



Kurere (Suing as the Legal Personal Representative of the Estate of Robert Kiptalam Cheberak) v County Land Adjudication & Settlement Officer, Trans Nzoia & 4 others; Managing Director Agricultural Development Corporation & 3 others (Interested Parties) (Environment & Land Petition E003 of 2024) [2025] KEELC 4420 (KLR) (10 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4420 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND PETITION E003 OF 2024**

CK NZILI, J

JUNE 10, 2025

IN THE MATTER OF ARTICLES 1, 2(4), 10(1) (B) (C), 10(2)(A)(B)(C), 27(1) (2), 35(1), 35(3), 40, 47(1), 47(2), 60(1) (A)(B)(C) AND (D), 73(1)(A), 2(B) AND 232(1)(A)(B)(C)(D)(E) AND (F) OF THE CONSTITUTION OF KENYA

BETWEEN

**LILY JEPKEMOI KURERE PETITIONER
SUING AS THE LEGAL PERSONAL REPRESENTATIVE OF THE ESTATE OF
ROBERT KIPTALAM CHEBEREK**

AND

**COUNTY LAND ADJUDICATION & SETTLEMENT OFFICER, TRANS
NZOIA 1ST RESPONDENT**

**THE DIRECTOR OF LAND ADJUDICATION & SETTLEMENT 2ND
RESPONDENT**

THE LAND REGISTRAR, TRANS NZOIA COUNTY 3RD RESPONDENT

THE LAND REGISTRAR, TRANS NZOIA COUNTY 4TH RESPONDENT

THE ATTORNEY GENERAL 5TH RESPONDENT

AND

**THE MANAGING DIRECTOR AGRICULTURAL DEVELOPMENT
CORPORATION INTERESTED PARTY**

THE NATIONAL LAND COMMISSION INTERESTED PARTY

ETHICS & ANTI-CORRUPTION COMMISSION INTERESTED PARTY

QUINCY JESSE KIPTOO INTERESTED PARTY



RULING

1. What is before the court is an application dated 25/2/2024. The petitioner seeks:
 - (a) ...spent
 - (b) Conservatory orders restraining the 1st interested party, his family member, agents, servants or any person claiming interest or acting through him from charging, selling or leasing and restraining order against him from trespassing onto, ploughing or planting on parcel No. Trans Nzoia/Zea/293, situated at Zea settlement Scheme, Kwana Subcounty, measuring 5 acres or any part thereof or in any way interfering with the petitioner's quiet possession of the suit parcel or her interest thereof.
 - (c) Direction to issue on:
 - (i) If the petition raises a matter of substantive public interest as regard the process of allocation of or reallocation of public land by the Settlement Fund Trustee under the Constitution of Kenya 2010.
 - (ii) And if yes, whether the petition should be heard by a special composition of the bench of the court to provide guidelines on such allocation or reallocation in order to give effect to the Constitution including Articles 40, 47 and 60 (1) (a) (b) (c) and (d).
 - (iii) The interested party do file the original list of land allottees for Zea Settlement Scheme.
 - (iv) The 1st and 2nd respondents do file in this court the current list of allottees for Zea Settlement Scheme.
 - (v) The 4th respondent does file received by it from the 1st respondent for Zea Settlement Scheme.
 - (vi) The 3rd interested party does find out and file a report whether or not the 1st and 2nd respondents did alter the original list of allottees as submitted by the 1st interested party.
 - (vii) The Deputy Registrar of this court visits Zea Settlement Scheme, carry out public participation generally on the status of land reallocation and in particular who has been utilizing Plot No. 293 and in any other similar petition before this court touching on Zea Settlement Scheme and file reports to that effect.
 - (d) Orders granted in prayer (b) above do operate until the substantive petition is heard and determined.
2. The application is based on the grounds on the face of it and in a supporting affidavit of Lily Jepkemoi Kurere sworn on 25/2/2024. The applicant deposes that the 1st, 2nd and 3rd respondents acted in contravention of Articles 10(2)(b)(c), 27, 40, 47, 60(1)(a), 67, 73, 232 and 159(2)(a),(b),(d) and (e) of the Constitution as read together with the Land Act, the National Land Commission Act, Public Officers Act, and the Leadership and Integrity Act, in failing to act professionally, involve the people, act with transparency and failing to provide information to its public in reallocating the land in question to the 4th interested party, usurped the parcel of the 2nd interested party, hence rendering such reallocation null and void, which the Constitution mandates this court to defend and enforce.



3. The applicant deposes that she has been in continuous possession of the land since 2008, yet the 1st, 2nd and 3rd respondents colluded with the interested party to reallocate the land in blatant violation of the Constitution, the invasion of the land by the new allottee as imminent, to defeat, evict, alter the status and interfere with the petitioner's interest and that of her family on the land, the petition has high prospects of success, substantial loss may arise if the status quo is not preserved and that the balance of convenience and the interest of justice tilts in favour of preserving the subject matter at this stage.
4. Further, the applicant deposes that she is the Administratrix of the estate of the late Robert Kiptalam Cheberok, pursuant to a grant issued on 13/10/2015 and sues also on behalf of any other affected member of the public in Zea Settlement Scheme, a copy is attached as annexure LJK-1. The applicant deposes that the land comprised in the settlement scheme initially belonged to the 1st interested party, which oversaw the initial subdivision and allocation to individuals before the land was sold to the Settlement Fund Trustees.
5. She further deposes that upon such subdivision and allocation, the 1st interested party submitted a list of all allottees and their respective acreages to the 1st, 2nd and 3rd respondents for final allocation to the beneficiaries, which list was corrupted and altered by the 1st interested party, and subsequently by the 1st and 2nd interested parties to dispose the original allottees and reallocate the land to corruptible third parties, contrary to the Constitution and for personal gains.
6. The applicant deposes that a land title No. Trans Nzoia/Zea/293 measuring 1.9 Ha was allocated to her late husband on 2/12/2002 as per a copy of an allotment letter annexed and marked LJK-2, after which he made payments which were received, retained and not refunded by the Government of Kenya.
7. In addition, the applicant avers that upon the demise of her husband, she continued utilizing the land, as it belonged to the estate, only to learn recently that the plot was secretly reallocated to the 3rd interested party, who obtained a title deed on 18/1/2021 as per a copy of official search certificate, attached marked as LJK-3. The applicant deposes that neither the deceased nor herself were served with a notice nullifying the allocation and, in any event, there was no basis at all to do so within the 1st and 2nd respondents publicizing the availability of the suit land for reallocation and to invite her to participate in the process, alongside other interested members of public.
8. The applicant deposes that the 1st and 2nd respondents' action while she had made payments for and was in actual possession was in violation of her right to property, equal access to land, fair administrative actions, equality before the law and the right against discrimination. According to her, the actions of 1st, 2nd and 3rd respondents are distinctive of corruptible practices and smacks of abuse of office, calling for the court to flex its muscles to defeat the Constitution, rule of law, democracy and human rights.
9. Equally, the applicant deposes that the title deed issued by the 4th respondent was in violation of the Constitution, is unlawful, illegal, ought to be cancelled and or revoked. The applicant deposes that she is aware of other pending petitions challenging the actions of the 1st and 2nd respondents on how they have perpetuated land grabbing in Zea and other settlement schemes, and therefore, this court ought to take judicial notice of the existence of those monumental disputes and to provide guidance on how the respondents especially the 1st and 2nd respondents should discharge their functions in order to preserve, protect and uphold the Constitution.
10. The applicant deposes that unless the orders sought are granted, she stands to suffer irreparable loss as the interested parties will move onto and forcefully occupy her land unless the court, in the interest of justice and fairness, gives effect of the constitutional rights, values and principles raised herein.



11. Both the application and the petition are opposed by the respondents and the 3rd and 4th interested parties through a replying affidavit, sworn by Nyanga C.A. and Joseph Maina, on 16/12/2024.
12. The application was canvassed by written submissions. The applicant relies on written submissions dated 7/4/2024. As to whether a matter of substantial public interest, it is submitted that Article 67 of *the Constitution*, as read together with Section 5 of the National Land Commission, established the 2nd interested party to inter alia manage public land on behalf of the National and County Governments. It is submitted that Sections 12(1) (12) and 134 of the *Land Act* vest the power to allocate public land in the National Land Commission with the power to make registration which it made, namely Land (Allocation of Public Land) Regulations 2017, vide Gazette Notice No. 284. It is submitted that under Section 134 of the *Land Act*, settlement schemes are established and vested in the Commission to implement settlement programmes so as to provide access to land for shelter and livelihood, governed by Section 167 of the repealed Agriculture Act.
13. The applicant submits that Section 134(2) thereof provides the cadre of persons to benefit from land allocation in settlement schemes while Section 134(4) thereof, provides the process of identification of beneficiaries and establishes a committee for the process, which are 1st and 2nd respondents are such officers, but unfortunately, they are not members or agents of the National Land Commission for they are employees of the Department of Lands and Settlement. They hence lack power in law to allocate land in settlement schemes, post 2010 Constitution. Therefore, the applicant submits that the allocation of plot No. 293 Zea Settlement Scheme to the 4th interested party is null and void and so is the title deed issued by the 3rd respondent.
14. As to a special bench of the court, the applicant submits that since the National Land Commission has abdicated its mandate under the law, as far as allocation of land in settlement schemes is concerned, and has instead left the same to the whims of the Director of Land Adjudication and Settlement Officers who have turned the department into a profit-making entity, in violation of *the Constitution*, yet the laws cited above do not recognize the 1st and 2nd respondents. As a result, there is need for a special bench to provide guidelines on the effect of *the Constitution* including Articles 40, 47 and 60 1(a)(b) (c) and (d) of Constitution 2010.
15. As to the guidelines Nos. (c)(iii), (10(v),(vi) and (vii), it is submitted that it was on public interest and fair administration of justice that this information be provided before the hearing, the 1st and 2nd respondent observe the principles of *the Constitution* and for public participation to be undertaken especially in deserving cases as the present one before the court can reach its decision. The applicant urges the court to take judicial notice of other pending similar cases and take into account its guiding principles under Section 18 of the *Environment and Land Court Act*, for the petition raises novel and substantial issues of law, where the 1st and 2nd respondents have usurped the functions of the National Land Commission contrary to *the constitution*, otherwise the findings of this court will have far reaching ramification including nullification of numerous allocations as may have been done by the 1st and 2nd respondents.
16. The applicant urges the court to find that a decision be arrived at upon wider legal consultation and participation as falling under Article 165 3(ii) and (iii) of *the Constitution* 2010, to require the invocation of Section 21 of the *Environment and Land Court Act*. Reliance is placed on Mohammed Iltarakwa Kochale & Others vs Lake Turkana Wind Power Ltd & Others [2018] eKLR.
17. In addition, the applicant submits that a conservatory order ought to issue notwithstanding that the 4th interested party holds a title deed, given that the issues raised herein are fundamental questions



- to the validity of the said ownership, requiring preservation of the suit land pending hearing and determination of the petition.
18. The 4th interested party relies on written submissions dated 8/4/2024 and 17/2024. It is submitted that the suit property was never public land to fall under the National Land Commission by dint of Sections 12 and 134 of the *Land Act*. The 4th interested party submits that the suit property was formally owned by the Agriculture Settlement Fund Trustees (ASFT), by dint of the repealed Agriculture Act, to be wrapped up under the transitional provisions of the Agriculture, Fisheries and Food Authority Act (AFFA), where the ASFT had a revolving loan that expired in 2022 and was completing allocation of any remaining land in its name to as to wide up its objectives, going by the reports submitted before parliament.
 19. More so, the 4th interested party, submits that the land does not fall under public land as defined in Articles 62(2)(a) and (b) and 2 and (3) of *the Constitution* 2010. Reliance was placed on LSK v Kinyua, Head of Public Service & Others; Migot-Adholla & Another (IP) ELC Petition E029 OF 2022 [2022] KEELC 3962 [KLR]. The 4th interested party submits that if *the constitution* excludes the National Land Commission from administering the suit property, then it cannot be involved in the process of allocation, otherwise the Settlement Fund Trustees had its constitutive Act which is now repealed by AFSA and the Cabinet Secretary was yet to address the transfer of functions and assets under the final schedule.
 20. The 4th interested party submits that the basis and grounds of granting conservatory orders have not been spelt out, otherwise, he applied and was allocated land. Further, the 4th interested party submits that the parameters to grant conservatory orders have not been guided by the Board of Management Uhuru Secondary School v City County Director of Education & 2 others [2019] KEELRC 1267 (KLR).
 21. Further, the 4th interested party submits that the applicant has not disclosed a prima facie case, is speculative, the Deputy Registrar has no jurisdiction and the petitioner in a fishing expedition, a letter of offer which is 20 years old per se, which was not perfected does not amount to ownership to challenge a title, she lacks standing before court and that a target of one parcel of land does not demonstrate a prima facie case.
 22. The issues calling for my determination are:
 - (1) If the applicant has made a case for issuance of a conservatory and restraining order of injunction.
 - (2) If the petitioner raises novel and substantial issues to require an empanelment of a bench.
 - (3) If the court should either release and disclosure of the original, current list of allottees for the scheme and a report on whether there was an alteration of the same or not.
 - (4) If the Deputy Registrar of the court should visit the locus on quo, carry out public participation on the status of the reallocation and on who are the current occupant of the subject plot and other plots in other similar petitions pending before the court.
 23. Conservatory orders were defined in Gatirau Peter Munya v Dickson Mwenda Kithinji & Others [2014] eKLR, as orders issued to facilitate ordered functions within public agencies as well as to uphold the adjudicatory authority of the court in the public interest. Unlike interlocutory orders, the court said that conservatory orders are accrued at preserve the substratum of the matter, pending the determination of the main issues in dispute. In considering whether or not to issue the orders, an applicant, as held in CREAW & Others v Attorney General [2015] eKLR, has to demonstrate



- that unless the orders are issued, there is a real danger that he will suffer prejudice as a result of the violation of *the Constitution*. Given the nature of conservatory orders, a court dealing with the issue has to exercise caution for the reason that matters which are the preserve of the main petition ought not to be dealt with finality at the interlocutory stage.
24. The principles to consider were set out in *Wilson Kabenja Nkunja v The Magistrates and Judges Vetting Board & Others* [2016] eKLR. An applicant must demonstrate that he has a prima facie case with a likelihood of success and unless the court grants the conservatory order, there is a real danger to suffer prejudice as a result of violation or threat, or infringement of *the constitution*. Secondly, whether a conservatory is not granted, the petitioner alleging violation of, or threat of violation of rights, will be rendered nugatory and finally, public interest must be considered before the grant of a conservatory order.
 25. To establish a prima facie case in a constitutional petition, a party has to show that a grant or denial of the conservatory order will enhance the constitutional value and objection of the specific right or freedom in the Bill of Rights. In *Gatirau Peter Munya* (supra), the court said that such orders are granted on the inherent merit of the case, bearing in mind the public interest, the constitutional values and the proportionate magnitudes and priority levels attributable to the relevant causes.
 26. It is in the public interest that *the constitution* and the law be respected, protected, upheld and enforced. What the petitioner is complaining about is a breach of her rights under Articles 27, 35, 40, 47, 60(1), 73 and 232 of *the Constitution* by reallocation of parcel No. Trans Nzoia/Zea/293, which she had a letter of allocation issued on 2/12/2002, now reissued through a title deed dated 18/1/2021 by the 2nd and 3rd respondents to the 4th interested party. She seeks a declaration that the reallocation and issuance of a title deed was unconstitutional, null and void without the involvement of the 1st interested party, which is constitutionally mandated to manage and administer public land. Further, the petition seeks an order of mandamus for the 1st, 2nd and 3rd respondents to revoke the title deed and cause it to be restored and registered under her name.
 27. The 1st, 2nd, 3rd and 4th respondents oppose the petition and the notice of motion through a replying affidavit sworn by Nyanga C.A. on 13/6/2024, that the Settlement Fund Trustee offer to the petitioner's late husband required payment of Kshs.32,500/=, which was not met leading to a demand notices, a notice of cancellation, and reallocation of the land to the 4th interested party who after meeting the terms and conditions of the offer letter was issued with a title deed. In *Likowa v Aluochier & Others* Petition (Application E008 OF 2024 and Application E013 of 2021 (Consolidated) 2024 KESC 41 KLR (26th July 2024) (Ruling), the court observed that as a matter of public policy, a court does not exercise its jurisdiction or act in vain, especially where the motion before court is overtaken by events.
 28. In *Cabinet Secretary Ministry of Health v Aura & Others (Civil Application E583 OF 2023*[2024] KECA 2 KLR (19th January 2024) (Ruling), cited *E.A. Cables Ltd v The Public Procurement Complaints Review & Appeals Board & Another* [2007] eKLR, that public interest should take precedence where its consequences of the orders would harm the greatest number of people, going by John Stuart Mill Utilitarianism, that in evaluating the rightness or wrongness of an action, the concern primarily should be the consequences of the action and should choose the alternative which tend to produce the greatest happiness for the greatest number of people and produces the most good.
 29. Public interest is a paramount consideration when considering the issuance of conservatory orders. A party must also establish the nugatory aspect if the orders are not granted. In *Rono & Others v Kirui* (Civil Application E036 of 2023 [2023] KECA 1543 [KLR] (15th December 2023) (Ruling), the court cited *Stanley Kangethe Kinyanjui v Tony Keter & Others*, that whether or not an appeal will



be rendered nugatory depends on whether or not what ought to be stayed or injuncted if allowed to happen is reversible or if not, damages would be reasonable compensation to the aggrieved party.

30. In this petition, the applicant has not listed the many other pending petitions or parcel numbers and their owners, who have been affected by the alleged unconstitutional revocation and reallocation of parcels of land in the settlement scheme. Equally, the petitioner has not attached copies to show that other than a letter of allotment, she or her late husband perfected the letter of allotment. Third the title deed sought to be revoked was issued in 2021. The delay in moving to court for conservatory orders has not been explained. Fourth, entry into a register is reversible. Fifth, the petitioner is yet to be evicted from the suit land. The petitioner does not require a conservatory order to stop any other transactions in the title register. This can be dealt with by way of inhibition or orders of the status quo.
31. As to whether the petition raises novel or substantial issues of law, in *Peter Nganya Muiruri v Credit Bank Ltd & Another* Civil Appeal No. 203 of 2006, the court observed that a single judge has jurisdiction and power to handle a constitutional question and therefore whether or not to certify a matter as raising a substantial question of law in an exercise of judicial discretion and not a right, which discretion is exercised judiciously and not on caprice, whims, likes or dislikes. There must therefore be an absolute necessity and strict compliance with *the constitution* and statutory provisions. The court must look on judicial resources available and how scarce they are for a bench under Article 165(4) of *the Constitution*, to deliver justice and in the context of backlog of cases in Kenya.
32. Substantial question as held in *Harrison Kinyanjui v Attorney General & Another* [2012] eKLR requires one to take into account the constitutional provisions, as a whole and the need to dispense justice without delay based on the specific fact situations. For a matter to be referred to the Chief Justice for empanelment of a bench, the guidelines are:
 - (1) Whether a right or freedom has been denied, violated, infringed or threatened.
 - (2) If it involves a question requiring the interpretation of *the Constitution* and if any law is inconsistent with or in contravention of *the Constitution*, or any matter relating to Constitution powers of state organs or constitutional relationship between the levels of government or a constitutional question relating to conflict of laws under Article 191 of *the Constitution*.
33. Parties seeking such empanelment must therefore identify the issues in their view, which raise substantial questions of law. A mere fact that a party thinks that the matter falls under Article 165(4) of *the Constitution* 2010 will not suffice for a court to issue a certification. In *Community Advocating Awareness Trust & Others v Attorney General & Others* HCC Petition 243 of 2011, the court held that a substantial question of law is not defined by *the Constitution* and therefore it is left to the court to satisfy itself if the matter is substantial to the extent that it warrants reference to the Hon. Chief Justice to empanel an uneven bench to determine the matter.
34. In *Chunilal Mehta v Century Spinning & Manufacturing Co.* AIR 1962 SC 1314, a substantial question of law was said to be one of general public importance or which directly or substantially affects the rights of the parties and which have not been finally settled by the Supreme Court, the privy council or the federal court or which is not free from difficult or which call for decision or alternative views. In *Santosh Hazari v Purushottam Tiwari* [2001] 3 SCC 179, the court observed that a substantial question of law must be debatable, not previously settled by law of the land or a binding precedent and must have a material bearing on the decision of the case, if answered either way. The court said that to be a question of law, there must be a foundation laid in the pleadings and the question should be from sustainable finding of facts arrived at by the court and it must be necessary to decide that question of law for a just and proper decree of the case.



35. In *Kibunja v Attorney General & Others* [2002] 2 KLR, the court held that in exercising its discretion, the court must take into account the complexity of the case, issues raised, their nature, weight, sensitivity, if any and public interest in them. In *Wycliffe Ambelsa Oparanya & Others v DPP & Another* [2016] eKLR, the court observed that a holistic approach to the matter has to be taken and that it should turn on cardinal issues of law or a jurisprudential moment, as opposed solely to the complexity, novelty, jurisprudential challenges, difficult of the case in the view of the applicant, since any judge must be prepared always to deal with and determine novel, complex or other matters.
36. The application dated 25/2/2024 was filed alongside the petition. The respondents entered an appearance by a memorandum of appearance dated 30/4/2024. The responses by the respondents are dated 13/6/2024. While that of the 4th interested party is dated 4/4/2024. Equally, the 3rd interested party filed a replying affidavit dated 16/12/024. The 1st interested party made an appearance on 19/7/2024. In the said response, the 1st, 2nd, 3rd, 4th and 5th respondents confirm that the suit land was initially owned by the SFT under the repealed Agriculture Act, managed and administered the Settlement Fund Trustees, now succeeded by the Land Settlement Fund (LSF).
37. In the supplementary affidavit sworn by the petitioner on 7/8/2024, she admits the letter of allotment initially issue to her late husband by the Agricultural Development Corporation (ADC), was surrendered together with the original receipt to the SFT in exchange of the letter of allotment, which, in her view did not require any payment of premiums. So, the petitioner took the view that the petition raises a substantial question of law even before pleadings were closed and the nature of the defence by both the respondents and the interested parties came to force.
38. The responses by the respondents and the interested parties have confirmed that the suit land was governed by the Agriculture Act (repealed), and was therefore transferred to the SFT for the settlement of the landless and squatters. The facts, therefore, point to a situation where there was an offer letter whose terms and conditions had a timeline within which to comply. In determining the petition, the court will have to look at whether or not there was a statutory or contractual relationship between the petitioner's late husband and the respondents regarding the subject land. Equally, the court will be looking into whether or not the late husband to the petitioner, after exchanging the initial letter of allotment from ADC with that of SFT was supposed to make a fresh payment for the letter of offer and if so, whether the new letter of offer's terms and conditions were complied with and the same, perfected so that then the petitioner can have basis to complain that her constitutional rights and freedoms were violated in the manner the initial letter of offer was revoked and the suit land subjected to reallocation and issuance of a title deed to the 4th interested party.
39. Additionally, the issue raised is whether it was the respondents who revoked the letter of offer and reallocated the suit land to the 4th interested party. In *Okiya Omtata Okiiti v IEBC & Others* [2016] eKLR, and in *Amos Kiumo & Others v CS Ministry of Interior & Co-ordination of National Government & Others* [2014] eKLR, the court observed that there must be something more to the substantial question than mere novelty or complexity of the issue before the court, such as the presentation of unique facts not plainly covered by the controlling precedents.
40. In *Del Monte (K) Ltd v County Government of Murang'a & Others* [2016] eKLR, the court observed that where a petition raises or deals with an issue of public importance, then the balance tilts in favour of empanelment, especially if it is also an issue, the determination whereby would affect the rights of both the individual parties as well as the public at large, or it is an issue which is yet to be determined and settled by the court or a court superior in hierarchy.



41. In *Kalpana H. Rawal v JSC & Others* [2015] eKLR, the court observed that the public importance of a matter is a key factor in determining whether a substantial question of law has been raised.
42. Looking at the issues raised in the petition, the petitioner has not mentioned the number of the affected parties by the alleged unconstitutional acts of the respondents in dealing with the settlement scheme land where they have no jurisdiction. Equally, the list of similar other pending petitions which have a bearing on the instant issue in Zea Settlement Scheme have not been mentioned. The petitioner has not even attempted to seek joinder of other parties likely to be affected by this petition's determination. Additionally, authority to sue for those likely to be affected has not been attached. Further, the novelty and complex public interest issues to be determined by the intended empaneled bench have not been distilled.
43. The law of allocation of land in settlement schemes has been subject to court consideration. The planning, mapping, demarcation and identification of the settlers has been dwelt in several cases. See *Pembe (as legal representative Kaingu Pembe Mwachaka) v Ngonyo & 2 others* (Civil Appeal E064 of 2021) [2024] KECA 562 (KLR) (24 May 2024) (Judgment).
44. The Supreme Court of Kenya also dwelt with the issue of the National Land Commission and Land Settlement Schemes in *National Land Commission v Attorney-General & 5 others; Kituo Cha Sheria & another (Amicus Curiae)* (Advisory Opinion Reference 2 of 2014) [2015] KESC 3 (KLR) (2 December 2015) (Advisory Opinion). The court observed that the National Land Commission is not to work in isolation but rather in consultation and co-operation with the ministry in an independent relationship.
45. Regarding Section 134 of the *Land Act*, the Supreme Court of Kenya observed that Section 134 empowers the National Land Commission to implement settlement programmes and to assist the government to administer settlement programmes. The court said that Section 135 of the Act established the Land Settlement Fund to be administered by the National Land Commission. It should be noted that there is a difference between the Land Settlement Fund and the SFT. The SFT is not the same as the Land Settlement Fund.
46. In *James Kiterie Alfayo v Margaret C Wambete* [2018] KECA 665 (KLR), the trial court had ordered the appellant to vacate the land in a settlement scheme he was occupying. The Court of Appeal found no fault in the judgment. See also *Adrian Gilbert Muteshi v William Samoei Ruto, Attorney General, Commissioner of Lands, Dorothy Chemutai Yator, Patrick Opiyo Adeor t/a Opiyo & Associates* (Civil Suit 510 of 2010) [2013] KEHC 5805 (KLR) (Environment and Land) (28 June 2013) (Judgment), *Mbitha v Bromine Investments Ltd & Others* (Civil Appeal Appl. E002 of 2022 [2024] KECA 111 [KLR] (9th February 2024) (Ruling), *Michael Mwanzia Kitavi v Lukenya University Trust & Others* [2017] eKLR, and *Chrispus Chengo Masha & Others v Danie Ricii* [2017] eKLR.
47. In sum, I have no basis to invoke Section 21 of the Environment Land Court Act. Turning to the production of the area list and reports, Article 35 of *the Constitution*, read together with the *Access to Information Act*, grants every citizen the right of access to information held by the state and another person, which is required for the exercise or protection of any right or fundamental freedom. Section 4 of the *Access to Information Act* provides for the procedure to access information held by inter alia a public entity or public body. In *Katiba Institute v Presidents Delivery Unit & Others* [2017] eKLR, the court said that once a citizen places a request to access information held by the State, the same should be availed without delay or conditions. Sections 5 and 8 of the *Access to Information Act* provide that a public body should facilitate access to information held by it and a citizen must request for that information in writing, and the decision on the request must be made and communicated within 21 days.



48. In Nairobi Law Monthly Company Limited v Kenya Electricity Generating Company & 2 Others [2013] KEHC 6054 (KLR), the court observed that the State under Article 35(3) of *the Constitution* has a duty to public and publicize information affecting the nation. In Trusted Society of Human Rights Alliance & Others v JSC [2016] eKLR, the court observed that public bodies have an obligation to disclose information and every member of the public has a corresponding right to receive information without specifying the interest in the information.
49. There is no evidence that the petitioner has sought in writing for such information from the respondents and the interested party and has been denied access. In Shollei v JSC [2022] KESC 5 [KLR] (17th February 2022) (Judgment), the court held that the applicant discharged her burden vide a letter from her advocates asking for inter alia, the reasons for her removal, pursuant to Articles 22, 35, 48, 73 and 159 of *the Constitution*. In this petition, there is no evidence that the petitioner sought, demanded and or requested for any reports, documents, decisions or reasons, minutes or notices and or proceedings over the revocation, reallocation and alienation of the subject land and was denied access or copies. There are no complaints raised with Commission on Administrative Justice, for non-disclosure.
50. Equally, at the hearing, the applicant is at liberty to issue a notice of inspection, production, and access under Order 11 of the Civil Procedure Rules. I find no basis for the same. Regarding the site visit by the Deputy Registrar, the basis of this request has not been laid. Order 18 Rule 11 of the Civil Procedure Rules provides that a court may inspect any property or thing concerning which any question arises at any stage of the suit. The purpose of a scene visit was discussed in E. Kangye v E. Bwana Kampala HCC S No. 39 of 1989, that court goes in to check on the evidence given in court and not to fill in gaps. It is not mandatory, but it depends on the circumstances of each case. There must be special circumstances. The court has no business to undertake a fact-finding mission on behalf of parties. It has no technical expertise on survey of land. It cannot descend to the arena of trial. There are alternative ways of bringing expert reports before the court. In the circumstances obtaining, I find no basis for the court to direct the Deputy Registry to visit the scene and conduct a public participation to determine who is in occupation of the land. That cannot be part of a judicial function.
51. The upshot is that I find no basis to grant the prayers sought. The application dated 25/2/2024 is dismissed with costs.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 10TH DAY OF JUNE 2025.

In the presence of:

Court Assistant - Dennis

Lichuma for Petitioner present

Sitati for Githinji for 3rd Interested Party present

Kwame for Respondents present

Auta for 1st Interested Party present

Kiptoo for 4th Interested Party absent

HON. C.K. NZILI

JUDGE, ELC KITALE.

