



**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) (Environment and Land Miscellaneous Application 6 of 2024) [2024] KEELC 5671 (KLR) (31 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5671 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MALINDI**  
**ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 6 OF 2024**  
**FM NJOROGE, J**  
**JULY 31, 2024**

**BETWEEN**

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

**AND**

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

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

**KATANA KARISA CHARO ..... 3<sup>RD</sup> RESPONDENT**

**SUED ON THEIR OWN BEHALF AND/OR LEGAL REPRESENTATIVES AND/OR ADMINISTRATORS OF THE ESTATE OF THE LATE KARISA CHARO NYAMAWI**

**RULING**

1. For determination is an amended notice of motion application dated 11/4/2023 filed by the Applicant, Kahindi Kambi Thebe, seeking orders as follows: -
  - 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 2014 between the Applicant herein as the Appellant and the Respondents 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. The application which is said to be brought under Section 1A, 1B, 3A and 18 of the *Civil Procedure Act* and Order 51 of the Civil Procedure Rules, 2010 is based on the grounds set out at the face



of the motion and those in the supporting affidavit which appears to be incomplete and undated. The grounds as deposed therein were that the Applicant instituted a claim over a parcel of land situated at Kibao Kiche area within Kilifi County, against the Respondents herein. The claim was filed on 19/8/1999 at the Kaloleni Land Disputes Tribunal whose decision was adopted as judgment of the court on 23/9/1999 in Kaloleni Resident Magistrate's Court Land Award No. 39 of 1999. The Applicant subsequently filed an appeal to the then Provincial Land Disputes Appeal Committee as Provincial No. 71 of 2008. The Appeals Committee commenced hearing on 16/12/2008 and thereafter the dispute was adjourned pending a site visit. Before the visit could take place, the statute governing Land Disputes Tribunals cases (and appeals) was repealed which saw the Provincial Land Disputes Appeal Committee being disbanded. Subsequently, the matter was transferred to the Kaloleni Magistrates Court under Land Case No. 32 of 2014, where it was dismissed on a preliminary objection.

3. Before the appeal could be transferred to this court, the Jimba/Kaliang'ombe Land Adjudication Committee awarded the disputed land to Karisa Charo Nyamawi (the deceased) based on the decision by the Kaloleni Land Disputes Tribunal. The applicant added that he filed an appeal to the Adjudication Committee, which he claimed could not be heard due to Covid-19 disruptions. To the Applicant there was no any other forum to ventilate his grievances except this court.
4. In response to the application, the Respondents filed a replying affidavit sworn by the 2<sup>nd</sup> Respondent on 7/6/2023 wherein he deposed that there was no appeal filed to the Provincial Appeals Tribunal and that the proceedings annexed to the supporting affidavit regarding the same were fictitious and calculated to mislead the court. The deponent also avers that letters of administration have not been issued to the Estate of the late Karisa Charo Nyamawi and the respondents are not the deceased's legal representatives.
5. According to the 2<sup>nd</sup> respondent, the Applicant approached the Magistrates' court in 2016 with a view to review or re-open the matter after the decision of the Kaloleni Land Tribunal had been adopted as judgment of the court; that the court declined to grant those orders on the basis that it did not have jurisdiction to do so. To the Respondents, no leave has ever been granted to appeal out of time as alleged in para 6 of the supporting affidavit and there is no appeal to be transferred to this court and thus the present application lacks merit and should be dismissed with costs.
6. I have carefully perused the submissions filed by both counsel in this matter and the authorities presented to me.
7. Paragraph 13 of the Practice Directions on Proceedings in the Environment and Land Court, and on Proceedings Relating to the Environment and the Use and Occupation of, and Title to Land and Proceedings in Other Courts, dated 25 July 2014 (Gazette Notice No. 5178) provides that appeals emanating from Magistrate's Courts and Tribunals shall be heard by the Environment and Land Court, which is this court.
8. There is no doubt that there was a decision by the Kaloleni Land Tribunal adopted as an award of the court on 22/9/1999 in Land Case No. 39 of 1999. What seems to be in dispute is whether or not an appeal was filed against that decision, and whether the same is still pending.
9. A perusal of the Applicant's documents reveals that an Appeal No. 71 Of 2008 was apparently admitted to the Provincial Appeals Committee and a notice of attendance issued to Karisa Nyamawi on 27/11/2008. However, I find no order of court extending time for the applicant to file that appeal. That order should have been attached to the supporting affidavit. Though the Respondents claim that the appeal proceedings annexed in the supporting affidavit are fictitious was not substantiated, I am



also unable to locate any evidence in support of the applicant's statements in the supporting affidavit to the effect that an extension of time was granted by court.

10. On 21/8/2014, the alleged appeal was purportedly transferred to the Kaloleni Magistrates' court where the Honourable R.K. Ondieki, the trial magistrate declined to determine the same on grounds of jurisdiction. The learned magistrate observed that determining the appeal would be equivalent to sitting on an appeal against his own decision. In the ultimate, he stated: -

“The upshot is that I lack jurisdiction to set aside the judgment suo moto.”

11. In view of what I have stated herein before, I find that even a reference by the magistrate in that ruling to an “appeal” is not sufficient to establish that there was a valid appeal filed before the Provincial Land Disputes Appeals Committee that could be transferred to his court or to this court. It is for the applicant therefore to establish that an appeal existed, and he has failed to do so. To this court, there is therefore no appeal to be transferred as sought.
12. The foregoing notwithstanding, it is evident that the greater issue that arises is whether the entire application is incompetent for having been commenced against a deceased person. The applicant attached to the supporting affidavit a copy of a letter from the respondents' advocate as well as a copy of a death certificate stating that the original respondent is deceased, having passed on before the institution of the present application. It is apparent that the current respondents alerted the applicant in advance, before he amended the motion to join them to these proceedings, that the original respondent was deceased.
13. It is also apparent that the applicant decided to amend the application and include the respondents believing them to be the administrators to the deceased's estate without attaching evidence of their status as administrators hence the objection to their joinder contained in the third paragraph of their replying affidavit. I have not seen any further affidavit in the court record filed by the applicant to controvert the claim of demise of the original respondent.
14. This court is of the view that the two opposing parties being of one accord that the original respondent died on 15/1/2022 while the present application was filed on 20/2/2023, even the availing of proof that the present respondents are the administrators of his estate would not redeem the application even in its amended form since the proper legal position is that no proceedings can be competently lie against a deceased person.
15. In ELC Misc. Application No. E024 of 2024 Pastor Benjamin Kahindi Thoya & 4 Others Vs Japheth Katana Kaingu (Through Agent, Representatives: Francis Baya Kaingu & 2 Others) the court cited Japhet Nzila Muangi v Hamisi Juma Malee [2022] eKLR and held as follows:

“It is thus clear that proceedings commenced against a deceased person whether in the proper manner as a suit or an application does not lie.”
16. The present application therefore deserves to be struck out for the reasons that first and on a preliminary basis the applicant has failed to establish that there was any extension of time that could have rendered the purported appeal valid, and, secondly, that it is incompetent for having joined a deceased person as a respondent.
17. The upshot of the foregoing is that I therefore disallow the application dated 11/4/2023 and it is hereby struck out. The costs of the application shall be borne by the applicant.



**RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON  
THIS 31<sup>ST</sup> DAY OF JULY, 2024.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI.**

