

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ELC LAND CASE NO. E018 OF 2025

KENYA PIPELINE CORPORATION.....
PLAINTIFF

VERSUS

MARULA ESTATES LIMITED.....1ST
DEFENDANT

MOREDANT LIMITED.....1ST THIRD
PARTY

PIUS NGUGI.....2ND THIRD
PARTY

RULING

1. Vide a Notice to Produce Documents dated 6th August 2025 brought pursuant to the provisions of Order 11 Rule 3 (2) (d) the 1st and 2nd Third Parties herein sought production of the documents referred to at paragraphs 3, 4, 5, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19 & 20 of the Defendant's statement of Defence dated 3rd June, 2025 and at paragraphs 1, 2, 5, 6, 7, 8 & 13 of the Notice of claim against the 1st and 2nd Defendants dated 3rd June, 2025 and in the letters dated 12th August 2003 and 21st April, 2008 in the Defendant's list of documents dated 14th July, 2025, being;-
 - i. A legible original title for LR No. 11367/2 together with the attached original deed plan.
 - ii. An original title for LR No. 11367/3 and/or official search confirming the existence of the said title.
 - iii. An original title for LR No. 11367/4 and/or official search confirming the existence of the said title.

- iv. A Valuation Report that had been done on 21st October 2003 by the Government Valuer for stamp duty for Ksh. 860,065/=.
 - v. A Valuation Report done by the Government Valuer for stamp duty (**sic**) done on 16th November, 2004.
 - vi. A Professional Undertaking letter dated 6th March, 2001 addressed to Ramesh Manek Advocates.
 - vii. The consent letter addressed to the Deputy Registrar in Nairobi HCC No. 2264 of 1985 requesting reinstatement of the prohibitory orders against the titles of all three properties including LR No. 11367/2.
 - viii. Proof that Kaplan & Stratton Advocates had returned all the documents listed at paragraphs (iv) of their dated 12th August, 2003.
 - ix. A Copy of Kaplan & Stratton Advocates' letter dated 5th October, 2004 addressed to the Principal/Chief Land Registrar referred to in their letter dated 21st April, 2008.
 - x. A copy of Kaplan & Stratton Advocates' letter dated 19th November, 2004 addressed to Morendat Limited.
 - xi. Proof that the commissioner of land issued the Defendant/Kaplan & Stratton with title of LR No. 11367/3.
2. The Defendant opposed the 1st and 2nd Third Parties' Notice vide its Grounds of Opposition dated 15th August 2025 for reasons that:
- i. That the Notice to Produce Documents by the 1st and 2nd Third Parties is bad in law, an abuse of the court process and ought to be dismissed.
 - ii. That the Notice to Produce Documents by the 1st and 2nd Third Parties is premised on a non-existent provision of the law being order 11 Rule 3(2)(d).
 - iii. That the Honourable Court lacks jurisdiction to order for the production of the documents sought in the absence of

- a formal application invoking the powers of the court and laying the basis for the production of each document.
- iv. That the Honourable Court had in its directions issued on 24th July, 2025, directed the Third Parties to file a formal application seeking the production of any documents so as to enable the Defendant substantively respond to the same and which directions the Third Parties had failed to obey to the clear prejudice of the Defendant.
 - v. That the Notice to Produce was a fishing expedition by the 1st and 2nd Third Parties in the absence of any nexus to the relevance of the documents sought.
 - vi. That without prejudice to the foregoing, the 1st and 2nd Third Parties were already in or ought to be in possession and/or custody of the documents referenced at items 1, 4, 6, 7 and 8 of the Notice to Produce.
 - vii. That the Defendant was ready and willing to avail the original title for LR No. 11367/2 at the substantive hearing of the suit.
 - viii. That the Defendant had made no mention of the existence nor custody of titles with respect to the parcels of the land known as LR No. 11367/3 and LR 11367/4.
 - ix. That the existence of titles although not related to the Defendant's Third-Party Notices and Notice of Claim against the 1st and 2nd Third Parties, was a fact to be established during the hearing of the main suit by production of witnesses and which fact of existence could be established by summoning the Land Registrar as the custodian of all land records.
 - x. That in view of the foregoing, the 1st and 2nd Third Parties Notice to Produce Documents is therefore incompetent,

misconceived, an abuse of the court process and ought to be dismissed with costs to the defendant.

3. The Plaintiff did not oppose the 1st and 2nd Third Parties' Notice to Produce Documents.
4. On 30th September, 2025, by consent, directions were issued that the Notice to Produce Documents and the Grounds of Opposition herein be canvassed through written submissions which the parties complied and filed their submissions which I shall summarize as hereinunder:

Third Parties' Submissions

5. In their submissions dated 14th October, 2025, the Plaintiff/Applicant first summarized the factual background of the matter specifically the contents of the Plaint and the Defence in details to submit that in view of the admission by the Defendant that the prohibitory orders had been registered against the titles in the years 1980 to 1985, the averment at paragraph 5 of the Defence alleging that the property known as LR No. 11367, had subsequently been subdivided resulting into properties known as LR Nos. 11367/1 and LR 11367/2 with the latter being subdivided to give rise to LR No. 11367/3 and LR No. 11367/4, whereby there had been an excision measuring 10 acres from LR No. 11367/4 in favour of the Plaintiff to create LR No. 11367/5, were without any factual nor legal basis, since the prohibitory orders and caveat had prevented any such subdivisions.
6. That the Defendant purported to join the Third Parties to the suit on the allegations pleaded at paragraph 20 of its Defence dated 3rd June, 2025 to the effect that it had been unable to honour its obligations to the Plaintiff as because of inability to surrender the title with respect to the property known as LR No. 11367/2, the mother title having been encumbered by the Caveat and prohibitory orders.

7. That it is trite law that under the provision of order 7 Rule 5(d) of the Civil Procedure Rules, the Defendant was required to file its Defence, accompanied with copies of the documents it intended to rely on at the trial, which it failed to do.
8. That contrary to the Defendant's Grounds of Opposition, parties to a case, under the supervision of a court undertake pre-trial directions and case conference for effective, efficient and expeditious disposal of cases, and case management, which is provided under the provisions of Order 11 of the Civil Procedure Rules and which include the power of the Court to order a party to produce documents under the provisions of Order 11 Rule 3(2)(d) of the Civil Procedure Rules which provision also gives power to the Honorable Court to order the production of documents at any time on its own motion or on the application of any party. It was their submission that the Defendant's Grounds of Opposition was devoid of merit in view of aforesaid explicit provisions of the law.
9. That in any event, nowhere in the Civil Procedure Act or the Civil Procedure Rules was there a requirement that a specific format of the application other than a Notice to Produce Documents had to be used and that none had been referred to by the Defendants.
10. They urged the Court to take judicial notice that the formal procedure of seeking production of documents from a party had always been by way of serving a Notice to Produce Documents to the said party as had been done by the Third Parties herein who had served the Defendant herein specifying the documents that they required produced That the procedure had not in any way prejudiced the Defendant. Reliance was placed on the decision in the case of **Supply Services Limited v Kenya Airports Authority (KAA) & 7 others [2024] KEELC 13444 (KLR)** to submit that the Defendant lacks any valid reason to decline to produce the documents that they had sought from it.
11. That the Defendant was merely being frivolous, evasive and obstructive in refusing to provide the requested documents, with the aim

of concealing vital information that was prejudicial to its false allegations in the Defence and the Notice of Claim made against the Third parties. Further reliance was placed in the decided case of **Afroplast Industries Limited v Sanlam Insurance Co Ltd [2025] KEHC 11551 (KLR)**.

12. That they had demonstrated in their Notice to Produce why each of the documents sought was relevant by referring to the averments in the Plaintiff and Defence such at paragraph 5 of the Defence where it was alleged that the Defendant had subdivided title LR No. 11367 which had given rise to titles LR Nos. 11367/2, 11367/3 and 11367/4 whose copies and/or official search had not been availed by the Defendant to the Third Parties and neither were they contained in the Defendant's list of documents.
13. That accordingly, the Defendant was being less than candid when it denied at paragraph 8 of the Grounds of Opposition that it did not mention the existence and custody of titles with respect to the title of parcels of land known as LR Nos. 11367/3 and 11367/4 yet at paragraph 5 of the Defence and at Ground 2 of the Notice of Claim against the Third Parties they had unequivocally pleaded that the property known as LR No. 11367 had been subdivided to create 5 other properties namely LR Nos. 11367/1, 11367/2, 11367/3, 11367/4 and 11367/5 which was the one that was supposed to be transferred to the Plaintiff. How would the Defendant allege that the initial property had been subdivided without any title being issued for the ensuing subdivided parcels of land, unless it was litigating through deceit and misrepresentation.
14. That the Defendant should at the bare minimum produce the official searches and certified copies of the original title LR Nos. 11367/2, 11367/3 and 11367/4 since its allegations against the Third Parties was that it had caused it (Defendant) not to honor its obligation to the Plaintiff despite apparently being able to allegedly subdivide the land known as LR No. 11367 even when there were prohibitory orders and caveat registered against the same. They thus submitted that it was illogical and contrary

to the provisions of Order 7 Rule 5 of the Civil Procedure Rules for the Defendant to turn around and purport in its Grounds of Opposition that the existence of the title was a fact to be established through calling witnesses during hearing of the main suit.

15. That the existence of a title was the document itself which the Defendant was required by law to file in Court and produce to the Third Parties to prove the allegations contained in the Defense.
16. That in its list of documents dated 14th July, 2025, the Defendant had filed an ineligible copy of the title for LR No. 11367 together with an ineligible deed plan thus making it necessary to seek that it provides the original title and deed plan to the Third Party to see and make copies. That subsequently, the conduct of the Defendant and its Advocate in blaming the Third Parties for failure to honour its obligation to the Plaintiff and failing to produce documents to substantiate its allegation was irrational and suspicious.
17. That indeed, the court should note that as pleaded at paragraph 8 and 10 of the P1 (sic), the Defendant had failed to disclose to the Plaintiff that there were prohibitory orders and caveats registered against the relevant title since the year 1975 before accepting, by false pretense, the sum of Ksh. 5,000,000/= from the Plaintiff in the year 2002 for an alleged subdivision of the property. They further failed to disclose the issue of prohibitory orders and caveats in June 2023, which is a whole 23 years later. It was thus their submission that contrary to the Defendant's Grounds of Opposition they had shown the nexus of the relevance of the documents sought with reference to the pleadings filed by the Defendant and the Notice of Claim issued against them.
18. That they were thus entitled to all the documents held by the Defendant that could exonerate them from the baseless allegation made against them by the Defendant and also enable the Honourable court reach a fair and just determination of the matter. They placed reliance in the decided case of **Lustman & Company (1990) Limited v Corporate**

Business Centre Limited & 4 others [2022] KEHC 42 (KLR) where the Court had cited the Indian Supreme Court's decision in the case of **M. L. Sethi vs R. P. Kapur, 1972 AIR 2379, 1973 SCR (1) 697**, to submit that if a document would throw light on the matter in dispute, the discovery of that document would be considered relevant even though the document may be inadmissible in evidence in the long run. That it was the relevance of the document and not its admissibility that matters.

19. That the Defendant had pleaded at paragraphs 11, 12, 13, 14, & 15 of its Defence that it had excised 4000 acres from LR No. 11367/2 in favour of the 1st Third Party and that the transfer of the excised portion which was referred to as LR No. 11367/3 had been submitted for registration on 10th November, 2003 after payment of stamp duty of Ksh. 860,065/= which had subsequently been increased to Ksh. 6,920,000/= on 16th November, 2004 to which it alleged to have informed the Third Parties of the increase of the stamp duty vide letter dated 19th November, 2004. It had thus been on the basis of said pleadings that they had sought for the production of the documents listed as numbers (ii), (iv) (v), (x) and (xi) of the Notice to Produce Documents.
20. That indeed, the Defendant filed a list and bundle of documents dated 14th July, 2025 wherein upon the perusal, the Third Parties sought the production of documents listed as numbers (vi), (vii) and (viii) of their Notice to Produce Documents. That the said Documents had emanated from correspondence that had been disclosed by the Defendant's advocate in their letter dated 12th August 2003 to the deceased Ramesh Manek Advocate. That there had been no evidence that the Third Parties had in their possession or custody the said Documents. That accordingly, the Defendant should not deny the Court and the Third Parties the benefit of production of the said documents, to enable the Court adjudicate on the case fairly. That to so deny them the documents would imply that the Defendant was hell bent on concealing the truth of the matter herein

having belatedly enjoined the Third Parties to a suit 22 years after the aforementioned correspondences had been made.

21. That they also sought that the Defendant produce a copy of a letter dated 5th October, 2004 addressed to the Principal/ Chief Land Registrar by Kaplan & Stratton Advocates and which letter had been mentioned in a letter dated 21st April, 2008, by Kaplan & Stratton Advocates herein referred to and listed as No. 9 in the Notice to Produce. They submitted that the significance of the said letter was that it would explain the false narrative that the Defendant had been peddling to the effect that it was unable to honour its obligation to the Plaintiff because of the prohibitory orders and caveats that had been registered against the property. That whereas between 10th November, 2003 the Defendant had allegedly lodged a transfer of the property known as LR No. 11367/03 in favour of the Third Parties as pleaded in paragraphs 12 of the Defence and despite the Third Parties having conditionally lifted the prohibitory orders and caveats to enable the transfer to be registered, the transfer had not been registered but instead the Defendant had written to the Principal Land Registrar recalling the documents that had been lodged at the registry.
22. It was their submission that the Defendant had since the year 2008 concealed the reason why it had recalled the registration of the transfer wherein the Third Parties had been taken for a ride for the past 22 years just as the Plaintiffs had been kept in the dark by the Defendant who was intent in concealing information and documents that would expose its deceit.
23. They thus prayed that the Court grant the orders requiring the Defendant to comply with the Notice to Produce dated 6th August, 2025.

Defendant's Submissions

24. In support of its opposition to the Third Parties' Notice to Produce dated 6th August, 2025, the Defendants through its submissions dated 21st October 2025 framed two issues for determination as follows:
- i. Whether the Third Parties' Notice to Produce is bad in law, an abuse of the court process and therefore incompetent.
 - ii. Whether the Defendant ought to be compelled to produce the documents sought by the third parties.
25. On the first issue for determination, it submitted that the sole purpose of a Notice to Produce was a clearly provided for under the provisions of Section 69 of the Evidence Act (Cap. 80) and which purpose was not the inspection and discovery of documents as had been propounded by the Third parties. That indeed, the said provision permits a party to rely on secondary evidence where a party served with the Notice to Produce fails to comply. It placed reliance on the decisions in the cases of **Concord Insurance Company Limited (Under Statutory Management) v NIC Bank Limited [2020] eKLR** and **Aluoch v Kenya Ports Authority & another (Cause E071 of 2022) 2025 KEELRC 1756 (KLR) (10 April 2025) (Ruling)**
26. That the notice before the court was not one presented pursuant to the provisions of Section 69 of the Evidence Act but rather under the provisions of order 11 Rule (3)(2)(d) of the Civil Procedure Rules which provisions did not exist on account of Legal Notice number 22 of 2020 Regulation 13 that had amended the said provision. He placed reliance on the provisions of Order 11 Rule (3) (2) of the Civil Procedure Rules to submitted that the Notice to Produce various documents had been premised on the wrong provision of the law hence incompetent. That the import of reliance on the repealed provisions had rendered the Notice to Produce as utterly defective and incapable of compliance on the part of the Defendant. That subsequently, the court could not rely on its inherent power to determine the propriety of notice on the face of the pleading as there were no grounds justifying the same. Reliance was placed on in the

Supreme Court decision in the case of **Mungai v Housing Finance Company (K) Limited & 5others (Civil Appeal (Application) 9 of 2015) [2017] KESC 47(KLR) (26 January, 2017) (Ruling)**

27. That whereas it was in agreement with the Third Parties that they had every right to serve the Notice to Produce upon the Defendant, the same had to be within the law as envisioned under the provisions of Section 69 of the Evidence Act and the Civil procedure Act and Rules. That in any case, a Notice to Produce could not result in an order for discovery which was what the Third Parties were mischievously attempting to do. Reliance was placed in the case of **Aluoch v Kenya Ports Authority another (Cause E071of2022)** (Supra) to submit that the Defendant could not be compelled to comply with an incompetent pleading.
28. On the second issue for determination as to whether the Defendant ought to be compelled to produce the documents sought by the Third Parties, the Defendant submitted in the negative firstly because the court had issued directions on 24th July, 2025 directing the filing of a formal application on the part of the Third Parties to warrant the making of any order for discovery and which the Third Parties had opted not to do so. Secondly, that it was only by way of a formal application that the Defendant could have its right of response to each of the documents sought by the Third Parties and their relevance to the prosecution of the Defendant's case against the Third Parties.
29. That indeed, its case against the Third Parties was clearly articulated in its filed Statement of Defence, Third Party notices and Notice of Claim all dated 3rd June, 2025 and that it would further rely on its list and bundle of documents dated 14th July, 2025 in support of its case. That subsequently, the inadequacy of the Pleadings could only be tested at the substantive hearing of case.
30. It hinged its reliance on the provisions of Section 22 of the Civil procedure Act, 2010 to submit that the absence of any formal pleading by the Third Parties had disentitles the court's exercise of its inherent

discretion to make any such order for discovery since any order for discovery must flow from the pleadings filed and the relevance must be exhibited before the court. Reliance was placed in the decided case of **Safaricom Plc v East Africa Data Handlers Limited (Civil Case E127 of 2019) [2022] KEHC 12979(KLR) (commercial and Tax) (14 September 2022) (Ruling)** where the Cour had cited the case of **Concord Insurance Co. Ltd v Nic Bank Ltd [2013]KEHC 3571(KLR)** to submit that the Third Parties on their part had sought to argue through their submissions, the relevance of each document they sought in the impugned Notice to produce. It submitted that submissions are not evidence which could be utilized to explain away the inefficiencies of the Notice to Produce.

31. That indeed, the arguments that had been made in the Third Parties' submissions ought to have been filed through a formal application to allow the Defendants its right of response by way of affidavit evidence and for the court to make a determination thereafter. The subsequently, absence of any such application, cogent grounds or filed pleadings before the court filed on behalf of the Third Parties, leaves the court with no manner of determining the relevance of the documents sought.
32. It submitted that the documents sought by the Third Parties were irrelevant to the present suit in so far as there was no pleading filed by the Third Parties. That it is trite law that discovery was solely limited to the matter in contention and would not be ordered in respect of irrelevant documentary material. Reliance was placed in the decided case of **Concord Insurance Co. Ltd v Nic Bank Ltd [2013] KEHC 3571(KLR)**
33. Thirdly, that the burden of proof clearly rests on the Defendant in the prosecution of its case against the Third parties hence it could not be the Third Parties' position to argue that certain documents had been left out and that the Defendant should be compelled to avail the same. It hinged its reliance in the decided case of **Crescent Distribution Services Limited V Egnite Technologies Limited & Another (2013) eKLR** to

submit that the Third Parties were on a fishing expedition and that the Notice was an abuse of the court process.

34. Fourthly, that the third parties had not provided any justification for the production of the documents beyond reference to averments in the statement of Defence and Notice of Claim. That the Third Parties bore the obligation of establishing before the court that the Defendants had sole custody of the documents and or information to the subject of the notice which had not been done. That indeed, the 1st and 2nd Third Parties were already in or ought to be in possession and or custody of the documents referenced to at items 1, 4, 6, 7, and 8 of the Notice to Produce thus the Defendant should not be compelled to avail the same.
35. That with respect to item 1 which is the original title for LR No. 11367/2, the Defendant had stated in its grounds of opposition that it was ready and willing to avail the same at the substantive hearing of the suit. On the other hand, in respect to items 2 and 3 of the Notice, the Defendant had made no mention of the existence nor custody of titles with respect to the parcels of land known as LR No. 11367/3 and LR No. 11367/4 hence the Third Parties' demand was misleading as it had travelled beyond the pleadings filed by the Defendant.
36. That further, the existence of titles although not related to the Defendant's Third-Party notices and Notice of Claim against the 1st and 2nd Third Parties, was a fact to be established during the hearing of the main suit by production of witnesses and which fact of existence could be established by summoning the Land Registrar as the custodian of all land records. That items 8 and 11 had made no specific reference to documents but had rather called for production of general evidence which could only be addressed at the substantive hearing of the matter as it had travelled beyond the scope of discovery.
37. In conclusion, it submitted that the Third Parties' Notice to Produce is incompetent, without merit and filed as a fishing expedition rather than in the interest of justice to the detriment of the Defendant. It thus urged the

court to find no merit in the same and dismiss it with costs to the Defendant.

Determination.

38. Pursuant to the filing of the present suit by the Plaintiff against the Defendant, on the 8th May 2025 Counsel for the Defendant sought leave to join two third parties to the proceedings and since the Application was not objected to by Counsel for the Plaintiff, it was allowed wherein subsequently, the Third Party Notice was served and thus bringing on board the 1st and 2nd Third Party. Parties were then directed to file their pleadings (full disclosure) in compliance with pre-trial directions.
39. On the 24th July 2025, the court had been informed by the Third party that there had been no compliance with the directions of the court for reason that some documents in possession of the Defendant had not been shared to the parties herein. The court then directed the Third Party to make a formal application seeking the production of any such documents so as to enable the Defendant substantively respond to the same.
40. The 1st and 2nd Third Parties did not comply with direction of the Court but instead served the Defendant with a Notice to produce dated 6th August 2025 purportedly under Order 11 Rule 3(2)(d) of the Civil Procedure Rules, seeking the production of eleven specific sets of documents listed as i to xi herein above which requested documents primarily relate to the subdivision of the land (original titles, official searches for subdivisions, deed plans), valuation reports for stamp duty, letters concerning the transaction, and proof of the return of documents.
41. In response, the Defendants filed their Grounds of opposition dated the 15th August 2025 to the said Notice to produce, asserting the following:
 - i. The Notice is bad in law and an abuse of court process.
 - ii. It is premised on a non-existent provision of law (Order 11 Rule 3(2)(d)).

- iii. The court lacks jurisdiction to make the order without a formal application.
- iv. The Third Parties had failed to obey prior court directions to file a formal application.
- v. The Notice is a fishing expedition lacking nexus to the relevance of the documents.
- vi. The Third Parties are already in possession or custody of some of the documents (items 1, 4, 6, 7, and 8).
- vii. The Defendant is willing to avail the original title for LR No. 11367/2 at the substantive hearing.
- viii. The existence of titles for LR Nos. 11367/3 and 11367/4 is a fact to be established by summoning the Land Registrar, as the Defendant had not mentioned their existence or custody.
- ix. The Notice is ultimately incompetent and misconceived.

42. This then formed the basis of this ruling for which I have considered the arguments by both Counsel, the written submissions, the authorities cited and the applicable law.

43. The issue for determination herein is whether or not the Notice to Produce Documents is fatally defective.

44. It is trite that the provisions of Order 11 Rule 3 (2)(d) of the Civil Procedure Rules were amended by Legal Notice No. 22 of 2020 which comprehensively deleted and replaced the entire Order 11 of the Civil Procedure Rules thus the original Order 11 ceased to exist.

45. The Supreme Court in the case of **Mungai v Housing Finance Company (K) Limited & 5 others (Civil Appeal (Application) 9 of 2015) [2017] KESC 47 (KLR) (26 January 2017) (Ruling)** had at paragraph 23 held as follows:

"In the case of Hermanus Phillipus Steyn v. Giovanni Gnechi-Ruscione, Supreme Court, Application No. 4 of

2012, this Court was categorical that a Court has to be moved under a specific provision of the law. The Court stated that: it is trite law that a Court of law has to be moved under the correct provisions of the law. We reiterate that the only legal regime for the Supreme Court is the Constitution, the Supreme Court Act and the Supreme Court Rules, 2012 (as amended). Hence it is preposterous for the applicant to purport to bring his application under other statutory provisions that are not the Supreme Court Act. It is sadder that he has the audacity to even invoke provisions of repealed pieces of legislations. No court can be moved on the basis of a repealed law. What right if at all does a repealed law give? The answer is clear: none.”

46. From the above captioned holding, the Supreme Court took a strict and decisive stance on applications brought under repealed or non-existent provisions of the law where it held that an application premised on a repealed or non-existent provision of the law is fundamentally incompetent and fatally defective. It emphasized that a court cannot properly exercise its jurisdiction based on a repealed provision, as that provision no longer forms part of the applicable law and thus renders such an application incapable of being salvaged by the Court even where its inherent powers are invoked.
47. The ruling underscored the necessity of procedural compliance reiterating that when a party invokes the jurisdiction of a court, they must do so by citing the correct, current, and enabling legal provision. Failure to do so amounts to an irregularity that cannot be overlooked, even in the interest of reaching the substantive issues of the case. In essence, the ruling establishes a firm legal principle: an application that does not cite a valid, exact provision of law is dead on arrival and cannot be rescued by the court's inherent jurisdiction.

48. I thus find that the Notice to Produce Documents dated 6th August 2025 brought pursuant to repealed provision of the law being Order 11 Rule 3 (2)(d) of the Civil Procedure Rules is fatally defective and the same is herein struck out with costs.

Dated and delivered at Naivasha via Teams Microsoft this 11th day of December 2025.



M.C. OUNDO

ENVIRONMENT & LAND COURT- JUDGE.