



Chelangat v Kiplimo & 2 others (Environment and Land Miscellaneous Application E026 of 2025) [2026] KEELC 165 (KLR) (21 January 2026) (Ruling)

Neutral citation: [2026] KEELC 165 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E026 OF 2025
GMA ONGONDO, J
JANUARY 21, 2026**

BETWEEN

MARCELA CHELANGAT APPLICANT

AND

EDWARD KIPLIMO 1ST RESPONDENT

ANTONY MELLY 2ND RESPONDENT

LAND REGISTRAR 3RD RESPONDENT

RULING

1. The present ruling is in respect of an application by way of a Notice of Motion dated 20th August 2025 by the applicant through Oyaro J and Associates Advocates for the orders infra;
 - a) That this Honourable Court be pleased to transfer Kapsabet Senior Principal Magistrate’s ELC Case No. E036 of 2023 from Kapsabet Senior Principal Magistrate’s Court to this Honourable Court for hearing and determination on merits.
 - b) That the cost of this application be provided for.
2. The application is anchored upon the Applicant’s affidavit of eleven paragraphs sworn on even date and the annexed copies of the originating summons (J.O.1) and the preliminary objection (J.O.2) in Kapsabet SPMC EL Case No. E036 of 2023. Also, it is premised on nine grounds, inter alia;
 - a) The suit in the Subordinate Court is founded on claims of adverse possession under Section 38 of the *Limitation of Actions Act*, which vests exclusive jurisdiction in the Environment and Land Court (formerly High Court).
 - b) The Court of Appeal recently vide a decision rendered on the 11th day of October 2024 in *Sugawara vs Kiruti Civil Appeal E141 of 2022*) (2024) KECA 1417 held that Magistrate’s



Courts have no jurisdiction to entertain adverse possession claims as those matters must be handled by the Environment and Land Court.

3. The 1st and 2nd Respondents through Cheruiyot Melly and Company Advocates, opposed the application by way of the replying affidavit sworn on 31st October 2025 by the 2nd respondent for and on behalf of his co-respondent and himself and the documents including a copy of the ruling (EK1) annexed thereto. They termed the application frivolous, vexatious, scandalous and an abuse of the process of the court hence, prayed that the same be dismissed with costs to the respondents. It was averred in part, that the application is incompetent since a matter filed in a Court without jurisdiction is a nullity at law as held in the case of Nickson M Chanda-vs-Angela Kamwaria (2009) eKLR. That the applicant was awakened by the Respondents' notice of preliminary objection which is pending before the Magistrate's Court.
4. The 3rd Respondent filed only the memorandum of appearance dated 31st October 2024 and did not respond to the application despite the opportunity given by the Court on 5th November 2025.
5. On 5th November 2025, the court directed that the application be heard by way of written submissions as provided for under Order 51 Rule 16 of the Civil Procedure Rules 2010
6. By the submissions dated 5th December 2025, learned Counsel for the applicant implored the Court to allow the application as the preliminary objection before the Magistrate's Court may be struck out on technicality of procedure and relied on Article 159 (2) (b) of *the Constitution* of Kenya 2010. Counsel further cited the case of Owners of Motor Vessel 'Lillian S'-vs-Caltex Oil (Kenya) Ltd (1989) KLR 1 and the decision in Sugawara case (supra) on jurisdiction.
7. In the submissions dated 1st December 2025, learned Counsel for the 1st and 2nd Respondents termed the application unmerited as the suit before the trial court is a nullity and urged the Court to dismiss the application with costs. Counsel relied on Chanda case (supra) and Nyanuaye Yiene Jacob & 3 others Kisumu ELC Case No. 59 of 2019.
8. In the foregone, is there merit in the application and what appropriate orders to issue for the ends of justice?
9. Notably, the application was generated under, inter alia, sections 1A,1B and 18 of the *Civil Procedure Act* Chapter 21 Laws of Kenya on overriding objective of the Court and transfer of suits. Also, section 3 of the *Environment and Land Court Act* 2015 (2011) stipulates the overriding objective of this Court.
10. The 1st and 2nd Respondents' contention is that the suit sought to be transferred is a nullity at law. The suit was originated before the decision in Sugawara case (supra) and the Court is guided by Article 159 (2) (b) (d) and (e) of *the Constitution* of Kenya 2010 as read with Articles 50 (1) 25 (c) and 48 of the same Constitution.
11. It is established law that lack of jurisdiction renders a Court's jurisdiction void; see Republic -vs- Karisa Chengo & 2 others (2017) eKLR.
12. The suit before the Magistrate's Court is for adverse possession in respect of the suit land reference number NANDI/KIPSIGAK/106. The Magistrate's Court lacks jurisdiction over the suit as held in Sugawara case (supra) in the circumstances.
13. In the instance application, I am guided by provisions of *the Constitution* and the law under which it was instituted. The essence, is to sustain the suit sought to be transferred rather than dismiss it as held by the Court of Appeal in DT Dobie & Company (Kenya) Ltd -vs-Muchina & another [1980] KECA 3 (KLR) and Safaricom PLC-vs-Kinuthia & 2 others (2025) eKLR.



14. It is thus, my considered view that the Magistrate's Court is devoid of jurisdiction over the suit before it. Thus, the application is meritorious and the 1st and 2nd Respondents' opposition fail to thwart it.
15. Accordingly, the application dated 20th August 2025 is hereby allowed in terms of order 3 for transfer of suit as stated in paragraph 1 (a) hereinabove with no orders as to costs.
16. It is so ordered.

DATED AND DELIVERED AT KAPSABET THIS 21ST DAY OF JANUARY 2026

HON G M A ONGONDO

JUDGE

In the presence of;

1. Ms Nekesa Bernice holding brief for Oyaro learned Counsel for the Applicant
2. Mr Kwame learned Counsel holding brief for Ms Cheruiyot learned Counsel for the 3rd Respondent
3. Walter, Court Assistant

