

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC NO. E045 OF 2025

PETER MBURU WERU-----1ST
PLAINTIFF/APPLICANT

PAUL MUNGAI MWANGI-----2ND
PLAINTIFF/APPLICANT

EVANS SAISI-----3RD
PLAINTIFF/APPLICANT

(Suing on their own behalf and residents of Ninaami Estate, Plot Owners Community Based Organization Certificate No. DSD/26/138/02/135401)

VERSUS

COUNTY GOVERNMENT OF TRANS NZOIA-----1ST
DEFENDANT/RESPONDENT

KENYA PRISONS SERVICE-----2ND
DEFENDANT/RESPONDENT

NATIONAL LAND COMMISSION-----3RD
DEFENDANT/RESPONDENT

HON. ATTORNEY GENERAL-----4TH
DEFENDANT/RESPONDENT

RULING

1. Before the court is an application dated **16/9/2025**.

The plaintiffs seek:

(1) ...spent

(2) ...spent

- (3) A temporary conservatory order restraining the 2nd defendant through its officer in charge of Kitale Medium Prison, whether by itself, agent, and or servants under its authority, from further excavating, trenches, and demolition of perimeter walls around the suit property known as L.R. No. 2116/807 or L.R. No. 2116/1025/1-42, pending hearing and determination of this case.
 - (4) The court may be at liberty to issue such other orders or further orders and directions for purposes of meeting the ends of justice and preserving the subject matter herein.
 - (5) That the plaintiffs be given unlimited access to the suit premises without let or hindrance pending the hearing of the case.
 - (6) The costs of the application be borne by the 2nd defendant.
2. The application is based on the reasons on its face and in the supporting affidavit of Peter Mburu Weru. It is deposed that the Ninaami Estate comprises **40** units of two-bedroom residential houses built over **L.R. Grant No. I.R. 37028, L.R. No. 2116/807** measuring **2.66 Ha**, a copy attached as **PMW-1(a)-(b)**, which was made to the Municipal Council of Kitale

on **12/10/1982**, upon a request to establish a residential housing scheme.

3. It is deposed that the defunct **Municipality Block 6/93**, which was adjudged to be prison land, the same emboldened the 2nd defendant to come for their land by destroying the perimeter fence and digging trenches around the houses as per photos marked as annexure **PMW-5(a)-(c)**.
4. The plaintiffs depose that the 2nd defendant has gone further and written to the Transwasco Company, the water providers, and the Kenya Power and Lighting Company provider to Trans Nzoia residents to disconnect water and sewerage services to the plots as a prelude to demolition of the structures as per letters dated **5/9/2025** and marked **PMW-6(i)** and **(ii)**.
5. The plaintiffs depose that the two letters confirm that the 2^d defendant appreciates that the plaintiffs are in occupation of the suit land, yet they intend to move and demolish the structures without due process; otherwise, apart from the referenced judgment, the 2nd defendant has no other judgment against any of the plaintiffs.

6. The plaintiffs depose that despite being on the suit land pursuant to valid sales, coupled with genuine and authentic titles to their properties, the 2nd defendant has, in contravention of the Constitution and statutes, and without any form of warning or legal authorization, embarked on a well-planned constructive eviction by threatening to essential services and demolishing the houses.
7. The plaintiffs depose that the municipal council of Kitale partnered with the Kenya National Assurance Co. Ltd in receivership to construct the **40** units and sold them to Kenyan who could afford them, hence the reason the grant shows that as per entry **No. 2**, the title was charged to KNAC Ltd, who were the developers of the houses, subdivided into **40** subtitles ranging from **L.R No. 2116/807/2-37**, all subject to the charge on the mother title.
8. The 1st plaintiff deposes that he owns **No. I.R 81429 LR No. 2116/807/37**, which he purchased from one Kirit Patel, who had purchased it from the 1st defendant herein as per annexure **PMW-2(a)-(h)**.
9. The 1st plaintiff deposes that he has also attached copies of titles **No. I.R. 81410** and **81411 L.R.**

2116/807/12 and **13**, which were purchased by the late William Chemoiywo Koross, following the same route, as annexures marked **PMW-3(i)-(xvi)**.

- 10.** The plaintiffs depose that since **2024**, the 2nd defendant has wanted to take over the land under the guise that it falls on prison land, which prompted them to write to various government agencies, all reacting with a reassurance that the letter they hold is valid and lawful. Attached are copies of letters dated **8/4/2022** and **12/9/2025**, marked as annexure **(a)** and **(b)**.
- 11.** The plaintiffs depose that following the judgment in **Kitale ELC No. 153 of 2016**, involving the 2nd defendant, the foregoing acts of the respondent speak of impunity on the part of the government agency, which is bound by **Article 10(1)(c)** of the Constitution, to uphold national values and principles of governance.
- 12.** The plaintiffs urge the court to grant the reliefs sought to protect them and their investments as guaranteed by **Article 40** of the Constitution; otherwise, the suit properties belong to them, hence the 2nd defendant should not act beastly to alter the status *quo*.

- 13.** The application is opposed by the 2nd and 4th defendants through a replying affidavit of Ogutu Leonard Odhiambo, a registered Land Surveyor, working at the Prison Headquarters, sworn on **25/9/2025**, denying that the plaintiffs are beneficial owners of the parcels of land in issue.
- 14.** It is deposed that Kitale Remand Prison was established during the colonial time as a detention camp and later a remand prison, currently renamed Kitale Medium Prison, occupying part of **Kitale Municipality Block 3 and 6**, where the suit property falls.
- 15.** The 2nd and 4th defendants depose that the land on which Kitale Medium Prison occupies was reserved for the prison purpose vide Legal Notice **No. 721 of 1961** and **751 of 1963**, measuring **159.01** acres as per attached notices marked **OLO-1A** and **1 B**. The 2nd and 4th defendants depose that the encroachment of the prison land by the plaintiffs and many others dates back to the **1980s**.
- 16.** It is deposed that as a result of the said illegal subdivisions and encroachment, as per **PDP No. KTL 10/96/95** approved plan **393** as provided by the plaintiffs; the Prison has been allocated 12 acres and

another **12** acres for the GK Remand Primary School, hence reducing its gazetted land from **159.01** acres to **24** acres. Otherwise, the plan provided here by the plaintiffs does not reflect the actual geo-position of the features as they are on the ground.

17. The 2nd and 4th defendants depose that following the presidential directive in **January 2024** to relocate the Kitale Medium Prison to Kitale Main Prison, for land for the expansion for Kitale town, the prison authority in collaboration with the Trans Nzoia County Security Committee, a demarcation exercise of the gazetted prison land was conducted relying on the survey maps of the abuttal and over-laid on the google earth which resulted to satellite imagery attached as **OLO-2**.

18. Further, it is deposed that following the presidential directive on **5/12/2022** to survey and title all prison parcels of land all over Kenya, there was a successful demarcation of the prison land measuring **159.01** acres. Attached is the directive marked **OLO-3(a), (b), and (c)**.

19. The 2nd and 4th defendants depose that it was as a result of the above-mentioned exercise that the affected persons were identified for a peaceful engagement process of vacating the land to enable

the prison authority to process its title upon successful cancellation of the illegal titles.

20. The 2nd and 4th defendants depose that on several occasions the officer in charge of Kitale Medium Prison ha engaged the plaintiffs and others who have encroached the prisons land for an amicable solution, but the plaintiffs have resulted to courts intervention, otherwise, others have requested for more time to move out peacefully from the gazetted prison land as per letters annexed as **OLO-4(a)** and **(b)**.

21. The 2nd and 4th defendants deny the alleged dug trenches or threat to cut off essential services such as water and electricity. The 2nd and 4th defendants depose that the prison facility is a protected area that requires heightened security measures with controlled movement in and out of the facility using a single point of entry with the permission of the officer in charge, who is duty-bound to ensure the security procedures are upheld by reinforcing all the porous entries leading to the prison facility.

22. The 2nd and 4th defendants depose that **L.R. No. 2116/807** is part of the gazetted Kitale Medium Prison land falling under **Block 3**, which has never been degazetted or otherwise lawfully alienated, hence the

certificate of lease obtained by the plaintiffs is illegal and irregularly acquired.

23. The 2nd and 4th defendants depose that the plaintiffs have tendered no evidence to demonstrate that the suit property is distinct from the **159.01** acres of land reserved for Kitale Prison; otherwise, they obtained the titles unprocedurally, and where the plaintiffs occupy is where the GK Remand Primary School is situated since the establishment of the prison facility, otherwise, the survey plan **FR. No. 160/192** produced by the plaintiffs confirms that the suit property was an illegal excision of government land, which has been illegally subdivided into **174** parcels (**60** of them out of **Block 6** and **114** from **Block 3**), all allocated to private parties.

24. The 2nd and 4th defendants depose that there are several court decisions cancelling all the entries and titles that were unprocedurally issued on gazetted Kitale Medium Prison land, such as **Kitale ELC No. 153 of 2022** and **ELC No. 115 of 2018**, attached as **OLO-6(A) and (B)**.

25. The 2nd and 4th defendants depose that the plaintiffs have failed to establish a prima facie case with a high chance of success, as they have not shown that there

was a de-gazettement of the suit property, thus making it available for allocation.

26. The primary pleading by the plaintiffs is the plaint dated **16/9/2025**. The plaintiffs seek:

(a) Permanent injunction restraining the defendants either jointly or through their servants and or assignees from interfering with the `plaintiffs' possession of LR No. 2116/807/ (subdivision 2116/1025/1-42), all inclusive.

(b) Declaration that the manner in which the plaintiffs acquired the suit property and took possession was and is legitimate and lawful.

(c) All manner of work being undertaken by the 2nd defendant or any other defendant, from digging trenches, demolition, and eviction, shall be halted until ownership is determined.

(d) Damages for breach of property rights.

27. The plaintiffs bring the suit on their own behalf and the residents of Ninaami Estate Plot Owners Community, based organization's Certificate No. **DSD/26/138/02/135401**.

28. From the verifying affidavit and the accompanying documents, the court finds no authority to sue, plead, and prosecute given to either the 1st plaintiff or the three plaintiffs to sue on behalf of the rest of the

plaintiffs. Equally, the court finds no leave which was sought and granted to the plaintiffs to bring a representative suit.

29. More importantly, the detailed plot owners alleged to own **40** units of Ninaami Estate have not been pleaded in the body of the plaint. In the absence of leave to file a representative suit and or authority to swear both the verifying and supporting affidavits to the plaint and the notice of motion, the court finds that the 1st plaintiff cannot speak for or act on behalf of the 2nd and 3rd plaintiffs and, by extension, the alleged plot owners of Ninaami Estate. Again, the plaintiffs purport to bring the suit on behalf of a community-based organization.

30. *Locus standi* refers to a right to be heard. A person must have sufficient interest to sustain a stand to sue in a court of law. See **Alfred Njau & Others -vs- City Council of Nairobi [1982] KAR 229**. Under what law the CBO is registered is not pleaded. The capacity that the plaintiffs hold in the CBO is not pleaded. Authority by way of minutes or board resolution has not been attached. Without disclosing whether the plaintiffs are officials and if they were also registered as such with any government

agencies, the plaintiffs cannot possibly represent or act for the plot owners. See **Audu Akuru A. Twiga CBO -vs- Chief Land Registrar: NLC (IP) ELC E013 of 2023 KEELC 20419 [KLR] (4th October 2023) (Ruling)**. My finding is that the plaintiffs can only advance their individual claims and not in a representative capacity.

31. The next issue is whether the plaintiffs deserve a temporary conservatory order. In **Peter Munya -vs- Dickson Mwenda Kithinji & Others [2014] eKLR**, the court defined conservatory orders as aimed at facilitating ordered functions within public agencies, which, unlike interlocutory injunctions, aim at upholding the adjudicatory authority of the court, in the public interest. Conservatory orders are, therefore, a judicial remedy granted by way of an undertaking that no action of any kind is taken to preserve the subject until the suit is heard by preserving the status *quo*.

32. In **Judicial Service Commission -vs- Speaker of National Assembly & Another [2013] eKLR**, the court said that conservatory orders are not ordinary civil law remedies between private individuals and are aimed at keeping the subject matter of the dispute in

place since they are remedies in rem as opposed to remedies in *personam*. The guiding principles to apply are only given on the inherent merit of a case, bearing in mind public interest, the constitutional values, the proportionate magnitudes, and the priority levels attributable to the relevant courses.

- 33.** In **BOM Uhuru Secondary School -vs- City County Director of Education & Others [2015] eKLR**, the court said that an applicant must demonstrate an arguable *prima facie* case with a likelihood of success and show, in the absence of a conservatory order, that he is likely to suffer prejudice.
- 34.** An applicant must show that by granting the order, it will enhance the constructive value of a specific right or freedom in the Bill of Rights, and if the public interest will be served or prejudiced by the decision, and whether the conservatory order is not issued, the substratum will be rendered nugatory.
- 35.** A *prima facie* case is defined as one where, looking at the material before the court, a right has been infringed or violated to call for a rebuttal from the opposite side. See **Mrao Ltd -vs- First American Bank of (K) Ltd & Others [2003] KLR 125**.

- 36.** An applicant must therefore raise a genuine and arguable case, such as that held in **David Ndi & Others -vs- Attorney General & Others [2021] eKLR**, need not succeed at the main hearing, but one disclosing an arguable issue. In assessing the sufficiency of an applicant's interests, the court, as held in **Naftali Ruthi Kinyau -vs- Patrick Thuita Gachure & Another [2015] eKLR**, looks into the nature of the complaints regarding the defendant's proposed activities
- 37.** What the plaintiffs are alleging is that they hold a genuine and valid certificate of leases issued to them by the government through the predecessor in title of the 1st defendant, which they have developed and occupied for many years.
- 38.** The 2nd and 4th defendants, on the other hand, dispute the legality of those titles for the land had been reserved as prison land and hence was never de-gazetted to be available for alienation in favour of the 1st defendant and by extension to third parties.
- 39.** The 2nd and 4th defendants assert superior title to the land, which they have set in motion measures to reclaim following the demarcation process courtesy of the presidential directives.

40. Repossession of public, private, and community land occupied by trespassers must adhere to the law set under **Section 152A-I** of the Land Act. **Section 152A-I** of the Land Act provides that a person unlawfully occupying private, public, and community land must be served with a **90**-day notice to vacate. There is a relief against a notice of eviction under **Section 152F** of the Land Act.

41. A court may give an appropriate relief to such an applicant depending on the circumstances of the case. The law also allows the owner of the land to approach the court for eviction orders. In **Ongera & Others - vs- Mwakwae Civil Appeal E246 of 2022 [2025] KECA [KLR] (21st March 2025) (Judgment)**, the court said that **Article 40** of the Constitution as read together with **Section 26** of the Land Registration Act are only meant to protect persons who genuinely enter into agreements for sale or transfer of land and who can establish their *bona fides* in the transaction, but not those crooks who criminally interfere with government land records.

42. The plaintiffs take the view that the house(s) were developed by KNAC Ltd in receivership in conjunction with the predecessors of the 1st defendant. The

defendants have not denied those facts. Equally, the defendants have not demonstrated that they have issued an eviction notice as per the law.

- 43.** In **Kenya Railways Corporation -vs- Birah & 14 others (Civil Appeal E206 of 2021) [2025] KECA 545 (KLR) (21 March 2025) (Judgment)** The court said that the legal provision for eviction from public land under **Section 152G** of the Land Act requires a notification in writing by notice in the gazette, and in one newspaper with nationwide circulation, and by radio announcement in a local languages for at least three months.
- 44.** In my view, the plaintiffs have established a prima facie interest or right. They hold certificates of title which have not been cancelled, invalidated, or impeached before a court of law. A statutory procedure for eviction or recovery of the land specific to the plaintiffs has not been undertaken by the defendants. Respect for human rights, fairness, and dignity must be observed when carrying out evictions or demolitions.
- 45.** These are the bare minimum in the Constitution and Statutory law on fair administrative acts. See **Kenya Airports Authority -vs- Mitu-Bell Welfare Society**

& 2 others,[2016] eKLR. It is against public interest to infringe on the right to property without adherence to the law. I think the plaintiffs in the circumstances deserve preservation of the substratum of the suit until the same is heard and determined.

46. The upshot is that I allow the reliefs sought to last for **one (1)** year only. Prayers **3** and **5** are also allowed.

47. Orders accordingly.

Ruling dated, signed, and delivered via **Microsoft Teams/Open Court** at **Kitale** on this **15th** day of **October 2025**.

In the presence of:

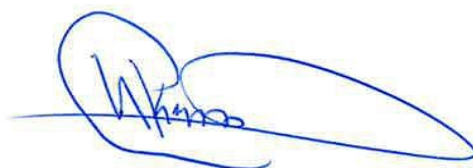
Court Assistant - Dennis

Ogutu for 1st Defendant/Respondent - present

Mbugu for plaintiff/applicant - present

Chilaka for 2nd and 4th defendants - absent

Obiho for 3rd Defendant - present



**HON. C.K. NZILI
JUDGE, ELC KITALE.**