



**Iha (Represented by His Legal Mwainasha Wema Salim & Alfán Shida Iha) v
Baridhwan & 5 others; Katana & 12 others (Interested Parties) (Environment and Land
Miscellaneous Case E014 of 2025) [2025] KEELC 6748 (KLR) (8 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6748 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND MISCELLANEOUS CASE E014 OF 2025
SM KIBUNJA, J
OCTOBER 8, 2025**

BETWEEN

**SHIDA IHA (REPRESENTED BY HIS LEGAL MWAINASHA WEMA SALIM &
ALFAN SHIDA IHA) APPLICANT**

AND

ZUBEIDA OMAR BARIDHWAN & 5 OTHERS RESPONDENT

AND

JULIUS KATANA & 12 OTHERS & 12 OTHERS INTERESTED PARTY

RULING

1. Vide the notice of motion dated 24th February 2025, the applicant seeks for inter alia:
 - a. The transfer of Mombasa MCC No. 3138 of 2009, Zubeida Omar Baidhwan versus Shida Iha & 18 Others to this court for hearing and determination.
 - b. An order restraining the 1st respondent and or her agents, attorney, servants or representatives from evicting, interfering, sale, disposing off, transferring, subdividing, charging and dealing in any manner with plot MN/11/397, suit property, pending the hearing and determination of the suit.

The application is based on the six (6) grounds on its face and supported by the affidavit of Mwainasha Wema Salim, wife and legal representative of the estate of Shida Iha, sworn on the 24th February 2025 inter alia deposing that Mombasa MCC No. 3138 of 2009, Zubeida Omar Baidhwan versus Shida Iha & 18 Others, was commenced through a plaint and before the lower court that had jurisdiction to hear and determine it; that her advocate has advised her that the lower court has no jurisdiction to hear and determine her adverse possession claim that she filed through her amended statement of defence



and counterclaim dated 18th September 2023, and hence this application; that as she resides on the suit property, Mombasa MCC No. 3138 of 2009, Zubeida Omar Baidhwan versus Shida Iha & 18 Others, should be transferred to this court that is with jurisdiction to hear and determine her adverse possession claim; that it is in the interest of justice for the subject matter of the suit to be preserved by restraining any interference by the 1st respondent so as not to render the entire judicial process nugatory.

2. The application is supported by Julius Katana, the 1st Interested Party, through his replying affidavit sworn on 5th March 2025, inter alia deposing that the lower court had issued status quo order to be maintained pending the hearing and determination of the suit, and it is only fair and just that prayer 4 be granted otherwise the plaintiff may proceed to evict them.
3. The 1st respondent opposed the application through the replying affidavit of Mohamed Omar Baridhawan, 1st respondent's son and duly appointed attorney, under power of attorney dated 30th September 2009, sworn on the 6th June 2025, inter alia deposing that the counterclaims filed before the lower court are incompetent and not fit for transfer to this court as the orders sought cannot be granted by any court.
4. On the 17th March 2025, the court heard the counsel present and directed the parties to maintain the status quo. The court issued directions on filing and exchanging submissions on 19th June 2025, and subsequently the learned counsel for the applicant and 1st respondent filed theirs dated the 27th June 2025 and 20th August 2025 respectively, that the court has considered. During the mention of 15th July 2025, the learned counsel for the Interested parties indicated that they are supporting the applicant and will not file any submissions.
5. The issues for determinations on the application dated 24th February 2025 are as follows:
 - a. Whether the applicant has met the threshold for the suit filed before the lower court to be transferred to this court, and for injunction order to issue as prayed.
 - b. Who pays the costs?
6. The court has carefully considered the grounds on the notice of motion, affidavit evidence, submissions by the two learned counsel and come to the following conclusions:
 - a. The applicant's only reason of seeking to have the suit filed before the lower court transferred to this court is because, that court is without jurisdiction on their adverse possession counterclaim. That ground has not been contested as even the 1st respondent, who filed a replying affidavit, conceded the lower court is without jurisdiction on adverse possession claim. Both counsel have relied on the Court of Appeal decision in the case of Sugara versus Kivuti (Civil Appeal No. E141of 2022)[2024] KECA 1417(KLR) 11th October 2024) that among others held that it is this court that has jurisdiction to hear and determine claims of adverse possession, and not the magistrates courts.
 - b. However, the 1st respondent opposes the applicant's prayer seeking to invoke the powers of this court under section 18 of the *Civil Procedure Act* chapter 21 of Laws of Kenya to transfer the suit from the magistrate's court to this court, alleging that the counterclaims filed before the lower court are incompetent. The 1st respondent has not specified in what respect the counterclaim is incompetent, and in the absence of the pleadings filed in the lower court suit, this court is unable to make any informed determination on the competence or otherwise of the counterclaims filed thereon. That ground is therefore, rejected.



- c. That as all parties are in agreement that the magistrate's court is without jurisdiction to hear and determine the adverse possession claim, the court finds the application for transfer of the suit from the lower court to this court is merited. The 1st Interested Party's deposition that the lower court had directed the parties to maintain status quo has not been rebutted. As that order is still in force and will remain in force even after the record is transferred to this court the injunction prayer is rejected.
 - d. Costs under section 27 of the *Civil Procedure Act* chapter 21 of Laws of Kenya, follow the events unless where otherwise ordered by the court on good grounds. In this instance, though the applicant has succeeded in their application, I find it fair and just for costs in the application to abide the outcome of the main suit, as the application was necessitated by the applicant's adverse possession counterclaim.
7. Flowing from the foregoing determinations, the court finds partial merit in the applicant's application dated the 24th February 2025, and orders as follows:
- a. That prayer (2) of the said notice of motion is allowed and Mombasa MCC No. 3138 of 2009, Zubeida Omar Baidhwan versus Shida Iha & 18 Others is hereby transferred to this court for hearing and determination.
 - b. The costs to abide the outcome of the main suit.

It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 8TH DAY OF OCTOBER 2025.

S. M. KIBUNJA, J.

ELC MOMBASA.

In The Presence Of:

Applicant : No Appearance

Respondents : M/s Kinuva For 1st Respondent

Interested Parties : Mr Mutisya

Kalekye-court Assistant.

S. M. KIBUNJA, J.

ELC MOMBASA.

