



REPUBLIC OF KENYA



KENYA LAW
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Bao Gold Hill Kenya Limited v Attorney General & 2 others (Environment and Land Petition E002 of 2025) [2025] KEELC 6786 (KLR) (7 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6786 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND PETITION E002 OF 2025
LN GACHERU, J
OCTOBER 7, 2025

BETWEEN

BAO GOLD HILL KENYA LIMITED PETITIONER

AND

THE HON ATTORNEY GENERAL 1ST RESPONDENT

**THE INSPECTOR GENERAL, NATIONAL POLICE SERVICE 2ND
RESPONDENT**

**THE CABINET SECRETARY, MINISTRY OF MINING, BLUE ECONOMY AND
MARITIME AFFAIRS 3RD RESPONDENT**

RULING

1. The matter for determination is the Notice of Motion Application dated 8th August 2025, which is premised to be brought under Rules 23 and 24 of *the Constitution* of Kenya (Protection of Rights and Fundamentals Freedom) Practice and Procedure Rules 2013, and Article 159 of *the Constitution* of Kenya, wherein the Petitioner/Applicant has sought for the following orders;
 - a. That pending the hearing and determination of the Petition a Conservatory Order be issued compelling the 1st Respondent to immediately restore the Petitioner's name and Mining Licence No.ML2019/0072/1038/3 in the mining cadaster.
 - b. That pending the hearing and determination of the petition herein a Conservatory Order be issued compelling the 2nd Respondent to immediately withdraw the Mining Police Unit from the Petitioner's mining site in Lolgorian, Narok County, and to cease all interference with the Petitioner's lawful mining operations,
 - c. That Pending the hearing and determination of the Petition herein a Conservatory Order be and is hereby issued restraining the 2nd Respondent from raiding, intimidating, harassing and/



or threatening the Petitioner's personal and employees' liberty under the guise of effecting arrest.

- d. That this Honourable Court be pleased to give such further or other orders and/or directions as to the hearing hereof and the Petition filed herein as it may deem just in light of the circumstances hereof.
 - e. That the Petitioner/Applicant be at liberty to apply for such other or further orders and/or directions as this court may deem fit and just to grant
 - f. That the cost of this application be provided for.
2. The Application is supported by the grounds set out on the face of the Application, and on the Supporting Affidavit of Wang Weibo, the Managing Director of the Petitioner/ Applicant.
 3. The grounds in support of the Application are; the Petitioner/ Applicant is a duly registered Company under Registration No PVT-AAAOR2, based in Lolgorian area of Narok County, which Company carries the business of exploration, mining and processing of minerals.
 4. Further, that the Petitioner/Applicant holds a valid mining licence No ML/2019/ 0072, which is duly registered under entry No. ML/2019/ 0072/1038/3, which was issued in accordance with Section 101 of the *Mining Act*. The said licence has a term of 25 years as specified by Section 107 of the *Mining Act*, commencing from 1st August 2021 up to 31st July 2046.
 5. That the said licence grants the Petitioner/Applicant specific and exclusive rights under section 108 of the *Mining Act*, wherein the Petitioner/Applicant is entitled to carry out mining operations for the designed mineral deposits within the specified area. The right also includes the ability to enter the licensed land to conduct these operations, construct the necessary equipment plants and buildings for mining and processing, disposal of recovered minerals, provided all fees and royalties have been paid.
 6. The Petitioner/Applicant also held a valid Mineral dealers licence MDL/P/DPL/2024/2329, until 31st December 2024, which was issued pursuant to section 164 of the *Mining Act*. Further, that the Petitioner/Applicant made an application for renewal of the Mineral Dealer licence on 27th November 2024, as required under section 160 of the *Mining Act*, and the said Application is still pending processing by the 1st Respondent.
 7. That on 31st October 2024, the Petitioner/ Applicant received a demand for payment of Ksh 622,280,800/= in annual ground rent and royalties from the 1st Respondent, but the amount demanded was disputed by the Petitioner herein, by lodging an appeal, which appeal is still pending before the 1st Respondent.
 8. However, on 24th January 2025, the Petitioner/Applicant wrote a letter to the Principal Secretary, Ministry of Mining and Blue Economy and Maritime Affairs, and requested for a meeting to discuss the said demand, but to date, no response has been received or forthcoming.
 9. On 3rd April 2025, the Petitioner/ Applicant's Company was removed from the Ministry of Mining Cadaster, and the area was marked Government of Kenya, without any official communication.
 10. Further, that on 20th June 2025, the 2nd Respondent through its officers from the Mining Police Unit, illegally and unlawfully entered into the Petitioner/Applicant's premises and effected militarized blockade that has continued to date, seizing equipment and paralyzing the Petitioner's operations without a court order or any legal basis.



11. That the action of the Mining Police Unit have caused significant adverse effects on the local community, as the cessation of production had led to local workers losing jobs, Landlords not receiving rent, and community being deprived of social development.
12. The Petitioner/ Applicant insisted that it had complied with the Mining Act of 2016, and other relevant legal and regulatory framework, and has undertaken significant preparatory work including obtaining Compliance Certificate from National Environment and Management Authority (NEMA), approval of property changes, and even applied for Power supply to the premises.
13. Further, that the Petitioner/Applicant has complied with all the Statutory obligations including payments of taxes to the Government, royalties to the Ministry of Mining through its designated account No. 1000696559, at Central Bank. That the payment of these royalties has adhered to the principles outlined under Regulation 5 of the 2 Mining (Royalty Collection and Management) Regulations, 2024, including providing monetary compensation to the people of Kenya for mineral extraction.
14. That owing to the Respondents' unconstitutional, illegal, arbitrary oppressive, capricious, unfair and unreasonable acts, the Petitioner/Applicant have continued to suffer severe prejudice and are constantly threatened with further arrests and intimidation.
15. That despite the persistent attempts to engage the 1st and 2nd Respondents, the said engagement has not born any fruits, as the Respondents have failed to respond to the Petitioner/Applicant's attempts to engage and resolve the stalemate.
16. Further, that there shall be no prejudice at all that shall be suffered by the 1st and 2nd Respondents if the conservatory orders are issued, as it is in the interest of justice and fairness that the reliefs sought are granted to prevent the imminent and impending devastating violation of fundamental rights of the Petitioner/Applicant over the subject matter.
17. In his Supporting Affidavit, Wang Weibo the Managing Director of the Petitioner/ Applicant reiterated most of the grounds in support of the application and urged the court to grant the Conservatory Orders, as sought, pending the hearing and determination of the instant Petition.
18. He reiterated that the Petitioner/ Applicant has consistently complied with the Mining Act, 2016, and all the other relevant legal and regulatory frameworks, and has undertaken significant preparatory work including obtaining a certificate of compliance from the National Construction Authority on 30th September 2021, approval of property changes, securing land leases and applying for power supply, and conducting Environmental Impact Assessment (EIA) as required by section 176 of the Mining Act, 2016.
19. He also averred that since the Petitioner/ Applicant has met its statutory, licencing and tax obligations, it is entitled to equal protection of the law, including the right to continue lawful business operations, and should not be threatened by the unconstitutional and capricious acts of the Respondents.
20. The Application is opposed by the Respondents herein. The 2nd Respondent filed their response to the application vide the Replying Affidavit sworn on 25th September 2025 by Mr. Thomas Mutwiwa, the Secretary Mines, in the State Department for Mining, Ministry of Mining, Blue Economy and Maritime Affairs of the 2nd Respondent herein.
21. The deponent admitted that the Petitioner/Applicant submitted an application for Mining licence through the online Mining Cadaster on 23rd July 2019, covering approx. 4, 7808km² in Narok County for extraction of Gold, with a requested licence duration of 25 years. He averred that the application



- underwent several levels of review, and was considered by the Mineral Rights Board(MRB) on multiple occasions.
22. Further, that vide the 87th MRB meeting, held on 26th September 2024, the Board recommended the rejection of the Petitioner/ Applicant's application due to the Petitioner's failure to submit the requirement documents in accordance with section 101 of the Mining Act, CAP 306, Laws of Kenya.
 23. Further, that the recommendation for rejection was approved by the 2nd Respondent on 30th September 2024, and on 19th November 2024, the Secretary to the Mineral Rights Board (MRB) wrote to the Petitioner informing them that the Board having reviewed the application for Mining Licence had recommended rejection for failure to submit the requisite documents for a valid Mining Licence application.
 24. Further, that the Petitioner was given 7 days to upload the said documents in the Online Mining Cadaster, and failure to do so would lead to removal of the application from the Cadaster. The said letter was marked as TM3, which was addressed to the Secretary to the Mineral Rights Board.
 25. The Deponent further deposed that the 2nd Respondent led a compliance and inspection exercise Countrywide for illegal mining operations and on 27th April 2024, and it was established that the Petitioner was illegally conducting mining and gold processing operations without a valid Mining licence. Several employees of the Petitioner/Applicant who were foreign nationals were arrested and deported during the said operation.
 26. That when an official assessment attributed to the illegal operation was conducted, the Petitioner/ Applicant was found liable for loss of royalty and ground rent revenue amounting to Ksh 622, 280,800/=, which amount was communicated to the Petitioner/Applicant through a letter dated 31st October 2024.
 27. It was his further averments that the issue of the Petitioner's application for Mining licence was reconsidered during the 94th meeting of MRB, on 14th March 2025, which meeting resolved that the application ML/2019/0072, be removed from the Mining Cadaster System due to continued non-compliance and illegal activity. That this recommendation was approved by the 2nd Respondent as per annexure TM5.
 28. Further, that what was removed from the Ministry Online Mining Cadaster was the Petitioner's application for a Mining licence, which had pegged the area/ Co-ordinates of interest and not the actual Mining licence as claimed by the Petitioner/Applicant in its Supporting Affidavit.
 29. The deponent further claimed that the Petitioner/Applicant does not have a valid Mining licence issued under the Mining Act Cap, 306 and the Petitioner/Applicant is not legally authorized to undertake any mining operations within the Country.
 30. The 2nd Respondent also averred that the stated period in which the alleged Mining licence was granted, which the Petitioner indicates as 26th May 2021, there was an existing moratorium, barring any issuance of any mining or prospecting licence. Further, that during the moratorium period, no mining licence was issued by the 2nd Respondent and the Petitioner/Applicant was put to strict proof as to the legality of the Mining licence attached to the Supporting Affidavit. The Moratorium was lifted during a Cabinet sitting held on 3rd October.
 31. He also averred that the alleged Mining licence held by the Petitioner/Applicant does not exist in the official Mining Cadaster System, and there was no evidence of Mining licence No. ML/2019/ 0072, allegedly issued to the Petitioner.



32. The 2nd Respondent further deposed that vide a letter dated 21st June 2025 the Petitioner confirmed receipt of the 2nd Respondent's stop order and agreed to fully comply with the orders, and to suspend with immediate effect all mining and mineral processing operations.
33. Further, the Petitioner confirmed that it understood the importance of adherence to regulatory frameworks and was committed to ensuring fully compliance with all necessary documentation and legal requirements, and that all activities will remain suspended until such a time that all required documentation was clear, approved and upon the 2nd Respondent authorizing it to resume operations.
34. The 2nd Respondent contended that with the acceptance by the Petitioner/Applicant above to suspend all mining and processing activities until compliance, is an admission that indeed they lacked valid Mining and processing licences to continue operations.
35. The 2nd Respondent further stated that the Applicant/Petitioner has not met the threshold required to obtain the Conservatory orders sought, as it has not adduced any valid grounds and/or evidence warranting or supporting the issuance of such Conservatory Orders.
36. The 3rd Respondent filed its response to the application vide the Replying Affidavit sworn on 25th September 2025, by No.74798 CPL Joseph Omeru, an Officer attached to the Directorate of Criminal Investigations(DCI), who stated that he is the current Investigating Officer, having taken over the case number PCR 12 of 2025 from Directorate of Criminal Investigations – Transmara South, following instructions from the Officer in Charge to have the same transferred to their unit in relation to allegations of the Petitioner and its staff, who were engaging in activities and operations connected with mining, processing and Refining of minerals without license contrary to Section 202(1) of the [Mining Act](#), Cap 306.
37. He deposed that the investigations proceeded forthwith following an arrest by their counterparts from the Mining Police Unit of three Chinese namely, Zhang Bao, Yang Hao and Liao Guanfa who were staff working for the Petitioner/Applicant.
38. The deponent averred that on 21st June 2025 at about 0300hrs, the officers from the APS Mining Police Unit made an impromptu intelligence visit to the Petitioner's premises situated at the outskirts of Lolgorian township in Transmara South within Narok County, and they arrested the three suspects named above and were escorted to Lolgorian Police Station.
39. It was his further averments that the action of the arresting Officers was as a result of an inspection report dated 16th June 2025, which had been compiled by the Regional Mining Officer, and submitted to the Principal Secretary, State Department for Mining.
40. He deposed that there was no unlawful illegal entry into the Petitioner's premises as alleged in the Supporting Affidavit by the Petitioner. Conversely, the entry was in compliance with the [Mining Act](#), Cap 306, which empowers inspectors of Mines accompanied by Police officers to conduct regular inspections and enforcement.
41. Further, that following issuance of a stop order by the Regional Mining officer, Migori dated 19th June 2025 and 20th June 2025, it was established that the Petitioner was operating without a Mining licence, and that the processing plant was operational at the time of visit.
42. CPL Joseph Omeru averred that documents relating to the dealings and operations of the Petitioner were also requested and provided by the Petitioner/Applicant, being; prospecting licence, mining licence, NEMA report, Community development Agreement, Letter of no objection for



establishment issued by Narok County Government, Mineral Dealer's licence, payment for mineral development levy issued by the Ministry of Mining including Royalties payments.

43. He also averred that one of the witnesses, the Director licencing compliance and enforcement for the 2nd Respondent vide letter ref No.DM/3/A/V/2/61 dated 31st July 2025 states that, the current status for the Petitioner in relation of the alleged licence registration number ML/2019/0072, is not authorized to undertake any mining operations within the Republic. That the Mining Dealers Processing Licence(DPL/224/2329,) issued to the Petitioner in March 2024, according to the data from the 2nd Respondent expired in December 2024.
44. He deposed that there was an ongoing processing activity on site, and the Cabinet Secretary, Ministry of Mining then, Hon. John Munyes, had not recorded his Statement over the alleged issuance of the licence. Thereafter the file was resubmitted to the Office of the Director of Public Prosecution, Kilgoris for further advice.
45. The Instant Notice of Motion application was canvassed by way of oral submissions wherein Mr. Ochieng Odoul, for the Petitioner/Applicant submitted that the Applicant Company is Foreign Investor which bears a Certificate of incorporation No.PVT-AAAOR2. Further, that the Petitioner/Applicant is in Tax compliance and bears a prospective Mining licence dated 21st August 2018. Further, he submitted that the Petitioner/ Applicant has duly complied with the *Mining Act*, Cap 306 Laws of Kenya.
46. Further, it was submitted that the Petitioner/Applicant has duly paid the Ground rent AND Royalties, and also applied for NEMA approval and Licence dated 26th January 2023, and power supply, as per the various annextures attached to its Affidavit in support of the Application. It was also submitted that the Narok County Government returned a no objection vide its letter dated 13th July 2023.
47. Further that a Mining licence was issued by the Cabinet Secretary, Ministry of Mining and Blue Economy on the basis of the documents availed by the Petitioner/Applicant, and the approvals given by the relevant government bodies.
48. Further, the Petitioner/ Applicant also submitted that the Mining licence was issued in the year 2021 up to 2046, which is a period of 25 years. That in recognition of the Petitioner/Applicant's activities, the Petitioner's details and its area of operation were uploaded on the Cadastre, held by the Ministry of Mining and Blue Economy, as is evident from Annextures 10 – 11. Further, that the Petitioner/Applicant has been paying Royalties and the Ground rent, and receipts to that effect were annexed to the Supporting Affidavit of the Applicant.
49. Consequently, the Petitioner/Applicant set up a processing plant, and it annexed several letters issued by the Regional Director – Migori, one of them is dated 31st October 2024. In addition to the Mining licence, the Petitioner was issued with the processing licence and returns are filed with the Ministry of Mining and Blue Economy.
50. However, in May 2025, the Inspector General of Police, the 3rd Respondent, invaded the Petitioner's premises and closed it, on the account of illegal mining, though the Petitioner/Applicant is engaged in legal activities. It was the Applicant's submissions that it has a legal licences as is evident from the documents attached to the application.
51. It was also submitted that the Petitioner/Applicant has imported heavy machineries from China to process Gold, and the Government of Kenya facilitated the said process of importation of these Machineries, and therefore, the same government cannot turn around and allege that the business of mining by the Applicant is illegal or un-licensed.



52. Further, it was submitted that no statutory notice was given before the administrative action was taken against the Petitioner/Applicant, and that action was against the provisions of Fair Administrative Actions Act. Further, that the Petitioner/Applicant has about 400 employees, whose source of income has been affected and as a Country that is governed by *the Constitution*, the illegal actions of the Respondents should not be allowed to continue.
53. For the above reasons, the Petitioner/Applicant sought for conservatory orders pending the hearing and determination of this Petition, allegedly to minimize the loss suffered by the Petitioner/Applicant who is a serious Investor.
54. It was also submitted that the conduct of the 2nd Respondent was illegal, and the 2nd Respondent could not take the law into its own hands without sanction of the court as judicial authority is vested in the courts.
55. Further, that the Petitioner/Applicant legitimate expectation to run a successful business was thwarted, by the actions of the Respondents who have tried to use Criminal Justice to harass the Petitioner. Further, that the Petitioner/ Applicant is holding a Mining licence issued by Hon. John Munyes, who was then a Cabinet Secretary, in the Government of Kenya, which licence was to run from 21/7/2021 to 2046, and it has not been revoked. The Petitioner/Applicant urged the court to grant the conservatory orders as prayed.
56. In opposition to the application, Mr. Eredi, Chief State Counsel from the Office of the Attorney General, the 1st Respondent, and who represented the other Respondents submitted that the Petitioner/Applicant has not met the threshold or fulfilled the principles for grant of Conservatory Orders as enumerated in the case of *Gitarau Peter Munya vs Dickson Mwenda Kithinji & 2 Others [2014] eKLR*. and *Giella vs Cessman Brown CO. Ltd (1973) EA 358*.
57. Mr. Eredi further submitted that the Petitioner/Applicant did not have a valid licence to carry out Mining activities, and what the Applicant was referring to as a licence is actually an application for prospective licence and not a Mining licence. Therefore, if the Petitioner/ Applicant is carrying out any mining activity, that action is illegal.
58. It was his further submissions that even if a Mining licence was issued by Hon. John Munyes, there was a Moratorium, that had been issued by the Government barring any issuance of any mining or prospecting licence. The court was urged to balance between the public interest and private interest, in the instant case, by not granting the said conservatory orders as sought.
59. He also submitted that the Petitioner/Applicant has not complied by remitting royalties and Ground rent for the years 2019 – 2023, amounting to Ksh. 622,280,800/= which should be paid in for the sake of the public interest.
60. It was Mr Eredi further submissions that in the event the court is to issue the conservatory orders as sought, then the Court should direct that the stated amount should be deposited in court, since the Petitioner/Applicant cannot continue to mine without remitting the royalties or acquiring the necessary licence.
61. Further, Mr Eredi submitted that adequate notice was given to the Petitioner/ Applicant, and the applicant did not comply. Therefore, the Petitioner/Applicant herein has not met the threshold for grant of conservatory orders.
62. In a rejoinder, Mr. Ochieng Oduol submitted that even if there was a moratorium, the basis of the said moratorium was not given, and that the Applicant had attached monthly payment of the royalties and



ground rent payments. Further, the Alternative Disputes Resolutions mechanism was not employed, and therefore, the actions of the Respondent were illegal.

63. Mr Oduol emphasized that all the ground rent and royalties were paid for, and therefore action taken by the Respondents was illegal, as all the conditions have been met and no explanation was given on why the Petitioner's name was removed from the cadaster. He also reiterated that the due process was not followed.
64. The above are the grounds for and against the instant application, which this court has carefully considered. The gist of this application is whether the Petitioner/Applicant is deserving of the Conservatory orders sought to compel the Respondents to immediately restore the Petitioner's name and licence ML/2019/0072/1038/3, in the Mining Cadaster, to compel the 2nd Respondent to withdraw the Mining Police Unit from the Petitioner's Mining site, and to restrain the 2nd Respondent from raiding, intimidating, harassing and threatening the Petitioner's personnel and employees liberty under the guise of effecting arrest.
65. The Petitioner/Applicant has alleged that as an incorporated Company No. PVT – AAAOR2 as from 24th January 2017, and with Mining licence No. ML/2019/0072, issued by the Government of Kenya on 26th May 2021, to run up to 31st July 2046, it holds exclusive right to mine Gold within and over the mineral right area. This Mining licence was issued by Hon. John Munyes, who was then the Cabinet Secretary in the Ministry of Petroleum and Mining.
66. The Petitioner/Applicant has alleged that it has met all the terms and conditions set out in the [Mining Act](#), Cap 306 Law of Kenya, and it holds a valid Mineral Dealers (Trading) licence No. MDL/P/DPL/2024/2329. However, the Ministry of Mining and Blue Economy and Maritime Affairs vide its letter dated 31st October 2024, demanded for payment of ground rent and royalties to the tune of Ksh.622,280,800/=, which amount was not tenable as the Petitioner/ Applicant had fully paid for the Ground Rent and Royalties.
67. It is evident that due to the said demand, the 2nd Respondent failed to renew the Applicant's Mineral trading licence which expired on 31st December 2024, and it later removed the Applicant's name from the Ministry cadaster. The said denial of the licence and removal from the Ministry Cadaster aggrieved the Petitioner/Applicant herein.
68. The Respondents denied the allegations made by the Petitioner/ Applicant, and averred that the Petitioner has no valid licence and whatever activities that is being carried by the Petitioner on the ground, or the site is illegal, and that was the reasons as to why the Mining Police Unit invaded Applicant's premises, and arrested the Chinese Foreigners who were operating illegally at the premises. The Respondents also submitted that the Petitioner/Applicant has not met the threshold or satisfied the principles for grant of Conservatory orders.
69. The prayers sought are conservatory orders which are issued to preserve the status quo of a matter until a Petition or suit in relation to that matter is heard and determined. The conservatory orders are sought when there is a risk to the effect that the subject of the Petition or the Petition itself might be rendered meaningless or nugatory by the actions taken in the interim period, and if such conservatory orders are not issued. See the case of David Ndii & others – Versus - Attorney General & others [2021eKLR], where the court held that:-

“..... Such orders (conservatory) are granted to preserve the substratum of the Petition and therefore, where it is contended that there is a threat of violation of [the Constitution](#), any



stage in the chain of a constitutional process under challenge may properly be the subject of a conservatory order as long as that action is consequential to the process under challenge...”

70. It is trite that conservatory orders maintain the situation as it is or it was by preventing any action that would alter the subject matter of the dispute by ensuring that the said subject matter is preserved before the final decision is given.
71. Therefore, the court can rightly state that conservatory orders are issued to preserve the subject matter, when an action is being challenged through a Petition. They are interim reliefs; which are temporary, and are granted before full trial commences. See the case of *Katiba Institute versus Judicial Service Commission & 2 others; Kenya Magistrates and Judges Association & 2 others (Interested Parties) (Constitutional Petition E128 of 2022) [2022] KEHC 438 (KLR) (Constitutional and Human Rights) (3 June 2022) (Ruling)*,
72. In the case of *Njagi Zacharia Mwaniki vs Ndiga & 3 others [2023] KEHC 9562*, the court while quoting the case of *Board of Management of Uhuru Secondary School vs City County Director of Education and 2 others [2015] Eklr* summarized the principles of grant of conservatory orders as follows; -
- i. The need for the applicant to demonstrate an arguable prima facie case with a likelihood of success, and to show that in the absence of the conservatory orders, he is likely to suffer prejudice.
 - ii. The second principle is whether the grant or denial of the conservatory relief will enhance the constitutional values and objects of a specific right or freedom in the Bill of Rights.
 - iii. Thirdly, the Court should consider whether, if an interim conservatory order is not granted, the petition or its substratum will be rendered nugatory.
 - iv. Whether the public interest will be served or prejudiced by a decision to exercise discretion to grant or deny a conservatory order.
73. These principles were also emphasized by the Supreme Court in the case of *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others [2014] eKLR* as follows; -
- (86) “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 supplicant’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.” (Emphasis added).
74. Therefore, from the above cited authorities, it is evident that conservatory orders are a judicial remedy sought or issued by the court to preserve a subject matter until a Petition is heard and determined. It is an order of status quo ante, so that the substratum of the Petition is preserved, so that the said Petition is not rendered an academic exercise. See the case of *Nairobi Civil Appeal 151 of 2011 Invesco*



Assurance Co. Ltd vs. MW (Minor suing thro' next friend and mother (HW) [2016] eKLR , where the court defined conservatory orders as follows: -

“ A conservatory order is 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.”

75. It is well settled principle that in determining whether to grant or not to grant conservatory orders, the court will be guided on whether the party has established a prima-facie case with high probability of success, whether the party is likely to suffer irreparable prejudice in the absence of conservatory orders.
76. Further, the court will consider whether if the Conservatory order is not granted or is granted, will it enhance the constitutional values, and the objects of the specific rights or freedoms in the bill of rights. The party seeking such orders must also demonstrate that if the interim conservatory orders are not granted, the Petition or its substratum will be rendered nugatory. Further, the court will consider whether the granting of the conservatory order is necessary in the public interest.
77. Turning to the instant Application, is the Applicant deserving of the conservatory orders sought? From the annexures attached to the Petition and the application herein, it is evident that the Petitioner/Applicant who is a legally incorporated company was issued with a Mining licence registration. ML/2019/0072 to run from 1st August 2021 to 31st July 2046. The licence was therefore to remain in force for a period of 25 years, and there is no evidence whether the same has been revoked and or cancelled.
78. The Respondents have alleged that the said Mining licence was issued during a period of moratorium, wherein it barred issuance of any mining or prospective licence. However, on the face of it, the said licence was signed by Hon. John Munyes, who was a Cabinet Secretary of the Republic of Kenya at that time. Whether the licence is valid or not is a matter to be determined at the main trial, and not at this interim stage.
79. In the case of Muslim for Human Rights (Milimani) & 2 Others vs Attorney General & 2 Others (2011) eKLR, the Court stated as follows: -

“ The court must be careful for it not to reach final conclusion and to make final findings. By the time the application is decided; all the parties must still have the ability and flexibility to prosecute their cases or present their defences without prejudice. There must be no conclusivity or finality arising that will or may operate adversely vis-a vis the case of either parties. The principle is similar to that in temporary or interlocutory injunctive in civil matters. This is a cardinal principle and happily makes my functions and work here much easier despite walking a tight legal rope that I could easily lose balance with the slightest slip due to any laxity or being carried away by the passion or zeal of persuasion of any one side.”
80. Further, the Petitioner/Applicant held a Mineral Dealers (Trading Licence) No. MDLP/P.DPC/2024/2329, which was valid up to 31st December 2024. The Petitioner/Applicant has alleged that its Mineral Dealers licence was not renewed by the concerned Ministry, and it was not given an opportunity to explain itself.
81. The court has seen the Mineral Rights Board(MRB) recommendation to the Cabinet Secretary to reject all applications for mineral rights, and the Petitioner/ Applicant's Application was one of those rejected Applications. There is no evidence that the Petitioner/Applicant was given an opportunity to explain itself. If there is such evidence, then the Respondents will have an opportunity to avail it



at the main trial, but at this juncture, it is doubtful whether the Petitioner was given Notice or an opportunity to explain itself before the application for licence was denied.

82. The Applicant/Petitioner attached documents to show that the County Government of Narok had no objection to its setting up a mining factory within the county. Further the applicant obtained NEMA licences, and also approvals for change of user, from the County Government. All these approving bodies are public bodies, and the Petitioner had legitimate expectations that its business was legal and licenced, and now the Government has turned around to allege that the Applicant did not have a valid licence to carry out the mining activities. The said allegation by the Respondents can only be determined through calling of evidence in the main trial. Therefore, the Petitioner/Applicant has established that it has a prima facie case with probabilities of success.
83. On the likelihood that the Petitioner/Applicant will suffer prejudice, it was submitted that the Petitioner/ Applicant imported heavy machinery from China, and the Government of Kenya assisted and facilitated in the said importation, and now the applicant is being forced to uproot the said machinery. Indeed, there is likelihood that the Petitioner/ applicant will suffer prejudice if conservatory orders are not issued. See the case of Law Society vs AG and another [2020] KEHC 1702(KLR), which relied on the Black Law Dictionary to define prejudice as. “The Black’s Law Dictionary 10th Edition Thomson Reuters at page 1370 ‘prejudice’ as Damage or detriment to one’s legal rights or claims.”
84. On whether the grant of conservatory orders will enhance constitutional values, it is alleged that the Petitioner/ Applicant, its employees or workers have been harassed by the Mining Police Unit, and some of the employees have been arrested without following the fair administrative action, or adhering to the tenets of *the Constitution*. If that is the case, the conservatory orders will indeed enhance constitutional values and uphold the rule of law.
85. On whether the conservatory orders are necessary in the public interest, it is alleged that the Petitioner/ Applicant’s company has employed over 400 workers, and its closure has affected many households and landlords as the 400 persons have been rendered jobless. Therefore, conservatory orders herein are necessary in the public interest, and securing jobs security.
86. There are a number of receipts to show that the Petitioner/Applicant has paid ground rent or royalties, and there is evidence of tax returns, by the Applicant. The Petitioner/Applicant has alleged that it has paid all the royalties and ground rent dues, and is has no debt. The Respondents have alleged that the Petitioner/ Applicant is in debt of Ksh 622, 280, 800/= due from nonpayment of ground rent and royalties.
87. The Petitioner/ Applicant has denied that allegation. Therefore, given that the Respondents have alleged that the Petitioner has not paid the ground rent due, it will be upon the Petitioner /Applicant to call evidence to prove such payment the during the main trial. The Respondents too will have a duty to prove that the Petitioner/Applicant herein has failed to pay the said royalties. The said contested issue cannot be determined at this interlocutory stage.
88. On whether a prima-facie case has been established, the court will rely on the case of Law Society of Kenya vs AG & JSC [2020] eklr, where the court held: -

“ 53. In sum, therefore, in determining whether a prima-facie case is demonstrated a Court must look at the case as a whole. It must weigh, albeit preliminarily, the pleadings, the factual basis, the respective parties’ positions, the remedies sought and the law.”



89. Ultimately, having carefully considered the instant Notice of Motion Application dated 8th August 2025, the Replying Affidavits by the Respondents, the annexures thereto, and the oral submissions by the respective Counsels, this court comes to a conclusion that the Petitioner/Applicant has established all the principles for grant of conservatory orders as set out in the case of Gitarau Peter Munya[Supra].
90. For the above reasons, the court allows the Petitioner's/Applicant's Notice of Motion Application dated 8th August 2025 in terms of prayers No. (2), (3), (4), (6) and (7).
91. These conservatory orders will remain in force for a period of 12 months, and or less period The Petitioner herein is urged to prepare the main Petition for hearing and thereafter have it prosecuted expeditiously. Failure to do so, the conservatory orders in place will be lapse automatically.

It is so ordered

DATED SIGNED AND DELIVERED VIRTUALLY AT NAROK THIS 7TH OCTOBER 2025

L. GACHERU

JUDGE

Delivered online in the presence of

Elijah Meyoki – Court Assistant

Mr. Ochieng Oduol for the Petitioner/Applicant.

Mr. Eredi and Mr. Menge for the Respondents

Mr. Langat for the Intended/Proposed interested party

L. GACHERU

JUDGE

