



**Thebe v Charo & 2 others (Sued on their own behalf and/or Legal Representatives and/or Administrators of the Estate of the Late Karisa Charo Nyamawi); Clan) (Intended Interested Party) (Miscellaneous Application E013 of 2023) [2023] KEELC 21851 (KLR) (29 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21851 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
MISCELLANEOUS APPLICATION E013 OF 2023**

**NA MATHEKA, J  
NOVEMBER 29, 2023**

**BETWEEN**

**KAHINDI KAMBI THEBE ..... APPELLANT**

**AND**

**SAFARI KARISA CHARO ..... 1<sup>ST</sup> DEFENDANT**

**KAZUNGU KARISA CHARO ..... 2<sup>ND</sup> DEFENDANT**

**KATANA KARISA CHARO(SUED ON THEIR OWN BEHALF AND/OR LEGAL REPRESENTATIVES AND/OR ADMINISTRATORS OF THE ESTATE OF THE LATE KARISA CHARO NYAMAWI) ..... 3<sup>RD</sup> DEFENDANT  
SUED ON THEIR OWN BEHALF AND/OR LEGAL REPRESENTATIVES AND/OR ADMINISTRATORS OF THE ESTATE OF THE LATE KARISA CHARO NYAMAWI**

**AND**

**ABDALLA KALAMA BANZI (REPRESENTING THE LARGE APARWA CLAN) ..... INTENDED INTERESTED PARTY**

**RULING**

1. The application is dated 14<sup>th</sup> February 2023 and is brought under Sections 1A,1B,3A and 18 of the [Civil Procedure Act](#) (Cap 210) and Order 51 Rule of the [Civil Procedure Rules](#) 2010 seeking the following orders;
  - a. That this Honourable Court be pleased to transfer appeal no 71 of 2008 that has been pending before the defunct provincial land appeals committee and which is now pending before the



Principal Magistrate's Court at Kaloleni as land case number 32 of the 2014 between the applicant herein as the appellant and the Respondent herein to this Honourable Court for hearing and disposal.

- b. That in the alternative; this Honourable Court be pleased to grant such further alternative directions and/or orders that it may deem fit in the interest of justice.
2. It is supported by the annexed affidavit of Kahindi Kambi Thebe and on grounds, *inter alia* that the applicant and Respondent have a land dispute that has been raging for many years. That the land dispute between the applicant and the Respondent was heard by a panel of elders constituted under the repealed [Land Disputes Tribunal Act](#) no 18 of 1990. That the applicant appealed against the decision of the said panel of elders which was adopted as a judgment of the subordinate court at Kaloleni. That the said Appeal no 71 of 2008 had been pending before the Provincial Land Disputes Appeals Committee which is now defunct. That the appellant does not have any other forum to ventilate his grievances contained in his memorandum of appeal in the said appeal except before this Honourable Court.
  3. The 2<sup>nd</sup> Defendant opposed the application and stated that his elder brother Karisa Charo Nyamawi had a land dispute with the applicant sometime in the year 1999 and on the 19<sup>th</sup> August 1999 the panel of Elders of Mariakani location ruled that the disputed shamba belongs to Karisa Charo Nyamawi in land dispute IKAL 209 at Kibao Kiche/Kawala after both parties and their witnesses had been heard before the said panel of elders. That on the 22<sup>nd</sup> September 1999 the said decision of the panel of elders was entered as a judgment of the court under Section 7 of the [land disputes act](#) in the presence of both parties and the defendant now the applicant was granted a right of appeal of 30 days. That the 30 days expired on the 22<sup>nd</sup> October 1999 and the applicant never filed nor served Mr. Karisa Charo Nyamawi with an appeal against the judgment of the Kaloleni Magistrate's Court. That there is nothing pending in the said defunct provincial land appeals tribunal and the magistrate's judgment is therefore not available for review by the ELC court as the judgment on the Magistrate's Court was executed by the court bailiff and possession handed over to Karisa Charo Nyamawi.
  4. The second application is dated 5<sup>th</sup> July 2023 and is brought under Order 51 Rule 1 of the [Civil Procedure Rules](#) and Section 1A, 1B, of the [Civil Procedure Act](#), Article 40, 46, 50, 159 (2) (d) of the [Constitution](#) of Kenya seeking the following orders;
    1. The application herein be certified as urgent and dispensed with in the first instance Abdalla Kalama Banzi (representing the larger Aparwa clan) be enjoined to this suit as an interested party.
    2. The costs of this application be provided for.
  5. The application is supported by the supporting affidavit of Abdalla Kalama Banzi on the grounds that the intended interested party is a member of the Aparwa clan. That the Aparwas are descendants of the late Mzee Nyamawi Dede. That the said Mzee Nyamawi Dede was the owner of the suit land which is the ancestral land of the Aparwas. That the Aparwas had agreed to have the late Karisa Charo Nyamawi represent them in the land dispute with the applicant herein at the now defunct land tribunal. That the representation was solely to safeguard the interests of the Aparwas. That the Respondents herein have been portraying themselves in manner likely to suggest that they are the legal owners of the land to the exclusion of the larger Aparwa clan. That the Respondents are not updating them on the progress of the application herein and have been blocking them from accessing any information on the goings on in this matter. That the intended interested party has interests in the suit land which cannot be wished away.



6. The Respondent is their grounds of opposition stated that the intended interested parties were never parties to the original proceedings before the Kaloleni land dispute tribunal and as such have no locus to be joined in the present proceedings. That the application by the intended interested parties is premature and is filed contrary to mandatory provisions of the law and procedure. That the intended interested parties have no right to litigate as a clan before a court of law and their alleged rights on or over the suit land cannot be recognized in law. That the application by the intended interested party is filed solely to frustrate the quick hearing of the applicant's application and is designed to obstruct the real issues before court and frustrate the determination and conclusion of the long standing dispute over the suit land. That the subject land is not community land and the intended interested parties claim, if any, lies elsewhere and not before this Honourable Court. Consequently, the applicant prays that the application be dismissed with costs to the applicant.
7. I have considered the applications and the submissions therein. The Applicant in the first application seeks orders that this court be pleased to transfer Appeal no 71 of 2008 that has been pending before the defunct Provincial Land Appeals Committee and which is now pending before the Principal Magistrate's Court at Kaloleni as land case no 32 of the 2014 between the Applicant herein as the appellant and the Respondent herein to this Honourable Court for hearing and disposal
8. I have perused the court record and find that this property is situate in Mariakani Location, Kilifi County and the Principal Magistrate's Court at Kaloleni is in Kilifi County. Section 12 of the [Civil Procedure Act](#) Cap 21 provides for guidelines on choosing territorial jurisdiction. When filing matters it provides thus; -

" Subject to the preliminary or other limitations prescribed by any law,

- a. for the recovery of immovable property; with or without rent or profits;
- b. for the partition of immovable property;
- c. for the foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property;
- d. for the determination of any other right to or interest in immovable property;
- e. for compensation for wrong to immovable property;
- f. for the recovery of movable property actually under distraint or attachment, where the property is situate in Kenya, shall be instituted in the court within the local limits of whose jurisdiction the property is situate: Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the Defendant may, where the relief sought be entirely obtained through his personal obedience, be instituted either in the court within the local limits of whose jurisdiction the property is situate, or in the court within the local limits of whose jurisdiction the Defendant actually and voluntarily resides or carries on business, or personal works for gain."

9. Section 13 provides; -

" Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different courts, the suit may be instituted in any court within the local limits of whose jurisdiction any portion of the property is situate,



provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such court.”

10. In the instant case the suit property is in Kilifi County which is served by Malindi Environment and Land Court in Kilifi County. Given that the suit property is located within Kilifi County Government, subject to Section 12 the correct forum is the Malindi Environment and Land Court. Having found that this court has no jurisdiction in the matter this court cannot determine the merits or demerits of these applications. Consequently, I transfer this matter to the Environment and Land Court Malindi for hearing and determination. Costs to be in the cause.

11. It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 29<sup>TH</sup> DAY OF NOVEMBER 2023.**

**N.A. MATHEKA**

**JUDGE**

