



Nyamora v Lake Victoria Water & Sewage & another (Environment and Land Miscellaneous Case E009 of 2025) [2025] KEELC 8052 (KLR) (20 November 2025) (Ruling)

Neutral citation: [2025] KEELC 8052 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT AND LAND MISCELLANEOUS CASE E009 OF 2025**

M SILA, J

NOVEMBER 20, 2025

BETWEEN

DANIEL BUNDI NYAMORA APPLICANT

AND

LAKE VICTORIA WATER & SEWAGE 1ST RESPONDENT

GUSII WATER & SANITATION COMPANY 2ND RESPONDENT

RULING

1. The application herein is one dated 10 March 2025 filed by the plaintiff in the suit Kisii MCELC No. 1 of 2019 which is pending before the Chief Magistrates' Court at Kisii. The reason given is that at the time of filing suit, the applicant had obtained a valuation of the property Nyaribari Chache/ B/B/Boburia/2619 which returned a value of Kshs. 19,500,000/=, but the destruction done on the property now exceeds Kshs. 20,000,000/= which would be beyond the pecuniary jurisdiction of the Magistrates' Court. I see also in the supplementary affidavit sworn by the applicant, that the applicant has also averred that the 2nd respondent has filed a counterclaim for adverse possession, which cause of action cannot be heard by the Magistrates' Court for want of jurisdiction.
2. The application is not opposed by the 1st respondent but is opposed by the 2nd respondent who filed a replying affidavit sworn by Wilfred Onsomu, the commercial manager of the 2nd respondent. He has deposed inter alia that the applicant had filed a valuation report when filing suit affirming the jurisdiction of the Magistrates' Court. He has further deposed that there is no evidence that the value of the subject matter is beyond Kshs. 20,000,000/=.
3. I have considered the application together with the submissions filed by Mr. Mainga, learned counsel for the applicant, and Mr. Nyasimi, learned counsel for the respondent.
4. It is not very clear to me, whether for sure, the value of the subject matter is below or beyond Kshs. 20 million. The applicant would probably have had a tough time demonstrating that he now



needs an order of transfer having himself filed the case before the Magistrates' Court and was alive to the pecuniary jurisdiction of that court. However, we cannot run away from the fact that the 2nd respondent has a counterclaim for adverse possession and that counterclaim cannot be heard by the Magistrates Court given 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 counterclaim cannot be heard by the Magistrates' court and it automatically ousts jurisdiction from the Magistrates' Court.

5. I am persuaded, more so because of the counterclaim, that it is necessary to transfer the suit to the superior ELC for determination. I therefore allow the application and order the transfer of the suit Kisii MCELC No. 1 of 2019 to this court for disposal.
6. There will be no orders as to the costs of this application.
7. Orders accordingly.

DATED AND DELIVERED THIS 20 DAY OF NOVEMBER 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of :

Mr. Mainga for the applicant

Mr. Nyasimi for the 2nd respondent

No appearance for the 1st respondent

Court Assistant – Michael Oyuko

