



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO.262 OF 2014**

**TRUSTEES CHRISCO CHURCH NAKURU.....PLAINTIFF**

**VERSUS**

**SAMWEL KIBOWEN TOWETT.....1<sup>ST</sup> DEFENDANT**

**ISAAC KIPKEMBOI TOWETT.....2<sup>ND</sup> DEFENDANT**

**CO-OPETATIVE BANK OF KENYA LTD.....3<sup>RD</sup> DEFENDANT**

**LAND REGISTRAR NAKURU COUNTY.....4<sup>TH</sup> DEFENDANT**

**ATTORNEY GENERAL.....5<sup>TH</sup> DEFENDANT**

**JUDGMENT**

*(Suit by the plaintiff seeking to bar the defendants from the suit land; plaintiff being a purchaser of land and holding the document of title from the seller; the defendants holding another title to the suit land; two registers also having been prepared, one in support of the plaintiff and the other in support of the defendant; title held by the plaintiff having significant inconsistencies with the register; Land Registrar not identifying with the title held by the plaintiff but affirming the title held by the defendants; from the evidence, the genuine title is that held by the defendants and not the plaintiff; suit dismissed)*

**PART A. INTRODUCTION AND PLEADINGS**

1. This suit was commenced by way of plaint on 22 September 2014. The plaintiff in its pleadings has described itself as a Religious Organization and averred that on 14 September 2010 it purchased from one Joseph Kiplangat Muge the land parcel Nakuru Municipality Block 8/36 (hereinafter also described as "the suit property") for a consideration of Kshs. 4 Million which was paid in full. It is pleaded that Joseph Kiplangat Muge had acquired the suit property from Rift Valley Hatcheries Limited and was issued with a Certificate of Lease on 13 May 2004. It is pleaded that upon purchase, the plaintiff took possession of the suit property which it uses for worship but on lodging the documents of transfer, the Land Registrar, Nakuru, sued as the 4th defendant (but wrongfully described in the body of the plaint as the 3rd defendant) failed to effect the transfer without any lawful reason. It is pleaded that on 26 August 2013, the 4th defendant fraudulently issued a new title deed to the 1st defendant who transferred the property to the 2nd defendant on 18 September 2013, without the consent or authority of Joseph Kiplangat Muge or the plaintiff. Among the particulars of fraud pleaded are that a new certificate was issued while the

original one existed and was held by the plaintiff, and that a new certificate of lease was issued in the knowledge that the property belonged to the plaintiff or to Joseph Kiplangat Muge. It is further pleaded that the Land Registrar could not have issued a new title without first cancelling the title held by Joseph Kiplangat Muge and that even then, the Land Registrar had no power to cancel any title, that being the mandate of the court. It is pleaded that in the month of May 2013, a loan was secured with the 3rd defendant over the suit property using the fraudulent title. It is averred that all entries in the illegally acquired title are null and void and should be removed from the Green Card.

2. In the suit, the plaintiff has asked for the following orders :-

*(a) A declaration that the plaintiff (or Joseph Kiplangat Muge) is the legal owner of LR No. Nakuru Municipality Block 8/36.*

*(b) A declaration that the Certificate of Lease issued to the 1st and 2nd defendants are null and void ab initio.*

*(c) A declaration that the loan granted to (sic) (probably meant "by") the 3rd defendant using the fraudulently obtained title is a nullity, the 3rd defendant (sic) (probably meant 2nd defendant) having no legal title to the suit land.*

*(d) A permanent injunction to issue against the 4th defendant from selling or transferring the suit land to any other party now or in future (sic) (probably meant 3rd defendant or 1st and 2nd defendants).*

*(e) An order to the 3rd defendant (sic) (probably meant 4th defendant) to cancel all title deeds issued to the 1st and 2nd defendants.*

*(f) Costs of the suit .*

*(g) Any other relief that this honourable court may deem fair and just to grant.*

3. Together with the suit, the plaintiff filed an application for injunction to stop the defendants from dealing with the suit land pending hearing and determination of the case. That application was compromised by an order of status quo, meaning that the plaintiff could continue being in occupation of the suit premises, which was then being used as a worship centre, until the case was finalized. All defendants filed defences to the suit.

4. In their statement of defence, the 1st and 2nd defendants pleaded that in the year 2013, they purchased the suit property from Rift Valley Hatcheries at a consideration of Kshs. 6,000,000/= and the property was thereafter transferred to the 1st defendant. The 1st defendant then transferred the property to the 2nd defendant who is his son. It is pleaded that Joseph Kiplangat Muge never had any right to sell the property to the plaintiff as he was not the legal owner of the suit property and that he had no title to pass. It was further pleaded that the area where the suit land is situated is an industrial area set aside for industrial purposes and not for religious purposes. It is pleaded that as owner, the 2nd defendant had the right to charge the property to secure a loan and that all entries in the white card are proper and in accordance with the law.

5. On its part, the 3rd defendant, has pleaded that the 2nd defendant approached it for a loan of Kshs. 5,000,000/= and offered the suit property as security. It is pleaded that before advancing the loan, the 3rd defendant carried out due diligence in verifying the authenticity of the title of the 2nd defendant and that an official search affirmed that the 2nd defendant was indeed the owner. The 3rd defendant has pleaded to be a stranger to the allegations of the plaintiff on the plaintiff's ownership of the land.

6. On the part of the 4th and 5th defendants, they pleaded that they are strangers to all the allegations of the plaintiff as pleaded in the plaint.

## **PART B : EVIDENCE OF THE PARTIES**

### **(i) The plaintiff's evidence**

7. PW-1 was Benjamin Cheruiyot Rotich. He testified that he is a member and trustee of Chrisco Church, Nakuru Worship Centre. He testified that in the year 2010, he was introduced to Joseph Kiplangat Muge by some land brokers whom he knew, since Mr. Muge had land that he was selling. He met Mr. Muge, who was hitherto not known to him, and they went to the suit property together with some other church elders. They were impressed by the land and made a decision to purchase it. They thereafter, on 14 September 2010, wrote a sale agreement before Mr. Kamonjo Kiburi Advocate. Before recording the sale agreement, they had on 9 September 2010, conducted an official search, which showed Mr. Muge to be the registered proprietor of the suit land having been issued with title on 12 May 2004. Upon purchase, they moved into the property, connected power and water, and laid a concrete slab, for purposes of putting up a church building. In the meantime, in January 2011, they erected a tent that could be used immediately for worshipping and they also put up a kitchen, a semi-permanent worker's house, a Sunday school tent and toilets. They utilized the premises until the end of the year 2013, when some people came and claimed that they owned the land and started digging trenches for purposes of putting up a fence. Among them was the 2nd defendant. They held discussions but they could not agree which prompted the filing of this suit. He testified that Mr. Muge died in the year 2013, before the 2nd defendant came to claim the land.

8. He testified that Mr. Muge handed over to them the original Certificate of Lease which was in his name and all other transfer documents. Their Advocate lodged these documents for registration but they got stuck there. On 18 October 2012, their Advocate wrote to inquire why the documents had not been registered and the response that he got from the Land Registrar, through a letter dated 5 November 2012, was that there are other persons claiming the same land but their identity was not disclosed. He then visited the office of the Land Registrar to know the fate of their transfer and was informed that there are two registers over the suit land. One register showed that the initial owner was Rift Valley Hatcheries who later effected a transfer to Joseph Kiplangat Muge who in turn obtained title on 12 May 2004. The second register showed Rift Valley Hatcheries as being the initial owners who then transferred the land to the 1st defendant on 26 August 2013.

9. He stated that when they purchased the land they found out that there was a restriction placed by the law firm of Odhiambo & Odhiambo Advocates, on account of unpaid Council Rates. They duly deposited the sum of Kshs. 80,000/= with the law firm and on 23 August 2011 the said law firm wrote a letter to the Municipal Council of Nakuru asking that the restriction be lifted. The restriction was later lifted on 17 September 2012.

10. Cross-examined by Mr. Waiganjo for the 1st and 2nd defendants, PW-1 testified that he was a trustee of the local Chrisco Church, not a trustee of the Chrisco National Church. He testified that save for the original Certificate of Lease, the other transfer instruments were retained at the Lands office. He stated that they paid Kshs. 4,000,000/= for the suit property. He affirmed that the Certificate of Lease that they hold is still in the name of Mr. Muge. The two registers and Lease Certificates were put to him and he acknowledged some discrepancies in the two documents. He also affirmed that the restriction for Council rates was not indicated in the register of land that they seek title under. He stated that he came to know of the pending rates when he was verbally informed by the Land Registrar. He was not previously aware that Rift Valley Hatcheries had interest in the suit land. He did not know that the land was reserved for industrial use as they did not carry out investigations on the user of the land. He stated that they got approval for putting up the church although he did not have any document to support this. He did not agree that the church was conned and that what they purchased was the fraudulent title.

11. In further cross-examination by Mr. Kisilah for the 3rd defendant, he stated that Chrisco exists as Christ Co-Workers Fellowship Church and that it was registered in the year 1978. The Nakuru Church is a branch of the main church. He affirmed that he was not a trustee of the national church but of the Nakuru branch and that one of the trustees of the main church are plaintiffs in this suit. He confirmed that there was no entity registered as Chrisco Church Nakuru or Trustees Chrisco Church Nakuru. He stated

that it was the mother church which was registered and it has its own trustees. He was not able to explain how title moved from Rift Valley Hatcheries, the original owners of the suit property, to Mr. Muge. He stated that consent to transfer was obtained but that it is among the documents retained by the Land Registrar. He did not have a copy or a letter asking for these documents. Neither did he have any document to show that Mr. Muge had cleared the rates although he did state that the Rates Clearance Certificate was forwarded to the Land Registrar. He did confirm that the original lessee in the two registers under dispute showed that Rift Valley Hatcheries were the first lessees but the Certificate of Lease that he held showed that Mr. Muge was the first lessee. He averred that the bank ought to have done due diligence by sending a valuer to the ground to confirm who was in occupation before charging the land.

12. In re-examination, he expounded that at the local level, Chrisco church has a body of elders and a Bishop who decide the running of the local church. He stated that they are recognized by the national office. He testified that in the agreement, the buyer was Chrisco Church Nakuru Worship Centre. He claimed that the Land's Office never raised an issue that the title they held was a forgery.

13. PW- 2 was Mr. Kamonjo Kiburi, an Advocate of the High Court of Kenya. He testified that he was instructed by one Peter Njeru to deal with a transfer over a parcel of land that a group of church members wanted to purchase. On 14 September 2010, he drew the sale agreement between Mr. Muge as vendor, and PW-1 and one Julius Gichobi as purchasers, the latter representing Chrisco Church members. The purchase price was Kshs. 4,000,000/= and Kshs. 600,000/= was paid immediately. The balance of the purchase price was to be paid in installments. When the parties came to record the sale agreement, they had the original title and search which had been conducted by PW-1. He produced the search and the receipt as exhibits. The transfer documents were also executed by the parties. There was however a hitch since the Municipal Council of Nakuru had sued through the case Nakuru HCCC NO. 63 of 2011 for rates. He testified that these were later cleared and the vendor availed the Clearance Certificate and consent to transfer. He then lodged the documents for valuation and transfer. For a long time, he was told to wait and he initially thought that this was due to inefficiency at the Land Registry. When the transfer took too long to be registered, he wrote to PW-1 on 23 July 2011, and advised him of the challenges he was facing and he asked him to try and follow up in person. On 19 October 2012, after seeing that a considerable amount of time had passed, he wrote to the Land Registrar asking for an explanation for the long delay. He received a response through a letter dated 5 November 2011 vide which the Land Registrar, a Mr. Nyantika, acknowledged receipt of the transfer documents but stated that there was in existence another register and two other persons claiming the same land. The letter did not however reveal the identity of these persons. He informed his clients of the contents of the letter and the matter went quiet for some time. At some point a CID officer came to him and stated that he was investigating the titles of the suit property. He asked for an explanation from Mr. Nyantika on the multiple registers and asked for his client's titles. They were however not returned to him as he was given the reason that titles in a suspect list are never returned. He was aware that his clients followed up on the release of the same. In May of 2014, he was informed that there was a person intending to register a charge and he prepared a caution which he presented on 6 May 2014. He was told to wait for two weeks but the caution was never registered nor returned to him.

14. In cross-examination, he inter alia stated that he never received any formal instructions from Chrisco Church or its Trustees. The persons he dealt with were PW-1 , Peter Njeru and Gichobi. He did not investigate whether Rift Valley Hatcheries ever had title to the suit land. He did not personally conduct any search or a historical search of the property.

15. PW- 3 was Presbyter Bonface Daniel Kaberi Gitau. He testified that he is the Bishop and Presbyter of Nakuru District 3. He explained that owing to its large size, Nakuru is divided into Districts. He became Bishop in Nakuru in the year 2005. He produced a copy of the Chrischo Church Constitution. He testified that in terms of structure, the Chrisco Church has an Apostle, the National Presbytry, the Trustees, then the elders who can also be appointed as trustees of the local church. He testified that he appointed PW-1 and Mr. Gichobi to be trustees for the purposes of the transaction in issue. He stated that they had the mandate of the Church and they undertook the transaction with his knowledge.

16. In cross-examination, he elaborated that a Presbyterian is the equivalent of a Bishop. He is the senior most officer of the Church in Nakuru. He testified that there is a Board of Trustees of Chrisco Fellowship which comprises of 6 persons who were not PW-1 nor Mr. Gichobi. He testified that he can appoint persons to act as trustees at the local level and stated that he is the one who appointed PW-1 and Mr. Gichobi. He did not have any written authority authorizing the filing of the case. He explained that the plaintiff, as described, only exists as a branch of the mother church. He stated that Mr. Gichobi and PW-1 are elders of the Nakuru Church. He was not personally involved in the sale agreement with Mr. Muge .

17. In re-examination, he stated that the Board of Trustees do not deal with the local church and that Mr. Gichobi and PW-1 had the mandate of the church to act in the transaction in issue.

18. PW-4 was Charles Kamau Mwangi. He testified that he has been a resident of Industrial Area Nakuru for a long time and that he has owned a plot of land in this area since the year 1977. He stated that at the same time he got his land from the Government, one Francis Mburugu was allocated the neighbouring land which measured about 13 acres. Mr. Mburugu then subdivided his land into several plots and sold them. He only remained with one plot which he let his sister and afterwards one Peter Kinugu to use. In the year 1998, Mr. Muge came to the plot and stated that President Moi wanted the plot for use by his company by name Rift Valley Hatcheries. On hearing the mention of the President's name, Mr. Kinugu left the land. Mr. Muge then took possession and started ploughing it until he sold it to Chrisco Church. He stated that Rift Valley Hatcheries never took possession of the plot nor did he ever see President Moi on it. He was not aware whether Mr. Muge acquired title to the said land. According to him, the property was owned by Francis Mburugu and not Rift Valley Hatcheries or President Moi.

19. In cross-examination, he testified that Mr. Muge first came to the land in the year 1987. He knew that he worked at Kabarak and he mentioned Rift Valley Hatcheries purposely to kick out the people who were occupying the land. He did not know who had been registered as owner.

20. PW-5 was one Kenneth Kariuki Githii. He is a retired Land Registrar and was working in Nakuru in the year 2004 upto the year 2008. He testified that he is the one who signed the entries into the register which led to Mr. Muge being registered as proprietor and who also signed Mr. Muge's Certificate of Lease. He testified that there was a transfer from Rift Valley Hatcheries and Clearance Certificates. These documents, he testified, are kept in the Deed File at the Registry. He explained that for leaseholds, there is a Green Card for the freehold title in the name of the Government, and a White Card which is opened in the name of the lessee. He stated that when he effected the transfer, he only saw the White Card relied upon by the plaintiffs which is what he believed existed.

21. In cross-examination, he testified that he was first employed in the year 1973 and he became Land Registrar in the year 1978. He confirmed that land is only supposed to have one Green Card and one White Card. He further testified that the information in the White Card should be the same as that reflected in the Certificate of Lease. He confirmed that there existed some discrepancies in the White Card and Certificate of Lease relied upon by the plaintiffs, regarding the name of the initial lessee, the size of land, the rent payable and the date of commencement of the leasehold title. He thought that these were typographical errors that could be corrected. He affirmed that the plaintiff's White Card was not certified. He was of the view that two titles can emerge due to human errors.

22. With the above evidence, the plaintiff closed his case.

**(b) Evidence of the defendants.**

23. DW-1 was Mr. Caleb Sunguti, the current District Land Registrar of Nakuru, having been posted to this registry in the year 2015. He testified that according to the documents in his possession, the current registered proprietor is the 2nd defendant who got registered as proprietor on 18 September 2013. He testified that from his records, the acreage of the land is 0.8039 Ha, which is a leasehold for 99 years. The first lessee was Rift Valley Hatcheries Ltd who got a 99 year old lease from the Government from 1 May 1983. He testified that the annual rent on the property is Kshs. 11,000/= per annum. He testified that on 27 January 2011, a restriction on the title was placed owing to accumulated Council rates. This restriction

was removed on 13 September 2012. The Certificate of Lease was on 17 August 2012, gazetted. A transfer from Rift Valley Hatcheries to the 1st defendant was done on 28 August 2013 at a consideration of Kshs. 6,000,000/= and on 18 September 2013, a transfer in favour of the 2nd defendant was effected. The Charge was registered on 15 May 2014. He was not aware of any other register. He was of opinion that what the plaintiff holds is the fraudulent title.

24. In cross-examination, he disputed the register displayed by the plaintiff showing Mr. Muge as proprietor. He also pointed out at discrepancies between the White Card and the Certificate of Lease held by the plaintiffs. In his view, these discrepancies were too glaring to be classified as mere typographical errors. He stated that the Certificate of Lease should reflect what is in both the Green Card and White Card. He explained that the first lessee is always reflected in the title document and this does not change. He had the certified copy of the transfer instrument from Rift Valley Hatcheries to the 1st defendant. He did not have any from Rift Valley Hatcheries to Mr. Muge. He did not have the original lease in the parcel file although it should be there. He stated that the Certificate of Lease was gazetted as lost and a new one issued on 18 October 2012 although he did not have documents of these.

25. DW- 2 was Ms. Susan Nabulindo, who is currently a Chief Land Registration Officer based in Nairobi. She was previously working in charge of the Nakuru Land Registry between March 2013 and March 2015. It is her who wrote to Mr. Kamonjo Kiburi informing her that what he had lodged for transfer did not tally with what they had on record and the same could not pass any title. In cross-examination, she testified that to come to that conclusion she looked at the Green Card on record. She did not see any Green Card to support the documents lodged by the plaintiff. She met Engineer Njeru and informed him that the documents that they held were not genuine.

26. DW-3 was the 2nd defendant. He testified that he is the son of the 1st defendant. He affirmed that he is the current registered proprietor of the suit land having become so registered on 18 September 2013. He stated that his father gave him this property. He testified that his father purchased the property from Rift Valley Hatcheries for Kshs. 6,000,000/= and the property was transferred to him. He then charged it to the 3rd defendant to secure a loan in the sum of Kshs. 5,000,000/=. He was of opinion that what the plaintiff hold is a fraudulent title. He had never met Mr. Muge before. He stated that after purchasing the land, he intended to put up a perimeter wall. He got approval from the County Government of Nakuru to erect the wall after paying land rates. He produced rent and rates payment receipts and clearance certificates and approval of the building plan to erect the intended wall. He stated that before transfer of the land to the name of his father, the Municipal Council demanded rates of Kshs. 6, 179,825/= from Rift Valley Hatcheries. An amount of Kshs. 1, 192, 331/= was paid after waiver of penalties. He testified that the plaintiffs are intruders on his land and event the tent that they have erected is illegal.

27. DW- 4 was Eric Samwel Njuguna. He is a business banker with the 3rd defendant bank. He testified that the 2nd defendant applied for a loan of Kshs. 5 million which was granted on security of the suit property. Before the charge was registered, a search was done, which showed the 2nd defendant as the registered owner and there were no restrictions. Nowhere was Chrisco Church indicated as having an interest in the land.

28. With the above evidence, the defendants closed their case.

## **PART C : SUBMISSIONS OF COUNSEL**

29. In his submissions, Mr. Kimatta, learned counsel for the plaintiff, submitted inter alia that the plaintiff produced a search which showed that Joseph Kiplagat Muge was the registered proprietor of the suit property. He submitted that Rates Clearance Certificates and Consent from the Commissioner of Lands showed the name of Mr. Muge. He also submitted that the plaintiff had produced approved building plans from the Municipal Council of Nakuru. He pointed out that three registers had been tabled and that it is the one relied upon by the plaintiff which is genuine. He submitted that no sale agreement had been produced between the 1st defendant and Rift Valley Hatcheries Limited. He submitted that the genuine title documents, those relied upon by the plaintiffs, were removed in the Land's office and substituted with those forged in the year 2013. He also questioned the charge, of which he submitted that a valuation

would have revealed that it is the plaintiffs on the suit land.

30. On his part, Mr. Waiganjo for the 1st and 2nd defendants, submitted inter alia that the pleadings of the plaintiff are faulty in the prayers as sought as against the parties. He pointed out that no amendment was ever done. He also submitted that the plaintiff lacks locus to institute the suit as there was no evidence that Benjamin Rotich who signed the verifying affidavit is a trustee of the plaintiff. He submitted that according to the Chrisco Constitution, the functions of a local church do not involve the acquisition of property which are vested in the Board of Trustees. He submitted that it is most likely that the trustees of Chrisco Church are not aware of this case. On the merits of the case, he submitted that the evidence showed that there was no application for any change of user as required by the Physical Planning Act. He was of the opinion that the registers and Certificate of lease relied upon by the plaintiff are the fraudulent documents. He also faulted the plaintiff for not enjoining the estate of Joseph Kiplangat Muge as parties to the case. He submitted that no fraud had been proved by the plaintiff.

31. Mr. Kisilah, learned counsel for the 3rd defendant, narrowed down three issues. The first was whether the plaintiffs have locus standi, the second whether the plaintiffs have any proprietary interest, and the third, whether the 3rd defendant conducted due diligence. On locus standi, he submitted that the plaintiff has none. He submitted that Chrisco Church has trustees and that the plaintiffs are not its trustees. He submitted that there is no legal entity known as Chrisco Church Nakuru which is registered under the Societies Act or any other registration system. He relied on several authorities to buttress his position. On the merits of the case, he submitted that the entries in the 2nd defendant's title are reflective of the white card in the Land Registry. He also submitted that the Bank conducted proper due diligence before charging the property.

32. Mr. Kirui, learned State Counsel, acting for the 4th and 5th defendants, inter alia similarly pointed out at discrepancies in the pleadings and prayers sought by the plaintiff against the parties. He also submitted that there was no evidence that the plaintiff is a registered entity and submitted that the plaintiff is actually a non-existent entity. He submitted that the Land Registrar gave evidence on who is the owner of the suit property which position did not support the plaintiff. He submitted that the documents held by the plaintiff are forgeries. He submitted that the plaintiffs did not do due diligence before purchasing the property as only a search was not good enough.

#### **PART D : ANALYSIS AND DECISION**

33. It is with the above pleadings, evidence and submissions that I need to pass judgment over this matter. 34. Three issues have clearly emerged, being :-

*(i) Is the plaint defective as drawn ?*

*(ii) Does the plaintiff have locus standi to bring this suit ?*

*(iii) Who is the proper registered owner of the suit property and does the plaintiff deserve to exercise any proprietary rights over the suit land?*

35. I will address these points here below.

#### ***Issue 1 : Is the plaint defective as drawn ?***

36. The issues raised by counsels for the defendants in their submissions, relate to the numbering of the plaint and the identification of the prayers sought as against the parties. There is a clear misidentification of the parties and also the prayers are misdirected. I pointed out this at the beginning of this judgment but I do not think that the issue is so great as to bring ambiguity. I think it can be read between the lines which prayers are being sought against which party and I do not think that there has been any prejudice occasioned to the parties by the poor drafting of the plaint. I wouldn't therefore want to dwell too much into this point, for I think that it is a matter that is curable under Article 159 of the Constitution and I will leave it at that.

## ***Issue 2: Does the plaintiff have capacity/locus standi ?***

37. The plaint describes the plaintiff as a "religious organization." It does not state under which law this "religious organization" is registered under and the plaint does not state whether or not this "religious organization" has capacity to sue or to be sued. The verifying affidavit to the plaint is sworn by Benjamin C. Rotich who has described himself as one of the trustees of the plaintiff "religious organization." It did emerge in evidence that the plaintiff is actually not a religious organization. What was revealed is that there is a registered organization known as Chrisco Fellowship which is a church organization registered under the Societies Act. Chrisco Fellowship has an Apostle and a Board of Trustees. The organization is spread across the country in the form of what I would refer to as "local churches" and the description Chrisco Church Nakuru, can only refer to one of the local churches of Chrisco Fellowship. The local church is not incorporated under the Societies Act, or indeed under any other statute, and it follows that it has no legal capacity. Neither does the local church have trustees who are registered under the Trustee (Perpetual Succession) Act, and therefore there is no body of persons who can be described as Trustees Chrisco Church Nakuru, which is the description given in the plaint. Benjamin C. Rotich, who swore the verifying affidavit and in it described himself as one of the trustees of the plaintiff, therefore gave a wrong description of the person who has purportedly come to this court as plaintiff. The entity with legal capacity and which has mandate to sue and to be sued is Chrisco Fellowship. Strictly speaking I have no plaintiff before me for the reason that the plaintiff as described is not a recognized "religious organization" with capacity to sue and to be sued. The local church could probably have sued, but through individuals who would be representing the body of persons who fellowship in that local church, but for this, they would have needed the mandate of this body of persons, through an authority to sue, and the case would have ended up being a representative suit on behalf of these persons. But that is not what I have before me. I have no plaintiff before me and therefore have no sustainable suit. The case automatically fails for want of capacity. I want to seize this moment to advise any advocate, before filing suit, to confirm the legal capacity of the person who has given him/her instructions, so that the issue of capacity does not derail the hearing of the case. It is a fundamental threshold, for legal suits and indeed rights and obligations, can only be maintained by entities which have legal capacity.

## ***Issue 3 : Who is the proper registered owner of the suit land and does the plaintiff deserve to exercise any proprietary rights over the suit land?***

38. Without prejudice to the holding that the named plaintiff has no legal capacity to sue, the persons who presented themselves to this court, have not demonstrated to me that what they hold is a good title which deserves protection.

39. It emerged in evidence that there are two registers and two Certificates of Lease over the suit land. Both parties adduced a wealth of evidence to support the Certificates of Title that they hold. After going through the evidence, I am not persuaded that the persons who presented themselves as plaintiffs in this case have demonstrated that what they hold is a good title and what the defendants hold is a fraudulent title.

40. The title documents that the persons who testified for the plaintiff presented show that the original allottee is Rift Valley Hatcheries Limited. From the Register that is the White Card presented by the plaintiff, the original lessee is Rift Valley Hatcheries holding a term of 99 years from 1 May 1983 at an annual rent of Kshs. 11,000/=. The land is said to measure 0.8039 Ha. The first entry in the said White Card shows that the said Rift Valley Hatcheries became registered as lessors on 15 January 1985. The second entry shows that a Certificate of Lease was issued on 18 January 1985. The third entry is transfer to Joseph Kiplagat Muge and the same was entered on 12 May 2004. The fourth entry shows that a Certificate of Lease was issued presumably to the said Joseph Kiplagat Muge. The 5th and last entry is a restriction for Municipal Rates which was entered on 10 February 2009.

41. There was consensus from the land officials who testified, that the entries in the White Card need to be reflected in the Certificate of Lease.

However, when I look at the Certificate of Lease that the plaintiff holds, the same has glaring

inconsistencies. First, the area of the land is said to be 0.8612 Ha, and not the 0.8039 Ha shown in the White Card. The Certificate of Lease shows that the lease is from 1 December 1997 for a term of 99 years at an annual rent of Kshs. 2,200/= . This as will be discerned is different from what is in the White Card which as I have noted above, shows that the lease is from 15 January 1985 for a term of 99 years at an annual rent of Kshs. 11,000/=. The property section in the Certificate of Lease also shows that the original lessee is Joseph Kiplangat Muge and not Rift Valley Hatcheries Limited as noted in the White Card.

42. The above inconsistencies are in contrast to what the defendants produced. The Certificate of Lease of the defendants and the White Card tally in all respects. They show that the original lessee is Rift Valley Hatcheries who held the lease for a term of 99 years from 1 May 1983 at an annual rent of Kshs. 11,000/=. The area of the land is 0.8039 Ha. The other entries show a restriction for Municipal Rates and the transfer to the 1st then the 2nd defendant. I have not noted any anomalies between the White Card and the Certificate of Lease.

43. I am afraid that the plaintiff has not offered a good explanation as to why the entries in the White Card that they have and the entries in the Certificate of Lease that they hold are different. There was attempt to wish this away as "typographical errors" but surely, these cannot be said to be typographical errors as they are in all respects a series of glaring anomalies.

44. Also of significance is the evidence of DW-1, the current Land Registrar. He did testify that according to their records, the genuine register and certificate of title is that held by the 2nd defendant and not that of the plaintiff. I cannot wish away that important bit of evidence without having good reason to do so since the Land Registrar is the custodian of land documents and the plaintiff has not demonstrated to me that what the Land Registrar holds is not the genuine title.

45. There is absolutely no support for the plaintiff's title. Nobody from Rift Valley Hatcheries Ltd was called to affirm that indeed they sold the land to Joseph Kiplangat Muge. Neither did anybody from the family of Joseph Kiplangat Muge come to testify that indeed Mr. Muge held a good title to the land. The evidence of these persons would have been significant to trace the path that Mr. Muge took in order to become the registered proprietor. The evidence of PW-4 in my view was not of much worth to give support to the document of title in the name of Mr. Muge.

46. Given the inconsistencies in the title held by the plaintiff and the evidence of the Land Registrar, which I am unable to fault, and the fact that the title of the plaintiff is unsupported from any relevant quarter, I find it difficult to hold that what the plaintiff has is a good title and in the same vein, I am unable to impugn the register and the Certificate of title held by the 2nd defendant.

47. Thus, even on merits, the plaintiff still fails in its suit.

48. Given the above, I have no option but to dismiss the plaintiff's case with costs to the defendants. The costs of the suit will be paid by the person who authorized its filing, and that is Benjamin C. Rotich who swore the verifying affidavit. I say so, because the capacity of the named plaintiff is questionable.

49. Since I have dismissed the case of the plaintiff, there is no basis upon which the persons who have brought this suit can state that they have a right to utilize the property as a church or in any other way. The 2nd defendant deserves to fully enjoy his property to the exclusion of all others. I would have ordered for an immediate vacation, but what I have before me appears to be a church congregation and they will need some time to reorganize themselves and get alternative accommodation. For that reason, and in my discretion, I give them 90 days to vacate. They also need to restore the premises to the state that they found it or to the satisfaction of the 2nd defendant. There is no counterclaim for mesne profits nor damages and I will therefore not award any to the 2nd defendant.

50. Judgment accordingly.

**Dated, signed and delivered in open court at Nakuru this 20<sup>th</sup> day of September 2017.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of :**

Mr. Kimatta present for the plaintiff.

Ms. Wangari B. present for the 1<sup>st</sup> and 2<sup>nd</sup> defendants.

Ms. Sambu holding brief for Mr. Kisilah for the 3<sup>rd</sup> defendant.

Mr. Kiprotich Kirui of the State Law Office present for the 4<sup>th</sup> and 5<sup>th</sup> defendants.

Court Assistant : Toroitich

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**