

**REPUBLIC OF KENYA**

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

**ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC E&P PETITION NO. E043 OF 2025**

**IN THE MATTER OF:** ARTICLES 2, 3(1), 10, 19, 20, 21, 22, 23 AND 27 OF  
THE CONSTITUTION OF KENYA, 2010

**IN THE MATTER OF:** THE VIOLATION AND/OR THREATENED  
VIOLATION OF ARTILCE 33, 35, 40, 47, 60, 62, 64  
AND 260 OF THE CONSTITUTION OF KENYA, 2010

**IN THE MATTER OF:** THE CONSTITUTON OF KENYA (PROTECTION OF  
RIGHTS AND FUNDAMENTAL FREEDOMS),  
PRACTISE AND PROCEDURE RULES, 2013

**IN THE MATTER OF:** INTENDED UNLAWFUL ENCROACHMENT OF  
PRIVATE PROPERTY DAGORETTI/RITUTA  
PARCELS (MAMA WAHU ROAD LENANA  
SCHOOL SECTION)

**BETWEEN**

**PIUS NJOGU NGUO & WANJIKU KINUTHIA WANYEE (for**

**DAGORETTI DISTRICT LANDOWNERS**

**WELFARE ASSOCIATION-NGANDO CHAPTER).....PETITIONER**

**VERSUS**

**KURA.....1<sup>ST</sup> RESPONDENT**

**LENANA PRIMARY & SECONDARY SCHOOL.....2<sup>ND</sup> RESPONDENT**

**BOM OF LENANA SCHOOL.....3<sup>RD</sup> RESPONDENT**

**KENYA RAILWAY CORPORATION.....4<sup>TH</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....5<sup>TH</sup> RESPONDENT**

**NAIROBI CITY COUNTY GOVERNMENT.....6<sup>TH</sup> RESPONDENT**

**MINISTRY OF INTERIOR &**

**NATIONAL ADMINISTRATION.....7<sup>TH</sup> RESPONDENT**

**INSTITUTE OF SURVEYORS OF KENYA.....8<sup>TH</sup> RESPONDENT**

**NATIONAL LAND COMMISSION.....9<sup>TH</sup> RESPONDENT**

**LAW SOCIETY OF KENYA .....10<sup>TH</sup> RESPONDENT**

**RULING**

1. The subject of this ruling is the Notice of Motion dated 26<sup>th</sup> October, 2025 where the Petitioner faults the 1<sup>st</sup> Respondent for unlawfully issuing demolition notices dated 26<sup>th</sup> September, 2025 targeting the private properties of members of the Petitioner along Mama Wahu road, Dagoretti without due process or compensation. The Petitioner’s members that have been affected are:

a) *Nicholas Ndung’u Kongoini owner of L.R No. DAGORETTI/RIRUTA/6813;*

- b) Elizabeth Wanjiku Kongoini owner of L.R Nos. DAGORETTI/RIRUTA/6814 and 6816;
- c) Peter Mung'aratu Jared owner of L.R No. DAGORETTI/RIRUTA/6815;
- d) Family Health Foundation owner of L.R No. DAGORETTI/RIRUTA/5112;
- e) Hellen Wairimu Kibe Kimani owner of L.R No. DAGORETTI/RIRUTA/5113;
- f) Kinuthia Wanyee owner of L.R No. DAGORETTI/RIRUTA/4944;
- g) Flomena Nyambura Mbogo owner of L.R No. DAGORETTI/RIRUTA/8860;
- h) Paul Kairu owner of L.R No. DAGORETTI/RIRUTA/5493;
- i) Teresia Nyambura Kinuthia owner of L.R No. DAGORETTI/RIRUTA/3886;
- j) Wanjiku Kinuthia owner of L.R No. DAGORETTI/RIRUTA/3887;
- k) Stephen Kamau Wanyee owner of L.R No. DAGORETTI/RIRUTA/7119;
- l) Lucy Njoki Kinuthia owner of L.R No. DAGORETTI/RIRUTA/7120;
- m) Marigi Magu/Salome Wanjiku Chege owners of L.R No. DAGORETTI/RIRUTA/560;
- n) Paul Oloo owner of L.R No. DAGORETTI/RIRUTA/5393;
- o) Njoroge Njuguni owner of L.R No. DAGORETTI/RIRUTA/5394;

*p) Simon Chege Wambiri owner of L.R No. DAGORETTI/RIRUTA/6681'*

*q) David Magu Wambiri owner of L.R No. DAGORETTI/RIRUTA/6682;*

*r) Stephen Wambiri Gichunji owner of L.R No. DAGORETTI/RIRUTA/5793'*

2. The Petitioner contends that the impugned survey report dated 7<sup>th</sup> June, 2025 purports to convert part of private land into public utility land allegedly contravening the provisions of the Constitution and the Land Act, 2012 and without the consents of the proprietors and/or the principles of natural justice. That no public participation was conducted despite the provisions entrenched in Articles 10 and 174 (c) of the Constitution leading to decisions that the Petitioner terms as discriminatory, irregular and procedurally unfair, offending Articles 27, 47 and 73 of the Constitution as well as the Petitioner's members' right to acquire and own property as provided in Article 40 of the Constitution.
3. The Petitioner further states that the Respondents actions have denied them access to justice contrary to Article 48 of the Constitution by:
  - a) failing to give notice or an opportunity to be heard before taking adverse action;
  - b) ignoring objections and requests for clarification from the affected land owners;

- c) undertaking enforcement measures without affording the Petitioners recourse to lawful administrative or judicial review; and
- d) causing the Petitioner's members to be shut out from fair administrative and judicial processes meant to safeguard their constitutional rights.

4. The Petitioner explains that the foregoing was despite the impugned KURA Survey Report dated 7<sup>th</sup> July, 2025 acknowledging that the 2<sup>nd</sup> Respondent's boundary is located approximately on the centerline of the existing Mama Wahu road, yet no enforcement, demolition, or adjustment has been proposed for the same. That further the 2<sup>nd</sup> and 4<sup>th</sup> Respondents and Kenya Railways continues to occupy their vast public purpose lands adjacent to the Petitioner's members' parcels without having to surrender any portion of their land. That this was selective targeting of the Petitioner's members' parcels while exempting adjoining institutional land allegedly amounting to discrimination, double standards and abuse of administrative power in violation of Articles 27 and 47 of the Constitution.

5. The Petitioner continued to state that the Respondents actions also pose a grave threat to the right to education under Article 53 (1) (b) of the Constitution as over 170 children stand to suffer irreparable disruption of their learning and examinations. This is because the Petitioner's side of the affected corridor sits Worldcomp Lenana Academy located on title number

DAGORETTI/RIRUTA/3887 hosting 130 learners and Emmanson Junior Academy located on title number DAGORETTI/RIRUTA/5393 hosting approximately 43 learners.

6. Additionally, the Petitioner's members aver that they are the lawful owners and occupiers of the land parcels listed in paragraph 1 above, having developed them lawfully with requisite approvals. Hence, they are entitled to equal protection before the law, tilting the balance of convenience and public interest in their favour in respect of allowing this application.
7. The Petitioner is apprehensive that unless restrained, the Respondents' actions will not only cause irreparable loss, render families homeless and disrupt education but will also defeat the substratum of this Petition.
8. The Petitioner reiterated these grounds in its affidavit in support of the Petition sworn by **PIUS NJOGU NGUO & WANJIKU KINUTHIA WANYEE** on the 26<sup>th</sup> of October, 2025,
9. They seek the following interim ORDERS:
  1. *Spent;*
  2. *That pending hearing and determination of this application inter partes, a conservatory order be and is hereby issued restraining the Respondent, its officers, agents, employees, or any other person acting on its behalf from implementing, enforcing or acting on the*

*impugned survey report dated 7<sup>th</sup> June, 2025 and demolition notices dated 26<sup>th</sup> September, 2025;*

*3. That pending inter partes of this application, this Honourable Court be pleased to issue an interim conservatory order restraining the Respondents, their servants, agents or assigns from entering upon, making, fencing, demolishing, excavating, constructing, alienating or in any other manner interfering with the Petitioners' parcels of land described in paragraph 36 of the Petition dated 26<sup>th</sup> October, 2025;*

*4. That pending hearing and determination of this Petition, this Honourable Court be pleased to issue a temporary injunction restraining the 4<sup>th</sup> Respondent, Kenya Railways Corporation, whether by itself, its agents, servants, employees or contractors from continuing with the construction of the permanent perimeter fence or wall along the disputed corridor adjacent to the Petitioners' parcels of land;*

*5. That there is great urgency in the circumstances of this matter because 130 registered KPSEA and KJSEA candidates at Worldcomp Lenana Academy, DAGORETTI/RIRUTA/3887 and 43 learners at Emmanson Junior Academy,*

*DAGORETTI/RIRUTA/5393 risk suffering irreversible academic harm and disruption of their national assessment and certification process. The Children's right to free compulsory and basis education guaranteed under Article 53 (1)(b) of the Constitution is under imminent threat, hence the immediate intervention of this Honourable Court to preserve the status quo ad secure their educational continuity;*

- 6. That pending hearing and determination of the Petition herein, this Honourable Court be pleased to issue a temporary injunction restraining the Respondents from enforcing the demolition notices dated 26<sup>th</sup> September, 2025 or acting on the impugned survey report dated 7<sup>th</sup> June, 2025;*
- 7. That pending hearing and determination of this application, this Honourable Court be pleased to issue a temporary conservatory order restraining the Respondents, their agents or servants from entering upon, marking, fencing, demolishing, or in any way interfering with the Petitioners' parcels of land under paragraph 36 of the Petition dated 26<sup>th</sup> October, 2025;*
- 8. Any other order and directions as may appear to this Honourable Court just and convenient to grant;*

***9. That costs of this application be in the cause.***

**1<sup>ST</sup>, 5<sup>TH</sup> & 7<sup>TH</sup> RESPONDENTS' RESPONSE**

10. **PAUL OWINO ODAK** swore the Replying Affidavit dated 5<sup>th</sup> November, 2025 on behalf of the 1<sup>st</sup>, 5<sup>th</sup> and 7<sup>th</sup> Respondents. He explained that KURA was implementing a road improvement project in Ngando ward, located within Dagoretti South Constituency of Nairobi City County which in the specific section of the project spans approximately 750 meters in length of Mama Wahu road between Wambiri road junction and Lenana High School. That there is also an ongoing separate construction of a perimeter wall around Lenana Primary School by the Kenya Railways Corporation which is situated along the project corridor.
11. He deposed inter alia that before the commencement of the project it was integral that KURA convene and hold stakeholder consultation and a meeting to this effect was scheduled on the 25<sup>th</sup> February, 2025 at Ngando Multipurpose Hall, Ngando ward, Dagoretti sub-county. That the meeting was attended by various stakeholders including Community land owners, local leadership and Lenana School with the sole purpose of discussing the proposed road corridor and address concerns regarding the project affected persons (PAPs).

12. He stated that KURA undertook ground survey and collected data in the specific road under construction and noted that the boundaries of Lenana School were as per the beacons and that parcels number NAIROBI DAGORETTI/RIRUTA/3886, 3887, and 560 were yet to surrender the required 5 meters for the road widening project according to the Registry Index Map (RIM) of NAIROBI BLOCK 66 (DAGORETTI RIRUTA).
13. That subsequent planning approvals by the County Government of Nairobi required a 5 meter' surrender for road widening in compliance with section 58 of the Physical and Land Use Planning (General Development Permission and Control) Regulations, 2021 enacted under the PLUPA (2019). Consequently, KURA demarcated a road reserve of 15 meters as indicated on the RIM of Nairobi Block 66 although some land owners have encroached the designated road reserve. That the observed encroachments include temporary structures, fences, toilets and perimeter walls particularly parcels Nos. 6813, 6814, 6815, 6819, 5112, 5113, 4944, 8860, 5493, 3886, 3887, 7119, 560, 5393, 6681, 6682 and 5793.
14. He continued to depose further that the authentic road reserve width of Mama Wahu Road from Wamburi road is approximately 20 meters while the section between Wambiri Road and Lenana Road is 15 meters. That KURA is in the process of upgrading that section of Mama Wahu Road and to do it requires

full compliance with designated road reserve, the only viable solution being voluntary surrender or demolition to remove the encroachments after notices have been issued to the affected parties. He stated further that it was essential to provide for a 10 meter' truncation at the junction with Wambiri Road to ensure the safety of road users and maintain adequate space for road construction.

15. He concluded by deposing that the said project will provide immense benefit to the members of the public but more particularly the Petitioners as they are the immediate neighbours. He urged this Court to find that both the Petition and Application are unfounded and without merit and be dismissed with costs to the Respondents.

#### **2<sup>ND</sup> & 3<sup>RD</sup> RESPONDENTS' RESPONSE**

16. **MARTIN MOGWANJA** swore the Replying Affidavit dated 4<sup>th</sup> October, 2025 on behalf of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. He commenced by requesting the consolidation of this instant application with the application in ELCEPJR/E008/2025 (Patrick Ndung'u Chege vs. Kenya Urban Roads Authority) dated 25.10. 2025 and the order made thereto on the 27<sup>th</sup> of October, 2025 because the subject matter in both causes is common and both refer to the survey report dated 7<sup>th</sup> June, 2025. That handling the two causes simultaneously will not be prejudicial to the parties because it will bring more

clarity and assist this Court in determining the validity of the said survey report once and for all.

17. With regards to the present application, the Respondents depose that the application neither accuses them of any wrongdoing nor violation of the Petitioner's constitutional rights and as such they have been wrongly enjoined in this case.
18. The Respondents proceeded to depose that despite the depositions in the Petitioner's affidavit, they stated that the survey report indicated that there was stakeholder consultation with all stakeholders attending the meeting on 27.2.2025. That this was before the compilation of the report, which identified and established the boundaries of the 2<sup>nd</sup> Respondent land by the beacons marked DY 10 and 9.
19. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have also deposed that the present petition and application do not meet the constitutionality test established in the case of **Anarita Karimi Njeru vs. Republic (1979-1980) KLR 1272** because they have not pleaded with reasonable precision the allegations and the manner of the alleged constitutional breaches on the part of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.
20. Further, that they have no control of where a road of access road should be located as the mandate lies elsewhere and is clearly defined by survey maps and/or plans and survey coordinates which are properly documented. That the

Petitioners have never challenged the survey plan P/R No. 101/28 of 1961 and coordinates thereto and delineate boundaries and beacons of parcels of land plus roads and access road in the area in question.

21. The Respondents concluded by deposing that the survey report dated 6<sup>th</sup> June, 2025 was conducted in accordance with the law. They urged this Court to find the instant application unmerited and to dismiss it with costs.

**The Petitioner's Rebuttal Affidavit:**

22. The Petitioner filed the supplementary affidavit dated 6<sup>th</sup> November, 2025. They dismissed the depositions in the Replying Affidavits as baseless, premature, incompetent, and without evidentiary value. For the 1<sup>st</sup>, 5<sup>th</sup> and 7<sup>th</sup> Respondents' replying affidavit, the Petitioner avers that it contained admissions on the unlawful nature of their actions. In particular, paragraph 20 of the replying affidavit provided proof that the land was private and not part of an existing public road reserve.
23. The Petitioner submitted further that the survey plan F/R No. 101/28 of 1961 is misplaced as the plan predates the current subdivisions and registered titles in DAGORETTI/RIRUTA which were created and registered under the Land Registration Act, 2012 and thus the said plan cannot override modern Registry Index Maps defining individual titles.

24. On the stakeholder meeting of 27<sup>th</sup> February, 2025, the Petitioner stated that its members were not involved in the meeting despite being directly affected by the impending demolitions. The Petitioner concluded by stating that the Respondents have employed the use of police to enforce the said demolitions, rendering this application urgent and deserving of immediate conservatory relief.

**SUBMISSIONS:**

25. The parties canvassed the application through oral submissions on 26<sup>th</sup> October, 2025. Mr Njau learned that counsel reiterated what is already pleaded, arguing that the registry index map relied on by the Respondents is obsolete/defunct following the digitisation of land records in Nairobi. That relying on this map is erroneous and legally inoperative.
26. Counsel cited the case of **BOM Uhuru Secondary School versus County Government of Nairobi** for the proposition that schools are entitled to protection from administrative positions that affect their operations.
27. Mr Eredi, Senior Principal State Counsel submitted that the Petitioner has not shown evidence that their developments are approved nor copies of the licenses of the schools if the same indeed exist. He argued that the residents were duly notified of the intention to upgrade the existing road, which culminated in the stakeholder meeting of 27.2.2025. Copies of the notices issued were annexed.

28. The 1<sup>st</sup> 5<sup>th</sup> and 7<sup>th</sup> Respondents urged that the 1961 map is valid and and the Petitioner has not produced a digitized map to contradict this map they deem as defunct. According to them, they are only recovering the corridor which has been encroached on.
29. Further, the Respondents argued that even if the orders are not granted, the Petition will not be rendered academic because the Applicants have not demonstrated a prima facie case. The public interest in constructing the road is higher than the private interest of the landowners.

#### **ANALYSIS AND DETERMINATION**

30. The main issue for determination herein is whether conservatory orders or a temporary injunction should be issued restraining the Respondents from proceeding with demolitions in the notices dated 26<sup>th</sup> September, 2025 targeting the private properties of members of the Petitioner along Mama Wahu road in Dagoretti Sub County.
31. The Supreme Court first discussed the place of conservatory orders in the case of **Gatirau Peter Munya vs. Dickson Mwenda Kithinji & 2 others [2014]** **eklr** when it held thus:

“7. Conservatory orders bare a more decided public-law connotation: for they are orders that facilitate orderly functioning within public agencies, as

well as 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 like “the prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the applicant’s case for orders of stay.

8. Conservatory orders ought to 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.”

32. The apex Court proceeded to outline the conditions that a court should consider when faced with a decision of whether or not to grant conservatory orders.

These being:

- a) That the petition was arguable and not frivolous;
- b) that unless the orders sought were granted, the petition were it to eventually succeed, would be rendered nugatory; and
- c) that it was in public interest that the conservatory orders be granted.

#### **Arguability of the Petition**

33. The Petitioner contends that its members’ right to property under Article 40 of the Constitution, the right to fair administrative action under Article 47 of the Constitution and the right to education under Article 53 of the Constitution

were being violated by the Respondents. The Petitioner argues that 15 meters of its members' properties being parcels number DAGORETTI/RIRUTA/6813, 6814, 6815, 6819, 5112, 5113, 4944, 8860, 5493, 3886, 3887, 7119, 560, 5393, 6681, 6682 and 5793 were on the verge of being compulsorily acquired by the 1<sup>st</sup> and 5<sup>th</sup> Respondents without following the requisite procedure.

34. They stated that there were significant developments on the suit parcels including but not limited to schools on some and demolition would disrupt learning in the said institutions. The Petitioner also faulted the Respondents in particular the 1<sup>st</sup>, 5<sup>th</sup> and 7<sup>th</sup> Respondent for failing to involve them in the stakeholder consultation meeting held on the 27<sup>th</sup> of February, 2025.
35. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents confirmed that they were involved in the consultations and that their boundaries conformed with the initial Registry Index Map as well as the Survey Report. The 1<sup>st</sup>, 5<sup>th</sup> and 7<sup>th</sup> Respondents also reiterated that the road expansion project required that the Petitioner's members surrender 15 meters of their suit parcels and remove any structure that had encroached on the road reserve as per the Registry Index Map annexed by the 1<sup>st</sup> Respondent. The 1<sup>st</sup> Respondent denied allegations of violation of constitutional rights, in particular that of fair administrative action and stated that the Petitioner's members were involved in the stakeholder consultations, a fact the Petitioner vehemently denies.

36. The Court in the **Dock Workers Union & Another vs. Portside freight Terminals limited & 10 others [2024] kesc 35 (klr)** had this to say in respect of the arguability of a case, thus:

*“5. The question about whether an appeal was arguable, did not call for the interrogation of the merit of the appeal, and the court, at that stage must not make any definitive conclusions of either fact or law. An arguable appeal was not one which must necessarily succeed, but one which ought to be argued fully at the hearing before the court. Even one arguable point was sufficient to meet that test.”*

37. The Petitioner has alleged violations of its members’ rights and the wheels of justice tilt in allowing their case to be presented and heard to conclusion before the demolitions proceed.

**Whether the Petition would be rendered nugatory if the orders are not granted**

38. This Petition is hinged on the preservation of the properties as they are. However, the question that burdens this Court is whether if the conservatory orders are not granted the entire petition will be rendered nugatory. On this issue, the Supreme Court in the case of **Haki na Sheria Initiative vs. Inspector General of police & 2 others; Kenya National Human rights and Equality Commission\_(Interested Party); [2021] KESC 22 (KLR)** held thus:

*“On the nugatory aspect, the concern is whether what is sought to be stayed if allowed to happen is reversible; or if it is not reversible, whether damages will reasonably compensate the party aggrieved.”*

39. In this case, damages would suffice to compensate for the destruction of any properties due to the demolition if the Petition were to succeed. Equally, the Respondents would be saved from unnecessary expenditure and utilisation of taxpayers' money if the status quo were to be maintained until the Petition is determined.

**Whether the public Interest lies in granting the orders**

40. This forms the last limb for the grant of conservatory orders. In the DOCK WORKERS case (supra) the Court stated that:

*“The court in considering an application for conservatory orders could not ignore the impact of such orders beyond the parties to the case should the order be granted or denied. Consequently, the court would make a general inquiry as to where the public interest lay, considering the parties’ respective rights. All the three conditions, including the third principle must be met for an application for conservatory orders to succeed for the reason that conservatory orders had a public law connotation.”*

41. The Petitioner contends that the impending demolitions would affect school going children because the expansion of the road also passed through Worldcomp Lenana Academy located on title number DAGORETTI/RIRUTA/3887 hosting 130 learners and Emmanson Junior Academy located on title number DAGORETTI/RIRUTA/5393 hosting approximately 43 learners who were sitting for KJSEA and KPSEA examinations.
42. This notwithstanding, schools resume in January, and demolition would require that the children be either transferred to other schools or other buildings constructed within the said properties to host the children. Public interest lies in awarding the said orders to give the affected children sufficient time to arrange for alternate schools.
43. In light of the foregoing analysis, I hold that the application dated 26th October, 2025, is partly merited. Therefore, the same is allowed but for a limited period set by this court of four months instead of pending determination of the Petition. Within the four months, the Petitioner can expedite the prosecution of the petition and/or take steps to verify the boundaries of their parcels according to the map (whether digitised or manual) and/or value their properties in case the matter of boundaries remains unresolved.
44. Consequently, this Court makes the following disposal orders:

a) A conservatory order be and is hereby issued restraining the 1<sup>st</sup>, 5<sup>th</sup> and 7<sup>th</sup> Respondents, their servants, agents or assigns from entering upon, making, fencing, demolishing, excavating, constructing, alienating or in any other manner interfering with the Petitioners' parcels of land described in paragraph 36 of the Petition dated 26<sup>th</sup> October, 2025 for a period of FOUR (4) Months from the date hereof.

b) Costs of the application shall be in the cause.

Dated, Signed and Delivered at Nairobi, this 13<sup>th</sup> Day of November, 2025.

**A. OMOLLO**

**JUDGE**