



REPUBLIC OF KENYA



**Alu v Muyanda (Environment and Land Miscellaneous Case
E030 of 2025) [2026] KEELC 689 (KLR) (4 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 689 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND MISCELLANEOUS CASE E030 OF 2025**

A NYUKURI, J

FEBRUARY 4, 2026

BETWEEN

NATHANIEL MUTIVA ALU APPLICANT

AND

GEORGE MZEE MUYANDA RESPONDENT

RULING

1. Before court is an amended Notice of Motion dated 24th June 2025 filed by the applicant seeking the following orders;
 - a. That this honourable court be pleased to transfer CMC Kakamega MC L&E NO. E184 OF 2022 (OS) now pending before the Chief Magistrate's Court to Kakamega Environment and Land Court for hearing and final determination.
 - b. That costs of this application be in the main suit
2. The application is premised on the supporting affidavit of the applicant sworn on 24th June 2025. The applicant's case is that he filed Kakamega CM ELC CASE NO. E184 OF 2022, claiming land under the doctrine of adverse possession, but that the Chief Magistrates Court now has no jurisdiction to hear and determine that matter in view of the determination by the Court of Appeal in Civil Appeal No. E141 OF 2022. That it is imperative that the matter is transferred to this court for hearing and determination.
3. The application was opposed. The respondent filed replying affidavit dated 30th July 2025. He stated that the application lacks merit, is bad in law, incompetent, defective and an abuse of the court process as it offends provisions of section 38 of the *Limitation of Actions Act*. That the court has no jurisdiction to grant orders sought and the application ought to be dismissed.



- Parties were directed to file and serve written submissions in respect of the application herein. On record are submissions filed by the respondent dated 6th October 2025; which the court has duly considered.

Analysis and determination.

- The court has carefully considered the application, response thereto and submissions. The only issue that arise for determination is whether the applicant deserves the orders sought.
- Section 18 (1) (b) (i) of the *Civil Procedure Act* grants this court the jurisdiction to transfer a matter from the Magistrates court to this court for hearing and determination.
- While section 38 (1) of the *Limitation of Actions Act* grants this court the jurisdiction to hear and determine claims of adverse possession, in the case of Patrick Ndegwa Munyua v Benjamin Kiiru & Another [2020] KEELC 3911 (KLR), the Environment and Land court held that Magistrates courts have jurisdiction to hear and determine claims of adverse possession. On the other hand, in Philip Kithaka v Mercy Karimi Nyaga [2021] e KLR L.N Mbugua J held that the Magistrates court has no jurisdiction to hear and determine adverse possession claims. Both decisions have been the legal position, until the Court of Appeal settled the law thereon in the case of Pauline Chemuge Sugawara v Nairuko Ene Mutarakwa Kiritu & 4 Others Civil Appeal No. E141 of 2022, delivered in October 2024, where it was held that Magistrates Courts have no jurisdiction to hear and determine claims based on adverse possession claims.
- The respondent submitted that as the applicant having filed his case before a court without jurisdiction, the same could not be transferred to this court. I however respectfully disagree with that position. I take the view that as there was in existence a Superior Court's pronouncement 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, and the position having changed in 2024, the applicant's prayer to bring the suit to this court for hearing and determination is proper.
- For those reasons, I am satisfied that the application dated 24th June 2025 is merited and the same is hereby allowed. In the result, Kakamega CMC ELC CASE NO. E184 of 2022 (OS) is hereby transferred from the Chief Magistrates Court to this court for hearing and determination. I make no order as to costs.
- It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT/VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 4TH DAY OF FEBRUARY 2026

A. NYUKURI

JUDGE

In the presence of

Ms. Cheron holding brief for Mr. Nandwa for the applicant

Mr. Osango for the respondent

Court Assistant: Delphine

