

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC MISC. CASE NO. 13 OF 2020

JEANBYE MUNGOLE MUGESANI.....APPLICANT

VERSUS

FILEMONA FUNDI INDIRARESPONDENT

RULING

The application is dated 23rd July 2020 and is and is brought under section 1A, 1B, 3 seeking the following orders;

1. That Vihiga PMCC ELC No. 28 of 2020 be transferred to Kakamega High Court Environment and Land Court for hearing and disposals.
2. That the costs of this application be in cause.

It is based on the affidavit of Washington Athung'a and the grounds that, the subordinate court do not have clear jurisdiction to determine the matter due to conflicting high court decisions. This is to have the matter determined and in the interest of justice. He relied in the case of Njoroge Gitau vs. Kabuthu Macharia and Peter Turuthi Nyahururu ELC No. 81 of 2017.

This court has considered the application and the submissions therein. The application was served but the respondents failed to attend court or file any response. In the case of Patrick Ndegwa Munyua v Benjamin Kiiru Mwangi & Another [2020] eKLR the court held that;

*“In view of the foregoing discourse, there are ample reasons based on the express provisions of **Section 26 (3) and (4) of the Environment and Land Court Act, 2011 and Section 9 (a) of the Magistrates’ Courts Act, 2015**, the principles of interpretation of the constitution as well as the principles of the constitution such as devolution, access to services and access to justice for all persons, to find as I hereby do, that so long as presided over by a magistrate who is duly gazetted under **Section 26 (3) of the Environment and Land Court Act, 2011** and who has the requisite pecuniary jurisdiction, magistrates’ courts have jurisdiction and power to handle cases involving claims of adverse possession.”*

I hold the same view and find that the magistrates do have jurisdiction to `entertain claims based on adverse possession. I find this application is not merited and I dismiss it with no orders as to costs as the same is undefended.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 26TH OCTOBER 2020.

N.A. MATHEKA

JUDGE