



Turkana Indigenous People Action for Development (TIPD) v Turkana County Government & 5 others (Environment and Land Petition E001 of 2025) [2025] KEELC 7179 (KLR) (15 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7179 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT LODWAR

ENVIRONMENT AND LAND PETITION E001 OF 2025

CK NZILI, J

OCTOBER 15, 2025

IN THE MATTER OF ARTICLES 1(1), 2(1),3(1), 19(1)&(2),20(1) &(2),21(1), 22(1)&(2),23(1) AND 258 OF THE CONSTITUION

AND

IN THE MATTER OF THE CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 10(1)(A),(B),(C)&(2)(A), (B),27(1), 40,47,60,63(1)&2 AND 73 OF THE CONSTITUTION

AND

IN THE MATTER OF THE CONTRAVENTION OF SECTIONS 4(1), 15,17,27,28,30,31,32,35,36,37 AND 38(2) OF THE COMMUNITY LAND ACT CHAPTER 287 LAWS OF KENYA

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS)PRACTICE AND PROCEDURE RULES, 2013

BETWEEN

TURKANA INDIGENOUS PEOPLE ACTION FOR DEVELOPMENT (TIPD) PETITIONER

AND

**TURKANA COUNTY GOVERNMENT 1ST RESPONDENT
JEREMIAH EKAMAIS LOMORUKAI NAPOTIKAN- GOVERNOR TURKANA COUNTY GOVERNMENT 2ND RESPONDENT**



FAITH ALETEA AKUWAM- COUNTY EXECUTIVE COMMITTEE MEMBER, MINISTRY OF LANDS, HOUSING AND URBAN AREAS MANAGEMENT 3RD RESPONDENT

MICHAEL EREGAE, COUNTY EXECUTIVE COMMITTEE MEMBER, MINISTRY OF FINANCE AND ECONOMIC & PLANNING TURKANA COUNTY 4TH RESPONDENT

NATIONAL LAND COMMISSION 5TH RESPONDENT

TULLOW OIL PLC 6TH RESPONDENT

RULING

1. The applicant, in the application dated 24/6/2025, is seeking the following orders:-
 - a. ...spent.
 - b. That pending the petition, the 1st - 6th respondents be ordered to produce and or make available before the court, the lease agreement executed in favour of the 6th respondent over the community lands belonging to the Nakukulas, Kasurio Kapese, and Lomunyenkurat communities.
 - c. Pending the petition, the court orders the 1st – 6th respondents to produce all documents relating to and leading to the execution of the lease agreement in favour of the 6th respondent, including but not limited to records evidencing public participation.
2. The grounds on the face of the motion are that the 6th respondent has been involved in oil exploration in Turkana since 2010, with six oil fields in the vast community lands adjoining Turkana South and Turkana East within Turkana County, under the control and management of the 1st respondent; that the said community lands belong to the community and are owned, used, and managed as communal properties for their benefit; that the Nakukulas and Kapese communities are duly registered under Section 11(1) of the *Community Land Act*, Cap 267 Laws of Kenya, and have been issued with title deeds; that several follow-ups with the Community Land Registrar, the Kasurio and Lomunyenkurat communities have yet to be issued with title deeds, but only have Forms CLA-4.
3. It is averred that many legal issues that affects the rights of above referenced communities over their community lands erupted, since the 6th respondent was granted prospecting and mining rights over the lands in South and East of Turkana County, thus inviting the 5th respondent to invoke its mandate as under Article 67(2)(a) of the *Constitution* and Section 5 of the *National Land Commission Act*, to initiate compulsory acquisition process.
4. It is averred that in exercising of its mandate under Article 67(2) of the *Constitution*, vide a Gazette Notice No. 2060 of 2022, the 5th respondent herein published a notice of intention to acquire land for the Project Oil Kenya –upstream project and later in April 2023, vide a Gazette Notice 4384 of 2023, the 5th respondent published a notice that initiated an inquiry into the proposed compulsory land acquisition of land for the construction of the LAPSSET corridor and associated facilities.
5. It is averred that however, the two proposed processes never took off, and in an unanswered letter to the chairperson of the 5th respondent and received by the 5th respondent on 4/2/2025, Turkana Extractives



- Consortium (TEC) and Turkana Community Land Alliance (TUCOLA), sought to know whether the 5th respondent was still keen on proceeding with the two processes of compulsory acquisition.
6. According to the applicant, pending the registration of Kasuropi, Nakukulas, Kapese, and Lomunyenkupurat, the 1st respondent, under the leadership of the 2nd respondent, assumed the management, control, and usage of community lands, as per the provisions of Section 6 of the [Community Land Act](#).
 7. It is averred that the 1st respondent, as the custodian of the said parcels of land in trust for the respective communities, entered into a lease agreement with the 6th respondent, on the premise that it shall for all intents and purposes, remit the proceeds obtaining from the said Agreement to the 1st respondent, who shall then hold the same in trust for the Kasuroi, Nakukulas, Kapese and Lomunyenkupurat communities, in a manner consistent with the provisions of Section 6(2),(3),(4) and (5) of the [Community Land Act](#).
 8. The applicant avers that the said lease agreement has never been made public and, therefore, the concerned communities are not aware of its terms. It is averred that in exercise of their right of access to information, the Kasuroi, Nakukulas, Kapese, and Lomunyenkupurat community members called upon the 1st - 3rd respondents to make the said lease agreement available for scrutiny and general knowledge. However, the 1st - 3rd respondents have adamantly ignored and wished away such calls.
 9. It is averred that in a joint letter by Kapese Community Land Management Committee (Kapese CLMC), Turkana Community Land Alliance (TUCOLA), and Turkana Extractives Consortium (TEC) on 5/2/2025, to the 3rd respondent, Kapese CLMC, TUCOLA, and TEC made a formal request for a copy of the Lease Agreement between the 1st respondent and the 6th respondent. However, the 1st - 3rd respondents failed, refused, and or neglected to provide a copy of the lease agreement.
 10. The applicant avers that the 6th respondent has been remitting payments as consideration for the lease; however, the 1st - 3rd respondents have channeled the same to County Budgetary Allocation contrary to Section 6 of the [Community Land Act](#).
 11. According to the applicant, the 6th respondent was to be remitting Kshs 1,000,000/=, per year for 20 acres in Turkana East and Turkana South. It is averred that on or before May 2024, the 1st respondent received from the 6th respondent herein a total of Kshs. 258,000,000/=, being proceeds obtained from the lease over the community lands so leased to the 6th respondent for purposes of the Tullow Oil Project.
 12. Further, the applicant avers that on or about 29/5/2024, Turkana Extractives Consortium (TEC) wrote a letter to the 4th respondent, seeking to know why the 1st respondent's Fiscal Strategy Paper 2024/2025 did not disclose any revenue from the oil fields as income for the 1st respondent.
 13. The applicant avers that in a letter dated 14/10/2024 in response to the Ombudsman, the 6th respondent denied leasing community land from the 1st respondent, and that the 6th respondent had been operating under a license issued by the National Government and thus Kshs. 258,000,000/= was a payment to the 1st respondent in respect of levies, rates, and taxes in respect of the period between 2011 and 2023.
 14. According to the applicant, the averments are contrary to the 6th respondent's position in the letter dated 20/6/2024, wherein the 5th respondent confirmed leasing 20 acres of community land to the 6th respondent, in Turkana East and Turkana South Sub-counties.



15. Accordingly, the applicant avers that the 1st respondent's 2024/2025 budget estimates, Kshs. 258,000,000/=, were reported as the 1st respondent's revenue. On 16/8/2024, the TUCOLA sought clarification on whether the Kshs. 258,000,000/= constituted the full and final payment of the community land lease to the 6th respondent.
16. The applicant avers that, further to the letter of 16/8/2024, the Kapese Community Land Management Committee, TUCOLA, and the TEC did a joint letter anchored on the right to access to information to the 3rd respondent, to make further inquiries on the existence and terms of the lease agreement as between the 1st respondent and the 6th respondent. There was no response to the letter.
17. It is averred that on 3/1/2025, the Chairman Kapese Community Land Management Committee wrote a letter to the 6th respondent herein to primarily inform the 6th respondent that Kapese community land had been registered by the Community Land Registrar pursuant to the edicts of the Community Land Act and issued with Community Title Number Turkana/Kapese Community Land/4 and as such the management of Kapese community land from then on vested in the community through their Community Land Management Committee (CLMC).
18. According to the applicant, the letter dated 3/1/2025 highlighted several pertinent issues central to the Kapese community vis-à-vis the activities of the 6th respondent. The letter clarified in great detail that the trusteeship of the Turkana County Government over Kapese community land terminated immediately upon the issuance of the Kapese Community Land Title, and thus, the Kapese Community Land Management Committee advanced the following points:-
 - i. The 6th respondent was expected to acknowledge, absent any reservations, the letter as an official notification and initiate direct engagement with the Kapese CLMC;
 - ii. That whereas the land for well pads is not under lease, but the 6th respondent rented it from the 1st respondent, the Kapese Community Land Management Committee maintained that the said arrangement as between the 1st respondent and the 6th respondent ceased to exist, that all contractual relationships over the said community land shall be negotiated and ratified by the Kapese Community Land Management Committee ;
 - iii. The compensation obtained from compulsory land acquisition shall be directly paid to the Kapese Community through the Kapese Community Land Management Committee.
 - iv. Agreements between Kapese Community Land Management Committee and the 6th respondent shall supersede all and any prior agreements between the 1st and 6th respondents.
 - v. The 6th respondent shall respect the principle of Free Prior Informed Consent with the Kapese community;
 - vi. The Kapese community attained a greater autonomy in decision-making regarding land use and resource management.
 - vii. The Kapese community shall benefit directly from any compensation or revenue generated from the use of their land generated from the use of their land.
19. In addition, the applicant avers that, whereas Kapese and Nakukulas communities are duly registered and are organized as communities per the edicts of the Community Land Act, the 1st and the 2nd respondent herein has refused, declined and/or neglected to recognize this fact and have since, declined to hand over the power that they exercise in trust on behalf of the Kapese and Nakukulas communities.



The applicant also avers that the instant application has been brought without unreasonable delay whatsoever.

20. In a supporting affidavit sworn by Ariong Goeffrey Lokol, he reiterates the grounds on the face of the application. Additionally, he has attached copies of the Nkukulas and Kapese Community Land Title and Form CLA-4 Lomunyenkupurat community; copies of Gazette Notice Nos. 2026 of 2022 and 4384 of 2023; letter received by the 5th respondent on 4/2/2025; letter dated 5/2/2025 to the 3rd respondent; letter dated 29/5/2024 to the 4th respondent; letters dated 20/6/2024; 14/10/2024; 16/10/2024; 3/7/2025 as annexures marked GA- 1-9, respectively.
21. The 1st – 4th respondents opposed the petition and the application vide a replying affidavit of Ekai Nabenyo, sworn on 28/8/2025. As the Principal Counsel, Office of the County Attorney of Turkana, the deponent terms the application and petition as fatally defective, legally untenable, and an abuse of the process, do not meet the threshold for a constitutional petition as set out in Anarita Karimi Njeru -vs- Republic [1979] eKLR and affirmed in Mumo Matemu -vs- Trusted Society of Human Rights Alliance & 5 Others [2013] eKLR, which mandate a petitioner to plead with precision the constitutional provisions allegedly violated, the manner of violation, and the nexus to the respondents' acts or omissions.
22. The 1st – 4th respondents depose that the petition improperly lumps together numerous constitutional provisions without demonstrating, with precision, the specific actions or omissions by the 1st - 4th respondents that allegedly contravened each of those provisions. The petitioner must set out with a reasonable degree of precision the provisions of the Constitution alleged to have been infringed and the manner of infringement. A constitutional petition should be pleaded with clarity and specificity, and not in broad or generalized terms.
23. Further, the 1st – 4th respondents depose that constitutional petitions should not be drafted in a manner that leaves the court guessing what specific violations are being alleged or how the respondents are culpable. It is further deposed that the allegations are framed in general terms, such as 'violation of community land rights' and 'conversion of funds,' without linking them to specific conduct by the respondents, thereby failing the test of specificity required by law.
24. The 1st – 4th respondents further deposes that the application offends the principle of constitutional avoidance, which holds that where a matter can be resolved through ordinary statutory mechanisms, constitutional litigation should not be invoked.
25. Again, the 1st – 4th respondents depose that the issues raised are not constitutional in nature, but rather contractual and administrative, arising from the alleged lease arrangements and revenue management, which fall under the Community Land Act, the Public Finance Management Act (PFMA), and the Access to Information Act.
26. It is deposed that the petitioner has failed to exhaust alternative statutory remedies contrary to Section 9(2) and (3) of the Fair Administrative Action Act and Sections 8 and 14 of the Access to Information Act, which mandate the use of internal mechanisms, including appeal to the Commission on Administrative Justice, before moving to court.
27. The 1st - 4th respondents depose that the applicant has further failed to exhaust alternative and adequate statutory remedies available under Kenyan law, thereby rendering this petition and the application premature, incompetent, and an abuse of the court process.
28. The 1st - 4th respondents deposes that Section 9(2) and (3) of the Fair Administrative Action Act, 2015 expressly requires a party aggrieved by an administrative decision to first exhaust all available and



effective internal remedies before seeking redress in court, unless the court grants an exemption for good reason. In this case, it is deposed that the petitioner has neither demonstrated that it invoked nor exhausted these remedies nor sought leave of this court to be exempted from the obligation of exhaustion.

29. The 1st - 4th respondents depose that since the claim is anchored on the right of access to information under Article 35 of the Constitution, the Access to Information Act, 2016, provides a clear statutory framework for obtaining information from public entities. Section 8 of the Act requires a person seeking to make a written application to the public entity concerned to specify the particulars of the information sought. Section 14 of the same Act further provides that any person dissatisfied with the decision of a public entity or its failure to respond shall first appeal to the Commission on Administrative Justice (Office of the Ombudsman), before instituting court proceedings.
30. Equally, it is averred that evidence of compliance with these provisions, such as a formal request instead, the applicant has rushed to court prematurely, contrary to the principles laid down in Speaker of the National Assembly -vs- Karume [1992] eKLR and affirmed in Geoffrey Mutbinja & Another -vs- Samuel Muguna Henry & 1756 Others [2015] eKLR, that where a statute provides a dispute resolution mechanism, that procedure must be strictly followed before invoking judicial review or constitutional litigation.
31. The 1st - 4th respondents depose that under Section 6 of the Community Land Act, the 1st respondent lawfully holds unregistered community land in trust for the affected communities and exercised control and management of the same, on behalf of those communities until it is registered, and that during the period of trusteeship, the 1st respondent has acted strictly within the confines of the Constitution and relevant statutes, ensuring that land resources are utilized in a manner consistent with Article 60(1) of the Constitution and Section 6(2) of the Community Land Act.
32. The 1st - 4th respondents depose that the applicant has not demonstrated that the arrangements between the 1st and 6th respondents were ultra vires or contrary to the law; that the allegation that the 1st respondent “converted” community funds is false, misleading, and wholly unsubstantiated by any credible evidence whatsoever; it is speculative and intended to malign the integrity of the 1st respondent and its officers without providing any documentary proof, such as audit reports, bank statements, or official correspondence indicating misappropriation.
33. It is averred that the 1st respondent categorically states that all monies received from the 6th respondent were treated as lawful County revenue under the Constitution and Sections 109 and 116 of the Public Finance Management Act, 2012, duly deposited into the County Revenue Fund as mandated by law; the funds were subsequently appropriated through the County Fiscal Strategy Paper and the Appropriation Act for the relevant financial year in accordance with the Public Finance Management Act and the County Governments Act.
34. Further, the 1st - 4th respondents depose that the said revenue is subject to the constitutional oversight mechanisms provided under Articles 201 and 229 of the Constitution, which require transparency, accountability, and annual audit by the Auditor-General, and that the Controller of Budget and the County Assembly also exercise financial oversight over the same.
35. It is deposed that the petitioner has not tendered any evidence that these oversight mechanisms were breached or that any Respondent personally benefited from the funds, and therefore, the allegation of “conversion” is baseless, scandalous, and should be expunged from the record.
36. The 1st - 4th respondents depose that the funds received from the 6th respondent were duly classified and treated as lawful county revenue under Article 209(4) of the Constitution and Sections 109 and



- 116 of the *Public Finance Management Act*, and appropriated through the county budgetary process, subject to audit by the Auditor-General pursuant to Article 229 of the *Constitution*.
37. Again, the 1st - 4th respondents depose that the petitioner has not produced evidence of personal benefit or misappropriation by any of the respondents, and therefore, the allegations are baseless and defamatory. It is averred that the prayers sought in the petition are monetary and contractual in nature, including a demand to compel the transfer of Kshs. 258,000,000/= and any future lease payments to the Community Land Management Committees.
38. It is deposed by the 1st - 4th respondents that the prayers sought do not seek enforcement of any specific constitutional right, but rather seek to determine alleged financial entitlements and contractual obligations arising from arrangements between the 1st respondent and the 6th respondent.
39. Similarly, the 1st - 4th respondents depose that such disputes relating to contractual rights, accounting of funds, and distribution of revenue fall within the realm of private law remedies and administrative processes under the *Community Land Act* and the *Public Finance Management Act*, and not within the jurisdiction of a constitutional petition. It is deposed that the court has consistently held that constitutional litigation should not be used to enforce ordinary civil and commercial obligations and that in *Uhuru Muigai Kenyatta -vs- Nairobi Star Publications Limited* [2013] eKLR, the court reiterated that a constitutional petition is not a substitute for ordinary civil actions.
40. The 1st - 4th respondents depose that the prayers in the petition are therefore incapable of being granted in a constitutional petition because:
- a. First, they do not allege or demonstrate with precision the violation of any specific constitutional right directly attributable to the 1st to 4th respondents, as required by the principle in *Anarita Karimi Njeru -vs- Republic* [1979] eKLR and affirmed in *Mumo Matemu -vs- Trusted Society of Human Rights Alliance* [2013] eKLR.
 - b. Second, the reliefs sought are in the nature of declaratory and mandatory orders for payment and transfer of funds, which are effectively civil remedies. The proper forum for adjudicating such claims is an ordinary civil suit or judicial review, not a constitutional petition, as emphasized in *International Centre for Policy and Conflict -vs- Attorney General & Another* [2013] eKLR, where the court cautioned against using constitutional litigation to bypass statutory mechanisms.
 - c. Third, granting such prayers would require this court to delve into complex factual questions, including: The existence and terms of any alleged lease agreement; The nature of payments made and their legal characterization; The budgeting and appropriation process under the *Public Finance Management Act*. These are matters of evidence and contract interpretation, which are unsuitable for determination in a constitutional petition whose mandate is limited to enforcing constitutional rights.
 - d. Fourth, granting the prayers would undermine the statutory public finance architecture established under the *Public Finance Management Act*, which provides for the collection, management, and appropriation of county revenue through the County Revenue Fund, the County Assembly, and oversight by the Controller of Budget and the Auditor-General. A constitutional petition cannot be used to bypass these mechanisms.
41. Accordingly, the 1st - 4th respondents contend that the prayers sought by the applicant should be pursued through an ordinary civil suit, or under the *Community Land Act* and the *Public Finance Management Act*, but not through a constitutional petition. It is deposed that granting such orders



- would disrupt county budgetary allocations approved under the [Public Finance Management Act](#) and cripple essential services, including health, education, and infrastructure, to the detriment of public interest. Further, it is deposed that public interest demands that county operations and service delivery continue uninterrupted, and that the court should avoid issuing orders that would paralyze governance and deprive residents of Turkana County of essential services. The 1-4th respondents depose that both the petition and the application are frivolous, misconceived, lacking merit, and brought in bad faith.
42. The 6th respondent relies on grounds of opposition dated 4/9/2025. It averred that it is a Public Limited Company registered in the United Kingdom is a separate and distinct entity from Tullow Kenya B.V.; that the two entities have separate and distinct legal personalities, and they cannot be sued or joined in legal proceedings interchangeably. It is averred that the petitioner has never sought any information from the 6th respondent under the [Access to Information Act](#), and that the allegations by the petitioner against the 6th respondent are misdirected; for it has never engaged with any of the other respondents, and it is not a party to the purported agreements and payments made to the 1st respondent.
43. It is averred that the 6th respondent has been erroneously joined in the current proceedings as an act of bad faith, ostensibly to vex the 6th respondent. It is averred that joinder of the 6th respondent in the proceedings is improper and an abuse of court process, and that the orders sought against the 6th respondent, if granted, would be unenforceable.
44. What the applicants are seeking in the interim is the disclosure of all documents relating to the execution of the lease agreements, including but not limited to records for public participation in favour of the 6th respondent over community land belonging to the Nakukulas, Kasurio Kapese, and Lomunyenkurat communities, pending the hearing of the petition, which they allege have been withheld from them despite request made.
45. In the letter dated 5/2/2025, the applicant alleges that they sought the information from the 3rd respondent, and that a follow-up on the said letter was said to have been done by the consortium to the 4th respondent on 29/5/2024. In a letter dated 14/10/2024 to the Ombudsman, the 5th respondent denied leasing the community land from the 1st respondent, saying it was merely a licensee of the national government, which it has paid levies, fees, and land rates and taxes.
46. In another letter dated 20/6/2024, the 6th respondent admitted leasing 20 acres of the community land from the 5th respondent, according to the applicants. Further, in a letter dated 16/8/2024, the applicant says that they wrote a letter under the Access Information Act to the 3rd respondent seeking the requested documents, which was not responded to. Further correspondence has been attached as annexures marked GA-5, 8, and 9, which, according to the applicant, show that the respondents have withheld the information, hence the reason they have come to court to be supplied with the same.
47. With respect to the application, the 1st – 4th respondents, through Mr. Ekai's affidavit dated 28/8/2024, have not specifically addressed whether or not they received the requests for information, acted on the requests, and gave any reason(s) one way or the other for not providing the information to the applicants.
48. The respondents take the view that the [Access to Information Act](#) has an elaborate procedure, especially Section 8 thereof, on how to seek information held by a public entity, which the applicants did not comply with but have instead rushed to court prematurely.
49. Article 35 of the [Constitution](#) of Kenya grants every citizen a right to access information held by the state or another person, which is required for the protection of any right or fundamental freedom. The right to access information has been operationalized through the [Access to Information Act](#).



50. Section 5(1)(a) of the [Act](#) provides that, subject to Section 6, a public entity should facilitate access to information held by such entity, which includes the procedure followed in the decision-making process.
51. Section 6(1) thereof limits access to information or its disclosure if it undermines national security, impedes due process, may cause substantial prejudice to commercial interests or cause substantial harm to the ability of the good to manage the economy of Kenya or undermines significantly a public or private entity's ability to give adequate and judicious contention to a matter consideration which no final decision has been taken or it is in active consideration, may damage a public entity position in actual or contemplated proceedings or infringes professional confidentiality.
52. It is now trite that before an applicant seeks an order of the court compelling a respondent to give him access to certain information, must show that the said information was requested. See [Charles Omanga & Others -vs- Attorney General Another](#) [2014] KEHC 5536 (KLR) and [Prof. Njuguna S. Ndungu -vs- The EACC & Others](#) Constitution Petition No. 73 of 2024.
53. In [Kenya Society for Mentally Handicapped -vs- Attorney General & Others](#) Petition No. 155A of 2011, the court stated that coercive powers of the court should only be met to enforce Article 35 where a request has been made to the state concerned and such request has been made to the state concerned and that such request denied, and where the request is denied the court will interrogate the reasons and evaluate whether the reasons accord with the [Constitution](#).
54. The court said that where the request has been neglected, then the state agency must be given an opportunity to respond, and a peremptory order made should the circumstances justify such an order. In [Andrew Omtata Okoiti -vs- Attorney General & Others](#) Civil Appeal No. 621 of 2019, the court said that before an application is made to compel the state or another person to disclose any information, the applicant must first demonstrate that the request for information required was made to the state or the persons and disallowed, otherwise the court is not the first port of call. The court said that the right is not absolute and each institution or person is entitled to assess any limitation consistent with the [Constitution](#).
55. [Khalifa & Another -vs- P.S Ministry of Transport & Others Katiba Institution & Another](#) Constitutional Petition E023 of 2019, the petitioner had registered for agreement contracts and a memorandum in relation to the Standard Gauge Railway project. The refusal by the respondent was based on national security reasons. The court held that restrictions on information based on national security should have a genuine purpose and demonstrate the effect of protecting legitimate national security reasons. The court held that withholding of information amounted to a violation of the right to access information.
56. In [Dande & 3 others -vs- Inspector General, National Police Service & 5 others](#) [2023] KESC 40 (KLR), the Supreme Court of Kenya distinguished between the right to access to information held by a public or private body. The Supreme Court held that the appellant had failed to demonstrate the nexus between the information sought and the right to be protected. The court said that the failure to establish the connection meant that if the information was granted, there could be an unwarranted invasion of the privacy of third parties, thus causing prejudice to their commercial interests.
57. The court, in other words, said that to request information from private entities under Article 35(1) (b) of the [Constitution](#), and Section 4 of the [Access to Information Act](#), a requester has to demonstrate the rights he seeks to be protected, and the access to the information is required to exercise or protect that right.



58. In the *Omondi & another -vs- Attorney General & 2 others; Etbekon & 7 others (Interested Parties)* (Constitutional Petition E269 of 2025) [2025] KEHC 9956 (KLR) (Constitutional and Human Rights) (10 July 2025) (Judgment), the court held that the applicant had not made a case for the court to compel the respondent to supply the complete set of Independent Electoral and Boundaries Commission selection panel report, panelist recommendations and the transmittal of the file to the president.
59. In *Kenya Railways Corporation & 2 others -vs- Okoiti & 3 others* (Petition 13 & 18. (E019) of 2020 (Consolidated) [2023] KESC 38 (KLR) (Civ) (16 June 2023) (Judgment), the court observed that Article 35 of the *Constitution* provides for the right to access information, which is given effect by the *Access to Information Act* 2016, and the mandate of the Commission on Administrative Justice.
60. In *Isaac Aluoch Polo Aluochier -vs- The Senate & Others* Petition No.E014 of 2025, the Supreme Court of Kenya said that Section 6 of the *Access to Information Act* sets out the limits on disclosing information and that upon refusal of the information, Section 14 thereof requires that a requestor to submit a written request to the Commission on Administration of Justice for a review of the public entity's decision within 30 days. The court said that Sections 20 - 23 thereof outline the mandate of the Commission and that only after its action can a party appeal to the High Court.
61. Further, the court cited *Njonjo Mue & Another -vs- Chairperson Independent Electoral and Boundaries Commission & Others* [2017] KESC 145 [KLR], that Article 35(1)(a) and (b) of the *Constitution* and Section 3 of the Act that information held by state or state organs ought to be freely share with the public, unless in very exceptional circumstances and that the information should flow from the custodian in a manner recognized under the law, and that public members have a corresponding duty to follow the procedure prescribed whenever they require access to any such information.
62. The court said that the duty cannot be abrogated or derogated from, as any such derogation could lead to breach or violation of the fundamental principles of freedom of access to information; otherwise, it is a two-way channel where the right has to be balanced with the obligation to follow due process. See also *Kenya Railways Corporation & 3 Others -vs- Okiya Omtatah Okoiti & 3 Others* (2020) eKLR.
63. The court in *Isaac Aluoch Polo Aluochier -vs- The Senate* (supra), based on the above jurisprudence, held that if the appellant was dissatisfied with the 2nd respondent's decision, he was still required to pursue the remedies explicitly provided by the Act, and the failure to exhaust the available remedies before filing his case in the high court, was fatal.
64. The question to be answered is whether the applicants followed the constitutional and statutory framework set out above before moving to this court. The respondents take the view that the court should decline the invitation since the applicant has not exhausted the alternative remedies; otherwise, the court should not be the first port of call but the last resort. The burden is on the applicant to prove the exhaustion doctrine and the nexus between the information sought and the pursuit of their constitutional rights and freedoms. Similarly, if the applicant exhausted the alternative remedies under the statute, the burden is on them to demonstrate exceptional circumstances that the alternative forum lacks efficacy and the capacity to grant constitutional reliefs. See *Nicholus -vs- Attorney General & 7 others; National Environmental Complaints Committee & 5 others (Interested Parties)* (Petition E007 of 2023) [2023] KESC 113 (KLR) (28 December 2023) (Judgment)
65. Despite the respondents raising the defence of no-exhaustion of alternative remedies, there is no evidence tendered to show any serious efforts that were made, as outlined in the procedure and the timelines laid out under the *Access to Information Act*. The nexus between the information sought



and the pursuit of specific constitutional rights and freedoms in favor of the applicants has not been established at all.

66. He who alleges must prove. The nature of, particulars of the information, dates when it was sought, demands for the same, its relevance, and impact on the rights and freedoms of the applicant are missing in the supporting affidavits. Interventions by the Commission on Administrative Justice before moving to court are lacking.
67. The 6th respondent raised grounds of opposition dated 4/9/2025, alleging that it has been wrongly sued and the orders sought, if granted, shall be unenforceable. under Order 1 Rule 9 of the [Civil Procedure Rules](#). A proper party is one impleaded in the suit and qualifies the thresholds of a plaintiff or defendant under Order 1 Rules 1 and 2, respectively, or as a third party or as an interested party and whose presence is necessary or relevant for the determination of the real matter in dispute or to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. See [Zephir Holdings Ltd -vs- Mimosa Plantations Ltd, Jeremiah Maztagaro and Ezekiel Misango Mutisya](#) (2014) eKLR. A suit is, however, not defeated for misjoinder. The Preliminary Objection by the 6th respondent is allowed. The 6th respondent is hereby struck out of the proceedings.
68. The upshot is I find the application lacking merit. It is dismissed with no order as to costs.
69. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 15TH DAY OF OCTOBER 2025.

In the presence of:

Court Assistant - Dennis

Baraki for the petitioners/applicants

Angwenyi for Watanguli for the 6th respondent present

National Land Commission - absent

Miss Mutua for 1st - 4th respondents present

HON. C.K. NZILI

JUDGE, ELC KITALE.

