



**Chogo v Kimari (Environment and Land Miscellaneous Application
E019 of 2025) [2025] KEELC 6692 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6692 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E019 OF 2025**

YM ANGIMA, J

OCTOBER 2, 2025

BETWEEN

KAINGU CHARO CHOGO APPLICANT

AND

MUCHIGI KIMARI RESPONDENT

RULING

1. By a notice of motion dated 20.03.2025 filed pursuant to Order 51 Rule 1 of the Civil Procedure Rules, Sections 1A, 1B, 3A, and 18 of the Civil Procedure Act (the Act) and all other enabling provisions of the law, the applicant sought to transfer ELC No. 137 of 2023 (O.S) pending before the Chief Magistrate's court at Mombasa to this court.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by Angeline Adhiambo Omollo on 29.03.2025. It was contended that on 08.01.2025, the magistrate's court ordered the valuation of the suit property (MN/III/3395 CR. 49135) pursuant to an application by the respondent, which sought to ascertain the value of the suit property. It was further contended that the said valuation revealed that the suit property was valued at Kshs 50,000,000/=, which value was above the pecuniary jurisdiction of the magistrate's court. The court was urged to transfer the said suit to this court, which is vested with the pecuniary jurisdiction to hear matters relating to land whose value exceeds Kshs 20,000,000/=.
3. The respondent opposed the application vide the grounds of opposition dated 06.05.2025. It was argued that the magistrates' court lacked jurisdiction to hear and determine the matter hence the suit was a nullity and cannot be transferred to this court. The said suit which was seeking adverse possession was said to offend Section 38 of the Limitation of Actions Act (Cap 22). The court was urged to dismiss the application with costs.



4. When the application was listed for inter partes hearing it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The applicant filed submissions in support of his application on 10.06.2025 while the respondent filed submissions on 21.07.2025.
5. The court has perused the application, the response thereto and the material on record as well as the submissions made by all counsel. The court is of the view that the following key issues arise for determination herein:
 - a. Whether the court can transfer ELC 137 OF 2023 from the magistrate's court to this court for hearing and determination.
 - b. Who shall bear the costs of the application.
6. The applicant herein is requesting that the suit CM ELC 137 OF 2023 Kaingu Charo Chogo v Muchigi Kimari before the Chief Magistrate's court at Mombasa be transferred to the Environment and Land Court for hearing and determination. The reason given was that a valuation had been conducted on the suit property, and it emerged that it was valued at Kshs 50 million above the pecuniary jurisdiction of the Chief Magistrate's court.
7. The power of the court to transfer cases instituted in a subordinate court is anchored in Section 18 (1) of the Act which provides;

On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage—

- a. transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
 - b. withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter—
 - i. try or dispose of the same; or
 - ii. transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
 - iii. retransfer the same for trial or disposal to the court from which it was withdrawn.
8. The discretionary powers of the court to transfer suits can only be exercised where the suit has been filed in a court clothed with the jurisdiction to hear and determine it. Where a suit has been filed in a court without jurisdiction, the same cannot be transferred. In this case, the magistrates' court was not clothed with jurisdiction to hear and determine the claim for adverse possession under Section 38 of the *Limitation of Actions Act*. The Court of Appeal in *Sugawara v Kiruti (Sued in her capacity as the administratrix of the Estate of Mutarakwa Kiruti Lepaso alias Mutaragwa Kiruti Lepaso alias Mutaragwa Kiroti Leposo and in her own Capacity) & 3 others* [2024] KECA 1417 (KLR)



clarified that the hearing and determination adverse possession matters is specifically limited to the Environment and Land Court to the exclusion of Magistrates' Court. It was held, inter alia, that;

“We come to this conclusion also bearing in mind that the jurisdiction of Magistrates' Courts is largely determined by the pecuniary interest designated for determination by each level of the Magistracy specified in the hierarchy of courts, in terms of section 7 of the Magistrates Courts Act. In claims for adverse possession where the value of the land in question may be unknown, as in the instant case, it could be that by the time of filing, the value of the land subject of determination may be far in excess of the particular Magistrates' Court's pecuniary jurisdiction, which for all intents and purposes was not what was intended by the Act.

In the circumstances, in view of the express provisions of section 38 of the *Limitation of Actions Act*, as did the Environment and Land Court, we find that Magistrates' Courts do not have jurisdiction to determine the claims of adverse possession. As a consequence, the trial magistrate in the instant case rightly disregarded hearing and determining it.”

9. The applicant's suit, which is devoid of jurisdiction, is basically incompetent and incapable of being transferred. The applicant's request to transfer an incompetent suit for want of jurisdiction to a competent court must fail. The applicant's case before the magistrate's court is a nullity and cannot be transferred into this court under Section 18 of the Act.
10. Although the costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded the costs of an action unless the court, for good reason, directs otherwise. Since the court is aware of the circumstances under which claims for adverse possession were being filed before the subordinate courts the court is of the view that the applicants were not at fault in doing so. As such, the court is of the view that there should be no order as to costs.
11. The upshot of the foregoing is that the court finds and holds that the applicant's application dated 20.03.2025 is devoid of merit. As a consequence, the said application is hereby dismissed with no order as to costs.

Orders accordingly

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 2ND DAY OF OCTOBER 2025.

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Y. M. ANGIMA

JUDGE

In the presence of:

Gillian - Court assistant

Mr. Apiyo for the applicant

Mr. Mwanzia for the respondent.

