



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT HOMABAY**  
**ELC CASE NO ELC OS 34 OF 2021**  
**(FORMERLY MIGORI ELC OS E002 OF 2021)**  
**JOHN OMOLLO AGUTU & ANOTHER .....PLAINTIFF**  
**VERSUS**  
**JOSEPH JUMA ABONDO & ANOTHER.....DEFENDANT**  
**RULING**

1. Mr. H.O Bunde learned counsel for the Plaintiff has sought the transfer of this suit to Oyugis Senior Principal Magistrate's Court. The grounds of the application are that the suit land, Title number Kabondo/Kasewe/473 is approximately 0.13 hectares in area and that the said Magistrate's Court has the requisite jurisdiction over the matter.
2. Mr. Ongoso holding brief for Mr. Jura learned counsel for the defendant has no objection to the application.
3. It is noteworthy that this suit was initiated by way of an originating summons dated 14<sup>th</sup> January, 2021. The plaintiff is claiming to have acquired the suit land by way of adverse possession.
4. In the replying affidavit of 20-paragraphs sworn on 22<sup>nd</sup> February, 2021 by the 2<sup>nd</sup> defendant and filed in court on 3<sup>rd</sup> February, 2021 for and on behalf of the 1<sup>st</sup> defendant and himself, the originating summons is opposed. The defendants sought its dismissal with costs.
4. The essence of the procedure of mounting suits by way of originating summons is well settled; see **Kibutiri versus Kibutiri (1983) eKLR**.
5. I bear in mind the character of the suit including the approximate acreage and value of the suit land alongside Article 48 of the Constitution of Kenya 2010, sections 7 and 9 (a) of the Magistrates' Courts Act No. 26 of 2015, section 26, (3) and (4) of the Environment and Land Court Act, 2015 (2011) and Sections 1A, 1B, 11, and 18 of the Civil Procedure Act. Chapter 21 Laws of Kenya. I am of the considered view that Oyugis Senior Principal Magistrate's Court has the requisite Jurisdiction over the matter. : See also **Patrick Ndegwa Munyua –versus - Benjamin Kiiru Mwangi (2020) eKLR** which is hereby endorsed.
6. In the premises, the plaintiff's application is merited. I proceed to allow the same in the following terms;
  - a. This suit generated by way of an originating summons as noted in paragraph 3 herein above, is hereby transferred to Oyugis Senior Principal Magistrate's Court for hearing and determination.
  - b. Mention of the suit before Oyugis Senior Principal Magistrate's Court on 2<sup>nd</sup> December, 2021 for directions
  - c. It is so ordered.

**RULING DELIVERED, DATED AND SIGNED AT THE ENVIRONMENT AND LAND COURT THIS 9<sup>TH</sup> DAY OF NOVEMBER, 2021**

**G.M.A ONG'ONDO**

**JUDGE**

In the Presence of:

1. Mr. Ongoso holding brief for Jura for Plaintiff
2. Mr. H.O Bunde for the defendant
3. Court Assistant: Akello

**G.M.A ONG'ONDO**

**JUDGE**