

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT VOI**  
**ELC PETITION NO. E006 OF 2025**

**JEREMIAH KINANGUKA KIBANGA**

**RICHARD NIXON OTANO**

**GABRIEL KAZEE**

**NICHOLAS MUNUVE MUNA & 69 OTHERS.....**

**PETITIONERS**

**=VERSUS=**

**LAND ADJUDICATION AND**

**SETTLEMENT OFFICER-TAVETA.....1<sup>ST</sup>**

**RESPONDENT**

**CABINET SECRETARY MINISTRY OF LANDS, PUBLIC**

**WORKS,**

**HOUSING AND URBAN DEVELOPMENT .....2<sup>ND</sup>**

**RESPONDENT**

**THE HON. ATTORNEY GENERAL.....3<sup>RD</sup>**

**RESPONDENT**

**RULING**

1. This Ruling is in respect to the Petitioners' application dated 30<sup>th</sup> October 2025 which seeks the following orders:-

- (i) This Honorable Court be pleased to issue an order directing the 1st Respondent to provide a certified Copy of the list of Beneficiaries from the sub-division of the Kachero Settlement Scheme on Land Registration Number LR NO.10287/7.**
- (ii) THAT the Honourable Court do issue such or further orders in the interests of justice.**
- (iii) Costs of the Application be granted to the Petitioners/Applicant.**

2. The application was premised on the grounds on its face and supported by the affidavit of Richard Nixon Ogaro sworn on 30<sup>th</sup> October 2025.

3. The application was opposed by the Respondents vide their Replying Affidavit sworn by Philemon Mutai on 27<sup>th</sup> November 2025.

4. The application was canvassed by way of written submissions pursuant to the directions issued by this Court. The Petitioner filed written submissions dated 27<sup>th</sup> December 2025 while the Respondents filed written submissions dated 8<sup>th</sup> January 2026.

5. It was the Petitioners case that they are residents of Kachero Settlement Scheme registration number L.R No. 10287/7, the list of beneficiaries from the subdivision of the scheme has no names from the individuals who have occupied plots numbers 1 to 116, they have requested for those details from the 1<sup>st</sup> Respondent but to date no response has been issued.
6. It was contended that the process lacks credibility, openness and there is total opaqueness since the details of the new settlers have not been provided and thus they seek this courts intervention to direct the 1<sup>st</sup> Respondent to provide a certified list of the new beneficiaries from the subdivision of L.R No. 10287/7.
7. In their written submissions, Counsel submitted on two issues, whether the reliefs sought can be granted and whether they are entitled to costs of the application.
8. It was argued that the court is not powerless and the fundamental duty of the court is to do justice. The Petitioners reside in the said property and they are in dire need of the certified list of beneficiaries to enable them proceed with the matter. Reliance was made to Article 35

of the Constitution of Kenya and the provisions of Section 1A and 1B of the Civil Procedure Act.

9. The Court was urged to grant the reliefs sought together with costs of the application.

10. In opposing the application, the Respondents averred that the application is another attempt to delay the proceedings herein and further to frustrate the legitimate squatters from taking possession of their lawful parcels and they have been unlawfully restrained by the 1<sup>st</sup> Petitioner.

11. It was further averred that the information sought ought to have been requested prior to filing of the Petition and further the Petitioners did not prior to filing of the application invoke of comply with the provisions of the Access to Information Act and as such the threshold for grant of the said relief has not been met.

12. In their written submissions, Counsel submitted on the following issues; whether the petitioners request circumvent the provisions of the Access to Information Act and hence violates the doctrine of exhaustion, whether the petitioners are on a fishing expedition and seeks to

delay the matter and whether the application and conduct of the petitioners is an abuse of the court process.

13. Citing Article 35 of the Constitution, Sections 9 to 15 of the Access to Information Act and the cases of **Geoffrey Muthiga Kabiru versus Samuel Munga Henry and 1756 others 2015 eKLR, Kenya Tea Development Agency Management Services Limited & another v AIG Kenya Insurance Company Limited [2022] KEHC 662 (KLR) and Habiba Ali Mursai & 4 others v Mariam Noor Abdi [2021] KEELC 190 (KLR)**,

it was argued that where an act of parliament provides for a procedure to be followed a party is compelled to follow that particular procedure to the later including where a remedy for redress is set out it must be exhaustively followed before the court's powers are invoked. The application before the court is an attempt to obtain information to which the petitioners will use to amend their prematurely drafted petition. It is manifestly a fishing expedition whose aim is to delay the hearing of the petition. It will open the petition up to further attempt to amend it, including left out perceived facts and change or alter the nature of the petition. The role of the court in an

adversarial system is to be an arbiter and not be used in an investigative role. The courts cannot be used to supply documents to a party for them to amend pleadings in an ongoing case and this defeats the purpose of an adversarial judicial system.

14. The court was urged to dismiss the application with costs.

15. Having considered the application, rival affidavits filed and written submissions of the parties, the salient issue for determination is whether the Petitioners have met the threshold for grant of the reliefs sought.

16. Article 35 (1) (b) of the Constitution states that 'Every citizen has the right of access to information held by another person and required for the exercise or protection of any fundamental right or freedom.' In my view, in order to enforce this right, a citizen claiming a right to access information must not only show that the information is held by the person from whom it is claimed; the citizen must go further and show that the information sought is required for the exercise or protection of another right.

17. In this Petition, the petitioners are seeking orders directing the 1st Respondent to provide a certified Copy of the list of Beneficiaries from the sub-division of the Kachero Settlement Scheme on Land Registration Number LR NO.10287/7.
18. It is worth noting that access to information is a fundamental right enshrined at Article 35 of the Constitution of Kenya. The enactment of the Access to Information Act, Cap 31 of 2016 which was for the purposes of ensuring that the modalities of accessing such information is realized pursuant to the provisions of Article 35 of the Constitution of Kenya.
19. In considering the Petitioners request, the Court ought to be satisfied that the party seeking for the said information has complied with the applicable provisions of the law. In pronouncing itself on a similar issue the Supreme Court of Kenya in the case of **Aluochier v Senate & 2 others (Petition E014 of 2025) [2025] KESC 59 (KLR) (3 October 2025) (Judgment)** held that the procedure available under the Access to Information Act must be complied with.

20. It is worth noting that the Access to Information Act No. 31 of 2016 enforces the right of citizens to access information as outlined in Article 35 of the Constitution. Section 5 of the Act details the procedures for disclosing information by public entities, including the decision-making process, channels of supervision, accountability, and norms for fulfilling their functions.

21. If a decision has been made to refuse access to the information requested, Section 14 of the Act states that an applicant may submit a written request to the Commission on Administrative Justice for a review of the public entity's decision. Such a review should be requested within thirty days of the public entity's decision. Sections 20 to 23 outline the broad mandate and functions of the Commission in its inquiries, including investigative roles. A person who is dissatisfied with the commission's decision may appeal to the High Court within 21 days of the order being issued. See also the case of **Communist Party of Kenya vs Nairobi Metropolitan Services & 3 Others** [2022] eKLR.

22. In the instant case the Petitioners have failed to demonstrate any compliance to the said provisions and it

therefore follows that the threshold for grant of the reliefs sought has not been met.

23. In conclusion, the Petitioners application dated 30<sup>th</sup> day of October 2025 fails in the circumstances. Each party to bear own costs of the same.

**Dated, Signed and Delivered Virtually this 21<sup>st</sup> day of January 2026.**

**E. K. WABWOTO**  
**JUDGE**

**In the presence of:-**

**Mr. Mwazighe for the Petitioners.**

**Mr. Penda for the 1<sup>st</sup> to the 3<sup>rd</sup> Respondents.**

**Court Assistant: Mary Ngoira.**