

**REPUBLIC OF KENYA**

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

**ELC MISCELLANEOUS CASE NO. E025 OF 2025**

**IN THE MATTER OF MC ELC CASE NO. E102 OF 2024 PENDING BEFORE  
THE ENVIRONMENT AND LAND COURT (MAGISTRATE'S COURT) AT  
NAIVASHA**

**AND**

**IN THE MATTER OF AN APPLICATION FOR WITHDRAWAL AND  
TRANSFER OF SUIT PURSUANT TO SECTION 18 (1) (B) OF THE CIVIL  
PROCEDURE ACT**

**BETWEEN**

**HARRISON MACHARIA MURIITHI**

**GABRIEL KARURI NGARI**

**SIMON MAINA**

**GEORGE WACHANIA MAINA**

**PHYLIS MWAURA.....APPLICANTS  
(DEFENDANTS)**

**VERSUS**

**WILSON KITILIT KARAMAI.....RESPONDENT  
(PLAINTIFF)**

**RULING.**

1. Before me for determination is a Notice of Motion dated 10<sup>th</sup> December 2025 brought pursuant to the provisions of Articles 48, 50, 159 of the Constitution of Kenya, Section 18 (1) (b) of the Civil Procedure Act, Section 13 of the Environment and Land Court Act, Order 51 Rule 1 of the Civil Procedure Rules wherein the Applicants herein have sought for the following orders:

- i. That the Honourable Court be pleased to withdraw and transfer MC. ELC Case No. E102 of 2025 pending before the Environment and Land Court (Magistrate's Court) at Naivasha to the Environment and Land Court at Naivasha for hearing and determination.

- ii. That the transfer be ordered on the ground that the Defendant's Counterclaim is founded on adverse possession, a claim which lies exclusively within the jurisdiction of the Environment and Land Court as a Superior Court.
  - iii. That costs of the Application be in the cause.
2. The Application was supported by the grounds set out therein, as well as the Supporting Affidavit of equal date, sworn by Harrison Macharia Muriithi, the 1<sup>st</sup> Applicant herein, who is the 1<sup>st</sup> Defendant in MC. ELC case No. E102 of 2025, and who deponed that the pending suit concerns ownership and use of land and that he had filed a counterclaim seeking title by virtue of his adverse possession, having been in open, continuous, exclusive and uninterrupted occupation of the suit property for a period exceeding twelve (12) years.
3. That the claim for adverse possession was governed by Sections 7, 13, 17 and 38 of the Limitation of Actions Act and was to be exclusively determined by the Environment and Land Court, a Superior Court. The Magistrate's Environment and Land Court, therefore, lacks jurisdiction to hear such a claim.
4. That both parties had agreed and raised no objection to the transfer of the suit to the Environment and Land Court for proper determination. That no prejudice will be suffered by either party if the transfer is allowed, and that the same would facilitate expeditious and lawful disposal of the dispute. He thus deponed that it was in the interest of justice that the suit be withdrawn from the subordinate court and transferred to this Court.
5. In response and in opposition to the Defendants/Applicants' Application, the Plaintiff/Respondent filed his Replying Affidavit dated 4<sup>th</sup> 2026 (**sic**) deponing that the Application was incurably defective, incompetent, bad in law and an outright abuse of the court process. That in their Defence and Counterclaim, the Applicants had made reference to the land parcel Plot No. LR. No. 1317/356 Gilgil Township, while the Plaintiff's claim in

Naivasha MC. ELC Case No. E102 of 2025 was over that property known as LR No. Gilgil Township Block 2/37.

6. That it was evident that the Applicants were not claiming the property known as LR. No. Gilgil Township, Block 2/37, which is registered in his name and clearly outlined and identifiable on a map he had obtained from the Survey of Kenya. That he did not have any claim or interest in respect of the land parcel Plot No. LR. 1317/356, Gilgil Township, which had been mentioned by the Applicants in their statement of defence and counterclaim.
7. That it was thus evident that the suit property in Naivasha MC. ELC Case No. E102 of 2025 was not being adversely claimed by the Applicants to warrant the Honourable court to transfer the suit from the magistrate's court to the ELC. That, contrary to the Applicants' contention, he had not consented to having the instant matter pending before the magistrate's court transferred to the ELC.
8. That he would suffer great prejudice were the matter transferred to the ELC, considering that his claim was in respect of LR No. Gilgil Township Block 2/37 and not Plot No. LR. 1317/356 Gilgil Township, which the Applicants were claiming to have adversely possessed.
9. That it was in the interest of justice that the adjudication over the ownership of LR No. Gilgil township Block 2/37 proceeds before the magistrate's court, and the applicants be at liberty to claim adverse possession in respect of LR. No. 1317/356 Gilgil Township before the Honourable Court.
10. He thus prayed that the instant Application be dismissed with costs.
11. In a rejoinder, the Applicants filed their Further Affidavit dated 12<sup>th</sup> February 2025 (sic), deponing that the Respondent's assertion that LR No. Gilgil Township Block 2/37 and Plot No. LR. 1317/356 Gilgil were distinct by virtue of different title numbers was misleading, erroneous, and intended to obscure the real dispute before the Honourable Court, since the two parcel numbers refer to the same parcel of land on the ground.

12. He explained that the difference in description had arisen from the process of conversion and amendment of the Registry Index Map (RIM) and not from the existence of two separate parcels. That he was among the proprietors and/beneficial owners of Plot No. 1317/356 situated within Gilgil Township and had been in actual possession and occupation of the said parcel of land for a period exceeding 12 years.
13. That while the Respondent claims ownership of an alleged distinct parcel, L.R. No. Gilgil Township Block 2/37, the Land Registry File No. 213598, herein annexed as "HMM 1", clearly shows the survey map and the property's location on the ground. That the owner of the suit land, as it appears in the said "HMM 1", was Njugi Ventures, which sold the land to the Applicants, whom the Respondent intended to take Third-Party proceedings against once the instant application is allowed and the file transferred to the ELC for pretrial. That the said certified record demonstrates that L.R. No. Gilgil Township Block 2/37 is a conversion of former L.R. No. 1317/356.
14. That, in any event, the Respondent's own documents, including a letter from the Survey of Kenya dated 29<sup>th</sup> September 2020, expressly indicate that L.R. No. Gilgil Township Block 2/37 arose from a RIM Amendment (Conversion) and was formerly L.R. No. 1317/356. That the title that had been acquired illegally, and annexed as "HMM 3", indicates Block 2, Parcel No. 37, in the registration section, which is clearly illustrated in a certified extract from the Survey of Kenya dated 30<sup>th</sup> April 1998, forming part of annexure "HMM 2", which shows the old L.R. No. 1317/358, which gave rise to the new parcel No. 37 that appears on the said illegitimate land title. That, however, forming part of their file "HMM 1" is a stamped map from the Survey of Kenya showing their parcel of land and the said old L.R. No. 1317/356. Furthermore, their letter of allotment, forming part of "HMM 1", was issued in regard to Plot No. L.R. 1317/356, which was converted to the new parcel No. 37.

15. On the other hand, the Respondent's letter of allotment was issued in respect of Plot No. 4 but contained no LR number, since the LR number used to produce his title belongs to the Respondents (sic). He thus deponed that it was not true that the two parcel numbers refer to different parcels; rather, they were two descriptions of the same land following conversion. Indeed, the existence of two land registry files referencing the same parcel further confirms that the dispute revolves around one and the same property, and thus the question of the legality of and/or propriety of the Respondent's title must be interrogated substantively before the proper court.
16. That his claim for adverse possession and challenge to the legality of the Respondent's title could only be properly determined by the ELC, which has the requisite jurisdiction since the issues raised had gone beyond the jurisdiction of the Magistrate's Court as they involved the determination of title, conversion process, alleged fraud, illegality and competing registry records. He thus deponed that allowing the Application for transfer will ensure that:
- i. All necessary parties are properly before the Court;
  - ii. All relevant land registry and survey documents are produced and interrogated;
  - iii. The Plaintiff's claim, Defence and counterclaim for adverse possession and illegality of title are determined comprehensively.
17. That, on the other hand, failure to transfer the matter would result in piecemeal litigation and duplicity of suits, contrary to the overriding objective of the Court under the provisions of Sections 1A and 1B of the Civil Procedure Act. That, no prejudice would be occasioned to the Respondent were the matter transferred, because he would have an opportunity to fully prosecute his case before the proper forum. That, on the contrary, dismissing the application would occasion grave prejudice to

them, as the substantive issues concerning the root of title and adverse possession may not be conclusively addressed.

18. That the Respondent's reliance on mere difference in title numbers without addressing the conversion and RIM amendment was a technical argument which did not reflect the true position on the ground. That the Court ought to prioritise substantive justice in accordance with Article 159 (2) (d) of the Constitution and allow the Application for transfer.
19. The Application dated 10<sup>th</sup> December 2025 was disposed of by way of Written Submissions.

### **Defendants/Applicants' Submissions.**

20. Vide their Submissions dated 25<sup>th</sup> February 2026 framed their issues for determination as follows:
  - i. Whether the Honourable Court has jurisdiction over the dispute.
  - ii. Whether the parcels in dispute refer to the same property.
  - iii. Whether the threshold for transfer under Section 18 of the Civil Procedure Act has been met.
  - iv. Whether any prejudice will be suffered by the Respondent.
21. The Applicant then founded his submissions on the provisions of Article 162 (2) (b) of the Constitution and Section 13 (2) (a) and (b) of the Environment and Land Court Act (ELCA), submitting that the claim involves adverse possession, alleged fraud and illegality in the acquisition of title, and interrogation of the conversion process and registry records, matters squarely within the jurisdiction of ELC. They placed reliance on the decided case of **Owners of Motor Vessel Lillian S v Caltex Oil (Kenya) Ltd**, (sic) to submit that the present dispute fell within the jurisdiction of ELC, as it concerns the root of title and the alleged illegality in acquisition.
22. Their argument was that the two different property descriptions, namely LR. No. 11317/356 and Block 2/37 refer to the same physical parcel of land. The Applicant relied on a letter from the Survey of Kenya

dated 29<sup>th</sup> September 2020 as prove that the change in name was merely a result of a Registry Index Map (RIM) amendment/conversion.

23. He argued that the Respondent's focus on different title numbers was a technicality designed to obscure the reality on the ground.
24. He invoked Section 18 of the Civil Procedure Act to assert that the Court has the discretionary power to withdraw a suit from a subordinate court to ensure the interests of justice. He further argued that consolidating the claims would prevent piecemeal litigation and a multiplicity of suits, and that under Sections 1A and 1B of the Civil Procedure Act, the Court ought to facilitate the most just and expeditious resolution, which in this case required a single forum. He relied on the decision in **David Kabugu v Zikarenga & 4 Others** (sic)
25. The Applicant further submitted that a fair trial required the involvement of the Land Registrar and Survey records, which could only be properly interrogated at the ELC level. He cited the principle in **Henderson v Henderson** (sic) to argue that all parties should bring their whole case forward at once rather than litigating related issues in separate courts.
26. He maintained that the Respondent would not suffer prejudice, as he would still have the opportunity to prosecute his claim in a superior forum. He also maintained that the provisions of Article 159(2)(d) of the Constitution required the Court to prioritise substantive justice over procedural technicalities such as the discrepancy in parcel numbers.
27. In conclusion, the Applicant submitted that because the dispute involved the root of title and adverse possession, which were matters for which the ELC was specifically created, the transfer was necessary to ensure a lawful and comprehensive final determination.

### **Respondent's Submissions.**

28. The Respondent, on the other hand, vide his submissions dated 3<sup>rd</sup> March 2026, summarized the factual background of the matter as well as

the contents of his Replying Affidavit before framing his issues for determination as follows:

- i. Whether the Honourable Court should exercise its discretion under Section 18 of the Civil Procedure Act to transfer Naivasha MC ELC Case No. E102 of 2025 to the ELC.
- ii. Whether the Application is merited.

29. The Respondent's primary argument was that the two land parcels were distinct and separate. That whereas his suit in the Magistrate's Court was in relation to LR No. Gilgil Township Block 2/37, the Applicants' claim for adverse possession specified Plot No. LR No. 1317/356.

30. The Respondent asserted that he had no interest in the Applicants' parcel of land, Plot No. LR No. 1317/356, and, conversely, that the Applicant had not properly pleaded adverse possession over his parcel of land, being Block 2/37.

31. He pointed out procedural flaws in the Application, namely that the Applicant introduced the theory that the two parcels of land were the same only via conversion in his Further Affidavit, and that this averment was neither in his original Statement of Defence nor in his Counterclaim.

32. That since parties are bound by their pleadings, the Respondent argued that the Court cannot consider the conversion theory because it was not part of the formal case documents filed in the Magistrate's Court. An affidavit could not be used to amend pleadings. He placed reliance on the **Thika ELC Misc App No. E095 of 2025 Kungu v Kamoche & another** (sic)

33. He maintained that the Magistrate's Court was the proper and suitable forum to hear and determine his dispute, which involved occupation and title within the pecuniary limits (monetary value) set out in the Magistrate's Court Act. Reliance was placed in the decided case of **Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tour Travel [2016] eKLR**

34. That since no valid adverse possession claim had been pleaded against Block 2/37, there was no jurisdictional necessity to move the case to a superior court. The Respondent thus characterized the application as an abuse of the court process, which was intended to delay the case. He placed reliance on the decided case of Independent **Electoral and Boundaries Commission & another v Stephen Mutinda Mule & 3 Others [2014] KECA 890 (KLR)**
35. He relied on the decided case of **Muchanga Investments Ltd v Safaris Unlimited (Africa) Ltd & 2 Others [2009] KECA 453 (KLR)** to reiterate that he had clearly deponed that he had no claim over LR No. 1317/356, Gilgil Township, and that his claim strictly concerns LR No. Gilgil Township, Block 2/37. Furthermore, he had not consented to the transfer of the matter, as alluded to by the Applicants; thus, the instant Application sought to create confusion by conflating two distinct parcels of land.
36. He relied on the decided cases of **Kaunda v Wambua [2025] KEELC 802 (KLR)** and **Rev. Madara Evans Okanga v Housing Finance Company of Kenya, HCCC No. 262 of 2005**, to urge the court to guard against the Applicants' attempt to forum shop and/or delay proceedings that were rightfully before the magistrate's Court, by introducing extraneous matters which were causing great prejudice and injustice upon him. That he stood to suffer prejudice and irreparable damage were the matter before the Magistrate's Court transferred without a lawful basis, as he was being kept out of his land by the Applicants' illegal occupation.
37. That the Court's discretionary power to transfer suits under Section 18 should only be used for compelling reasons and to ensure justice, not to sanctify an incompetent suit.
38. In conclusion, he submitted that the application is misconceived and vexatious. He maintained that the Magistrate's Court had full jurisdiction

to hear his claim over Block 2/37, and asked the Court to dismiss the transfer application with costs.

**Determination.**

39. I have considered the Defendant/Applicants' application, the Plaintiff/Respondent's response, the applicable law and the authorities cited and submissions.
40. Briefly, the Applicants seek to transfer MC. ELC Case No. E102 of 2025 from the Magistrate's Court at Naivasha to the ELC at Naivasha on the ground that their counterclaim seeks to establish adverse possession, which the trial court had no jurisdiction to hear and determine. Secondly, although the titles of the suit parcels of land are different, they contend that LR. No. 1317/356 (their claim) and LR No. Gilgil Township Block 2/37 (the Plaintiff's claim) are actually the same piece of land, and the discrepancy results from a conversion process and Registry Index Map (RIM) amendments. Lastly, they argue that the case involves allegations of fraud, illegal title acquisition, and competing registry records, which require the specialised oversight of the ELC to avoid piecemeal litigation.
41. The Respondent's response in opposition to the application is that the two titles refer to different parcels of land, where he claims ownership of Block 2/37 and denies any interest in LR. No. 1317/356. Further, contrary to the Applicants' claims, he did not consent to the transfer of the suit. He argues that the application is an attempt to delay justice and that the Magistrate's Court is the proper forum to adjudicate his specific claim of Block 2/37. That the Applicants are free to pursue their adverse possession claim for the other parcel separately in the ELC.
42. From the summation of the matter as herein mentioned above, I find the issue for determination as being:
  - i. Whether the Magistrate's Court is stripped of jurisdiction by the counterclaim of adverse possession.

- ii. Whether the two descriptions of land refer to a single property, necessitating a consolidated hearing in the Superior Court.

43. Section 18 of the Civil Procedure Act bestows upon the High Court (read ELC) the powers to transfer suits of a civil nature. The said provisions of the law provides as follows;

*“(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage—*

*(a) transfer any suit, Appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or*

*(b) withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter—*

*(i) try or dispose of the same; or*

*(ii) transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or*

*(iii) retransfer the same for trial or disposal to the court from which it was withdrawn.*

*(2) Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn”.*

44. The power to transfer a suit is discretionary, and therefore a party seeking to transfer a matter from one court to another bears the burden of showing that the transfer is warranted. However, a matter can only be transferred if the Court from which the Applicant seeks transfer has jurisdiction over it.

45. In **Sugawara vs 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)**, the Court of Appeal had held as follows:

*“In other words, reference is to the “High Court” as the court to which such cases are heard, and given the dictates of the Constitution set out above, this should be construed to mean the “Environment and Land Court”, as being the court donated with jurisdiction to hear and determine matters pertaining to adverse possession of land. The effect of this interpretation is that, it is only the Environment and Land Court established under Article 162(2)(b) that is mandated to hear these cases. So that, notwithstanding the expansion of the jurisdiction of environment and land usage to Magistrates Courts, it is distinctive that under section 9(a) of the Magistrates Courts Act, various matters are specified for determination, but claims for adverse possession are not included.”*

46. In **Albert Chaurembo Mumba and 7 Others vs Maurice Munyao & 148 Others (2019) eKLR**, the Supreme Court 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.”*

47. From the above holdings, it is clear that the question of jurisdiction in land matters has been significantly clarified by the superior courts, which affirmed that the Environment and Land Court has a specialised mandate. However, it also recognised the role of the Subordinate Courts in handling land matters as empowered by statute.

48. More specifically, regarding the transfer of cases and the "automatic" loss of jurisdiction, the Court of Appeal in **Sugawara** (supra) dealt with the interplay between Magistrate's Courts and the ELC. The court emphasised that where a dispute involves a substantive challenge to the root of a title or a claim for adverse possession—which are remedies within the specialised purview of the ELC—the interests of justice favour the matter being heard by the Superior Court.
49. In the present case, there is a fundamental dispute as to whether LR No. 1317/356 and Block 2/37 are the same land. The Applicants have provided a letter from the Survey of Kenya suggesting a conversion process. The Respondent argues that this wasn't pleaded. However, the court must look at the substance of the dispute rather than just the form. If there is a possibility of double-titling or an overlap arising from a conversion process, the Magistrate's Court—whose jurisdiction is limited by the Magistrates' Courts Act, may find itself unable to grant the declaratory reliefs required to settle the root of the title.
50. Under Section 13(2) of the Environment and Land Court Act, this court has a broad mandate to deal with disputes relating to title, tenure, boundaries, rates, rents, valuations, and adverse possession. While Section 26 of the same Act allows Magistrates to hear land cases, it is subject to their pecuniary limits and the nature of the claim. A claim for adverse possession is essentially a claim for the compulsory acquisition of title by operation of law, which goes beyond mere possession or occupation typically handled by Subordinate Courts.
51. The Respondent's argument that the Applicants are bound by their pleadings is a valid trial principle, but at this interlocutory stage of determining the proper forum, the court must ensure that the forum chosen has the capacity to resolve the entire controversy. To leave the matter in the Magistrate's Court, only for that court to later realize it cannot cancel a title or declare adverse possession, would result in the

piecemeal litigation discouraged in Sections 1A and 1B of the Civil Procedure Act.

52. In the end, I find that the dispute involves complex questions of land conversion, the legality of the root of title, and a claim for adverse possession, which issues are best suited for the specialized jurisdiction of the ELC. No prejudice will be suffered by the Respondent by moving to a superior court; rather, it ensures that any decree issued is final and jurisdictionally sound.

11. Consequently, I am satisfied that the threshold for transfer under Section 18 of the Civil Procedure Act has been met and direct as follows:

- i. The Application dated 10<sup>th</sup> December 2025 is hereby allowed.
- ii. Naivasha MC. ELC Case No. E102 of 2025 is hereby withdrawn from the Magistrate's Court at Naivasha and transferred to the Environment and Land Court at Naivasha for hearing and determination.
- iii. Costs of the application shall be in cause.

**Dated and delivered via Microsoft Teams at Naivasha, this 23<sup>rd</sup> day of April 2026.**



**M.C. OUNDO**

**ENVIRONMENT & LAND COURT - JUDGE**