



REPUBLIC OF KENYA



Kingola v Mulwa (Land Case E002 of 2024) [2025] KEELC 3625 (KLR) (8 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3625 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
LAND CASE E002 OF 2024
EO OBAGA, J
MAY 8, 2025**

BETWEEN

ANTONY MUTUNGA KINGOLA APPLICANT

AND

MATHIAS KIMASYO MULWA RESPONDENT

RULING

1. The Applicant filed the Originating Summons herein dated 16th February, 2024 seeking orders for registration as proprietor of the suit property Title Number Makueni/Kalongo/787 by way of adverse possession.
2. On 6th March, 2024, the Respondent filed a preliminary objection raising the following grounds: -
 - i. That the suit offends the provisions of Section 26 (3) and (4) of the *Environment and Land Court Act*.
 - ii. That the suit offends the provisions of Section 9 of the Magistrates' Court Act.
 - iii. That this court stands deprived of jurisdiction to try the suit.
3. Directions were issued that the preliminary objection be canvassed by way of written submissions.
4. The Respondent filed his submissions on 22/1/2025. On his behalf, Counsel contended that the suit property measures approximately 0.95 acres and that its value cannot exceed Kshs.15 million. Counsel argued that the originating summons ought to have been filed in the magistrates' court which is competent to try the suit.
5. Counsel further contended that the suit property is situated within the local limits of the magistrates' court at Kilungu and the filing of the suit in Makueni violated the provisions of Section 12 of the *Civil Procedure Act*. Counsel urged the court to strike out the suit with costs to the Respondent.



6. In the Plaintiff/Applicant's submissions dated 28th November, 2024, Counsel identified the following issues for determination: -
 - i. Whether the Notice of preliminary objection is meritorious;
 - ii. Whether the court is seized of jurisdiction to determine these summons; and
 - iii. Whether the court has the power to strike out the summons.
7. On the Plaintiff's behalf, Counsel submitted that the jurisdiction to deal with issues of adverse possession is founded on Section 38 of the Limitation of Actions Act. Counsel contended that the relevant court under the enabling provisions of the law is the High Court and not the magistrates' court. It was submitted that this court has jurisdiction conferred to it by statute and by the Constitution to hear and determine the suit herein.
8. To buttress the submission that the preliminary objection is without merit, Counsel relied on the following authorities: -
 - i. *Kisaka v Muyia & 3 others* (Environment & Land Case E009 of 2022) [2024] KEELC 4162 (KLR)
 - ii. *Peter Salai Mwalagaya v Murtaza Hussein Bandali* [1980] eKLR
 - iii. *Allan Mupe Bakari v Diani Sea Lodge* [2020] eKLR
9. The sole issue for determination is whether the jurisdiction of this court to hear and determine the suit has been properly invoked by the Plaintiff/Applicant.
10. As stated earlier, the Plaintiff seeks to be registered as proprietor of the suit property by way of adverse possession. A keen perusal of the originating summons evinces the same. The Respondent contends that the magistrates' court is the court with competent jurisdiction to hear and determine the dispute in accordance with the provisions of Section 26 (3) and (4) of the Environment and Land Court Act.
11. Section 38 (1) of the Limitation of Actions Act outlines 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 of this Act, 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.
12. The above statute prescribes that the only court vested with jurisdiction to hear and determine land disputes arising out of adverse possession is exclusively the Environment and Land Court. The Court of Appeal conclusively reaffirmed the position in the case of *Sugawara v Kiruti* (Sued in her capacity as the administratrix of the Estate of Mutarakwa Kiruti Lepaso alias Mutaragwa Kiruti Lepaso alias Mutaragwa Kiroti Leposo and in her own Capacity) & 3 others [2024] KECA 1417 (KLR) when it pronounced itself as follows: -

“It is our view that, if it was intended that claims for adverse possession be determined by the Magistrates' Court, nothing would have been easier than for Parliament to have expressly enacted such a provision. So that in view of the express provisions of the law, a strict interpretation of section 38 would mean that hearing and determination of such matters is specifically limited to the Environment and Land Court to the exclusion of Magistrates' Court.”



13. The upshot is that the preliminary objection dated 4th March, 2024 is devoid of merit and is dismissed with costs to the Applicant.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 8TH DAY OF MAY, 2025.

IN THE PRESENCE OF:

Mr. Mbullo for Resondent

Ms. Theuri for Mr. Oduk for Applicant

Court assistant – Steve Musyoki

