11.2017.

126. According to Section 26 of the Land Registration Act, No. 3 of 2012 states as follows; -

***“ (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 the proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained in the certificate, and the title of that proprietor shall not be challenge.....”***

127. Based on the Certificate of Lease dated 17.11.2017, this Court hereby makes a finding that the Plaintiff who is the person issued with the Certificate of Lease is the legal and lawful owner of the suit property herein unless otherwise declared by a Court of Law.

**ISSUE NO.2- WAS THE EASEMENT AGREEMENT BETWEEN THE DEFENDANT & THE THIRD PARTY LAWFUL & LETIGIMATE?**

128. The second issue for determination is whether the Easement Agreement dated 25.06.2013 over the suit property between the Defendant and the Third Party was lawful and legitimate.

129. The Plaintiff being the lawful owner of the suit property is challenging the occupation and use of a portion of the suit property by the Defendant herein.

130. The Defendant herein on the other hand did plead and testify that it's occupation on a portion of the suit property was lawful and legitimate based on the Easement Agreement dated 25.06.2013.

131. The Defendant did present the Easement Agreement dated 25.06.2013 as DW 1 EXHIBIT 3 during the hearing.
132. A perusal of the Easement Agreement dated 25.06.2013 confirms that the Defendant herein had been granted an Easement over the suit property for a period not exceeding 99 years or upon expiry of the Term of the Lease whichever came earlier.
133. The Grantor of the Easement over the suit property in favour of the Defendant was the Third Party.
134. The Plaintiff challenges the validity of the Easement Agreement dated 25.06.2013 on the basis that the Third Party was and is not the owner of the suit property and therefore had and/or has no powers to alienate any ownership rights over the suit property to the Defendant herein.
135. The Third Party in its Statement of Defence dated 03.12.2022 did admit that indeed it was not the registered owner of the suit property.
136. The Third Party did plead in its Statement of Defence dated 03.12.2022 that it was only a tenant on the suit property had no powers and/or authority to alienate and/or administer any ownership rights over the same.
137. Based on the admission by the Third Party in its Statement of Defence dated 03.12.2022 that it was not the registered owner of the suit property but only a tenant thereof, the Easement Agreement dated 25.06.2013 is lawful, legitimate and enforceable against the Plaintiff herein.
138. To begin with, Section 3 of the Law of Contract, Cap 23 provides that a binding Agreement must have an offer, acceptance, consideration and be in writing and/or executed.

139. A perusal of the Easement Agreement dated 25.06.2013 provides that the Third Party was the entity offering the Defendant a portion of the suit property for the creation of the easement.
140. Clearly, based on the Certificate of Lease produced as PW 1 EXHIBIT 1, the Third Party had no ownership rights over the suit property in the year 2013 to make a legitimate offer to the Defendant herein.
141. Similarly, the Third Party did not have any lawful authority from the Plaintiff herein to alienate and/or deal with the rights over the suit property with the Defendant herein.
142. As such, the Court is of the view that the Third Party did not have the capacity and/or legal rights over the suit property to make any offer for the alienation or creation of any easement in favour of the Defendant.
143. In the absence of a legitimate and lawful offer by the Third Party to the Defendant over any portion of the suit property, then remaining ingredients of acceptance, consideration and execution of the Contract which in this case is the Easement Agreement dated 25.06.2013 were irregular, null and void.
144. In other words, this Court is of the considered view and finding that the Easement Agreement dated 25.06.2013 between the Third Party and the Defendant over a portion of the suit property was illegitimate, illegal and unlawful incapable of conferring any rights and/or use by the Defendant herein.

**ISSUE NO.3- WAS THE DEFENDANT'S OCCUPATION ON  
THE SUIT PROPERTY LAWFUL AND LEGAL?**

145. The third issue for determination is whether the Defendants occupation and/or use of a portion within the suit property was lawful and/or legal.
146. Based on the finding in Issue No. 2 hereinabove, this Court did make a finding that the Easement Agreement dated 25.06.2013 was illegal, null and void and therefore incapable of bestowing any occupation and/or rights of use on the suit property.
147. However, in addition to the legality of the Easement Agreement dated 25.06.2013, the Defendant did also raise an issue of having an overriding interest over the suit property due to the placement of the oil transportation pipelines before the Plaintiff herein was issued with the Certificate of Lease dated 17.11.2017.
148. The Defendant was of the considered view that the presence of the oil transportation pipelines within the suit property did create an automatic overriding interest over the Plaintiff's title and even without the Easement Agreement dated 25.06.2013, the Defendant had a right to use the portion within which the oil transportation pipeline had been placed on the suit property.
149. The Plaintiff on being served with the Defendant's Statement of Defence dated 20.01.2022 did not file a Reply to Defence in answer to the claim of an overriding interest on the suit property.
150. Be as it may, Overriding Interests are provided for under Section 28 of the Land Registration Act, No. 3 of 2012 which states as follows; -

***“Unless the contrary is expressed in the Register, all registered land shall be subject to the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register; -***

- a) Deleted by Act No. 28 of 2016, S.11 a;**
- b) Trusts including customary trusts;**
- c) Rights of way, rights of water and profits subsisting at the time of the first registration under this Act;**
- d) Natural rights of light, air, water and support;**
- e) Rights of compulsory acquisition, resumption, entry, search and user conferred by any other written law;**
- f) Deleted by Act No. 28 of 2016, S.11 b;**
- g) Charges for unpaid rates and other funds which, without reference to registration under this Act, are expressly declared by any written law to be a charge upon land;**
- h) Rights acquired or in the process of being acquired by virtue of any written law relating to the limitation of actions or by prescription;**
- i) Electric supply lines, telephone and telegraph lines poles, pipelines, aqueducts, canals, weirs and dams erected, constructed or laid in pursuance or by virtue of any power conferred by any written law; and**
- j) Any other rights provided under any written law.”**

151. Clearly, Section 28 (i) of the Land Registration Act, No. 3 of 2012 provides that any pipelines that were placed before any parcel of land prior to its registration is deemed to be an overriding interest over the parcel of land even if such an easement has not been recorded in the register of the parcel of land in issue.

152. In the present suit, it is clear in the Third Party's Letter dated 01.03.2021 to the Plaintiff herein produced as PW 1 EXHIBIT 3 that the oil transportation pipelines were placed in the suit property in the year 2014.

153. In essence, by the time the Plaintiff was being issued with the Certificate of Lease dated 17.11.2017, the oil transportation pipelines were already on the suit property and therefore did constitute an overriding interest over a portion of the Plaintiff's property.

154. In conclusion therefore, the Defendant herein does have an overriding interest over the suit property registered in the name of the Plaintiff and its occupation and/or use of the portion within which the oil transportation pipelines are placed is lawful and legitimate hence cannot amount to trespass.

**ISSUE NO.4- DID THE DEFENDANT'S OCCUPATION ON THE SUIT PROPERTY INFRINGE THE PLAINTIFF'S RIGHT TO A CLEAN AND SAFE ENVIRONMENT AS PROVIDED BY THE CONSTITUTION?**

155. The fourth issue is whether or not the Defendants occupation on a portion of the suit property did infringe on the Plaintiff's right to a clean and safe environment within the suit property as provided by the Kenyan Constitution, 2010.

156. The Plaintiff herein did plead and testify that the suit property herein had been developed with a university and a Pastoral College.

157. The Plaintiff further did state that the suit property was being used with a substantial number of people being students and/or priests.

158. In essence therefore, the presence of the oil transportation pipelines on a portion of the suit property was inconsistent

with the use of the suit property and did expose the people using the same to environmental and social risks.

159.The Defendant on the other hand did oppose the Plaintiff's allegation.

160.The Defendant did plead and testify that the oil transportation pipelines which were within the Plaintiff's suit property had been placed underground and were not in direct contact with any person or people that could be within the suit property.

161.In addition to the above, the Defendant did plead and state that there was no document and/or environmental impact report that had been presented by the Plaintiff to demonstrate any environmental and/or social risk that was imminent due to the oil transportation pipelines that were within the suit property.

162.The Third Party who is one of the entities within the suit property did not make any comment on this issue of environmental and/or social exposure.

163.Under the Kenyan Constitution, 2010, Article 42 provides as follows; -

***“Every person has the right to a clean and healthy environment, which includes the right -***

***a) To have the environment protected for the benefit of the present and future generations through legislative and other measures, particularly those contemplated in Article 69; and***

***b) To have obligations relating to the environment fulfilled under Article 70.”***

164. Article 70 of the Kenyan Constitution, 2010 states as follows;

**(1) If any person alleges that a right to a clean and healthy environment recognised and protected under Article 42 has been, is being or is likely to be, denied, violated, infringed or threatened, the person may apply to the Court for redress in addition to any other legal remedies that are available in respect to the same matter.**

**(2) On application under Clause (1), the Court may make any order, or give any directions, it considers appropriate-**

**a) To prevent, stop or discontinue any act or omission that is harmful to the environment;**

**b) To compel any public officer to take measures to prevent or discontinue any act or omission that is harmful to the environment; or**

**c) To provide compensation for the victim of a violation of the right to a clean and healthy environment.**

**3) For purposes of this Article, an applicant does not have to demonstrate that a person has incurred loss or suffered injury.**

165. To begin with, Article 70 (3) of the Constitution clearly provides that an Applicant seeking the enjoyment of a clean and healthy environment need not demonstrate injury.

166. In essence, the intention of the Constitution was to ensure proactive approach in safeguarding the right to clean and a healthy environment

167. It is this proactive approach that Article 70(2) gives this court the powers to ensure that the right to a clean and healthy environment is achieved by all means.
168. There is no doubt that a number of statutory organizations have been established through legislation in pursuance and achievement of the right to clean and healthy environment.
169. Nevertheless, the court also has a complementary role to enforce the right to a clean and healthy environment.
170. The question that then this court requires to discuss is whether the fact that the oil transportation pipelines have been placed underground within the suit property is sufficient to guarantee a clean and healthy environment to the plaintiff or the persons that are in occupation of the same.
171. Fortunately, this court is of the view that the defendant's actions of placing the oil transportation pipelines underground is an action in the right direction.
172. However, this action alone by the defendant in the court's view is not sufficient.
173. The court did invite itself to look at various scenarios that could possibly occur within the suit property which hosts the underground oil transportation pipelines;
- a. The first scenario is; is it possible for a person who is not aware that oil transportation pipelines are beneath the ground to erect either a temporary or permanent structure over the underground oil transportation pipelines.
  - b. Is there a possibility that although the oil transportation pipelines are underground, they could be subject to

damage due to various factors like rust, corrosion or breakages.

- c. Is there a possibility that the underground oil transportation pipelines could suffer a fracture thereby leading to spillage or leakage on the suit property.
- d. Is there a possibility of a fire breaking out within the underground oil transportation pipeline or even within the suit property where the underground oil transportation pipelines are placed.
- e. Is there a possibility of persons within the suit property or from outside the suit property trying to access and vandalize the underground oil transportation pipelines for their own economic benefits.

174. Looking at all these scenarios, the court does take note that the easement agreement dated 25.06.2013 did not have any aspects of the environment or social well-being being put in consideration.

175. It is therefore important that the defendant takes the appropriate measures in consultation with the occupants of the suit property in ensuring that the environment and social well-being is taken care of in line with Article 42 of the Constitution.

176. The first point of this exercise should be in the Environmental Management and Co-ordination Act, which is one of the legislations that enforces the right to clean and healthy environment envisaged in Article 42 of the Constitution.

**ISSUE NO. 5- IS THE PLAINTIFF ENTITLED TO THE RELIEFS SOUGHT IN THE PRESENT SUIT?**

177. The fifth issue is which of the reliefs sought in the plaint should be granted to the plaintiff.

178. Based on the findings in issue No. 1 and 2, it is clear and not in doubt that the suit property herein belongs to the plaintiff and therefore he is entitled to relief No. (a) in the plaint.
179. As regards relief No. (b), the court is of the considered opinion that there was no demonstration of any environmental or social infringement by the defendant as provided under Article 42 of the Constitution.
180. However, the court was of the view that better mechanisms should be put in place to eliminate or avoid any possible environmental or social exposures.
181. As regards relief No. (c), the court did make a finding in issue No. 3 that although the easement agreement dated 25.06.2013 was null and void, the defendant herein did have an overriding interest over the suit property based on section 28(i) of the Land Registration Act No. 3 of 2012.
182. Based on the findings that the defendant had an overriding interest over the suit property, relief No. (d) and (e) cannot be granted.
183. Similarly, due to the overriding interest enjoyed by the defendant over the suit property, relief No. (f) in the plaint for general damages for trespass is not sustainable.

**ISSUE NO.6- IS THE THIRD-PARTY NOTICE ISSUED BY  
THE DEFENDANT AGAINST THE THIRD PARTY  
MERITED OR NOT?**

184. The sixth issue for determination was raised by the defendant against the Third Party through the Third-Party Notice dated 22.04.2022.
185. In the Third-Party Notice dated 22.04.2022, the defendant sought to be indemnified by the Third Party, all the costs it had incurred based on the Easement Agreement dated 25.06.2013.

186. In particular, the defendant sought to be indemnified by the Third Party a sum of Kshs.2,305,800/= which was received by the Third Party on the basis of the Easement Agreement dated 25.06.2013.
187. The Third Party did dispute this claim by the defendant through a Statement of Defence dated 03.12.2022.
188. In the Third Party's defence, it was stated that the Easement Agreement was not executed by the Third Party.
189. The Third Party did further plead that if the Easement Agreement dated 25.06.2013 was executed by their organization, the same was not ratified by the University Council.
190. In essence therefore, the Third Part did state that the persons who did execute the Easement Agreement dated 25.06.2013 with the defendant were not acting on behalf of the Third Party and were unknown by the Third Party.
191. During the hearing, the defendant did plead and testify that the sum of Kshs.2,305,800/= was paid to the AMECEA.
192. The defendant did produce various documents including a Debit Advice slip dated 27.02.2012 showing that AMECEA were the ultimate beneficiaries of these funds.
193. PI1, who did testify on behalf of the Third Party also confirmed that the ultimate beneficiaries of the payments from the defendant was AMECEA.
194. The defendant during cross-examination of PI1 did attempt to create a connection between AMECEA and the Third Party.
195. PI1 did testify that the Third Party was owned by AMECEA.
196. Based on this evidence, the court is of the view that AMECEA and the Third Part are separate and distinct entities.

197. The Third Party is a legal entity established under the Universities Act and has the capacity to sue and be sued.
198. The Third Party is materially governed by a University Council.
199. The Third Part according to the Universities Act is required to run its own finances including bank accounts.
200. On the other hand, AMECEA is an association of registered Trustees of the Episcopal Conferences within Eastern Africa.
201. According to the testimonies by the defendant and PI1, AMECEA had its own bank account different from that of the Third Party.
202. The defence document marked as DW1 Exhibit 9 did clearly show that the sum of Kshs.2,305,800/= was paid into the account of AMECEA and not the Third Party.
203. Consequently, this court is of the view and finding that the Third-Party Notice issued by the defendant for the indemnification of Kshs.2,305,800/= is not merited.

### **ISSUE NO.7- WHO BEARS THE COSTS OF THE PRESENT SUIT?**

204. Costs are usually awarded to a winning party.
205. However, in the current suit, the plaintiff has succeeded to the extent that it has been declared the lawful registered owner of the suit property.
206. However, the plaintiff did not succeed to obtain an injunction or vacant possession of the suit property as had been sought.
207. On the other hand, the defendant and Third Party's Easement Agreement dated 25.06.2013 was declared null and void.

208. However, the defendant's occupation on the suit property was allowed based on the principle of overriding interests.
209. Looking at the above scenario, both the plaintiff and the defendant did partially succeed and partially not succeed.
210. It is the court's view and finding that due to the above scenario where both parties partially succeed, each party should bear its own costs of the suit.

## **CONCLUSION**

211. In conclusion, the court hereby makes the following orders in determination of the present suit: -

**A. THE PLAINTIFF HEREIN BE AND IS HEREBY DECLARED THE LAWFUL AND REGISTERED OWNER OF THE PROPERTY KNOWN AS ELDORET MUNICIPALITY BLOCK 14/19.**

**B. A DECLARATION BE AND IS HEREBY MADE THAT THE DEFENDANT HEREIN HOLDS AN OVERRIDING INTEREST ON THE PROPERTY KNOWN AS ELDORET MUNICIPALITY BLOCK 14/19 BELONGING TO THE PLAINTIFF AND IN PARTICULAR THE PORTION MEASURING 3-METER-WIDE BY 343 METERS LONG WITHIN WHICH THE UNDERGROUND OIL TRANSPORTATION PIPELINE HAS BEEN PLACED.**

**C. THE DEFENDANT IS HEREBY DIRECTED TO UNDERTAKE AN ENVIRONMENTAL IMPACT ASSESSMENT EXERCISE WITH A VIEW OF IDENTIFYING ALL POTENTIAL ENVIRONMENTAL AND SOCIAL RISKS AND/OR EXPOSURES THAT MIGHT ARISE DUE TO THE PLACEMENT OF THE OIL TRANSPORTATION PIPELINES WITHIN THE SUIT PROPERTY AND MAKE THE APPROPRIATE RECOMMENDATIONS AND/OR MITIGATING FACTORS TO ADDRESS SUCH ENVIRONMENTAL OR SOCIAL EXPOSURES AND/OR RISKS WITHIN 180 DAYS FROM THE DATE OF THIS JUDGMENT.**

**D. THE ENVIRONMENTAL IMPACT ASSESSMENT REPORT TO BE UNDERTAKEN BY THE DEFENDANT IN CONSULTATION WITH THE PLAINTIFF AND ANY OTHER RELEVANT ACTORS, MUST BE FILED BEFORE THIS COURT WITHIN 210 DAYS FROM THE DATE OF THIS JUDGMENT AS A RECORD OF THIS COURT.**

**E. EACH PARTY WILL BEAR ITS OWN COSTS.**

**DATED, SIGNED and DELIVERED at ELDORET this on this 16<sup>TH</sup> DAY OF APRIL, 2026.**

**EMMANUEL.M. WASHE  
JUDGE**

**In The Presence Of:**

Court Assistant: Brian

Advocate for Plaintiff: Mr. Wangui holding brief for Mr. Situma

Advocate for Defendants: Mr. Odongo for The Defendant

Advocate for Third Party: Mr. Kofuna