

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ELC PET. E003 OF 2024

DANIEL KIPINTOI KINANTA.....1ST
APPLICANT
LEBOI ROLEX MORIASO.....2ND
APPLICANT
ANNA SUKUTA KANTULI.....3RD
APPLICANT

VERSUS

THE PRINCIPAL SECRETARY MINISTRY OF LANDS, HOUSING
AND URBAN DEVELOPMENT.....1ST
RESPONDENT
THE NATIONAL LAND COMMISSION.....2ND
RESPONDENT
CHIEF LAND REGISTRAR.....3RD
RESPONDENT
OFFICE OF THE LAND REGISTRAR KILGORIS.....4TH
RESPONDENT
THE DIRECTOR KENYA SURVEY.....5TH
RESPONDENT
THE HON. ATTORNEY GENERAL.....6TH
RESPONDENT
COUNTY GOVERNMENT OF NAROK.....7TH
RESPONDENT
LAND ADJUDICATION OFFICER, TRANSMARA WEST.....8TH
RESPONDENT

RULING

1. This Ruling relates to the application by way of Notice of motion dated 8th July 2025. The first prayer for joinder of the 9th Respondent, the

chief land Adjudication and settlement officer was allowed thus prayer 1, 2 and 5 have been overtaken by events and hence this ruling relates substantially to prayers 3 and 4 of the application, in which the Applicants seek;

- (i) Spent.
- (ii) Spent.
- (iii) That upon grant of prayer 1, the Honourable court be pleased to issue an order compelling the 9th Respondent to furnish the petitioners with a certified copy of the Kimintent Adjudication section report and or register for sections "E" and "F" by the adjudication committee appointed on the 13th of March 1989.
- (iv) That in default of compliance, this Honourable court can be pleased to hold the Chief Land Adjudication and Settlement officer in contempt and he be summoned to show cause why he should not be held in contempt of court.

2. The court shall not replicate grounds a-c of the application as the same relate to prayers 1, 2 and 5 of the application which have already been allowed and the grounds specifically to support prayers 4 or 5 of the application are *interalia*;

- (i) The 9th Respondent is the lawful custodian of the adjudication register relating to Kimintent Adjudication section report and register for sections E and F, and formal request for purposes of the records have not been acceded to.
- (ii) That he said information is important to the petition herein.
- (iii) The petitioners are entitled to said adjudication register under Article 35 of the Constitution and section 4 of the Access to Information Act and refusal to grant the same amounts to violation of the Applicants/Petitioners right under Articles 35, 47 or 50 of the constitution.

3. The supporting affidavit in support of the application reiterates the grounds in support of the application and has annexed a copy of an

authority to depone, a copy of the Amended Petition, as well as a copy of letter dated 12th May 2025.

4. The 8th Respondent through Mr. Justus Levu opposed the Application vide his Replying affidavit dated 26.9.2025 in which he deposes as follows;
 - (i) That the 9th Respondent Chief Land Adjudication and Settlement officer does not legally exist.
 - (ii) That the Adjudication register for Kiminent E was completed on the 11th April 2023 and forwarded to the Director of Land Adjudication and Settlement on 18th July 2023 and a certificate of finality issued on 25th May 2023, titles processed and issued on 1st September 2023, while the adjudication register for Kiminent F had been completed earlier on 28th April 2022, forwarded to the Director of Land Adjudication and Settlement on 20th July 2022 certificate of finality issued on 30th November 2022, titles processed and issued on 15 December of 2022.
 - (iii) Once the adjudication register is sent to the Director of the Land Adjudication and Settlement, the director forwards the register to the Chief Land Registrar who causes registration in accordance with the adjudication register and the demarcation map is forwarded to the Director of survey and it then becomes the Registry Index Map.
 - (iv) The demarcation map and the adjudication record collectively are collectively known as adjudication register, ceases to exist once there are sent to the Director of survey and Chief Land Registrar.
 - (v) That the Registry Index Map and searches are public documents available on application and payment of requisite fees.
5. The court directed filing of submissions in respect of prayers 3 and 4 for application.

6. Mr. Rana for the Respondents indicated that he would entirely rely on the Replying affidavit of Mr. Levu without the need to file written submissions while leave was granted to Mr. Nandi counsel for the Petitioner/Applicants, 7 days to file a further affidavit if he needed to, as well as the submissions to prosecute his client's application.
7. The Applicant did not file the further affidavit but filed the written submissions, framing 3 issues for determination and submitting on the said issues.
8. The Applicant submits that under section 25(1) of the Land Adjudication Act, an Adjudication officer prepares and maintains an Adjudication register in a particular adjudication section?
9. That there is a constitutional right to Information or Fair Administrative Action provided for under Article 35(1) (a) allowing citizens the right to access information held by the state. Reliance was placed on the decisions in the cases of Nairobi Law monthly versus Kenya Electricity Co. Ltd and 2 Others as well as Mbogho and 8 others vs. Director Lands Adjudication and Settlement and 4 Others.
10. The Applicant submits further that the court has jurisdiction to punish the 9th Respondent for contempt of court in the event of non-compliance with the order.
11. On costs the Applicant submits for costs to be awarded to them.

Issues for Determination.

- (i) Whether or not the 9th Respondent the Chief Lands Adjudication and Settlement officer in the petition is the proper and competent party for purposes of this application?
- (ii) Whether or not the application is merited?
- (iii) Who bears the costs of the application?

Analysis and Determination.

12. In his Response the 8th Respondent alluded to the preparation of an adjudication register which comprises of the demarcation map as well as the adjudication record. The Adjudication register is ordinarily sent to the Director of the Land Adjudication and Settlement who then forwards the same to the Chief Land Registrar as well as well as the Director of Survey.
13. The 8th Respondent deponed that the 9th Respondent as sued, to wit, the Chief Land Adjudication and Settlement officer's office does not exist.
14. From the Response, it follows that the correct 9th Respondent ought to have been the Director of the Land and Settlement as opposed to the Chief Lands Adjudication and Settlement office which office is non-existent.
15. Annexure DKK3, the letter dated May 2025, was thus addressed to non-existent office, and the 9th Respondent equally does not exist, it follows that if the court was to issue orders 3, the same would be directed to a non-existent office and possibly not implemented.
16. Accordingly, although prayer 1, 2 and 5 of the application were not opposed and were allowed the same related to non-existent office, which renders the Application before court defective.
17. Thus, in answer to issue number 1, the court finds that the Chief Land Adjudication and Settlement officer being a non-existent office to have been wrongly joined in the proceedings and the 9th Respondent is hereby struck out of the proceedings.
18. On the merits or otherwise application. The Applicant has placed reliance on the Nairobi Law monthly decision as well as the Mbogho decision alluded to earlier. However, the said decisions do not reflect the current position of the law, with regard to Application for Access to information.
19. The Respondent did not file submissions in respect of the application.

20. The Law on an application under Article 35 of the constitution seeking Access to information from a public body was settled by the Supreme court in its recent decision in the case of Alouchier vs. Senate and 2 Others Petition E014 of 2025 KESC 59 KCR delivered on 3rd October 2025. In this decision at paragraph 65 the Supreme court held *inter alia* that information should flow from the custodian of such information and the citizens should follow the prescribed procedure whenever they require access to information.
21. The said procedure was set out in the case of Njonjo Mue and Another vs. Chairperson of IEBC which position was reaffirmed in the Supreme court decision in Kenya Railways Corporation and 2 Others vs. Oloitia Omtatah.
22. The Supreme court held as follows, in the Alouchier vs. Senate decision ***“Article 35(1)(a) of the Constitution read with section 3 of the Access to Information Act would thus show without unequivocation that all citizens have the right to access information held by the state, or public agencies including bodies.....we recognise that information held by the state or state organs, unless for very exceptional circumstances, ought to be freely shared with the public. However, such information should flow from the custodian of such information to the recipients in a manner recognized under the law without under restriction to access of any such information. Further a duty has also been imposed upon the citizens to follow the prescribed procedure whenever they require access to any information. This duty cannot be abrogated or derogated from as any such derogation would lead to a breach and/or violation of the fundamental principles of access to information provided under the Constitution and the constituting provisions of the law. It is a two-way channel where the right is to be balanced with the obligation to follow due to process”***.

23. From the above excerpt, it follows that an application for access to information must be first made to the custodian, and when it is rejected there an internal process to be exhausted before filing in court.
24. The Applicant exhibited DKK3 a letter sent to the Chief Land Adjudication and Settlement officer who is firstly not the custodians of the information, hence in that regard rendering the application defective the process, but still the set out at section 14 of the Access to information Act requiring a challenge to the decision to refuse access to information to be made in writing to the commission on Administration of justice for a review of the public entity's decision, such a request is lodged within 30 days of the public entity decision. An appeal lies with the High court against the decision of the Administration of justice, was equally not followed and exhausted.
25. The Applicants herein only exhibited letter to the Chief Lands Adjudication and Settlement officer. They did not exhaust the mechanism set out under section 14 of the Access to information Act, as stated in the Njonjo Mue case.
26. The upshot is that the application is not only defective for having sought orders against a non-existence office which is not custodian of the information but also failing to exhaust the internal remedies.
27. The upshot is that Application is therefore struck out with costs in the cause.

Dated at Kilgoris this 8th day of December 2025.

Hon. M. N. Mwanyale.
Judge.

In the presence of:

CA - Emmanuel/Sylvia/Sandra

Mr. Nandi for the Petitioner

Mr. Nderitu h/b for Mr. Ranah for 1st, 3rd to 6th and 8th Respondents