



**Kibanga & 72 others v Land Adjudication and Settlement Officer-
Taveta & 2 others (Environment and Land Petition E006 of 2025)
[2025] KEELC 5519 (KLR) (Environment and Land) (25 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5519 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND PETITION E006 OF 2025**

EK WABWOTO, J

JULY 25, 2025

BETWEEN

**JEREMIAH KINANGUKA KIBANGA 1ST PETITIONER
NIXON RICHARD OTANO 2ND PETITIONER
GABRIEL KAZEE 3RD PETITIONER
NICHOLAS MUNUVE MUNA & 69 OTHERS & 69 OTHERS & 69 OTHERS &
69 OTHERS & 69 OTHERS & 69 OTHERS 4TH PETITIONER**

AND

**LAND ADJUDICATION AND SETTLEMENT OFFICER-TAVETA 1ST
RESPONDENT
CABINET SECRETARY MINISTRY OF LANDS PUBLIC WORKS, HOUSING
AND URBAN DEVELOPMENT 2ND RESPONDENT
THE HON. ATTORNEY GENERAL 3RD RESPONDENT**

RULING

1. This Ruling is in respect to the Petitioners' application dated 29th June 2025 which application seeks for the following orders:-
 - i. Spent...
 - ii. That this Honourable Court be pleased to issue an order restraining the Respondents, their servants, agents, workers or any person acting under their instructions, from trespassing



and erecting fence or interfering with the suit property in any manner pending hearing and determination of this application.

- iii. That this Honourable Court be pleased to issue an order restraining the Respondents, their servants, agents, workers or any person acting under their instructions, from trespassing and erecting fence or interfering with the suit property in any manner pending hearing and determination of the Petition.
 - iv. That this Honourable Court be pleased to issue any other order it deems fit in the interest of justice.
 - v. Costs of this application be provided for.
2. The application was premised on the grounds on its face and supported by the affidavits sworn on 29th June 2025 and 18th July 2025 by Jeremiah Kinanguka Kibanga.
 3. It was deposed that despite the court granting orders in restraining the Respondents, the Respondents have since deployed a different strategy and have cleared cutlines and have started erecting an electric fence around the suit property and that the fence will lock the Petitioners inside their homes as they will not be in a position to make any movement. It was averred that the Respondents have also not disclosed any public amenities and or utilities which are being maintained and as such they are being cunning in their actions.
 4. The application was opposed by the Respondents vide a Replying Affidavit sworn by Philemon Mutai on 11th July 2025. It was deposed that the application is frivolous and an outright abuse of court process for the reason that shortly after directions in respect of the suit being given on the 18th June 2025, Applicants herein proceeded to bring this application whereas this court had made orders, inter alia:-
 - a. That the Respondents by themselves, their agents be restrained from evicting or in any way evicting the Petitioners.
 - b. That the Respondents by themselves, their agents, employees etc restrained from harassing or intimidating the Petitioners.
 5. It was averred that pursuant to the said orders the Respondents have been abiding by the said orders and not evicted or in any interfered with the Petitioners'/Applicants' use and occupation of the suit property.
 6. It was contended by the Respondents that the said orders did not and does not extend to prohibiting the Respondents from executing their public functions, performing routine maintenance on essential public amenities, and protecting public utilities from wasting away and destruction by the forces of nature and natural wear and tear in the entire administrative jurisdiction where the suit property lies. This is evidenced by the annexures to the application to the effect of routine maintenance and protective measures on the suit properties.
 7. It was further contended that pursuant to the aforesaid ordinary public administration and routine maintenance of public utilities and public works in and around the suit property have been ongoing, including road and infrastructure maintenance and upgrading. That the said public works taking place are intended for the entirety of the Taita Taveta and outside regions benefit and extend beyond the suit property to the entirety and benefit of the County and further that the Petitioner/Applicants' attempt to characterize the ongoing public works as an attempt to render the court orders (in)directly as foil or defeat the same, or as an impediment to their enjoyment, use and entitlement to the suit property is not only false, but outrightly misleading.



8. It was deposed that the orders sought amount to hamstringing the Respondents from continuing and or performing their constitutional and statutory mandate.
9. It was contended that the said application also seeks to accord the Petitioners a second bite to the cherry and that the Petitioners claims borders on generalization and imputations that are bit amorphous claims. The court was urged to dismiss the application.
10. Having considered the application and the rival affidavits filed, the main issue for consideration is whether the application is merited to warrant the grant of the orders sought.
11. Before I consider the said issue, it is worth noting that on 25th June 2025 this court upon considering an earlier application filed by the Petitioners did grant orders restraining the Respondents from harassing, intimidating and evicting any of the Petitioners. The Petitioners have now moved this court again with another application the gist of which they seek orders restraining the Respondents from trespassing and erecting fence or interfering with the suit property in any manner pending the hearing and determination of the Petition. The Respondents on the other hand have argued that the said application seeks a second bite of the cherry by the Petitioners and further that the said orders if granted will amount to hamstringing the Respondents from continuing and performing the constitutional and statutory mandate. Since the Respondents are undertaking routine maintenance of public utilities and public work in and around the property which have been ongoing includes road and infrastructure maintenance and upgrading.
12. Having considered the affidavits of the parties and further pursuant to the orders issued on 25th June 2025, the Petitioners have not demonstrated how the actions of the Respondents have led to any actions of eviction, harassment and intimidation and as such it is the view of the court that the said application seeks to relitigate the issues raised in the earlier application dated 11th June 2025. This in essence amounts a piecemeal litigation of the Petition.
13. In view of the foregoing, this court is not satisfied that the Petitioners have laid any basis to warrant the grant of the orders sought and as such it is the finding of this court that the application is not merited.
14. Consequently, the application dated 29th June 2025 is hereby dismissed with an order that each party to bear own costs of the application.

DATED, SIGNED AND DELIVERED VIRTUALLY/OPEN COURT AT VOI THIS 25TH DAY OF JULY 2025.

E. K. WABWOTO

JUDGE

In the presence of:-

Mr. Mwzighe for the Petitioners.

Mr. Penda for the Respondents.

Court Assistant: Mary Ngoira.

