



**Kibii (Suing as the Legal Representative of the Estate of the Late Kibii Boiyo)
v Agricultural Development Corporation & 3 others; Ethics and Anti-
Corruption Commission & another (Interested Parties) (Environment & Land
Petition E001 of 2023) [2025] KEELC 4352 (KLR) (10 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4352 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND PETITION E001 OF 2023**

**FO NYAGAKA, J
JUNE 10, 2025**

BETWEEN

**DANIEL KIBET KIBII (SUING AS THE LEGAL REPRESENTATIVE OF THE
ESTATE OF THE LATE KIBII BOIYO) PETITIONER**

AND

**AGRICULTURAL DEVELOPMENT CORPORATION & 3 OTHERS & 3
OTHERS & 3 OTHERS RESPONDENT**

AND

**ETHICS AND ANTI-CORRUPTION COMMISSION INTERESTED PARTY
NATIONAL LAND COMMISSION INTERESTED PARTY**

RULING

1. During the pendency of this Petition the 1st Interested Party moved this court through an Application dated 23rd October, 2024 for a number of orders as stipulated below. It brought it under Rules 3, 4, 5, 11, 19 and 21(2) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, Articles 48 and 159 of *the Constitution* of Kenya and all enabling provisions (of the law). It sought the following orders:-
 1. This Honorable Court be pleased to grant leave to the 1st Interested Party/ Applicant to file a Supplementary Affidavit, additional documents and statements.
 2. That such other reliefs and orders as the court may deem fit.
 3. That the costs of the application be in the cause.



2. The application was based on a number of grounds totaling eight (8) which were set out on its body. Further, it was supported by an Affidavit sworn by Daniel Kipruto on 23rd October 2024. It reiterated the contents of the grounds but in deposition form.
3. He deposed that he worked with the 1st Interested Party as an investigator. Further, in his duties, he would conduct investigations into complaints over alleged corruption, unethical conduct, or economic crimes. Following information received by the 1st Interested Party, he was tasked to investigate allegations of corrupt conduct, namely, irregular alienation of public land in Trans Nzoia County which belonged to the Agricultural Development Corporation (ADC) in respect of land parcel L.R. No. 5335/23 and L.R. No. 4140/4. Having done so, he was aware of the matters raised herein pursuant to alleged fraudulent activities discovered in the course of investigations into this matter.
4. The 2nd Interested Party (sic) launched criminal investigations through the file inquiry EACC/ELD/FI/INQ/12/2023. It, therefore, applied for and obtained Search Warrants to search the offices, residences and vehicles of the Respondents herein to recover evidence of suspected fraudulent and illegal activities carried out in registering the two parcels of land in the Petitioner's late father Kibet Boiyo's name. He annexed and marked KD1 a copy of the Application for a search warrant, dated 23rd September 2024. The application was heard before the Magistrates Court in Nairobi on 25th September 2024 through Miscellaneous Criminal Application No. E1129 of 2024 and the court issued Search Warrants, annexed as KD2, which were served on the Respondents. Following the successful execution of the Search Warrants on 26th September, 2025 at various locations where the Respondents resided and carried out businesses, the search yielded evidence as to criminal activities undertaken by the Respondents in effecting land transfers countrywide, including the transfer of the two subject parcels of land herein. Further, a search at the office of Victor Netia Rapando, the 8th Respondent in the Miscellaneous Application for the Search Warrants, led to the seizure of original certificates of title to the two parcels of land and other assorted certificates of title in both original and copy from the ADC. He marked KD3 (i) and (ii) copies of the Certificates of Title for the two parcels of land in issue and KD4 assorted certificates of title for other parcels of land.
5. He added that the seized original certificates of titles of the parcels of land in issue and the other documents seized in the search disclosed inconsistencies, amongst them the dates when the two parcels of land were purported to have been transferred. He singled out the copy of the title for parcel number LR. No. 4140/4 as filed by the petitioner indicated that the transfer was on 1st December 1997 but the transfer by the ADC to the petitioner's father was purportedly done on 13th of March 2012, a decade later. He annexed as KD5 (i) and (ii) the copies of transfer agreements dated 1st December 1997 and 13th March 2012 respectively. Further, backdated allocation letters purported to be from the 1st Respondent to various individuals were also recovered by him. He annexed and marked as KD 6(i) to (viii) copies of the letters of allocation to various individuals similar to those of ADC. He added that backdated receipts purported to belong to Lands Limited were also recovered: some filled and others awaiting signatures and still others serialization. He annexed as KD7 copies of receipts similar to those of Lands Limited. He added that the backdated letters of allotment and respected receipts did not emanate from Lands Limited but were forgeries created to facilitate allocations of land of Lands Limited and ADC to private individuals without their knowledge or approval of the said entities.
6. He added that the seized Certificates of Lease in their original form were supposedly franked and imprinted to suggest that stamp duty had already been paid even before valuation or stamp duty assessment. He and next as KD 8 (i) to (vii) copies of the partially filled leases and certificates of title. He deposed further that the documents were a forgery and it amounted to criminal conduct.



7. He deposed further the Interested Party also seized documents of an application relating to a Limited Grant of Letters of Administration Ad Litem dated 30/09/2021 filed by the Petitioner. Further, that the discharge of charge. Who's copy related to title LR No. 41404. Indicated that it was registered on 16th March 2001. And not 16th March 2000 as purported by the petitioner and cleaned question that the amendment was a forgery meant to facilitate the fraudulent transfer of the land to KIBI. Supposedly done on 18th of April 2000 to defeat the ADC's Patio Farm Rules 2001.
8. He annexed as KD9(i) a copy of the 1st Interested Party's letter requesting that said documents and KD 9(ii) copies of the application form for the Letters of Administration Ad Litem. Further, the documents seized were inventorized and assigned by the persons seizing and surrendering the same respectively. He annexed as KD 10 copies of the inventories. He added that the evidence demonstrated a well-conceived and calculated scheme by the Petitioner and his cronies which had resulted in the fraudulent acquisition of the subject parcels of land in issue. Further, at the time of filing the Further Affidavit in response to the petition, the documents alluded to above had not been obtained. It was in the interest of justice that leave be granted to file a Supplementary Affidavit and a Further List of Documents and Statements to resolve the real issues in controversy. The matter was of great public concern. The court had unfettered discretion to allow the application and no prejudice would be occasioned to the Respondent if the Application was allowed. Lastly, the application was made without undue delay and in good faith.
9. The application was opposed through a Replying Affidavit sworn on 17th December 2024 by the Petitioner, Daniel. Kibet Kibii. He deposed that the materials obtained by the 1st Interested Party were obtained from a Third Party who was not a party to the Petition and the veracity of the documents was in question. Therefore, the court should not allow the application. He stated that the inventory of the documents obtained from his custody did not have the alleged documents while the individuals whom the 1st Interested Party had mentioned to be in possession of the same were unknown to him. He stated that his advocate at the time (of the seizure) was S. N. Otinga and Company Advocates. The materials obtained by the 1st Interested Party were irrelevant to the suit and only meant to curtail their rights of the Estate of the deceased person (father) for whom he was an administrator. Further, allegations of a criminal nature as the ones made should be prosecuted in another forum.
10. Again, whereas the 1st Interested Party averred that it had discovered new and compelling evidence to warrant a grant of the orders sought, the manner in which the documents were obtained was contrary to the mandatory provisions of the law and the dictates of the right and fair trial as provided for under Article 50 of *the Constitution*. The deponent was an Administrator of the Estate of the deceased and therefore the allegation of him being a party to fraudulent transactions did not arise and was not substantiated. He deposed that only the documents already filed by the 1st Interested Party should be the ones to be relied on. He added that the court had a duty to protect the integrity of the proceedings and not allow a third party to usurp its role. The Interested Party was interfering with the proceedings and frustrating fair trial. The court had to differentiate between proceedings in a civil court and those in a Criminal Court. Lastly, the court had a duty to ensure that the provisions of the *Evidence Act* on adduction of evidence were complied with and Respondent's right to a fair hearing was not violated. That the grant of the orders would prejudice his rights.
11. The application was disposed of by way of written submissions. The Applicant filed its dated 16th December 2024 together with a List of Authorities dated the same date. The Petitioner did not file his submissions. That did not prejudice the merits of the application since submissions are a mere marketing language of parties to convince the Court to decide in their favour. Pleadings, in this case, Affidavits, and the grounds count.



Issue, Analysis And Determination.

12. This Court has considered the application, the replying affidavit, the law and the submissions of the parties. It has infused the submissions with the analysis before.
13. The law on filing of documents and witness statements by parties is governed by Order 3 Rule 2 of the Civil Procedure Rules for the case of the Plaintiff, and Order 7 Rule 5 of the Civil Procedure Rules for the cases of Defendants. It follows that the law applies mutatis mutandis to other parties to in matters, in so far as filing of their pleadings goes. This includes Interested Parties generally and Respondents or Ex Parte Applicants in cases of applications. Order 11 of the Civil Procedure Rules then obligates the Court and parties to take directions and certification that the matter is ready or not for hearing.
14. The consequence of failure to comply with the Order is given in the provision, Rule 7(3) of Order 11 of the Civil Procedure Rules. It stipulates that any party or Advocate who does not comply is deemed to have violated the overriding objective of the procedure as provided for in Sections 1A and 1B of the *Civil Procedure Act*. In brief, the objective is about the facilitation of the just, expeditious, proportionate, and affordable resolution of the civil disputes governed by the Act. The sanction in such a case is the payment of costs by the defaulting party or Advocate.
15. To add more life to the process of hearings and leveling the taking of evidence in the Environment and Land Court, the Rules Committee formulated the Practice Directions on Proceedings in The Environment and Land Courts, and on Proceedings Relating to the Environment and he Use and Occupation of, and Title to Land and Proceedings in Other Courts (the Mutunga Rules), published in Gazette No. 5178. Rule 28 (b) thereof provides that,

“In addition to the matters contained in Order 11, Rule 3 of the Civil Procedure Rules, 2010, the following are the orders/directions that may be issued by a Judge during a pre-trial conference: (b) The issuance of an Order striking out pleadings or imposing costs or similar sanctions due to non-compliance with pre-trial directions and other timelines.”
16. The provision is on further sanctions in addition to costs. These include striking out of pleadings or similar sanctions. In the instant case, directions have not been taken. Therefore, as much as the Rule provides for striking out of the pleadings of a non-compliant party, the question is whether, in the circumstances of the instant Petition, there would be sufficient ground to strike out the Interested Party’s pleadings at the Pre-trial stage. This Court would doubt if that would be merited because the Interested Party is not stating and it is not in its position that it failed to file documents that were crucial to placing before the Court its case in defence of the Petition. Far from it.
17. The 1st Interested Party’s contention, if I understand it well, is that (after it was included in the proceedings) it filed its pleadings (Replying Affidavit) together with the documents that it had in its power and possession it discovered new and important evidence. This evidence was, as per the contention, in the possession of the Petitioner, his advocates, or cronies. The Petitioner contended that it was the evidence was irrelevant and meant to derail the fair trial and was obtained against the rules of fair trial as provided for in Article 50 of *the Constitution*. Further, they were from a third party and their veracity could not be vouched for.
18. It is this Court’s view that first, the basis does the applicant not filing the documents and statements at the time it was required to do so is of fundamental importance and material for determining this application. It is shown that the documents came to its possession way after the filing of the other documents. It was as a result of the seizure of the said documents due to the execution of the Search Warrants obtained from the Magistrates Court in Nairobi Misc. Criminal Application No. E1129 of



2024 on 25th September 2024. This was way after the Affidavits by the 1st Interested Party had been filed. As submitted by the said party, where documents are new and discovered after the filing of the ones one has in possession the law permits it to be filed with leave of the Court. This is supported by the authority relied on by the said party. It is *Raila Odinga & 5 others v Independent Electoral and Boundaries Commission & 3 others* [2013] eKLR.

19. It is true that the right to a fair hearing is a fundamental tenet in the constitutional system of Kenya, as contended by the Petitioner. One has to demonstrate that the right has been violated in order for the court to exclude evidence adduced in the process. One thing that is clear is that arguments of this nature would only come at the trial stage. The fact that a party has been permitted to file documentary evidence before a trial does not mean that they have passed the legal threshold of admissibility and proof in evidence. That comes into the fore during the trial.
20. There are four stages of proof of documentary evidence as this Court explained in *Sofie Feis Caroline Lwangu v Benson Wafula Ndote* [2022] KEELC 986 (KLR) as follows:

“...this Court explained in detail the four stages of production and proof of documentary evidence. In summary it stated that first, the document is filed in court (according to the rules or legal requirements. Second, if the document is not the original, the party wanting to produce it will lay the basis for the production of the copy and not the original. Once the Court is satisfied with that basis, then third, the party will lay a further basis for production of the document. Fourth, the party will then prove the contents, state or physical appearance of the document. In this regard, I refer to the ruling in *Lwangu v Ndote* (Environment & Land Case 79 of 2010) [2021] KEELC 2 (KLR) (10 November 2021) (Ruling).”

21. The stage sought herein by the orders prayed for is the first one. The Petitioner should train his guns toward the hearing if he is of the opinion that his rights have been violated. Thus, while the court does not agree that by granting the prayer sought herein or even the process of acquiring the documents the Interested Party wishes to file, the Petitioner’s right to a fair trial has been breached, it starts by analyzing the import of the basic tenet on right to a fair hearing. The right to be heard is a principle of natural justice which the Court while enforcing the Bill of Rights, is called upon under Article 22 (3) (d) of the 2010 Constitution, to draw on determining this matter. The right to be heard is not to be confused with the right to a fair hearing. The latter is narrower in scope and it is the one in which Article 25 (d) is specified as being among the four that under the new constitution dispensation is non-derogable. The Court cannot, by use of its discretion, deny any of all the parties herein the right to fair hearing.
22. Of fair hearing, in *Evans Odhiambo Kidero & 4 others v Ferdinand Ndungu Waititu & 4 others* Petition no. 18 of 2014 as consolidated with Petition No. 20 of 2014 [2014] eKLR, Justice Njoki SCJ concurring stated,

“(257) Fair hearing, in principle incorporates the rules of natural justice, which includes the concept of *audi alteram partem* (hear the other side or no one is to be condemned unheard) and *nemo iudex in causa sua* (no man shall judge his own case) otherwise referred to as the rule against bias. Peter Kaluma, *Judicial Review: Law, Procedure and Practice* 2nd Edition (Nairobi: 2009) at page 195, notes that the rules of natural justice generally refer to procedural fairness in decision making. Further he analyses the two mentioned concepts of the rules of natural justice and states [at pages 176 and 177] that it is the duty of the courts, when dealing with individual cases, to determine whether indeed the rules of natural justice have been violated and noting that “although



the necessity of hearing is well established, its scope and contents remain unsettled.”

23. In regard to the right to be heard, Justice Njoki SCJ, in the same Petition, wrote as follows:
- (258) What then are the norms or components of a fair hearing? The Supreme Court of India, in *Indru Ramchand Bharvani & Others v Union of India & Others*, 1988 SCR Supl. (1) 544, 555 found that a fair hearing has two justiciable elements: (i) an opportunity of hearing must be given; and (ii) that opportunity must be reasonable (citing *Bal Kissen Kejriwal v Collector of Customs, Calcutta & Others*, AIR 1962 Cal. 460).
- (259) That Court in *Union of India v J.N. Sinha & Another*, 1971 SCR (1) 791 and *C.B. Boarding & Lodging v State of Mysore*, 1970 SCR (2) 600 held that with regards to fair hearing, each case has to be decided on its own merits. In *Mineral Development Ltd. v State of Bihar*, 1960 AIR 468, 160 SCR (2) 909 the Court further observed that the concept of fair hearing is an elastic one and “is not susceptible of easy and precise definition.”
24. In *Union Insurance Co. of Kenya Ltd. v Ramzan Abdul Dhanji* Civil Application No. Nai. 179 of 1998 the Court of Appeal held that:
- “Whereas the right to be heard is a basic natural-justice concept and ought not to be taken away lightly, looking at the record before the court, the court is not impressed by the point that the applicant was denied the right to defend itself. The applicants were notified on every step the respondents proposed to take in the litigation but on none of these occasions did their counsel attend. Clearly the applicant was given a chance to be heard and the court is not convinced that the issue of failure by the High Court to hear the applicant will be such an arguable point in the appeal. The law is not that a party must be heard in every litigation. The law is that parties must be given a reasonable opportunity of being heard and once that opportunity is given and is not utilised, then the only point on which the party not utilising the opportunity can be heard is why he did not utilise it.”
25. In this case the Petitioner argues that his right to fair trial was violated in the process of obtaining the documents sought to be filed. This, as has been observed, is an issue that can only be taken up at the time of production and proof of the documents. As of now the important issue is whether the documents were available to the 1st Interested Party at the time it filed the other documents, and statements, or not. The interested party has demonstrated that they were not.
26. I have considered the entire circumstances herein and weighed them against all the parameters I have discussed above. I am of the view that it would be in the interest of justice that the 1st Interested Party, the Ethics and Anticorruption Commission, be given leave to file and serve the other parties the documents prayed for by way of a Supplementary Affidavit, a Further List of Documents and written Witness Statements.
27. The upshot is that the application dated 23rd October 2024 is merited and allowed in terms of the orders and directions given in the paragraphs immediately above. This Court hereby fixes the matter for mention before the judge for further directions on 24th June 2025. Each party is to bear their own costs.
28. Orders accordingly.

RULING DATED SIGNED AND DELIVERED VIA THE TEAMS PLATFORM ON THIS 10TH DAY OF JUNE , 2025.

HON. DR. IUR F. NYAGAKA



JUDGE.

