



Migaa Golf Estate Residents' Association v Cabinet Secretary, Ministry of Mining, Blue Economy and Maritime Affairs & 2 others (Environment and Land Petition E012 of 2025) [2025] KEELC 8346 (KLR) (1 December 2025) (Ruling)

Neutral citation: [2025] KEELC 8346 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND PETITION E012 OF 2025**

JA MOGENI, J

DECEMBER 1, 2025

**IN THE MATTER OF ALLEGED CONTRAVENTION OF
FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLE
20(2), 22 AND 23 OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF THE ENVIRONMENTAL MANAGEMENT AND CO-
ORDINATION ACT, 1999, THE MINING ACT AND THE EXPLOSIVES ACT**

BETWEEN

MIGAA GOLF ESTATE RESIDENTS' ASSOCIATION PETITIONER

AND

**THE CABINET SECRETARY, MINISTRY OF MINING, BLUE ECONOMY AND
MARITIME AFFAIRS 1ST RESPONDENT**

**THE NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY 2ND
RESPONDENT**

FEBI ENTERPRISES LIMITED 3RD RESPONDENT

RULING

1. This Ruling is in respect of a Notice of Motion dated 17/07/2025 by the Petitioners/Applicants seeking the following orders:
 - a. Spent.
 - b. Spent.



- c. Pending inter partes hearing and final determination of this Petition, this Honorable Court be pleased to issue an order of injunction restraining any further blasting and quarrying activities on Land Reference No. 4888/2 Rioki Village, Kiambu County by the 3rd Respondent, its agents, employees or any other person acting under the authority or instructions of the 3rd Respondent.
 - d. Any other order in the interest of justice.
 - e. Costs of this Application be awarded to the Petitioner.
2. The application was supported by the annexed Affidavit of JOSHUA MURIITHI, the Chairperson of the Petitioner who through a Resolution by Members is duly competent to swear the said Affidavit as evidence by annexure 'JM1'.
 3. He swore the affidavit on 18/07/2025, where he deponed that the Petitioner is an Association registered under the Societies Act and the members are all home owners and residents of Migaa Golf Estate situated in Rioki area of Ting'ang'a ward in Kiambu County.
 4. That the residents have lived quietly on various properties within the Estate but on 12/03/2025 there was loud and ground breaking earthquake which was caused by blasts emanating from the neighbouring plot of land known as Land Reference No. 4888/2 in Rioki Village, Kamiti Locaton, Ting'ang'a Division Kiambu County.
 5. They depose that the 3rd Respondent has established a quarry in the adjoining land where it is conducting quarrying and blasting activities.
 6. That the blasting was conducted on 16/04/2025 and 12/05/2025 without the knowledge and prior notice to the Petitioner herein and its residents. The 3rd Respondent is apparently undertaking the activities on the strength of an Environmental Impact Assessment Licence number NEMA/EIA/PSL/33037 issued on 13/06/2024 by the 2nd Respondent and a blasting authorization issued by the 1st Respondent on 10/03/2025.
 7. The Applicants claim that there was no consultation with the Petitioner nor its members before issuance of the licence and blasting authorization.
 8. According to the Petitioner/Applicant, the activities of the 3rd Respondent have caused damage to residential houses of the Petitioners' member making cracks on the houses which was attributed to the vibrations following a structural audit commissioned by the Petitioner as evidenced by annexure 'JM 7' and 'JM 8'.
 9. Further the Petitioner also aver that their right to clean and healthy environment has been infringed, denied and violated due to the 3rd Defendant's activities. They therefore implore the Court to use the precautionary principle to address the quarrying activities of the 3rd Respondent on the parcel known as Land Reference No. 4888/2 in Rioki Village, Kamiti Location, Ting'ang'a Division, Kiambu County adjoining the Petitioner's Estate to avert irreversible damage to the environment and safeguard rights of members of the Petitioner as well as a clean and healthy environment.
 10. The Petitioner depones that public participation was not undertaken, no change of user was filed, no project board has been erected to show the approvals issued in relation to the project.
 11. Further the blasting authorization permit provided conditions that the 3rd Respondent had to adhere to as stated at paragraph 25 of the Supporting Affidavit and shown on annexure 'JM6' and the 3rd Respondent has employed unsuitable blasting methods which has led to destruction of the houses of



residents from excessive vibration, air pollution from the dust emanating from the blasting as shown vide annexure 'JM 7'.

12. Only the 3rd Respondent filed a Replying Affidavit dated 11/09/2025 where it denied any wrong-doing as alleged by the Petitioner. The 3rd Respondent produced 26 annexures to support their claim that they had entered into an agreement to conduct the quarrying and mining activities with Rioki Estate Company (1970) Limited dated 30/09/2024.
13. The 3rd Respondent also stated that public participation was undertaken and notices to conduct the blasting was also issued. The 3rd Defendant avers that injunctive orders will lead to loss of revenue yet the expenses attendant to the work have to be paid as shown through annexures 22, 23 and 24.
14. On pollution, the 3rd Respondent avers that it uses a water crushing technique that takes care of dust as seen vide annexure 19. Further that whereas they wanted the damage claimed by the Petitioner to be assessed by the County Government, the Petitioners were adamant that they would use their experts. Annexures 17 and 18 are the letters written to Petitioners dated 13/06/2025 and 22/06/2025.
15. They aver to have conducted public participation on 29/04/2024 although according to the 3rd Respondent, the Applicant chose not to participate despite the placement of the banner at the Applicant's Estate.
16. The Court directed parties to file written submissions which I have read and considered.

Analysis and Determination

17. The issue for determination is whether the Petitioner/Applicants have satisfied the conditions for the grant of a temporary injunction pending the hearing and determination of this suit. The principles for the grant of a temporary injunction are well set out in the case of *Giella vs. Cassman Brown & Co. Ltd* (1973) EA 358.
18. It is trite law and procedure that a claimant seeking orders of injunction orders must establish that he/she has a prima facie case with a probability of success, must show that he/she will suffer irreparable loss which would not be adequately compensated by an award of damages, if the order is not granted and if the Court is in doubt, it will decide the application on a balance of convenience.
19. It is the Applicants' case that they occupy the suit property which adjoins the suit property Land Reference No. 4888/2 Rioki Village, Kiambu County. They are apprehensive that the 3rd Respondent's activities of quarrying, blasting and mining are causing damage to the houses of the Petitioner and also environmental pollution following vibrations and remittance of dust.
20. They commissioned a study which confirmed that the cracks on their residential houses are a result of the vibrations emanating from the 3rd Respondent's quarrying and mining activities. At the same time, they allege that public participation was not undertaken and that there was no change of user.
21. On his part the 3rd Respondent indeed avers that change of user has not been applied for and that it is in the process of being applied for now. Confirming the claim of the Petitioner that change of user was not done.
22. Further the public participation that the 3rd Respondent alleges to have done is according to the 3rd Respondent the process where they hanged a banner at the gate of the residence of the Petitioner and from their own statement, the Applicant chose not to attend.



23. The principles for grant of a temporary injunction are well settled. In the case of Nguruman Limited vs. Jan Bonde Nielsen & 2 Others [2014] eKLR, the Court of Appeal pronounced itself as follows:

“On the second factor, 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 facie, 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.”

24. It is incumbent upon the Applicant to prove that he or she will suffer irreparable harm that is not capable of being compensated by an award of damages if an order of injunction is not issued. The irreparable injury of harm should not be speculative. It should be real, actual and substantial, which the Applicant must demonstrate. Mere apprehension, which is unfounded, will not suffice to benefit from the grant of an equitable remedy of a temporary injunction.

25. The 3rd Respondent in their Replying Affidavit deponed that they will suffer loss if the activities are stopped and the Company risks going into insolvency.

26. In the case of Rockland Kenya Limited v Elliot White Miller [1994] eKLR, the Court held as follows:

“The object of an interlocutory injunction is to protect the Plaintiff against injury by violation of his legal right for which he could not be adequately compensated in damages recoverable in the action if the matters in dispute were resolved in his favour at the trial. However, his need for such protection must be weighed against the corresponding need of the Defendant to be protected against injury resulting from his having been prevented from exercising his own legal right for which he could not be adequately compensated under the Plaintiff’s undertaking in damages if the subject-matter of the trial was decided in his favour. It is a remedy that is both temporary and discretionary. In cases where the legal rights of the parties depend on facts that are in dispute between them, the evidence available to the Court at the hearing of the application for an interlocutory injunction is given on affidavit and is therefore incomplete as it has not been tested by oral cross-examination. At that stage therefore, it is not the function of the Court to attempt to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. Such matters are to be dealt with at the trial. Nonetheless, the Court must in the exercise of its discretionary power in this regard be satisfied that the claim in respect of which an interlocutory injunction is sought is neither frivolous nor vexatious: in other words, that there is a serious question to be tried.”

27. The purpose of a temporary injunction is to preserve the substratum of the suit. The Applicant must establish a prima facie case with a probability of success and not present a frivolous case. In the case



of Paul Gitonga Wanjau vs. Gathuthi Tea Factory Company Ltd & 2 Others (2016) eKLR, the Court dealing with the issue of balance of convenience expressed itself thus:

“Where any doubt exists as to the Applicants’ right, or if the right is not disputed, but its violation is denied, the Court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right and that which the Applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right ... Thus, the Court makes a determination as to which party will suffer the greater harm with the outcome of the motion. If Applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction. The Court will seek to maintain the status quo in determining where the balance of convenience lies.”

28. I have considered the application, the submissions and find that the application has merit and is therefore allowed as prayed with the following specific orders:

- a. The Court issues an order of injunction restraining any further blasting and quarrying activities on Land Reference No. 4888/2 Rioki Village, Kiambu County by the 3rd Respondent, its agents, employees or any other person acting under the authority or instructions of the 3rd Respondent.
- b. Since there is already a Pre-trial Conference date it is reserved as issued for 19/01/2026 to prepare for viva voce hearing of the Petition.
- c. Costs are awarded to the Applicants.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 1ST DAY OF DECEMBER, 2025 VIA MICROSOFT TEAMS.

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MOGENI J

JUDGE

In the presence of:

Mr. Gitau holding brief for Mr. Giatau for the Petitioner

Ms. Ndundu for the 1st Respondent

2nd Respondent – Absent

Mr. Mungai for the 3rd Respondent

Mr. Melita – Court Assistant

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MOGENI J

JUDGE

