



**Gachoki & 3 others (Suing as Pastor in charge, Chairman, Secretary and Committee Members respectively on grounds Truth Church) v Mwendwa & 2 others (Environment & Land Case 460 of 2013) [2024] KEELC 646 (KLR) (15 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 646 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA**  
**ENVIRONMENT & LAND CASE 460 OF 2013**  
**JM MUTUNGI, J**  
**FEBRUARY 15, 2024**

**BETWEEN**

**JOHN GACHOKI ..... 1<sup>ST</sup> PLAINTIFF**  
**BENJAMIN MUCHIRI ..... 2<sup>ND</sup> PLAINTIFF**  
**HOSEA MWANIKI ..... 3<sup>RD</sup> PLAINTIFF**  
**ROBERT NYAGA ..... 4<sup>TH</sup> PLAINTIFF**  
**SUING AS PASTOR IN CHARGE, CHAIRMAN, SECRETARY AND**  
**COMMITTEE MEMBERS RESPECTIVELY ON GROUNDS TRUTH CHURCH**

**AND**

**SILAS MWENDWA ..... 1<sup>ST</sup> DEFENDANT**  
**SYMON NJERU MUKUOGO ..... 2<sup>ND</sup> DEFENDANT**  
**JOTHAM N W NGURE ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiffs instituted the present suit by way of a Plaint dated 13<sup>th</sup> May, 2009. The Plaintiffs sought a declaration that the sale of land parcel Kirinyaga/Gathigiriri/1398 was done fraudulently, was illegal and unlawful and that the same be retransferred back to the original proprietor. “The Ground of Truth Church”. The Plaintiffs further prayed for costs of the suit. The Plaintiffs were vide a Ruling delivered on 14<sup>th</sup> February 2020 granted leave to amend the Plaint essentially to introduce the 4<sup>th</sup> Defendant, “The Ground of Truth Registered Trustees” as party. The 1<sup>st</sup> and 3<sup>rd</sup> Defendants filed separate defences. The 3<sup>rd</sup> Defendant through his amended defence and Counterclaim dated 23<sup>rd</sup> November 2015 claimed ownership of land parcel number Kirinyaga/Gathigiriri/1398 and by way of Counter Claim prayed for orders as follows:-



- a. A declaration that the Plaintiffs by themselves, their agents and/or servants have trespassed on L.R. Kirinyaga/gathigiriri/1398.
  - b. An order for eviction of the Plaintiffs, their agents and/or servants from L.R Kirinyaga/gathigiriri/1398
  - c. General damages for trespass and mense profits.
  - d. Costs of the suit and Counter Claim.
  - e. Interest on (d) here above at Court rates.
2. The 2<sup>nd</sup> and the 4<sup>th</sup> Defendant did not appear and/or file any pleadings.
  3. The suit was part heard before Cheron, J who took the evidence of the Plaintiffs. The 1<sup>st</sup> Plaintiff testified as the only witness in support of the Plaintiffs case on 12<sup>th</sup> June 2019 before they closed their case. The Plaintiffs application vide a Notice of Motion dated 14<sup>th</sup> March 2022 seeking to reopen the Plaintiffs case to adduce further evidence was dismissed by the Court on 22<sup>nd</sup> July, 2022.
  4. The defence case was heard before me on 23<sup>rd</sup> March 2023 when the 1<sup>st</sup> and 3<sup>rd</sup> Defendants testified. The 2<sup>nd</sup> Defendant was stated to have died during the cause of the proceedings and having not been substituted, the suit against him invariably abated.
  5. PWI Pastor John Muchoki testified that he was a pastor with the Ground of Truth Church based at Wang'uru in Kirinyaga County. He stated that he, the 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs had instituted the suit on behalf of the Church against the Defendants. The witness testified that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were members of the Church's Branch in Chuka, Meru. He stated the 1<sup>st</sup> Defendant was the Secretary of the Branch of the Church at Chuka and that the 2<sup>nd</sup> Defendant Symon Njeru was a member of their church at Chuka and was one the Trustee Members. He stated the 3<sup>rd</sup> Defendant was not a member of their Church. The witness as part of his evidence relied upon and adopted his witness statement dated 26/4/2016 and the documents itemised in the list of documents as "PEX 1 to 8". The documents were admitted in evidence and produced as Plaintiff's exhibit Nos. 1 to 8 as listed.
  6. The witness (PW1) testified that land parcel Number Kirinyaga/Gathigiriri/1398 was registered in the name of the Church but the 1<sup>st</sup> Defendant who was a Trustee unlawfully sold the same to the 3<sup>rd</sup> Defendant. He stated that they wanted the property to be reverted back to the Church and the Counterclaim by the 3<sup>rd</sup> Defendant dismissed with costs.
  7. Under cross-examination PWI conceded that under the certificate of Incorporation of the Church the Trustees had authority to deal with the properties of the Church which would include sale of the same. He stated clause 6 of the certificate of incorporation mandated the Trustees to hold immovable property and deal with the same as the Constitution of the Church permits. Clause 6 of Certificate of incorporation ('PEXI') provides as follows:-
    - 6) The Trustee may hold all land, buildings and other immovable property and all investments and securities in the Republic of Kenya that maybe vested in them by way of purchase, acquisition, donation, gift or other assurance which may hereafter be lawfully made.
  8. PW1 in further cross examination affirmed he had never been a trustee of the church and that as per the certificate of Incorporation (PEX1) none of the Plaintiffs was shown to be a trustee of the Church. He admitted the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were registered as Trustees as per the certificate of Incorporation. The witness further asserted the sale of the land was effected when there was a restriction on the



- land. He stated that he occupies a portion of the land and that the 3<sup>rd</sup> Defendant has not given him permission to occupy the land as the land belongs to the Church.
9. PWI in further Cross examination denied having been issued a letter in 2002 directing him to cease from acting as a pastor of the Church. He admitted that on 9/7/2009 he and the Defendants attended a meeting with the DO where the dispute relating to the suit property was discussed. He stated that the Defendants had wanted him to vacate from the suit land but he stated he was still occupying the suit land and lived on the land with his family. The witness admitted there was a case in Wang'uru Magistrates Court No. 38 of 2009 where he had been sued by the 1<sup>st</sup> Defendant to vacate the suit land but the case was withdrawn.
  10. DWI Silas Mutege Mwendwa in his evidence relied and adopted on his witness statement dated 5<sup>th</sup> April 2016 and the list of documents filed in Court on 12<sup>th</sup> April 2016. The documents were admitted as 1<sup>st</sup> Defendant's exhibits 1 to 3 respectively as listed.
  11. In Cross examination the 1<sup>st</sup> Defendant (DW1) stated that he was a Trustee of the Ground of Truth Church which was registered in 1972. He stated he joined the Church in 1993 and in 1996 he was appointed as a Trustee as evidenced by the Trust Deed (Certificate of Incorporation) exhibited as "DEX2". He stated that though the term of the Trustees was Three years there was Provision for renewal of the term and since there had been no re-election of the Trustees, the initial Trustees remained in office. He stated on 22/5/2009 when the agreement of sale of the suit land to the 3<sup>rd</sup> Defendant was entered into he was still a Trustee of the Church since no elections had been held for new Trustees. He stated the Trustees were the custodians of the Church property. He explained in his witness statement that the 2<sup>nd</sup> Defendant (now deceased) was also a Trustee of the Church. He stated he was the Chairman of the St. Lydia Branch, a branch of the Ground of Truth Church and that they opened a Ministry in Gathigiriri, Mwea where the 1<sup>st</sup> Plaintiff was appointed as the overseer of the branch in 1998. He stated the suit property was bought and registered in the name of the Church.
  12. The witness explained that after the Church bought the land, the intention was to build a Children's Home at Gathigiriri. He stated materials for construction were procured and the building commenced but there was not enough money to complete the project. He stated the Church incurred debts in buying the materials and as they could not raise enough money to complete the construction they decided to sell the land to pay off the debt incurred by the Church.
  13. DWI explained that on 9/7/2009 they attended before the Land Control Board and consent for the sale was granted on the terms recorded before the Chief as per the minutes produced as "DEX 3" duly endorsed by the Chief. DW1 explained that at the time he bought the land for the Church, he made no consultation and hence it was his view that the trustees needed not make any consultations before selling the land. He further stated he had sued the 1<sup>st</sup> Plaintiff at Wang'uru Magistrate's Court to have him removed from the land. He stated further that he was the one who put the 1<sup>st</sup> Plaintiff onto the land to take care of the land. He stated at the time he allowed him onto the land, he was part of his (DWI's) Church grouping but the 1<sup>st</sup> Plaintiff later aligned himself to another grouping leading to his ex-communication from the Church.
  14. In re-examination DWI confirmed all the Plaintiffs were present at the meeting held at the DO's Office at which the Chief was in attendance as well as other members of the Church. He stated the Plaintiffs agreed to the sale of the land and that the 1<sup>st</sup> Plaintiff agreed to vacate from the land within 6 months from the date of the meeting as per minute 2 of "DEX 2" and further that the case at Wang'uru Magistrate's Court would be withdrawn unconditionally.



15. DW2, Jotham Nguire (3<sup>rd</sup> Defendant) in his evidence in chief adopted the contents of his witness statement dated 5/4/2016 and relied on the bundle of documents as per the list dated 11/4/2016. The documents were admitted in evidence as “D3 EX 1 – 4”.
16. DW 2 stated that he purchased land parcel Kirinyaga/Gathigiriri/1398 on 22/5/2009 from the Group of Truth Church who had approached him through the 1<sup>st</sup> Defendant who was a Trustee of the Church. He stated he dealt with the 1<sup>st</sup> Defendant as the representative of the Church. In Cross examination he affirmed that on 9/7/2009 he attended a meeting at D.O’s Office at which the Plaintiffs and the 1<sup>st</sup> Defendant were present. He stated that at the meeting both the Plaintiffs and the 1<sup>st</sup> Defendant confirmed the sale. He stated he obtained title to the land in 2009 but has not been able to utilise the land since the Plaintiffs have not allowed him to take possession.
17. Following the closure of the trial the parties filed their final written submissions as per the Court’s directions. The Plaintiffs filed their submissions dated 14<sup>th</sup> July 2023 while the Defendants filed their submissions dated 12<sup>th</sup> July 2023. I have duly reviewed the pleadings, the evidence and I have considered the submissions filed on behalf of the parties. The following are the issues that arise for determination:-
  - i. Whether there was a sale agreement between the Ground of Truth Church and Jotham N W. Nguire of land parcel Number Kirinyaga/Gathigiriri/1398?
  - ii. If there was such a sale agreement whether the sale agreement was entered into fraudulently?
  - iii. Whether the 3<sup>rd</sup> Defendant was a bonafide purchaser for value, and if so, whether he is entitled to the orders he seeks in the Counterclaim?
  - iv. What orders/reliefs should the Court grant?
18. At the outset it is evident that this is a case where there two rivalling factions in a Church, one faction spearheaded by the 1<sup>st</sup> Plaintiff and the other faction by the 1<sup>st</sup> Defendant. It is not controverted that the 1<sup>st</sup> Defendant was amongst the founder members of The Group of Truth Church at least within Kirinyaga County. The certificate of Incorporation of the “Ground of Truth Registered Trustees” dated 19<sup>th</sup> March 1996 shows that the 1<sup>st</sup> Defendant and the 2<sup>nd</sup> Defendant were among the initial four (4) Trustees of the Church. The 1<sup>st</sup> Defendant testified that he appointed the 1<sup>st</sup> Plaintiff to be overseer of the Church’s Ministry in Mwea, Kirinyaga but when groupings emerged in the Church and the 1<sup>st</sup> Plaintiff aligned himself to a rival grouping he was excommunicated from the Church.
19. As per the certificate of Incorporation and the Constitution of the Church, it is clear that the Trustees of the Church were the custodians of the Church properties and the persons given the mandate to deal with such properties in accordance with the Church Constitution. As per the evidence adduced by the parties, it is not disputed that both the 1<sup>st</sup> and 2<sup>nd</sup> Defendants as per the Certificate of Incorporation of the Trust Deed dated 19<sup>th</sup> March 1996 were appointed amongst the founding Trustees. The Plaintiffs did not adduce any evidence to demonstrate that the Trustees appointed at the time of Incorporation were ever removed from office or any change of Trustees was registered. There was no evidence adduced from the Registrar of documents to show there had been any change of Trustees of the Church. In the absence of any such evidence, the Court finds that as at 2009 the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were still duly registered as Trustees of the 4<sup>th</sup> Defendant and therefore could lawfully represent the Church.
20. The 1<sup>st</sup> Defendant testified that the Church had incurred a debt when they were undertaking a Children’s Home project which they could not complete owing to lack of money and hence it was agreed that the suit property be sold to pay the debt. The 1<sup>st</sup> Defendant testified that they as Trustees with the 2<sup>nd</sup> Defendant, entered into an agreement for sale of the suit property with the 3<sup>rd</sup> Defendant



dated 22/5/2009 exhibited by the 3<sup>rd</sup> Defendant as “D3 EX 1”. The agreement was signed by the 1<sup>st</sup> and 2<sup>nd</sup> Defendant as Trustees representing the Church as the vendors and by the 3<sup>rd</sup> Defendant as the purchaser. As per the agreement the purchaser paid Kshs 80,000/- on execution of the Agreement and the balance of the purchase price of Kshs 220,000/- was to be paid after the consent of the Land Control Board was obtained.

21. On the evidence adduced I am satisfied that indeed there was an agreement of sale entered into between the Church (represented by its Trustees) and the 3<sup>rd</sup> Defendant. That was the agreement dated 22/5/2009.

#### **Was the sale agreement entered into fraudulently?**

22. The Plaintiffs in their pleadings averred the agreement was entered into fraudulently. On the particulars of fraud the Plaintiffs alleged conspiracy amongst the Defendants as the Plaintiffs and other Committee members were not notified of the sale and that due process as under the Church’s Constitution was not adhered to. Clause 11 (a) and (b) of the Constitution of the Church that the Plaintiffs cite as having been breached affirms that all properties of the church would be vested in the hands of the Trustees. There was no evidence that the 1<sup>st</sup> and 2<sup>nd</sup> Defendant had been removed from being Trustees. The Constitution provided that Trustee could be removed through retirement after completing their terms but were in any event eligible for re-appointment. Any vacancies in the office of Trustees under Clause 11 of the Constitution could only be filled at a general meeting through election. No evidence was led to show that the offices of Trustees held by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were replaced at any general meeting. In my view the 1<sup>st</sup> and 2<sup>nd</sup> Defendants would only have ceased to be Trustees if they were formally removed and replaced at a regularly convened general meeting of the Church. They were therefore in my view still Trustees of the Church in 2009 when they entered into the sale agreement with the 3<sup>rd</sup> Defendant.

Under Clause 5 of the Trust Deed at least two Trustees were required to sign any instruments that required to be executed by the Church. Clause 5 of the Deed provided as follows:-

5. The common seal shall be kept in the custody of the Secretary and shall not be affixed to any instrument except in the presence of at least two Trustees who shall sign every instrument to which a common seal is so affixed.

23. In the instant case the 1<sup>st</sup> and 2<sup>nd</sup> Defendants as Trustees executed the sale agreement, the application for the consent of the Land Control Board and the Form of Transfer. This satisfied the requirement for at least two Trustees to execute the instruments on behalf of the Church. On the evidence adduced, there is nothing to suggest the 3<sup>rd</sup> Defendant in entering into the sale transaction was not acting in good faith. The 1<sup>st</sup> and 2<sup>nd</sup> Defendant presented themselves as Trustees of “The Ground of Truth Church” who had authority to act for and on behalf of the Church. The 3<sup>rd</sup> Defendant without doubt dealt with the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on the basis that they were the Trustees and had authority to enter into the sale transaction. The 3<sup>rd</sup> Defendant in my view was acting in good faith and was indeed a bonafide purchaser for value without any notice of any defect in the title of the land he had agreed to purchase. He would not have been expected to be privy to the internal workings of the church.
24. The 3<sup>rd</sup> Defendant, if he had any reservations respecting the transaction, any such reservations were erased following the joint meeting the Plaintiffs and the Defendants held at the DO’s Office in the presence of the Chief and the Assistant Chief on 9/7/2009. It is noteworthy that the 1<sup>st</sup> Plaintiff admitted there was such a meeting and that he and other members of the Church attended the meeting. The minutes of that meeting were exhibited by the 3<sup>rd</sup> Defendant and the attendees included all the four (4) Plaintiffs and the 1<sup>st</sup> and 3<sup>rd</sup> Defendants. Amongst the issues agreed at the meeting was that



the sale of the land was allowed to proceed against the balance of the purchase price being paid; The 1<sup>st</sup> Plaintiff was to be allowed by the purchaser a period of 6 months upto December 2009 within which to vacate from the land; that the suit against the 1<sup>st</sup> Plaintiff in Court (at Wang'uru) be withdrawn unconditionally; and finally that the purchaser was to agree on compensation of any developments on the land and if there was no agreement the developments to be removed. It was after this meeting that the 3<sup>rd</sup> Defendant paid the balance of the purchase price as per the endorsement on the sale agreement on 18<sup>th</sup> July 2009, the consent of the Land Control Board was issued and the transfer executed by the parties.

25. The Plaintiffs in their submissions have questioned the authenticity of the minutes but I find no basis. While the meeting was held on 9/7/2009 there can be no issue with the attendees signing the same on 10/7/2009. The minutes had to be prepared and made ready for signing. I believe that is what happened. On the basis of the outcome of the meeting of 9/7/2009 it was in order for the D.O who was the Chair of the Divisional Land Control Board where the local Chief is equally a member, to issue a letter of Consent in regard to the application for consent of the Land Control Board dated 11/6/2009 that was pending before the Board. The Chief and the Assistant Chief who both endorsed the minutes by signing had no personal interest in the matter and had no reason to sign minutes that were incorrect and/or which were doctored. It is my finding that minutes must be a proper representation of what transpired at the meeting.
26. It is rather intriguing that the 1<sup>st</sup> Plaintiff would after a short spell of just about four (4) months after reaching agreement with the Defendants make a turn around and institute the instant suit. No doubt the 1<sup>st</sup> Plaintiff must have come to the realisation that he had just about one (1) month to vacate as the month of December 2009 by which time he was required to vacate was fast approaching. They had reached a compromise and he ought not to be allowed to renege. The 3<sup>rd</sup> Defendant had allowed him time to vacate while the 1<sup>st</sup> Defendant had presumably caused the case against the 1<sup>st</sup> Plaintiff at Wang'uru Magistrate's Court to be withdrawn. The 1<sup>st</sup> Plaintiff wanted to take advantage and the present suit in my view is an abuse of the Court process and is unsustainable.
27. The 3<sup>rd</sup> Defendant it is admitted is the registered owner of the suit property though no document evidencing title was tendered in evidence.
28. The Plaintiffs under paragraph 6 of the Plaint pleaded that the property was transferred to the 3<sup>rd</sup> Defendant on 14<sup>th</sup> July 2009 and therefore agree the 3<sup>rd</sup> Defendant is the registered owner. Under paragraphs 10 and 11 of the Counterclaim the 3<sup>rd</sup> Defendant pleaded as follows:-
  10. The 3<sup>rd</sup> Defendant stated that he is the registered proprietor of LR Kirinyaga/Gathigiriri/1398.
  11. The Plaintiffs have refused to vacate the suit land despite selling it to the 3<sup>rd</sup> Defendant and duly transferring the same in his favour.
29. The Court has found the transfer to the 3<sup>rd</sup> Defendant was proper and validly done. The 3<sup>rd</sup> Defendant as the registered proprietor of the suit property is entitled and is vested with the rights of ownership under Section 24 and 25 of the [Land Registration Act](#) 2012. He is entitled to have exclusive possession and right to use the land. The Plaintiffs occupation and use of the land violates the 3<sup>rd</sup> Defendant's right to own and use his land. The Plaintiffs are in trespass over his land and should vacate and yield possession. As it is apparent the Plaintiffs had as far back as 2009 agreed to vacate and renege, the 3<sup>rd</sup> Defendant are entitled to nominal damages for trespass and I award general damages of Kshs 100,000/- on that account.



30. The upshot is that I find the Plaintiffs have failed to prove their case, on a balance of probabilities and I dismiss the same with costs to the 1<sup>st</sup> and 3<sup>rd</sup> Defendants. I find and hold that the 3<sup>rd</sup> Defendant has proved his Counterclaim on a balance of probabilities and enter Judgment in his favour on the Counterclaim as against the Plaintiffs jointly and severally on the following terms:-
- i. A declaration that the Plaintiffs by themselves, their agents and/or servants have trespassed on LR No. Kirinyaga/Gathigiriri/1398.
  - ii. The Plaintiffs, their agents and/or servants are ordered to vacate and yield vacant possession of land parcel Kirinyaga/Gathigiriri/1398 within sixty (60) days from the date of this Judgment failing which an order of eviction of the Plaintiffs to issue on application by the 3<sup>rd</sup> Defendant.
  - iii. The 3<sup>rd</sup> Defendant is awarded Kshs 100,000/- general damages for trespass with interest at Court rate from the date of the Judgment.
  - iv. Costs of the Counterclaim are awarded to 3<sup>rd</sup> Defendant.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY VIA VIDEO LINK THIS 15<sup>TH</sup> DAY OF FEBRUARY 2024.**

**J. M. MUTUNGI**

**ELC - JUDGE**

