



**Wanambisi v Rianga (Environment and Land Miscellaneous Case
E006 of 2025) [2025] KEELC 4819 (KLR) (25 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4819 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND MISCELLANEOUS CASE E006 OF 2025**

**CK NZILI, J
JUNE 25, 2025**

BETWEEN

TOM LIHIRU WANAMBISI APPLICANT

AND

ENOCH MOCHIEMO RIANGA RESPONDENT

RULING

1. Before the court is an application dated 28/3/2025 seeking the court to transfer Kitale CMCELC No. 113 of 2002 (O.S), to this court for hearing and disposal. The main reason is contained on the face of the application and the affidavit in support of Tom Lihiru Wanambisi, sworn on 28/3/2025, is that the Court of Appeal has determined that lower courts have no jurisdiction to hear and determine a claim based on adverse possession. The applicant avers that he had filed the suit based on a ruling and order in Nakuru ELC No. 2 of 2019, Patrick Ndegwa Munyua -vs- Benjamin Mwangi & Another, attached to the affidavit as annexure marked TLW-2(b).
2. The application is opposed on the grounds of opposition and a preliminary objection dated 7/4/2025 for lack of jurisdiction to grant the orders sought, bad in law, incompetent, defective, and an abuse of the court process.
3. What the applicant is asking the court to do is to withdraw and transfer the suit threatened with dismissal by the lower court, after dismissing other two files belonging to the applicant's name Kitale MCELC No. 112 of 2022 (O.S) and MCELC No. 115 of 2022 (O.S), without allowing him an opportunity to apply for withdrawal or transfer of the two matters.
4. Section 18 of the *Civil Procedure Act* grants the court the general power to transfer a suit from one lower court to another and also to itself for hearing and disposal, at any stage of the proceedings on an application by a party or even on its motion. An applicant must make a strong case for the transfer.



Such power is exercised on grounds such as the expenses and difficulties of the trial, the convenience of the parties, and if it is in the interest of justice to do so.

5. In Abraham Mwangi Wamigwi -vs- Mbiriri Wanjiku & Another [212] eKLR, the court cited Kagenyi -vs- Musiramo & Another (1968) EA 43, that a suit can only be transferred if in the first instance, it had been brought to a court with jurisdiction to try it. In Samuel Kamau Macharia & Another -vs- Kenya Commercial Bank Ltd [2013] eKLR, the court held that jurisdiction is conferred by either [the Constitution](#) or a statute and not through the consent of the parties or judicial craftsmanship.
6. In Equity Bank Ltd -vs- Bruce Mutie Mukutu T/S Diani Tour Travel [2016] eKLR, the Court of Appeal held that where a suit is filed in a court without jurisdiction, the same was an incompetent suit incapable of being transferred.
7. Jurisdiction is everything, and without it, a court has to put down its tools, as held in the Owners of the Motor Vessel "Lillian S" -vs- Caltex Oil (Kenya) Ltd [1989] KECA 48 (KLR). In Phoenix of E.A. Assurance Co. Ltd -vs- S.M. Thiga T/A Newspaper Service [2019] eKLR, the court held that where a suit is filed in a court without jurisdiction, the only remedy is to withdraw it and file a competent one in the court seized of jurisdiction, otherwise, a suit devoid of jurisdiction is dead on arrival and cannot be remedied. The court said that without jurisdiction, the court cannot confer jurisdiction on itself.
8. The applicant says he relied on the professional advice of his lawyers, given the ruling by a sister court in Nakuru. The jurisdiction to entertain an adverse possession claim is defined by Sections 7, 11, and 38 of the [Limitation of Actions Act](#), Section 28(b) of the [Land Registration Act](#), and Order 37 of the Civil Procedure Rules. The court to handle the matter under the [Limitation of Actions Act](#) is the High Court.
9. Notwithstanding the honest error and the mistaken belief of the applicant's counsel, I think the applicant should exercise the only option to withdraw the suit and file it before this court.
10. A nullity is a nullity as held in Macfoy -vs- United African Co. Ltd [1961] 3 ALL ER 1169. The court cannot act on a nullity, for everything founded on nothing is also bad and incurably bad. I decline to exercise the power to transfer an otherwise incompetent suit. The preliminary objection by the respondent is upheld. The application is dismissed with costs.
11. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 25TH DAY OF JUNE 2025.

In the presence of:

Court Assistant - Dennis

Chebii for Kraido for Applicant present

Songole for Respondent present

HON. C.K. NZILI

JUDGE, ELC KITALE.

