



**Kimeto v Omwomo (Environment and Land Appeal E004 of 2024)  
[2024] KEELC 13848 (KLR) (18 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 13848 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT AND LAND APPEAL E004 OF 2024  
JM ONYANGO, J  
DECEMBER 18, 2024**

**BETWEEN**

**PATRICK KIGEN CHEMOIYAI KIMETO ..... APPELLANT**

**AND**

**GEORGE OOKO OMWOMO ..... RESPONDENT**

*(Being an appeal from the judgment delivered by Hon. P.N Areri (Senior Principal Magistrate) on 14th December 2023 in Eldoret CMELC Case No. E112 of 2022)*

**JUDGMENT**

1. Patrick Kigen Chemoiyai Kimeto the Appellant herein was the Plaintiff in CMELC Case No. E112 of 2022 where he filed suit against George Ooko Omwomo the Respondent herein as the Defendant in the lower court seeking the following reliefs:-
  - a. A declaration that the Defendant's rights over the whole of that land known as Pioneer/Ngeria Block 1 (EATEC)/5650 got extinguished by adverse possession upon expiry of 12 years and when the Plaintiff was in possession.
  - b. An order under section 38 of the *Limitation of Actions Act* Cap 22 of the Laws of Kenya that part of that parcel of land known as Pioneer/Ngeria Block 1 (EATEC)/5650 measuring approximately 0.08 hectares be registered in the name of the Plaintiff herein as a proprietor or owner. The Land Registrar Uasin Gishu to execute all such documents as could facilitate the transfer of the whole of that land parcel known as Pioneer/Ngeria Block 1 (EATEC)/5650 to the Plaintiff.
  - c. Costs of this suit
  - d. Any further or other order or relief that this Honourable Court shall deem fit to grant.



2. The Respondent did not enter appearance or file any defence. Upon hearing the Appellant's case by way of formal proof, the court held that it had no jurisdiction to hear and determine a claim for adverse possession and struck out the suit with no order as to costs.
3. Being dissatisfied with the judgment of the trial court, the Appellant filed this appeal raising 5 grounds of appeal claiming that the trial magistrate erred in law and in fact by:-
  - i. Striking out the case for lack of jurisdiction when the court is fully clothed with jurisdiction to handle the matter.
  - ii. Failing to analyze and consider and misapprehending section 38 of the *Limitation of Actions Act* and failing to take into account section 26(3) of the *Environment and Land Court Act* 2011, Gazette Notices by the Chief Justice granting Magistrates' Courts jurisdiction to handle land matters, several decided cases and the *Magistrates' Courts Act* 2015, hence arriving a wrong decision.
  - iii. Failing exercise his discretion judiciously by striking out the suit without any supporting evidence and without any legal backing.
  - iv. Proceeding to admit the matter for hearing and actually hearing it on merit only for him to strike it out purporting to lack the requisite jurisdiction to handle the same.
  - v. Failing to act fairly, applying the wrong principles of law and citing /applying the wrong legal provisions thereby occasioning a miscarriage of justice.

#### **Appellant's Submissions**

4. The appeal was canvassed by way of written submissions and Mr. Kirui learned counsel for the Appellant filed his submissions dated 7<sup>th</sup> November 2024. The Respondent did not file any submissions. In support of his submission that the trial Magistrate's had jurisdiction to hear and determine cases of Adverse Possession, the Appellant's counsel relied on the case of Eloto & Another (Suing for themselves as Administrators of the Estate of Peter Eloto Larai – Deceased) v Sirite & Another Environment and Land Originating Summons E001 of 2023KEELC 5886 (KLR) 20 August 2024. In the said case the Court held that Magistrates Courts have jurisdiction to hear and determine claims of adverse possession subject to the limit of their pecuniary jurisdiction.
5. He further relied on the case of Patrick Ndegwa Munywa v Benjamin Kiiru Mwangi & Another (2020) eKLR where the court held that pursuant to Section 26 of the *Environment and Land Court Act* 2011 and section 9(a) of the *Magistrates' Courts Act*, magistrates who are duly gazetted have the jurisdiction to hear and determine claims of adverse possession as they relate to title to land.

#### **Analysis and Determination**

6. Having considered, the Grounds of Appeal, the entire Record of Appeal and the Appellant's submissions the main issue for determination is whether the trial magistrate erred in holding that he had no jurisdiction to hear and determine a claim for adverse possession.
7. The importance of jurisdiction cannot be over-emphasized. Nyarangi, JA in *The Owners of Motor Vessel 'Lilian S' vs. Caltex Oil Kenya Limited* (1989) 1 KLR 1 held that: -

“Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a court has no jurisdiction there should be no basis for a continuation of proceedings pending



other evidence. A Court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

8. Additionally, Ibrahim, JSC in Supreme Court of Kenya Civil Application No. 11 of 2016 Hon. (Lady) Justice Kalpana H. Rawal vs. Judicial Service Commission & Others in demystifying jurisdiction quoted from the decision in Supreme Court of Nigeria Supreme Court Case No. 11 of 2012 Ocheja Emmanuel Dangana vs. Hon. Atai Aidoko Aliusman & 4 Others where Walter Samuel Nkanu Onnoghen, JSC expressed himself as follows: -

...It is settled that jurisdiction is the life blood of any adjudication because a court or tribunal without jurisdiction is like an animal without blood, which means it is dead. A decision by a court or tribunal without requisite jurisdiction is a nullity - dead - and of no legal effect whatsoever. That is why an issue of jurisdiction is crucial and fundamental in adjudication and has to be dealt with first and foremost...

9. Regarding the source of a court’s jurisdiction, the Supreme Court of Kenya in the case of Samuel Kamau Macharia & Another vs. Kenya Commercial Bank Limited & others (2012) eKLR stated as follows:

“A court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law”.

10. A claim for adverse is founded on section 38 of the *Limitation of Actions Act* which provides as follows:

38. Registration of title to land or easement acquired under the 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 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.
- (2) An order made under subsection (1) shall on registration take effect subject to any entry on the register which has not been extinguished.
- (3) ...
- (4) The proprietor, the applicant and any other person interested may apply to the High Court for determination of any question arising under this section.

11. Following the enactment of the *Environment and Land Court Act* 2011, any reference to the High court in section 38 now means the Environment and Land Court.

12. The procedure for filing an application under section 38 of the *Limitation of Actions Act* is provided under Order 37 rule 7 of the Civil Procedure Rules which stipulates that:

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- (1) An application under section 38 of the *Limitation of Actions Act* shall be made by Originating Summons
- (2) The summons shall be supported by an affidavit to which a certified extract of the title to the land in question has been annexed.



- (3) The court shall direct on whom and in what manner the summons shall be served.
13. The question as to whether the Magistrates' Courts have jurisdiction to hear and determine cases of adverse possession has received conflicting interpretations by the courts. On one hand, there is a school of thought that based on the provisions of section 26(3) and (4) of the *Environment and Land Court Act*, 2011 and section 9 of the Magistrates Courts Act, 2015 the Magistrates' Courts have jurisdiction to determine cases of adverse possession. On the other hand, the second school of thought is that the Magistrates' Court lack jurisdiction to hear and determine cases of adverse possession in view of the express provisions of section 38 of the *Limitation of Actions Act*.
14. Section 26(3) of the *Environment and Land Court Act* provides as follows:
- (3) 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.
- (4) Subject to Article 169(2) of *the Constitution*, the Magistrate appointed under sub-section (3) shall have jurisdiction to handle
- (a) disputes relating to offences defined in any Act of Parliament dealing with environment and land and
- (b) matters of a 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*.
- Section 9 of the *Magistrates' Courts Act* provides that:-
9. A magistrate shall-
- (a) in the exercise of the jurisdiction conferred upon it by section 26 of the *Environment and Land Court Act* (Cap 12A) and subject to the pecuniary limits under section 7, hear and determine claims relating to:
- (i) environmental planning and protection, climate issues, land use planning, title tenure, boundaries, rates, rent, valuation, 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 interest in land and
- (v) environment and land generally.
15. In the case of Patrick Ndegwa Muniyua v Benjamin Mwangi & Another (2020) eKLR Ohungo J held that the above provisions confer jurisdiction on magistrates who have been duly gazetted to hear and determine cases of adverse possession within the pecuniary limit of their jurisdiction.
16. The same position was adopted in the case of Elot & Another (Suing for themselves and as Administrators of the estate of Peter Loroto Larai (Deceased) (supra)
17. On the other hand, the Court of Appeal in the recent case of Pauline Chemuge Sugawara v Nairuko Ene Mutarakwa Kiruti (Sued in her capacity as the administrator of the estate of Mutarakwa Kirui



Lepas alias Mutaragwa Kiruti Lepas alias Mutarakwa Kiroti Lepas Civil Appeal E141 of 2022 (20240 KECA 1417 (KLR) (11 October 2024) Judgment the court observed as follows:

“The controversial question of jurisdiction of the Magistrates’ Courts in claims for adverse possession emanates from sections 37 and 38 of the *Limitation of Actions Act* where it is specifically provided that such claims are to be heard by the High Court. Section 38 of the *Limitation of Actions Act* provides:

38. Registration of title to land or easement acquired under the 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 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.
- (2) An order made under subsection (1) shall on registration take effect subject to any entry on the register which has not been extinguished.
- (3) ...
- (4) The proprietor, the applicant and any other person interested may apply to the High Court for determination of any question arising under this section.

In other words, reference 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 and determine these cases. So that notwithstanding the expansion of the jurisdiction of environment and land usage to Magistrates’ Courts under Section 9 of the *Magistrates’ Courts Act* various matters are specified for determination but claims for adverse possession are not included.

18. In the case of Republic v Karisa Chengo & 2 Others (2017) eKLR the Court held that:

“A court’s jurisdiction flows either from *the Constitution* or legislation or both thus a court of law only exercises jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred by law”.

It is our view that if it was intended that claims for adverse possession be determined by the Magistrate’s court, nothing would have been easier than for Parliament to have expressly enacted such a provision. So that in view of the express provisions of the law a strict interpretation of section 38 would mean that hearing and determination of matters is specifically limited to the Environment and Land Court to the exclusion of the Magistrates’ Court.

“...In the circumstances in view of the express provisions of section 38 of the *Limitation of Actions Act* as did the Environment and Land Court, we find that the Magistrates’ Courts do not have the jurisdiction to determine claims of adverse possession”



19. In arriving at its decision, the Court of Appeal noted that the predominant view of the Environment and Land Court was that the Magistrates' Courts have no jurisdiction to hear and determine cases of Adverse Possession. In particular, the Court cited the cases of *Jesse Njoroge Gitau v Kibuthu Macharia & Another* ( 2019) eKLR; *Michael Chebii Toroitich V Peter Mogin Yatich Chebii* ( 2013) eKLR; *Njoki Wainaina V Josephat Thuo Githachiri & 3 Others, National Land Commission and Another Interested Parties* (2021) eKLR and *Reuben v Mwanagangi & 7 Others v ELC* Case No. E011 of 2023 (2023) KEELC 21899 (KLR) where the Court arrived at that finding that Magistrates' Courts do not have the jurisdiction to hear and determine cases of adverse possession.

20. Additionally, the Court observed that the Magistrates' Courts' jurisdiction is largely determined by the pecuniary limit of each level of magistracy as specified under section 7 of the *Magistrates' Courts Act*. That means that since the value of the subject matter in claims of adverse possession may be unknown, the value may be far in excess of the court's pecuniary jurisdiction.

Suffice is to say that this court is not only persuaded by but is also bound by the above decision of the Court of Appeal.

21. On whether the court ought to have proceeded to hear the matter before arriving at the decision that it had no jurisdiction, it worth noting that matters of jurisdiction can be raised at any stage including on appeal. The trial magistrate can therefore no be faulted for having proceeded to hear the case.

Having come to the conclusion that the trial magistrate was right in arriving at the decision that he had no jurisdiction to hear and determine the matter, I need not delve into the other grounds of appeal.

22. The upshot is that the appeal lacks merit and it is hereby dismissed with no order as to costs.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 18<sup>TH</sup> DAY OF DECEMBER 2024.**

.....

**J.M ONYANGO**

**JUDGE.**

In the presence of;

1. Miss Munji for Mr. Kirui for the Appellant

2. No appearance for the Respondent

Court Assistant: Brian

