



**Mwangi v Directorate of Criminal Investigations & another; Tegeret (Interested Party) (Petition E024 of 2024) [2025] KEHC 10510 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10510 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
PETITION E024 OF 2024  
RC RUTTO, J  
JULY 17, 2025**

**BETWEEN**

**HEZEKIAH KARIUKI MWANGI ..... PETITIONER**

**AND**

**THE DIRECTORATE OF CRIMINAL INVESTIGATIONS ... 1<sup>ST</sup> RESPONDENT**

**THE DIRECTOR OF PUBLIC PROSECUTIONS ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**JOEL TEGERET ..... INTERESTED PARTY**

**RULING**

1. The petitioner filed a Notice of Motion application dated 25<sup>th</sup> November 2024. The application is premised upon the provisions of Articles 22 and 23 of *the Constitution* as well as Rules 19, 23 and 24 of *the Constitution* of Kenya (Supervisory Jurisdiction and Protection of the Fundamental Rights and Freedoms of the Individual) High Court Practice and Procedure Rules 2013. The application seeks the following prayers, That:
  1. ... Spent;
  2. ... Spent;
  3. Pending the hearing and determination of the petition herein, a conservatory order do issue staying or suspending investigations into any arrest and prosecution by the respondents in relation to the parcel of land namely L.R. No. 29763 IR 250788;
  4. The costs the (sic) application be provided for;
2. The application is premised on the grounds set out in the body of the Motion, the supporting affidavit of the petitioner sworn on 25<sup>th</sup> November 2024 and the applicant's supplementary affidavit sworn on



18<sup>th</sup> March 2025. The gist of the Motion is that the applicant is the registered owner of all that parcel of land namely L.R. No. 29763 IR 250788. That he applied for allocation of the said property vide a letter of allotment referenced 39711/XXVI dated 24<sup>th</sup> February 1998. That the property was allotted to him having fulfilled the conditions embedded therein. That he then took vacant possession and remained in peaceful occupation with his family to date. He is emphatic that he was in possession of verifiable documents of title as confirmed by different institutions.

3. The petitioner states that on 19<sup>th</sup> February 2024, the Interested Party, forcefully gained access to the property in an attempt to evict him. That he was served with a consent court order dated 26<sup>th</sup> September 2023 emanating from Mavoko MCELC No. 116 of 2023; Joel Tegeret vs. Clifford Nyamagwa & Hezekiah Kairuki Mwangi. The order urged the petitioner not to trespass on the suit property.
4. The applicant states that the consent order in question prompted him to file an application for joinder and to have the said order set aside. Upon successfully setting aside the consent order, the applicant claims that the Interested Party, in collusion with the 1<sup>st</sup> respondent, began to frustrate him by initiating baseless investigations aimed at obstructing justice. On 20<sup>th</sup> August 2024, the applicant formally requested the 1<sup>st</sup> respondent to provide him with any information and access to the investigation diary related to those investigations. He subsequently followed up with another letter dated 22<sup>nd</sup> November 2024. However, both letters have not elicited any responses.
5. The applicant argues that the 1<sup>st</sup> respondent's failure to give him an opportunity to record a statement and present his evidence amounted to a violation of his rights under Article 47 of *the Constitution*, which guarantees fair administrative action. He further contended that the ongoing investigations appeared to be orchestrated to bolster the Interested Party's position in a separate dispute pending before the Mavoko court, thereby prejudicing him. Additionally, he claims that the 1<sup>st</sup> respondent's failure to respond to his letters contravened the principles outlined in Article 232(1)(c), (e), and (f) of *the Constitution*, which emphasize accountability, transparency, and prompt responsiveness to the public.
6. The applicant urges that unless conservatory orders are issued to suspend the investigations, they would proceed in violation of his constitutional rights. He is worried that the culmination of those investigations would lead to charges in the criminal court. He further states that he would suffer irreparable and substantial loss if the orders sought are not granted. On these grounds, he urges the Court to allow his application.
7. The respondents opposed the application through a replying affidavit sworn on 4<sup>th</sup> February 2024 by Police Constable, Polly Njeru, the investigating officer. In the affidavit, the respondents urged the Court to dismiss the application on the grounds that: a complaint was lodged by the Interested Party on 26<sup>th</sup> July 2023 at Mavoko Police Station vide OB No. 16/26/07/2023. That the matter was subsequently referred to the Directorate of Criminal Investigations (DCI) Mlolongo on 31<sup>st</sup> July 2023, where the deponent, PC Polly Njeru, was assigned to handle the investigation. The complaint involved a dispute over the land parcel numbers 28411/5, 28411/6 and 30083. That during the course of investigations, the applicant presented his ownership documents, which were received and acknowledged by the deponent through a signed inventory. That the applicant was summoned to the DCI Mlolongo and recorded his statement on 29<sup>th</sup> July 2024.
8. According to the deponent, preliminary investigations indicated that the title document submitted by the applicant was a forgery. However, specimen signatures and stamp impressions over the document had not yet been examined by the document examiner. Further investigations revealed that the deed



plan availed by the applicant allegedly from the Director of Survey was similarly a forgery. That the specimen signatures and sample impressions on the deed plan were also pending examination.

9. The deponent further denied being served with letters from the applicant requesting updates on the status of the investigations. She further deposed that once the investigations are complete, the inquiry file will be forwarded to the relevant authorities, who will then determine whether or not to prefer criminal charges against the applicant.
10. The deponent deposed that no valid reasons had been advanced to impede the ongoing investigations which she maintained that they were lawful, rational and procedurally sound. She emphasized that the respondents were within their mandate to act upon receiving a complaint. Additionally, she argued that the application was premature, as no decision had yet been made to charge the applicant. She concluded that it was in the public interest and in the broader interest of justice for the investigations to be completed without interference.
11. In his supplementary affidavit, the applicant complained that the respondents failed to annex the documents supporting the preliminary findings of their investigations. He also disputed the assertions, that they had not received his letters, asserting that the letters were indeed served. The applicant further stated that, contrary to the respondents' position, he was arrested on 5th December 2024 with the apparent intention of preferring charges against him. However, the 2nd respondent ultimately chose not to prefer any charges. Despite this, the applicant was released on a cash bail of Kshs. 50,000.00.
12. The appellant/applicant also responded to the interested party's replying affidavit which addressed the petition and not the present application. He further pointed out that although the interested party had lodged a complaint against him in 2023, she only initiated legal proceedings against an individual named Clifford, and not against him. On this basis, the applicant argued that the ongoing investigations were driven by malice.
13. At the hearing of the application, parties elected to proceed by way of written submissions. The applicant filed his written submissions dated 18<sup>th</sup> March 2025 while the respondents relied on their written submissions dated 17<sup>th</sup> April 2025. The submissions before this Court are well elaborate, articulate and each party rigorously attempted to persuade this Court to find in their favor. I have read and considered the submissions together with the pleadings.
14. This is an application seeking conservatory orders whose effect would be to stay or suspend investigations, any arrest and prosecution by the respondents in relation to the parcel of land namely L.R. No. 29763 IR 250788. Indeed, a party has a remedial right under Article 23 (3) (c) of [the Constitution](#) for the grant of conservatory orders. In *Makumi & 4 others vs. Speak County Assembly of Kitui & another* [2024] KEHC 2812 (KLR), the court delineated the nature of a conservatory order as follows:

“A conservatory order is a judicial remedy sought or issued by a court to preserve a subject matter until the suit/petition is heard and determined. It is in other words an order of status quo ante so that the substratum of the suit/petition is preserved, or so that the same is not rendered an academic exercise.”
15. To succeed in obtaining conservatory orders, *J.L. Onguto, J. (as he then was) in Board of Management of Uhuru Secondary School vs. City County Director of Education & 2 others* [2015] KEHC 2174 (KLR) succinctly laid down the following principles:

“Foremost, the applicant ought to demonstrate a prima facie case with a likelihood of success and that in the absence of the conservatory orders he is likely to suffer prejudice...”



It is in my view not enough to merely establish a prima facie case and show that it is potentially arguable. Potential arguability is not enough to justify a conservatory order but rather there must also be evident a likelihood of success. The prima facie case ought to be beyond a speculative basis... Once the applicant has established to the court's satisfaction a prima facie case with a likelihood of success the court is then to decide whether a grant or a denial of the conservatory relief will enhance the Constitutional values and objects of the specific right or freedom in the Bill of rights...

Thirdly, flowing from the first two principles, is whether if an interim Conservatory order is not granted, the petition or its substratum will be rendered nugatory. It is indeed the business of the court to ensure and secure so far as possible that any transitional motions before the court do not render nugatory the ultimate end of justice.

The fourth principle which emerges from the various cases and is well captured by the Supreme Court of Kenya in the case of *Gatirau Peter Munya –v- Dickson Mwenda Githinji & 2 Others* [2014] eKLR is that the court must consider conservatory orders also in the face of the public interest dogma.

Finally, the court is to exercise its discretion in deciding whether to grant or deny a conservatory order. The court must consequently consider all relevant material facts and avoid immaterial matters. The court will consider the applicants 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 grave and serious or merely vague and reckless: see *Centre for Human Rights and Democracy & 2 Others –v- Judges and Magistrates Vetting Board & 2 Others* CP No. 11 of 2012 as well as *Suleiman –v- Amboseli Resort Ltd* [2004] 2 KLR 589.

16. Has the application met the threshold for grant of conservatory orders? It is important to note that this relief is also sought in the substantive petition. The applicant alleges that he was excluded from the investigative process, thereby placing him at a disadvantage regarding the potential outcome of the investigations. He further claimed that the investigations were malicious and intended to give the Interested Party an unfair advantage. However, the respondents filed a response refuting these allegations and outlined the applicant's involvement in the investigation process.
17. On the face of it, there is no credible basis to conclude that the respondents were conducting the investigations maliciously or without legal justification. I am satisfied that the investigations were initiated following a complaint by the Interested Party, alleging fraud in relation to the suit property. The respondents were merely exercising their lawful mandate. In any case, the applicant will have an opportunity to defend himself and raise all relevant issues once the investigations are concluded, should any legal proceedings be instituted.
18. I do agree with the respondents that the application is premature and inchoate. It is my finding that the ongoing investigations should be allowed to take its natural course. At this stage, no formal charges have been preferred against the applicant, and no adverse prosecutorial action has been taken. While the applicant claims to have been released on cash bail, this alone does not establish that charges have been instituted. To the contrary, the fact that he has been released on cash bail is a confirmation that the 1<sup>st</sup> respondent is acting in accordance with the law. All the applicant is required to do is to abide by the bail terms and cooperate with the investigation team. Should charges eventually be brought, the applicant will have the opportunity to mount a full defence and assert his innocence before the appropriate forum. The 1<sup>st</sup> respondent has the constitutional mandate to conduct investigations and they cannot be arbitrary curtail, even by this Court, where there are no sufficient reasons so to do.



- 19. The applicant has not demonstrated sufficient grounds to warrant this Court’s intervention in the investigative process. He has failed to establish a prima facie case with a likelihood of success, nor has he shown that the issuance of conservatory orders is necessary to preserve the substratum of the dispute. The allegations of malice and procedural unfairness have been adequately countered by the respondents, who have shown that the investigations were initiated following a formal complaint and that the applicant was involved in the process, including recording a statement and submitting documents. The respondents have shown that they are awaiting confirmation of the allegation of forgery after which they will wrap up their investigations. This Court cannot stop them. I hasten to add that whenever a complaint is made to the 1<sup>st</sup> respondent, it is under an obligation to investigate. Where investigations are done, one of the possible outcome is the dismissal of the complaint by the 1<sup>st</sup> respondent where it finds no merit and/or evidence. It is not a must that all investigations must end up with a person being charged. Hence, a suspect may even benefit from having investigations confirming that the allegations against him/her are baseless.
- 20. Consequently, in line with the principles set out in the case of Board of Management of Uhuru Secondary School v City County Director of Education & 2 others,(supra) the applicant has not met the threshold for the grant of conservatory relief. The Court must exercise caution not to interfere with the lawful mandate of investigative agencies unless there is clear evidence of abuse of power or violation of constitutional rights which has not been demonstrated here.
- 21. Accordingly, I find that the Notice of Motion dated 25th November 2024 lacks merit and is hereby dismissed. Each party shall bear their own costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 17<sup>TH</sup> DAY OF JULY, 2025**

**RHODA RUTTO**

**JUDGE**

In the presence of;

.....Petitioner

.....Respondent

Selina Court Assistant

