



REPUBLIC OF KENYA



KENYA LAW
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**Githuka v Adan & another (Environment and Land Appeal E014 of 2021)
[2022] KEELC 13742 (KLR) (26 October 2022) (Judgment)**

Neutral citation: [2022] KEELC 13742 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL E014 OF 2021
MN GICHERU, J
OCTOBER 26, 2022**

BETWEEN

RAPHAEL KARIUKI GITHUKA APPELLANT

AND

SHADIA AHMED ADAN 1ST RESPONDENT

ALI AHMED 2ND RESPONDENT

JUDGMENT

1. On March 17, 2021, Hon JN Nthuku, principal magistrate Loitoktok delivered a judgment in which she dismissed a suit filed by Raphael Kariuki Githuka (appellant) against Shadia Ahmed Adan and Ali Ahmed (respondents).
2. The suit in the lower court had been commenced by way of originating summons dated November 26, 2018. It sought to have the appellant declared the owner of LR Loitoktok/Emperon/229 by way of adverse possession.
3. Aggrieved by the dismissal of his suit by the learned magistrate, the appellant filed this appeal on April 18, 2021 listing thirteen grounds.
4. I have noted one glaring issue that goes to the root of the case and the proceedings of the case before the learned trial magistrate. This issue has not been addressed by the appellants' counsel in the submissions dated May 13, 2022 and filed in court on July 1, 2022.

The issue is simply whether the trial magistrate had jurisdiction to entertain a suit relating to adverse possession.



My finding on this fundamental question is that the learned magistrate had no jurisdiction in view of section 38 of the [Limitations of Actions Act](#) which provides as follows.

- “(1) Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land”.

The above provision ousts the jurisdiction of the magistrates court from all suits relating to acquisition of title through adverse possession.

It has been held in the case of [Jesee Njoroge Gitau v Kibuthu Macharia and another](#) (2019) eKLR (Nyahururu ELC) that Magistrates’ courts lack jurisdiction to hear claims relating to adverse possession.

5. The basic rule on jurisdiction is that a court lacking it must down its tools. This was the holding in the case of [Owners of Motor Vessels “SS Lillian”](#) (1989) KLR1. There is also the case of [Christopher Wafula Mutoro v Richard Lordia Lokere](#) (2017) eKLR (Eldoret Court of Appeal).
6. In conclusion, I allow the appeal on the ground of lack of jurisdiction by the learned trial Magistrate. In order that the dispute may be heard and determined as envisaged by article 50 (1) of the [Constitution](#), I direct that the suit commences *de novo* before a court of competent jurisdiction.

No order as to costs.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 26TH DAY OF OCTOBER, 2022.

M.N. GICHERU

JUDGE

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