



**Adingo v Mudoga & another (Environment and Land Miscellaneous Application  
E027 of 2025) [2026] KEELC 141 (KLR) (21 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 141 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E027 OF 2025  
GMA ONGONDO, J  
JANUARY 21, 2026**

**BETWEEN**

**BATSON MUDASHI ADINGO ..... APPLICANT**

**AND**

**WILLIAM MUDOGA ..... 1<sup>ST</sup> RESPONDENT**

**HENRY ASWANI AGOSA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The present ruling pertains to an application by way of a Notice of Motion dated 15<sup>th</sup> September 2025 under, inter alia, sections 3 and 3A of the *Civil Procedure Act* Chapter 21 Laws of Kenya by the applicant, Batson Mudashi Adingo through Ochieng Ndolo and Company Advocates for the orders infra;
  - a) Suit No. Kapsabet CMELC NO. E055 of 2023, Batson Mudashi Adingo v William Mudoga & Henry Aswani Agosa (The CM's Court suit herein) be and is hereby transferred from the Chief Magistrate's Court, Kapsabet, to the Environment & Land Court at Kapsabet for hearing and final determination.
  - b) Costs of this application be provided for.
2. The anchorage of the application is an affidavit of eleven paragraphs sworn on even date by the applicant and copies of documents including green card regarding the suit land reference number NANDI/SEREM/271, pleadings and accompanying documents filed in the CMs court suit, Kapsabet ELCOS Nos. E023 (The ELC 1<sup>st</sup> suit herein) and E024 of 2023 (The ELC 2<sup>nd</sup> suit herein) marked as 'BMA-1 to BMA-5' annexed thereto and six grounds, inter alia;
  - a. The Applicant herein, on 29/9/2023, had filed the CM's court suit No.; Batson Mudashi Adingo v William Mudoga & Henry Aswani Agosa seeking primarily eviction orders and



permanent injunction against the Respondents herein and their agents, servants or persons acting through them.

- b. The 1<sup>st</sup> Respondent, through his mother one Elikah Mbone Okungi, upon learning of the filing of the suit in the subordinate Court, proceeded to file the ELC 1<sup>st</sup> suit; Elikah Mbone Okungi v Batson Mudashi Adingo. The same was filed on 17/10/2023. In this Originating Summons suit, the 1<sup>st</sup> Respondent, through his said mother Elikah Mbone Okungi, primarily seeks to be declared as being entitled to land measuring 1 acre over the Applicant's land NANDI/SEREM/271 measuring 3 acres (The suit land) by way of adverse possession.
  - c. The 2<sup>nd</sup> Respondent too, upon learning of the filing of the suit in the subordinate Court, proceeded to file the ELC 2<sup>nd</sup> suit; Henry Aswani Agosa v Batson Mudashi Adingo. The same was filed on 30/10/2023. On this Originating Summons, the 2<sup>nd</sup> Respondent herein equally seeks, primarily to be declared as being entitled to land measuring 2 acres over the suit land by way of adverse possession too.
3. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents through AK Advocates opposed the application by way of nine (9) grounds of opposition dated 2<sup>nd</sup> October 2025 which include;
- a. The application is frivolous, vexatious, incompetent and an abuse of the process of Court.
  - b. The subordinate courts have jurisdiction to handle land disputes pursuant to section 9 of the Magistrates' Courts Act provided the subject land in dispute falls within the pecuniary jurisdiction of the Court.
  - c. The Honourable court has no powers to transfer suit filed in the court with jurisdiction to handle the same to a Court without jurisdiction in the matter.
  - d. Pursuant to section 18 of the Civil Procedure Act, a Court can only transfer suit when the same is filed in a Court without jurisdiction to a Court with jurisdiction to handle the same and not vice versa.
  - e. The application is thus an abuse of the process of the Court and the same should be struck out with costs.
4. The application was heard by way of written submissions further to the directions of this Court given on 22<sup>nd</sup> September 2025 under Order 51 Rule 16 of the Civil Procedure Rules 2010.
5. By the Applicant's submissions dated 12<sup>th</sup> November 2025, reference is made to the application, the grounds of opposition and delineated three issues for determination including whether this Court has the jurisdiction and power to transfer the sought as sought in the application. It was submitted in part, that this Court has the jurisdiction and equipped with discretionary power to transfer the suit for more convenient administration of justice. That the application meets the tests and considerations in Heinz Isbracht-v-Charles Ochieng Ndiga Misc Application No. 20 of 1997 on transfer of suit.
6. So, Counsel for the Applicant implored the Honourable Court to allow the application with costs to the Applicant as a well settled principle. Reliance was made on the overriding objective of this Court under sections 3 and 19 (2) of the Environment and Land Court 2015 (2011), section 18 (1) of the Civil Procedure Act Chapter 21 Laws of Kenya to buttress the submissions.
7. In the submissions dated 2<sup>nd</sup> October 2025, Learned Counsel for the Respondents referred to the application, the grounds of opposition and urged the Court to strike out the application with costs to the Respondent as the application does not satisfy all the requirements for transfer of suit. Counsel cited Section 18 (1) of the Civil Procedure Act (supra) in opposition to the application.



8. Further, Counsel submitted that jurisdiction must exist at the time of filing the suit as held by the Court of Appeal in the case of *E.A. Assurance Company Limited-v-S.M Thiga t/a Newspaper Services* (2010) KLR. That in light of the orders sought in the suit and the other two suits pending before this Court, the test to be considered by court is whether to transfer the suit as noted in the case of *Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tour & Travel* (2016) KLR.
9. Upon careful consideration of the application, the grounds of opposition and the rival submissions in entirety the issues for determination identified in the submissions are compressed to whether there is merit in the application and the appropriate orders to issue for the ends of justice.
10. I bear in mind all the provisions of the law under which the application was commenced as well as case law inclusive of *Heinz* and *Equity Bank* cases (supra) cited in the submissions. It is notable that sections 11, 12 to 18 of the *Civil Procedure Act* (Cap 21) relate to the place of suing and transfer of suits.
11. In opposing the grounds of application, the respondents asserted that this court lacks jurisdiction to transfer the suit in the manner sought in the application. That the ELC 1<sup>st</sup> and 2<sup>nd</sup> suits pertain to adverse possession which claim can only be entertained by this court and not the Magistrate's Courts; see *Sugawara-v-Kiruti* (Sued in her capacity as the administratrix of the Estate of Mutarakwa Kiruti Lepaso alias Mutarakwa Kiruti Lepaso alias Mutaragwa Kiroti Leposo and in her own Capacity & 3 others (2024) eKLR
12. Sections 7 and 9 of the *Magistrates' Courts Act* No. 26 of 2015, provide for the magistrates' courts' civil jurisdiction and claims in Land and Environment cases.
13. It is worth to note that grounds (b) (c) and (d) of the application and the applicant's supporting affidavit inclusive of paragraphs 2 through to 6 disclose that the subject matter in the CM's court suit, the ELC 1<sup>st</sup> and 2<sup>nd</sup> suits, is the same. It is land reference number NANDI//SEREM/271.
14. The applicant herein is a constant party in the aforesaid three suits. He is the plaintiff in the CM's court suit and the ELC 2<sup>nd</sup> suit. The parties in both suits are the same. Further, the defendant in the ELC 1<sup>st</sup> suit is the applicant.
15. Undoubtedly the parties in the trio suits have the right of access to justice as provided for under Article 48 of *the Constitution* of Kenya 2010. Furthermore, they have unlimited right to be heard therein under Article 50 (1) as read with Article 25 (c) of the same Constitution.
16. It is established law that the right to be heard is fundamental and permeates our entire justice system; see *James Kanyiita Nderitu & another-v-Marios Philotas Ghikas & another* (2016) eKLR.
17. Notably, Article 159 (2) (b) of *the Constitution* of Kenya 2010 reads;  
Justice shall not be delayed.
18. In the foregone, the CM's Court suit, the ELC 1<sup>st</sup> and 2<sup>nd</sup> suits ought to be heard without delay by this court bearing in mind section 3 of the *Environment and Land Court Act* 2015 (2011) for the ends of justice. So, I find the application cogent and meritorious. The grounds of opposition fail thereby.
19. Wherefore, the application dated 15<sup>th</sup> September 2025 is hereby allowed in terms of the principal prayer for the transfer of suit as set out in paragraph 1 (a) hereinabove with no orders as to costs.
20. It is so ordered.

**DATED AND DELIVERED AT KAPSABET THIS 21<sup>ST</sup> DAY OF JANUARY 2026.**

**HON G M A ONGONDO**



## **JUDGE**

In the presence of; -

Mr. Ndolo Learned Counsel for the Applicant

Mr. Ogutu Learned Counsel for the Respondents

Walter, Court Assistant

