



Moenga & 2 others v Machora (Suing as a Representative of the Family of the Late Samson Machora Ombati) & 2 others (Environment and Planning Miscellaneous Application E001 of 2025) [2025] KEELC 8675 (KLR) (10 December 2025) (Ruling)

Neutral citation: [2025] KEELC 8675 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT AND PLANNING MISCELLANEOUS APPLICATION E001 OF 2025
M SILA, J
DECEMBER 10, 2025**

BETWEEN

**ZACHARIA ANUNDA MOENGA 1ST APPLICANT
KOIGE ANTONY 2ND APPLICANT
ANNAH ANUNDA 3RD APPLICANT**

AND

**REUBEN MANYANGE MACHORA (SUING AS A REPRESENTATIVE OF THE FAMILY OF THE LATE SAMSON MACHORA OMBATI) 1ST RESPONDENT
LAND REGISTRAR, KISII 2ND RESPONDENT
THE HON. ATTORNEY GENERAL 3RD RESPONDENT**

RULING

1. The application before me is one dated 1 July 2025 filed by the 1st – 3rd defendants in the suit Kisii MCELC No. 47 of 2022. What they seek is an order that the said case be transferred to this court for hearing and final disposal. The reason they give for seeking the order is that they have a counterclaim for adverse possession in that suit and the Magistrates’ Court lacks jurisdiction to determine such a matter. I have not seen anything filed to oppose the application and I have given it due consideration.
2. The applicants have annexed the plaint and from it, I see that they, together with the Land Registrar Kisii, and the Attorney General, were sued as 1st – 5th defendants by the 1st respondent. The claim of the 1st respondent is that his late father owned the land parcels Bassi/Bogetaorio II/2875 and 2665. He claimed that the applicants herein proceeded to bury the remains of one Joseph Mogiri Moenga in the land parcel No. 2665. In the suit, the 1st respondent sought a declaration of ownership of the suit



lands , an order to exhume the body interred therein, and orders to have the applicants permanently restrained.

3. The applicants have annexed the defence and counterclaim that they have filed. From it, I see that they claim entitlement to the land parcels No. 2665, 2875 by way of adverse possession.
4. The Court of Appeal, in the fairly recent 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 held that the Magistrates' Courts have no jurisdiction to entertain a claim for adverse possession. I cannot fault the applicants for finding themselves in the Magistrates' Court, because they were sued, but their defence and counterclaim ousts the jurisdiction of the court, and I do not think it can be argued that the main suit itself was commenced in a court that was devoid of jurisdiction. It is the defence and counterclaim which has ousted jurisdiction from the Magistrates' Court.
5. I am therefore persuaded to allow this application and order the transfer of the suit Kisii MCELC No. 47 of 2022 to the superior Environment and Land Court at Kisii for disposal. There will be no orders as to the costs of this application.
6. Orders accordingly.

DATED AND DELIVERED THIS 10 DAY OF DECEMBER 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT,

AT KISII

Delivered in the presence of :

Ms. Chepkorir for the applicants

Mr. Momanyi Aunga for the 1st respondent

Mr. Wabwire, State Counsel, for the 2nd & 3rd respondents

Court Assistant – David Ochieng

