



Odinga v Ambundo & 2 others (Environment and Land Miscellaneous Application E004 of 2025) [2025] KEELC 4439 (KLR) (12 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4439 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E004 OF 2025**

**E ASATI, J
JUNE 12, 2025**

BETWEEN

JOSPHAT MUKUNA ODINGA PLAINTIFF

AND

FLORENCE MEDINA AMBUNDO 1ST DEFENDANT

JAPHETH ODUODO 2ND DEFENDANT

AMOS MAKANGA MIGANDA 3RD DEFENDANT

RULING

1. The Notice of Motion application dated 5th March 2025 seeks for orders that the court be pleased to transfer Vihiga PM ELC NO 17 of 2019 (the suit) to this court for trial and determination.
2. The grounds upon which the application was made are that the Respondents herein filed the suit claiming that they are the registered proprietors of the whole of land parcel known as West Bunyore/ Esiandumba/7X1 measuring 0.26 Ha situate along the Luanda-Siaya Road. That the applicant herein is the Defendant in the suit and that in the suit he filed a counterclaim stating that he had been in actual possession, peacefully, and openly without use of force, secrecy or persuasion of the of the suit land for an aggregate period of and exceeding 12 years.
3. That it was decided in Civil Appeal E141 of 2022 that Magistrate's courts had no jurisdiction to hear and determine suits based on adverse possession.
4. The application was not opposed. Affidavit of service sworn by James Oyondi Mukabi on 19th March 2025 shows that the Respondents' Advocates were served with the application via email on 19/3/2025 at 11.59.



5. The suit filed by the Respondent in the Magistrate's court is within the jurisdiction of that court. However, the counterclaim based on adverse possession is outside the jurisdiction of that court under the provisions of section 38 of the Limitation of Sections Act.
6. The suit and the counterclaim are intertwined. The Defendant having been sued was entitled to make his defence against the plaintiffs' claim and part of his defence is that he has had adverse possession of the land.
7. Taking into account all circumstances of the case, it is in the interest of justice to allow the application.
8. The application is allowed in terms of prayer 1 thereof namely; that Vihiga SPMC ELC Case no 17 of 2019 *Florence Medina Ambundo & 2 Others vs Joseph Mukuna Odinga* is hereby transferred to this court for hearing and disposal. No orders as to costs.

Orders accordingly.

RULING, DATED AND SIGNED AT VIHIGA, READ VIRTUALLY THIS 12TH DAY OF JUNE, 2025 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI

JUDGE.

In the presence of:

Ajevi: Court Assistant.

Rabote for the Applicant.

Ombat for the Respondents.

