

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
KAKAMEGA

ELC MISC. CASE NO. E041 OF 2025

GLADYS ACHIENG NDEDA (Legal administrator

Of the estate of PETER ONDU alias

PETER OKORE ONDU.....
APPLICANT

VERSUS

ROSE ATIENO ALUGA.....1ST
RESPONDENT

ISAAC NYABOK OKORE.....2ND
RESPONDENT

RULING

Introduction

1. Before court is a Notice of Motion dated 16th June 2025 filed by the applicant seeking the following orders;

a) Spent

b) That this honourable court be pleased to issue an order transferring the suit Butali ELC NO. E 010 of 2023 (GLADYS ACHIENG NDEDA (Legal administrator of the estate of PETER

ONDU alias PETER OKORE ONDU - VERSUS-ROSE ATIENO ALUGA AND ANOTHER) from Butali Principal Magistrates Court to Kakamega Environment and Land court (ELC).

c) That costs of this application be provided for.

2. The application is premised on the grounds on its face and the supporting affidavit of the applicant sworn on 16th June 2025. The applicant's case is that she is the plaintiff in Butali ELC CASE NO. E010 OF 2023 where she has made a claim of adverse possession in respect of the land in dispute.
3. That she filed her suit under the impression that the Magistrates court had jurisdiction to hear and determine the matter, but that in view of the determination by the Court of Appeal in Civil Appeal No. E141 OF 2022, it is prudent that the matter in Butali ELC CASE NO. E010 OF 2023 be transferred to this court for hearing and determination as the trial court lacks jurisdiction.
4. The application was opposed. The respondent filed grounds of opposition dated 23rd July 2025, where they stated that the application was incompetent, a non-

starter and fatally defective. Further that this court has no jurisdiction to transfer a matter that is in a court that lacks jurisdiction. That Butali ELC CASE NO. E010 OF 2023 is a nullity in law for having been filed in a court with no jurisdiction. That the said suit is incapable for being transferred and the only remedy available for the applicant is to withdraw the matter and file a suit in the court with jurisdiction.

5. The court directed parties to file written submissions in support of their respective positions. On record are submissions filed by the applicant dated 28th August 2025 and the respondent's submissions dated 2nd December 2025, both of which the court has duly considered.

Analysis and determination.

6. 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.

7. This court has the jurisdiction to transfer a suit from the Magistrates court to this court for hearing and determination, as provided for in section 18 (1) (b) (i) of the Civil Procedure Act.
8. 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.
9. 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 to hear and determine claims concerning adverse possession 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.

10. Therefore, when Butali ELC CASE NO. E010 OF 2023 was filed, as per the decision in **Patrick Ndegwa** case, the Magistrates court had jurisdiction to determine that matter. On that basis, the respondent's submission that Butali ELC CASE NO. E010 OF 2023 was filed in a court without jurisdiction and should be withdrawn and not be transferred to this court, is unjustified because at the time of filing that 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 and in view of provisions of Section 1A of the Civil Procedure Act, in the circumstances of this case, I find that it is only just, fair, expeditious and

affordable to the parties that Butali ELC CASE NO. E010 OF 2023 is transferred to this court for hearing and determination.

11. In the premises, I find and hold that the application dated 16th June 2025 is merited and the same is hereby allowed. Consequently, Butali MC ELC CASE NO. E 010 of 2023 2022 (OS) (GLADYS ACHIENG NDEDA (Legal administrator of the estate of PETER ONDU alias PETER OKORE ONDU - VERSUS- ROSE ATIENO ALUGA AND ANOTHER) is hereby transferred from Butali Principal Magistrates Court to this court for hearing and determination. I make no order as to costs.

12. It is so ordered.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA
IN OPEN COURT/VIRTUALLY THROUGH
MICROSOFT TEAMS VIDEO CONFERENCING
PLATFORM THIS 11TH DAY OF FEBRUARY 2026**

**A. NYUKURI
JUDGE**

In the presence of

Ms Kiprop for the applicant

Mr. Mukavale J for the respondents

Court Assistant: Delphine