



**Shitanda v Governor, Nairobi City County & another; Enterprises
(Interested Party) (Environment and Land Petition E041 of 2025)
[2025] KEELC 8598 (KLR) (10 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 8598 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND PETITION E041 OF 2025
CA OCHIENG, J
DECEMBER 10, 2025**

BETWEEN

HENRY NAMATI SHITANDA PETITIONER

AND

THE GOVERNOR, NAIROBI CITY COUNTY 1ST RESPONDENT

THE COUNTY SECRETARY, NAIROBI CITY COUNTY 2ND RESPONDENT

AND

KENCH A ENTERPRISES INTERESTED PARTY

RULING

1. What is before the Court for determination is the Petitioner’s Notice of Motion application dated 4th June 2025 where he seeks the following Orders:
 - a. Spent.
 - b. That pending the hearing and determination of this Petition, an interim injunction do issue restraining the Respondents and the Interested Party, their agents or assigns from continuing with the construction, erection, or occupation of the container stalls on L.R. No. 2322/2.
 - c. That the Honourable Court be pleased to issue a conservatory order stopping any development or leasehold action relating to the said land until the Petition is heard and determined.
 - d. Spent.
 - e. The costs of this application be borne by the Respondent.
 - f. Any other or further relief or order be made as this Honourable Court may deem fit to grant.



2. The application is premised on grounds on its face and on the Petitioner's supporting affidavit. He avers that L.R. No. 2322/2, is a designated public utility space within the Nairobi Central Business District and has been irregularly allocated to the Interested Party for construction of eleven (11) commercial stalls unlawfully. To this end, he points out a 'Container Permit' issued by the Nairobi City County dated 21st February 2023, which he annexed.
3. He avers that no advertisement, public tender or notice was ever issued to allow competitive bidding for the lease or development of the suit property as required under Section 54(2), 55(1), 58, and 91 of the *Public Procurement and Asset Disposal Act*, 2015. Further, that members of the public were not involved in any public participation or stakeholder engagement contrary to Articles 10 and 201 of *the Constitution* and that environmental approvals were not granted.
4. He contends that the ongoing construction on public land poses irreparable loss and deprivation of the public's right to a clean and organized urban environment.

Responses

5. The application is opposed by the Respondent who filed Grounds of Opposition. It contends that the construction approval allegedly issued to the Interested Party with respect to the suit property was formally and expressly nullified by the Nairobi City County Government through the 2nd Respondent's letter dated 26th May 2025 and that in the said letter, the County Government of Nairobi affirmed that it remains the lawful proprietor and is in actual occupation of the suit property, which is currently being utilized and earmarked for the expansion of the County's public storage facility. Further, that the Petitioner has not met the legal threshold for grant of conservatory orders as no material has been placed before the Court to demonstrate any ongoing or future breach of *the Constitution*. It reiterates that the application appears designed to disrupt essential County operations and to frustrate a legitimate and ongoing public infrastructure initiative meant to serve Nairobi residents.
6. The Interested Party also filed a replying affidavit sworn by Charles Kengati, who claims to be its proprietor. He avers that the Interested party has never applied for allocation of the suit property or ever been awarded a Lease. Further, that at the time it is said to have been allocated the suit property, it was not operational. He disowns all correspondences purporting to link the Interested party to the Lease, development or occupation of the suit property and claims that the Interested Party's name might have been used fraudulently by third parties, a matter he reported to Embu Police station.
7. The application was canvassed by way of written submissions.

Submissions

8. The Petitioner submits that it has met the test for grant of conservatory orders as stated by the Supreme Court in the case of *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others* [2014] eKLR, having demonstrated that the suit property is public land, and that the allocation to the Interested party violated various constitutional and statutory provisions. Further, that the ongoing development on the suit property creates irreparable environmental and social harm, and any remedy post-completion would be academic.
9. He contends that the claim by the Respondents that the matter is moot due to a revocation letter is not sufficient as the same has not been gazetted and construction is ongoing, in breach of public rights.
10. To buttress his averments, he relied on the following decisions: *Save Lamu & Others v NEMA & Another* [2019] eKLR, *Michael Osundwa Sakwa v Chief Justice & President of the Supreme Court*



of Kenya & Another [2016] eKLR and County Government of Mombasa v Outdoor Advertising Association of Kenya [2016] eKLR.

11. The Respondents submit that the Petitioner failed to meet the threshold for grant of conservatory orders. Further, that his allegations of “unlawful allocation” are vague and unsupported by facts offending the threshold in Anarita Karimi Njeru v Republic [1979] eKLR which demands precision. Further, that the revocation letter dated 26th May 2025 confirms that the suit property remains reserved for public utility, with no private claim/interest thus there is no threat of violation, and no live controversy before the Court.
12. They contend that in the absence of a prima facie case, the element of irreparable harm cannot stand on its own. To this end, they relied on the case of Board of Management of Uhuru Secondary School v City County Director of Education & 2 Others [2015] eKLR.
13. The Interested Party did not file submissions.

Analysis and Determination

14. I have considered the instant Notice of Motion application including the affidavits, Grounds of Opposition and rivalling submissions and the only issue for determination is whether the Petitioner has satisfied the principles governing the grant of conservatory orders in light of the Respondents’ revocation letter dated 26th May 2025.
15. The Petitioner seeks conservatory orders restraining the Respondents and the Interested Party from continuing with construction, erection, or occupation of container stalls on L.R. No. 2322/2. His case is that without adherence to public procurement procedures, including public participation as provided for by *the Constitution*, the Respondents allocated the suit property, which is public land, to the Interested Party who erected container stalls thereon.
16. The Respondents contend that the suit property stands fully preserved by administrative action as the construction approval allegedly issued to the Interested Party with respect to it, was nullified by the Nairobi City County Government through the 2nd Respondent’s letter dated 26th May 2025.
17. They also contend that the Petitioner cannot claim conservatory orders over a speculative threat as the suit property is earmarked for a critical public purpose expansion of the general stores for County of Nairobi operations.
18. The Interested Party denied knowledge of the alleged allocation and contends that there might have been third parties who fraudulently used its name to procure the alleged allocation.
19. The principles for grant of conservatory orders were stated by the Supreme Court in Gatarau Peter Munya v Dickson Mwenda Kithinji & 2 others (2014) eKLR as follows:

“Conservatory orders” bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to 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 as “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. Conservatory orders, consequently, should 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 courses.”



20. Further, in Board of Management of Uhuru Secondary School v City County Director of Education & 2 others [2015] eKLR, the Court stated that:

“It is in my view not enough to merely establish a prima facie case and show that it is potentially arguable. Potential arguability is not enough to justify a conservatory order but rather there must also be evident a likelihood of success. The prima facie case ought to be beyond a speculative basis...”

21. Based on the facts as presented while associating myself with the decisions quoted and applying them to the circumstances at hand, noting that the Interested Party has denied knowledge of the project while the Respondents insists that the alleged allocation was revoked, I find that the Petitioner has not provided adequate proof to warrant the conservatory orders sought. I opine that there is no potential arguability of the Petition as there is no evidence of success. Further, the orders are being sought on a speculative basis and there is no proper demonstration of an alleged infringement.

22. In the foregoing, I find the instant Notice of Motion application unmerited and will disallow it.

23. Costs will be in the cause.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 10TH DAY OF DECEMBER, 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

Oduor for 1st and 2nd Respondents

Court assistant: Vena

