



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT OF KENYA**  
**AT NAKURU**  
**MISC. APPLICATION NO. 240 OF 2013**  
**JOHN CHELIMO SEGUTON.....APPLICANT**  
**VERSUS**  
**JOSEPH KIRUR KIPLANGAT.....RESPONDENT**  
**RULING**

*(Application to transfer suit from Magistrates' Court to Environment and Land Court; suit for eviction; counterclaim for adverse possession; Magistrates' court having no jurisdiction to entertain a claim for adverse possession; suitable to have matter transferred for determination of all issues; application allowed; no orders as to costs)*

1. The application herein seeks orders of the transfer of the suit Nakuru CMCC No. 293 of 2012 from the Chief Magistrates' Court at Nakuru to the Environment and Land Court at Nakuru for hearing and determination. The application is supported by the affidavit of the applicant originally filed with the application and a further affidavit later filed. The application is not opposed by the respondent.
2. The applicant is the plaintiff in the suit Nakuru CMCC No. 293 of 2012. It is his case that he is the registered owner of the land parcel Nakuru/Teret/741 and that the defendant in the year 2002 trespassed into it. In the suit, he has inter alia asked that the defendant be evicted. The defendant filed defence and counterclaim. He refuted the claims of the plaintiff and in the counterclaim, he pleaded that he is entitled to the suit land by dint of the doctrine of adverse possession.
3. It is the position in our statutes that the Magistrates' court has no jurisdiction to entertain a claim for adverse possession. See Order 37 of the Civil Procedure Rules. It is this court which has jurisdiction to try the claim for adverse possession. The defendant could of course file a separate suit in this court for adverse possession but to avoid additional costs to the parties, I think it is best that I order the said suit to be transferred to this court for the determination of all issues.
4. I therefore allow the application but make no orders as to costs.

**Dated, signed and delivered in open Court at Nakuru this 3<sup>rd</sup> day of March 2015.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT**

**AT NAKURU**

**In presence of :-**

Mrs Ndeda for applicant

Mr Morintat holding brief for Mr B. N Kipkoech for respondent

Emmanuel Maelo : Court Clerk

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT**

**AT NAKURU**