



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA**

**ELC MISC. CASE NO. 12 OF 2020**

**JOHNSON MANYA NAIKA .....APPLICANT**

**VERSUS**

**JOSEPH ANDA WERIMO ..... RESPONDENT**

**RULING**

The application is dated 10<sup>th</sup> July 2020 and is brought under Section 1A, 1B, 3A, Section 18 (1) (b) (ii) & 2 of the Civil Procedure Act (Cap 21, Laws of Kenya) and Article 48 and Article 159 (d) of the Constitution of Kenya seeking the following orders:-

1. That case number Kakamega MCL & E 48 of 2020 be transferred to Mumias Senior Principal court for final hearing and determination.
2. That the costs of this application be in the cause.

It is based on the annexed affidavit of James Wanzla Namatsi and on the grounds that the cause of action arose beyond the geographical jurisdiction of this honourable court. That there is Mumias ELC Case No. 7 of 2020 already filed at Mumias SPMCC Court touching on the same land parcel No. S/Wanga/Musanda/978. That no prejudice will be occasioned to the defendant if the orders sought herein are granted. That it is in the interest of justice that the same be transferred to the magistrate's court at Mumias for hearing and final determination of this matter.

The respondent opposed the application and stated that the applicant has not annexed the originating summon and/or any other document or pleadings to demonstrate the existence of Kakamega MCL & E 48 of 2020 and Mumias ELC Case No. 7 of 2020 to warrant the grant of the orders sought. That a claim of adverse possession cannot be entertained by the Magistrates Court going by the provisions of section 7 & 38 of the Limitation of Actions Act and Order 37 Rule 7 of the Civil Procedure Rules. That the applicant has therefore not satisfied the conditions precedent to grant of the orders sought and the same ought to be dismissed with costs. That the respondent prays that the application be and is hereby dismissed with costs.

This court has considered the application and the submissions therein. 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 has merit and I grant it with no orders as to costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 24<sup>TH</sup> NOVEMBER 2020.**

**N.A. MATHEKA**

**JUDGE**