



**Kiminda & another v Gospel Outreach Church Gakawa Hope  
Christian Worship Center & another (Environment & Land Case  
3 of 2015) [2024] KEELC 5981 (KLR) (20 September 2024) (Judgment)**

Neutral citation: [2024] KEELC 5981 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT & LAND CASE 3 OF 2015  
JO OLOLA, J  
SEPTEMBER 20, 2024**

**BETWEEN**

**MWANGI KIMINDA ..... 1<sup>ST</sup> PLAINTIFF**

**LUCY WANGARI MWANGI ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**GOSPEL OUTREACH CHURCH GAKAWA HOPE CHRISTIAN WORSHIP  
CENTER ..... 1<sup>ST</sup> DEFENDANT**

**PASTOR IN CHARGE GOSPEL OUTREACH CHURCH  
GAKAWA ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

**Background**

1. By a Plaint dated and filed herein on 15<sup>th</sup> January 2015, Mwangi Kiminda and Lucy Wangari Mwangi (the Plaintiffs) pray for Judgment against the Defendants for:-
  - a). A permanent injunction restraining the Defendants from trespassing and /or entering on LR. No. Gakawa/Kahurura Block 1/Ichuga/1303;
  - b). An order that the Defendants remove the plastic water tank and other structures they may have put on LR. No. Gakawa/Kahurura Block 1/Ichuga/1303 and reinstate the boundaries;
  - c). Alternative to (b) (sic), the Plaintiff carry out the work and the Defendants do compensate for the costs incurred;
  - d). General damages for trespass and economic loss;
  - e). Costs of the suit; and



- f). Any other or better relief.
2. Those prayers arise from the Plaintiffs' contention that the 2<sup>nd</sup> Plaintiff who is a wife to the 1<sup>st</sup> Plaintiff is the registered proprietor of the said LR. No. Gakawa/Kahurura Block 1/Ichuga/1303 (the suit property) and that the 1<sup>st</sup> Defendant is fully conversant with the acquisition and registration of the suit property.
  3. The Plaintiffs aver that at the time the suit property was acquired, there existed a permanent building thereon which extended to an adjacent parcel of land but the boundaries of the two parcels were clearly marked out.
  4. It is the Plaintiffs' case that in the month of October 2011, the 1<sup>st</sup> Defendant entered the suit property and started interfering with the building on the purport that they were in the process of purchasing the same from the owner of the adjacent parcel of land. In the year 2014, the Defendants installed a plastic water tank on the property and started putting up other structures without the consent of the Plaintiffs and hence the suit herein.
  5. The Gospel Outreach Gakawa (Hope Christian Worship Centre) and the Pastor in-charge Gospel Outreach Church – Gakawa (the 1<sup>st</sup> and 2<sup>nd</sup> Defendants respectively) are opposed to the orders sought in the suit. In the joint Statement of Defence and Counterclaim dated and filed herein on 24<sup>th</sup> February 2015, the Defendants aver that they purchased two parcels of land namely Gakawa/Kahurura Block 1/Ichuga/1302 and 1303 in good faith from one Charles Wahome Wachira who was the agent and joint owner of the building that was erected on the two parcels of land.
  6. The Defendants assert that at the time of the purchase there was no demarcation or boundary between the two parcels of land and that they purchased the same together with the permanent building thereon. It is the Defendant's case that the 1<sup>st</sup> Defendant has been in occupation of the suit property from October 2001 to date and that its occupation has been peaceful, lawful and uninterrupted for the entire period.
  7. By way of their counterclaim, the Defendants aver in the alternative that given its uninterrupted occupation of the suit property for a period of 14 years, the 1<sup>st</sup> Defendant should be declared the owner of the suit land under the doctrine of adverse possession.

#### **The Plaintiffs' Case.**

8. The Plaintiffs called a single witness in support of their case in the trial which commenced before the Honourable Justice L.N. Waithaka in the year 2016.
9. PW1- Mwangi Kiminda is the 1<sup>st</sup> Plaintiff and the husband of the 2<sup>nd</sup> Plaintiff. PW1 told the court that he purchased the suit property in the year 2000 and caused the same to be registered in the name of the 2<sup>nd</sup> Plaintiff. At the time the land was acquired it had a permanent building extending to the neighbouring parcel of land.
10. PW1 testified that sometime in the year 2011, he visited the land and found two young men interfering with the floor of the permanent building. On enquiry, the two young men told him that they were instructed to carry out the works by a Pastor of the 1<sup>st</sup> Defendant Church. PW1 then met the Pastor at her nearby office and the Pastor informed him they had bought the two adjacent parcels of land from one individual. The Pastor requested for time to sort out the issue with the seller.
11. PW1 further told the court that in the year 2012/2013, he again met the Pastor but this time she stated that the seller had relocated to Mpeketoni and could not be physically reached. In December 2014,



PW1 found a plastic water tank on the land and construction going on for some two rooms. It was PW1's testimony that when he asked the Pastor about the land, she became abusive and accused PW1 of trying to defraud the 1<sup>st</sup> Defendant Church of its land.

### **The Defendants' Case**

12. The defence called two witnesses in support of their case at the trial.
13. DW1- Pastor Grace Wambui Mbuthia is the 2<sup>nd</sup> Defendant and the Resident Pastor of the 1<sup>st</sup> Defendant in Nyeri. DW1 told the court she became a Pastor of the 1<sup>st</sup> Defendant in the year 2000 and that they occupied the two parcels of land No. 1302 and 1303 in the year 2001.
14. DW1 testified that they purchased the two parcels of land from one Charles Wahome Wachira who was the registered owner of LR. No. Gakawa/Kahurura Block 1/1302 and who was also an agent of the 2<sup>nd</sup> Plaintiff. They paid the full purchase price being Kshs. 170,000/= and the registered owner obtained consent of the Land Control Board to transfer the same in favour of the 1<sup>st</sup> Defendant.
15. DW1 further told the court that on 8<sup>th</sup> July 2006, after finalizing payment for the parcel No. 1302, they entered into another sale Agreement for the purchase of the suit property with the same Charles Wahome Wachira who informed them that he had authority from the 2<sup>nd</sup> Plaintiff to sell her portion of land. They paid the sum of Kshs. 70,000/= and agreed that the balance would be paid later to Wachira.
16. DW1 further testified that they then partitioned the old building on the land into four (4) rooms with separate doors and then demolished the internal partitions to create one common hall to accommodate the members of the 1<sup>st</sup> Defendant.

### **Analysis and Determination**

17. I have carefully perused and considered the pleadings filed herein, the testimonies of the witnesses as well as the evidence adduced before the court. I have similarly perused and considered the submissions placed before me by the parties herein.
18. By the suit herein, the two Plaintiffs pray for a permanent order of injunction to issue restraining the two Defendants from trespassing into and/or entering the parcel of land known as Gakawa/Kahurura Block 1/Ichuga/1303 (the suit property). The Plaintiffs also urge the court to direct the Defendants to remove a plastic water tank and other structures they have erected on the suit property failure to which the Plaintiffs ought to be allowed to remove the same at the Defendants' cost. In addition, the Plaintiffs pray for general damages for trespass and what they term as economic loss.
19. The two Plaintiffs are a husband and his wife. The basis of those prayers is the contention that the 1<sup>st</sup> Plaintiff purchased the suit property sometime in the year 2000 and thereafter caused the same to be transferred and registered in the name of the 2<sup>nd</sup> Plaintiff. The Plaintiffs accuse the two Defendants of entering the suit property in October 2011 and interfering with a building erected thereon on the purport that they were in the process of purchasing the same from the owner thereof.
20. It was further the Plaintiffs' case that despite several warnings issued to the Defendants urging them to cease any further interference with the land, the Defendants had proceeded in the year 2014 to install a plastic water tank and to commence construction of certain structures on the suit land.
21. On their part, the Defendants do not deny being on the suit property. It is however their case that contrary to the Plaintiffs' contention that they had trespassed onto the land, they had lawfully purchased the same in good faith from one Charles Wahome Wachira who, according to them, was the



agent of the 2<sup>nd</sup> Plaintiff and a joint owner of an old building that was erected on both the suit property as well as an adjacent parcel of land being LR. No. Gakawa/Kahurura Block 1/Ichuga/1302.

22. It was the Defendants case that as at the time they purchased the suit property, there was no boundary demarcating it from Parcel No. 1302 and that they purchased the same together with the permanent building thereon which they have since converted for use as a church by members of the 1<sup>st</sup> Defendant. The Defendants further assert that the 1<sup>st</sup> Defendant has been in occupation of the suit property from October 2001 and had hence acquired the same under the doctrine of adverse possession.
23. From the material placed before the court, it was not in dispute that the suit property was registered in the name of Lucy Wangari Mwangi (the 2<sup>nd</sup> Plaintiff). A perusal of her title produced as “Pexb 1” reveals that she was registered as such proprietor on 21<sup>st</sup> February 2000.
24. There was equally no dispute that there was a permanent building erected on the suit property and that the said building extended to an adjacent parcel of land being LR. No. Gakawa/Kahurura Block 1/1302. A perusal of the Title Deed from the said parcel of land produced as

“Dexh 6” reveals that the said parcel of land is registered in the name of one Charles Wahome Wachira.

25. According to the Defendants, it is that very same Charles Wahome Wachira who had sold them the suit property after initially selling to them parcel No. 1302. The circumstances under which the alleged sale took place are captured at Paragraphs 8 to 10 of the written statement of Pastor Grace Wambui Mbuthia (DW1) dated 23<sup>rd</sup> February 2015 as follows:-

- “8. On the 8<sup>th</sup> July 2006, after finalizing paying for the purchase of the 1<sup>st</sup> plot (read Parcel No. 1302), we entered into another sale Agreement for the purchase of LR. No. Gakawa/Kahurura Block 1/Ichuga/1303 (the suit property);
9. The officials of the 1<sup>st</sup> Defendant being myself, Mr. Peter Wachira and Alfred Miano entered into a separate sale Agreement with one Charles Wahome Wachira who by then had informed us that he had authority from the 2<sup>nd</sup> Plaintiff to sell her portion to the 1<sup>st</sup> Defendant.
10. Mr. Charles Wahome Wachira informed us that the 1<sup>st</sup> Plaintiff who was known to him had authorized him to sell the said land to the 1<sup>st</sup> Defendant. We paid Kenya Shillings Seventy Thousand ( Kshs. 70,000/=) being the deposit and agreed that the balance of Kenya shillings One Hundred Thousand (Kshs. 100,000/=) was to be paid later.”

26. Asked in cross examination about the authority given to the said Charles Wahome Wachira and how they came to buy the suit property from him, DW1 responded as follows:-

“We did not check the ownership of Parcel No. 1303. We trusted Mr. Wachira Wahome having paid him for Parcel No. 1302 over a period of time.

The Agreement was on 18<sup>th</sup> July 2006. He told us he was authorized by Lucy to sell. We did not request for anything in writing to show he was authorized by Lucy. We paid the whole amount. The Agreement was prepared by one of the elders.”



27. As it were, the legal burden of proof is provided for under Section 107 of the *Evidence Act*, Cap 80 of the Laws of Kenya. The said section provides as follows:-

- “(1). Whoever desires any court to give Judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2). When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

28. In the matter herein, the Plaintiffs have categorically denied that they gave authority to any person to sell their land and the onus therefore lay upon the Defendants to adduce cogent and credible evidence to prove that indeed the Plaintiffs had given authority to the said Charles Wahome Wachira to sell the suit property on their behalf.

29. Unfortunately, no such evidence was adduced by the Defendants. According to the 1<sup>st</sup> Plaintiff (PW1), when he enquired from DW1 as to the whereabouts of the said Charles Wahome Wachira, the Pastor responded that Charles had relocated to Mpeketoni in the Coast Province. When PW1 called the cell phone number given to him by the Pastor, the owner of the line denied that he had sold the suit property to the Defendants.

30. It was also apparent that the Defendants were themselves unable to find the said Charles Wahome Wachira. By a Chamber summons application dated 26<sup>th</sup> May 2017, they sought to join the said Charles Wahome Wachira as a third party to these proceedings for the purpose of seeking to be indemnified by himself. At paragraphs 3 to 5 of the Supporting Affidavit of Pastor Grace Wambui Mbuthia (DW1) she deposes as follows:

- “3. That on 8<sup>th</sup> day of July 2006, I entered into a sale Agreement of property known as Gakawa/Kahurura Block 1/Ichuga/1303 with one Charles Wahome Wachira. Annexed hereto and marked “GWM2” is a copy of the said Sale Agreement;
4. That the said Charles Wahome Wachira pointed out the parcel of land and the boundaries to me, and I paid part of the consideration, took possession and we are in occupation and have done extensive development on the same; and
5. That the boundaries of the suit property have never been moved an inch since 2006 and the Plaintiffs now claim ownership of the suit land, they further allege that they have never sold the suit land to us.”

31. As it turned out, that Chamber Summons application was never served upon the said Intended Third Party and the Defendants were therefore not indemnified against the Plaintiffs’ claim.

32. In regard to the Defendants’ counterclaim, there was nothing placed before the court to demonstrate that the 1<sup>st</sup> Defendant had taken possession of the suit property in the year 2001 as alleged. From the testimony of DW1, they had entered into a Sale Agreement with the said Charles Wahome Wachira on 8<sup>th</sup> July 2006. This suit having been filed on 15<sup>th</sup> January 2015, it was clear to me that the statutory period of 12 years required for adverse possession to set in had not been met.

33. Besides, there was no evidence adduced to demonstrate that the Defendants had used the suit property in the intervening period in a manner that was adverse to the Plaintiffs’ rights and interest in the land. That being the case, the claim for adverse possession was unproven and must therefore fail.



34. Arising from the foregoing, I was persuaded that the Defendants had unlawfully trespassed into the plaintiffs' property without any reasonable cause. Where one is guilty of trespass, the owner of the land is entitled to damages. As was stated in Philip Ayaya Aluchio –vs- Crispinus Ngayo [2014] eKLR:

“The Plaintiff is entitled to general damages for trespass. The issue which arises is as to what is the measure of such damages? It has been held that the measure of damages for trespass is the difference in the value of the Plaintiffs' property immediately after trespass or the costs of the restoration, whichever is less. [See Hostler –vs- Green Park Development Co. 986 SW 2d.500 (No. App. 1999) J.”

35. In the matter herein, the Plaintiffs have not adduced any evidence as to the state or the value of their property before and after the trespass. Taking into account the circumstances herein, the period of trespass and the fact that the 1<sup>st</sup> Defendant is but a religious organization, it is my view that a sum of Kshs. 200,000/= would suffice as general damages for the trespass.

36. Accordingly I hereby enter Judgment for the Plaintiffs as against the Defendants as follows:-

- a). An order is hereby issued directing the Defendants to remove the plastic water tank and other structures they may have constructed upon the suit property and to reinstate the boundaries thereof within 45 days from today. In default, the Plaintiffs' shall be at liberty to remove the same with the costs thereof being due from the Defendants.
- b). Upon expiry of 45 days from today, a permanent order of injunction shall immediately issue restraining the Defendants from trespassing upon and/or entering the suit property.
- c). The Plaintiffs' are hereby awarded Kshs. 200,000/= as general damages.
- d). The Defendants shall meet the costs of this suit.

**DATED, SIGNED AND DELIVERED AT NYERI THIS FRIDAY 20<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

In the presence of:

Mr. Kiminda for the Plaintiffs.

Mr. Okemwa holding brief for Abuor for the Defendant.

Court Assistant: Michael

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**J. O. OLOLA**

**JUDGE**

