

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MALINDI**  
**ELC PETITION NO. E016 OF 2024**

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

**VERSUS**

**SAFARI KARISA CHARO & 4 OTHERS** .....

**PETITIONER**

**RESPONDENTS**

**RULING**

1. The petition before me is dated 11<sup>th</sup> October 2024. Kahindi Kambi Thebe seeks the following orders in the petition:
  - a. A Declaration that the failure by the Land Disputes Tribunal and the Provincial Land Disputes Appeals Committee Coast and their successor or failure to provide and allow the petitioner the opportunity and chance to pursue his appeal against the decision of Kaloleni Land Disputes Tribunal in Land Award Number 39 Of 1999 amounts to a violation of the petitioners rights under Articles 10, 19, 20,21, 27 35 40, 47, 50(1),60(1)(b), 165 and 259 of the Constitution of Kenya 2010 and **Section 4** of the Fair Administrative Action Act 2015;
  - b. A declaration that the petitioner is entitled to be granted a chance and opportunity to pursue and or ventilate his appeal emanating from the decision of the elders in Kaloleni Land Disputes Tribunal Land Award Number 39 Of 1999 before competent tribunal or court of law;
  - c. An order of mundane must be issued directing that the petitioner’s Appeal Number 71 Of 2008 Kahindi Kambi Thebe versus Charo Nyamawi be admitted on appeal by the Environment and Land Court at Malindi for hearing and final disposal on merit;
  - d. Costs of this petition be provided for.
  
2. The petition is supported by the sworn affidavit of the petitioner dated 11<sup>th</sup> October 2024. The background to the petition as narrated by the petitioner is that at all material times, he was the owner of the unsurveyed piece of land measuring approximately **70** acres situated at Kibao Kiche, having inherited the same from his ancestors (hereinafter referred to as “*the suit property*”). His

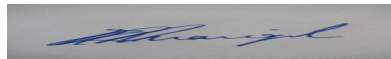
- ancestors had tilled the suit land for ages and planted perennial fruit trees thereon for both subsistence and commercial use. In **1999** Karisa Charo Nyamawi instituted a claim against the petitioner's family at the Kaloleni Land Disputes Tribunal claiming that the suit land was his ancestral land and sought to have the boundary reestablished in a manner that would lead to the eviction of the petitioner's family.
3. The Tribunal heard the case and delivered its decision on 19<sup>th</sup> August 1999 awarding the land to Karisa and the decision was adopted as a judgement of the Court by the Kaloleni Resident Magistrate' s court in **Land Award Number 39 Of 1999**.
  4. Dissatisfied, the petitioner commenced an appeal procedure under the repealed **Land Dispute Tribunal Act Number 18 Of 1990** which process was delayed due to the challenges in obtaining the typed records from the Kaloleni Land Disputes Tribunal and transmission of the same to the Provincial Disputes Appeals Committee at Mombasa.
  5. Subsequently the petitioner was granted leave to appeal and his appeal was admitted to that Appeals Committee as **Land Appeal Number 71 Of 2008**.
  6. Hearing of the appeal began on 16<sup>th</sup> December 2008 and was adjourned to enable parties arrange for a site visit.
  7. While the parties were waiting for the site visit, the **Land Disputes Tribunal Act Number 18 Of 1990** was repealed and the appeal was required to have been transmitted to the Environment and Land Court for hearing and disposal
  8. On 2<sup>nd</sup> December,2013, the Deputy Registrar Environment and Land Court issued directions to have all files that were pending before the Provincial Land Disputes Appeals Committee to be forwarded to the ELC.

9. On 21<sup>st</sup> August 2014, the Mombasa Court issued a letter transferring the appeal to Kaloleni Magistrate's Court where it was registered as **Kaloleni Land Case Number 32 Of 2014**. Karisa filed a Preliminary Objection against the appeal which objection was upheld and the appeal at Kaloleni Magistrate's Court was struck out.
10. After that the petitioner filed an application before this court **Malindi ELC Miscellaneous Application Number 6 Of 2024** seeking transfer of **Provincial Land Appeals Committee Appeal Number 71 Of 2008** to be transferred to this court which application was struck out.
11. The petitioner's case is that it was the obligation of the Provincial Land Disputes Appeals Committee Coast and the Environment and Land Court to have the appeal transferred to the ELC and the petitioner should not be punished for failure to have his appeal transferred. The petitioner was also not in a position to progress or prosecute his appeal without first being notified by the court that the appeal had been transferred and as such the petitioner was left in limbo; that the ELC was supposed to continue hearing appeals from the Tribunals subject to any directions by the Chief Justice or the Chief Registrar; that the actions or lack of action on the part of the defunct Land Disputes Tribunal and the successor thereto amount to violation of the petitioner's constitutional rights and threatens to further prejudice and infringe on the petitioner's rights unless this court intervenes; that the transition from the repealed Land Disputes Tribunal Act to the Environment And Land Court and/or the lack of it denied him his fundamental right to pursue his appeal, which right ought to be upheld by this court; that the haphazard repeal of the Land Disputes Tribunals Act without providing a clear transition of appeals pending

- within the Coast region prejudiced the petitioner and denied him his right to access to justice.
12. The petitioner avers that courts and judicial bodies, in discharging their lawful mandate, are bound by **Article 10** of the Constitution to observe the rule of law assert equality and protect human rights.
  13. The petitioner requests this court to return a finding that the failure on the part of the responsible offices to transmit the petitioner's appeal from the Land Disputes Tribunal to this court amounted to a violation and infringement of the petitioner's right to fair trial and that the order that commends itself in the circumstances would be a directive that the petitioner's appeal be admitted out of time, noting that the proceedings under the Land Disputes Tribunal's Act were not bound by strict procedural technicalities under the Civil Procedure Act including the rules on the death of a party, and the inclusion of the first deceased's children in proceedings touching on the dispute at hand would suffice; that the continued delay in the conclusion of the ownership disputes prevented the completion of the land adjudication and registration process over the suit land thereby prejudicing the petitioner. The petitioner avers that while he was waiting for his appeal to be forwarded to this court, the Jimba/Kaliangombe Land Adjudication Committee made an irregular decision awarding his land to Karisa Charo Nyamawi, the deceased.
  14. As I read through the court file to prepare this ruling, I checked the CTS records and confirmed that I gave the ruling in **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) [2024] KEELC 5671 (KLR)** on 31<sup>st</sup> July 2024. That matter relates to the same land and the same parties herein.

15. In effect, this is the second time that I would be sitting in respect of this dispute, albeit in a petition. This is a fact that has come to me quite late in the day for the reason that the names of the parties hearing did not for some reason automatically ring a bell earlier. Counsel appearing also never informed this court that the earlier dispute was presided over by myself, otherwise I should have issued appropriate directions at the right time. I now find that it is improper that I hear and determine the present petition. In the circumstances the date for judgment scheduled for **24<sup>th</sup> February 2026** is hereby vacated and parties or counsel are ordered to appear in court on 11/6/2026 for further directions to be made in their presence before a different court.

**Dated, signed and delivered at Malindi on this 24<sup>th</sup> February 2026.**



**MWANGI NJOROGE,  
JUDGE, ELC, MALINDI.**