



**Ndegwa v Mathenge (Environmental and Land Originating Summons E004 of 2025) [2025] KEELC 8503 (KLR) (3 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 8503 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU**  
**ENVIROMENTAL AND LAND ORIGINATING SUMMONS E004 OF 2025**  
**LN MBUGUA, J**  
**DECEMBER 3, 2025**

**BETWEEN**

**PETER KIMANI NDEGWA ..... APPLICANT**

**AND**

**PURITY WANJIRU MATHENGE ..... RESPONDENT**

**RULING**

1. This Originating Summons dated 20.5.2025 was filed by the Applicant who is claiming the suit property Marmanet/North Rumuruti Block 2/3393 (Ndurumo) by way of adverse possession. The suit was filed alongside an application dated 23.05.2025 where the Applicant is seeking the following orders; maintenance of status quo to the effect that the Applicant remains in occupation of the suit land, temporary injunction restraining the Respondent from interfering with Applicant's possession of the suit land and that the file Nyahururu Magistrate's Court ELC No. E010 of 2025 be transferred to this court for hearing and determination.
2. The application is premised on grounds that the Applicant is the one in occupation of the suit premises. That the Respondent who is the registered owner of the suit premises filed a plaint dated 02.05.2025 in Nyahururu CMELC No. 10 of 2025 seeking vacant possession of the said land. The applicant contends that the Magistrate's Court lacks the jurisdiction to hear his counterclaim of adverse possession.
3. The Applicant has availed various documents including the plaint filed in the Chief Magistrate's Court.
4. In opposition thereof, the Respondent filed a Notice of Preliminary Objection dated 01.07.2025 seeking to have the suit and the application struck out on the basis that this suit is scandalous, frivolous and vexatious and that it amounts to an abuse of the process of this court. The Respondent contends



that the suit is res subjudice to Nyahururu CM ELC 10 of 2025 which is between the same parties and is in respect of the same subject matter.

5. On 28.07.2025 the court gave directions for the pending application and the preliminary objection to be heard simultaneously by way of written submissions. To this end I have duly considered the rival submissions, those of the Applicant dated 11.08.2025 as well as those of the Respondent dated 16.08.2025.

6. In the case of *Kiiru v Githinji (Representative of Joseph Githinji Kanyogo Deceased) & 5 others* (Environmental and Land Originating Summons E001 of 2025) [2025] KEELC 1233 (KLR) (12 March 2025) (Ruling) Neutral citation: [2025] KEELC 1233 (KLR) where the court was dealing with more less similar issues as the ones in the current suit, the court stated thus;

“There being no dispute that the suit before the magistrate’s court is for eviction of the current plaintiff, and that the current suit relates to a claim of adverse possession, I had no reason to engage in an exercise of splitting hairs through myriad applications in different courts with possibilities of having conflicting decisions. In that regard, and taking into account that this court is the one vested with jurisdiction to hear a claim of adverse possession, I find that the logical course of action is to transfer the suit before the magistrates court to be heard with the current suit”.

7. A perusal of the plaint dated 02.05.2025 in Nyahururu CM ELC E010 of 2025 reveals that the Respondent herein is seeking orders inter alia the current Applicant to vacate the suit premises. The Originating Summons filed before this court is a claim on adverse possession and the jurisdiction to hear such a claim falls under the Environment and Land Court as was recently pronounced by the Court of Appeal in the case of *Sugawara v Kiruti (Sued in her capacity as the administratrix of the Estate of Mutarakwa Kiruti Lepaso alias Mutaragwa Kiruti Lepaso alias Mutaragwa Kiroti Leposo and in her own Capacity) & 3 others* (Civil Appeal E141 of 2022) [2024] KECA 1417 (KLR) (11 October 2024) (Judgment) Neutral citation: [2024] KECA 1417 (KLR)

8. In light of the foregoing analysis, I find that the appropriate orders to grant are the transfer of the case before the Magistrates court to this court and for maintenance of status quo. Thus the final orders are;

- 1). The case Nyahururu Magistrate’s Court ELC No. E010 of 2025 is hereby transferred to this court and shall be registered as an ELC file in terms of the provisions of Section 18 of the *Civil Procedure Act*.
- 2) Once the file from the magistrate’s court is registered, it shall be consolidated with the current matter of which, the case from the magistrate’s court shall be the lead file while the OS suit shall be the counterclaim.
- 3) An order of maintenance of status quo is hereby issued where by the current applicant shall continue to be in occupation of the suit land.
- 4) The application dated 23.5.2025 is marked as spent, while the Preliminary Objection is hereby dismissed.
- 5) Each party is to bear their own costs of the application and the preliminary objection.

**DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 3<sup>RD</sup> DAY OF DECEMBER 2025 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**



**JUDGE**

In the presence of;

Vanessa – Court Assistant

Ndung'u Maina for Plaintiff

David Kaburu for Defendants

