



REPUBLIC OF KENYA



**KENYA LAW**  
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**Meme v Mwira (Environment & Land Case E028 of 2021)  
[2022] KEELC 15221 (KLR) (7 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15221 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE E028 OF 2021**

**CK YANO, J**

**DECEMBER 7, 2022**

**BETWEEN**

**GERALD MEME ..... PLAINTIFF**

**AND**

**ZAVERIO KINYANKI MWENDA B. MWIRA ..... DEFENDANT**

**RULING**

1. The application for determination is the Notice of Motion dated June 10, 2022 by the Defendant/applicant seeking for the following orders-;
  - i. Spent
  - ii. That this Honourable court be pleased to call for and order for consolidation of this suit with Maua Chief Magistrate's Court Environment and Land Case No 132 of 2021 Zaverio Kinyaki Mwenda vs Gerald Meme.
  - iii. That upon grant of prayer (ii) above, this Honourable court be pleased to transfer the consolidated file i e Maua Chief Magistrate's Court Environment and Land Case No 132 of 2021 Zaverio Kinyaki Mwenda vs Gerald Meme to the Chief Magistrate's Court at Maua for hearing and determination into this Honourable court for hearing and determination ( sic).
  - iv. That the costs of this application be provided for.
2. The application is supported by the affidavit of Zaverio Mwenda Kinyaki the applicant herein sworn on June 10, 2022 and is based on the grounds that on June 16, 2021, the applicant filed Maua CMC ELC case no 132 of 2021 which suit is between him and the plaintiff herein and which is in respect of the same suit parcel of land No Igembe/Amwathi/Maua/3821. That the trial magistrate at Maua is duly gazetted and is seized with jurisdiction to hear and determine all land matters within his territorial (Igembe) and pecuniary jurisdiction of Kshs. 20 million which includes the suit land herein whose



value is between Kshs. 3 – 4 million and located within Maua. The applicant therefore wants this suit transferred to the Chief Magistrate’s court in Maua and be consolidated with Maua CMC ELC 132 of 2021 and heard and determined by that court. That the Chief Magistrate sitting at Maua is empowered by section 9 of the Magistrate’s court Act 2015 and section 26 ( 3) and ( 4) of the [Environment and Land court Act](#), 2011 to deal with all claims involving land and title to land which includes claims for adverse possession. That it is in the interests of justice to have the two suits consolidated and transferred for hearing and determination to avoid multiplicity of suits and multiplicity of conflicting orders by different courts.

3. In opposing the application, the plaintiff filed grounds of opposition dated July 18, 2022 on the following grounds:
  - i. Much as consolidation is a good idea since both matters deal with the same subject matter and between the same parties, the court competent to hear and determine claims for adverse possession is this Honourable court by dint of Section 38 (1) of the [Limitation of Actions Act](#), Cap 22.
  - ii. In effect therefore, the Magistrate’s court file should be transferred to this Honourable court and be consolidated herewith upon which this should become the lead file and the defendant/ applicant’s claim in the Magistrate’s court file be deemed as a counterclaim herein.
4. The application was canvassed by way of written submissions and only the plaintiff/respondent filed submissions on September 27, 2022. The applicant did not file any submissions.
5. The plaintiff submitted inter alia, that the grounds of opposition are in the nature of a cross application. The plaintiff further submitted that Section 38 (1) of the [Limitation of Actions Act](#), Cap 22 gives exclusive jurisdiction to the High Court to determine claims for adverse possession, while Maua Chief Magistrate’s court lacks jurisdiction on such claims. The plaintiff urged the court to have the Maua Magistrate’s case No 132 of 2021 transferred to this court and be consolidated with this suit for hearing and determination, with the lead file being the file in this suit.
6. I have considered the application. It is not in dispute that both parties are in agreement that the two suits are between the same parties and involve the same subject matter and that they can be consolidated. Therefore the only issue for determination is which court between the Maua Chief Magistrate’s court and this court should the consolidated suits be transferred to for hearing and determination.
7. It is not in dispute that the case before this court is a claim for adverse possession. Section 38 (1) of the [Limitation of Actions Act](#) provides as follows-;

“ 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”
8. Therefore it is clear as submitted by the plaintiff that Section 38 of the [Limitation of Actions Act](#) permits an adverse possessor to only apply to the High Court for an order that he be registered as the proprietor of the land. I do not therefore think that the Magistrate’s court will have jurisdiction over a claim for adverse possession. For that reason, it would be futile to transfer this suit, which is a claim for adverse possession to the Magistrate’s Court at Maua. Since both parties are in agreement that the two suits should be consolidated, I find that it is the Maua CMC ELC case No. 132 of 2021 which ought to be transferred to this court and be consolidated with this suit for hearing and determination. Section



18 of the Civil Procedure Act gives the High Court power to withdraw and transfer a case instituted in the subordinate court.

9. In the result, I allow the notice of motion dated June 10, 2022 in the following terms-;
- a. Maua CMC ELC case No 132 is withdrawn and transferred to this court for trial and disposal.
  - b. Upon prayer (a) above, Maua ELC no 132 OF 2021 to be consolidated with ELC No 28 OF 2021 (O.S).
  - c. ELC No 28 of 2021 (O.S) shall be the lead file.
  - d. Costs shall be in the cause.
10. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MERU THIS 7<sup>TH</sup> DAY OF DECEMBER, 2022**

**IN PRESENCE OF**

**Court assistant – Kibagendi**

**Gikonyo for respondent/applicant**

**No appearance for applicant/respondent**

**C K YANO**

**ELC JUDGE**

