



Koskei v Rotich (Sued through Philip Marindany Chumo- Guardian Ad Litem) (Environment and Land Miscellaneous Application E046 of 2025) [2025] KEELC 7393 (KLR) (30 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7393 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E046 OF 2025
MAO ODENY, J
OCTOBER 30, 2025

BETWEEN

JOSEPH KIPNGENO KOSKEI APPLICANT

AND

EDWIN KIPKOECH ROTICH RESPONDENT
SUED THROUGH PHILIP MARINDANY CHUMO- GUARDIAN AD LITEM

RULING

1. This ruling is in respect of the Applicant’s Notice of Motion application dated 4th June, 2025 which seeks the following orders:
 - a. That the Honourable Court be pleased to transfer Molo MC-ELC No E053 of 2024 from the Chief Magistrate’s court at Molo to the Environment and Land Court at Nakuru for hearing and determination of the same.
2. The application was supported by the annexed affidavit of Joseph Kipngeno Koskei, sworn on June 5, 2025. He deponed that he filed a suit against the Respondent, Molo MC ELC 2053/2024, seeking a declaration that he acquired Title No. Nakuru/Korao settlement scheme/1223 (sic) through the doctrine of adverse possession.
3. The applicant deponed that before the suit could be determined, the Court of Appeal, sitting in Nairobi in Civil Appeal No E141 of 2022, rendered a landmark decision in which it held that the Magistrates court lacks jurisdiction to determine matters touching on a claim of adverse possession.
4. Philip Marindany Chumo, the Respondent’s legal guardian ad litem, filed a Replying Affidavit sworn on 20th June, 2025, and deponed that the orders sought should not be granted as based on the pleadings in Molo ELC No E053 of 2024, the suit does not qualify to be one that fits an adverse possession claim



but rather an action on trespass. He deponed that the application is made in bad faith as the Molo ELC Case is still ongoing simultaneous with the present case touching on the subject parcel. He asked that the application be dismissed with costs to the Respondents.

5. Joseph Kipngeno Koskei, filed a Further Affidavit sworn on 5th July, 2025, and deponed that the Respondent's Replying Affidavit has not demonstrated any tangible prejudice that he stands to suffer should the orders sought in his application be granted.

Applicant's Submissions

6. Counsel for the Applicants filed submissions dated 24th September, 2025, and identified the following issues for determination:
 - a. Whether this Honourable Court has power under Section 18 (1) (b) (ii) of the [Civil Procedure Act](#) to order transfer of the suit?
 - b. Whether the Respondent will suffer prejudice if the suit is transferred to the Environment and Land Court?
 - c. Who bears the costs of this application?
7. On the first issue, counsel relied on the Court of Appeal cases of Kagenyi vs Musirambo & Another [1968] EA 43 and Civil Appeal No E141 of 2022, and submitted that the Court of Appeal pronouncement is binding on all subordinate courts and renders it imperative that the Applicant's suit be transferred to the proper forum. Counsel further relied on the cases of: Equity Bank Limited vs Bruce Mutie Mutuku t/a Diani Tour & Travel [2016] eKLR and Omollo vs Nyamunga [2025] KEELC 120 (KLR).
8. On the second issue, counsel submitted that the Respondent has not demonstrated prejudice that would arise from the transfer. Counsel further submitted that the matter in Molo has not been heard and relied on the case of Owners of Motor Vessel "Lillian S" vs Caltex Oil (Kenya) Ltd [1989] KLR 1. On the third issue, counsel urged the court to allow the application and award him costs.

Respondent's Submissions

9. Counsel for the Respondent filed submissions dated 22nd September, 2025, and submitted that the Respondent's guardian ad litem has been making several attempts to seek the Applicant's eviction from the portion that he is illegally and fraudulently occupying. Counsel relied on the case of Omollo vs Nyamunga (Land Case 53 of 2020) [2025] KEELC 120 (KLR), and submitted that application lacks merit. Further that the trial court should be allowed to hear and determine the question of ownership and make appropriate orders on an action for trespass.

Analysis and Determination

10. The issue for determination is whether this court should transfer Molo MC-ELC No E053 of 2024 from the Chief Magistrate's court at Molo to the Environment and Land Court at Nakuru for hearing and determination. The Applicant contends that the cause of action is based on adverse possession. The Court of Appeal in the case of Pauline Chemuge Sugawara v Nairuko Ene Mutarakwa Kiritu & 4 Others Civil Appeal No. E141 of 2022 held that a Magistrates' Court has no jurisdiction to hear and determine a claim of land based on the doctrine of adverse possession.
11. It was the Respondent's submission that the cause of action is based on trespass hence the application should be dismissed with costs. The Applicant has attached a copy of the plaint to his supporting



- affidavit sworn on 5th June, 2025, which lists the particulars of trespass and illegality. The prayer for adverse possession has been made as an alternative.
12. If a suit is filed in the wrong court of forum, a transfer cannot breathe life into the suit, where such a court does not have jurisdiction to hear and determine it in the first place.
 13. The Court of Appeal in the case of Pauline Chemuge Sugawara vs Nairuko Ene Mutarakwa Kiruti & 3 Others, Nairobi, Civil Appeal No. E141 of 2022, judgment of 11 October 2024, held as follows:
 48. It is our view that, if it was intended that claims for adverse possession be determined by the Magistrates' Court, nothing would have been easier than for Parliament to have expressly enacted such a provision. So that in view of the express provisions of the law, a strict interpretation of section 38 would mean that hearing and determination of such matters is specifically limited to the Environment and Land Court to the exclusion of Magistrates' Court.
 49. 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.
 50. 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. In the result, this ground is without merit and is accordingly dismissed.
 14. A transfer can only be done if the matter was initially filed in the Environment and Land Court but erroneously transferred to the Magistrates Court as was held in the case of Obae & another v Ogeko (Suing as the Legal Representative of the Late Edward Ogeko Keburi) (Environment and Land Appeal E018 of 2021) [2025] KEELC 1204 (KLR) (13 March 2025) (Judgment). The court ordered that the case start de novo before the Environment and Land Court.
 15. I note that the Plaintiff claims for trespass with an alternative prayer for adverse possession. If the Applicant so wishes to pursue the alternative prayer for adverse possession then, he must withdraw the case and file in the Environment and Land Court which is the proper court under Section 38 of the Limitation of Actions Act. Alternatively, he can proceed with the trespass claim and abandon the adverse possession claim.
 16. I find that the Notice of Motion application dated 4th June 2025 lacks merit and is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 30TH DAY OF OCTOBER 2025.

M. A. ODENY

JUDGE

