

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA

ELCLC NO. E010 OF 2025

**LAKE OLOIDEN YOUTH
GROUP.....PLAINTIFF**

VERSUS

**CATHERINE NJOKI NG'ETHE (as administratrix of the
estate of ISAAC NJOROGE MUGUKA).....1st
DEFENDANT**

**KENNETH KOMEN.....2nd
DEFENDANT**

**OSERIAN COMPANY LIMITED.....3rd
DEFENDANT**

**CHIEF LAND REGISTRAR..... 4th
DEFENDANT**

**COUNTY GOVERNMENT OF NAKURU.....5th
DEFENDANT**

**ETHICS AND ANTICORRUPTION COMMISSION.....6th
DEFENDANT**

**HON. JANE GITUKU (MCA, MAIELIA WARD).....1st INTERESTED
PARTY**

ASSISTANT COUNTY COMMISSIONER

**NAIVASHA.....2nd INTERESTED
PARTY**

OFFICER COMMANDING STATION (OCS)

**KONGONI POLICE STATION..... 3rd INTERESTED
PARTY**

RULING

1. Before me for determination is a Notice of Motion dated 21st February 2025 brought pursuant to the provisions of Order 40 Rule 1 of the Civil Procedure Rules, Section 63(e) of the Civil Procedure Act, and all other enabling provisions of the law where the Plaintiff/Applicant seeks that pending the hearing and determination of this suit, orders of temporary injunction restraining the 1st Defendant/Respondent, her agents, servants, or any other person acting under her instructions from making any further false or misleading claims regarding the ownership or description of land reference No. 6576 (IR 4429). The Applicant further seeks orders of temporary injunction restraining any dealings, transactions, or representations in respect of land reference No. 6576 (IR 4429) as well as interim conservatory order restraining the 2nd and 3rd Respondents/Defendants, their agents, servants, employees, or any other persons acting under their authority from trespassing, fencing, constructing, alienating, selling, leasing, or in any way dealing with or interfering with the said parcel of land.
2. The applicant also seeks for interim mandatory injunction compelling the 2nd and 3rd Respondents/Defendants to remove any fences, structures, or developments they have unlawfully erected on Land Reference No. 6576 (IR 4429) wherein the Officer Commanding Station (OCS), Kongoni Police Station, shall provide security and enforce compliance with the court orders by preventing any further encroachment, trespass, or interference with the suit property by the 2nd and 3rd Respondents/Defendants or any other unauthorized persons.
3. That further, an interim order do issue suspending any further dealings, transactions, or registration of interests over Land Reference No. 6576 (IR 4429) by the 2nd and 3rd Respondents/Defendants, whether through the Chief Land Registrar and that a mandatory order do issue directing the 4th Defendant, to conduct an urgent review of the conflicting

entries concerning I.R 4429 and I.R 10263 and provide a clarification on how two separate properties have been assigned identical Presentation Numbers and Registration Dates.

4. Lastly, the Applicant seeks that there issue an order compelling the Ethics and Anti-Corruption Commission (EACC) to investigate the conflicting land records concerning I.R 4429 and the fraudulent claims made by the 1st Defendant/Respondent and for costs of this application.
5. The Application was supported by the grounds therein and the Supporting Affidavit of an even date sworn by Cornelius Odhiambo, a member of the Plaintiff/Applicant herein, to the effect that the Plaintiff/Applicant, was in possession of and utilizing the suit parcel of land situate in West of Lake Naivasha, within Maiela Ward, Nakuru County, as a public utility. He annexed a Certificate of registration, a members list and the minutes dated 24th January 2025.
6. That the 1st Defendant, purporting to act as the Administratrix of the Estate of Isaac Njoroge Muguku, had unlawfully and fraudulently misrepresented the property by alleging that LR No. 20591/47, adjacent to Lake Naivasha, was the proper description of IR 4429.
7. That there exists a conflicting and fraudulent entry in the land records indicating that the same I.R 4429 is leased to Lematesho Limited under Presentation No. 10022, registered on 23rd October 1958, yet a separate Grant No. I.R 10263, LR 8048 bearing identical registration details relates to land in Rumuruti, Laikipia County as per copies of I.R 4429 and I.R 10263 and FR 44/22 as herein annexed.
8. He further deponed that the 2nd and 3rd Defendants, had unlawfully encroached on the suit property, hived off portions of it, and fenced the same, thereby depriving the Plaintiff/Applicant and the community of access and use of the land. That indeed their actions amounted to trespass and illegal alienation of public land without due process, further exacerbating the fraudulent misrepresentations surrounding the ownership and boundaries of the disputed property.

9. That the fraudulent misrepresentation and misallocation of land records had caused confusion and threatened to unlawfully deprive the Plaintiff/Applicant of its legitimate occupation and use of the public utility wherein the continued false claims, misrepresentation, and potential unlawful transactions pose a significant risk of encumbrances, loss, and possible dispossession of the Plaintiff/Applicant and other community members who rely on the property.
10. That unless the Defendants/Respondents were immediately restrained by the court, the Plaintiff/Applicant stood to suffer irreparable loss, which could not be adequately compensated by an award of damages. That it was in the interest of justice and public policy that the Defendants/Respondents be ordered to cease and desist from further misrepresentations, unlawful dealings, and interference with the Plaintiff/Applicant's rightful occupation of the suit property.
11. In response, the 1st Defendant/Respondent filed her Notice of a preliminary objection dated the 21st March 2025 stating that she had been wrongfully sued as the administratrix of the estate of the late Isaac Njoroge Muguku, a position she did not occupy at all.
12. The 2nd Respondent, vide his Replying Affidavit sworn on the 25th April 2025 in opposition to the Application deponed that contrary to the Plaintiff's allegations, there was no fraudulent entry over the suit property I.R No. 4429/1 as the alleged Grant No. I.R 10263, L.R NO. 8048 related to a different parcel of land in Rumuruti, Laikipia County which in any event bore different registration details.
13. That contrary to the Applicant's allegation, he was in lawful occupation of the property known as L.R No. 20591/85 which had never for all intents and purposes, been earmarked for public use but was classified as private land since inception of land records and which land, he had purchased from its registered owner namely, Naivasha Enterprises Limited, vide an agreement dated 2nd January, 2024 albeit through his company namely, Lake Oloiden Resort Limited.
14. That in any case, the Plaintiff/Applicant had not established a prima-facie case with chances of success to warrant a grant of the injunctive

relief sought for and had also failed to prove that it stood to suffer irreparable harm in the event the orders sought were declined especially considering that it has neither submitted any evidence of their purported occupation of any part of the subject property or any iota of evidence that the subject property comprise public land and what it had been earmarked for.

15. That the grant of an order of injunction in the terms sought by the Applicant would unnecessarily occasion undue hardship to him as he would be denied unfettered use, occupation and enjoyment of the property known as L.R No. 20591/85.
16. That in the premise, should the court be in doubt, the balance of convenience lay with not granting the order sought for which the Application should be dismissed with costs.
17. The 3rd Defendant/ Respondent through its Replying affidavit sworn by one George Lunke Mobile its administration manager, on 6th March 2025 deponed that the Notice of motion was vexatious lacked merit and amounted to abuse of court process and ought to be dismissed with costs.
18. That the 3rd Defendant/Respondent does not share a common boundary with the land allegedly occupied by the Plaintiff/Applicant and therefore the issue of trespass on their land as alleged by the Plaintiff/Applicant did not arise.
19. That the Suit land parcel was a public utility parcel where the Plaintiff/Applicant had no legal and or equitable interest over. That the proper Applicant ought to have been the County Government of Nakuru being the custodian of public land within Nakuru County for which the Plaintiff/Applicant had no iota of a cause of action against the 3rd Defendant/Respondent.
20. That there had been no prima facie case established and neither had the Applicant established that they would suffer irreparable damages were the orders sought not granted. He sought for the dismissal of the Application with costs.

21. In his Replying Affidavit sworn on the 20th March 2025, C.W Sunguti a Land Registrar based at the Office of the Chief Land Registrar deponed that Land Reference 6576/2 (Grant IR 4429/1) was transferred to Colvile Limited on the 18th September, 1951. That on the 23rd October 1958, a lease was registered to Lerematesho Limited for a term of 21 years as from 1st January, 1957 and a surrender registered on 11th May, 1964. A surrender to the President of Republic of Kenya was made in exchange for a new grant as per a certified copy of the register herein annexed. That subsequently, Land Reference 8048 (Grant IR 10263/1) was transferred and registered under Colvile Limited on 27th February, 1957 wherein on the 23rd October, 1958, a lease was registered to Lerematesho Limited for a term of 21 years as from 1st January 1958 and a surrender was registered on 11th May 1964.
22. That the surrender to the President of the Republic of Kenya was done in exchange for new grant IR 20949-LR NO.11642 as per the annexed copy of the register.
23. That the two parcels of land i.e Land Reference 6576/2 (Grant IR 4429/1) and Land Reference 8048 (Grant IR 10263/1) were both leased and registered to Lerematesho Limited on 23rd October 1958 and there is therefore no confusion on the land records as the two parcels of land contain different registration numbers and further located in different places whereby Land Reference 6576/2 (Grant IR 4429/1) is located in Naivasha while Land Reference 8048 (Grant IR 10263/1) is located in Rumuruti, Laikipia County. That the application therefore lacked merit was an abuse of the court process and should be dismissed with costs.
24. In yet another opposition of the Application, the 6th Respondent in its Grounds of opposition dated 9th June 2025 argued that there had been no evidence has been presented to the Court by the Applicants to demonstrate that prior to the filing of this Application forwarded, it had forwarded any complaint to the 6th Respondent with respect to the allegations of corruption as set out in the Applicant's Notice of Motion application that it had without any proper or justifiable reason failed or

refused to investigate its complaints so as to warrant the issuance of the order sought to compel them (6th Respondent) to investigate the suit property herein.

25. That it was established under Section 3 of the Ethics and Anti Corruption Commission Act, 2011 (EACC Act) pursuant to the provisions of Article 79 of the Constitution and is mandated under Article 252(1) (a) of the Constitution and Section 13 of the Ethics and Anti-Corruption Commission Act, among other duties to conduct investigations on its own initiative or on a complaint made by any person.
26. That the Court had a constitutional obligation pursuant to Article 3(1) of the Constitution to respect, uphold and defend the Constitution which would include safeguarding and securing the independence of Constitutional Commissions and Independent Offices as guaranteed therein. That granting the order sought against them (6th Respondent) would contravene the provisions of Article 249 (2) (b) of the Constitution which guarantees the independence of Constitutional Commissions and independent offices.
27. That the law specified the institutions that the 6th Respondent ought to report to while discharging its legal mandate and the manner of reporting. That Section 35 of the Anti-Corruption and Economic Crimes Act, 2003 (ACECA) directs the Commission to forward its report on the results of the investigations and the recommendation therefrom to the Office of the Director of Public Prosecutions (ODPP). That the Application and the Plaint were improperly before the court, and therefore abuse of the court process and therefore should be struck out.
28. Lastly the 1st interested party in her Replying Affidavit sworn on the 20th March 2025 in support of the Application, deponed that she was a duly elected Member of County Assembly (MCA) for Maiella Ward, within Nakuru County and therefore had a statutory duty to represent the interests of her constituents, including the Plaintiff/Applicant, who are beneficiaries and occupants of the suit property known as LR No. 6576 (IR 4429) and which land had for an extended period, been

utilized by the local community, including members of the Plaintiff/Applicant, for public and communal purposes and therefore any purported alienation of the same by private individuals or entities raised serious concerns of public interest.

29. That the allegations of fraudulent and conflicting land registration records regarding IR 4429, as outlined by the Plaintiff/Applicant warranted thorough scrutiny and an immediate intervention to protect the community from possible dispossession.
30. That the 1st Respondent's claim to the suit property under the Estate of Isaac Njoroge Muguku, despite the existing public and communal use of the land, was misleading and appeared to be part of a larger scheme to defraud the rightful users of the property.
31. That further, the actions of the 2nd and 3rd Respondents/Defendants in fencing off portions of the suit property and engaging in acts of trespass and alienation have caused distress among the community and continue to threaten their peaceful occupation and use of the land. She was thus in support of the Applicant's Application to have an urgent review of the conflicting land records and for investigation to be carried out on the alleged fraudulent misrepresentation of ownership, so as to preserve the suit property from unlawful alienation and to and protect the rights of the community members who stood to be unlawfully displaced.
32. The Application was disposed of by way of written submissions herein summarized as follows;

Applicant's Submissions

33. The Applicant's submissions dated 3rd November 2025 focus on establishing a prima facie case for an interlocutory injunction by arguing that the suit property, Title No. I.R 4429, is public land and that the Defendants' claims to private ownership are void due to fraud and unconstitutional acquisition.
34. The Applicant challenged the 2nd Respondent's claim of lawful occupation over L.R No. 20591/85, allegedly acquired from Naivasha

Enterprises Limited through Lake Oloiden Resort Ltd by asserting that the the original parcel, I.R 4429, remains reserved for public utility purposes. It argued that the 2nd Respondent's documents lacked essential instruments like the deed plan, survey authorization, subdivision approval, consent from Physical Planning thus rendering the alleged title void *ab initio* under Sections 26(1)(b), 80, and 143 of the Land Registration Act and Article 40(6) of the Constitution.

35. That there had been no connection established between Naivasha Enterprises Ltd and the public land I.R 4429. That their evidence of public user dating back to 1958 is reinforced by a Deed of Surrender by the previous proprietor, Colvile Limited, in favor of the Rift Valley Regional Assembly. The Applicant's submission further was that the 3rd Defendant's affidavit was self-defeating and supported their (Applicant's) case in that the 3rd Defendant, while denying involvement and claiming that the motion was "vexatious," explicitly stated that the suit land was a public utility parcel whose proper custodian was the County Government of Nakuru. That this was a direct admission that the land cannot be privately owned, thus aligning with their assertion that all private dealings including those with Naivasha Enterprises Ltd were unlawful and void under Article 40(6) of the Constitution. It submitted that the core complaint was about encroachment and conversion of public land, not boundary trespass.

36. The Applicant claims to have satisfied the three limbs of the **Giella v Cassman Brown [1973] EA 358** test as restated in **Nguruman Ltd v Jan Bonde Nielsen [2014] eKLR**. That it had established a Prima Facie Case by the evidence of fraud, the lack of proper documentation for the 2nd Respondent's alleged title, and the 3rd Defendant's admission that I.R 4429 was public land. That the continued unlawful alienation and subdivision of public land represents a risk of irreparable loss/harm wherein the balance of convenience impliedly favored preserving the land for the public good over protecting a contested, allegedly void, private title. That the Applicant, was a registered Community-Based Organization (CBO) representing residents, and

therefore had the *locus standi* to protect public land under Articles 22, 42, 69, and 70 of the Constitution.

37. In conclusion the Applicant submitted that all prerequisites for an interlocutory injunction had been met, and the court should issue the orders as prayed to prevent further alienation of the public land.

1st Respondent/Defendant's submissions.

38. The 1st Respondent/Defendant's submissions dated the 3rd November 2025 primarily argue for the dismissal of the Plaintiff's application and the entire suit against her, based on procedural defects and the Plaintiff's failure to meet the threshold for granting an interlocutory injunction.

39. She submitted that she had been wrongfully joined to the suit as an Administratrix of the late Isaac Njoroge Muguku's estate, a position she does not occupy. That the Plaintiff had failed to take action to investigate or present evidence identifying the correct administrator, despite being put on notice. She argues that the entire suit, being filed against an estate without identifying the correct legal representative, "had no legs to stand on and stands to be dismissed."

40. That the Plaintiff had failed to discharge the burden of proof under Sections 107, 109, 112 of the Evidence Act in proving the facts that she was the correct party to be sued as the administrator. That the suit be deemed "fatally defective" for joining "interested party," a term that the Defendant claims is unknown in law for initial joinder. They argue that one must demonstrate a necessary role to be enjoined as an interested party, which the Plaintiff failed to do.

41. The 1st Defendant contended that the Plaintiff had not shown any wrongdoing or wrong she was about to commit against it (the Applicant) and therefore, citing **Mrao Ltd v First American Bank of Kenya Ltd** and **Giella v Cassman Brown** (*supra*), the 1st Defendant argues that the Plaintiff had not demonstrated a *prima facie* case which required the court to conclude that a right had been apparently infringed by the opposite party as to call for an explanation.

42. That the Applicant had not shown any wrong visited upon them by the 1st Defendant. Citing the **Kenya Commercial Finance Co. Ltd v Afraha Education Society [2001] 1 EA 86**, cited with approval by Gitumbi, J. in the case of **Joseph Wambua Mulusya v David Kitu & Another (2014) eKLR**, the 1st Defendant stressed that the conditions for an injunction were sequential. Since the Plaintiff had failed to satisfy the first condition (*prima facie* case), the court does not need to consider the other two conditions on irreparable harm and balance of convenience. The application should therefore be dismissed with costs.

The 2nd Respondent's written submissions

43. The 2nd Respondent in its written submissions dated 28th October 2025, vehemently opposed the Plaintiff's Notice of Motion primarily on the grounds that the Plaintiff had failed to meet the **Giella v Cassman Brown** (supra) test for interlocutory injunctions and that the orders sought, particularly the mandatory injunction, were drastic and unwarranted at this stage.

44. The 2nd Defendant claimed lawful occupation of property known as L.R No. 20591/85, which he had acquired from Naivasha Enterprises Limited via a sale agreement dated 2nd January 2024, through his company, Lake Oloiden Resort Limited.

45. He asserted that L.R No. 20591/85 had always been classified as private land since the inception of land records and was never earmarked for public use. He rebutted the Plaintiff's claim of conflicting records, stating that the alleged Grant No. I.R 10263, L.R NO. 8048, related to a different parcel of land in Rumuruti, Laikipia County, with different registration details.

46. He further argued that the Plaintiff had not submitted any evidence that the subject property was public land or that the Plaintiff/community had been in occupation of any part of it. He contended that the Plaintiff had not established a *prima facie* case as defined in **Mrao Ltd vs First American Bank of Kenya**.(supra)

47. That the Plaintiff lacked a "plausible interest" in the property, as it claims the land was public but offered no evidence to support this claim and neither did it specify the public purpose the land was earmarked for. That further, the Plaintiff had failed to show how it would suffer irreparable harm as was held in the case of **Pius Kipchirchir Kogo vs Frank Kimeli Tenai (2018) eKLR**. That since the Plaintiff had not proved any registrable legal or beneficial interest in the property, thus conceding it was public land, it could not establish the kind of injury that could not be compensated by damages.
48. That the balance of convenience therefore tilts in his favour due to his long use and occupation of L.R No. 20591/85. That granting the orders sought would cause undue hardship by requiring him to vacate his "rightful portion" of the property.
49. The 2nd Defendant specifically opposed the prayer that sought a mandatory order to remove fences and structures, as well as the prayer that had sought to bar trespass while he was already in occupation, stating that granting these prayers would operate as an eviction order against the Defendants before the suit's merits had been heard, which would occasion a miscarriage of justice.
50. Relying on the holding by the Court of Appeal in in the case of Court of Appeal in **Lucy Wangui Gachara vs Minudi Okemba Lore [2015] eKLR**, cited with approval by this court in **Stephen Mwhia Maragara v Mwangi Kamurara (suing as legal Representative of the estate of Mwangi Kamurara Mathigi (deceased) [2020] eKLR**, the 2nd Defendant submitted that a mandatory injunction at an interlocutory stage was a drastic remedy that required special circumstances and a clear case, which the Plaintiff has not established. He urged the Court to dismiss the Plaintiff's application with costs.

The 3rd Defendant's Submissions.

51. In its submissions dated the 31st October 2025, the 3rd Defendant also vehemently opposed the Plaintiff's Notice of Motion dated 21st February 2025, primarily on the grounds that the Plaintiff had failed to

establish a *prima facie* case against them, wherein its claims were based on "mere allegations.

52. It submitted that the Notice of Motion was vexatious, lacks merit, and is an abuse of court process. That it did not share a common boundary with the subject land parcel L.R No. 6576 IR 4429 and had not therefore trespassed on the subject land. That the suit land was a public utility property, wherein the Plaintiff/Applicant had no legal interest over it. That the Plaintiff therefore had no cause of action against the 3rd Defendant.
53. The 3rd Defendant focused exclusively on the first limb of the **Giella v Cassman Brown** case wherein it submitted that the Plaintiff had not established a *prima facie* case with a probability of success. That based on the definition in **Mrao Ltd v First American Bank of Kenya LTD** (*supra*), where a *prima facie* case required a tribunal to conclude that a right had been apparently infringed by the opposite party based on the material presented, the Applicant had made "wild allegations" of trespass and illegal alienation of public land against the 3rd Defendant but had failed to produce credible evidence (oral or documentary) to support these claims. That without proof, the Plaintiff's claims were "mere allegations, pleadings or unsupported claims which did not amount to a *prima facie* case."
54. That the Applicant had failed to establish a right over the subject matter that was in danger of being violated by the 3rd Defendant, especially since the 3rd Defendant denies any involvement, including denying sharing boundaries with the suit land.
55. The 3rd Defendant asserted that since the first ingredient of the *Giella* test (*prima facie* case) had failed, there was no need for the court to consider or submit on the second and third conditions (irreparable damages and balance of convenience).
56. It opposed the prohibitory and mandatory injunctions orders sought in the Application on the basis that the Plaintiff was not entitled to them due to the failure to establish a *prima facie* case against it (3rd Defendant).

57. That regarding the prayer to suspend further dealings/transactions, the 3rd Defendant argued that it had been incumbent upon the Applicant to demonstrate that it (3rd Defendant) had been involved in transactions in the suit property. Since the Plaintiff failed to do so, the prayer must be declined. It sought for the dismissal of the Application with costs.

The 6th Respondent's submissions.

58. The 6th Respondent vide its undated submissions submitted in strong opposition to the Plaintiff/Applicant's prayer seeking an order of Mandamus to compel them to investigate the conflicting land records and fraudulent claims concerning I.R 4429 stating that it had constitutional independence with a statutory mandate to choose the manner and timing of its investigations, and the legal principles governing the issuance of the writ of Mandamus.

59. That Mandamus was a command requiring a person or entity to perform a public duty imposed by statute, which they have failed, neglected, or refused to perform. Citing the case in **Kenya National Examination Council vs Republic Exparte Geoffrey Gathenji Njoroge & 9 Others [1997] eKLR**, it submitted that Mandamus could only issue when the person concerned has refused to perform the public duty. That it had neither neglected, refused, or failed to carry out its mandate and therefore the Applicant had an ulterior motive by filing the suit without first lodging a complaint with the Commission, meaning that it could not be said that they (EACC) had neglected its duty.

60. That the EACC was an independent Constitutional Commission established under Article 79 and Section 3 of the EACC Act wherein Section 28 of the EACC Act provided that the Commission shall not be subjected to the direction or control of any person or authority in the performance of its functions. That granting the orders sought would therefore be tantamount to interfering with its investigative mandate and investigative independence (Article 249(2)(b) of the Constitution).

That the EACC was not subject to the direction and control of the court on how to perform its duties, absent evidence of impropriety.

61. That under Section 25 of the ACECA, the EACC was obligated to investigate all reports of alleged corruption or give reasons for not investigating them. This implies discretion and control over its process. On the other hand, under Section 35 of ACECA the EACC was mandated to report the results of its investigations and recommendations to the Director of Public Prosecutions (DPP), not to the Honourable Court or the Applicant.
62. It placed reliance on the decision in **R-vs- Anti-counterfeit Agency & 2 others ex-parte Surghipharm [2015] eKLR** to submit that courts were generally slow to interfere with the mandate of investigative agencies unless abuse of power or bad faith is proved. That the Applicant had not demonstrated any bad faith or impropriety on the part of the 6th Respondent that would warrant the court directing its investigative function. That the Court should decline the invitation by the Plaintiff to "descend into the arena of investigations" where no impropriety has been shown. They sought that application against it be dismissed with costs.

Determination.

63. I have considered the Applicants' application, its opposition, the submissions by parties, the appropriate law as well as the authorities herein cited.
64. The Applicant brings the Application as as a Community-Based Organization (CBO) representing local residents, of the area and the beneficiaries and occupants of the suit property seeking to protect land claimed to be public utility land, in a representative capacity on behalf of the affected community. This is a recognized form of *locus standi* for community-based organizations seeking to protect communal rights or public resources.
65. The Applicant's standing is grounded in the constitutional and environmental framework of the jurisdiction in Kenya, which grants

broad rights to access justice, especially in matters of public interest and environmental protection. He asserts its standing based on the following legal provisions:

i. Under the Constitution.

Article 22 of the Constitution allows any person to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated, or infringed and specifically a person acting in the public interest to institute court proceedings to protect public utility land from illegal private acquisition which falls squarely under the public interest mandate.

Article 42 grants every person the right to a clean and healthy environment, which includes the right to have the environment protected for the benefit of present and future generations.

Article 69 (2) imposes obligations on the State and all persons to cooperate in protecting and conserving the environment.

Article 70 (1) grants any person the right to apply to court for redress if their right to a clean and healthy environment has been or is likely to be violated. Alienating public land or open space often constitutes an environmental violation, giving the CBO standing.

ii. Under the Environmental Management and Coordination Act (EMCA)

Section 3 of EMCA provides an expansive definition of *locus standi*, allowing any person to bring an action to safeguard the environment where their interest is affected or even where the action is being pursued in the public interest.

66. I therefore find that the broad public interest litigation framework in the Constitution and EMCA overrides the traditional, restrictive rule that only a person with a direct private interest in the land can sue. By alleging that I.R 4429 is public utility land and that its alienation violates community rights and the environment, the Applicant successfully established *locus standi*.

67. Subsequently, the court has been moved under Certificate of Urgency, by the Applicant to issue the following orders which shall form the court's issues for determination.

- i. **Prohibitory order of Injunctions** restraining any dealings, transactions, or representations in respect of land reference No. 6576 (IR 4429) as well as interim conservatory order restraining the 2nd and 3rd Respondents/Defendants, their agents, servants, employees, or any other persons acting under their authority from trespassing, fencing, constructing, alienating, selling, leasing, or in any way dealing with or interfering with the said parcel of land.
- ii. **Mandatory Injunction** compelling the 2nd and 3rd Respondents/Defendants to remove any fences, structures, or developments they have unlawfully erected on Land Reference No. 6576 (IR 4429).
- iii. **Order against 1st Defendant** restraining her, her agents, servants, or any other person acting under her instructions from making any further false or misleading claims regarding the ownership or description of land reference No. 6576 (IR 4429)
- iv. **Order against 6th Respondent (EACC)** compelling it to investigate the conflicting land records concerning I.R 4429 and the fraudulent claims made by the 1st Defendant/Respondent.
- v. **Order against 4th Defendant** compelling it to conduct an urgent review of the conflicting entries

concerning I.R 4429 and I.R 10263 and provide a clarification on how two separate properties have been assigned identical Presentation Numbers and Registration Dates.

68. The primary effect of the application is to stop any further dealings, alienation, or construction on the disputed property, Land Reference No. 6576 (IR 4429), and therefore seek the preservation of the suit property pending the final determination of the ownership dispute, to compel the investigation, and initiate legal processes to resolve the alleged fraudulent land records.

69. At this stage, the Court is only required to determine whether the Applicant is deserving of the Orders sought. The Court is not required to determine the merit of the case.

70. The celebrated case of **Giella vs Cassman Brown (1973) EA 358** sets out conditions for the grant of an interlocutory injunction as follows: -

- i. Is there a serious issue to be tried (prima facie case)?
- ii. Will the Applicant suffer irreparable harm if the injunction is not granted?
- iii. Which party will suffer the greater harm from granting or refusing the remedy pending a decision on the merits? (Often called "balance of convenience").

71. On the first issue as to whether the Plaintiff/Applicant in the instant matter has made out a prima facie case with a probability of success, I am guided by the case of **Mrao vs First American Bank of Kenya Limited & 2 Others (2003) KLR 125**, where a prima facie case was described as follows:

“a prima facie case in a Civil Application includes but is not confined to a ‘genuine and arguable case’. It is a case which, on the material presented to the Court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite

party as to call for an explanation or rebuttal from the latter.”

72. In its application dated 21st February 2025, the Applicant herein seeks a prohibitory order of Injunction restraining any dealings, transactions, or representations in respect of land reference No. 6576 (IR 4429) as well as interim conservatory order restraining the 2nd and 3rd Respondents/Defendants, their agents, servants, employees, or any other persons acting under their authority from trespassing, fencing, constructing, alienating, selling, leasing, or in any way dealing with or interfering with the said parcel of land.
73. The Applicants argument raises serious questions about the validity of the Defendants' titles to the effect that there exist two separate grants I.R 4429 and I.R 10263 bearing identical presentation numbers and registration dates, and despite the Land Registrar's attempt to clarify they are in different locations, this still suggests a failure in land record keeping that warrants judicial intervention.
74. The Applicant further points out that if the Deed of Surrender by Colville Limited (the original proprietor) in favor of the Rift Valley Regional Assembly was valid, it would have converted I.R 4429 into public land under Article 62(1)(a) of the Constitution.
75. The 3rd Defendant's opposing affidavit ironically supports the Applicant by stating the suit land is a "public utility parcel" belonging to the County Government of Nakuru. This amounts to an admission that the land is not available for private alienation and therefore if the land is public, any subsequent subdivision, allocation, or sale to private entities like Naivasha Enterprises Ltd and the 2nd Defendant would be unlawful and void *ab initio* under Article 40(6) of the Constitution, which strips protection from titles acquired illegally.
76. The Applicant has established that denying the orders would lead to irreparable harm of Loss of Public Utility wherein the continued private dealings of fencing, construction, sale would permanently convert public land into private property, thereby depriving the community and

the Applicant of a legitimate public utility, which cannot be compensated by money alone. That without a restraining order, the Defendants could further subdivide or transfer the land to innocent third parties, making the eventual recovery of the property extremely difficult and complex.

77. That the balance of convenience strongly favors granting the injunction so as to protect the land reserved for the public good, thereby outweighing the inconvenience suffered by the 2nd Defendant, whose title faces serious legal questions of fraud and constitutional validity. That granting the injunction temporarily preserves the land until the court can determine the rightful owner whereby denying the injunction risks the permanent loss of public land.
78. In response, the 1st Respondent filed a Preliminary Objection, stating she was wrongfully sued as the administratrix of Isaac Njoroge Muguku's estate, a position she does not hold.
79. The 2nd Respondent denied the fraud claiming that he was in lawful occupation of L.R No. 20591/85, which he purchased from Naivasha Enterprises Limited. That the land was private land since inception, not earmarked for public use. That the Plaintiff had failed to establish a *prima facie* case or prove irreparable harm, and neither had it provided any evidence of their occupation or that the land is public. That granting the injunction would cause him undue hardship.
80. The 3rd Respondent's stand on the other hand was that the motion was vexatious and lacked merit. That it did not share a common boundary with the Plaintiff's alleged land, so trespass did not arise. It conceded that the suit land was a public utility, and the proper Applicant should be the County Government of Nakuru, not the Plaintiff. It sought for the dismissal of the Application for lack of *prima facie* case and irreparable harm.
81. Lastly the representative of the 4th Respondent's stand was that he had confirmed that LR 6576/2 (IR 4429/1) and LR 8048 (IR 10263/1) were both leased to Lematesho Limited on the same date (23/10/1958) after being transferred to Colville Limited. However, there was no

confusion because the two parcels had different registration numbers and were in different locations. That while LR 6576/2 was in Naivasha, LR 8048 was in Rumuruti, Laikipia. He contended that the application lacks merit.

82. Having taken the above issues into consideration and noting that at this stage the court is not required to make final findings of contested facts but to weigh the relative strength of the parties cases as observed by Lord Diplock in **American Cyanamid Co. vs Ethicon Limited (1975) 1 ALL ER 504; (1975) A.C. 396 HL at 510** where he stated as follows:

"It is no part of the Court's function at this stage of the litigation to try and 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. These are matters to be dealt with at the trial."

83. I find that the Applicant having established a Prima Facie Case, the balance of convenience tilts in favour of preserving the land for the public good over protecting a contested, allegedly void, private title and therefore the order that best commends itself in the circumstances of this case is an order of status quo because in land matters the maintenance of status quo order is now literally synonymous with the proceedings. As was held by the Court of Appeal in the case of **Mugah -v- Kunga [1988] KLR 748**, in land matters status quo orders should always be issued for purposes of preserving the subject matter. The court's practice directions in Gazette Notice No. 3461/2025 Practice Direction No. 23(I) gives the court the leeway and discretion to make an order for status quo to be maintained until determination of the case.

84. On the second issue for determination on whether there should issue a Mandatory Injunction compelling the 2nd and 3rd

Respondents/Defendants to remove any fences, structures, or developments they have unlawfully erected on Land Reference No. 6576 (IR 4429), the court of Appeal in **NIC Bank Limited v Odhiambo & 2 others [2025] KECA 347 (KLR) while** making reference to its earlier decision in the case of **Alex Wainaina t/a John Commercial Agencies v Johnson Mwangi Wanjihia [2015] eKLR**, held thus:

“These principles have received full approval by the courts in this country, including:- Belle Maison Limited Vs. Yaya Towers Limited H.C.C.C. 2225 of 1992, per Bosire, J. (as he then was) , Ripples Limited Vs. Kamau Mucuha H.C.C.C. No. 4522 of 1992 per Mwera, J. and Magnate Ventures Limited vs Eng. Kenya Limited [2009] KLR 538 which summarized the principles thus:

- i. A mandatory injunction need not to be given at an interlocutory stage. It could be granted on an interlocutory application as well as at the hearing, but in the absence of special circumstances, it would not normally be granted. However, it would be granted if the case was:-*
 - a. Clear and one which the court thought it ought to be decided at once, or*
 - b. If the act done was a simple and summary one which could be easily remedied.*
 - c Or if the defendant attempted to steal a match on the plaintiff.*
- ii. The decision to grant a mandatory injunction at the interlocutory stage was a decision dependent on the discretion of a judge and each case had to be decided on the basis of its own peculiar facts and circumstances.’*

The consistent reiteration of those principles by the courts is an affirmation that the remedy of mandatory injunction is a drastic one which ought not to be granted mechanically but considered with caution."

85. I find that in the present case, there is no special circumstances that would have necessitated the grant of a mandatory injunction at this interlocutory stage. This is a drastic order that effectively grants final relief (eviction) before trial. The Applicant needs a very clear, strong case that the injury is grave and urgent. The 2nd Defendant's claim of lawful occupation of L.R 20591/85 introduces enough doubt and contestation of fact to make a court reluctant to issue a mandatory order at this stage, preventing a "miscarriage of justice" as argued by the 2nd Defendant. This prayer is therefore denied.

86. In regard to the third issue for determination being an Order against 1st Defendant restraining her, her agents, servants, or any other person acting under her instructions from making any further false or misleading claims regarding the ownership or description of land reference No. 6576 (IR 4429), I find that the 1st Defendant's Preliminary Objection that she was not an Administratrix of the estate of Isaac Njoroge Muguku, and therefore was a wrong party to the suit was uncontroverted by the Applicant who failed to discharge the burden of proof to confirm her status. However, it is trite that a valid Preliminary Objection must consist of a pure point of law that, if argued, may dispose of the suit entirely, often relating to jurisdiction or procedure. The argument that the suit is defective because the wrong party was sued as an administrator is a procedural matter that may require a factual inquiry and evidence on who *is* the correct administrator, or whether the 1st Defendant has a personal interest separate from the estate.

87. Courts are generally reluctant to strike out a suit at the preliminary objection at this stage if the issue can be rectified by amendment or substitution of parties, especially where the main claim involves a

significant public interest issue like the ownership of public land. The 1st Respondent's Preliminary Objection is herein denied.

88. On the fourth issue for determination, wherein the Applicant seeks an Order against 6th Respondent (EACC) compelling it to investigate the conflicting land records concerning I.R 4429 and the fraudulent claims made by the 1st Defendant/Respondent, I find that the EACC is an independent constitutional body as per Article 249 of the Constitution for which it cannot be directed on how to perform its functions unless abuse is demonstrated.
89. The EACC correctly cited Article 249(2)(b) of the Constitution, which guarantees the independence of constitutional commissions. It also cited Section 28 of the EACC Act, which removes them from the direction or control of any person or authority. As established in **Kenya National Examination Council v Republic Ex Parte Geoffrey Gathenji Njoroge [1997] eKLR**, Mandamus lies only to compel the performance of a duty where there has been a failure, refusal, or neglect to act. The 6th Respondent stated it had not refused to investigate and was committed to its mandate. Without concrete proof of bad faith or neglect by the 6th Respondent, the court declines this order to uphold the principle of institutional independence.
90. Lastly the Applicant sought an Order against 4th Defendant compelling it to conduct an urgent review of the conflicting entries concerning I.R 4429 and I.R 10263 and provide a clarification on how two separate properties have been assigned identical Presentation Numbers and Registration Dates.
91. In its response, the 4th Defendant (Land Registrar) provided the clarification in his Replying Affidavit, that was accompanied by the registers of the two parcels of land i.e Land Reference 6576/2 (Grant IR 4429/1) and Land Reference 8048 (Grant IR 10263/1) contained different registration numbers and were located in different places whereby Land Reference 6576/2 (Grant IR 4429/1) is located in Naivasha while Land Reference 8048 (Grant IR 10263/1) is located in

Rumuruti, Laikipia County. This largely renders the prayer for review moot.

92. Having found as herein above, I find the final orders of the court being as follows;

- i. The order of status quo to be maintained by all with the understanding that the Plaintiff/Applicant' is in possession and occupation of the suit property described as land reference No. 6576 (IR 4429) situate in West of Lake Naivasha, within Maiela Ward, Nakuru County, as at the time of filing the instant suit and therefore there shall not be any eviction and/or disruption of the said occupation.
- ii. The Applicants shall also not deal with the land adversely.
- iii. Such status quo is to be maintained by all parties until the matter is finally heard and determined.
- iv. Officer Commanding Station (OCS) Kongoni Police Station is directed to ensure compliance with the orders.
- v. The costs of the application shall be in the cause.
- vi. Parties to comply with the provisions of Order 11 of the Civil Procedure Rules within the next 21 days for the hearing of the main suit herein.

Dated and delivered via Microsoft Teams at Naivasha this 11th day of December 2025.



M.C. OUNDO

ENVIRONMENT & LAND COURT- JUDGE