

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
KAKAMEGA

ELC MISC. CASE NO. E023 OF 2025

WYCLIFFE AMBUNYA ANALO.....APPLICANT

VERSUS

LIVINGSTONE ATIKA SHINALI (Sued on behalf

of the estate of RAJIKO OKWARO ISACK.....

RESPONDENT

RULING

1. Before court is a Notice of Motion dated 4th April 2025 filed by the applicant seeking the following orders;

a) That this honourable court be pleased to transfer Butere MC ELC NO. E046 OF 2022 (OS) from Butere Principal Magistrates Court to itself for directions and for hearing and final disposal thereof.

b) That costs of this application be provided for.

2. The application is premised on the supporting affidavit of the applicant sworn on 4th April 2025. The applicant's case is that Butere MC ELC CASE NO. E046 OF 2022 (O.S) is a claim for land based on the doctrine of adverse

possession but that the Magistrates court now has no jurisdiction to hear and determine the 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 in Butere be transferred to this court for hearing and determination.

3. The application was opposed. The respondent filed a preliminary objection dated 21st July 2025, where he stated that the application was incompetent because it sought to transfer a suit filed in a court without jurisdiction.
4. The court directed parties to file written submissions in support of their respective positions. On record are submissions filed by the respondent dated 10th November 2022 which the court has duly considered.

Analysis and determination.

5. The court has carefully considered the application, the preliminary objection and submissions. The only issue that arise for determination is whether the applicant deserves the orders sought.

6. This court has the jurisdiction to transfer a suit from the Magistrates court to this court, as provided for in section 18 (1) (b) (i) of the Civil Procedure Act.

7. 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. 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. This court takes cognizance of the fact that there are also other decisions of Environment and Land Court where it was held that Magistrates courts have no jurisdiction to hear and determine adverse possession claims, like the decision of L.N. Mbugua J. in **Philip Kithaka v Mercy Karimi Nyaga [2021] e KLR**. The decisions for and against the jurisdiction of Magistrates Court in respect of adverse possession claims being decisions of the Environment and Land Court have been the law, until the Court of Appeal settled the law in that regard, in October 2024 in the case of **Pauline**

Chemuge Sugawara v Nairuko Ene Mutarakwa Kiritu & 4 Others Civil Appeal No. E141 of 2022, where it held that Magistrates Courts have no jurisdiction to hear and determine adverse possession claims.

8. Therefore, when Butere CMC ELC NO. E046 of 2022 (OS) was filed, as per the decision in **Patrick Ndegwa** case, the Magistrates court had jurisdiction to determine that matter. Therefore, the respondent's submission that Butere MC ELC CASE NO. E046 OF 2022 was filed in a court without jurisdiction and should be dismissed and not be transferred to this court, lacks justification as at the time of filing the said suit, the Magistrates Court had jurisdiction to hear and determine the same. The Magistrates court's jurisdiction having been taken away by the decision in the **Sugawara** case, in view of provisions of Section 1A of the Civil Procedure Act, and the circumstances of this case I find that it is only just, fair, expeditious and affordable to the parties that the suit in Butere is transferred to this court for hearing and determination.

9. In the premises, I am satisfied that the application dated 4th April 2025 is merited and the same is hereby allowed. Consequently, Butere MC ELC CASE NO. E046 of 2022 (OS) is hereby transferred from the Magistrates Court at Butere to this court for hearing and determination. I make no order as to costs.

10. 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

No appearance for the applicant

No appearance for the respondent

Court Assistant: Delphine