

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU**

**ELC MISC. E009 OF 2025**

**KARIUKI                      WANJIRU.....1<sup>ST</sup>**

**APPLICANT**

**JANE              WAMBUI              KARIUKI.....2<sup>ND</sup>**

**APPLICANT**

**MARY              NDUTA              KARIUKI.....3<sup>RD</sup>**

**APPLICANT**

**VERSUS**

**MARY              NJOKI              KIRAITHE.....1<sup>ST</sup>**

**RESPONDENT**

**JOSEPH              MWANGI              MACHARIA.....2<sup>ND</sup>**

**RESPONDENT**

**RULING**

**1.** Before me is a notice of motion application dated 20.5.2025 where the applicant seeks orders for the transfer of the suit MCELC 291 OF 2018 from the magistrates court to this court. The application is

supported by the affidavit of one May Nduta, the 3<sup>rd</sup> applicant. She contends that the respondent filed the aforementioned case before the magistrate's court for their eviction from the suit land on 6.6.2018. That they filed a defence and counterclaim, claiming the suit land through adverse possession. However, they have learnt that the magistrates court have no jurisdiction to entertain claims of adverse possession.

2. In opposition thereof, the respondent filed a replying affidavit on 13.10.2025 averring that the primary suit is based on trespass, well within the jurisdiction of the magistrate's court. She avers that the counterclaim does not divest a court of jurisdiction to hear the trespass case.

3. I find that the controversial question of jurisdiction of the Magistrates' Courts in claims for adverse possession was only recently settled by 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 (Civil Appeal E141 of 2022)**

**[2024] KECA 1417 (KLR) (11 October 2024)**

**(Judgment) Neutral citation:**

**[2024] KECA 1417 (KLR)**, a decision delivered on 11.10.2024.

4. I find that multiplicity of actions on the same matter between the same parties even where there existed a right to bring the action has the likelihood of courts giving conflicting orders, See, **Republic v Paul Kihara Kariuki, Attorney General & 2 others Ex parte Law Society of Kenya [2020] eKLR**, a situation which is not tenable.
5. Thus, whichever angle one looks at the issue, the competing claims of the parties ought to be heard by one court. In the circumstances, I find that the application dated 20.5.2025 is merited, the same is allowed but each party is to bear their own costs of the application.

**DATED, SIGNED AND DELIVERED AT NYAHURURU  
THIS 16<sup>th</sup> DAY OF APRIL 2026 THROUGH MICROSOFT  
TEAMS.**

**LUCY N. MBUGUA  
JUDGE**

**In the presence of:**

**Bedan/Vanessa - Court Assistants**

**No appearance for parties**