



Makinda & another v Otundo & another (Environment and Land Miscellaneous Case E013 of 2025) [2025] KEELC 8078 (KLR) (19 November 2025) (Ruling)

Neutral citation: [2025] KEELC 8078 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT AND LAND MISCELLANEOUS CASE E013 OF 2025**

M SILA, J

NOVEMBER 19, 2025

BETWEEN

MARGARET MAKINDA 1ST APPLICANT

CHARLES ONYANCHA 2ND APPLICANT

AND

RAEL OTUNDO 1ST RESPONDENT

MARIA KEMUNTO ONYANCHA 2ND RESPONDENT

RULING

1. The application herein is one dated 4 July 2025 filed by the defendants in the suit Kisii MCELC No. 15 of 2019 pending in the Chief Magistrates' Court at Kisii. The applicants wish to have the said suit transferred to this court for disposal. The reason they give is that they have raised a counterclaim for adverse possession which the Magistrates' Court does not have jurisdiction to hear.
2. In the supporting affidavit the applicants have annexed a copy of the defence of the 2nd applicant which he filed in the suit sought to be transferred.
3. The respondents do not oppose the application and I have given it due consideration.
4. I am not too sure what the claim in the suit is as the plaint is not annexed. Nevertheless, I see from the annexed defence of the 2nd applicant that he filed a counterclaim seeking adverse possession for a portion measuring 25 x 100 feet out of the land parcel Nyaribari Chache/B/B/Boburia/2701 before subdivision into the land parcel Nyaribari Chache/B/B/Boburia/10888.
5. It is now settled pursuant to the Court of Appeal decision in the case of Pauline Chemuge Sugawara vs Nairuko Ene Mutarakwa Kiruti & 3 Others, Court of Appeal at Nairobi, Civil Appeal No. E141 of 2022, that Magistrates' Courts do not have jurisdiction to hear claims of adverse possession. I cannot fault the applicants because they did not commence the suit at the Magistrates' Court yet they need to



advance their claim for adverse possession as a counterclaim. Given that the counterclaim is for adverse possession which cannot be heard by the Magistrates' Court, I am persuaded to allow the application and order the transfer of the suit Kisii MCELC No. 15 of 2019 to the superior Environment and Land Court at Kisii for disposal.

6. There will be no orders as to the costs of this application.

DATED AND DELIVERED THIS 19 DAY OF NOVEMBER 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT AT KISII

Delivered in the presence of :

Mr. Nyambati for the applicants

Ms. Nyandoro for the respondents

Court Assistant – Michael Oyuko

