

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISII

ELCLMISC NO. E029 OF 2025

JOASH MORUYE OMWAMBA APPLICANT

VERSUS

NYAMWEYA MOSES ONYAMBU RESPONDENT

RULING

1. The application before me is one dated 12 November 2025 filed by the defendant/counterclaimant in the suit Etago MCELC No. E021 of 2024. The substantive order sought by the applicant is that the said case be transferred to this court for hearing and final disposal. The reason given for seeking the order is that he has 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 applicant has annexed the plaint and from it, I see that the respondent sued him for eviction from the land parcel South Mugirango/Bogetenga/1842. I see that the applicant filed a defence and counterclaim wherein he asserted that he deserves title to the disputed land by way of adverse possession.
3. 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 applicant for finding himself in the present situation, because he was sued, but in his defence he wishes to raise the claim of adverse

possession. The primary suit was filed in a court of competent jurisdiction but it is the defence and counterclaim which ousts the jurisdiction of the Magistrate.

4. I am therefore persuaded to allow this application and order the transfer of the suit Etago MCELC No. E021 of 2024 to the superior Environment and Land Court at Kisii for disposal. There will be no orders as to the costs of this application.
5. Orders accordingly.

DATED AND DELIVERED THIS 11 DAY OF DECEMBER 2025

JUSTICE MUNYAO SILA
JUDGE, ENVIRONMENT AND LAND COURT,
AT KISII

Delivered in the presence of :

No appearance on part of counsel for the applicant

No appearance on part of counsel for the respondent

Court Assistant – David Ochieng