



Obul & 2 others v KCA University & another (Environment and Land Miscellaneous Application E15 of 2022) [2022] KEELC 2831 (KLR) (15 July 2022) (Ruling)

Neutral citation: [2022] KEELC 2831 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E15 OF 2022**

**A OMBWAYO, J
JULY 15, 2022**

BETWEEN

**MOSES ODHIAMBO OBUL 1ST APPLICANT
TABITHA ADOYO OBUL 2ND APPLICANT
LINET AUMA ODOYO 3RD APPLICANT**

AND

**KCA UNIVERSITY 1ST RESPONDENT
NATIONAL LAND COMMISSION 2ND RESPONDENT**

RULING

1. Moses Odhiambo Obul, Tabitha Adoyo Obul and Linet Auma Odongo (hereinafter referred to as the applicants) have made an application against K.C.A University and National Land Commission praying that that the Honourable Court be pleased to order and direct that Kisumu CMC ELC NO. 101 OF 2017 be transferred to this court and be consolidated with Kisumu ELC NO. E11 OF 2020 (OS) for hearing and final determination. That cause of the application be in the cause.
2. The application is premised on grounds that the 1st respondent lodged a case in Kisumu CMC ELC NO. 101 OF 2017 against the applicants over Land Reference Number 24810. The issue of adverse possession can only be litigated under an Originating Summons while the other issues can be canvassed by way of filing a plaint hence the filing of Kisumu ELC OS NO. E11 OF 2020. Both claims can be consolidated and tried before this court.
3. Tabitha Adoyo Obul states that she is the 2nd defendant in Kisumu CMC ELC No. 101 of 2017 (Formerly Kisumu ELC NO. 276 OF 2016).



4. That she is in occupation of Land Reference Number 24810 for more than and over 12 years hence the claim of adverse possession. That she has also lodged an Originating Summons in the ELC Court; Being Originating Summons No. Kisumu ELC No. E11 FO 2020 (OS).
5. That there is no hybrid claim under which both claims can be lodged in the same suit. That both claims can be consolidated and tried before this court.
6. I have considered the application and do find that the same is merited.
7. I do grant prayer (a) Kisumu CMC ELC No. 101 of 2017 be transferred to this court and be consolidated with Kisumu ELC No. E11 OF 2020 (OS) for hearing and final determination. Costs in the cause.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 15th DAY OF JULY, 2022

ANTONY OMBWAYO

JUDGE

This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15th *March* 2020.

