



**Mutamba v Koskei (Environment and Land Miscellaneous Application
15 of 2025) [2025] KEELC 6869 (KLR) (13 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6869 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 15 OF 2025**

CK NZILI, J

OCTOBER 13, 2025

BETWEEN

ALICE NAFULA MUTAMBA APPLICANT

AND

KIPKERICH C KOSKEI RESPONDENT

RULING

1. The applicant seeks to have Kitale CMC Civil Case No. 100B of 2022, formerly Kitale ELC No. 8 of 2020 (O.S), withdrawn and transferred to this court. The application, which is premised on Section 18 of the Civil Procedure Act, is dated 2/4/2025. The grounds are that the applicant's claim is on adverse possession; the court transferred the two consolidated suits to the lower court; the lower court cannot entertain the matter for want of jurisdiction.
2. In an affidavit sworn on 2/4/2025, the applicant emphasizes that the court transferred the consolidated suits, suo moto. Copies of the plaint and originating summons are attached as annexures marked ANM-1 and 2. The respondent is not opposed to the application.
3. A claim based on adverse possession is governed by Sections 7, 12, 13, and 17 of the Limitation of Actions Act, Cap 22 of the Laws of Kenya.
4. The said provisions set out the requisite ingredients that must be established and proven by a claimant seeking adverse possession. Section 38 of the Limitation of Actions Act espouses that the court vested with the requisite jurisdiction to entertain and adjudicate upon a claim for adverse possession is the High Court and not the Magistrates' Court.
5. Article 162 (2) (b) of the Constitution divests the said mandate to entertain and adjudicate claims touching on ownership of, title to, and use of land from the High Court and vests it in this court. Section 38 of the Act ought to be read alongside Section 7 of the 6th Schedule of the Constitution. Jurisdiction is everything, and it gives a court or a tribunal the power, authority, and legitimacy to



entertain any matter before it. See Phoenix of E.A. Assurance Company Limited -vs- S. M. Thiga t/ a Newspaper Service [2019] eKLR.

6. The Court of Appeal in Sugawara -vs- 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 (Civil Appeal E141 of 2022) [2024] KECA 1417 (KLR) (11 October 2024) (Judgment), just clarified what the law has been all along.
7. As it stands, the consolidated suits are before a court devoid of jurisdiction to entertain them. It is not lost to this court that it, suo moto, inadvertently transferred the suit to the lower court. The applicant should not suffer for the mistakes of this court. I allow the application with no orders as to costs.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 13TH DAY OF OCTOBER 2025.

HON. C.K. NZILI

JUDGE, ELC KITALE.

In the presence of:

Court Assistant - Dennis

Mr. Nyamu for applicant present

Atego for respondent absent

