



**Otieno v Kimani & another (Environment and Land Miscellaneous Case E008 of 2026) [2026] KEELC 2808 (KLR) (13 May 2026) (Ruling)**

Neutral citation: [2026] KEELC 2808 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITALE  
ENVIRONMENT AND LAND MISCELLANEOUS CASE E008 OF 2026**

**CK NZILI, J**

**MAY 13, 2026**

**BETWEEN**

**DOROTHY OTIENO ..... PLAINTIFF**

**AND**

**STEPHEN KIMANI ..... 1<sup>ST</sup> DEFENDANT**

**MARTHA WAIRIMU KIGAMBA ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The court is asked to transfer Kitale Magistrates' Court Land Case No. 14 of 2022 to this court for hearing and disposal. The reasons are contained on the face of the application dated 2/3/2026, and a supporting affidavit of Karani Grey, advocate, sworn on the same date.
2. It is deposed that in the lower court suit, a statement of defence and counterclaim attached as annexures KOA-(1) has been filed, raising a claim of adverse possession which the lower court has no jurisdiction to hear and determine in view of the Court of Appeal ruling delivered on 11/10/2024, in Sugawara v Kiruti [2024] KECA 1417 [KLR].
3. The application is opposed through a replying affidavit of Morris Indakwa Buluma for being defective, misconceived, premature, frivolous, vexatious, and an abuse of court process. It is deposed that the law is that a claim for adverse possession by way of an Originating Summons under Order 37 of the Civil Procedure Rules.
4. The respondent deposes that the purported counterclaim at the lower court is defective in law and therefore, this court has nothing to transfer, other than to strike the entire defence and counterclaim.
5. Jurisdiction is everything. It is a creature of either a statute or a Constitution or both. Without jurisdiction, a court shuts its doors, as held in Owners of Motor Vessel Lillian "S" v Caltex Oil (K) Ltd [1989] eKLR.



6. Section 18 of the *Civil Procedure Act* provides that a High Court can suo moto or through an application, terminate a case in a lower court, and transfer it to itself or a court with jurisdiction to handle it.
7. The reason sought for the transfer is that in *Sugawara v Kiruti* (supra), lower courts no longer have jurisdiction to hear and determine matters on adverse possession. The applicant has not seen it fit to annex the plaint, which led to the filing of the claim at the lower court. A counterclaim is an independent suit that succeeds or fails regardless of the outcome of the primary suit.
8. The court has looked at the defence and counterclaim attached. It is the applicant who decided to file a counterclaim in a court without jurisdiction and not the respondent, as a defence to a claim for recovery of land. Therefore, the respondent's primary suit remains competent. What remains incompetent is the applicant's counterclaim.
9. A suit filed in a court bereft of jurisdiction is dead on arrival. In *Phoenix E.A. Assurance Co. Ltd v S.M. Thiga t/a Newspaper Service* [2019] KECA 767 [KLR], the court held that when a suit is filed in a court without jurisdiction, the only remedy is to withdraw it and file a competent suit in a court seized of jurisdiction. See also *Ganjoni Properties Ltd & Others v Al-Riaz International Limited* [2025] KECA 1711 [KLR].
10. Concerning whether a claim on adverse possession must be brought by way of an originating summons, the answer is in the negative.
11. In *Martha Njeri Wanyoike & Others v Peter Macharia Mwangi & Others* Civil Appeal No. 39 of 2012, the court cited *Gulam Miriam Noordin v Julius Charo Karisa* [2015] eKLR, *Wabala v Okumu* [1997] LLR 609 (CAK), *Bayete Co. Ltd v Kosgey* [1998] LLR 813 and *Teresa Wachuka Gachira v Joseph Mwangi* Civil Appeal No. 325, that introducing the same by way of a counterclaim was possible in a claim for recovery of land, and that it is only where one wants to be declared an adverse possessor that he has to follow the procedure under Order 37 of the Civil Procedure Rules. See *Wafula & another v Mulunda* (Civil Appeal 51 of 2018) [2022] KECA 1145 (KLR) (21 October 2022) (Judgment)
12. The upshot is that I find the application lacking merit. It is dismissed with costs.
13. File closed.
14. Orders accordingly.

**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 13<sup>TH</sup> DAY OF MAY 2026.**

In the presence of:

Court Assistant – Dennis

Shejero for the respondent present

Karani for the applicant present

Githaiga for the 1<sup>st</sup> defendant absent

**HON. C.K. NZILI**

**JUDGE, ELC KITALE.**

