



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC MISC. CASE NO. E2 OF 2020

MICHAEL PATRICK INGANGA

CHRISTOPHER MAKANA OKWALO

HERBART WANYANGU

DIXON OKUSIMBA INDAKWA

CALISTO OMUTIMBA AKAPETI.....APPLICANTS

VERSUS

MUSTAFA A. JUMA

IDDI W. JUMA

MOHAMMED W. JUMA

RASHID O. JUMA

TWAHA A. JUMA

KHATHWIBO A. JUMA

ABDINUR A. JUMA

SHUAIB S. JUM.....ARESPONDENTS

RULING

The application is dated 2nd October 2020 and is brought under Section 3A of the Civil Procedure Rules seeking the following orders:-

1. That the honourable court be pleased to transfer Mumias MCLE No. 122 of 2018 from Mumias Law Courts to the Land and Environment Court at Kakamega for hearing and final determination since Mumias Court lacks jurisdiction to hear and determine the case.
2. The costs of this application be provided for.

The application is based on the annexed affidavit of Michael Patrick Inganga Olunga and grounds that the case was transferred to Mumias Law Courts for hearing and determination administratively by the Land and Environment Court at Kakamega. That when the case was mentioned at Mumias Law Courts, the court noted that it lacked jurisdiction to hear and determine the case. That the court at Mumias advised that they move the Land and Environment Court to transfer the case back to the High Court at Kakamega. That the case was originally Kakamega High Court Land and Environment Case No. 177 of 2015 originating summons. That the case cannot be heard and determine unless its moved to the High Court at Kakamega. That it is in the interest of justice that the above orders be granted.

The respondents submitted that the applicants originated Civil Suit No. 177 of 2015 (OS) before Kakamega High Court in the year 2015 and

took no action over the same for three years until the year 2018 when this honourable court ordered it to be transferred to the lower court, the Chief Magistrate's court where it was registered as MELC No. 577 of 2018 and later to Mumias Principal Magistrate's Court where it was registered as MELC 122 of 2018. The suit land parcel falls within the territorial jurisdiction of Mumias Principal Magistrate's Court. That on 28th November, 2018, the applicants advocate and his advocate appeared before Mumias Court and instead of the applicant's advocate moving the said court for hearing of the court, he raised the issue of jurisdiction thereby prompting the court to advise the parties lawyers to apply to the High Court for re-transfer of the case to the High Court. That the applicants never heeded the advice of the Principal Magistrate in Mumias and never made application all this time from November, 2018 forcing him to file the application dated 4th August, 2020 in Mumias Court for review of the orders so that the case would proceed in that court. That the court has the required jurisdiction and that the applicants only filed this application in abuse of court's process in order to defeat his application pending before Mumias court a copy. That the titles the applicants are challenging through this suit were obtained through Succession Cause No. 26 of 1999 in Kakamega High Court where they never laid their claim. But after filing this suit, they have abandoned it and enjoined in Succession Cause No. 26 of 1999 in which they are pursuing revocation of the grant and cancellation of the titles. That from the foregoing, the applicants' sole intention is to abuse court process and they are not interested in justice at all that is why they are coming up with this application two years after the Court in Mumias advised them to make the application.

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 not merited and I dismiss it with no orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 8TH DECEMBER 2020.

N.A. MATHEKA

JUDGE