



**Njeru v Ireri (Environment and Land Miscellaneous Application
E030 of 2024) [2025] KEELC 3849 (KLR) (6 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3849 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E030 OF 2024**

**AK BOR, J
MAY 6, 2025**

BETWEEN

WANJIRA NJERU APPLICANT

AND

HENRY KITHAKA IRERI RESPONDENT

RULING

1. The Applicant, Wanjira Njeru filed the application dated 12/12/2024 seeking to have further proceedings in Siakago MC ELC E060 of 2023 Henry Kithaka Ireri v Wanjira Njeru stayed pending hearing and determination of this application. She also sought to have Siakago MC ELC E060 of 2023 which is pending determination at the Siakago Magistrates' Court withdrawn and tried or disposed of by this court.
2. The application was made on the grounds that as the defendant in the Siakago suit, the Applicant intends to file a defence and counterclaim of adverse possession over which the magistrate's court at Siakago lacks jurisdiction to entertain. It was urged that this court had power to withdraw and try or dispose the suit.
3. The Applicant swore the affidavit in support of the application and attached copies of the amended plaint in Siakago ELC No. E060 of 2023 and the draft defence and counterclaim in that case.
4. The Respondent opposed the application through the replying affidavit in which he deponed that the application was frivolous, vexatious and an abuse of the court's administration of justice and that it was meant to oust the jurisdiction of the Siakago court without a justifiable cause. The Respondent contended that the cause of action in the Siakago suit was for eviction of the Applicant from the Respondent's land and that this court's power is to supervise the subordinate courts and not take away the jurisdiction of that court when it has competent jurisdiction. He averred that the Applicant was trying to delay the case in Siakago, and that she failed to attach the intended counterclaim to



- the application and that the court could not act on a mere intention from the Applicant. He further contended that the subject matter in the Siakago suit is situated within the jurisdiction of that court and therefore the suit is rightfully filed there and urged this court to dismiss the application with costs.
5. The Applicant filed a supplementary affidavit in response to the Respondent's replying affidavit and averred that the Respondent failed to cite any legal provision granting the Siakago Magistrates' Court jurisdiction over adverse possession claims and maintained that adverse possession overrides the Respondent's proprietary interests. She reiterated that this court had jurisdiction under Section 18(1)(b)(i) of the Civil Procedure Act and Section 38 of the Limitation of Actions Act to withdraw and determine the matter.
 6. The court directed parties to file and exchange written submissions which it has considered. Only the Respondent filed his submissions. He submitted that the lower court had jurisdiction under Section 25 of the Magistrates' Court Act to hear eviction matters. He argued that the Environment and Land Court lacked supervisory authority over the Siakago Magistrates' Court following amendments to Section 13(5) of the Environment and Land Court Act, and that the Applicant had not demonstrated valid grounds for transferring the case. He contended further that a claim for adverse possession was untenable since the Applicant entered the suit land in 2018, and that such a claim must be brought through an originating summons pursuant to Order 37 Rule 7 of the Civil Procedure Rules and Section 38 of the Limitation of Actions Act. He invited the court to dismiss the application.
 7. The issue for determination is whether the court should withdraw and transfer Siakago MC ELC Case No. E060 of 2023 from the Magistrate's Court at Siakago to itself for hearing and determination. The Respondent filed the case in Siakago seeking to evict the Applicant from the land known as Gichiche/Gichiche/2528. He also sought a permanent injunction against the Applicant and mesne profits for the use of the land and for the Applicant to be ordered to remove the fence erected on the land. The Applicant attached to her application a draft defence and counterclaim where she averred that she had been on the suit land since 1970 after she was settled on the suit land by her late husband. She claimed that she had become entitled to the land through adverse possession.
 8. The Applicant's request for transfer is grounded on her intention to plead adverse possession as part of her defence and counterclaim. She urged that the Magistrate's Court lacked jurisdiction to entertain such a claim.
 9. The Respondent's contention that adverse possession cannot be raised in a defence or counterclaim is legally flawed. In *Chevron (K) Ltd v Harrison Charo Wa Shutu* [2016] KECA 248 (KLR), the Court of Appeal affirmed that a claim of adverse possession may be raised not only by originating summons but also by way of defence or counterclaim. The court held that where a party is sued for vacant possession, he can raise a defence of statute of limitation by filing a defence or a defence and counterclaim and that it was only when the party applied to be registered as the proprietor of land by adverse possession that Order 37 Rule 7 requires such a claim to be brought by Originating Summons. A claim for adverse possession can be pleaded in a defence or counterclaim.
 10. Siakago MC ELC E060 of 2023 was filed in 2023. It is not clear when the Applicant was served. The Applicant merely expresses the intention to file a counterclaim to the suit without explaining why it has taken long from to make the application. She only stated in the supplementary affidavit that she was previously served with documents for a stranger and that it was only after the plaint was amended that she brought this application.
 11. The court notes from the plaint that the Respondent pleaded that the Applicant entered the suit land in 2018 and erected a fence without the Respondent's permission. The Applicant neither provided evidence of her occupation of the suit land to support a claim for adverse possession nor did she rebut



the Respondent's claim that she entered the land in 2018. No reason has been proffered as to why the Applicant failed to file her claim for adverse possession and had to wait until the suit for her eviction was lodged.

12. The court finds no merit in the application dated 12/12/2024 and dismisses it with costs to the Respondent.

DELIVERED VIRTUALLY AT EMBU THIS 6TH DAY OF MAY 2025.

K. BOR

JUDGE

In the presence of: -

Mr. Mwaniki Gachuba for the Applicant

Ms. Emies Mutugi for the Respondent

Diana Kemboi- Court Assistant

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