



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC MISCELLANEOUS CIVIL APPLICATION NO. 50 OF 2020

WESTERN CERAMIC INDUSTRIES LIMITED.....PLAINTIFF/RESPONDENT

VERSUS

PHOEBE ORANGA.....1ST DEFENDANT/APPLICANT

JUDITH AKINYI OMONDI.....2ND DEFENDANT/APPLICANT

MICHAEL ODHIAMBO ONG'AWO.....3RD DEFENDANT/APPLICANT

DAVID OKUMU.....4TH DEFENDANT/APPLICANT

OKUMU OYOLA.....5TH DEFENDANT/APPLICANT

CHRISTOPHER OYIE.....6TH DEFENDANT/APPLICANT

MARY OKOTH.....7TH DEFENDANT/APPLICANT

TOM MBOYA AWINO.....8TH DEFENDANT/APPLICANT

CHIAGA ACHOLA.....9TH DEFENDANT/APPLICANT

OWINO ACHOLA.....10TH DEFENDANT/APPLICANT

MARTHA WANDAYA.....11TH DEFENDANT/APPLICANT

DERRICK OGODO.....12TH DEFENDANT/APPLICANT

RULING

The Defendants/Applicants have come to this court with application dated 9/12/2019 seeking the transfer of Kisumu CMC ELC No. 478 of 2018 to this court for determination. The application is based on facts that the subordinate court does not have jurisdiction to hear this case in view of the counter-claim. That the Applicants have been in occupation of Kisumu Kanyakwar LR 2290 for more than and over 12 years. The Defendants/Applicants claim to have been in possession for over 12 years hence the principles of adverse possession apply.

The Defendant in his reply states that there is no one occupying the suit land. The defendants entered the land in September 2018 and erected a wall but are not in occupation. According to the Plaintiff, it will be unfair to transfer the suit when 5 witnesses have been heard. Moreover, that the defendants have not raised the defence of adverse possession or the fact that the suit is time barred.

I have considered the affidavit on record and rival submissions and do find that since an originating summons no 11 of 2020 has been filed by the defendants claiming adverse possession on the suit land it is prudent that the file in the lower court be transferred to this court to pre-empt two conflicting Judgements on the same parcel of land. The parties are the same and that the subject matter is the same. The Magistrate Court has no jurisdiction to determine a claim based on adverse possession and therefore the Applicants cannot file a claim based on adverse possession in the Magistrate's Courts. I do allow the application and do order that file No. Kisumu CMC ELC No. 478 of 2018 be transferred to the Environment and Land Court Kisumu for hearing and determination. Costs in the cause.

DATED AND DELIVERED THIS 13th DAY OF MARCH, 2020.

A.O. OMBWAYO

ENVIRONMENT & LAND

JUDGE

In the presence of:

M/S OWIRO FOR APPLICANT

MR BAGADA FOR RESPONDENT