



REPUBLIC OF KENYA



**Itinga & 2 others v Itinga (Environment & Land Case  
E011 of 2020) [2025] KEELC 4956 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 4956 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI  
ENVIRONMENT & LAND CASE E011 OF 2020**

**EO OBAGA, J**

**JULY 3, 2025**

**BETWEEN**

**KIOKO WAMBUA ITINGA ..... 1<sup>ST</sup> PLAINTIFF**

**JAMES KYALO WAMBUA ..... 2<sup>ND</sup> PLAINTIFF**

**ANASTASIAH MUTINDI WAMBUA ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**MBOYA WAMBUA ITINGA ..... RESPONDENT**

**RULING**

1. This is a ruling in respect of a Notice of Motion dated 7<sup>th</sup> March, 2024 in which the 1<sup>st</sup> and 2<sup>nd</sup> Defendants/Applicants seek the following orders:
  1. That this honourable court be pleased to order for the transfer of this suit to the Chief Magistrate's Court at Makueni for hearing and final disposal.
  2. That this honourable court be pleased to issue orders reviewing, revoking and/or setting aside the orders and directions it had issued in this suit and direct that the trial process before the Chief Magistrate's Court at Makueni starts de novo.
  3. That this honourable court be pleased to order for the transferred file in (1) above to be placed before the same judicial officer in the Chief Magistrate's Court at Makueni dealing with Makueni Chief Magistrate's Court Succession Cause No. 139 of 2016 for hearing and final disposal.
  4. That the costs of this application to abide the final disposal of the suit before the Chief Magistrate's Court at Makueni.



2. The Applicants contend that the subject matter of this suit relates to an award for compulsory acquisition of LR No. Mavindini/Mavindini/1238 and 1239 whose value is Kshs.8,077,309/= which is within the monetary jurisdiction of the Chief Magistrates court.
3. The Applicants state that there is a Succession Cause pending before the Chief Magistrate's Court being Succession Cause No. 139 of 2016 and that it will be expedient for this file to be transferred to the Chief Magistrate's Court to be handled by the Magistrate handling the Succession Cause.
4. The Applicants further state that the decision of the Plaintiff/Respondent to file this suit in this court is to limit their chances of review or appeal in case they are not successful. The Applicants further state that there were adverse orders made against them requiring them to pay throw away costs of Kshs.20,000/ and deposit security for costs in the sum of Kshs.100,000/= which orders should be set aside so that the hearing before the Chief Magistrate's Court can start de novo.
5. The Applicant's application was opposed by the Respondent through a replying affidavit sworn on 20<sup>th</sup> March, 2024 and grounds of opposition dated 20<sup>th</sup> March, 2024. The Respondent contends that this application is mischievous, frivolous, is a sham and a delaying tactic. The Applicants had filed an application dated 26<sup>th</sup> October, 2021 seeking stay of execution of an order directing 3<sup>rd</sup> Defendant to pay him compensation. There was conditional leave granted to file defence but the Applicants never complied.
6. On 22<sup>nd</sup> November, 2022, the Applicants filed another application seeking to set aside the conditions granted on ground that they were unable to meet the conditions. This application was dismissed.
7. The Respondent states that whereas the compensation amount is within the monetary jurisdiction of the Chief Magistrate's Court, there is a claim for adverse possession which the Chief Magistrate does not have jurisdiction to handle.
8. The Respondent states that this court has already determined the issue of compensation for developments on the suit properties and that the succession court has no jurisdiction to deal with the issue of ownership and adverse possession.
9. The Respondent accuses the Applicants of forum shopping holding that the trial magistrate who was dealing with the succession cause in the Chief Magistrate's Court is no longer there.
10. The Respondent contends that the Applicants had made an application for review of the court's orders which application was dismissed for lack of merit and cannot again seek the same court to review what had already been declined.
11. In a further affidavit sworn on 25<sup>th</sup> November, 2024, the Applicants states that the Respondent is out to vex them as he has numerous cases in the succession court including the current one. They state that in a ruling by Justice Matheka of the High Court, the Judge observed that the amount in issue is within the jurisdiction of the Chief Magistrate's Court and that as the Chief Magistrate's Court has both jurisdiction to hear succession matters and Environment and Land matters, the case can be filed there so that if any party is aggrieved, he can file an appeal to either the High Court or Environment and Land Court depending on their respective jurisdiction.
12. This application was argued orally. The Applicants' lawyer Mr. Otieno submitted that the *Civil Procedure Act* in Section 11 provides that a suit should be filed in the lowest court with jurisdiction. He submitted that the value of the subject matter was about 8 million which is within the monetary jurisdiction of the Chief Magistrate's Court. He submitted that the court does not have jurisdiction



- to entertain the suit and that it should down its tools. He relied on the case of Owners of Motor Vessel Lillian “s” –vs- Caltex Oil (Kenya) Ltd (1989) eKLR.
13. He also relied on Phoenix E.A Ltd –Vs- S. M. Thiga t/a Newspaper service (2019) eKLR Mr. Otieno submitted that as this case was filed in a court without jurisdiction, it should be struck out.
  14. The Applicants through their advocate submitted that this suit should be struck out as the claim of adverse possession must be brought by way of originating summons and not by way of plaint. He further submitted that there was no extract of title annexed to the Respondent’s claim. He relied on the case of Daniel Kimani Ruchina & Others –vs- Rutherford Co. Ltd and another and Wilson Kaungu Katana & 101 others –vs- Salim Abdalla Bakhsweni to buttress the two points respectively.
  15. Mr. Otieno submitted that as the court had no jurisdiction, it should set aside all its previous orders as they were a nullity.
  16. Ms. Kyania for the Respondent submitted that the Chief Magistrate’s Court does not have jurisdiction to determine claim for adverse possession. She relied on the case of Suwawalla –vs- Kiruti & 3 others KECA 2024.
  17. Ms. Kyania also submitted that a claim for adverse possession can be brought by way of counterclaim plaint or even in a defence. She relied on the case of Ghulam Miriam Nurdin –vs- Julius Chalo Karisa (2015) eKLR and Chevron (K) Ltd –vs- Harrison Chalo Wa Shutu (2016) eKLR.
  18. I have carefully considered the Applicants’ application, the opposition to the same by the Respondent as well as the oral submissions and authorities cited by the parties herein. The first issue for determination is whether this court or the Chief Magistrate’s Court has jurisdiction to deal with this case. Second issue is whether this court should revoke and set aside all the directions and orders granted herein.
  19. The main reason why the Applicants want this suit transferred to the Chief Magistrate is that the subject matter of this suit is Kshs.8 million which is within the monetary jurisdiction of the Chief Magistrate’s Court. They state that Section 11 of the *Civil Procedure Act* provides that a suit should be filed in the court with jurisdiction to entertain it.
  20. I agree with the submissions of the Applicants that the value of the subject matter is about Kshs.8,000,000/= which is within the monetary jurisdiction of the Chief Magistrate’s Court. However, a look at the Respondent’s claim shows that he is seeking a claim of adverse possession as an alternative claim. The Chief Magistrate’s Court has no jurisdiction to entertain a claim of adverse possession. This was clearly set out in the case of Suwawalla –vs- Kiruti & 3 others (Supra).
  21. This suit which has a claim for adverse possession and claim for compensation cannot be severed because the two claims are intertwined. As the Chief Magistrate’s Court does not have jurisdiction to entertain the claim for adverse possession, I find that the only court with jurisdiction is the Environment and Land Court.
  22. On the second issue, this court is being asked to revoke all directions and orders which were issued in this matter. There are a number of directions and orders which have been given in this matter. Those include the order for deposit of security for costs in the sum of Kshs.100,000/= and payment of thrown away costs of Kshs.20,000/=. The Applicants had attempted to have these orders set aside but the application was dismissed. They did not appeal against these orders and they cannot be heard to ask the court to revoke the same. To do so will amount to this court sitting on appeal on its own decision.



23. The issue of whether the claim for adverse possession is properly before the court is not a subject for determination at this stage. This is a decision which will be made after a hearing. I therefore find no merit in this application which is dismissed with costs to the Respondent.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 3<sup>RD</sup> DAY OF JULY, 2025.**

.....

**HON. E. O. OBAGA**

**JUDGE**

In The Presence Of:

Ms. Thuku for Dr. Musau for Plaintiff/Respondent.

Mr. Maosa for Mr. Otieno for 1<sup>st</sup> Defendant/Applicant

Court assistant – Steve Musyoki

