



Mohamed & 2 others (Suing as Administrator of the Estate of Peter Rashid Abdallah Mboty) v Kazungu (Environment and Land Appeal E017 of 2023) [2024] KEELC 14045 (KLR) (12 December 2024) (Judgment)

Neutral citation: [2024] KEELC 14045 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND APPEAL E017 OF 2023
EK MAKORI, J
DECEMBER 12, 2024**

BETWEEN

**NOORHER MOHAMED 1ST APPELLANT
HADUA NANZALA RASHID 2ND APPELLANT
FATUMA MARUTI RASHID 3RD APPELLANT
SUING AS ADMINISTRATOR OF THE ESTATE OF PETER RASHID
ABDALLAH MBOTY**

AND

JOEL KAZUNGU RESPONDENT

(Being An Appeal Under Section 65 1(b) Of The Civil Procedure Act Cap 21 Laws Of Kenya And Order 42 Rule 1 (1) Of The Civil Procedure Rules 2010 From The Judgment And Order Of Hon. James Ongondo, Malindi Delivered On 5Th April, 2023 In Malindi Mcel No. 21 Of 2018)

JUDGMENT

1. The Court of Appeal has recently provided guidance on whether the Magistrates Court has jurisdiction to hear adverse possession claims. It is reported in *Sugawa V Kinuti & 3 Others (2024) KECA 1417 KLR*.
2. The Court of Appeal reversed several decisions from the ELC for and against the litigants handling adverse possession matters. The Court of Appeal considered;
3. ...the appeal arises from a mixed grill claim- with a Counterclaim being under adverse possession and which was the basis of the decree from the Lower Court.



4. The Court had no jurisdiction. The appeal succeeds with no order as to costs here and in the Lower Court in view of the confusing jurisprudence that has been emanating from the ELC itself.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 12TH DAY OF DECEMBER, 2024.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Achieng for the Appellant

Abdrashid: Court Assistant

In the Absence of

Mr. Komora for the ...

