



**Sankale v Sakaja (Environment & Land Miscellaneous Case
E011 of 2024) [2025] KEELC 974 (KLR) (4 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 974 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND MISCELLANEOUS CASE E011 OF 2024**

MN MWANYALE, J

MARCH 4, 2025

BETWEEN

DAVID SANKALE APPLICANT

AND

FRANCIS LERIONKA SAKAJA RESPONDENT

RULING

1. Upon consideration of the Notice of Motion Application dated 15th December 2024 seeking transfer of Kilgoris CMELC No. E030 of 2024 between David Sankale vs Francis Lerionka Sakaja for hearing and determination before this court on grounds that the CM's court has no jurisdiction to hear and determine Adverse possession claims as was recently held by the Court of Appeal in Nairobi Civil Appeal No. E141/2022 between Pauline Chemuge Sugawara vs Nairuko Ene Mutarakwa Kiruti and others.
2. Upon further consideration that the Respondent did not file any Replying affidavit nor Grounds of Opposition and neither did he file submissions to the application contrary to what Mr. Machage learned counsel for Respondent indicated on 18.02.2025, there being no such a Replying affidavit and/or Grounds of Opposition on the CTS as well as physical copies on the court file, the application dated 15th December 2024 is thus unopposed.

Issue for Determination

3. The court having analyzed the application and submissions by the Applicants counsels, frames the sole issue for determination is whether the Application is merited.



Analysis and Determination

4. The Applicant submits that the Court of Appeal has settled the issue that Magistrates court lack jurisdiction to entertain claims of adverse possession as held in the case of Pauline Sugawara cited above, the Applicant submits urges the court to allow the application.
5. Indeed, the Court of Appeal held in the Pauline Sugawara, that the Magistrates Court lacks jurisdiction to determine Adverse possession.
6. The suit pending before the CM's court was filed on 23.04.2024 before the decision of the Court of Appeal, at which time there was an ELC decision by Ohungo J, in Patrick Ndegwa Munyua vs. Benjamin Kiiru Mwangi and another 2020 (eKLR) which had held that Magistrates with the requisite pecuniary decision had the necessary jurisdiction to hear and determine adverse possession matters.
7. The law having been settled after filing of this matter it follows thus there is merit to seek for the transfer of this suit for hearing and determination before this court; as the decision in the Pauline Sugawara case was delivered on 11th October 2024.
8. Accordingly, the Application dated 15th December 2024, is allowed in terms that Kilgoris CMELC No. E030/2024 between David Sankale vs Francis Lerionka Sakaja be and is hereby transferred to Kilgoris ELC for hearing and determination.
9. There shall be no orders as to costs.

DATED AND DELIVERED AT KILGORIS THIS 4TH DAY MARCH OF 2025

HON. M.N. MWANYALE

JUDGE

In the presence of:

C/A Emmanuel/Sylvia

Mr. Koome for the Applicant

Mr. Machage for the Respondent

