



Gandani (Suing on behalf of the Gandani Family) v National Land Commission & 2 others (Environment & Land Petition E003 of 2025) [2025] KEELC 3546 (KLR) (30 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3546 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND PETITION E003 OF 2025**

**FM NJOROGE, J
APRIL 30, 2025**

BETWEEN

THOMAS BENJAMIN HARE GANDANI (SUING ON BEHALF OF THE GANDANI FAMILY) PETITIONER

AND

NATIONAL LAND COMMISSION 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

COUNTY GOVERNMENT OF KILIFI 3RD RESPONDENT

RULING

1. The Petitioner instituted this suit by way of a Petition dated 14/1/2025 seeking, inter alia, an order directing the 1st Respondent to expedite the processing of the Gandani clan’s compensation claim for compulsory acquisition of a parcel of land identified as Buni/Kisimani/813 (the suit property). Alongside the Petition, the Petitioner filed a Notice of Motion application dated 14/1/2025 under Articles 22, 23 (3) (c) and 162 (2) (b) of *the Constitution* of Kenya, 2010, Sections 1A, 1B & 3A of the *Civil Procedure Act*; and Rule 23 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, which is the subject of this ruling. The Petitioner sought the following interim orders: -

1. Spent;
2. Spent;
3. That pending the hearing and determination of the Constitutional Petition herein, a conservatory order do issue restraining the 3rd Respondent, whether by itself, its servants, agents, or any other person acting under its authority, from alienating, transferring, developing,



charging, leasing, disposing of, or in any other manner interfering with the parcel of land known as Buni/Kisimani/813;

4. That the costs of this application be provided for;
 5. That this Honourable Court be pleased to grant such further or other orders as it may deem just and expedient in the circumstances.
2. The application is premised on the grounds set out on the face of the Motion, and is supported by an affidavit sworn on 21/2/2025 by the Petitioner. The Petitioner's case was that the suit property measuring approximately 15.34 Ha has historically belonged to the Gandani clan who voluntarily agreed to donate 3 acres for the establishment of a school; that upon subsequent enquiries, they discovered that the 3rd Respondent had caused or permitted the whole of the suit property to be registered under trusteeship, on the premise that the rightful owners were unknown during the 1983 land adjudication exercise. As a result, the 3rd Respondent has reserved the suit property for other public development projects, disregarding the Petitioner's interest and without paying any compensation; that the Petitioner engaged the 1st Respondent who confirmed the Petitioner's legitimate interest in the suit property and advised them to lodge a claim on historical land injustice. The Petitioner averred that despite the 1st Respondent's acknowledgment of their interest, and follow ups, there has been no tangible progress in compensating the Petitioner's clan, yet the 3rd Respondent has continued dealing with the suit property. The Petitioner is apprehensive that if the orders sought are not granted, the petition will be rendered nugatory and occasion the Petitioner's clan irreparable harm.
3. When the Motion came up on 5/3/2025, respondents were ordered to file their responses within 14 days. As at the time of writing this ruling, they had not complied. It is therefore safe to conclude that the application was unopposed. On the same date, the court directed parties to file written submissions and by the expiry of the time limited by court for doing so no submissions from either party had been filed.

Analysis And Determination

4. The Supreme Court in *Peter Munya Gatirau v Dickson Mwenda Kithinji & 2 others* [2014] eKLR pronounced itself on conservatory orders: -

“Conservatory orders’ bear a more decided public Law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as the “prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the applicant’s case for orders of stay. Conservatory orders consequently, should be granted on the inherent merit of the case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes However, in the context of *the Constitution* of Kenya, 2010, a third condition may be added, namely public interest.... That it is in the public interest that the order of stay be granted. This third condition is dictated by the expanded scope of the Bill of Rights, and the public spiritedness that run through *the Constitution*.”



5. Similarly, in *Kenya Association of Manufacturers & 2 others v Cabinet Secretary – Ministry of Environment and Natural Resources & 3 others* (2017) eKLR the Court had this to say about the grant of conservatory orders: -

“In an application for a conservatory order, the Court is not invited to make any definite or conclusive findings of fact or Law on the dispute before it because that duty falls within the jurisdiction of the Court which will ultimately hear the substantive dispute. The jurisdiction of the Court at this point is limited to examining and evaluating the materials placed before it, to determine whether the applicant has made out a prima facie case to warrant grant of a conservatory order. The Court is also required to evaluate the materials and determine whether, if the conservatory order is not granted, the applicant will suffer prejudice. Thirdly, it is to be borne in mind that conservatory orders in public Law litigation are meant to facilitate ordered functioning within the public sector and to uphold the adjudicatory authority of the court in the public interest. (emphasis mine)

6. It follows therefore that the conditions for granting conservatory orders largely mirror the ones for grant of injunction with some degree of modification. Guided by the case of *Mrao Ltd v First American Bank of Kenya Ltd & 2 Others* (2003) KLR 125, a prima facie case in a civil application “includes but is not confined to a genuine and arguable case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later”.
7. The question that follows is whether the Petitioner tendered any material to this court to convince the court to conclude there exists a right which has been allegedly infringed by the Respondent in relation to him to warrant an explanation from the infringing party.
8. The Petitioner’s case is quite straightforward. He averred that the suit property was at all material times owned by members of his clan or forefathers; that his said clan agreed to donate a portion of it to the community for construction of Gandani Primary School, only to later find out that the 3rd Respondent had caused the entire suit property to be registered under trusteeship. The Petitioner exhibited a copy of official search from the land registry indicating that the suit property is currently reserved for another school, Bungu Primary School.
9. When members of the Petitioner’s clan escalated their grievance to the 1st Respondent, the latter acknowledged and recommended in the meeting dated 21/5/2018 that the clan seek compensation from the government if they feel aggrieved. Although the recommendation or what was termed the “way forward” in the minutes of that meeting does not conclusively mean much at this stage, I am satisfied that the Petitioner has demonstrated a prima facie case in the circumstances.
10. On whether the Petitioner will suffer irreparable loss if the orders are not granted, I am guided by the case of *Nguruman Ltd v Jan Bonde Nielsen & 2 Others* [2014] eKLR where the Court of Appeal considered irreparable injury as follows: -

“On the second factor, that the applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, prima facie, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is, injury that is actual, substantial and demonstrable; injury that cannot “adequately” be



compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is of such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”

11. Looking at the Petitioner’s supporting affidavit, the Petitioner deposed under paragraph 2 thereon that his clan has been utilizing the suit property for generations for both agricultural activities and cultural practices. The Petitioner did not demonstrate in particular, the activities and practices being undertaken on the suit property that would occasion them irreparable loss if the orders sought herein are not granted, or how they would suffer such loss. The Petitioner’s apprehension that the 3rd Respondent will develop and alienate parts of the suit property, is to this court merely speculative and does not warrant this court’s exercise of discretion in his favour. My finding is therefore that the Petitioner has failed on this second limb. In any event, the Petitioner’s ultimate relief sought in the Petition is an award for compensation, meaning that, even if the conservatory order is not granted and the Petition is successful, the Petitioner will not suffer any irreparable loss.
12. The upshot is that the Notice of Motion dated 14/1/2025 is unmerited. It is hereby dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 30TH DAY OF APRIL 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

