

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ELC LC MISC. NO E067 OF 2025

SAMWEL KIMUTAI SINEI APPLICANT

VERSUS

SELINA CHERONO RONO 1ST RESPONDENT

NATIONAL LAND COMMISSION 2ND RESPONDENT

COUNTY COORDINATOR NAKURU COUNTY 3RD RESPONDENT

LAND REGISTRAR, NAKURU 4TH RESPONDENT

RULING

1. This ruling is in respect of the Applicant’s Notice of Motion dated 30th July, 2025, seeking the following orders:
 - a. *Spent.*
 - b. ***THAT the Honourable Court be pleased to transfer the matter MOLO CM ELC CASE NO. E082 OF 2021; SAMWEL KIMUTAI SINEI -VS- SELINA CHERONO & 2 OTHERS from the Chief Magistrate's Court at Molo to this Honourable Court for hearing and disposal.***
 - c. ***THAT the costs of this application be provided for.***

2. The Application was supported by the annexed affidavit of Lucy Nekesa Cheloti, an Advocate of the High Court of Kenya, practicing as such in

the firm name of Wamaasa, Masese, Nyamwange & Company Advocates, and in the conduct of this matter on behalf of the Applicant.

3. Counsel deponed that the Applicant filed the suit **MOLO CM ELC NO. E082 OF 2021; SAMUEL KIMUTAI SINEI VS SELINA CHERONO & 2 OTHERS** against the Respondents which was later amended on 3rd March 2023, wherein he sought among other prayers, a prayer of being entitled to land parcel NO. **NAKURU/NDOINET SETTLEMENT SCHEME/296** by virtue of the doctrine of adverse possession.
4. She further stated that at the time of filing the suit in 2021, the prevailing jurisprudence was that the Magistrates' Court had jurisdiction to hear and determine claims arising from adverse possession, but on 11th October 2024, the Court of Appeal in the case of **Sugawara v Kiruti (Sued in her capacity as the administratrix of the Estate of Mutarakwa Kiruti Lepaso alias Mutaragwa Kiruti Lepaso alias Mutaragwa Kiroti Leposo and in her own Capacity) & 3 others [2024] KECA 1417 (KLR)**, held that the Magistrates' Court have no jurisdiction to hear and determine adverse possession claims.
5. Ms. Cheloti urged the court to transfer **MOLO CM ELC NO. E082 OF 2021; SAMUEL KIMUTAI SINEI VS SELINA CHERONO & 2 OTHERS**, from Molo Chief Magistrates' Court to this court for hearing and determination.
6. The 1st Respondent, Selina Cheronon Rono, filed a Replying affidavit dated 7th November 2025, and deponed that Molo CM ELC No. E082 of 2021 is part heard, and two witnesses have already testified before the trial court,

and therefore the transfer of this suit at this stage would occasion serious prejudice to her as the case would have to start afresh.

7. It was her disposition that the suit which was filed in 2021, has not been concluded to date largely due to delays occasioned by the Plaintiff/Applicant, and the present application is therefore a calculated attempt to further delay the matter and to frustrate her right to expeditious disposal of the case.
8. The Respondent deponed that the Applicant's claim in the Amended Plaint is primarily founded on trespass, fraud, and illegality, and only in the alternative, on adverse possession. Further that the cause of action as pleaded is therefore a claim of trespass and fraud, which falls within the jurisdiction of the Magistrate's Court under Section 9 of the Magistrates' Courts Act, and not one of adverse possession.
9. She urged the court to dismiss the application with costs.

APPLICANT'S SUBMISSIONS

10. Counsel for the Applicant filed submissions dated 11th February 2026, and identified three issues for determination as follows:
 - a) ***Whether the Magistrate's Court lacks the requisite subject matter jurisdiction to determine a claim of Adverse Possession.***
 - b) ***Whether a transfer is the most appropriate remedy to meet the ends of justice.***

c) Whether this Court has the power to transfer a suit from a subordinate court.

11. On the first issue as to whether the Magistrate's Court has the requisite jurisdiction to determine a claim of Adverse Possession, counsel submitted that in the primary suit, Molo CM ELC Case No. E082 of 2021, the Applicant seeks, inter alia, a declaration of ownership of land parcel NAKURU/NDOINET SETTLEMENT SCHEME/296 via the doctrine of Adverse Possession.
12. Mr. Alusa submitted that the suit was filed in 2021, when the prevailing practice was that Magistrates' Courts could entertain adverse possession claims provided the land value fell within their pecuniary limits. It was based on this that the Applicant moved the Chief Magistrate's Court, Molo.
13. Counsel stated that the legal landscape changed with the decision **Sugawara v Kiruti [2024] (supra)**, where the Court of Appeal clarified that the specialized nature of the Environment and Land Court (ELC) grants it exclusive jurisdiction over the determination of ownership through the doctrine of adverse possession, regardless of the land's value.
14. The Applicant, therefore, seeks this transfer not as an afterthought or a delaying tactic, but as a proactive step to align these proceedings with the clarified position of the law.

15. Counsel relied on the case of **Owners of the Motor Vessel "Lilian S" v Caltex Oil (Kenya) Ltd [1989] KLR I**, on the issue of jurisdiction which is the lifeblood of a court, and without it, a court must down its tools at the earliest opportunity. The Applicant submits that the Molo Chief Magistrate's Court currently lacks the "subject matter jurisdiction" to determine the claim for Adverse Possession.
16. It was counsel's submission that the 1st Respondent stated that the matter is part-heard which does not answer the jurisdictional question as it would be a waste of judicial resources to proceed with a case in a subordinate court, only for such a judgment to be set aside on appeal for lack of jurisdiction.
17. The Respondent also suggested that the Applicant must abandon his claim for adverse possession and proceed in the lower court, however, counsel submitted that the Applicant is entitled to plead an alternative prayer.
18. Counsel further relied on Section 18 of the Civil Procedure Act (Cap 21), which empowers a superior court to withdraw any suit pending in a subordinate court and transfer it to a competent forum to meet the ends of justice. Counsel also relied on the Overriding Objective as enshrined in Sections IA and 1B of the Civil Procedure Act and Article 159(2)(d) of the Constitution of Kenya, 2010, which mandate the court to administer justice without undue regard to procedural technicalities and to ensure the efficient use of judicial time.
19. Mr. Alusa cited that the case of **Songoi v Muhunzu [2025] KEELC 5310**, where the Environment and Land Court in Bungoma specifically

ordered the transfer of a suit from the Chief Magistrate’s Court to the ELC. The Court in that matter reasoned that because the subordinate court lacked jurisdiction to determine adverse possession following the Sugawara decision, a transfer was the most appropriate vehicle to ensure judicial efficiency and to prevent the multiplicity of proceedings. Counsel urged the court to allow the application as prayed.

1ST RESPONDENT’S SUBMISSIONS

20. Counsel for the 1st Respondent filed submissions dated 13th November 2025 and identified the following issues for determination:
 - a) *Whether the suit before the Magistrate’s Court is founded on trespass and fraud, and not adverse possession?*
 - b) *Whether transfer of suit can confer jurisdiction where none existed ab initio?*
 - c) *Transfer of the part-heard matter filed in 2021.*
21. On the first issue as to whether the suit before the Magistrate’s Court is founded on trespass and fraud, and not adverse possession, counsel submitted that the Applicant in **Molo CM ELC No. E082 of 2021**, in the Amended Complaint pleads, trespass, fraud and illegality as the main cause of action and only invokes adverse possession in the alternative.
22. Mr. Bore submitted that the law is settled that a litigant whose suit is premised on trespass cannot in the same breath claim adverse possession, as the two causes are mutually exclusive, and relied on the case of **Joseph Kipngeno Koskei v Edwin Kipkoech Rotich (ELC Misc. Application No. E046 of 2025) [2025] KEELC**.

23. Counsel further submitted that a transfer is only permissible where the original court was competent, and since the Applicant's claim is trespass and fraud, the Molo Chief Magistrate's Court is properly seized with the jurisdiction to hear and determine the matter and cannot transfer a claim of adverse possession.
24. It was counsel's submission that the matter being part-heard before the lower court, the transfer is a delaying tactic and relied on the Court of Appeal case of **Equity Bank Ltd v Bruce Mutie Mutuku t/a Diani Tour & Travel [2016] eKLR** , where it was held that it would be a mockery of justice to allow a party who is indolent and who has instituted proceedings in a court without jurisdiction to benefit from his own mistake through an order of transfer. Counsel urged the court to dismiss the application with costs.

ANALYSIS AND DETERMINATION

25. The issues for determination are whether the court should transfer **Molo CM ELC No. E082 of 2021**, to this court for hearing and determination, on the ground that the Magistrates' Court lacks jurisdiction to hear claims of adverse possession.
26. It is settled that the Magistrate's court lacks jurisdiction to hear and determine claims founded on the doctrine of adverse possession as per the recent clarification in the Court of Appeal case of **Sugawara v Kiruti (Sued in her capacity as the administratrix of the Estate of Mutarakwa Kiruti Lepaso alias Mutaragwa Kiruti Lepaso alias**

**Mutaragwa Kiroti Leposo and in her own Capacity) & 3 others
[2024] KECA 1417 (KLR) (supra).**

27. Previously, there were conflicting decisions on whether the Magistrate's courts have the requisite jurisdiction to hear and determine claims of adverse possession. The two schools of thought rendered decisions for and against the jurisdictional issue leading to confusion.
28. One school of thought, argued that since the Magistrate's court gave them the mandate to hear and determine land matters, then they had the requisite jurisdiction to hear all land matter subject to their pecuniary jurisdictional limit. The other school of thought argued that under Order 37, Rule 7 of the Civil Procedure Rules, provides that a claim of adverse possession should be filed vide as Originating Summons, supported by an affidavit and a certified title extract in the High Court (read ELC). An Originating Summons can only be filed in the Superior court and not the Subordinate courts. The argument was that unless and until this Order is amended the Magistrates' court lack the jurisdiction to hear and determine claims of adverse possession.
29. Section 26(3) of the Environment and Land Court Act, the Chief Justice may, by notice in the Gazette, appoint certain Magistrates to preside over cases involving environment and land matters of any area of the country.
30. However, Section 26(4), specifically restricts the extent of the jurisdiction that can be exercised by Magistrates' Courts as far as environment and land matters are concerned and provides that:

(4) Subject to Article 169(2) of the Constitution, the Magistrate appointed under sub-section (3) shall have jurisdiction and power to handle:

(a) disputes relating to offences defined in any Act of Parliament dealing with environment and land; and

(b) matters of civil nature involving occupation, title to land, provided that the value of the subject matter does not exceed the pecuniary jurisdiction as set out in the Magistrates' Courts Act.

31. The jurisdiction of Magistrates over land disputes is further defined at Section 9(a) of the Magistrates' Court Act as follows:

9. Claims in employment, labour relations claims, land and environment cases

A magistrate's court shall:

(a) in the exercise of the jurisdiction conferred upon it by section 26 of the Environment and Land Court Act (Cap. 8D) and subject to the pecuniary limits under section 7(1), hear and determine claims relating to—

(i) environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;

(ii) compulsory acquisition of land;

(iii) land administration and management;

(iv) public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and

(v) environment and land generally;

32. Similarly, Section 38(1) of the Limitation of Actions Act, provides that:

38. Registration of title to land or easement acquired under Act

(1) Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37 of this Act, or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.

33. In the case of **Biwott & another v Amin; Tanui (Interested Party) [2025] KEELC 3391 (KLR)**, the court held that:

“It goes without saying that the Limitation of Actions Act has always been clear with regards to the court in which matters of adverse possession ought to be filed. There is no statute conferring jurisdiction on the Magistrates gazetted by the Chief Justice to entertain adverse possession disputes. It is of no significance that courts have flouted the said provisions and allowed subordinate courts to determine matters of adverse possession contrary to the law. What is clear, is that the Court of Appeal in its decision set out to resolve this mischief by clarifying the law that was already in existence.

Evidently, therefore, the Court of Appeal did not divest the Magistrates’ court of jurisdiction to handle adverse possession

claims as alleged. What the superior court is saying is that the Magistrates' court never had such jurisdiction to begin with. The issue of jurisdiction did not thus arise out of the Court of Appeal decision as alleged by the Applicants.”

34. Having dealt with the reasoning of the two schools of thought, it is important to note that the Applicant filed an amended plaint where he listed particulars of fraud and illegality on the part of the Defendants, and a claim for adverse possession and cancellation of the Defendant's title.
35. It is trite that a person claiming adverse possession must acknowledge the title of the registered owner and cannot simultaneously claim that the title was acquired fraudulently. As much as the court should not deal with the case in the lower court as it is not an appeal before it, the Applicant annexed a copy of the amended Plaint to demonstrate why the same should be transferred to this court. The court cannot transfer a case that is fundamentally flawed. The Applicant has a remedy to either withdraw the case and file in the right court with amended prayers if he so wishes.
36. In the case of **Haro Yonda Juaje v Sadaka Dzenzo Mbauro & Kenya Commercial Bank (2014) eKLR**, the Court held that:

“One cannot succeed in a claim for adverse possession before conceding that indeed the registered proprietor of the land is the true owner of the said land. It does not lie in the mouth of a claimant to aver that the title held by the registered proprietor was fraudulently acquired and then claim the same parcel of land under the doctrine of adverse possession. If the Plaintiff's

averment is that the title which was issued to the Defendant was fraudulently acquired, then his cause of action would be for the rectification of title by cancellation pursuant to the provisions of Section 143 of the Registered Land Act and not adverse possession. He cannot use the doctrine of adverse possession to go around the decision of the Minister.”

37. Without going into the merits of the case, taking into consideration that parties are bound by their pleadings, the amended Plaint is very elaborate and clear on the particulars of fraud and the prayer for adverse possession. The Applicant has options.

38. Additionally in the Supreme Court case of **Albert Chaurembo Mumba and 7 Others vs Maurice Munyao & 148 Others (2019) eKLR** held that:

“However, as it was well elucidated in the case of Kagenyi vs Musiramo & Another (1968) EALR 43, an order for transfer of a suit from one court to another cannot be made unless the suit has been brought, in the first instance, to a court which has jurisdiction to try it. It’s therefore irrelevant as parties cannot consent to confer jurisdiction to a Court or tribunal where it is not provided by law.”

39. The Magistrate’s court lacked jurisdiction in the first instance to hear and determine a claim of adverse possession, therefore transferring the matter

to this court would be clothing it with jurisdiction, which mandate it does not possess.

40. I have considered the application, the submissions by counsel and find that the application lacks merit and is therefore dismissed with costs to the 1st Respondent.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 25TH
DAY OF MARCH 2026.**

A handwritten signature in black ink, consisting of a large loop on the left and a long horizontal stroke extending to the right, with a vertical stroke crossing the horizontal one near the center.

**M. A. ODENY
JUDGE**