



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 199 OF 2018

PASTOR RICHARD TOO (Suing as a Trustee of the

FULL GOSPEL CHURCHES OF KENYA, MOGOTIO.....**PLAINTIFF**

VERSUS

LIVING HOPE MINISTRIES.....1ST DEFENDANT

STEPHEN K. KAMAU2ND DEFENDANT

RICHARD BRUNTO3RD DEFENDANT

DAVID EATON.....4th DEFENDANT

(sued in their capacity as the chairman, Secretary and Treasurer of Living Hope Ministries)

JUDGMENT

(plaintiff church suing the defendant church for title to land in occupation by the plaintiff; plaintiff having an allotment letter to the suit land; title however issued to the defendant church; clear that the title was issued fraudulently to the defendant church; members of the defendant church having previously been members of the plaintiff church before splitting to form the defendant church; defendant church cannot claim the land as it was allotted to the plaintiff church; defendant church not offering an explanation as to how it obtained title to land where the plaintiff holds the allotment letter and its members worship in it; judgment entered for the plaintiff; defendant's title revoked)

1. This suit was commenced through a plaint which was filed on 26 May 2008. This suit has been filed on behalf of the Full Gospel Church of Kenya, Mogotio (hereinafter also referred to as the plaintiff church). The 1st defendant is the Living Hope Ministries and the 2nd, 3rd and 4th defendants are its Chairman, Secretary, and Treasurer. It is pleaded that on 16 November 1992, the Commissioner of Lands allocated to the Full Gospel Churches of Kenya, the Plot No. 264, Mogotio, now registered as Mogotio Township/Block 2/102 measuring 0.1 Ha (hereinafter referred to as "the suit land"). It is averred that upon allocation, the plaintiff church took possession and developed the same for use by its church members. It is pleaded that the 2nd defendant, Stephen K. Kamau, was a member of the Full Gospel Churches of Kenya, until the year 2006 when he was ex-communicated alongside other officials of the church. It is claimed that on 28 June 2007, the defendants fraudulently caused a certificate of lease to be issued in respect of the suit land with intention to deny the plaintiff church its right to use the suit land. In this suit, the plaintiff has sought a declaration that the suit land is the property of the Full Gospel Churches of Kenya, Mogotio, and for cancellation of the Certificate of Lease issued in favour of the 1st defendant. The plaintiff also seeks to have the defendants permanently restrained from interfering with the suit land.

2. The defendants appointed counsel and filed a joint statement of defence. They inter alia denied that the suit land was allocated to the plaintiff by the Commissioner of Lands on 16 November 1992 as alleged in the plaint. They contended that the suit land belongs to the 1st defendant upon allocation by the County Council of Koibatek. It was pleaded that the suit land has never been plot No. 264 and it was also denied that the land has ever been in possession of the plaintiff. It was also denied that there are developments on the land made by the plaintiff and it was claimed that the developments on the said land were done by the defendants. In the alternative, the defendants pleaded that if the plaintiff church is in possession, the same is illegal and that the plaintiff should be evicted.

3. The plaintiff filed a reply to defence, where it was inter alia pleaded that the suit land was allocated to the plaintiff long before the 1st defendant was registered. She also denied that the existing developments were made by the defendants.

4. PW-1 was Bishop Richard arap Too. He testified that he is a pastor with the Full Gospel Churches of Kenya and also the Deputy Secretary of the Board of Trustees of the said church. He has been a trustee of the plaintiff church since the year 1984. He mentioned that Stephen Kamau, the 2nd defendant was a Bishop with the plaintiff church from the years 1998 to 2002, but he did not know the 1st, 3rd and 4th defendant, only that the plaintiff church has sued them for having title to their land. He had a white card of the land parcel Mogotio Township/Block 2/102 which showed the name of the 1st defendant, Living Hope Ministries, and which revealed that the 1st defendant got title on 28 June 2007. He stated that it was the plaintiff church in occupation, on a plot they identify as Plot No. 264, and he had an allotment letter for the said plot issued to them in 1992. 5. He stated that plot No. 264 and Mogotio Township Block 2/102, relate to the same ground. He testified that in 1992, they had a senior pastor by the name of Joseph Chesergon, whose deputy was Jackson Kipkemboi Koskei, and that the church building on the suit land was built in the year 2004, when Jackson Koskei was the Senior Pastor of the local church and the General Secretary at the national level. He offered that there was a tussle in the Full Gospel Churches which led to Stephen Kiguru and Jackson Koskei being expelled from the church in the year 2005. It is after this that Living Hope Ministries came about and acquired title to the suit land. He averred that despite having title, the defendants have never come to remove them from the suit land.

6. He was cross-examined on the allotment letter which shows 0.12 Ha as the area and the term indicated is a freehold from 1 July 1992. He acknowledged that the allotment letter required some payment but he did not have the payment receipts. He identified the term in the title to Mogotio Township Block 2/102 as 99 years from 1 December 1997, and the area noted as 0.1 Ha. He did not know how Living Hope came to acquire their title.

PW-2 was Joshua Kobuti Ayabei Chepkurgor, the plaintiff's District Overseer for Mogotio District, and previously the senior pastor of the church located in the suit land. He was named as 1st defendant in the case Eldama Ravine PMCC No. 75 of 2007 where Living Hope sued them for trespass. He stated that the Eldama Ravine case was dismissed on 21 April 2009. He testified that he took over the church from Bishop Jackson Koskei (sometimes also referred to as Reverend Koskei or Bishop Koskei) in July 2007 after the later left Full Gospel following its fragmentation, and joined Worldwide Churches of Kenya. Stephen Kamau, who was previously the Bishop and the senior most person in the Full Gospel Church, also left to join Worldwide Full Gospel Missions of Kenya Churches of Kenya. He stated that there was no formal handover to him from Rev. Koskei when he took over the church as Rev. Koskei had already left when he was seconded to the church. He stated that Rev. Koskei had put up a signpost for Worldwide Churches in the Mogotio church but they had it removed and replaced with their signage of Full Gospel Churches Mogotio. He stated that they then went over to a neighbouring building where they are to date with the signage Worldwide and Living Hope. He testified that it was around 1992, when Rev. Koskei became a pastor in the Mogotio church. He described the buildings in the church compound as including the sanctuary and a guest house and he lived in this guest house from 2007 to 2014. This is also where their District Office is located. He mentioned that the guest house was first made of semi-permanent structures in the 1980s and later renovated. The church building was made in the year 2004 during the tenure of Rev. Koskei and at this time there was no wrangle within the church. He explained that wrangles started in the year 2005 and that Rev. Koskei (General Secretary then) and Bishop Kiguru left in the year 2007. He was categorical that the church building was not developed by Living Hope Ministries. He testified that the building plan was drawn in June 2004 and that it was Rev. Koskei who caused the plan to be drawn as their senior pastor. The plan shows LR No. 9109/150 which he offered is the same plot No. 264. He testified that the plaintiff church has another 5 acre plot which was also allocated to them after a written request dated 16 July 2007 by Rev Koskei (who was then their pastor) and who in the same letter thanked the Council for giving them the town plot (suit land). He faulted the deed plan displayed by the defendant showing the name Living Hope Ministries dated 19 February 1997, as then, Living Hope Ministries was not in existence. He mentioned that he has never seen an allotment letter for their plot in the name of Living Hope Ministries. He believed that Living Hope Ministries wanted to take over their plot because its members participated in building it.

7. Cross-examined, he stated that he was appointed pastor of the Full Gospel Churches in the year 1976 and was transferred to Mogotio in July 2007 to be the Senior Pastor of the Mogotio church, where the suit land is located. He testified that in the year 2002, Full Gospel Churches held an election where Bishop Samuel Mureithi took over from Bishop Stephen Kiguru Kamau. He mentioned that Bishop Kamau is now deceased. He was questioned on the larger 5 acre plot which he stated is Plot No. 1621. Re-examined, he stated that their church has occupied the plot since the year 1965.

8. PW-3 was Francis Kipchumba Cheruiyot an employee of the Ministry of Health, and the sub-county Public Health Officer, Mogotio. He testified that in their office is a development plan submitted on 18 June 2004 which they approved for the Full Gospel Churches of Kenya, for the Plot No.9109/150 Mogotio. He produced this plan as an exhibit. He did not have a development plan for the Plot No. 264.

9. PW-4 was Jonah Kiprono Korir a surveyor at the Koibatek Survey Office. He testified that there is a survey plan in their office being FR No. 197/11 which conforms to the allotment letter of the plot No. 264. The land reference number is noted as LR No. 9109/150 measuring 0.1360 Ha. He testified that this land is now identified as Mogotio Township Block 2/102 in the Registry Index Map. He explained that during allotment of land, there is drawn a Part Development Plan (PDP) which has a number from the planning department, which in this case is the number 264. He stated that after survey is done, the plots are given new survey numbers. He mentioned that the plots in Mogotio are coded 9109 then will follow the individual plot numbers. In this case the plot is 9109/150, the number 150 being the plot number within Mogotio area. It is the same plot identified as Mogotio Township Block 2/102 in the RIM.

10. He was cross-examined on the allotment letter which he stated shows 0.12 Ha but the land is 0.136 Ha. The allotment letter also showed "freehold" but he stated that the land in issue is not a freehold title. In re-examination, he explained the difference in acreage being that when the PDP is prepared, the planner puts an approximate area which is verified during survey. He did state that the allotment letter should have read "leasehold" rather than "freehold".

11. With the above evidence, the plaintiff closed her case.

12. DW-1 was Bishop Jackson Kipkemboi Koskei (Rev. Koskei) . He testified that the suit land is owned by Living Hope Ministries International but stated that he played no role in its acquisition of title. He also stated that he is not connected to the 1st defendant in any way. He stated that Living hope Ministries is an organization which works with all evangelical churches in Kenya and that it started in England in the year 1993. He was introduced to it in the year 1994 by virtue of being a leader at the Full Gospel Church. He mentioned that he is only giving evidence in this matter because he is aware of the property in dispute. He testified that the property allocated to the Full Gospel Churches is another one, which is not less than 3 acres. He was shown the allotment letter to Plot No. 264 but he stated that he is not aware

of it and wouldn't know where it came from. He testified that it is he who applied for the plots for the Full Gospel Churches. He was aware that the suit land is occupied by the Full Gospel Church and he mentioned that the Full Gospel Church came to be in possession of the suit land in 2006 at a time that he was away in the United States of America. He stated that the plaintiff church with the assistance of the police, evicted members and took over the building. It was his view that those who were evicted were the members of Living Hope Ministries. He affirmed that he was previously the Secretary General of Full Gospel Church from 1999 up to October 2003 when he was voted out in elections held in that year. He then chose not to be a member of Full Gospel Church. He testified that he was involved in acquisition of Full Gospel Church plots between 1992 and 1997 when he was the pastor in charge at Mogotio.

13. Cross-examined, he stated that he joined Full Gospel Church in the year 1980 and it is after the 2003 elections that the church split. He aligned himself with Stephen Kiguru in the split. Stephen Kiguru then became a minister in Worldwide Gospel Mission of Kenya. He testified that he served as pastor in the Mogotio church from 1992 to 1997 and described where the church settled which was more or less the description of the suit land. He was shown the letter dated 12 September 1995 which he authored but explained that the Council ruled that they cannot allocate more than one plot and he opted to choose the bigger plot rather than the suit land. He claimed that he did not know who erected the building in the suit land and stated that he had nothing to do with the development. He denied that any money was sent through him for the development of the church from a person in the United Kingdom. He stated that he did not know who was in possession of the suit land when he left the plaintiff church in the year 2003. He stated that he handed over the church to one Pastor Odhiambo but acknowledged that there were no hand over notes. He denied assisting Living Hope Ministries take away the disputed land from the plaintiff church and stated that he has no interest in what they own.

14. Re-examined, he asserted that he never applied for the suit land when he served in the plaintiff church and that what he applied for was the bigger plot, and did not know the genesis of the allotment letter.

15. The defendants did not procure any other witness and closed their case based on the above evidence.

16. I invited counsel to make written submissions which they did and I have taken note of the same before arriving at my decision.

17. If I am to summarize the case of the plaintiff, it is that the plaintiff was allotted the Plot No. 264, and has built a church on it and its members worship in it. The plaintiff is thus at a loss as to how the 1st defendant came to procure title to the said land and it is the plaintiff's belief that the title of the 1st defendant is fraudulent and thus ought to be cancelled. The defence of the defendants, as presented in the submissions of their counsel, is that the 1st defendant holds a title deed to the suit land and that the same was properly allocated to it by the County Counsel of Koibatek. There was also submission that the Plot No. 264 is not the same as Mogotio Township/Block 2/102. Counsel for the defendants in addition, submitted that there was no evidence of acceptance of the offer by the plaintiff church in respect of its allotment letter and further submitted that an allotment letter is not a document of title.

18. Starting with the question whether the plot No. 264 is the same as Mogotio Township/Block 2/102, from the evidence tendered, there can be no doubt that the Plot No. 264 in the plaintiff's allotment letter refers to the same land described as Mogotio Township/Block 2/102. The surveyor, PW-4, explained this very elaborately in his evidence. He did state that the Plot No. 264 was a planning number and the title that was supposed to be issued, was LR No. 9109/150, which should be a title under the Registration of Titles Act (Cap 281) (repealed). In the Registry Index Map, this same land is identified as Mogotio Township/Block 2/102, which is a title issued under the regime of the Registered Land Act (repealed). We are thus dealing with the same land albeit described differently.

19. The core question is who between the plaintiff and the 1st defendant ought to be regarded as the genuine owner of the suit land. The plaintiff has explained that it was issued with an allotment letter to the suit land which it displayed in evidence. It had already taken possession of the suit land and had prepared building plans for it which were duly approved. Following the approval, they did develop the church sanctuary and a guest house. They have been on the land all this time and they are still in occupation and use of the suit land. I am not in doubt that the Government intended to allocate the suit land to the plaintiff church. That is clear from the allotment letter. Ordinarily what would have followed was a title issued to the plaintiff but instead a title was issued to the 1st defendant. The 1st defendant has not explained to this court how it acquired title to the suit land. It never displayed to this court any application for the suit land or any allotment letter. Somehow, out of the blue, the 1st defendant has a title whose root it is unable to explain. It is also unable to explain how come it was granted land that is in occupation of another party who has been in possession of it for a long time and who has already developed on it. But to me, the explanation for all this is not far to find, and I have my own conviction on what I believe to be the true state of affairs.

20. The 1st defendant is closely connected to the persons who split from the plaintiff church and started their own. That church is the 1st defendant church. The evidence of this is clear since the previous Bishop of the plaintiff church, who is the 2nd defendant, went on to start the 1st defendant. I am convinced that following this, a plot was hatched to take away properties of the plaintiff, and move them to the 1st defendant, and being aware that no title under the Registration of Titles Act had issued to the plaintiff church, the schemers procured a title under the Registered Land Act. It is a scheme, that given my experience in this court, I have seen several times. Without any sound explanation as to how the 1st defendant procured a title deed in its name, it cannot be argued that the said title is a good title. In fact, as far as I can see, that title ought not to have issued to the 1st defendant but instead ought to have issued to the plaintiff church.

21. The issues in this matter arose during the regime of the Registered Land Act, and the suit itself was also filed before the repeal of the said statute. It is therefore the provisions of the Registered Land Act, which apply. The operative section is Section 143 which is drawn as follows :-

S.143 (1) Subject to subsection (2) the court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration (other than a first registration) has been obtained, made or omitted by fraud or mistake.

(2) The register shall not be rectified so as to affect the title of a proprietor who is in possession and acquired the land, lease or charge for valuable consideration, unless such proprietor has knowledge of the omission, fraud, or caused such omission, fraud or

mistake or substantially contributed to it by his act, neglect or default.

22. I am persuaded that the registration of the 1st defendant could not have been procured in any other way other than fraud. As I have explained, the 1st defendant is closely connected to the former officials of the plaintiff church who split and started the 1st defendant church. They have no letter of allotment to the suit land and could not explain how they out maneuvered the plaintiff in obtaining title yet the plaintiff had an allotment letter, had approved building plans, and had developed the land and been in it for years. The 2nd defendant, who was former bishop certainly was aware of the interest of the plaintiff church in the suit land. There is no way that the 1st defendant can claim to have legitimately obtained title to the suit land. Being persuaded that that the title of the 1st defendant was procured by way of fraud, such title is subject to cancellation by dint of the provisions of Section 143 of the Registered Land Act above.

23. I thus proceed to order a cancellation of the title of the 1st defendant to the land parcel Mogotio Township/Block 2/102. I further hold that the rightful owner of the title is the Full Gospel Churches of Kenya, and the Full Gospel Churches of Kenya is at liberty to procure title in its name for the land parcel LR No. 9109/150, or Mogotio Township/Block 2/102, as the case may be.

23. The plaintiff will also have the costs of this suit as against the defendants jointly and/or severally.

25. Judgment accordingly.

Dated, signed and delivered in open court at Nakuru this 30th day of September 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

Ms. Wangari present for the plaintiffs.

Mr. Kibet holding brief for Mr. Njenga for the defendant.

Court Assistant: Nancy Bor/Alfred Cheronno.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU