



REPUBLIC OF KENYA



KENYA LAW
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**Amasitsa v David (Environment and Land Case E003 of 2025)
[2025] KEELC 8215 (KLR) (19 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 8215 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND CASE E003 OF 2025
A NYUKURI, J
NOVEMBER 19, 2025**

BETWEEN

DIMINA AMASITSA APPLICANT

AND

JOHN MUKHWESO DAVID RESPONDENT

RULING

1. Before court is a Notice of Motion dated 12th May 2025 filed by the applicant seeking the following orders;
 - a. Spent
 - b. Spent
 - c. That the honourable court be pleased to transfer Butali SPMCELC NO. 47 OF 2021 to the ELC court for hearing and determination.
 - d. That the costs of this application be provided for.
2. The application is premised on the supporting affidavit of the applicant sworn on 12th May 2025. The applicant's case is that together with her husband, they were sued in Butali SPMC ELC CASE NO. 47 OF 2021. That they filed defence and made a counterclaim based on adverse possession. That the lower court has no jurisdiction to hear and determine a claim based on adverse possession. That the respondent will not suffer prejudice if orders sought are granted.
3. The application was opposed. The respondent filed replying affidavit dated 9th July 2025. He stated that the applicant was dishonest as she had failed to disclose to this court that together with her husband they filed ELC Case No. 130 of 2018 which case was dismissed on 27th July 2018. That parties have closed their defences and the matter slated for submissions on 1st July 2025. That the application herein



- came four years after the suit was filed. That the application seeks to relitigate issues resolved in ELC 130 of 2016 and that the applicant's claim for adverse possession is res judicata.
4. Parties filed submissions in regard to the application which the court has duly considered.
 5. Having considered the application, response and submissions, the only issue for this court's determination is whether the applicant deserves the orders sought.
 6. This court has the jurisdiction to transfer a matter from the lower court to this court, as provided for in section 18 of the *Civil Procedure Act*.
 7. Section 38 (1) of the *Limitation of Actions Act* grants the Environment and Land Court the jurisdiction to hear and determine claims of adverse possession. While parties have always filed adverse possession claims in the Environment and Land Court (ELC), in a 2020 decision of the ELC being Patrick Ndegwa Munyua v Benjamin Kiiru & Another [2020] KEELC 3911 (KLR), the court held that Magistrates courts had jurisdiction to hear and determine claims of adverse possession. This had been the position until the Court of Appeal in the case of Pauline Chemuge Sugawara v Nairuko Ene Mutarakwa Kiritu & 4 Others Civil Appeal No. E141 of 2022, delivered in October 2024, held that Magistrates Courts have no jurisdiction to hear and determine claims based on adverse possession. Therefore, between 2020 and October 2024, many matters on adverse possession have lawfully been determined by Magistrates Courts throughout the Republic. I therefore take the view that as there was in existence a Superior Court's pronouncement in 2021 when the instant suit was filed; that the Magistrates Court had jurisdiction to hear and determine adverse possession claims, the applicant herein lawfully filed her claim in the subordinate court as that court then had jurisdiction, and the position having changed in 2024, the applicant's prayer to bring the suit to this court for hearing and determination is proper.
 8. Therefore until October 2024, the lower court in Butali SPMCELC 47 of 2021 had jurisdiction to hear and determine that suit. The respondent does not dispute the fact that the applicant had made a counterclaim based on the doctrine of adverse possession. He contests the application on the basis that the applicant's suit is res judicata in view of the decision in ELC 130 of 2016. While the respondent is within his right to argue that the applicants claim in Butali 47 of 2021 is res judicata, that argument can only be entertained in that suit and not in this application seeking for transfer of the said suit to this court. That matter has been in court for 4 years, and it is strange that the issue of res judicata is being raised in this application, instead of being raised in the said suit. If indeed Butali SPMELC is res judicata, then the court that has jurisdiction to pronounce as much is the court with the jurisdiction to determine the said suit, which is now not the lower court but this court. However, the question of whether or not that suit is res judicata can only be determined within that suit and not in the instant application.
 9. For those reasons, I am satisfied that the application dated 12th May 2025 is merited and the same is hereby allowed. In the result, Butali SPMELC Case No. 47 of 2021 is hereby transferred to this court for hearing and determination. I make no order as to costs.
 10. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 19TH DAY OF NOVEMBER, 2025

A. NYUKURI

JUDGE



In the presence of

Both parties absent

Court Assistant: Delphine

