



**Karanja & 14 others v National Land Commission & 6 others (Environment & Land Petition E002 of 2023) [2024] KEELC 6654 (KLR) (9 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6654 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND PETITION E002 OF 2023**

**JG KEMEI, J**

**OCTOBER 9, 2024**

**IN THE MATTER OF THE VIOLATION AND/OR THREATENED  
VIOLATION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER  
ARTICLES 28, 35, 40 & 47 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF THE INTERPRETATION AND ENFORCEMENT  
OF ARTICLES 1, 2, 3, 10, 19, 20, 21, 22, 23, 28, 40, 47, 60, 62, 64,  
67, 159, 258 & 259 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF SECTIONS 3, 4, 5, 7 & PART VIII OF THE LAND ACT NO. 6  
OF 2012 AND THE LAND (ASSESSMENT OF JUST COMPENSTATION) RULES, 2017**

**AND**

**IN THE MATTER OF SECTIONS 24, 25 & 26 OF  
THE LAND REGISTRATION ACT NO. 3 OF 2012**

**AND**

**IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTION ACT NO. 4 OF 2015**

**AND**

**IN THE MATTER OF THE IRREGULAR AND UNLAWFUL  
COMPULSORY ACQUISITION OF THE PETITIONERS' PROPERTIES**

**BETWEEN**

**MARY MUKUHI KARANJA ..... 1<sup>ST</sup> PETITIONER  
CAROLYNE AMINA OKALO ..... 2<sup>ND</sup> PETITIONER  
DINAH NKIROTE KOBIA ..... 3<sup>RD</sup> PETITIONER  
SELINA WANJIKU NGUGI ..... 4<sup>TH</sup> PETITIONER**



PHANICE KAPKARICH NYANGA .....	5 <sup>TH</sup> PETITIONER
VITALIS LUMBASI MUKE .....	6 <sup>TH</sup> PETITIONER
PETER MAINA MWIRIGI .....	7 <sup>TH</sup> PETITIONER
JOSPHAT MAINA MBUGUA .....	8 <sup>TH</sup> PETITIONER
REGINA WANGO KASAU .....	9 <sup>TH</sup> PETITIONER
RAPHAEL MWANGI MABUYA .....	10 <sup>TH</sup> PETITIONER
RONALD NAMASAKA MASINDE .....	11 <sup>TH</sup> PETITIONER
ELIZAPHAN MUURO MAINA .....	12 <sup>TH</sup> PETITIONER
STEPHEN KINYUA MABUYA .....	13 <sup>TH</sup> PETITIONER
MARJORIE NDANU KIVUVA .....	14 <sup>TH</sup> PETITIONER
MONICA WAIRIMU WAIKWA .....	15 <sup>TH</sup> PETITIONER

**AND**

NATIONAL LAND COMMISSION .....	1 <sup>ST</sup> RESPONDENT
LAND REGISTRAR, RUIRU .....	2 <sup>ND</sup> RESPONDENT
DIRECTOR OF SURVEY OF KENYA .....	3 <sup>RD</sup> RESPONDENT
CRETUM PROPERTIES LIMITED .....	4 <sup>TH</sup> RESPONDENT
THE DEPUTY COUNTY COMMISSIONER, RUIRU SUB-COUNTY .....	5 <sup>TH</sup> RESPONDENT
HON. INSPECTOR GENERAL POLICE .....	6 <sup>TH</sup> RESPONDENT
HON. ATTORNEY GENERAL .....	7 <sup>TH</sup> RESPONDENT

**RULING**

1. Vide their Application dated 27/12/2023 expressed under Sections 1A,1B, 3A of the [Civil Procedure Act](#), Order 40 Rules 1&4, Order 42 and Order 51 Rule 1 of the [Civil Procedure Rules](#), the Petitioners/Applicants seek Orders THAT;
  - a. Spent.
  - b. That the Honourable Court be pleased to grant interim orders preserving the Petitioners' properties as listed herein below, by restraining and/or prohibiting any further construction and/or development of a road on the said properties, pending inter parties hearing of the Application;



Petitioner(s)	Description of Property(ies)	Date of issuance of Registration and/or issuance of Title Deed
Mary Mukuhi Karanja	Ruiru Kiu Block 2/21447 & Ruiru Kiu Block 2/21448	29/01/2019
Carolyn Amina Okalo	Ruiru Kiu Block 2 (Githunguri)/25119	22/09/2023
Dinah Nkirote Kobia	Ruiru Kiu Block 2/12399	23/01/2019
Selina Wanjiku Ngugi	Ruiru/Kiu Block 2/8196 & Ruiru/Kiu Block 2/8197	26/04/2019
Phanice Kapkarich Nyanga	Ruiru Kiu Block 2/17906 & Ruiru Kiu Block 2/17907	16/03/2020
Vitalis Lumbasi Muke	Ruiru Kiu Block 2/17908	25/11/2020
Peter Maina Mwirigi	Ruiru/Kiu Block 2/16487	12/04/2016
Josphat Maina Mbugua	Ruiru Kiu Block 2 (Githunguri)/14446	16/10/2016
Regina Wango Kasau	Ruiru Kiu Block 2/9355	21/10/2020
Raphael Mwangi Mabuya	Ruiru Kiu Block 2/21446	12/09/2019
Ronald Namasaka Masinde	Ruiru Kiu Block 2/21444	10/11 /2021
Elizaphan Muuro Maina	Ruiru Kiu Block 2/9356 & Ruiru Kiu Block 2 (Githunguri)/8376	14/06/2013 & 22/08/2013
Stephen Kinyua Mabuya	Ruiru Kiu Block 2/21445	12/09/2019
Marjorie Ndanu Kivuva	Ruiru Kiu Block 2/18596	6/09/2019
Monica Wairimu Waikwa	Ruiru Kiu Block 2/18290	13/10/2022

- c. That the Honourable Court be pleased to grant an order for discovery of all documents in the Respondents' possession, that are related to the alienation and acquisition of the Petitioners' properties listed hereinabove, and the construction of a road on the same, pending inter parties hearing of the Application.



- d. That the Honourable Court be pleased to grant an order directing and/or compelling the 6<sup>th</sup> Respondent and the Officer Commanding Gatong'ora Police Station, to ensure the implementation and enforcement of the ex parte orders issued herein.
  - e. That the Honourable Court be pleased to grant a conservatory order preserving the Petitioners' properties as listed hereinabove and maintaining the status quo, by restraining and/or prohibiting any further construction and/or development of the road on the said properties, pending hearing and determination of the Petition.
  - f. That in the alternative and without prejudice to prayer 5 above, that the Honourable Court be pleased to grant an Order of Inhibition, preventing any further dealing with properties listed hereinabove, pending hearing and determination of this suit or otherwise unless with the authority of the Honourable Court.
  - g. Costs of the Application be awarded to the Applicants.
  - h. Any other relief that the Honourable Court may deem just and appropriate under the circumstances.
2. The Application is premised on the grounds on the face of it that the Applicants are the registered proprietors of the said properties holding valid title deeds issued by the Government of Kenya; the Government through the Respondents is currently building a road through the Applicants properties (hereinafter referred to as the Project) which are located on Ruiru Kiu Block 2 (formerly Githunguri Ranching). That the Applicants' properties are being delineated abruptly to pave way for the Project without public participation; prior notice of adherence to the laid down procedure for compulsory acquisition of land as enshrined in Article 40(3) of the Constitution of Kenya as read with Part VIII of the Land Act was not followed.
  3. Further that the construction of the road is currently ongoing and at advanced stages and unless the same is stopped, there is an acute risk of loss and irreparable damage that will render the Petition nugatory. That the petition raises salient issues of gross violation of human rights including the Applicants' rights to quiet and uninterrupted possession. They urged the Court to allow the Application as prayed.
  4. Rehashing the above grounds, the 11<sup>th</sup> Applicant Ronald Namasaka Masinde swore a Supporting Affidavit of even date and annexed a copy of Authority (RNM-1) – to plead on behalf of all Applicants. The deponent outlined the subject properties (suit properties) and annexed a bundle RNM-2a -2f being copies of the Applicants' title deeds and their identification cards. He avowed that some of the suit properties are developed while others are charged to secure interests of third parties for instance the 4<sup>th</sup> Applicant's two properties are charged in favor of Co-operative Bank of Kenya for a loan facility of Kshs4 Million.
  5. Opposing the Application, Mr Mburu Mungai, a Director of the 4<sup>th</sup> Respondent refuted the Petitioners' claim that the 4<sup>th</sup> Respondent is the contractor undertaking the road construction and averred that it has wrongly been sued. Interalia, he contended that the Respondent has not shown any iota of evidence to show any connection of the 4<sup>th</sup> Respondent to the claim of the Petitioners and urged the Court to strike out the 4<sup>th</sup> Respondent's name from the suit.
  6. Save for the 4<sup>th</sup> Respondent, the Application is not opposed by the rest of the Respondents.
  7. On 1/7/2024 directions were taken to canvass the Application by way of submissions.



8. At the time of writing this Ruling, only the 1<sup>st</sup> Respondent filed written submissions which I have read and considered.
9. The main issue for determination is whether the Application is merited.
10. The Applicants' case is that they are the registered owners of the suit properties as evidenced by copies of their Title deeds annexed as RNM2. Going by the Court record, their ownership averments have not been controverted. They also contend that the Government of Kenya through the Respondents has acquired interests in the properties via compulsory acquisition by initiating road construction works without following due process.
11. The Court of Appeal in Nairobi Civil Appeal 151 of 2011 *Invesco Assurance Co. Ltd Vs. MW (Minor suing thro' next friend and mother (HW))* [2016] eKLR defined a conservatory order as a judicial remedy granted by the Court by way of an undertaking that no action of any kind is taken to preserve the subject until the motion of the suit is heard. It is an order of status quo for the preservation of the subject matter.
12. Prior to that the High Court in *Centre for Rights Education and Awareness (CREAW) & Another Vs. Speaker of the National Assembly & 2 Others* (2017) eKLR emphasized that:-
  - “ 55. A party who moves the Court seeking conservatory orders must show to the satisfaction of the Court that his or her rights are under threat of violation, are being violated or will be violated and that such violation, or threatened violation is likely to continue unless a conservatory order is granted. This is so because the purpose of granting a conservatory order is to prevent violation of rights and fundamental freedom and preserve the subject matter pending the hearing and determination of a pending cause or petition.
  56. In other words, an Applicant should demonstrate to the Court that she/he has a prima facie case with a probability of success and that should the Court not grant the conservatory order sought, she/he will continue to suffer prejudice while awaiting determination and her/his cause.
  57. That is what Musinga J (as he then was) said in the case of Rights Education and Awareness (CREW) and 7 others v Attorney General [2011] eKLR, that at this stage a party seeking a conservatory order is only required to demonstrate that he has a Prima facie case with a likelihood of success and that unless the conservatory order is granted, there is a real danger that he will suffer prejudice as a result of the violation or threatened violation of *the Constitution*.
  58. A conservatory order would normally issue where there is real impending danger to violation of *the Constitution* or fundamental rights and freedoms with a consequence that a Petitioner or the public at large would suffer prejudice unless the Court intervenes and grants Conservatory orders. In such a situation, the Court would issue a conservatory order for purposes of preserving the subject matter of the dispute.”
13. Additionally Order 40 Rule 1 of the Civil Procedure Rules provides;
  - “ Cases in which temporary injunction may be granted [Order 40, rule 1.]
  - Where in any suit it is proved by affidavit or otherwise—



- (a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
- (b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the Court thinks fit until the disposal of the suit or until further orders.”

14. The guiding principles for the grant of orders of temporary injunction are well settled and are set out in the judicial decision of *Giella Vs. Cassman Brown* (1973) EA 358. This position has been reiterated in numerous decisions of the Courts in Kenya and in recent years in the case of *Nguruman Limited Vs. Jan Bonde Nielsen & 2 Others* CA No.77 of 2012 (2014) eKLR where the Court of Appeal held that;

“In an interlocutory injunction Application the Applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favour. These are the three pillars on which rest the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the Applicant is expected to surmount sequentially.”

15. No doubt therefore that the Applicants ought to, first, establish a prima facie case. In this case they have averred that they stand to lose their proprietary rights over the suit properties if the actions of the Respondents are not stopped. They attached copies of their Identification cards and title deeds to demonstrate ownership alongside photos of the impugned Project. As already stated the Applicants’ averments are not controverted and I therefore find that they have established a prima facie case in their favor.

16. Secondly, the Applicants have to demonstrate that irreparable injury will be occasioned to them if an order of temporary injunction is not granted. The judicial decision of *Pius Kipchirchir Kogo Vs. Frank Kimeli Tenai* (2018) eKLR provides an explanation for what is meant by irreparable injury and it states;

“Irreparable injury means that the injury must be one that cannot be adequately compensated for in damages and that the existence of a prima facie case is not itself sufficient. The Applicant should further show that irreparable injury will occur to him if the injunction is not granted and there is no other remedy open to him by which he will protect himself from the consequences of the apprehended injury.”

17. The Applicants have deposed on how some of the suit properties comprise their residential homes and some are charged to secure third party interests. In my view, therefore, if the Respondents proceed with the impugned Project, there is sufficient basis for the Applicants to claim the irreparable loss that will be occasioned to them.

18. Thirdly if the Court is in doubt, it should decide the Application on a balance of convenience. It must be appreciated that an interlocutory injunction is a discretionary equitable remedy and accordingly, the same will not be granted where it is shown that the Applicant’s conduct with respect to matters



pertinent to the suit does not meet the approval of a Court of equity. In my view the Applicants have satisfied the triple requirements for granting conservatory orders as prayed.

19. Final orders for disposal

- a. The Application is merited. It is allowed in terms of prayers e and g only.
- b. A conservatory order preserving the Petitioners' properties as listed hereinabove and maintaining the status quo, by restraining and/or prohibiting any further construction and/or development of the road on the said properties, be and is hereby granted pending hearing and determination of the Petition
- c. Costs shall be in favour of the Applicants.

20. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 9<sup>TH</sup> DAY OF OCTOBER, 2024 VIA MICROSOFT TEAMS.**

**J G KEMEI**

**JUDGE**

Delivered online in the presence of ;

Ms. Wanjiru HB for Ms. Wangui Kuria for 1<sup>st</sup> – 15<sup>th</sup> Petitioners/Applicants

Mr. Osoro for 1<sup>st</sup> Respondent

2<sup>nd</sup> and 3<sup>rd</sup> Respondents – Absent

Mr. Thimba for 4<sup>th</sup> Respondent

5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents - Absent

Court Assistants – Phyllis/Oliver

