

# JURISDICTION OF MAGISTRATES' COURTS IN CLAIMS OF ADVERSE POSSESSION

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The Court of Appeal's Sugawara-Kiruti  
Judgment



**BY JOHN WILLYS**

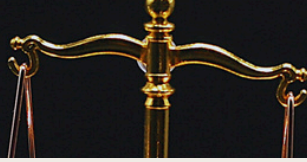
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Justice Nyarangi's eminent pronouncement lives with us more than three decades later. To the learned Judge (as he was then), jurisdiction is everything. Without it, a court has no power to make one more step. The question of jurisdiction of the Magistrates' courts in claims for adverse possession is one that, up until recently, remained a hot topic, open for discussion. The precedent and jurisprudential disagreement witnessed at the various courts was now up for settlement. While the question of jurisdiction is an expression of the law, a sampling of case law from the various courts demonstrates that no accord subsisted on the question whether Magistrates' courts are clothed with the requisite jurisdiction to hear claims for adverse possession.

Recently, as part of settling the dust of disagreement that had long blown, the Court of Appeal at Nairobi decided the appeal from the environment and Land Court [ELC] which court had previously held that Magistrates Courts lacked jurisdiction to determine claims of adverse possession; on the question of whether Magistrates' court are clothed with the requisite jurisdiction to hear matters relating claims for adverse possession, it upheld (in my view, correctly) the ELC reasoning hook, line and sinker.

The Court of Appeal's reasoning was based on an interesting construction of Section 37 and 38 of the Limitation of Actions Act [LAA] which expressly provides that a party claiming under adverse possession is to apply directly to the High Court as read in tandem with Section 9 (a) of the Magistrates Courts Act which provides on the extent of jurisdiction of the Magistrates Court, Article 162 (2) (b) of the 2010 Constitution of Kenya which establishes the two Specialized Courts- with concurrent jurisdiction as the High Court-including the ELC and the ELRC and Section 13 of the Environment and Land Court Act that provides on the extent of jurisdiction of the ELC. The court went ahead to analyze the conflicting jurisprudence including the Peter Ndegwa case, the Philip Kithaka case and the Michael Chebii Chorotich case just to mention but a few.



The court held that “if it was intended that claims for adverse possession be determined by the Magistrates’ Court, nothing would have been easier than for Parliament to have expressly enacted such a provision. To that extent and in light of the express provisions of the law, a strict interpretation of section 38 would mean that hearing and determination of such matters is specifically limited to the Environment and Land Court to the exclusion of Magistrates’ Court.” (Paragraph 48)

As a corollary to this very position, and out of abundance of caution, the court went ahead to clarify the reference to the “High Court” under Section 38 of the LAA as the court which such cases are heard to mean the Environment and Land Court, being the court conferred with the proper jurisdiction to hear and determine matters pertaining to adverse possession of land. For purposes of clarity, the Environment and Land Court enjoys the exclusive jurisdiction in claims of adverse possession.

In excluding the Magistrates Courts from the jurisdiction to hear matters relating to adverse possession of land, the court held, specifically, that the jurisdiction of Magistrates Courts is largely determined by pecuniary interest. This was juxtaposed by the fact that in claims for adverse possession, the value of the land may be unknown and it could be that by the time of filing, the value of land subject of determination may be far in excess of the particular Magistrates’ court’s pecuniary jurisdiction.

## **Conclusion**

In a nutshell, and while reiterating the ratio in the Karisa Chengo case where the Supreme Court clarified that parity of hierarchical structure does not imply that either the Environment and Land Court or the ELRC is the High Court and the Court recounted the history and context in which the Committee of Experts (CoE) conceived of specialised courts, the court held that a court’s jurisdiction flows from either the constitution or legislation or both. That a court cannot expand its jurisdiction through judicial craft or innovation. More importantly, the court was of the considered view, and rightly so, that Section 37 as read with Section 38 of the LAA confers the jurisdiction to determine the claims of adverse possession to the High Court, more particularly the Environment and Land Court.

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John Willys holds an LLB (Hons.) from the Catholic University of Eastern Africa, Kenya and is currently an Advocate Trainee at the Kenya School of Law Advocates Training Programme (2024-2025). His professional interests are constitutional and administrative law, dispute resolution, Intellectual Property Law, data protection, Sports Law, Tax Law, commercial and corporate law and public international law.



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