



**Visram & 3 others v Nairobi City County Government & 3 others;  
Runda Association (Interested Party) (Environment and Land Petition  
E31 of 2025) [2025] KEELC 7427 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7427 (KLR)

**REPUBLIC OF KENYA**

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

**ENVIRONMENT AND LAND PETITION E31 OF 2025**

**OA ANGOTE, J**

**OCTOBER 30, 2025**

**IN THE MATTER OF ARTICLES 2,3, 10, 22, 23, 24, 27, 28, 40, 42, 43,  
69, 70, 186, 258 AND 259 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF SECTION 5 OF THE COUNTY GOVERNMENTS ACT**

**AND**

**IN THE MATTER OF SECTION 3 OF THE ENVIRONMENTAL  
MANAGEMENT AND COORDINATION ACT**

**AND**

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF ARTICLES 2,3, 10, 22, 23,  
24, 27, 28, 40, 42, 43, 69, 70, 186, 258 AND 259 OF THE CONSTITUTION OF KENYA 2010**

**BETWEEN**

**HON (RTD) JUSTICE ALNASHIR VISRAM ..... 1<sup>ST</sup> PETITIONER**

**AZMINA VISRAM ..... 2<sup>ND</sup> PETITIONER**

**SHAILA BHANJI ..... 3<sup>RD</sup> PETITIONER**

**IMTIAZ BHANJI ..... 4<sup>TH</sup> PETITIONER**

**AND**

**NAIROBI CITY COUNTY GOVERNMENT ..... 1<sup>ST</sup> RESPONDENT**

**GOVERNOR JOHNSON SAKAJA ..... 2<sup>ND</sup> RESPONDENT**

**PATRICK MBOGO ..... 3<sup>RD</sup> RESPONDENT**

**IBRAHIM AUMA NYANGOYA ..... 4<sup>TH</sup> RESPONDENT**



AND

RUNDA ASSOCIATION ..... INTERESTED PARTY

**RULING**

IN THE MATTER OF ARTICLES 2,3, 10, 22, 23, 24, 27, 28, 40, 42, 43, 69, 70, 186, 258 AND 259 OF THE CONSTITUTION OF KENYA 2010

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RULING

1. Through a Notice of Motion dated 25<sup>th</sup> July 2025, brought pursuant to Order 40 Rule 1 and Order 51 of the Civil Procedure Rules, 2010, the Petitioners/Applicants seek the following orders
  - i. That an interim injunction be and is hereby issued prohibiting the Respondents by themselves, their agents, servants or any person acting their authority from unlawfully discharging storm water into the Applicant's property, Plot 216 and other adjacent plots pending the hearing and determination of the petition.



- ii. That an interim mandatory injunction be and is hereby issued compelling the Respondents by themselves, their agents, servants or any person acting under their authority to immediately seal the illegal open passage in the storm drainage canal along Ruaka Road fronting the Applicants private property through which storm water is being unlawfully discharged into private properties including Plot 216, Ruaka Road pending the hearing and determination of the Petition.
  - iii. That an interim mandatory injunction be and is hereby issued directing the Respondents to take immediate steps to prevent flooding and protect life and property on Plot 216 Ruaka Raod. These steps may include but are not limited to, temporarily redirecting the storm water being discharged into Plot 216 and installing drainage control measures pending the hearing and determination of the Petition.
  - iv. That an interim order does issue directing the Respondents to conduct a technical inspection and assessment of the storm drainage system along the southern side of Ruaka Road between Ruaka Drive intersection and Mae Properties Drive intersection and file a report before this Honourable Court within 14 days detailing the current storm water discharge route, the impact of the unlawful discharge of the storm water into Plot 216 and adjacent plots and proposed remedial measures to alleviate the risk of flooding during the pendency of the Petition.
  - v. That an interim order does issue directing the Respondents to take reasonable emergency measures to assist the Applicants in the event of flowing during the pendency of this suit including but not limited to facilitating clean up and sanitation support and provision of temporary shelter if displacement occurs.
  - vi. That the costs of implementing the interim measures under the above order be borne by the Respondents pending the determination of liability in the Petition.
  - vii. That this Honourable Court be pleased to issue any other interim relief that it may deem fit and just to prevent the continued violation of the Applicant's constitutional rights pending the hearing and determination of the Petition.
2. The grounds upon which the application is premised are set out in the Supporting Affidavit sworn by the 1<sup>st</sup> Petitioner, Hon. Justice (Rtd.) Alnashir Visram. He deponed that he, together with the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Petitioners, are the joint owners of Plot No. 216, Ruaka Road, which comprises two portions, one being an empty plot and the other containing the residential house in which the deponent resides with his family. He explained that Plot 216 lies immediately behind Plot 215 as viewed from Ruaka Road.
  3. The 1<sup>st</sup> Petitioner deponed that due to what he described as an erroneous design and construction of the storm-water drainage system along the southern side of Ruaka Road, between the Ruaka Drive intersection and Mae Properties Drive intersection, storm water is being unlawfully and continuously discharged into their homestead on Plot 216.
  4. He stated that the storm drainage canal correctly slopes westwards from the junction of Githogoro Road towards Mae Properties Drive and that its last section, near the Ruaka Drive junction, is



improperly aligned, thereby obstructing the natural flow of water towards Mae Properties Drive and its designated storm water drainage canal. It was deposed that the defective portion, measuring approximately 150 metres in length, including a 20 m segment near the Mae Properties Drive intersection, requires deepening to facilitate the free flow of the substantial volume of water along the roadway.

5. In the absence of corrective works, he deposed, storm water has been diverted into Plots 215, 216, 1247, 1248 and 1249 (formerly Plot 228), causing erosion, destruction of property, nuisance, disturbance and exposure to pollutants, thus inflicting physical, emotional and environmental distress upon the residents.
6. It was further deposed that the continued discharge of storm water into Plot 216 has led to flooding and extensive structural damage to the 1<sup>st</sup> Petitioner's home, including the collapse of two perimeter walls and that the Petitioners have been compelled to incur substantial expenditure in remedial works including removal of damaged structures, excavation and construction of new boundary walls, reinforcement through ground and top-beam work, drainage reconstruction, landscaping, cleaning and the erection of a counter-fort retaining wall.
7. It was averred that the unlawful discharge has effectively turned their property into a water meadow, diminishing its value and rendering it difficult to sell or safely inhabit.
8. The Petitioners have, in addition, incurred significant costs in redesigning the residence to protect their family from injury and to mitigate further structural damage arising from the recurrent flooding.
9. The deponent stated that the flooding has subjected his family to physical and psychological distress, depriving them of the ability to live in dignity and safety and that they live in constant fear that flooding may recur whenever it rains, exposing them to pollution, fatigue, illness and continuous anxiety associated with the repetitive clean-up and repair efforts.
10. It was deposed that despite numerous complaints made to the 1<sup>st</sup> Respondent, both individually and through the Runda Association, the authorities have failed to take corrective action to seal the open drainage, divert the flow, or otherwise rectify the defective gradient.
11. The deponent stated that on 2<sup>nd</sup> July 2024, he submitted a residents' petition to the 2<sup>nd</sup> Respondent, urging it to direct the 1<sup>st</sup> Respondent to rectify the storm-water drainage before the onset of further rains. He asserted that no response was forthcoming.
12. Subsequently, it was deposed, by a letter dated 29<sup>th</sup> April 2025, the Applicants, through their advocates on record, demanded that the Respondents immediately desist from discharging storm water into private plots, including Plot 216. Again, no action or response was received.
13. It is the Petitioners' case that under *the Constitution* and the *County Governments Act*, the Respondents bear a statutory and constitutional obligation to provide effective public works and services, including proper storm-water management and sanitation infrastructure within developed urban areas.
14. It was contended by the Petitioners that the continued and reckless discharge of storm water into Plot 216, resulting in recurrent flooding, has violated, infringed and threatened their constitutional rights and freedoms as particularized in the Petition.
15. The Respondents opposed the application through a Replying Affidavit sworn on 19<sup>th</sup> September 2025 by Allan Nyaga, the Acting Deputy Director of Engineering and Works in the Nairobi City County Government. He deposed that it was not correct, as alleged by the Petitioners, that the Respondents had taken no steps to remedy the drainage problem.



16. According to Mr. Nyaga, following receipt of several complaints from residents along Ruaka Drive and adjoining premises during the long and short rains of 2024, the County Government dispatched a technical team to the site to assess the situation and recommend appropriate interventions.
17. He conceded that the storm-water gradient was improperly aligned, and that during the inspection, it was observed that the existing underground drain comprised precast concrete culverts of 450mm diameter, originally designed and installed by the Runda Estate Developer.
18. He explained that the purpose of this system was to drain water from the junction of Ruaka Lane and Ruaka Drive, through a cross culvert under Ruaka Road, to the outfall discharging towards Mae Properties Drive.
19. However, he deposed, the Respondents' inspection revealed that the drainage system had collapsed and the invert levels were misaligned, thereby impeding the free flow of storm water and resulting in overflow into adjoining plots. It was also observed that a cross culvert had been installed at the lowest point of Ruaka Road, draining towards a natural watercourse downstream, and that the road surface formed a natural sag that collected storm water.
20. Mr. Nyaga deposed that on 22<sup>nd</sup> October 2024, the County Government commenced mitigation works intended to rehabilitate the sub-surface drainage along the same alignment previously designed by the Runda Estate Developer, while also desilting the existing outfall.
21. It is the Respondents' case that the works undertaken included excavation and removal of blocked precast culvert pipes, installation of new 800mm diameter HDP-DWC SN8 pipes for a stretch of 220m as the primary drain, construction of a subsurface open drain with IBD and side slabs, construction of inspection chambers (4 No) with precast concrete pipe and desilting the existing 450mm diameter culvert across Ruaka Road.
22. It was averred that these works had been completed and that, as a result, flooding had ceased in the affected premises along Ruaka Drive. Mr. Nyaga further deposed that the subject properties, Plots 215, 216, 1247, 1248, and 1249, experience periodic flooding primarily due to their natural surface alignment, being located at the lowest point of the catchment. He stated that following the residents' complaints, the County conducted a site visit to ascertain the causes and propose further remedial measures.
23. According to the Respondents, the existing drainage along Ruaka Road was constructed by Mae Properties Limited, the original estate developer, during the establishment of Runda Estate, and the design created a low point adjacent to Plots 215 and 216.
24. Mr. Nyaga deposed that a comprehensive catchment analysis is required, followed by the design and construction of a new storm-water drainage system to redirect runoff along Ruaka Road towards the junction with Mae Properties Drive and ultimately to River Ruiru.
25. He stated, however, that the proposed works are extensive and resource-intensive, as there are no existing public wayleaves for drainage, and implementation would require relocation of service utilities such as water supply pipes and power lines along the drainage corridor.
26. In the interim, he suggested that individual property owners situated along the natural drainage path may mitigate flooding by installing culverts within their properties, pending the County's mobilisation of funds to undertake long-term corrective works.
27. In response, the 1<sup>st</sup> Petitioner swore a Further Affidavit, reiterating that the Respondents had taken no effective action to address the flooding affecting Plot 216, Ruaka Road. He restated that he had written



- to the Respondents on three occasions complaining about the unlawful discharge of storm water but received no substantive response.
28. The 1<sup>st</sup> Petitioner concurred with the Respondents' admission that the collapsed drainage and misaligned invert levels were the cause of flooding, but contended that this further proved that storm water from Ruaka Road was being unlawfully diverted into their property.
  29. He challenged the technical report annexed to the Respondents' affidavit on grounds that it was undated and unsigned, and therefore could not be relied upon by the court as its author and authenticity were unknown.
  30. Without prejudice to that objection, the 1<sup>st</sup> Petitioner deponed that even if the report were to be considered, it confirmed that Plots 215, 216, 1247, 1248 and 1249 suffer flooding because the cross culvert along Ruaka Road lacks sufficient capacity to handle the storm water volume, thereby causing overflow into private plots.
  31. He stated that this amounts to an admission by the Respondents that the drainage system is defective and inadequate, and that storm water continues to be discharged into private properties in violation of the law.
  32. The 1<sup>st</sup> Petitioner denied the Respondents' assertion that flooding had ceased, referring the court to photographic and video evidence annexed to his supporting affidavit showing ongoing flooding within the premises along Ruaka Drive. He argued that no independent inspection report or technical data had been presented by the Respondents to substantiate their claim.
  33. He further denied that the flooding is caused by the natural topography of the area, asserting that several neighbouring properties at similar elevation suffer no such inundation. He attributed the flooding to a large opening in the storm-water drain which unlawfully channels water into their compound, compounded by the defective design of the drainage gradient.
  34. The 1<sup>st</sup> Petitioner acknowledged that the Respondents' proposal to construct a new storm-water canal would provide a long-term solution, but urged the court to issue interim injunctive relief to prevent continuing violation of the Petitioners' constitutional rights pending the hearing and determination of the Petition.
  35. He averred that the Applicants have already incurred substantial expenditure in mitigating the flooding, as detailed in the Petition, and should not be compelled to bear further financial burdens for what is clearly a public duty owed by the County Government under *the Constitution* and statute.

### Submissions

36. Counsel for the Petitioners submitted that the sole issue for this court's determination at this stage is whether the application satisfies the legal threshold for the grant of an interlocutory injunction.
37. It was submitted that under Section 5(2)(c) of the *County Governments Act* and Part 2 of the Fourth Schedule to *the Constitution*, the Respondents bear the statutory duty to provide public works and services, including storm-water management and sanitation within built-up areas. By allowing storm water to be unlawfully discharged into Plot 216, Ruaka Road, Counsel argued, the Respondents have violated the Petitioners' constitutional rights and failed in their public obligations.
38. Counsel emphasized that the Petitioners had provided photographic and video evidence showing the defective design of the storm-water drainage along the southern side of Ruaka Road, which diverts water into private property, and that the Petitioners had also exhibited proof of recurrent flooding and receipts evidencing substantial financial expenditure incurred in repairing the damage.



39. Based on this evidence, it was argued that the Applicants had established a prima facie case, demonstrating that their constitutional rights to property, dignity, and a clean environment were under imminent threat.
40. Counsel submitted that the flooding has caused continuous erosion, destruction of property, and emotional and psychological distress, which cannot be adequately compensated by monetary damages. The damage, it was argued, extends beyond physical harm to the property and includes the violation of constitutional rights, which the law recognizes as non-pecuniary in nature.
41. Counsel urged that the violation of the Petitioners' rights is ongoing, and unless restrained by this court, the Applicants will continue to suffer irreparable injury each time it rains. It was submitted that no amount of compensation could adequately remedy the loss of dignity, security, and peace of mind occasioned by the recurring flooding.
42. It was contended that the balance herein favours the Petitioners, whose home would otherwise become uninhabitable during the anticipated October rains, as all runoff water from Ruaka Road continues to flow into their premises.
43. Counsel invoked Article 70(2)(a) and (b) of *the Constitution* of Kenya, 2010, submitting that this court has a constitutional obligation to issue orders necessary to prevent or discontinue acts harmful to the environment, including unlawful discharge of storm water into private property. It was argued that the risk in granting interim protection is far lower than the risk of refusing it, especially given the imminent rains. Reliance was placed on *Mwangi & 3 Others v Ndunyu & 2 Others* [2025] KEELC 1121 (KLR).
44. On costs, Counsel submitted that under Section 27 of the *Civil Procedure Act*, costs follow the event, and the successful party is entitled to costs unless the court, for good reason, orders otherwise. The Petitioners' Counsel maintained that the Respondents' conduct in failing to act on repeated complaints has necessitated the present proceedings.
45. In response, Counsel for the Nairobi City County Government relied on the principles guiding the grant of injunctions as set out in *East African Industries vs Trufoods* [1972] EA 420, *Giella vs Cassman Brown & Co. Ltd* [1973] EA 358, and reaffirmed in *Nguruman Limited vs Jan Bonde Nielsen & 2 Others* [2014] eKLR.
46. Counsel submitted that although the Applicants have a prima facie case, based on their averments, the other two pillars have not been proven on a balance of probabilities and therefore the orders sought should not be granted.
47. It was acknowledged that under Part 2, Section 11 of the Fourth Schedule to *the Constitution*, the 1<sup>st</sup> Respondent is responsible for public works, storm-water management, and sanitation services. Counsel, however, contended that these obligations had been discharged, as the County undertook drainage rehabilitation works between October 2024 and February 2025 following complaints from residents.
48. Counsel further submitted that additional works undertaken by the Runda Association had alleviated the drainage problem. Sealing the drainage outlet at this stage, it was argued, would merely redirect the water elsewhere, transferring the problem to other private properties and potentially resulting in multiple disputes.
49. Counsel contended that the orders sought are presently impractical and premature, since any long-term drainage reconstruction would require planning, technical design, and budgetary allocation,



processes that cannot be undertaken immediately. The court was urged to avoid granting orders whose implementation may not be feasible, rendering the proceedings academic.

50. It was submitted that the storm-water drainage follows a natural course toward the downstream area, where the Petitioners' property lies. Counsel argued that several downstream property owners had developed their parcels without leaving wayleaves for drainage, thereby constraining the County's ability to expand or realign the storm-water system.
51. Counsel added that while the County awaits allocation of funds for a permanent solution, the Petitioners and other affected residents could mitigate the flooding by installing culverts on their properties, and that the County is willing to offer technical guidance and ease of acquisition of approvals to facilitate such interim measures.

#### Analysis and Determination

52. The Petitioners have, through the present application, sought interim reliefs in the nature of both preventive and mandatory injunctions pending the determination of the Petition. The single issue for this court's determination is whether the application meets the threshold for the grant of such injunctive reliefs.
53. The Petitioners' complaint arises from what they describe as an erroneous design and construction of the storm-water drainage canal along the southern side of Ruaka Road, between the Ruaka Drive and Mae Properties Drive intersections. They assert that as a result of this defective design, storm-water is being unlawfully discharged into their property, Plot No. 216, causing erosion, destruction of property, pollution, and severe mental and emotional distress.
54. The first prayer sought by the Petitioners is couched as a prohibitory injunction, seeking to restrain the Respondents from unlawfully discharging storm-water into Plot No. 216 and adjoining parcels pending the hearing and determination of the Petition. However, to give effect to this restraint would necessarily require the Respondents to take affirmative steps, including sealing the open drainage outlet and realigning the flow of storm-water. The prayer, though framed as prohibitory, is therefore mandatory in substance, as it compels action rather than merely restraining conduct.
55. An interlocutory injunction, whether prohibitory or mandatory, is a temporary equitable relief intended to preserve the subject matter of the dispute pending determination of the main suit. The jurisdiction of the court to issue such orders is anchored in Order 40 Rule 1 of the Civil Procedure Rules, 2010, which empowers the court to grant temporary injunctions where it is shown that property in dispute is in danger of being wasted, damaged, alienated, or otherwise dealt with in a manner prejudicial to the applicant.
56. Order 40 Rule 1 of the Civil Procedure Rules, 2010 provides that;

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



57. The conditions for the grant of an interlocutory injunction were settled in the case of *Giella vs Cassman Brown & Company Limited* [1973] EA 358 and restated in *Nguruman Limited vs Jan Bonde Nielsen & 2 others* [2014] KECA 606 (KLR). An applicant is required to demonstrate, sequentially: that a prima facie case with a probability of success exists; that the applicant stands to suffer irreparable harm not compensable by damages; and if the court is in doubt on the first two, the matter should be decided on a balance of convenience.
58. However, where the relief sought is mandatory rather than prohibitory, the threshold is higher. As the court observed in *Maher Unissa Karim vs Edward Oluoch Odumbe* [2015] eKLR:
- “The test for granting a mandatory injunction is different from that enunciated in the *Giella v Casman Brown* case which is the locus classicus case for prohibitory injunctions. The threshold in mandatory injunctions is higher than in the case of prohibitory injunctions...”
59. The Court of Appeal in *Nation Media Group & 2 others vs John Harun Mwau* [2014] KECA 308 (KLR) quoted Halsbury’s Laws of England, Volume 24 4<sup>th</sup> Edition paragraph 948, where the learned authors state as follows:
- “A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks it ought to be decided at once, or if the act done is simple and summary one which can be easily remedied, or if the defendant attempted to steal a march on the plaintiff.... a mandatory injunction will be granted on an interlocutory application.”
60. Whereas the Court can grant mandatory injunctions at an interlocutory stage, it can only do so under special circumstances. The Court of Appeal in *Kenya Breweries Ltd & Another vs Washington O. Okeya* [2002] eKLR quoted the English case of *Locabail International Finance Ltd vs Agro Export & Another* (1986), ALI ER 901 which stated that;
- “A mandatory injunction ought not to be granted on an interlocutory application in the absence or special circumstances, and then only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a march on the plaintiff. Moreover, before granting a mandatory interlocutory injunction, the court had to feel a higher degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction.”
61. The requirement of certainty articulated by the English court above underscores the cautious approach courts must take when granting mandatory orders at an interlocutory stage.
62. It therefore follows that whereas this court has jurisdiction to grant mandatory injunctions at an interlocutory stage, such jurisdiction must be exercised sparingly and only in the clearest of cases, where the applicant has shown a clear and undisputed right and where refusal of the order would perpetuate an ongoing illegality or violation of constitutional rights.
63. As defined by the Court of Appeal in *Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others* [2003] eKLR, a prima facie case is one in which, on the material placed before the court, a tribunal



properly directing itself could conclude that there exists a right apparently infringed by the opposite party, thereby calling for an explanation or rebuttal.

64. In the present matter, it is not disputed that under Section 11 of Part 2 of the Fourth Schedule to *the Constitution*, the Respondents bear a constitutional and statutory duty to provide county public works and services, including storm-water management systems in built-up areas; and water and sanitation services.
65. It is further common ground that the storm-water drainage system along the southern side of Ruaka Road, between the Ruaka Drive and Mae Properties Drive intersections, is misaligned and defective.
66. Mr. Allan Nyaga, Acting Deputy Director of Engineering and Works in the Nairobi City County Government candidly acknowledged that Ruaka Drive has historically suffered storm-drainage challenges. He confirmed that the County received several complaints from residents during the 2024 rains and that, upon inspection, the County established that the underground drainage network had collapsed, with misaligned invert levels causing blockages and overflow into adjoining plots. The inspection further revealed that a cross-culvert had been installed at the lowest point of Ruaka Road draining towards a natural watercourse, and that the road surface itself formed a natural sag which collected storm water.
67. The Respondents additionally contended that the subject properties experience periodic flooding due to their natural surface alignment, being located at the lowest point of the catchment area. It was their position that the flooding was therefore a topographical inevitability rather than a consequence of any omission or mis design on their part.
68. The Respondents relied on a report prepared by the Chief Officer, Works, Eng. Geoffrey Tirop, detailing the interventions allegedly undertaken to address flooding along Ruaka Road. The Petitioners disputed its authenticity for want of signature. However, the court notes that the document bears both the official stamp and signature of Eng. Tirop and is thus properly attributed to him.
69. According to the report, mitigation measures were undertaken in October 2024, including rehabilitation of the sub-surface drain along the existing Runda Estate alignment and desilting of the outfall drains. The report concluded that, following those works, “there is no more flooding in premises along Ruaka Drive.”
70. His assertion is, however, directly contradicted by the photographic evidence annexed by the Petitioners, dated 8<sup>th</sup> April 2025, depicting significant flooding and pooling of storm-water within Plot No. 216.
71. In his own affidavit, Mr. Nyaga further conceded that a comprehensive catchment analysis and the design of a new storm-water drainage system are required to redirect runoff from Ruaka Road towards Mae Properties Drive and ultimately into River Ruiru. He nonetheless stated that such an undertaking would be resource-intensive and dependent on future budgetary allocations.
72. From the totality of the evidence placed before this court, including the Respondents’ express admissions, it is apparent that the Petitioners have established a prima facie case. The defective alignment of the drainage canal, the continued discharge of storm-water into private property, and the County’s acknowledgment of both the defect and its duty to rectify it, together demonstrate an apparent violation of the Petitioners’ right to property and to a clean and healthy environment guaranteed under Articles 40 and 42 of *the Constitution*.
73. Having found that the Petitioners have established a prima facie case, the next issue for determination is whether they stand to suffer irreparable harm should the orders sought not be granted. The test,



as restated by the Court of Appeal in *Nguruman Limited vs Jan Bonde Nielsen & 2 Others* [2014] eKLR, is that:-

“...the applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, prima face, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy...”

74. In the present case, the Petitioners have demonstrated that the continued discharge of storm-water into Plot No. 216 has caused extensive and recurring flooding, leading to the collapse of perimeter walls, damage to the residential house, and degradation of the land itself.
75. They have adduced photographs, and receipts showing the significant sums expended in attempts to mitigate the damage. Beyond the structural harm, the Petitioners have deponed to the psychological distress, anxiety and loss of dignity suffered by their family, who now live in constant fear of flooding whenever it rains.
76. The Respondents have not controverted this evidence, save to suggest that the flooding results from the natural topography of the area. Yet, as already observed, their own technical officer acknowledged that the drainage system is defective and requires realignment and reconstruction. This admission negates the argument of natural causation and reinforces the Petitioners’ position that the injury complained of is a direct consequence of official omission and design error, not natural terrain.
77. The court is persuaded that the harm suffered by the Petitioners cannot be quantified in monetary terms. The flooding of a residential home, the continuous discharge of waste-laden storm-water into private property, and the attendant mental distress amount to infringements of the right to property under Article 40 and the right to a clean and healthy environment under Article 42 of *the Constitution*. These are continuing violations, which cannot be adequately compensated by an award of damages after the fact.
78. As already stated, the Petitioners continue to reside in a property repeatedly flooded with storm-water. Each rainfall event exposes them to renewed risk of loss and emotional distress. On the other hand, the Respondents have not demonstrated that immediate remedial measures, such as sealing the open drainage outlet or redirecting water flow, would paralyse public operations or inflict disproportionate hardship upon them. Indeed, their own affidavit acknowledges the defective design of the drainage canal and the necessity of corrective works.
79. In *Pius Kipchirchir Kogo vs Frank Kimeli Tenai* [2018] eKLR, the court explained that:

“The court should issue an injunction where the balance of convenience is in favor of the plaintiff and not where the balance is in favor of the opposite party. The meaning of balance of convenience in favor of the plaintiff is that if an injunction is not granted and the suit is ultimately decided in favor of the plaintiffs, the inconvenience caused to the Plaintiff would be greater than that which would be caused to the defendants if an injunction is granted but the suit is ultimately dismissed. Although it is called balance of convenience it is really the



balance of inconvenience and it is for the Plaintiffs to show that the inconvenience caused to them would be greater than that which may be caused to the defendants. Should the inconvenience be equal, it is the Plaintiffs who suffer. In other words, the Plaintiffs have to show that the comparative mischief from the inconvenience which is likely to arise from withholding the injunction will be greater than which is likely to arise from granting it.”

80. Applying that reasoning to the present case, the Petitioners continue to endure recurrent flooding within their home, exposure to environmental pollutants, and emotional distress with every rainfall. By contrast, the Respondents have not demonstrated that taking immediate remedial steps, such as sealing the open drainage outlet and temporarily redirecting storm-water flow, would occasion them disproportionate hardship or undermine public infrastructure. On the contrary, these measures fall squarely within their constitutional and statutory mandate to manage storm-water in built-up areas under Section 11 of Part 2 of the Fourth Schedule to *the Constitution*.
81. This court is persuaded that the comparative mischief from withholding the injunction would be far greater than that likely to arise from granting it. The Petitioners’ home continues to suffer structural and environmental degradation, whereas the Respondents merely face the obligation to act within the law.
82. This court is further satisfied that the circumstances of this case are exceptional and warrant the grant of a mandatory injunction at the interlocutory stage. The evidence before this court demonstrates a continuing and undisputed discharge of storm-water into the Petitioners’ residential property arising from a defective public drainage system which the Respondents have acknowledged to exist.
83. The resulting flooding has caused recurrent destruction of property, environmental degradation, and psychological distress to the Petitioners and their family. The violation complained of is ongoing, not speculative, and stems from an act of public authority contrary to its constitutional duty under Articles 42 and 69 of *the Constitution*. These facts constitute the kind of clear and special circumstances contemplated in *Kenya Breweries Ltd & Another vs Washington O. Okeya* [2002] eKLR and reaffirmed in *Nation Media Group & 2 Others vs John Harun Mwau* [2014] eKLR, where the courts held that a mandatory injunction may issue at an interlocutory stage where refusal would perpetuate an illegality or continue a constitutional violation.
84. This court is mindful of the delicate balance between the County’s obligation to progressively fulfil its public service mandate and the immediate duty to prevent the violation of constitutional rights. While the Respondents’ submission that remedial works require planning, budgeting, and technical input is acknowledged, such administrative constraints cannot justify the continued infringement of fundamental rights.
85. Under Articles 21 and 43 of *the Constitution*, the State and its organs bear a positive obligation to respect, protect and fulfil the rights to dignity, property, and a clean and healthy environment. Where an ongoing administrative omission results in an immediate and continuing injury to citizens, the court must act to forestall the violation rather than defer to bureaucratic delay.
86. On this basis, the Petitioners’ application dated 25<sup>th</sup> July 2025 is found to be merited and is allowed as follows:
  - i. That an interim injunction be and is hereby issued prohibiting the Respondents by themselves, their agents, servants or any person acting under their authority from unlawfully discharging storm water into the Applicant’s property, Plot 216 and other adjacent plots pending the hearing and determination of the petition.
  - ii. That an interim mandatory injunction be and is hereby issued directing the Respondents to take immediate proportionate mitigation measures to prevent flooding on Plot 216 Ruaka Raod. These steps may include



but are not limited to, temporarily redirecting the storm water being discharged into Plot 216 and installing drainage control measures pending the hearing and determination of the Petition.

iii. That an interim order does issue directing the Respondents to conduct a technical inspection and assessment of the storm drainage system along the southern side of Ruaka Road between Ruaka Drive intersection and Mae Properties Drive intersection and submit a verified report before this Honourable Court within 45 days detailing the current storm water discharge route, the impact of the unlawful discharge of the storm water into Plot 216 and adjacent plots and proposed remedial short term measures to alleviate the risk of flooding during the pendency of the Petition.

iv. That an interim mandatory injunction be and is hereby issued compelling the Respondents after the technical inspection, to implement immediate containment measures, including, if feasible, the temporary sealing or controlled diversion of the open drainage outlet, so as to prevent direct discharge into private plots pending final remedial works.

v. That an interim order does issue directing the Respondents to take reasonable emergency measures to assist the Applicants in the event of flooding during the pendency of this suit including but not limited to facilitating clean up and sanitation support and provision of temporary shelter if displacement occurs.

vi. That the costs of implementing the interim measures under the above order be borne by the Respondents subject to the final determination of liability.

vii. The Respondents to cater for costs of the application

Dated, signed and delivered in Nairobi virtually this 30<sup>th</sup> day of October, 2025.

O. A. Angote

Judge

In the presence of;

Mr. Masiga for Applicant

Ms Makutwa for Respondent

Court Assistant: Tracy



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RULING

