



REPUBLIC OF KENYA



**Nguwa & 8 others v Kanyolo & another (Environment and Land Appeal
17 of 2023) [2025] KEELC 5897 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5897 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND APPEAL 17 OF 2023**

EK MAKORI, J

JULY 24, 2025

BETWEEN

KADZO JEFWA NGUWA 1ST APPELLANT
ROBERT KAHINDI KIRAO 2ND APPELLANT
JOHN KARISA KIRAO 3RD APPELLANT
LAWRENE MUMBA KIRAO 4TH APPELLANT
HENRY KATANA KIRAO 5TH APPELLANT
ALPHONCE MAJIMBO KIRAO 6TH APPELLANT
RODGERS KIRAO MWAGIRANI 7TH APPELLANT
JOSEPH KAVELEI KIRAO 8TH APPELLANT
POSHIAKIRAO... 9TH APPELLANT

AND

ALEXANDER MUSYOKI KANYOLO 1ST RESPONDENT
NATIONAL LAND COMMISSION 2ND RESPONDENT

JUDGMENT

1. On October 12, 2023, this court, presided over by Odeny J., granted the Appellants leave to appeal the decision made by the National Land Commission (NLC) regarding the appeal against the determination of the 2nd Respondent, published on February 15, 2019, in the Kenya Gazette, Volume CXXI, No. 21. The decision recommended that the land parcel identified as Plot No. Kilifi/Jimba/325 be regularized in favor of Alexander Musyoki Kanyolo. At the same time, the court instructed the 2nd Respondent to produce the Appellant's minutes, proceedings, evidence, and related records



- concerning the determination made regarding the suit property to be part of the record of appeal; however, the 2nd Respondent failed to fulfill these instructions, which could have provided important evidence for the appeal.
2. The appeal then proceeded without the benefit of the proceedings and record relied on by the NLC to reach its decision.
 3. The grounds of appeal and the reliefs sought are as listed in the Memorandum of Appeal.
 4. The appeal was canvassed through written submissions.
 5. Based on the materials and submissions before me, the issues this court must decide are whether the current appeal is properly filed, whether the NLC erred in its decision to regularize the suit property in favor of Alexander Musyoki Kanyolo, and who should bear the costs of this litigation.
 6. The primary function of a first appellate court within Kenyan jurisdiction is to undertake a thorough, independent re-assessment of the evidence presented during the trial and to reevaluate the findings and judgment or decision rendered by the trial court. This meticulous review ensures that both facts and law are considered, while duly acknowledging the trial court's advantageous position of having observed witnesses firsthand. Furthermore, the appellate court has the authority to uphold, annul, or modify the trial court's decision, and may also admit additional evidence or order a new trial as deemed appropriate. See *Okeno v Republic* 1972 EA 32.
 7. The Appellants argue that they filed a Record of Appeal on February 6, 2025, which included all the evidence they submitted to the 2nd Respondent. The Respondents did not oppose the appeal despite being served.
 8. They claim to be the legitimate beneficiaries of the estate of the late Kirao Kombe Hare (deceased), who passed away on August 21, 2012, as confirmed by the Certificate of Confirmation of Grant issued on January 25, 2021. The late Kirao Kombe Hare was recognized as the legal owner of the land known as Plot No. Kilifi/Jimba/325 by the Kilifi Jimba Land Settlement Scheme Local Land Committee after a ground verification in 2009. This verification, conducted by a task force from the Ministry of Lands in collaboration with the committee, identified him as the rightful owner. The committee recommended processing ownership documents in favor of the deceased.
 9. On December 20, 2011, the then Member of Parliament for Malindi Constituency forwarded the committee's report to the Commissioner of Lands and requested that the property's embargo be lifted. Reference is made to the letter dated December 20, 2011, on page 5 of the Record of Appeal.
 10. On October 3, 2012, the Commissioner of Lands informed the Kilifi District Land Registrar and the Chief Land Registrar that the embargo had been lifted and directed them to process ownership documents for Kirao Kombe Hare (deceased). Reference is made to the letter dated October 3, 2012, on page 6 of the Record of Appeal.
 11. Following the enactment of the [*National Land Commission Act*](#) and the functioning of the second Respondent, the Chairman of the NLC approved lifting the embargo on the property. By a letter dated July 11, 2013 (on page 7 of the record of appeal), the 2nd Respondent instructed the Kilifi District Land Registrar to process ownership documents for the late Kirao Kombe Hare.
 12. Before these title documents were issued, Kirao Kombe Hare died on August 21, 2012. In 2018, the NLC held hearings at Watamu Hall to review grants and dispositions within the Kilifi Jimba Settlement Scheme, during which the Appellants presented their father's claim to the property. The Appellants submitted the letters from the Kilifi Jimba Land Settlement Scheme Local Land



- Committee, the then Member of Parliament for Malindi, the Commissioner of Lands, and the NLC, all dated October 25, 2011, December 20, 2011, October 3, 2012, and July 11, 2013, respectively.
13. According to the Appellants, neither party disputed the Appellants' claim at the hearing, and the officer from the 2nd Respondent present confirmed to the Appellants that they were satisfied the deceased was the rightful owner of the property.
 14. On January 28, 2020, the Appellants visited the Kilifi Land Registry to process their title deed for the property but were told it had already been registered in the name of the 1st Respondent, based on the recommendation of the 2nd Respondent.
 15. The Appellants then sought clarification from the offices of the 2nd Respondent and were informed of Gazette Notice Vol. CXXI No. 21 Number 1549, issued on February 15, 2019. A review of this notice showed that no party before the 2nd Respondent or the commission had recommended that the property be regularized in favor of the 1st Respondent.
 16. On its part, the 2nd Respondent submitted that NLC derives its mandate from Article 67 of *the Constitution* of Kenya 2010, the *National Land Commission Act*, 2012, and the *Land Registration Act*, 2012. These include managing public land, recommending national policy, advising on land registration, conducting research on land and natural resources, investigating land injustices, and monitoring land use planning.
 17. Article 67(2) of *the Constitution* mandates that investigations be initiated either on their own or based on a complaint concerning current or past land injustices, and to suggest appropriate solutions. It also promotes the use of traditional dispute resolution methods in land conflicts.
 18. The NLC held public hearings on October 8th, 9th, 11th, and 12th, 2018, during which all residents of the Jimba Settlement Scheme attended, and all complaints were addressed. Additionally, other parties gave oral statements, and ownership documents were verified before making findings.
 19. The government had imposed a ban on dispositions and dealings in land on the Jimba Settlement Scheme due to allegations of double allocations, and an investigation was conducted to verify the legitimacy of the occupants across this settlement scheme before lifting the ban.
 20. Regarding Plot No. Kilifi/Jimba/325, the commission was informed that adjudication had been completed, and this suit land was awarded to Alexander Musyoki Kanyoro as the rightful owner. During a ground inspection, it was found that two claimants were listed for that parcel of land: Warda Investments Ltd and Kirao Ngure (deceased). Verification revealed that Alexander Musyoki Kanyoro had leased the land to Warda Co. Ltd for a period of 99 years, starting on December 10, 1992.
 21. According to the Kilifi/Jimba Plot Verification Report, it was clear on the ground that Warda Investments Ltd occupied plot No.325 on 0.4 Ha. with no developments. Kirao Kombe Hare claimed to be in occupation but had no documents to support that claim, and it was recommended that the Commission handle negotiations.
 22. The NLC announced the dates for public hearings through various channels, including chiefs and relevant departments, to ensure that all affected parties were adequately informed and able to attend the scheduled hearings effectively. However, during the public hearings, the Appellants did not participate. After the process concluded, a gazette notice was issued on February 15, 2019.
 23. It was submitted that the NLC applied its authority in this matter with proper diligence and fairness toward all involved parties.



24. After reviewing the materials and submissions presented to me, I will discuss the competence of the appeal along with whether the appeal has merit.
25. As presented by counsel for the 2nd Respondent, NLC derives its mandate from Article 67(2) of *the Constitution*, which stipulates that investigations shall be initiated either independently or upon receipt of a complaint concerning ongoing or historical land injustices, and to recommend suitable remedies. It further advocates for the utilization of traditional dispute resolution mechanisms in land conflict resolution.
26. Regarding the suit property, NLC conducted investigations into its ownership, and public hearings were held on October 8th, 9th, 11th, and 12th, 2018. All residents of the Jimba Settlement Scheme attended these hearings, where all complaints, including those related to the suit property, were addressed.
27. Following a decision by the NLC under Section 14 of the *National Land Commission Act*, a party aggrieved by the commission's decision may appeal to the ELC. The appeal process is outlined in the Land Commission (Review of Grants and Disposition of Public Land) Regulations, 2017.
28. Specifically, Regulation 30(1) provides as follows:

“A person aggrieved by the decision of the Commission may, within fourteen days of the Commission’s decision, appeal to the Court.”
29. This provision is final and does not allow any subsequent review or internal appeal within the commission. Once the commission issues its decision on a complaint or review, it becomes functus officio, ending its authority over that specific matter.
30. An appeal can be filed with the ELC. Additionally, see Regulation 13(3), which explicitly prohibits a party from re-submitting a complaint on the same or a substantially similar issue once it has been resolved. Therefore, the only remedy available to a dissatisfied party is to appeal to the ELC; the commission lacks the jurisdiction to reopen or reconsider a decision it has previously made under Section 14 of the Act. As a result, this appeal is properly before this court.
31. Under Regulation 29 (2), the decision by the Commission must entail:
 - (a) the nature of the complaint;
 - (b) a summary of the relevant facts and evidence adduced;
 - (c) the determination and reasons supporting the Commission’s decision;
 - (d) the remedy, if any; and
 - (e) the order of the Commission necessary to enforce the remedy.”
32. To ensure the completeness of the record pursuant to Regulations 31 and 32, an appeal must be accompanied by the commission’s resolution and a record detailing how the decision was reached, which must be legally and procedurally sound. The decision should be extracted, authenticated, and signed under the seal of the commission. This structure explicitly anticipates that any appeal to the Court must be based on a formal, reasoned record outlining the process the commission employed in reaching its decision. It should be noted that the appeal is not a trial de novo, but rather a review of the commission’s determination. An appellant must be provided with a certified copy of the Commission’s final determination or resolution, a record of the proceedings, the procedures applied, the evidence received, and the reasoning employed, to serve as the basis for consideration by the appellate court.



33. The appeal before this court is based on documents supplied by the Appellant, Odeny J., of this court, as noted above, ordered the Appellants to be provided by the commission the record, but that never happened. The Appellants did not follow through to ensure the orders were executed. As a result, the current Record of Appeal stands incomplete and is therefore considered incompetent; the appeal must be deemed invalid and fails on that point alone.
34. To ensure procedural integrity and fairness, the Commission should:
- i. Provide each affected party with a formal resolution that explains the nature of the dispute, the evidence considered, the legal reasoning used, and the final orders;
 - ii. Attach a certified record of proceedings, notices, evidence submitted, and any other relevant materials used in the decision-making process;
 - iii. Maintain a transparent administrative practice of compiling a review file, which must be produced in court if an appeal is filed;
 - iv. Inform parties that once a decision is made, their only option is to appeal to the ELC, rather than seeking further review by the commission.
35. Regarding the merits of the appeal, after reviewing the materials and submissions presented, it seems unlikely that the Appellants will succeed. Additionally, in my view, the proper channel for addressing this matter would have been through a Judicial Review Mechanism, which would have evaluated whether the NLC acted illegally, irrationally, unreasonably, or with bias regarding the contested decision it made. See *J.M Richard Wanjigi v Chebukati and 2 Others*. [2023] KESC 15 (KLR).
36. But it will appear that the avenue may also have closed since the Appellants seem to have acquiesced in bringing the JR and the current appeal.
37. The upshot is that the appeal is dismissed with costs.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 24TH DAY OF JULY 2025.

E. K. MAKORI

JUDGE

In the Presence of:

Mr. Mwadilo for the Appellant

Ms. Khaoya for 2nd Respondent.

Happy: Court Assistant

