



Nyapola & another v Ndunde (Environment and Land Miscellaneous Case E024 of 2025) [2026] KEELC 296 (KLR) (28 January 2026) (Ruling)

Neutral citation: [2026] KEELC 296 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND MISCELLANEOUS CASE E024 OF 2025
A NYUKURI, J
JANUARY 28, 2026**

BETWEEN

EUNICE NYAKOA NYAPOLA 1ST APPLICANT

BEARTRICE OTABA WANGA 2ND APPLICANT

AND

FRANCIS ASHIKOBÉ NDUNDE RESPONDENT

RULING

1. Before court is a Notice of Motion dated 6th April 2025 filed by the applicants seeking the following orders;
 - a. That Kakamega CMC ELC NO. E130 OF 2021 be transferred to the ELC High court Kakamega for hearing and determination.
 - b. Costs be in the cause.
2. The application is premised on the supporting affidavit of the 2nd applicant sworn on 6th April 2025. The applicant's case is that they filed Kakamega CM ELC CASE NO. E130 OF 2021, wherein they sought land under the doctrine of adverse possession, but that the Chief Magistrates Court has no jurisdiction to hear and determine the matter. That it is imperative that the matter is transferred to this court for hearing and determination.
3. Although the respondent indicated in his submissions that he filed grounds of opposition dated 28th April 2025, having checked the CTS, it appears that nothing was filed by the respondent in response to the application herein. Both parties filed submissions in regard to the application, which the court has duly considered.
4. Having considered the application and submissions, the only issue that arises for this court's determination is whether the applicant deserves the orders sought.



5. This court has the jurisdiction to transfer a matter from the lower court to this court, as provided for in section 18 (1) (b) (i) of the *Civil Procedure Act*.
6. Section 38 (1) of the *Limitation of Actions Act* grants the Environment and Land Court the jurisdiction to hear and determine claims of adverse possession. While generally, parties have filed adverse possession claims in the Environment and Land Court (ELC), in a 2020 decision of the ELC being Patrick Ndegwa Munyua v Benjamin Kiiru & Another [2020] KEELC 3911 (KLR), the court held that Magistrates courts had jurisdiction to hear and determine claims of adverse possession. This had been the position until the Court of Appeal in the case of Pauline Chemuge Sugawara v Nairuko Ene Mutarakwa Kiritu & 4 Others Civil Appeal No. E141 of 2022, delivered in October 2024, held that Magistrates Courts have no jurisdiction to hear and determine claims based on adverse possession. Therefore, between 2020 and October 2024, many matters on adverse possession have lawfully been determined by Magistrates Courts. The respondent submitted that as the applicants filed the case before a court without jurisdiction, the same was a nullity. I however disagree with that position. I take the view that as there was in existence a Superior Court's pronouncement in 2021 when the instant suit was filed; that the Magistrates Court had jurisdiction to hear and determine adverse possession claims, the applicant herein lawfully filed their claim in the subordinate court as that court then had jurisdiction to determine the dispute. That position having changed in 2024, the applicant's prayer to bring the suit to this court for hearing and determination is proper.
7. For the above reasons, I am satisfied that the application dated 6th April 2025 is merited and the same is hereby allowed. In the result, Kakamega CMC ELC Case No. E130 OF 2021 is hereby transferred from Kakamega Chief Magistrates Court to this court for hearing and determination. I make no order as to costs.
8. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 28TH DAY OF JANUARY 2026

A. NYUKURI

JUDGE

In the presence of

Mr. Momanyi for the applicant

Mr. Shilisia holding brief for Mr. Luchivya for the respondent

Court Assistant: Delphine

