



REPUBLIC OF KENYA



KENYA LAW
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**Kalani & 5 others v Katuse (Environment and Land Case Application
E009 of 2025) [2026] KEELC 1196 (KLR) (26 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 1196 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT AND LAND CASE APPLICATION E009 OF 2025
EO OBAGA, J
FEBRUARY 26, 2026**

BETWEEN

**CYRUS MBEVA KALANI 1ST APPLICANT
FARES JUMA 2ND APPLICANT
NGINA NZIOKI 3RD APPLICANT
KYALO MUTUA 4TH APPLICANT
MWENDO KYALO 5TH APPLICANT
JOHNSTONE WAMBUA 6TH APPLICANT**

AND

REDEMPTA KATUSE RESPONDENT

RULING

1. This is a ruling in respect of a notice of motion dated 26th March, 2025 in which the Applicants seek transfer of Makindu Senior Principal Magistrates court MC ELC E004 of 2023 to this court for hearing and disposal.
2. The Applicants contend that the Respondent had filed a suit against them at Makindu. They filed a defence and raised a counterclaim in which they sought the suit property through adverse possession. They further contend that the counterclaim was filed when there was divided opinion within the Environment and Land Court as to whether magistrates courts had jurisdiction to entertain claims for adverse possession. In 2024 the Court of Appeal settled this grey area by stating that magistrates courts did not have jurisdiction to entertain claims for adverse possession. The Applicants therefore state that it will be in the interest of justice to transfer the file from Makindu to this court for hearing and disposal.



3. The Respondent opposed the Applicants' application based on a replying affidavit sworn on 27th May, 2025. The Respondent contends that as at the time of filing the suit against the Applicants, the period of 12 years had not lapsed and that therefore the claim for adverse possession by the Applicants does not arise.
4. The Respondent also contends that the claim by the Applicants does not expressly contain a claim for adverse possession and that the case before Makindu court is part-heard where two witnesses have testified and transferring it to this court will entail unnecessary costs on the part of the Respondent. She states that the Applicants were represented by counsel who ought to have known that claims of adverse possession cannot be filed in magistrates' court.
5. The parties were directed to file written submissions. The Applicants filed their submissions dated 13th October, 2025. The Respondent filed her submissions date 21st November, 2025. I have considered the Applicants' application, the opposition to the same as well as the submissions filed by the parties. The only issue for determination is whether the Makindu file should be transferred to this court.
6. The Applicants have demonstrated that when they filed their counterclaim before the magistrates' court, there was divided opinion as to whether the magistrates' court had jurisdiction to hear claims of adverse possession. The Applicants cited the case of Jese Njoroge –vs- Josephat Thuo Githachuri Njoki Wainaina & 3 others; National Land Commission & Another (Interested Parties)(2021) eKLR where Justice M. C. Oundo, S. Munyao and M. Oguttu respectively held that magistrates courts had no jurisdiction to entertain a claim for adverse possession.
7. The Applicants also cited the case of Patrick Ndegwa Munyua –vs- Benjamin Kiiru & Another ELC case No. 2 of 2019 where Justice D. Omondi held that magistrates courts had jurisdiction to entertain claims of adverse possession. The Applicants submitted that the position was only cleared by the court of Appeal on 11th October, 2024 in the case of Sugawara –vs- Kiruti (2024) eKLR where the Court of Appeal stated that the magistrates court had no jurisdiction to entertain claims for adverse possession.
8. The Respondent's argument that the Applicants had not satisfied the statutory period of 12 years or that there was no specific prayer for adverse possession is not a matter which can be addressed at this stage. At least the Applicants have demonstrated that at the time when they filed their counterclaim, the law was not yet settled as to whether magistrates courts had jurisdiction or not to entertain claims of adverse possession. It cannot therefore be argued that the counterclaim by the Applicants was a nullity ab initio which cannot be transferred as was stated in the case of Rose Muthoni Mwangi –vs- Kenya Meat Commission (2020) eKLR.
9. I therefore find that the Applicant's application is well founded. I allow the same as prayed.
It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 26TH DAY OF FEBRUARY, 2026.

In the Presence of:

Mr. Mathuva for Applicant

Ms. Singi for Respondent.



Court assistant Steve Musyoki

