

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT SIAYA**  
**ELC MISC APPLICATION NO. E 020 OF 2025**

**MICHAEL OKUMU ORIARO.....1<sup>ST</sup>**  
**APPLICANT**  
**SYLVANUS ORIARO OKUMU.....2<sup>ND</sup>**  
**APPLICANT**  
**GEORGE OBIERO.....3<sup>RD</sup>**  
**APPLICANT**

**-Versus -**

**JAMES ONUAMGO**  
**OBONDI.....RESPONDENT**

**RULING**

1. This ruling is the subject of the Notice of Motion application dated 20/5/2025. The applicant seeks the transfer SIAYA SPMC ELC CASE NO E065 OF 2021 JAMES ONYANGO OBONDI VS JMICAHEL OKUMU ORIARO, SYLVANUS ORIARO OKUMU AND GEORGE OBIERO OKUMU to this Honourable court for hearing and determination.
2. The application is premised on the grounds on its face and the supporting affidavit of Michael Okumu Oriaro sworn on 20/5/2025.
3. It is deponed that the Respondent filed a land case at Siaya SPMC ELC Case No. E065 OF 2021 vide a Plaint

dated 22<sup>nd</sup> July 2021. The Defendant filed a Defence & counterclaim dated 7<sup>th</sup> April 2022. That the Counterclaim includes a prayer for adverse possession which the SPMC court at Siaya lacks jurisdiction to determine. That this court is seized of jurisdiction to deal with the matter.

4. That it is in the interests of justice that the suit is transferred that the suit be transferred to this court for hearing and determination on merits.
5. The application is opposed by the replying affidavit of James Onyango Obondi sworn on 25<sup>th</sup> June 2025. The deponent admits the existence of the said counterclaim. It is averred that the respondent raised a preliminary objection on the courts jurisdiction to handle a claim of adverse possession. which was sustained by the trial court. A copy of the ruling is annexed as JOO2.
6. It is averred that the present application is an afterthought and was spent on 29/11/2022 when the trial court rendered its ruling. The application is termed to be bad in law as it seems to be an appeal on the ruling herein which was in favor of the applicants. Further that it is resjudicata and overtaken by events. The court is urged to dismiss the application in the interests of justice.
7. The application was disposed by way of written submissions. The applicants' submissions are dated 30<sup>th</sup>

May 2025 but filed on 21/06/2025. The respondents' submissions are dated 18/07/2025.

8. The applicants posit that they have moved the court to transfer the suit in the lower court in view of the decision of the Court of Appeal in the case of **Pauline Chemuge Sugawara Vs Nairuko Ene Mutarakwa Kiruti (2024) KECA 1417 (KLR)**. The applicant also invokes the provisions of section 18 of the Civil Procedure Act on the power of the High Court to withdraw and transfer cases instituted in subordinate court and prays for the application to be dismissed.
9. The respondents submission reiterate that the issue ought to have come as an appeal to this court. That the best the court can do were it to review the orders of the trial court then it should only move to strike out the applicants defence and counterclaim. The respondent citing the decision of the Supreme Court in **Jasbir Singh Rai & 3 others v. Tarlochan Singh Rai Estate of & 4 others; SC Petition 4 of 2012; [2013] eKLR** prays for costs.

### **DETERMINATION**

10. Having considered the application, the responses thereto as well as the submissions of the parties for me the main issue for determination is whether the application is merited.

11. The court has noted the plea of resjudicata raised and that the matter ought to have come as an appeal. I to a large extent agree on the former submission but what is before me is an application to transfer of suit for hearing and determination by this court. I will therefore determine the application on its merits.
12. I have read the ruling delivered by the trial court which has been availed though attached to the submissions and not the replying affidavit. However, this is a court record and I will look away at the technicalities.
13. Let me state that assuming that the matter had come to this court on appeal, I would still uphold the trial courts finding on the jurisdiction of the Magistrates Court to handle claims on adverse possession.
14. The Court Appeal in **Pauline Chemuge Sugawara Vs Nairuko Ene Mutarakwa Kiruti (supra)** clarifying the law held that notwithstanding the expansion of the jurisdiction of environment and land usage to the Magistrates Courts, it is instructive that under Section 9 (a) of the Magistrates Court Act, various matters are specified for determination, but claims for adverse possession are not included in that section. And that, it is only the Environment and Land Court which has jurisdiction to hear and determine claims for adverse possession.

15. But what was the effect of the above decision. To me the above holding did not mean that litigants could now transfer their matters to the ELC for hearing and determination.
16. It is trite that a counterclaim is a separate suit that stands on its own. As long as the counterclaim sought orders that the claimants be declared the owners of the suit property by way of adverse possession, the court was not seized of the requisite jurisdiction.
17. Should the court exercise its discretion under the provisions of Section 18 of the Civil Procedure Act as invited by the applicants? Discretion must be exercised judiciously. It is trite that nothing comes from a nullity and therefore there is nothing to transfer.
18. I think I have said enough to demonstrate there was no cure for the counterclaim.
19. The application must fail and it is hereby dismissed with no orders as to costs.  
Orders accordingly.

**Dated at Siaya this 5<sup>th</sup> Day of February 2026**

**HON. JUSTICE A. E. DENA**  
**JUDGE**  
**5/02/2026**

**Judgment delivered virtually through Microsoft Teams Video Conferencing Platform in the Presence of:**

Mr. Ogonda for the Applicants

Mr. Agina for Respondent

Court assistant: Elisha Mboya

ORIGINAL