



**Orodho alias Jimmy Ogongo Opiyo & another (Suing in their Personal Capacity and as the Legal Representatives of the Estate of Alexander Paul Opiyo Orodho) v Nyangweso & 2 others (Sued in their Personal Capacity and as Representatives of the Estate of Andere Ondeyo) (Environment and Land Appeal E010 of 2025) [2026] KEELC 82 (KLR) (20 January 2026) (Judgment)**

Neutral citation: [2026] KEELC 82 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA  
ENVIRONMENT AND LAND APPEAL E010 OF 2025**

**E ASATI, J**

**JANUARY 20, 2026**

**BETWEEN**

**JEREMIAH LIVINGSTONE ORODHO ALIAS JIMMY OGONGO  
OPIYO ..... 1<sup>ST</sup> APPELLANT**

**JOASH BARON ORODHO ALIAS JOASH BARRON OPIYO .... 2<sup>ND</sup> APPELLANT**

**SUING IN THEIR PERSONAL CAPACITY AND AS THE LEGAL  
REPRESENTATIVES OF THE ESTATE OF ALEXANDER PAUL OPIYO  
ORODHO**

**AND**

**FLORENCE NYANGWESO ..... 1<sup>ST</sup> RESPONDENT**

**ELIZABETH ASAMI ..... 2<sup>ND</sup> RESPONDENT**

**JANE ADHIAMBO OLUOCH AONO ..... 3<sup>RD</sup> RESPONDENT**

**SUED IN THEIR PERSONAL CAPACITY AND AS REPRESENTATIVES OF  
THE ESTATE OF ANDERE ONDEYO**

*(An appeal from the judgement of the Honourable J. A Agonda (P.M)  
dated 11th February 2025 in Vibiga CMC E&L CASE NO E300 OF 2022)*

**JUDGMENT**

**Introduction**

1. Vide the Memorandum of Appeal dated 10<sup>th</sup> March 2025, the Appellants appealed against the judgment dated 11<sup>th</sup> February 2025 in Vibiga SPMC E & L Case No. E300 of 2022 and sought for



orders that the appeal be allowed, the entire judgment and decree by the Hon. Principal Magistrate J.A. Agonda delivered on 11<sup>th</sup> February 2025 be set aside and be substituted with proper orders, that the honourable court be pleased to make its own independent findings and conclusion on the issues raised and that the Appellant be awarded the costs of the appeal and cost in the trial court.

2. A brief background to the appeal as can be gathered from the record of appeal is that the Appellants sued the Respondents vide the amended Originating Summons dated 22<sup>nd</sup> September 2023 and sought orders that they had obtained title to the suit land parcel NO. WEST BUNYORE/ EKWANDA/1814 (previously WEST BUNYORE/EKWANDA/383) by adverse possession. The Respondents opposed the Appellants' claim vide the contents of their Reply to the Originating Summons dated 10<sup>th</sup> January 2023 sworn by ELIZABETH ASAMI, the first Respondent. The record shows that the matter was heard by way of viva voce evidence before the trial court which, vide the judgment delivered on the 14<sup>th</sup> February 2025 found that the Appellants had failed to prove their case against the Respondents to the required standard of balance probabilities. The Court consequently dismissed the suit and awarded costs to the Respondents.
3. Aggrieved by the judgment the Appellants preferred the present appeal.

### **Submissions**

4. Vide directions given on 11<sup>th</sup> June 2025, the appeal was heard by way of written submissions. Written submissions dated 12<sup>th</sup> September 2025 were filed by RGO Advocates LLP on behalf of the Appellant.
5. Written submissions dated 7<sup>th</sup> October 2025 were filed by Morigori Ondieki and Company Advocates on behalf of the Respondents.

### **Issues for determination**

6. Although the Appellant presented a total of 22 grounds of appeal, the same were compressed into 4 substantive issues for determination herein namely;
  - a. Whether the Magistrate's court had jurisdiction to hear and determine adverse possession claims.
  - b. Whether the trial court had authority to pronounce herself on the original Originating Summons dated 13<sup>th</sup> December 2022 when there existed an amended Originating Summons dated 22<sup>nd</sup> September 2023.
  - c. Whether the use of the suit parcel of land is not clear after the demise of Alexander Paul Opiyo Orodho.
  - d. Whether the Appellants met the threshold for grant of a declaration of adverse possession orders.
  - e. What orders should issue from the appeal.
7. The court adopts these as the issues for determination in this appeal.

### **Analysis and determination**

8. This being a first appeal, this court is enjoined to reexamine the evidence placed before the trial court to arrive at independent conclusion and findings. See cases of *Selle & Another vs Associated Motor Boat Company Limited and Others* [1968] EA 123 and *Gitobu Imanyara & 2 others -vs- Attorney General* [2016] e KLR.



9. The first issue for determination is whether or not the trial court had jurisdiction to hear and determination adverse possession claims. It was submitted on behalf of the Appellants that jurisdiction is the cornerstone of any lawful decision. Counsel relied on the cases of the Owners of the Motor Vessel “Lillian S” -vs- Caltex Oil (Kenya) Limited [1989] KECA 48 (KLR), Macharia and Another vs Kenya Commercial Bank Limited and 2 others [2012] KESC 8 (KLR) and Phoenix of E.A Assurance Company Limited vs S.M Thiga t/a Newspaper Services (2019) KECA 767 (KLR) to support the submissions.
10. Counsel further relied on the case of Sugawara vs Kiruti (sued in her capacity as the Administratrix of the Estate of Mutorakwa kiruti lepasso alias Mutaragwa Kiruti Lepaso alias Mutaragwa Kiroti Leopso and in her own capacity and 3 others [2024] KECA 1417 (KLR) (herein referred to as the Sugawara case) where it was held, inter alia, that in view of the express provisions of section 38 of the Limitation of Actions Act, the Magistrate’s courts do not have jurisdiction to determine claims of adverse possession. Counsel submitted that on the issue of jurisdiction alone the appeal has merit and the decision of the trial court should be set aside.
11. On behalf of the Respondent it was submitted that it was the Appellants who instituted the Originating Summons in the Magistrate’s court and dutifully prosecuted the same to conclusion thereat. That the authorities cited by the Appellant are clear on jurisdiction. That where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. That a party cannot appeal against nothing. That the Appellant having filed the case is estopped from challenging the court’s decision for want of jurisdiction.
12. It is clear from the pleadings and proceedings before the trial court that the Appellants’ claim before the trial court was based on adverse possession. It is clear that the court and all parties proceeded with prosecution of the case to the end in spite of the provisions of section 38 of the Limitation of Actions Act. The Appellants have not explained why they filed the suit in the court without jurisdiction and prosecuted the same to the end even in the wake of the Court of Appeal decision in the Sugawara case (supra). Nonetheless, failure of the parties to move the court on the issue of jurisdiction and failure of the court to find suo moto that it had no jurisdiction neither donates jurisdiction to the court nor validates a court decision made without jurisdiction.
13. The appropriate step that the trial court ought to have taken as held in the cases cited by the appellant on jurisdiction, was to down its tools and strike out the suit for want of jurisdiction. The 1<sup>st</sup> issue is therefore determined in the positive that the trial court did not have jurisdiction to entertain the suit
14. Having found that the trial court lacked jurisdiction and erred in failing to down its tools and strike out the suit for lack of jurisdiction the court finds that the Appeal has merit for purpose of upholding the position that the Magistrates court has no jurisdiction to entertain claims based on adverse possession for as long as Section 38 of the Limitations Act has not been amended to accommodate the said courts.
15. It is clear from the Sugawara Case that before the decision was made, there had emerged conflicting decisions jurisprudence on the issue of jurisdiction of the Magistrate’s to entertain adverse possession claims thereby misguiding litigants who filed claims based on adverse possession in the Magistrate’s courts. But what is not clear is why the parties and the court in the present case proceeded with the matter even after the decision in the Sugawara case in 2024 by the Court of Appeal.
16. Although costs follow the event, in this case it is the appellants who filed the case and prosecuted it to the end in a court without jurisdiction and subsequent filed this appeal on grounds that the trial court had no jurisdiction. I find it to be in the interest of justice that the respondents be compensated by way of an award of costs.



17. The appeal is hereby allowed. The judgment of the trial court dismissing the suit is hereby set aside and replaced with a judgment striking out the suit for lack of jurisdiction with no order as to costs.

Costs of the appeal are awarded to the respondents.

Orders accordingly.

**JUDGEMENT DATED AND SIGNED AT VIHIGA, DELIVERED VIRTUALLY THIS 20<sup>TH</sup> DAY OF JANUARY 2026.**

**E. ASATI,**

**JUDGE.**

**In the presence of:**

Ajevi- Court Assistant.

Ogongo for the Appellants.

Ondieki for the Respondents.

