



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT IN NAIROBI

ELC NO. E.349 OF 2022

1. REVEREND SIMEON OBAYO

2. REVEREND PETER S. DEYAS

3. REVEREND JOSEPH M. KILOBA *(In their capacity as the
Registered Trustees/(Office Bearers) of Pentecostal Evangelistic
Fellowship of Africa)*

.....**PLAINTIFFS**

VERSUS

NJOKI GACHANJA.....1ST

DEFENDANT

EVANS ODENYO.....2ND

DEFENDANT

FREDRICK OCHIENG.....3RD

DEFENDANT

AND

NAIROBI COUNTY.....3RD

PARTY

JUDGEMENT

1. This suit is brought by some of the registered trustees and office bearers of the Pentecostal Evangelistic Fellowship of Africa in respect of Nairobi/ Block 119/ 534 hereinafter referred to as the suit property. The Plaintiffs aver that in the year 2001 the Plaintiff acquired the suit property which is adjacent to Githurai Primary School. They aver that when they sought to fence the property a group of youths protested and caused actual injury to one of the church officials.
2. That the matter was subject of a discussion in the Nairobi City County Assembly which led to a report vindicating the Plaintiff as the rightful owner of the suit property. That the Defendants intended to forcefully enter the occupation of the property and have in conjunction with others, built a

toilet, thus there was need to stop the forceful entry and construction as it would subject the Plaintiff to irreparable harm.

3. The Plaintiffs have therefore filed the instant suit in which they seek the following orders;

a) A declaration that the continued actual and threatened trespass vandalizing property and building by the Defendants of any building on the suit land LR NAIROBI/BLOCK 119/534 is illegal

b) A declaration that the PEFA church through the Plaintiffs is the rightful owner of LR NAIROBI/BLOCK 119/534

c) That a permanent injunction be issued restraining the Defendants either by themselves, servants or agents from entering and trespassing upon and or otherwise interfering with, transferring or alienating all that property known as LR NAIROBI/BLOCK 119/534 or any part thereof

d) Costs of the suit

4. The Plaintiffs disclose that though the matter was initially brought to Court, it was not determined substantively as the Court ordered that the right litigants who could prosecute the case are the Registered Trustees of the PEFA Church.
5. The 1st, 2nd and 3rd Defendants filed a Defence which was premised on several grounds first being that the present suit is *res judicata* as the issues herein had been litigated in **ELC Milimani E 322 of 2021** and the suit dismissed in its entirety. The Defendants contend that the Githurai Tinga'ang'a Famers Ltd were the original owners of the suit property. That the suit property was one of those set aside for public use in the year 1975. That the property then passed to the county. In the meantime it is the Defendants case that the community had constructed a nursery school on the property. Lastly it is the case of the Defendants that the Plaintiffs have no enforceable claim against them as the case of the Plaintiffs is against the public who are claiming the suit property as public land.
6. The interested party, Nairobi City County filed a statement of Defence in which they denied all averments by the Plaintiff.

7. The Plaintiffs called two witnesses. PW 1 Reverend Joseph Kilioba filed a witness statement in which he deposed that in the year 2001 the church purchased the suit property from Githurai Tinganga Company Limited. That a certificate of lease was thereafter issued to the church on the 9th June 2009. He avers that as part of its social responsibility, the church allowed the community to utilize a piece of land for recreational purposes. That the community have now violently opposed their efforts to fence the property or even to have surveyors visit for beacon establishment. He also informs the court that the 1st, 2nd and 3rd Defendant have issued the Plaintiffs with a notice to vacate.

8. PW 2 Reverend Samuel Maina corroborated the evidence of PW 1 in its entirety. Although counsel for the Defendants was in court when the matter was confirmed for hearing, they did not participate in the hearing of the matter.

9. Peter Wanyoike testified on behalf of the Nairobi City County. He produced a witness statement. Upon cross examination he told the court that the Primary School has its

land. He confirmed that the suit property is one of the parcels as a result of the sub division. That there is mention of parcels. He ended by stating that only the officials can point out the public utilities. Upon re examination he told the court that he noticed a discrepancy in shape of primary school between the survey plan and the scheme plan with the latter being rectangular while the survey plan showed it as rectangular. He further stated that the scheme plan had three plots before the road while the survey plan had two small plots and the big one in contention. He confirmed that the scheme plan comes before the survey plan. And that the county is involved in approval of the survey plan.

10. Plaintiffs counsel filed submissions which the court has duly considered. The other parties did not file submissions. Arising from the pleadings the court deciphers the following issues for determination;

- **Whether this suit is res judicata E322 of 2021**
- **Whether the Plaintiff is entitled to the reliefs sought**

1) On the question of *res judicata*, **Section 6 of the Civil Procedure Act** provides ***“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court”***

2) As such in determining the issue of *Res Judicata* the court is called upon to determine the following issues;

- a. Whether the issue was directly and substantially in issue in the former suit**
- b. Whether suit was between the same parties or parties claiming under them.**
- c. The parties were litigating under the same title.**
- d. The issues were heard and finally determined in the former suit.**

e. The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue was raised.

11. The earlier case was dismissed for lack of capacity hence was not heard substantively and finally determined. There is therefore no bar to this court hearing the matter.
12. Regarding the claim by the Plaintiffs, they claim ownership of the suit property on the grounds that they lawfully acquired the suit property. The Defendants who had issued them with a notice to vacate did not attend court to adduce any evidence that would have shed light on their claims.
13. Given that the Plaintiffs case was based on acquisition by way of sale, they needed to prove the elements of a bona fide sale which were set out in the Court of Appeal case of **Samuel Kamere v. Lands Registrar, [Kajiado Civil Appeal No. 28 of 2005 [2015] eKLR]** in which the Court pronounced itself as follows: “...***in order to be considered a bona fide purchaser for value, they must prove; that***

they acquired a valid and legal title, secondly, they carried out the necessary due diligence to determine the lawful owner from whom they acquired a legitimate title and thirdly that they paid valuable consideration for the purchase of the suit property...”

14. The Plaintiffs produced a sale agreement and proof of payment of the purchase price. The interested party witness further confirmed that Githurai Tingagana who had sold the suit property were the ones with the information on the suit property.

15. Given that the Plaintiffs acquired the property from the said Tinganga and have provided a sale statement and proof of consideration I find that they lawfully acquired the suit property. However the challenge appears to have been in the extent of the property they acquired. The interested party witness confirmed that there were discrepancies on the size. And indeed it was confirmed by the Plaintiffs that due to insecurity, the beacons have not been established and this no doubt is the continued cause of conflict with the

community. The Committee report also confirms this state of affairs.

16. In paragraph 2 the Chief Lands Officer states that the officers from the lands department were unable to conduct a survey to determine whether PEFA church has encroached on Githurai Primary School. The report ends by finding that Githurai Tingagnga were the original owners of the suit property. The Committee also confirms the Plaintiffs purchased the suit property though the boundaries are not clear.

17. The findings of this report are in line with the evidence that was adduced before the court. I therefore find that the Plaintiffs lawfully acquired the suit property. However the boundaries need to be established. While this is being done for the sake of peace neither of the parties should interfere with each others possession of the occupied portions.

18. In the end the court the court issues the following orders;

a. A declaration is hereby issued that the PEFA church through the Plaintiffs is the rightful owner

of LR NAIROBI/BLOCK 119/534. This declaration shall be subject to confirmation of the boundaries as outlined in (b) below.

b. The Land Registrar shall with the assistance of a licensed surveyor shall visit the suit property, hear the parties and fix and demarcate the boundaries within 90 days

c. The orders issued on 25th September 2023 shall remain in place until the exercise is finalized and the parties respective portions secured.

d. The nearest police station shall maintain law and order during the demarcation exercise.

e. Each party shall bear their own costs of the suit.

Dated, Signed and Delivered virtually at Kajiado this 23rd day of April 2026.

JUDY OMANGE

JUDGE

IN THE PRESENCE OF:

Mr. Gachoya for Plaintiff.

Peter - Court Assistant.