



REPUBLIC OF KENYA



Ngina & 5 others (Defending and Suing in Their Personal Capacity as Well as Representatives of the Estate of John Muinde Musau – Deceased) v Mbaluku (Environment and Land Miscellaneous Application E056 of 2025) [2026] KEELC 290 (KLR) (28 January 2026) (Ruling)

Neutral citation: [2026] KEELC 290 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E056 OF 2025
NA MATHEKA, J
JANUARY 28, 2026**

BETWEEN

**PAULINE NGINA 1ST APPLICANT
SALOME MUENI 2ND APPLICANT
LUCY MBATHA 3RD APPLICANT
JOSEPHINE GEORGE 4TH APPLICANT
MARY NDINDA 5TH APPLICANT
CATHERINE MWENDE 6TH APPLICANT**

**DEFENDING AND SUING IN THEIR PERSONAL CAPACITY AS WELL
AS REPRESENTATIVES OF THE ESTATE OF JOHN MUINDE MUSAU –
DECEASED**

AND

THERESIA MBULA MBALUKU RESPONDENT

RULING

1. The application is dated 10th June 2025 and is brought under Order 18(1b) of the *Civil Procedure Act* seeking the following orders;
 1. Civil Suit ELC No. E96 of 2021 at the Chief Magistrate’s Court Machakos be transferred to the High Court for hearing and determination.
 2. Costs of the application be provided for.



2. It is supported by the annexed Affidavit of Salome Mueni Mbai and on the grounds that the Respondent moved the court by way of Plaint seeking an order of injunction directed against the Applicants to be permanently restrained from entering, disposing of or in any other way interfering with land parcel No. Muputi/Kiima Kimwe/3876. That in response, in their defence and counter-claim, the Applicants sought an order of adverse possession by virtue of them having resided on the land for over 12 years. That the High Court has recently determined that a Lower Court cannot issue an order of adverse possession. That it would only be fair and just if the above suit is transferred to the High Court for hearing and determination.
3. The Respondent submitted that the Applicants are not the originators of the subject suit that was properly filed before a court with competent jurisdiction and their counter claim of adverse possession is an afterthought. That the suit can only be transferred from one court to another if the court from which it is being transferred had jurisdiction over the subject matter.
4. This court has considered the application and the submissions therein. The question as to whether or not the Magistrates courts have jurisdiction to entertain or adjudicate upon a claim for adverse possession had been addressed by the Court of Appeal.
5. In the case of *Sugawara vs 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)*, the Court of Appeal held thus;

It is our view that, if it was intended that claims for adverse possession be determined by the Magistrates' Court, nothing would have been easier than for Parliament to have expressly enacted such a provision. So that in view of the express provisions of the law, a strict interpretation of section 38 would mean that hearing and determination of such matters is specifically limited to the Environment and Land Court to the exclusion of Magistrates' Court."

6. In the case of *Njoki Wainaina vs Josephat Thuo Githachuri & 3 others; National Land Commission & another (Interested Parties) (2021) Eklr* the Court observed as follows;

the magistrate's court, are not seized with jurisdiction to adjudicate upon claims founded on adverse possession on the face of the explicit provisions contained in Sections 37 & 38 of the *Limitation of Actions Act*."

7. From the foregoing binding decisions, there is no gainsaying that the Chief Magistrates court including the trial court is not vested with jurisdiction to address and adjudicate upon the issues pertaining to adverse possession in the defence.
8. In the case of *John Mwangi Karanja vs Alfred Ndiangui (2011) eKLR*, Hatari Waweru J ruled that;

With the enactment of sections 1A and 1B of the *Civil Procedure Act*, the time has perhaps now come for this matter of transfer of suits to be looked at afresh.... It appears to me that transfer of suits from one court to another is essentially a procedural issue that has been elevated to the status of jurisdiction. If a suit finds itself in the wrong court, surely it is in the interests of justice and in the interests of all concerned that the suit be forwarded to the appropriate court with jurisdiction so that the issues in dispute can be properly and finally adjudicated. What prejudice would any party suffer in that event? After all, the overriding objective of the *Civil Procedure Act* and Rules is to facilitate the just, expeditious,



proportionate and affordable resolution of the civil disputes governed by the Act (section 1A (1)). The court itself is enjoined by subsection (2) of that section to seek to give effect to the said overriding objective in exercise of its powers under the Act or the interpretation of any of its provisions.”

9. And also the Court of Appeal in *Daniel N. Mugendi vs Kenyatta University & 3 others* (2013) eKLR in dealing with a similar case ruled as follows;

And in order to do justice, in the event where the High Court, the Industrial Court or the Environment & Land Court comes across a matter that ought to be litigated in any of the other courts, it should be prudent to have the matter transferred to that court for hearing and determination. These three courts with similar/equal status should in the spirit of harmonization, effect the necessary transfers among themselves until such time as the citizenry is well-acquainted with the appropriate forum for each kind of claim.”

10. In the instant case, the Plaintiff filed by the Respondent is seeking an order of injunction directed against the Applicants to be permanently restrained from entering, disposing of or in any other way interfering with land parcel No. Muputi/Kiima Kimwe/3876. In response the Applicants filed a defence and counter-claim, seeking an order of adverse possession by virtue of them having resided on the land for over 12 years. In the circumstances, in view of the express provisions of section 38 of the *Limitation of Actions Act*, I find that Magistrates’ Courts do not have jurisdiction to determine the claims of adverse possession. I find that the trial court does not have the jurisdiction to entertain the counter claim and hence the case would not be fully determined.
11. In Section 17 and 18 of the *Civil Procedure Act* confer on the High Court of Kenya limited jurisdiction to transfer a case instituted in a subordinate court where more than one subordinate court has jurisdiction to try the case from one such subordinate court to the other or from the High Court to a subordinate court or vice versa.
12. Guided by the above statutory and case law and invoking the court’s inherent and wide discretionary powers and in order do justice to the parties I transfer this matter to ELC Machakos for hearing and determination with no orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 28TH DAY OF JANUARY 2026.

N.A. MATHEKA

JUDGE

