



**Revelation Mission Centre v African Church of the Holy Spirit (Civil Appeal E004 of 2022) [2023] KECA 1020 (KLR) (16 June 2023) (Judgment)**

Neutral citation: [2023] KECA 1020 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPEAL E004 OF 2022  
W KARANJA, J MOHAMMED & AO MUCHELULE, JJA  
JUNE 16, 2023**

**BETWEEN**

**REVELATION MISSION CENTRE ..... APPELLANT**

**AND**

**AFRICAN CHURCH OF THE HOLY SPIRIT ..... RESPONDENT**

*(Being an appeal against the decree and ruling of the ELC Court at Chuka (P.M. Njoroge. J.) dated 17th March, 2021 in ELC Appeal Case No. 2 of 2020)*

**JUDGMENT**

1. This is a second appeal arising from the judgment of the Environment and Land Court (ELC), (PM Njoroge, J) dated March 17, 2021 dismissing the appellant's appeal against the judgment of the trial court dated February 5, 2020 in favour of the respondent in Chuka CMCC No 99 of 2018.
2. The subject of the suit was the ownership of Land Parcels numbers Muthambi/Erega/324 and 326 (The suit land) which was originally registered in the name of Meru County Council but which parcels were reserved for use by the Muti Iguru nursery and primary school and the African Church of the Holy Spirit (ACHS), the respondent herein. The said church was the founder and sponsor of the nursery and primary schools in question. At some point the church split and a splinter group emerged in the name of Revelation Mission Center (RMC) (the appellant). This splinter group was registered as a separate entity and on July 18, 2005, or thereabouts, it caused the suit land to be transferred to its name through its three trustees. According to the respondent, the appellant had no color of right whatsoever to the said land, as after splitting from the main church, they became a totally different and independent entity and they had no rights whatsoever to register the suit land in their name. The respondent maintained that the said transfer was unlawful and fraudulent and that the right or legal procedures had not been followed when transfer of the suit land was affected.



3. This is what precipitated the filing of the plaint dated October 24, 2005 in which the respondent, sued the appellant, seeking a declaration that the transfer and registration of Land Parcels numbers Muthambi/Erega/324 and 326 in the names of the appellant herein were done illegally and fraudulently, and an order for rectification of the Lands Register in respect of the suit land cancelling the name of the appellants herein and reverting its ownership, as it was before the July 18, 2005 when without knowledge and consent of the respondent, the appellant caused the said parcels of land to be registered in its name.
4. The claim was denied by the appellant who averred that the respondent was a busy body and not a trustee of African Holy Spirit Rugara Headquarters.
5. The learned magistrate heard the case and ultimately held that when Revelation Mission Centre (RMC) was incorporated, the same was not a change of name but a totally new entity, the RMC comprised of members who split from ACHS. The ACHS had been left intact with the remaining church members, structures and ownership rights, therefore the registration of both land parcels into the names of the appellant was fraudulent and though the appellant had carried out intensive improvements including a building for the schools that did not validate their ownership rights. In its judgment dated February 5, 2020, the trial court found that the respondent had proved its case on a balance of probabilities against the appellant.
6. The appellant was aggrieved and preferred an appeal to the Environment and Land Court (ELC), relying on some 10 grounds of appeal. The main issue was on the incorporation of the appellant's name as a church on its own and subsequently the registration of the suit land to the said church. The learned Judge after re-appraising the evidence on appeal upheld the trial magistrate's decision in its entirety and dismissed the appeal with costs.
7. Still aggrieved, the appellant has now moved to this Court on second appeal vide the memorandum of appeal dated February 7, 2020 on grounds that the learned Judge:

' Erred in law by failing to consider the evidence tendered before the trial court; holding that the appellant did not have the capacity to be registered as proprietors of land parcel number Muthambi/Erega/326 as trustees; failing to consider that the land parcel number Muthambi/Erega/324 had been in the names of Muti-iguru Nursery school which is a public school which was never a party to the suit land and the appeal; upholding the decision of the trial court which ordered that the suit land be transferred to the respondent when it was evident that prior to transferring the land, the County Council of Meru was the custodian of the land holding in trust for the appellant who were the inhabitants and failing to subject the evidence to fresh analysis'.
8. Both parties filed submissions in compliance with the directions given by the Court. When the appeal came up for plenary hearing before us on October 18, 2022, learned counsel, Mr Munene appeared for the appellant but there was no appearance by the respondents, though duly served with the hearing Notice. The appeal proceeded by way of written submissions without highlighting.
9. In the submissions, counsel for the appellant submitted that the appeal should be allowed for the reasons that the respondent failed to prove ownership or proprietary interest. Referring to the decision in *Joseph NK Arap Ng'ok vs Moiyo Ole Keiwua & 4 others [1997] eKLR*, he urged that title to the land could only have vested on the respondent by way of allotment by the County Council which was not the case. He posited that the green card showed that the two parcels of land were registered under the Tharaka-Nithi County Government and later transferred to the appellant by issuance of title deed, therefore, they are protected by section 26 of the *Land Registration Act*.



10. In addition, it was submitted that the burden of proof was shifted to the appellant, when the respondent failed to prove its case as provided by sections 107 and 108 of the *Evidence Act*. Yet, the learned Judge relied on the minutes and granted proprietary interest of the land to the respondent. Counsel emphasized that the appellant had carried out extensive developments on the land but the learned Judge still held them to have acquired the land illegally.
11. Counsel maintained that the respondent's case that the land was transferred fraudulently was not proved on a standard higher than a balance of probabilities but below reasonable doubt as held in *Vinesh Emporium Gudka v Kesbavji Jivraj Dodhia [1982] eKLR* and in *Ratilala Gordhanbhai Patel v Lalji Makanji [1957] EA 314, 317*. He urges the Court to find that the learned Judge erred in upholding the decision of the trial court and thus implored this Court to quash the same by holding that the appellant is the registered proprietor of the suit land.
12. In the submissions in opposition to the appeal, learned counsel for the respondent urged this Court to make findings on law only and not to interfere with the findings of fact of the two courts below as was held by this Court in *Charles Kipkoech Leting vs Express (K) Ltd & Another [2018] eKLR*. He urged the Court to find that the appellants misconstrued the nature of the claim, yet the issue was in regard to the process through which the suit land was discharged and allocated to the trustees of the appellant.
13. The Court was also urged to disregard the appellant's ground on land reservation minutes, allotment letter and title deed which they said did not arise during trial nor at the appeal stage. In regard to fraud, it was submitted that the same was pleaded and strictly proved to the required standard by showing that the appellant had tried to incorporate a fresh entity which was separate from the respondent herein and relied on this Court's decision in *Victory Soul Winning Centre vs Simon Muiruri & 7 others [2017] eKLR*.

' The appellants assertion that it had developed the land and therefore it should not be left with nothing was baseless since they had fraudulently registered the land in their name and that they did not deserve the compassion of court, even by compensation.'

14. This is a second appeal. Our mandate is as has been enunciated in a long line of cases decided by this Court. (See *Maina vs Mugiria [1983] eKLR* 78, *Kenya Breweries Ltd vs Godfrey Odongo, Civil Appeal No 127 of 2007* and *Stanley N Muriithi & another vs Bernard Munene Ithiga [2016] eKLR*) for the holding that on a second appeal, the Court confines itself to matters of law only, unless it is shown that the courts below considered matters they should not have considered or failed to consider matters they should have considered, or looking at the entire decision, it is so perverse that no reasonable court or tribunal, properly addressing itself on the relevant law and evidence could have reached such a determination.
15. The above test will guide us in determining whether the impugned decision was perverse or not. Having carefully perused the record in its entirety, in light of the written and oral submissions relied upon by the parties, we decipher the issues of law that fall for our determination to be: Whether the first appellate court re-appraised and fully considered the evidence adduced before the trial court before arriving at its decision; Whether the appellant had capacity to be registered as the proprietor of the suit lands; Whether the two courts below considered extraneous matters or failed to considered some relevant materials that had been placed before them, thus arriving at the wrong conclusion; and Whether the learned Judge erred in upholding the trial court's decision
16. In regard to the first issue, we have perused the record and confirmed that the learned Judge did actually re-consider and re- evaluate the evidence adduced before the trial court afresh, and took into account the contents of the documents placed before the court and ultimately made his independent



determination. The first issue is, therefore, answered in the affirmative. We have carefully perused the proceedings and judgments of the two courts below and we do not find evidence of consideration of any extraneous material, or any exclusion of important relevant material that would justify our interference with the concurrent findings of the two courts below.

17. The other germane point of law for our consideration, which actually forms the fulcrum of the entire claim before the trial court and the 1<sup>st</sup> appellate court is whether the appellant herein had the legal capacity or right to have the suit land transferred to it after splitting from the respondent. Without delving into the realm of facts, we note that there is no dispute that the suit land was reserved for the respondent for purposes of developing the nursery and primary schools mentioned earlier. There was no problem with that for decades until the church split and some members formed the appellant. The respondent, which was the original church was left standing and its role as founder and sponsor of the nursery and primary schools in question remained intact.
18. The appellant split and left the main church and even returned some of the properties of lesser value belonging to the respondent. Theirs was not just a change of name. It was a clean split and registration of a totally different entity. They could not go away with land that the main church was holding on its behalf and for the nursery and primary school which had been established on that land. They could not therefore approach the Land registrar and have the suit lands transferred to it surreptitiously and without the respondent's knowledge. This was the finding of the two courts below and we find no fault in it. The analysis and reasoning of the learned Judge cannot, in our reasonable view, be impeached.
19. Having so found, we do not find any other issues of law that call for our determination in this appeal. The appellant is rueful that the suit land was taken away from it, yet it has carried out some developments on the facilities thereon. In our view however, at the end of the day, the appellant should find consolation in the fact that the said developments are for the benefit of the community whose children go to the said schools and the same is not for personal aggrandisement. Accordingly, we find this appeal devoid of merit and dismiss it with costs to the respondent.

**DATED AND DELIVERED IN NYERI THIS 16TH DAY OF JUNE, 2023.**

**W. KARANJA**

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**JUDGE OF APPEAL**

**JAMILA MOHAMMED**

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**JUDGE OF APPEAL**

**A. O. MUCHELULE**

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**JUDGE OF APPEAL**

*I certify that this is a true copy of the original.*

**DEPUTY REGISTRAR**

