



**Church Commissioners of Kenya v County Government of Nyeri;
Kariuki & 198 others (Interested Parties) (Environment & Land Case
612 of 2014) [2024] KEELC 1025 (KLR) (29 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 1025 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 612 OF 2014
JO OLOLA, J
FEBRUARY 29, 2024**

BETWEEN

CHURCH COMMISSIONERS OF KENYA PLAINTIFF

AND

COUNTY GOVERNMENT OF NYERI DEFENDANT

AND

JOSEPH MWANGI KARIUKI & 198 OTHERS INTERESTED PARTY

JUDGMENT

1. This suit was initially instituted at the High Court at Nyeri as Nyeri HCCC No. 90 of 2010.
2. By its Complaint dated 3rd August, 2010 as amended on 7th November, 2011 and further amended on 1st April 2019, the Church Commissioners for Kenya (the Plaintiff) prays for Judgment against the Defendant as follows:
 - (a) That the Court do make an order that the action of the Council through its Sub-committees and itself was illegal, irregular and unlawful. Further that this Court do please order that parcel (No.) Chinga/Gikigie/1517 be reinstated as it was and the County Government be ordered to consider and give consent for the registration of A.C.K St. Luke’s Academy;
 - (b) Costs and interest of the suit at Court rate; and
 - (c) Any other relief that this Court deems fit to grant.
3. The prayers arise from the Plaintiffs position that during land consolidation, demarcation and registration, some 23 Anglican faithful of Mucharage Village of then Othaya Division of Nyeri District donated certain fragments of their land which were later consolidated and registered as comprising



- approximately 19.6 acres of land and was registered as Chinga/Gikigie/467 and reserved for A.C.K Mucharage Church.
4. The Plaintiff avers that the donation was made to the Anglican Church to enable the Church to provide services to its members and the local people of Mucharage and it did construct thereon A.C.K Mucharage Primary School, A.C.K Mucharage St. Luke's Education Institute and A.C.K Mucharage Church.
 5. The Plaintiff avers that sometime in the year 1998, it caused the said parcel of land to be sub-divided into two the same being Parcel No. Chinga/Gikigie/1517 and 1518. It is their case that when they applied to the Defendant to register their St. Luke's Academy to enable their Standard 8 pupils to sit for the Kenya Certificate of Primary Education, the Defendant treated the request as a dispute and proceeded to excise part of their land measuring 6.1 acres which they proceeded without authority to reserve for a public polytechnic.
 6. But in its Statement of Defence dated 17th November, 2011 as amended on 14th May 2019, the County Government of Nyeri (the Defendant) avers that land parcel number Chinga/Gikigie/467 measuring 19 acres was originally reserved for Mucharage Primary School.
 7. The Defendant asserts that it is aware that 3 acres out of the said 19 acres belonged to the Plaintiff, the same having been contributed by members of the Anglican Church before it was consolidated with the School's land.
 8. It is the Defendant's case that in the year 1967 parcel number Chinga/Gikigie/467 was sub-divided into two – being Chinga/Gikigie/481 and 482. The Church took its portion being Chinga/Gikigie/482 while the other was reserved for Mucharage School. The Defendant further avers that Chinga/Gikigie/481 was later sub-divided into Chinga/Gikigie/1517 and 1518 with a view to separating Mucharage Primary School from Mucharage Polytechnic. Parcel 1517 was then reserved for Mucharage Youth Polytechnic while 1518 became the Primary School.
 9. The Defendant asserts that there is no time when land parcel Chinga/Gikigie/1517 was reserved for A.C.K St. Luke's Education Institute as stated by the Plaintiffs. It asserts that it declined to approve the registration of the said A.C.K St. Luke's Academy as the land was never meant for that purpose.
 10. Following a Notice of Motion application dated 7th July, 2011 brought by some 199 individual residents of Gikigie Village in Othaya, they were joined in the suit collectively as the 2nd Defendant.
 11. In the Statement of Defence and Counterclaim dated 23rd July 2013, the 2nd Defendants deny the Plaintiff's claim and assert that the Church was placed on the subject property merely as a sponsor and not a beneficiary of the subject parcel of land.
 12. The 2nd Defendants further assert that there was no time that the local community who were the beneficiaries of the Youth Polytechnic donated and agreed to the conversion of the Polytechnic to an Academy owned and controlled by the Plaintiffs.
 13. By way of their Counterclaim, the 2nd Defendants, assert that they did donate land for the building and establishment of the Youth Polytechnic and urge the Court to dismiss the Plaintiff's suit and to direct them to surrender L.R No. Chinga/Gikigie/467 to the 2nd Defendants and/or their trustees.

The Plaintiff's Case

14. The Plaintiff Church called a total of three (3) witnesses in support of their case.



15. PW1 – Venerable Gerald Mwangi Muriithi is a clergy with the Anglican Church of Kenya (A.C.K) and a commissioner with the Church Commissioners for Kenya. Relying on his Statement dated 17th February 2014, PW1 told the Court that L.R No. Chinga/Gikigie/1517 was donated by the Anglican Church elders for the Church’s development as indicated in Nyeri County Council Minutes for the meeting held on 31st October, 1967.
16. PW1 further testified that the said parcel of land had all along been reserved for A.C.K Mucharage Polytechnic and that the Council has never issued a title deed to the Church as required by law. In 2006, the Church held a meeting with the Community and the findings of the meeting some of which state that the land belonged to the A.C.K were recorded.
17. PW1 told the Court that all the buildings on the land were built by the A.C.K Christian faithful. Having started a Primary School within the facility that had remained idle, the Church requested for registration which the District Education Board approved but was hindered by the County Council because there were a few people who were fighting the Church Project. PW1 further told the Court the Nyeri County Council has all along refused to issue title deeds to all institutions it holds land for in trust thus having a way of manipulating and intimidating the institutions.
18. PW1 further testified that the separation of the parcel Chinga/Gikigie/481 to make Mucharage Primary Schools parcel No. Chinga/Gikigie/1518 and A.C.K Mucharage Polytechnic’s parcel No. Chinga/Gikigie/1517 was initiated by the Church and not the County Council.
19. PW2 – John Ngugi Wachira is a farmer and the secretary of Gichami Parish Council. He told the Court he was also the secretary of the A.C.K St. Luke’s Academy which was founded 10 years after the A.C.K Youth Polytechnic ceased to function due to low enrolment and rampant theft. PW2 testified that the Academy uses the facilities built by the A.C.K Mucharage Church and that the land on which the facilities were built was donated by 23 members of the Anglican Church for the construction of future church schools and churches.
20. PW3 – Ephantus Mathenge Kiragu is a member of the church. He told the Court his father was one of the 23 members who donated fragments of land making up the land which was registered as Chinga/Gikigie/467. He further told the Court he was aware that the 23 members donated the land for the development of the A.C.K Church and school. The land was then allocated as follows:
 - (a) Mucharage Primary School - 10 acres
 - (b) A.C.K Mucharage Church - 3 acres
 - (c) A.C.K Mucharage Youth Polytechnic - 6.9 acres
21. PW3 further testified that the development by the church began with a secondary school on the land which later became a polytechnic. The secondary school was running until the County Council issued the public with a piece of land where a public secondary school (the current Mucharage Girls Secondary School) was built. The students in the A.C.K secondary School transferred to the public school and the A.C.K school became dormant.

The Defence Case

22. On their part, the Defence called one witness in support of their case.
23. DW1 – Joseph Giteru Njomo is the Principal Physical Planner with the County Government of Nyeri (the Defendant). DW1 told the Court that the suit property is a resultant sub-division of land parcel number Chinga/Gikigie/467 which was 19.9 acres and was reserved for Mucharage School.



24. DW1 testified that in the year 1967, A.C.K Mucharage approached the defunct County Council of Nyeri and requested that the church land be separated from the school's land and the request was granted on 31st January, 1967. The resultant sub-divisions – Chinga/Gikigie/481 measuring 16.9 was reserved for Mucharage School while Chinga/Gikigie/482 measuring approximately 3 acres was reserved for the A.C.K Church.
25. DW1 further told the Court that from their records, a need arose to have the Primary School separated from the Community Polytechnic and the school's land was then sub-divided into two; that is Chinga/Gikigie/1517 which was reserved for A.C.K Mucharage Polytechnic and Chinga/Gikigie/1518 which was reserved for Mucharage Primary School.
26. DW1 told the Court L.R No. Chinga/Gikigie/1517 was meant for the community Polytechnic which was already in existence. However, the A.C.K Church has made several attempts to utilize the Polytechnic land for an academy. All the applications have been rejected. Sometime in the year 2004, the Church wrote to the defunct Council seeking authority to register a private academy in the name and style of A.C.K St. Luke's Academy. The same was rejected as the land on which they wanted to establish the said academy was meant for Mucharage Polytechnic which is a public entity. A similar application made in 2009 was equally rejected.

Analysis And Determination

27. I have carefully perused and considered the pleadings filed herein, the testimonies of the witnesses as well as the evidence adduced at the trial. I have similarly perused and considered the written submissions and the authorities to which I was referred. Despite filing a Statement of Defence and a Counterclaim, the 199 persons who were joined as the 2nd Defendants herein, did not present any evidence and/or participate at the trial and their claim was therefore treated as having been abandoned.
28. By the suit herein, the Plaintiffs who are the trustees of the Anglican Church of Kenya (A.C.K) have urged the Court to find that the decision by the Defendant refusing its request to set up and register a school over a parcel of land known as L.R No. Chinga/Gikigie/1517 was irregular, illegal and unlawful. It is further their prayer that the said parcel of land be reinstated as it was before and that the Defendant County Government be ordered to give consent for the registration of the school christened A.C.K St Luke's Academy.
29. It is the Plaintiffs' case that before the Defendant proceeded to sub-divide the land, the same was known as L.R No. Chinga/Gikigie/467 measuring approximately 19.6 acres, the same having been donated by some 23 Anglican faithful and reserved for the Plaintiffs' A.C.K Mucharage Church within its Diocese of Mt. Kenya West.
30. The Plaintiffs accused the Defendant of proceeding without any lawful cause and or authority to sub-divide the said parcel of land and to excise therefrom a portion measuring some 6.1 acres which the Defendant then unilaterally reserved for a public polytechnic.
31. On its part, the Defendant denies the assertions made by the Plaintiffs. It is the Defendant's case that the parcel of land known as Chinga/Gikigie/1517 has all along been public land and that the same had always been reserved for the purposes of being utilized as a public polytechnic. It was further the Defendant's case that it was right in rejecting the Plaintiffs' application for the registration of the said A.C.K St. Luke's Academy as the same is a private entity and registering it over the said parcel of land would amount to conversion of land meant for public use into the Plaintiff's private use.



32. In support of their case, the Plaintiffs called three (3) witnesses. PW1 – the Venerable Gerald Mwangi Muriithi told the Court that the suit property was donated by some 23 Anglican Church Elders for use by the Church. In his further testimony, PW1 asserted that the parcel of land had all along been reserved for the A.C.K Mucharage Polytechnic and accused the defunct County Council of Nyeri of refusing to issue a title deed to the Church as required by law.
33. That position was supported by John Ngugi Wachira (PW2) who told the Court he was the secretary of the said A.C.K St Luke’s Academy. He told the Court the Academy was started some 10 years after the A.C.K Mucharage Youth Polytechnic ceased to function due to low enrolment and rampant theft.
34. From the material placed before the Court, it was apparent that there was no dispute by the Plaintiffs and their witnesses that the parcel of land in question was at all times material, registered in the name of the County Council of Nyeri, the predecessor to the present County Government. There was also no dispute that the land had been reserved for the construction of a polytechnic.
35. While the Defendant held out that the said Polytechnic was a public facility, it would appear to me that the Plaintiffs considered the same a private facility which the Church could convert to whatever use it deemed fit. That must have informed the contention by PW2 that when the Youth Polytechnic ceased to function due to low enrolment and rampant theft of its facilities, they converted the same into what they now called A.C.K St. Luke’s Academy.
36. Asked in cross-examination about the Polytechnic and the buildings from which it was operated, PW1 told the Court that he was aware that the buildings at the Polytechnic were built through harambee fundraisers. He testified as did PW2 after him that Mucharage Polytechnic was operated on the land as a public entity by the Government.
37. As to the status of the said A.C.K St Luke’s Academy, PW1 was rather evasive in his testimony before the Court. In response to questions put to him by Mr. Wa Gathoni Learned Counsel for the Defence, PW1 responded thus:

“We are not saying that the Polytechnic should not be within the compound. We are saying we be allowed to have St. Luke’s Academy on the land. The school would not be private. It is true there is already Mucharage Primary School.

The Academy would still be available for the whole community and not just the Anglican community.”
38. As it turned out, his colleague PW2 who was the secretary of the said Academy confirmed that the proposed Academy would be a private school fully owned by the Plaintiffs. That position was indeed confirmed by PW3 – Ephantus Mathenge Kiragu.
39. It was rather interesting that while the Plaintiffs asserted that the 19.9 acres formerly comprised in the parcel known as Chinga/Gikigie/481 was donated by some 23 elders, they were themselves unclear as to how and when the donation took place. While it was probably true as captured in the Minutes of the County Council of Nyeri meeting held on 31st October, 1967 produced by the Plaintiffs in evidence, that some elders contributed part of the land, it was apparent from PW2’s testimony-in-chief and in re-examination that the County Council had itself contributed at least 10 acres of the disputed property.
40. From the records produced by the Defendant’s Principal Physical Planner Joseph Njomo (DW1) it was evident that contrary to the Plaintiffs assertions, the suit property was indeed a sub-division of L.R No. Chinga/Gikigie/467 (and not 481) which had the original 19.9 acres. That entire parcel had from the said records been reserved for what was termed Mucharage School.



41. Those records also revealed that sometime in the year 1967, the Plaintiffs made a request that the land on which the church stood be separated from that for the school. That request was acceded to on 31st January, 1967 and the said L.R No. Chinga/Gikigie/467 was sub-divided into Chinga/Gikigie/481 and 482. Parcel No. Chinga/Gikigie/482 measuring approximately 3 acres was reserved for the A.C.K church.
42. From the testimony of DW1, a decision was later made to separate land for the Primary School from that which was to be used as a Polytechnic. That was when L.R No. Chinga/Gikigie/481 was then sub-divided into Chinga/Gikigie/1517 which was reserved for the Mucharage Polytechnic and L.R No. Chinga/Gikigie/1518 which was reserved for Mucharage Primary School. That sub-division was done on 29th January, 1999.
43. Considering both the evidence adduced by the Plaintiffs and the Defendant, it was evident that indeed the suit land – Chinga/Gikigie/1517 was reserved for a technical institution for the benefit of the Mucharage Community. From a perusal of the Certificate of Official Search produced at the trial and dated 24th March 2003, it is clear that the property was reserved for A.C.K Mucharage Polytechnic with the Nyeri County Council as the registered proprietor. That can only mean that the church was considered as a sponsor of the polytechnic which remained the property of the community as held for them in trust in the name of the Defendant.
44. It was apparent from the Plaintiffs’ evidence that they had converted what was public land into use for their A.C.K St. Luke’s Academy without obtaining the necessary authorization. It was only when the pupils they had enrolled in the school reached class eight and were about to sit for the Kenya Certificate of Primary Education that they realized they needed the authorization. Their attempt to convert the public land into one for private use was thwarted when the Defendant rejected their application for registration.
45. Looking at the totality of the circumstances herein, I was unable to see how the Defendant could be blamed for defending the public interest. At any rate the Defendant has no power to change the status of the suit land as regards the user thereof without consultation with the local community in whose name it holds the land in trust. Its decision in my view was legal and within the law. Land acquired for a public purpose cannot be alienated, transferred or used in any other way than for the set public purpose.
46. It follows that I was not persuaded that there was any merit in the plaintiffs’ suit. The same is dismissed.
47. In the circumstances herein each party shall bear their own costs.
48. It is so ordered.

JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI THIS 29TH DAY OF FEBRUARY, 2024.

In the presence of:

Mr. Makura for the Plaintiffs

Mr. Muchiri wa Gathoni for the Defendants

Ms. Waweru holding brief for Gachomo for the Interested Parties

Court Assistant - Kendi

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J. O. Olola



JUDGE

