

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT KAPSABET**

**ELCL.MISC/E001 OF 2026**

**CALEB KIPTOO SITIENEI SEREM ..... 1<sup>ST</sup>**

**APPLICANT**

**KENNETH KIPKORIR SEREM.....2<sup>ND</sup>**

**APPLICANT**

**-VERSUS-**

**ERNEST KIPKATAM ROTICH.....1<sup>ST</sup>**

**RESPONDENT**

**WILFREDA JEPKOECH ROTICH.....2<sup>ND</sup>**

**RESPONDENT**

**RULING**

**1.** This ruling is in respect of an application by way of a Notice of Motion dated 18<sup>th</sup> February 2026 by the applicants through Cherono Jepkosgei and Company Advocates for the following orders;

a) That, this Honourable Court be pleased to thereafter transfer to itself the lower Court file being **Kapsabet Chief Magistrate's Court Land Case No. E069 Of 2022 between Ernest Kipkatam Rotich & Wilfreda Jepkoech Rotich -Versus- Caleb Kiptoo Sitienei Sere & Kenneth Kipkorir Serem** for trial and final disposal.

b) That the costs of this Application be provided for.

**2.** The foundational basis of the application is the 1<sup>st</sup> applicant's supporting affidavit of fifteen paragraphs sworn on even for and on behalf of the 2<sup>nd</sup> applicant and himself alongside grounds (a) to (n) which include;

a) That the Applicants herein on the **17<sup>th</sup> Day of October 2022** instituted a suit vide KAPSABET **Chief Magistrate's Court Land Case No. E069 Of 2022 (Os)** by way of adverse possession.

b) That the Magistrate's court lacks jurisdiction to hear and determine suits founded on adverse possession which jurisdiction is exclusively reserved for the Environment and Land Court.

c) That it is a matter of judicial notice that prior to the delivery of the Court of Appeal Judgment above cited Magistrate's court had delivered several judgments bordering on adverse possession and this was made possible subject to pecuniary jurisdiction. The Applicants herein was advised on the appropriate forum following such trend.

**3.** Mr. Maritim learned counsel for the respondents told this court that the application relates to adverse possession claim. That thus, it can be allowed accordingly.

**4.** Notably, it is trite that jurisdiction is everything and without it, a court cannot make one more step; see Owners of the Motor Vessel 'Lillian S' -vs-Caltex Oil (Kenya) Ltd (1989) eKLR.

**5.** In the case of Republic-vs-Karisa Chengo & 2 others (2017) eKLR, the Supreme Court of the Republic of Kenya held;

*'...Lack of jurisdiction renders a court's decision void as opposed to it being merely voidable.....'*

**6.** It is the applicants' claim that the Magistrate's Court is not seized of jurisdiction over the suit touching on adverse possession pending before the same Court. In the case of Sugawara-vs-Kiruti (Sued in her capacity as the

**administratrix of the Estate of Mutarakwa Kiruti Lepaso alias Mutarakwa Kiruti Lepaso alias Mutaragwa Kiroti Leposo and in her own Capacity & 3 others (2024) eKLR**, the Court of Appeal held that the Magistrates' Courts lack jurisdiction over adverse possession claims.

7. Accordingly, the application dated 18<sup>th</sup> February 2026 has merit. The same is hereby allowed in terms prayer number 3 for transfer of suit as stated in paragraph 1 (a) hereinabove with no orders as to costs.

8. It is so ordered.

**Dated and Delivered at Kapsabet this 19<sup>th</sup> day of March 2026**

**HON. G.M.A. ONG'ONDO**

**JUDGE**

**In the presence of;**

1. Mr. E. Koech learned counsel for the applicants
2. Mr. Serem learned counsel for the respondents
3. Walter, court assistant

