



REPUBLIC OF KENYA



**KENYA LAW**  
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**Leyagu v National Land Commission & 3 others (Environment & Land  
Petition E008 of 2021) [2022] KEELC 2608 (KLR) (21 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 2608 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU  
ENVIRONMENT & LAND PETITION E008 OF 2021**

**YM ANGIMA, J**

**JULY 21, 2022**

**BETWEEN**

**RICHARD NCHAPI LEYAGU ..... PETITIONER**

**AND**

**NATIONAL LAND COMMISSION ..... 1<sup>ST</sup> RESPONDENT**

**LAND REGISTRAR NYANDARUA COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**MARY WACERA NGUGI ..... 3<sup>RD</sup> RESPONDENT**

**PETER KAMAU MUTUGI ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. By a notice of motion dated November 8, 2021 brought under Order 40 rules 1(a), 2(1), 4(1) of the [Civil Procedure Rules](#) 2010 and all enabling provisions of the law, the Petitioner sought a conservatory order or interim injunction staying the hearing of Nyahururu CMCC No.59 of 2020 – Mary Wacera Ngugi –vs- Richard Nchapi Leyagu pending the hearing and determination of the petition.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the Petitioner on November 8, 2022 and the exhibits thereto. The Petitioner contended that he was the registered proprietor of Title No. Nyahururu Municipality Block 8/702 (the suit property) and that the 1<sup>st</sup> Respondent (NLC) had unlawfully and in violation of Article 47 of [the Constitution](#) of Kenya made a determination to deprive him of the suit property by directing the 2<sup>nd</sup> Respondent to cancel his registration without according him a hearing. It was further contended that the said determination was made by the NLC in 2019 without jurisdiction to do so.
3. The Petitioner further contended that in reliance upon the said impugned determination the 3<sup>rd</sup> Respondent filed the aforesaid suit before the magistrate’s court seeking recovery of the suit property and that she intended to tender the said determination as evidence in the prosecution of the suit. It



was the Petitioner's case that unless the said proceedings were stayed pending determination of the petition, the outcome of the petition might be rendered nugatory. Consequently, the Petitioner prayed for an interim stay of those proceedings to enable him challenge the determination of the NLC made on June 14, 2019.

4. Although the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents entered appearance to the petition, they did not file any responses to the application for interim orders despite being granted an opportunity to do so.
5. When the application was listed for inter partes hearing, it was directed that the same shall be canvassed through written submissions. The record shows that the Petitioner filed his submissions on May 4, 2022 but none of the Respondents had filed submissions by the time of preparation of the ruling.
6. The court has considered the Petitioner's notice of motion dated November 8, 2021 as well as the submissions and the material on record. The court is of the opinion that the main question for determination is whether or not the Petitioner has made out a case for the grant of a conservatory order to stay the proceedings before the magistrate's court. The court has noted that the Respondents did not file any response to the application. The Petitioner submitted that he had satisfied the requirements for the grant of a conservatory order to stay the proceedings before the trial court. It was contended that it would be prejudicial to the Petitioner to allow the suit to proceed to full hearing whereas the instant petition was challenging the determination of NLC on the ownership of the suit property. The Petitioner cited the cases of *Centre for Rights Education and Awareness (CREAW) and 7 others – vs- Attorney General* [2011] eKLR and *Progress Welfare Association of Malindi & Others –vs- County Government of Kilifi & 4 Others* [2020] eKLR in support of his application and urged the court to allow the application.
7. It is evident from the petition that the Petitioner is challenging the determination of NLC directing the 2<sup>nd</sup> Respondent to expunge his registration details from the land registrar on the basis of a complaint lodged by the 4<sup>th</sup> Respondent. It is also evident from the copies of the pleadings before the trial court that the 3<sup>rd</sup> Respondent pleaded that the NLC had made a determination to the effect that the 4<sup>th</sup> Respondent was the rightful owner of the suit property and directed the 2<sup>nd</sup> Respondent to amend his records accordingly.
8. The court is of the opinion that unless a stay of proceedings is granted in the circumstances, the outcome of the instant petition might be rendered nugatory. The trial court may well receive and act upon the impugned determination in the absence of a stay to the prejudice of the Petitioner who has a pending petition challenging the legality and constitutionality of the said determination.
9. In the case of *Gatirau Peter Munya –vs- Dickson Mwenda Kithinji & 2 Others* [2014] eKLR the Supreme Court of Kenya described a conservatory order as follows:

“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 the 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 a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.”



10. The upshot of the foregoing is that the court is satisfied on the basis of the material on record that the Petitioner has made out a case for the grant of the conservatory order sought. Accordingly, the court makes the following orders for disposal of the notice of motion dated November 8, 2021:
- a. A conservatory order be and is hereby granted staying further proceedings in Nyahururu CMELC No. 59 of 2020 – Mary Wacera Ngugi –vs- Richard Nchapi Leyagu pending the hearing and determination of the petition.
  - b. The petition shall be mentioned on October 11, 2022 for directions on the hearing of the petition.
  - c. The costs of the application shall be in the cause.

**RULING DATED AND SIGNED AT NYAHURURU AND DELIVERED VIA MICROSOFT TEAMS PLATFORM THIS 21<sup>ST</sup> DAY OF JULY, 2022.**

In the presence of:

Mr. Okemwa holding brief for Mr. Abuor for the Petitioner

N/A for the 1<sup>st</sup> Respondent

N/A for the Attorney General for the 2<sup>nd</sup> Respondent

N/A for the 3<sup>rd</sup> and 4<sup>th</sup> Respondents

C/A - Carol

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**Y. M. ANGIMA**

**JUDGE**

