

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
KAKAMEGA

ELC MISC. CASE NO. E014 OF 2025

CHRISTOPHER MUNIALO & 3 OTHERS.....
APPLICANTS

VERSUS

JACKSON MWANZO OLODO.....RESPONDENT

RULING

Introduction

1. Before court is a Notice of Motion dated 7th March 2025 filed by the applicant seeking the following orders;

a) Spent

b) Spent

c) That this Honourable Court do withdraw Kakamega MC ELC NO. 248 OF 2023 (OS) to itself and the same be heard and determined by this Honourable Court.

d) That costs of this application be provided for.

2. The application is premised on the grounds on its face and the supporting affidavit sworn by the 2nd applicant

on 7th March 2025. The applicants' case is that they filed suit in the lower court which is still pending which is a claim of adverse possession.

3. Further that vide the Court of Appeal's decision made in October 2024 in Nairobi CA No. E 141 of 2022 **Pauline Chemunge Sugawara v Kairuko Mutarakwo Kiritu & 3 Others**, the jurisdiction of the Magistrates court to hear and determine adverse possession claims was ousted. That when they filed their suit in the lower court, the Magistrates court had jurisdiction to hear and determine the matter.
4. The application was opposed. The respondent filed replying affidavit dated 20th May 2025. He stated that he filed a preliminary objection challenging the jurisdiction of the lower court. That when the applicants filed suit in the lower court, the law on jurisdiction on adverse possession matters had not been amended.
5. He further averred that court decisions do not oust clear legal provisions. That since the case was filed before a court that lacked jurisdiction, it was a nullity. That this

court cannot transfer a matter where the trial court had no jurisdiction.

6. He faulted the application stating that the applicants failed to disclose that on 12th February 2025, the trial court gave them 30 days to transfer their suit, failure of which the suit was to stand dismissed. That they did not file application within 30 days and hence the OS is dismissed and there is nothing to transfer. That he stands to suffer prejudice because his case has been pending for seven years. That this court has no jurisdiction and discretion to transfer a nullity.
7. In a rejoinder, the 2nd applicant filed a supplementary affidavit dated 27th May 2025. She stated that he had authority of other applicants to swear and plead on their behalf. That the preliminary objection by the applicant was filed in January 2025. That the ELC has made decisions that stated that the Magistrates court had jurisdiction to hear and determine adverse possession claims and that when Kakamega CM ELC CASE NO. 248 OF 2023 was filed, the Magistrates court had jurisdiction to hear and determine it.

8. Regarding whether the instant application was filed within the period granted by the lower court, they argued that the applicants filed the application herein within the 30-day period granted by the trial court and that when the matter came up for mention on 12th March 2025, the said suit was stayed, pending the outcome of this application as the applicants had already moved to this court. They argued that Kakamega CM ELC CASE NO. 248 OF 2023 is not a nullity as it was filed when the Magistrates court had jurisdiction to hear and determine the matter.
9. The court directed parties to file written submissions in support of their respective positions. Parties filed submissions, which the court has duly considered.

Analysis and determination.

10. The court has carefully considered the application, the response and submissions. The only issue that arise for determination is whether the applicants deserve the orders sought.

11. 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.
12. 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.
13. This court takes cognizance of the fact that there are also other decisions of the 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**.
14. 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.

15. Therefore, when KAKAMEGA ELC CASE NO. E248 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 KAKAMEGA ELC CASE NO. E248 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.

16. Ours is a jurisdiction governed by the doctrine of *stare decisis*, which means that lower courts are bound by decisions of higher courts. Therefore, the argument

by the respondent that a court decision cannot oust clear legal provisions is misplaced as courts interpret the law and their decisions bind the courts lower than them.

17. Essentially, the decision in the **Patrick Ndegwa** case had the force of law between 2020 and 2024 and the applicants did not offend the law by filing their counterclaim in the lower court. 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 Kakamega CM ELC CASE NO. 248 OF 2023 is withdrawn from the lower court and transferred to this court for hearing and determination.

18. Besides, the respondent's argument that the instant application was filed out of time contrary to the lower court decision made on 12th February 2025, is implausible since the application herein was filed on 7th March 2025 which is within the 30 days period granted

by the lower court. In a nutshell, the respondents' objections on the application herein are unjustified.

19. In the premises, I find and hold that the application dated 7th March 2025 is merited and the same is hereby allowed. Consequently, Kakamega CM ELC CASE NO. 248 OF 2023 (O.S) is hereby withdrawn from Kakamega Chief Magistrates Court and transferred to this court for hearing and determination. I make no order as to costs.

20. It is so ordered.

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

**A. NYUKURI
JUDGE**

In the presence of

Ms Kadenya for the respondent

No appearance for the applicants

Court Assistant: Delphine

