



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mungania & 3 others v County Government of Meru & 6 others (Land Case  
Petition E010 of 2024) [2024] KEELC 7441 (KLR) (6 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 7441 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**LAND CASE PETITION E010 OF 2024**

**CK NZILI, J**

**NOVEMBER 6, 2024**

**IN THE MATTER OF THE CONTRAVENTION OF FUNDAMENTAL  
RIGHTS AND FREEDOM UNDER ARTICLES 27 (1) & (2),  
40, 47, 48 AND 50 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF ENFORCEMENT OF THE BILL OF RIGHTS  
UNDER ARTICLE 22, 23 AND 162 (2) (B) CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF SECTIONS 4, 5 (2) (B) & (C) & 6 OF  
THE FAIR ADMINISTRATION ACTION ACT NO. 4 OF 2015**

**AND**

**IN THE MATTER OF THE LAND ACT 2012**

**AND**

**IN THE MATTER OF THE LAND REGISTRATION ACT 2012**

**AND**

**IN THE MATTER OF THE NATIONAL LAND COMMISSION ACT 2012**

**AND**

**IN THE MATTER OF THE REGISTRATION OF TITLES ACT CAP 281 (REPEALED)**

**AND**

**IN THE MATTER OF THE REGISTERED LAND ACT CAP 300 (REPEALED)**

**IN THE MATTER OF THE ILLEGAL ALIENATION OF LAND REGISTRATION NUMBER  
TIGANIA/KIRIMANCHUMA/6 BELONGING TO KIRIMANCHUMA PRIMARY SCHOOL**

**BETWEEN**



**JOSEPH NGULU MUNGANIA ..... 1<sup>ST</sup> PETITIONER**  
**ZAKAYO MUGAMBI ..... 2<sup>ND</sup> PETITIONER**  
**JOHN MUTURIA MUNGANIA ..... 3<sup>RD</sup> PETITIONER**  
**PAULINE KENDI JULIUS ..... 4<sup>TH</sup> PETITIONER**

**AND**

**COUNTY GOVERNMENT OF MERU ..... 1<sup>ST</sup> RESPONDENT**  
**LAND REGISTRAR MERU ..... 2<sup>ND</sup> RESPONDENT**  
**NATIONAL LAND COMMISSION ..... 3<sup>RD</sup> RESPONDENT**  
**ADMINISTRATION POLICE COLLEGE MERU ..... 4<sup>TH</sup> RESPONDENT**  
**FULL GOSPEL CHURCH ..... 5<sup>TH</sup> RESPONDENT**  
**AFRICAN INDEPENDENT PENTECOSTAL CHURCH OF AFRICA**  
**(AIPCA) ..... 6<sup>TH</sup> RESPONDENT**  
**ATTORNEY GENERAL ..... 7<sup>TH</sup> RESPONDENT**

**RULING**

1. Through an application dated 16.9.2024, the applicants are seeking conservatory orders against the respondents restraining themselves, their agents, servants, employees, transferees, assignees, and anyone acting on their behalf, from dealing with the register to title L.R No. Tigania /Kirimanchuma/6 (the suit parcel), and its resultant subdivisions, L.R Nos Tigania/Kiramanchuma/235,236, 237, and 238.
2. The second prayer is for an injunctive order for the respondents by themselves, their agents, servants, employees, transferees, assignees and anyone acting on their behalf from entering, trespassing, alienating, constructing, and or interfering with the quiet user and occupation or otherwise dealing in any way with the suit parcels of land and the resultant subdivisions.
3. The grounds on the face of the motion are that the suit parcel is owned by Kirimanchuma Primary School (the school) and measures 10.374 acres; the 1<sup>st</sup> - 3<sup>rd</sup> respondents illegally, unprocedurally, and unlawfully caused the resultant subdivisions and allotted them to the 4<sup>th</sup> – 6<sup>th</sup> respondents, who are in the process of acquiring title deeds; the school shall be deprived of the suit parcel of land; the pupils and parents shall suffer irreparable loss.
4. In an affidavit sworn on 16.9.2024 by Joseph Ngulu Mungani, the 1<sup>st</sup> applicant, he avers that he has the authority to sue on his own behalf and on behalf of his co-applicants, representing the school; which consists of a pre-primary, primary, and junior secondary; parents and the community. Further, that the 4<sup>th</sup> respondent has commenced construction adjacent to the school, and the community is apprehensive of eminent noise pollution since it deals with weapons instruments and uses the school compound for its training.
5. Again, the 1<sup>st</sup> applicant avers that the respondents continue to cause untold suffering to the entire community, and unless the orders are granted, they will continue interfering with the school's proprietary rights. Further, the 1<sup>st</sup> applicant avers that the 4<sup>th</sup> respondent operates a canteen that is less than 10 meters from the school, separated by a barbed wire fence, hence causing much disturbance to



- the learners. Similarly, the 1<sup>st</sup> applicant avers that it is in the interest of justice, that the orders sought are granted to protect their interest. He annexed the authority, copies of the official search, copies of the land register, and photographs as J.N.M. "1-4".
6. The 2<sup>nd</sup> respondent opposes the application through a replying affidavit sworn on 2.10.2024 by J.M. Mwambia, the Land Registrar Tigania Central Sub-County. He avers that a meeting was held on 25.4.2014 for the establishment of the 4<sup>th</sup> respondent; whose proposal was unanimously approved as per the annexed minutes marked "JMM1".
  7. Further, the 2<sup>nd</sup> respondent avers that the title deed to the suit parcel is owned by the defunct Meru County Council and reserved for the school and as public land; further reservation to the 4<sup>th</sup> respondent is still in line with educational purposes.
  8. The green card is attached as "JMM2". Additionally, the 2<sup>nd</sup> respondent avers that by a letter dated 20.4.2024 to the Inspector General of the police the school's head teacher indicated that there was no dispute between the school and the 4<sup>th</sup> respondent and that the school was in support of "its" expansion.
  9. Similarly, the 2<sup>nd</sup> respondent depones that due procedure was followed in the reservation of the suit parcel to the various institutions. A scheme plan was prepared by the Director of the Physical Planning Department and approved the proposed subdivisions to the respondents. He attached the scheme plan as "JMM4".
  10. The 2<sup>nd</sup> respondent also avers the surveyor subdivided the parcels after mutation forms were done and surveyed the boundaries according to the approved scheme plan. Further, according to the search dated 2.3.2021, it was clear that the defunct Meru County Council is the proprietor of the suit parcel reserved for the school. Again, upon the subdivisions, the 2<sup>nd</sup> respondent avers that title registers were opened for the resultant subdivisions. He attached the mutation form, an official search, and copies of the register as "J.M.M. 5-7", respectively.
  11. Moreover, the 2<sup>nd</sup> respondent avers that public participation meetings were conducted on 25.6.2021 and 14.10.2022 at the Administration Police Leadership and Sports Center, to discuss the relocation of the school and the subdivision process. The 2<sup>nd</sup> respondent also avers that the 1<sup>st</sup> applicant had attended the initial meeting and agreed with the expansion of the 4<sup>th</sup> respondent, even though he expressed his reservations about the relocation of the school. According to the 2<sup>nd</sup> respondent, filing of the petition and subsequent application was an afterthought. The minutes are attached as "J.M.M. 8 & 9".
  12. In addition, the 2<sup>nd</sup> respondent avers that the construction of the 4<sup>th</sup> respondent is a holding area and no weapons are used. Therefore, he avers that the process was at an advanced stage and court orders should not be granted for the 1<sup>st</sup> applicant has not illustrated how they stand to suffer.
  13. The application is further opposed through replying affidavits sworn on 3.10.2024 by Henry Mithika and Naftaly Murangiri Wanjau as the chairpersons of the 5<sup>th</sup> and 6<sup>th</sup> respondents. They aver that the application as brought is dishonest and frivolous; the petitioners are out to steal a judicial match; they have no locus standi to sue on behalf of the school; the legal process was duly followed in the reservation and subdivision of the suit parcel; there is a similar suit Meru H.C. No. E002 of 2023 Attorney General vs Joseph Ngulu & 17 Others; that 5<sup>th</sup> & 6<sup>th</sup> respondent and the school live peacefully, and there is no dispute; the subdivisions were procedurally done and the resultant subdivisions approved on 9.1.2014; there is no change of ownership; the conditions have not been met to grant conservatory orders; the petitioners are out to grab the suit parcel for private use and that the application is incompetent and



- defective. They annexed copies of photographs, minutes, scheme plan, mutation form, and a copy of the register as "HGM1-5".
14. The 5<sup>th</sup> and 6<sup>th</sup> respondents also filed grounds of opposition dated 3.10.2024. They allege that the application is fatally defective since the petitioners have no locus standi or capacity to initiate the petition on behalf of the school; it is frivolous, vexatious and an abuse of the court process.
  15. In written submissions dated 2.10.2024, the 2<sup>nd</sup>, 4<sup>th</sup> and 7<sup>th</sup> respondents submit that the single issue for determination is whether the applicants are entitled to conservatory orders. They submit that Article 23 of *the Constitution* sets the principles requisite for the grant of conservatory orders, where a party is required to demonstrate a prima facie case with a probability of success and danger and violation of their constitutional right if the orders are not granted. They further rely on the Board of Management Uhuru Secondary School vs City Director of Education & 2 others (2015) eKLR, David Ndi & others vs. Attorney General & Others (2021) eKLR and Wilson Kaberia Nkunja vs Magistrates & Judges Vetting Board & Another (2016), to submit that the application falls short of the threshold for conservatory orders.
  16. In addition, the 2<sup>nd</sup>, 4<sup>th</sup> and 7<sup>th</sup> respondents submit that a public participation process was conducted involving various stakeholders to ensure legal compliance for the subdivision and guide the compulsory acquisition of the suit parcel by the National Land Commission, the County Government, and the Administration Police, for the benefit of the community. They also submit that the applicants have approached this court with unclean hands since their late fathers grabbed the suit parcel and are involved in cases regarding the school's funds.
  17. Further, the 2<sup>nd</sup>, 4<sup>th</sup> and 7<sup>th</sup> respondents submit that the 4<sup>th</sup> respondent was supporting the community; has built a health center; provided water street lighting; promoted peace and built churches and that the title deed to the suit parcel is still registered under the County Government of Meru.
  18. The issues for my determination are whether the applicants have locus standi; if the petition raises a constitutional question, and lastly; if the applicants are entitled to conservatory orders
  19. A conservatory order is a judicial remedy granted by the court by way of an undertaking to preserve the subject matter until the motion of the suit is heard. It is an order of status quo for the preservation of a subject matter. In Gatirau Munya vs Dickson Mwenda Githinji & others Supreme Court of Kenya Application No. 5 of 2014, the court held thus:

“Conservatory orders bear a mode decided public law connotation; for these are ordered to facilitate ordered functioning within public agencies as well as to uphold the adjudicatory authority of the court in the public interest.”
  20. The principles to be considered for the grant of conservatory orders were enumerated in Wilson Kaberia Nkunja (supra). An applicant must demonstrate that he has a prima facie case with a likelihood of success and that unless the court grants the conservatory orders, there is a real danger that he will suffer prejudice as a result of the violation or threatened violation of *the Constitution*. Secondly, the applicant must prove whether, if a conservatory order is not granted, the petition alleging violation of rights will be rendered nugatory, and thirdly; the public interest must be considered before granting a conservatory order.
  21. Public interest in Black's Law Dictionary 11<sup>th</sup> edition, page 1486, is defined as the general welfare of a populace, considered as warranting recognition and protection. It is something in which the public as a whole has a stake.



22. In *B.O.M. Uhuru Secondary School (supra)*, a prima facie case with a likelihood of success was held as established to the satisfaction of the court where a grant or denial of the conservatory relief, will enhance the constitutional values and objects of the specific right or freedoms in the bill of rights. The other issue is whether, if an interim conservatory order is not granted, the petition or its substratum will be rendered nugatory. In considering whether to grant or not to grant conservatory orders, the court said that it must consider all the relevant material facts and avoid immaterial matters. The court said that it is the business of the court to ensure and to secure so far as possible that any transitional motion before the court is not rendered, nugatory the ultimate end of justice.
23. Additionally, the court held that it has to consider the applicant's credentials, the prima facie correctness of the availed information, whether the grievances are genuine, legitimate, and deserving, and finally, whether the grievances and allegations are severe and grave or merely vague and reckless.
24. In *Gatirau Munya vs Mwenda (supra)*, the court emphasized that conservatory orders should be granted on the inherent merit of a case, bearing in mind the public interest, the court values, and the proportionate magnitude and priority levels attributed to the relevant causes.
25. In *Haki ya Sheria Initiative vs Inspector General of Police and others Kenya Human Rights and Equity Commission (I.P.) Petition 5 (E007) of 2021 (2021) KESC 22 (K.L.R.) (Civ) 3<sup>rd</sup> December 2021* (ruling), the court cited *Nubian Rights forum & 2 others vs A.G. & others (2019) eKLR* where the court defined public interest as a matter of public or general interest that does not mean that which is interesting or gratifying curiosity or a love of information or amusement, but in which a class of the community has a pecuniary interest or some interest by which their legal rights or liabilities are affected. On the nugatory aspect, the concern is whether what is sought to be stayed, if allowed to happen, is reversible or, if it is not reversible, whether damages will reasonably compensate the party aggrieved. See *Stanley Kang'ethe Kinyanjui vs Tony Keter & others (2013) eKLR*.
26. Applying the preceding case law to the facts of this petition, the petition is brought on behalf of citizens, parents, pupils, and the school community of Kirimanichuma Primary School, Tigania Central Sub-County, said to be in the public interest to lodge it on their behalf on behalf of the school, its P.T.A, B.O.G, and school community. It is averred that the school initially occupied or owned 10.3.74 acres (4.2 ha) of land reserved for the school in 1959 and in which the buildings were erected in 1987, consisting of pre-primary, primary and now junior secondary.
27. The applicants aver that the letter reserving the land was designated for an educational institution, specifically Kirimanichuma Primary School. It is averred that there was no evidence that the Ministry of Education approved that the land allotted to the school for educational programs be excised for private use by Administrative Police Training College Meru, Full Gospel Church and African Independent Pentecostal Church of Africa.
28. The applicants aver that the survey department surveyed the land, and after all statutory requirements were met, the land was allocated under the trusteeship of the defendant. Again the applicants aver that the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> respondents, in total breach of trust for the school, clandestinely subdivided and alienated the land to the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents, despite several demands or pleas from the community and in total breach of the petitioner's constitutional rights under Articles 10, 27, 40, 47, 48, 50, 53.
29. Similarly, the applicants aver that efforts to seek the intervention of the National Land Commission, County Government and Deputy County Commissioner over their concerns have not been addressed. The applicants seek declaratory orders for the land to remain as reserved, that their rights have been violated, infringed, or threatened with violation, cancellation of the alienation, conservatory orders to



- stop the implementation of the alienation, and permanent injunction to stop any trespass, alienation or interference of the land.
30. The 2<sup>nd</sup> respondent opposed the application through an affidavit sworn by J.M Mwambia on 2.10.2024. He denies that there was an unlawful or unprocedural subdivision of the subject land. The deponent bases the legality of the alienation on minutes for the meeting held on 25.4.2014 as an annexure J.M.M. "1" and a public participation exercise conducted on 25.6.2021 and 14.10.2022 annexed as J.M.M. "8" & "9".
  31. The 2<sup>nd</sup> respondent avers that there was no change of reservation and that Administration Police Training college was equally for educational purposes and, therefore; there was no bar to further reserve the public land for the college as per green card annexed J.M.M. "2" and a letter of approval by the school head teacher dated 20.4.2024, to the deputy inspector general of the police attached as J.M.M. "3". The land registrar avers that an approved scheme was duly prepared to include the 4<sup>th</sup> to 6<sup>th</sup> respondents as per annexure J.M.M. "4". The 2<sup>nd</sup> respondent avers that after the approved scheme, a subdivision was done, and a mutation form was registered as per annexure J.M.M. "5," a register opened on 13.3.2024 for the various parcels as per J.M.M. "6" & "7".
  32. Again, the 2<sup>nd</sup> respondent avers that the process was in its last stage and should not be interfered with on flimsy reasons as raised by the petitioners; otherwise, the public interest of security, educational opportunities, and business opportunities of the county, outweigh the narrow and selfish interests of the petitioners. The 3<sup>rd</sup> respondent, as the body mandated to procure and acquire public land for and on behalf of the county and national government organs such as the 4<sup>th</sup> respondent, has chosen to be silent in this petition to confirm if it was involved and followed the law on alienation of public land and its conversion to public and private use.
  33. The 5<sup>th</sup> – 6<sup>th</sup> respondents associated themselves with the averments of the 2<sup>nd</sup> respondent save to add that the church and the school offer institutional work and live together peacefully in their respective parcels of land. The 5<sup>th</sup> respondent termed the petitioners as lacking locus standi; the application and the petition as frivolous, vexatious, and an abuse of the court process.
  34. In *Kimathi Munjuri Jacob Miriti and 3 others vs Head of the Public Service & another* (2017) eKLR, the court took the view that in considering whether to grant conservatory orders, it has to consider if the case is arguable whether the matter before the court will be rendered nugatory if the orders are not granted, whereby the adjudicatory authority of the court might be exercised in vain and finally, whether it is in the public interest that orders be granted. In *Platinum Distillers Ltd vs Kenya Revenue Authority* (2019) eKLR, the court held that it is not called upon and is indeed not required to make any definitive findings either of fact or law which the province of the court that will ultimately hear the petition.
  35. The court held that its duty at the conservatory stage is limited to determining whether the applicant has made out a prima facie case to warrant the grant of conservatory orders. In doing so, the court held it has to evaluate the pleadings and determine whether denial of conservatory orders will prejudice the applicant. The exact position obtained in *Center for Rights Education & Awareness & others vs Attorney General* (2011) eKLR and *Kenya Association of Manufacturers 7 others vs Cabinet Secretary Ministry of Environment and Natural Resources and others* (2017) eKLR.
  36. The issue for the court to determine is whether there is a prima facie case established by the applicants. In *Mrao Ltd vs American Bank of Kenya* (2003) eKLR a prima facie is established if, on the basis of the material placed before the tribunal, a right has been infringed to call for the rebuttal from the opposite side. The petitioners have brought this petition on their behalf and on behalf of the community of



- Tigania West claiming that public land was alienated into private land and in total breach, threat, or infringement of their constitutional rights.
37. The 2<sup>nd</sup> – 6<sup>th</sup> respondents have admitted that the alienation of public land is out of a public participation, exercise undertaken on 25.6.2021 and 14.10.2022, which have been acted upon through an approved scheme plan, mutation form, letter of approval by the school head teacher, new registers for titles opened and therefore the process was at its last stage in implementation. Without going to the merits or demerits of the petition, I think the petitioners have an arguable case for determination at the main hearing of the petition.
  38. The second issue is whether, by granting or not granting the conservatory orders, the court will be advancing constitutional values and principles and if it is in the public interest to exercise that power. Alienation of public land and the conversion of the same to either private, public, or community land is governed by Articles 60, 61, 62, 63 & 64 of *the Constitution*, Sections 7 – 17 of the *Land Act* and the Rules made thereunder, the National Land Commission (Review of Grant and Disposition of Public Land) Regulations 2017 and Section 16-35 of the *Land Registration Act*.
  39. The respondents, generally and in particular, the 2<sup>nd</sup> respondent, who is a creature of the land laws as a custodian of titles, have not denied that alongside alienating public land, private parties such as the 5<sup>th</sup> and 6<sup>th</sup> respondents were allocated public land.
  40. Sections 9 (3) & 12 of the *Land Act* requires gazettelement of the process, active involvement of the 3<sup>rd</sup> respondent and the approval by parliament or county assembly as the case may be if the issue involves a substantial transaction of conversion of public to private land. The affidavit of the 2<sup>nd</sup> respondent, leaves no doubt in my mind that there has been an alienation of public land and conversion of land belonging to a public school in favor of third parties unrelated to school use, such as security and private entities. The petitioners' case is that the alienation was dwelt with, contrary to the law and in contravention of their constitutional rights. In my view, the petitioners have locus standi and have raised constitutional questions whose answers require the interpretation and application of *the Constitution*.
  41. As to whether conservatory orders should be issued, the 2<sup>nd</sup> respondent has not confirmed if there has been an amendment to the registry index map in line with the new register of titles, the correspondence of the physical location of the new parcels of land with the amended registry index map, the visiting of the ground to insert new beacons with the assistance of the land surveyor. Other than the mutation form which has no date on when it was presented for registration, the respondents have not displayed the registry map sheets number 2 and 3 and a gazettelement of the acquisition of, conversion and alienation of public land for private use. The respondents aver that the process is at its last stage. They have not indicated what is remaining.
  42. An illegality is an illegality. A nullity is a nullity. The respondent cannot use public interest or national and state security to flout the law as held recently in the Lemusi case. If the framers of our Constitution were of the view that public land can be alienated primarily out of a public participation exercise, they would have explicitly stated so.
  43. Given the foregoing, I am of the considered opinion that the petition shall be rendered nugatory if the substratum of the matter is not preserved. It will also be in the interest of justice to issue conservatory orders pending the hearing and determination of the petition. A conservatory order as a result of this shall be issued barring and restraining the respondents from further alienating L.R No. Kirimanchuma/6 into its resultant subdivisions L.R No's Tigania/Kirimanchuma/235, 236, 237, and



238 otherwise than in accordance with the law. Equally, inhibition orders are hereby issued restraining any dealing on L.R No. Tigania/Kirimanchuma/235, 237 and 238.

44. Any ongoing new developments on the suit parcels of land, other than on the parcel reduced and currently registered in favor of the school and, to be specific, L.R. No. Tigania/Kirimanchuma/237, shall cease at the issuance of the conservatory orders.
45. The orders shall subsist for 12 months, during which the petition shall be listed for hearing on a priority basis.

Orders accordingly.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 6<sup>TH</sup> NOVEMBER, 2024**

In presence of

C.A Kananu

Omari for the petitioners

Mugambi for the 5<sup>th</sup> and 6<sup>th</sup> respondents

**HON. C K NZILI**

**JUDGE**

