



**Ombui & another v Omaiko (Environment and Land Appeal  
E017 of 2024) [2026] KEELC 1161 (KLR) (26 February 2026) (Judgment)**

Neutral citation: [2026] KEELC 1161 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT AND LAND APPEAL E017 OF 2024**

**M SILA, J**

**FEBRUARY 26, 2026**

**BETWEEN**

**JULIUS ONSARE OMBUI ..... 1<sup>ST</sup> APPELLANT**

**PETER KENANDA OMBUI ..... 2<sup>ND</sup> APPELLANT**

**AND**

**NYAMAYEIRA OMAIKO ..... RESPONDENT**

*(Being an appeal against the judgment of Hon. P.C Biwott, Chief  
Magistrate, delivered on 17 April 2024 in the suit Ogembo MCELC  
No. E031 of 2021 consolidated with Ogembo MCELC No. 38 of 2021)*

**JUDGMENT**

1. The judgment against which the appellant has preferred an appeal was a consolidated judgment in respect of two suits, that is Ogembo MCELC No.E031 of 2021 and Ogembo MCELC No.38 of 2021. That suit Ogembo MCELC No. 38 of 2021 was an Originating Summons originally filed in the High Court of Kenya at Kisii as Kisii HCCC No. 203 of 2011 (OS). With the creation of the Environment and Land Court, vide *the Constitution* of Kenya, 2010, that suit was transferred to the Environment and Land Court at Kisii and registered as Kisii ELC No. 514 of 2016. It was subsequently transferred to Ogembo Magistrates' Court and that is how it got the number Ogembo MCELC No.38 of 2021. This suit was filed by four persons, Julius Onsare Ombui, Peter Momanyi Ombui, Samwel Makori Ombui and Ombiro Ombui against the respondent herein, Nyamaiyera Omaiko. In the Originating Summons they sought orders that they have obtained title, through adverse possession, to the land parcel Bassi/Masige/634.
2. On the other hand, through a plaint filed in Ogembo Magistrates' Court, and registered as Ogembo MCELC No. E031 of 2021, the respondent sued Julius Onsare Ombui, Peter Momanyi Ombui, Samwel Makori, Ombiro Ombui, and Mary Mecha, seeking orders of vacant possession of the land



parcel Bassi/Masige/5071 (parcel No. 5071) measuring 1.60 ha. These two parcels No. 634 and No. 5071 are connected and it is worthy giving a background to them.

3. The land parcel No. 634 was initially registered in the name of one Bosibori Ombui. The respondent claimed to have purchased this land from Bosibori sometimes in the year 1983 and he subsequently got title thereto on 19 March 1983. In 1990, vide the suit Kisii HCCC No. 326 of 1990, he sued Bosibori Ombui, Peter Momanyi Ombui, Onsare Ombui, Samwel Ombui and Ombiro Ombui (the Ombui family) for vacant possession. The defence raised by the Ombui family was that the respondent fraudulently obtained title to the whole land despite them only selling two acres of the land. The dispute was referred to arbitration and the award made was that the respondent retains half of the land i.e 4 acres, whereas the Ombui family retains half of the land i.e 4 acres. The award was entered as the judgment of the court by Mbaluto J, on 14 February 1997.
4. Despite the judgment, the land parcel No. 634 was not subdivided immediately. In 2011, before the land parcel No. 634 was subdivided, the Ombuis filed the suit Kisii HCCC No. 203 of 2011 (OS) seeking adverse possession of the whole of the land parcel No. 634. Subsequently, the respondent moved to now give effect to the decree issued in Kisii HCCC No. 326 of 1990, and subdivided the land parcel No. 634 into two portions of 4 acres each. These are the land parcels Bassi/Masige/5071 registered in his name and Bassi/Masige/5071 registered in the names of Samuel Ombui, Julius Ombui, Peter Ombui and George Ombiro Ombui. The titles were issued on 13 August 2015.
5. Now armed with his title, he sued the Ombuis in the case Ogembo MCELC No. E031 of 2021. The defence raised by the Ombuis was that the execution of the decree in Kisii HCCC No. 326 of 1990 was time barred and in any event, they had already filed the suit for adverse possession. They contended that they had occupied the suit land for over 12 years and thus entitled to it through prescription.
6. The two suits were consolidated for hearing culminating in the impugned judgment delivered on 2 April 2024. The trial Magistrate dismissed the suit for adverse possession, and entered judgment in favour of the respondent as prayed in his plaint.
7. Aggrieved, the appellants have now preferred this appeal. The same was argued through written submissions with counsel for the appellants and respondent urging the respective cases of their clients.
8. I am afraid that I will not go into interrogating the decision for it is apparent to me that the entire trial was a ‘mistrial’ given that Magistrates’ Courts have no jurisdiction to hear cases for adverse possession. This is following the Court of Appeal decision in the case Pauline Chemuge Sugawara vs Nairuko Ene Mutarakwa Kiruti & 3 Others, Court of Appeal at Nairobi, Civil Appeal No. E141 of 2022, judgment of 11 October 2024 where the Court of Appeal held as follows :
  48. It is our view that, if it was intended that claims for adverse possession be determined by the Magistrates’ Court, nothing would have been easier than for Parliament to have expressly enacted such a provision. So that in view of the express provisions of the law, a strict interpretation of section 38 would mean that hearing and determination of such matters is specifically limited to the Environment and Land Court to the exclusion of Magistrates’ Court.
  49. We come to this conclusion also bearing in mind that the jurisdiction of Magistrates’ Courts is largely determined by the pecuniary interest designated for determination by each level of the Magistracy specified in the hierarchy of courts, in terms of section 7 of the Magistrates Courts Act. In claims for adverse possession where the value of the land in question may be unknown, as in the instant case, it could be that by the time of filing, the value of the land subject of determination may be far in excess of the particular Magistrates’ Court’s pecuniary jurisdiction, which for all intents and purposes was not what was intended by the Act.



50. In the circumstances, in view of the express provisions of section 38 of the *Limitation of Actions Act*, as did the Environment and Land Court, we find that Magistrates' Courts do not have jurisdiction to determine the claims of adverse possession..."
9. It is unfortunate that we find ourselves in the present situation because the case for adverse possession was properly filed in the High Court in the year 2011 and properly transferred to the superior Environment and Land Court in 2016 for disposal. The order transferring it to Ogembo Magistrates' Court ought not to have been made, for the effect of it was to move the case from a court with jurisdiction to one without jurisdiction. It may be argued that the case Ogembo MCELC No. E031 of 2021 was filed in a court with jurisdiction, but that case was consolidated, and thus tied to the hip with the case of adverse possession. It is correct to have consolidated the two cases but they ought to have been heard in the superior Environment and Land Court and not in the Magistrates' Court.
10. For reason that the Magistrates' court had no jurisdiction, I proceed to set aside the judgment dated 2 April 2024 and delivered on 17 April 2024. I order the case Ogembo MCELC No. 38 of 2021 and Ogembo MCELC No. E031 of 2021 to be transferred to the superior Environment and Land Court at Kisii for hearing and disposal.
11. The last issue is costs. The challenge that the parties find themselves arose from a mistake of the court, which thought that the Magistrates' Court had jurisdiction to hear the case. In those circumstances, there will be no orders as to the costs of this appeal.
12. Judgment accordingly.

**DATED AND DELIVERED THIS 26 DAY OF FEBRUARY 2026**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**

Delivered in the presence of :

Mr. David Ochieng' – Court Assistant

No appearance on part of M/s C.M Ayienda & Company Advocates for the appellants

No appearance on part of M/s Aboki Begi & Company Advocates for the respondent

