



REPUBLIC OF KENYA



**KENYA LAW**  
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**Olooirusha & 4 others v Narok & 3 others (Environment and Land Petition  
E001 of 2025) [2025] KEELC 18550 (KLR) (18 December 2025) (Ruling)**

Neutral citation: [2025] KEELC 18550 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT AND LAND PETITION E001 OF 2025**

**LN GACHERU, J**

**DECEMBER 18, 2025**

**IN THE MATER OF CONTRAVENTION OF SECTION 14, 24, 25, 26 AND 80 OF  
THE LAND REGISTRATION ACT (NO.3 OF 2012)ANDIN THE MATTER OF  
CONTRAVENTION OF SECTION 4 AND 7 OF THE FAIR ADMINISTRATIVE ACTION  
ACT (NO. 4 OF 2015)ANDIN THE MATTER OF IRREGULAR CANCELLATION AND  
REVOCATION OF TITLE DEED FOR LAND PARCEL NUMBER CISMARA/LEMEK/**

**BETWEEN**

**KIRANTO OLOLOIRUSHA ..... 1<sup>ST</sup> PETITIONER  
MAISON OLE NASI ..... 2<sup>ND</sup> PETITIONER  
TEKETI NKON’GONI DALTON ..... 3<sup>RD</sup> PETITIONER  
PEMPOA MANKUYIO ..... 4<sup>TH</sup> PETITIONER  
ASHAR OLE SITOI ..... 5<sup>TH</sup> PETITIONER**

**AND**

**THE LAND REGISTRAR NAROK ..... 1<sup>ST</sup> RESPONDENT  
HON ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT  
LUNGUTUT MUNTET ..... 3<sup>RD</sup> RESPONDENT  
TUMPES OLE MUNTET ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. The matter for determination is the Notice of Motion Application dated 28<sup>th</sup> March 2025, filed by the Petitioners/Applicants herein, which is brought under Articles 2, 3, 23, 165, 258 of *the Constitution* of Kenya and Rules Constitution of Kenya (Protection of Rights and fundamental Freedoms) Practice and Procedure Rules, seeking the following orders;



- i. Spent
  - ii. Spent
  - iii. That pending the hearing and determination of the main petition, this court be pleased to issue conservatory order to stay the implementation or further implementation of decision of the 1<sup>st</sup> Respondent to cancel and/or the cancellation of Petitioners titles namely Cis/Mara/Lemek 3435, 3593, 3637, 3638, 3715, 4106, 6580, 6699, 7057, 7305, 7769 vide Gazette Notice No.2490 dated 1<sup>st</sup> March 2024.
  - iv. That pending the hearing and determination of the main petition this court be pleased to issue an order of injunction restraining, prohibition and/or stopping the Respondents from making entries, transferring, alienating, disposing, dispossessing, interfering with the Petitioners ownership, registration and possession or in any way dealing with the Petitioner parcels of land namely Cis Mara/Lemek 3435, 3593, 3637, 3638, 3715, 4106, 6580, 6699, 7057, 7305, 7769 vide Gazette Notice No.2490 dated 1<sup>st</sup> March 2024.
  - v. That Respondents be condemned to pay costs.
2. The application is premised on the grounds stated on the face of the Application, being that; the Land Registrar, Narok District, issued Gazette Notice No. 2490, dated 1<sup>st</sup> March 2024, notifying the intended cancellation of Land Parcels Cis-Mara/Lemek/6699, 6680, 4106, 7057, 7305, 7366, 7687, 3593, 3688, 3715, 7769, 7770, and 3435. Subsequently, the original title Cis-Mara/Lemek/793, was restored automatically cancelling the aforementioned parcels.
  3. That the Petitioners/Applicants, who are registered owners of the affected parcels CIS-MARA/LEMEK/6699, 6680, 4106, 7057, 7305, 7366, 7687, 3593, 3688, 3715, 7769, 7770, and 3435, contended that the cancellation was done irregularly and in contravention of their constitutional rights under Articles 40 and 47 of *the Constitution* of Kenya, which guarantee the right to property and fair administrative action.
  4. The Petitioners/Applicants elaborated the background of how they acquired their parcels of lands through purchase after performing due diligence on the suit properties, and confirming the sellers as registered owners by acquiring copies of Green cards supplied to them on diverse dates.
  5. Further, the Petitioners/Applicants averred that the suit properties are resultants of the subdivision of the original land parcel title number Cis-Mara/Lemek/793, measuring approximately 40.48ha registered in the name of Lepish Ole Muntet.
  6. The Petitioners/Applicants further deposed that the suit properties are resultants of the subdivision of the original land parcel title number Cis-Mara/Lemek/793, which measured approximately 40.48 hectares, and was registered in the name of Lepish Ole Muntet (deceased).
  7. Further, that through a sale agreement dated 10<sup>th</sup> May 2010, Lepish Ole Muntet sold a portion of Cis-Mara/Lemek/793, measuring approximately 20 acres to the 1<sup>st</sup> Petitioner, Kiranto Ololourusha. The original parcel was subsequently divided into two portions, creating parcels Cis-Mara/Lemek/3435, and 3436, measuring 9.09 hectares and 32.39 hectares, respectively.
  8. Further, that land parcel No. 3435 was transferred to the 1<sup>st</sup> Petitioner, while land parcel No. 3436 was retained by Lepish Ole Muntet. That after the demise of Lepish Ole Muntet, his sons, Lengoti Ole Muntet and Langutut Ole Muntet, further subdivided land parcel number Cis-Mara/Lemek/3436, into two portions, creating land parcels Cis-Mara/Lemek/3593 and 3594.



9. The Petitioners/Applicants averred that land parcel No 3593 was sold and transferred to the 1<sup>st</sup> petitioner, while land parcel No. 3594 was retained by the sons. They alleged that the sons continued to subdivide land parcel No. Cis-Mara/Lemek/3436, and sold and transferred the resultant parcels to the Petitioners.
10. It was their contention that the Petitioners purchased the parcels in good faith, believing the sellers had the legal capacity to transact. Further, that on 21<sup>st</sup> January 2025, the petitioners obtained a map from the survey office in Narok, which confirmed the subdivisions of the original parcel.
11. It was the Petitioners/Applicants argument that the cancellation was carried out without proper notice and/ or an opportunity to be heard, violating Sections 14, 24, 25, 26, and 80 of the [Land Registration Act](#) (No.3 of 2012) and Sections 4 and 7 of the [Fair Administrative Action Act](#) (No. 4 of 2015).
12. The Petitioners/Applicants further contended that the 1<sup>st</sup> Respondent acted ultra vires and in abuse of power, as the cancellation of their titles was not within the scope of the law.
13. Therefore, the Petitioners/Applicants sought for conservatory orders to stay the implementation of the cancellation, and an injunction to restrain the Respondents from interfering with their ownership, registration, and possession of the suit properties pending the hearing and determination of the application and the main petition.
14. The application is opposed by the Respondents vide the Replying Affidavit of the 3<sup>rd</sup> Respondent sworn on 20th May 2025. The 3<sup>rd</sup> Respondent, Langutut Muntet, on his own behalf and on behalf of the 4<sup>th</sup> Respondent, the biological sons of the late Lepish Ole Muntet and averred that the application is misconceived, frivolous, and an abuse of the court process.
15. He deponed that the deceased died on 29<sup>th</sup> June 2011, and was the registered proprietor of Land Parcel No. Cismara/Lemek/793, which he never sold, transferred, or subdivided during his lifetime, and that no consent of the Land Control Board was ever sought or obtained.
16. It was his contention that the Applicants masterminded and orchestrated an elaborate scheme to intermeddle with the property of the deceased, both prior to his demise and after his death, and that all alleged transfers, subdivisions, Green card entries, and the resultant titles effected in 2011, 2012, 2013, 2020, 2021, and 2023 were fraudulent, illegal, null and void, as the deceased could not have transacted from the grave.
17. He further averred that neither he nor the 4<sup>th</sup> Respondent were administrators of the estate or registered proprietors of any of the suit properties; and that no succession proceedings had ever been undertaken, and that the Applicants were therefore feigning ignorance and misleading the Court.
18. The 3<sup>rd</sup> Respondent deponed that investigations by the Narok DCI Anti-Land Fraud Unit revealed fraudulent dealings, prompting the 1<sup>st</sup> Respondent to revoke all subdivisions and restore the original land parcel CIS-MARA/LEMEK/793, in the name of the deceased. He relied on Article 40(6) of [the Constitution](#), which provides that protection of the right to property does not extend to property that has been unlawfully acquired, and Section 26(1) of the [Land Registration Act](#), No. 3 of 2012, which allows impeachment of title obtained through fraud or misrepresentation.
19. He also averred that the doctrines of indefeasibility of title and innocent purchaser for value are unavailable where the root of the title is illegal, fraudulent, null and void ab initio, and that equity cannot aid a litigant with unclean hands, and that conservatory orders cannot be granted to prevent what has already happened.



20. ultimately, the 3<sup>rd</sup> Respondent deponent averred that the Applicants are unlawfully asserting ownership of the suit property with the aim of dispossessing the estate of the deceased. He urged the Court to dismiss the application with costs in the interest of justice and equity.
21. In response to the Replying Affidavit, the Petitioners/Applicants filed a Further Affidavit dated 19<sup>th</sup> June 2025, and deponed that the 3<sup>rd</sup> Respondent's opposition to the Notice of Motion Application and petition dated 28<sup>th</sup> March 2025 is entirely misplaced and misguided.
22. The Petitioners/Applicants further stated that the 3<sup>rd</sup> Respondent's Replying Affidavit is based on erroneous, incorrect, and false assumptions and/or assertions that the instant petition is a suit for a land claim, and the Respondent has responded as such.
23. The Petitioners/Applicants deposed that the petition challenges the legality and procedural propriety of the actions of the 1<sup>st</sup> Respondent in cancelling the titles obtained from the subdivision of land parcel No. CIS-MARA/LEMEK/793, through a Gazette Notice.
24. The Petitioners/Applicants deponed that they are well within their rights to institute a petition under Articles 22 and 23 of *the Constitution*, as their rights have been threatened, infringed, and violated.
25. Further, the Petitioners/Applicants averred that, together with their Co-petitioners, they are the registered owners of land parcels within CIS-MARA/LEMEK/3435, 3593, 3637, 3638, 3715, 4106, 6580, 6699, 7057, 7305, and 7769, hereinafter referred to as the suit properties, which they lawfully acquired through innocent purchase without notice.
26. They also deponed that the 3<sup>rd</sup> and 4<sup>th</sup> Respondents sold the suit properties to the petitioners/Applicants as trustees of the estate of the deceased and cannot be heard to say otherwise. Reliance was sought in the case of *Shah & 7 others v Mombasa Bricks & Tiles & 5 others* (Petition 18 of 2022),
27. The Petitioners/Applicants also deponed that even though the 3<sup>rd</sup> Respondent claims that the subject properties were never sold either by their father or themselves, they have not challenged the authenticity of the sale agreements containing their signatures, and that of their father selling the suit properties.
28. The petitioners/Applicants also averred that they have enjoyed peaceful possession of the suit lands from 2011 to date. At no particular time did the 3<sup>rd</sup> and 4<sup>th</sup> Respondents challenged the possession and ownership of the suit land parcels, even after the death of their father in June 2011.
29. The petitioners/Applicants also averred that the 3<sup>rd</sup> and 4<sup>th</sup> Respondents have made wild allegations of intermeddling with the property of the deceased, failing to appreciate that land parcel No. CIS-MARA/LEMEK/3435, was transferred to the 1<sup>st</sup> Petitioner by the deceased inter vivos, during his lifetime, and can therefore not be subject to Section 45 of the *Law of Succession Act*.
30. Further, that all the other parcels of land were sold to the petitioners/applicants by the 3<sup>rd</sup> and 4<sup>th</sup> Respondents, as demonstrated by the sale agreements, which remain undisputed.
31. The Petitioners/Applicants contended that it is in the interest of justice that their application and petition dated 28<sup>th</sup> March 2025, be allowed with costs.
32. The application was canvassed by way of written submissions. The Petitioners/Applicants filed their written submissions dated 19<sup>th</sup> June 2025, through Gordon Ogola & Associates Advocates, wherein they raised three main principles for consideration as follows:
  - i. The need for the Applicants to demonstrate an arguable prima facie case,



- ii. Whether the public interest will be served or prejudiced by a decision to exercise discretion to grant or deny a conservatory order.
  - iii. Whether, if an interim conservatory order is not granted, the Petition or its substratum will be rendered nugatory.
33. On the first principle, the Applicants submitted that they had demonstrated a prima facie case as defined in *Mrao v First American Bank of Kenya Limited & 2 others* [2003] KLR 125, arguing that the legality and propriety of the process leading to cancellation of their titles was in question.
  34. The Petitioners/Applicants relied on the case of *Gachagua & 40 others v Speaker, National Assembly & 15 others* [2024] KEHC 13473 KLR, while submitting that the petition raises arguable constitutional issues, particularly whether due process was followed, and whether the Land Registrar acted within the mandate conferred by Section 80 of the *Land Registration Act*, as read together with Article 47 of *the Constitution* on fair administrative action.
  35. The Petitioners/Applicants submitted that these issues required further judicial interrogation and should not be conclusively determined at an interlocutory stage.
  36. With respect to public interest, the Applicants relied on the definition in Black's Law Dictionary, 10<sup>th</sup> Edition, and submitted that public interest tilts in favour of allowing the constitutional process to proceed unhindered, as observed in *Gachagua & 40 others v Speaker, National Assembly & 15 others* [2024] KEHC 13473 KLR.
  37. The Petitioners/Applicants relied on the case of *Hermanus Phillipus Steyn v Giovanni Gnechi Ruscone* [2012] eKLR, while submitting that the matter meets the threshold of public interest litigation. They argued that the grant of conservatory orders would enhance constitutional values and principles under Articles 10, 23, 40 and 47 of *the Constitution*, which form the cornerstone of good governance and societal wellbeing.
  38. On whether the petition would be rendered nugatory, the Petitioners/ Applicants relied on the case of *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others*, Petition No. 2 of 2014, and *Judicial Service Commission v Speaker of the National Assembly & another* [2013] eKLR, while submitting that conservatory orders are constitutional remedies in rem intended to preserve the subject matter in situ.
  39. They further argued that the suit properties form the substratum of the petition, and that any interference, disposal, or further implementation of the cancellation decision would render the petition an academic exercise and condemn the Applicants unheard. They urged the Court to maintain the status quo pending the hearing and determination of both the application and the main petition.
  40. Finally, the Petitioners/ Applicants submitted that they stood to suffer prejudice if the orders were not granted. The Applicants relied on the definition of prejudice in Black's Law Dictionary, 10<sup>th</sup> Edition, and contended that they have been in occupation and use of the suit properties since 2010.
  41. It was their further argument that the Respondents would suffer no prejudice if conservatory orders were granted, and that the Replying Affidavit sworn by Langutut Muntet on 20<sup>th</sup> May 2025, raised substantive land ownership issues that were premature at the interlocutory stage. They therefore urged the Court to grant the prayers sought in the application dated 28<sup>th</sup> March 2025, in order to preserve the substratum of the petition and uphold the Court's constitutional mandate.
  42. The Respondents filed their submissions through Kamwaro & Co Advocates, in opposition to the Applicants Notice of Motion for Injunctive and Conservatory orders.



43. The Respondents set out one issue for determination; whether the petitioner /Applicants have demonstrated that they are entitled to conservatory and/ or injunctive orders as sought.
44. It was their submissions, that the guiding principles for grant of conservatory orders are well settled in Article 23(1)& (3) of *the Constitution*, which provides;

“ Authority of courts to uphold and enforce the Bill of Rights.

23.

- (1) The High Court has jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.
- (3) In any proceedings brought under Article 22, a court may grant appropriate relief, including—
  - (a) a declaration of rights;
  - (b) an injunction;
  - (c) a conservatory order;

45. It was their argument that the Petitioners/Applicants are seeking to stop the implementation of the decision of the 1<sup>st</sup> respondent vide Kenya Gazette Notice No 2490 of 1<sup>st</sup> March 2024, which was effected after 30 days.
46. Further, they argued that the titles held by the Petitioners/Applicants were cancelled, and the land reverted to the original title held by Lepish Ole Muntet( deceased). Therefore, the court cannot stop what has already happened.
47. Reliance was sought in the case of Habiba Ali Mursal & 4 others v Mariam Noor Abdi ( 2018) eklr, where the court held;

“On the issue as to whether an injunction should be issued, there is nothing to restrain as the Respondent has already demolished the walls of the building. According to the photographs annexed to the application for contempt which I shall shortly herein after deal with, the walls of the building have already been demolished and all windows removed. The entire building has been fenced and sealed using iron sheets. The Applicants are not in the premise4s. The purpose of an injunction is to restrain that which is threatened to occur or is in the process of being undertaken in breach of one’s right. It is never meant to prevent what has already occurred. It will therefore be futile to grant injunctive orders. I will therefore decline to grant any orders in the Notice of Motion dated 11<sup>th</sup> October 2018 save for an order that the Respondent shall meet the costs of this application. It is so ordered.”

48. It was also argued that the Applicants have not come to court in good faith, and reliance was sought in the case of Caliph Properties ltd v Barbel Sharma & Another ( 2015) eklr, where the court held;

“Secondly, the injunction sought is an equitable remedy. He that comes to equity must come with clean hands and must also do equity. The conduct of the Plaintiff in this case betrays him. It does not endear him to equitable remedies... He who comes to equity must fulfil all



or substantially all his outstanding obligations before insisting on his rights. The Plaintiff has not done that. Consequently, he has not done equity.”

49. The Respondents submitted that the Applicants did not acquire the suit properties legally and they cannot seek the protection of the court. Reliance was sought in the case of John Njue Nyaga v Nicholas Njiru & Another ( 2013) eKLR, where the court held;

“It is our considered view that one who comes to equity must come with clean hands and equity frowns upon secrecy and underhand dealings.” The applicant has not done so and is underserving of the orders he seeks.”

50. On conservatory orders, the Respondents submitted that the Applicants are required to demonstrate a prima facie case with probability of and further that unless the orders are granted there is real danger that the applicants will be prejudiced by court’s refusal to grant the orders.

51. They submitted that the Gazette Notice has been perfected and there is nothing to injunct, and no evidence that the substratum of the petition will be lost, and that petitioners will suffer prejudice , and /or the petition will be rendered nugatory.’

52. Reliance was sought in the case of Wilson Kaberia Nkuja v Magistrates and Judges Vetting Board & Another( 2016) eKLR, where the court held;

“It therefore follows that an applicant must satisfy three key principles in order to make out a case for the grant of conservatory orders that is; -

- a. An Applicant must demonstrate that he has a Prima Facie case with a likelihood of success and that unless the Court grants the Conservatory order, there is real danger that he will suffer prejudice as a result of the violation or threatened violation of *the Constitution*.
- b. Whether if a Conservatory Order is not granted, the Petition alleging violation of, or threat of violation of rights will be rendered nugatory; and;
- c. The Public interest must be considered before grant of a Conservatory Order.”

53. Further reliance was sought in the case of Center for Rights Education and Awareness (CREAW)) & Another v Speaker of National Asembly & 2 others (2017) eKLR, where the court held;

“A party who moves the court seeking Conservatory Orders must show to the satisfaction of the Court his or her rights are under threat of violation; are being violated or will be violated and that such violation or threatened violation is likely to continue unless a Conservatory Order is granted. This is because the purpose of granting a Conservatory Order is to prevent violation of rights and fundamental freedom and preserve the subject matter pending the hearing and determination of a pending case or Petition.”

54. The Respondents further submitted that the Applicants have failed to demonstrate public interest in the matter, contending that as averred in the Replying Affidavit of the 3<sup>rd</sup> and 4<sup>th</sup> Respondents, the Petition has all the hallmarks of an ordinary land claim and that the grievances alleged amount to civil wrongs rather than public wrongs; further, that the Gazette Notice having been executed and titles cancelled, there is no imminent danger facing the Applicants and the substratum of the Petition would not be rendered nugatory.



55. They additionally argued that the Petitioners/Applicants have not demonstrated a prima facie case with any likelihood of success, nor shown that the substratum of the Petition will be rendered nugatory or that they would suffer prejudice if conservatory orders are declined.
56. While Articles 40 and 47 of *the Constitution* of Kenya are mentioned in the title to the Petition, the Respondents asserted that such mention alone is not sufficient to infer a threat of or violation of rights, emphasizing that a constitutional issue is one that forces the court to consider constitutional rights and values and to interpret *the Constitution*.
57. In conclusion, the Respondents urged the court to find that the application is unmeritorious and a candidate for dismissal with costs to the 3rd and 4th Respondents, their starting point being that the Petition does not meet the threshold of a constitutional petition as established in *Anarita Karimi Njeru v The Republic* [1979] eKLR and *Mumo Matemo v Trusted Society of Human Rights Alliance & 5 Others* [2013] eKLR.
58. The court has considered the instant Notice of Motion Application, the pleadings in general and the annexures thereto, together with the Applicants written submissions, and renders itself as follows;
59. Basically, the Petitioners/Applicants have sought for conservatory orders, which are court orders granted to maintain the status quo and / or keep things as they are on a subject matter, while a case is being heard, thus preventing irreversible changes, often to protect constitutional rights or public interest.
60. These conservatory orders are granted when the applicant is able to establish that he has an arguable case, there is potential of prejudice if denied, and consideration for public interest, and also ensuring the court's final decision is not rendered useless and/ or nugatory.
61. The purpose of conservatory orders is to preserve the "substratum" or subject of the case, preventing actions that would make a final judgment pointless.
62. The basis of the conservatory orders is rooted in *the Constitution*, especially the Bill of Rights, public interest, and the court's inherent powers.
63. The conditions for grant of the conservatory orders are; the applicant must have an arguable and prima facie case with a likelihood of success. Further, he must demonstrate the likelihood of real danger or prejudice or the case becoming nugatory if the order is not granted.
64. Further, there should be consideration of the public interest, by upholding constitutional values and public interest.
65. Unlike interlocutory injunctions conservatory orders focus more on public interest, constitutional values, and ensuring the court's jurisdiction is not bypassed. Therefore, conservatory orders are powerful tools for judicial intervention to maintain order and protect rights while complex legal matters are resolved in court.
66. In the case *Mwaniki v Ndiga & 3 others* [2025] KEHC 9562 (KLR), the court held;  

“The principles for granting conservatory orders were stated in the case of *Board of Management of Uhuru Secondary School v City County Director of Education and 2 Others* (2015) eKLR where the court summarized the principles for the grant of conservatory orders and stated as follows:



- i. “The needs for the applicant to demonstrate an arguable prima facie case with likely hood of success and to show that in the absence of the conservatory orders he is likely to suffer prejudice.
  - ii. The secondary principal in whether the denial of the conservatory order will enhance the constitutional values and objects of the specific right or freedom in the bill of rights.
  - iii. The court should consider whether if an interim conservatory order is not granted, the petition or its substratum will be rendered nugatory.
  - iv. Whether the public interest would be prejudiced by a decision to exercise discretion to grant or deny conservatory order.”
67. It is trite that conservatory orders are judicial remedies sought or issued by a court to preserve a subject matter until a petition is heard and determined. It is an order of status quo ante ,so that the substratum of the petition is preserved to prevent the same being rendered an academic exercise. It is well settled that the principles that guide the court in determining whether or not to issue conservatory orders are that the party must establish a prima facie case with high probability of success and in the absence of the conservatory order, he is likely to suffer prejudice.
68. Secondly that if the order is not granted or it is granted the relief will enhance the Constitutional values and objects of the specific right or freedom in the bill of rights. The party must also demonstrate that if an interim conservatory order is not granted, the petition or its substratum will be rendered nugatory. The court will also consider whether granting the conservatory order is necessary in the public interests.
69. The court herein is called upon to determine the question as to whether or not conservatory orders should be granted pending the hearing and determination of the substantive petition. The Petitioners/ Applicants have urged the court to find that they have met the threshold for grant of the conservatory orders sought.
70. The issue for determination therefore is whether the Petitioners/Applicants has met the threshold for the issuance of conservatory orders.
71. The court will consider the pleadings herein and the prayers sought by the Petitioners/Applicants and juxtapose them with the principles for grant of conservatory orders, and then come up with a finding on whether the petitioners have met the threshold for grant of the conservatory orders sought herein.
72. Bearing in mind the above preliminaries, are the Petitioners/Applicants deserving of the Conservatory orders sought? The Applicants have urged the court to issue conservatory orders to stay implementation or further implementation of the decision of the 1<sup>st</sup> Respondent to cancel or cancellation of the following titles, Cis Mara/ Lemek/ 3435, 3593, 3637, 3638,3715, 4106, 6580, 7057, 7305,7769, vide a Gazette Notice No 2490 of 1<sup>st</sup> March 2024.
73. It is evident that the above land parcels are all subdivisions of land parcel No Cis-Mara/Lemek/793, which was initially registered in the name of Lepish Ole Muntet. The Applicants alleged in their petition that the late Lepish Ole Muntet subdivided his above parcels of land into two parcels of land during his lifetime.
74. They claimed that the said Lepish Ole Muntet sold one portion of the subdivided land to Kiranto Olooirusha, and later the other subdivisions, were sold to other Petitioners in later years or diverse dates.
75. The Petitioners/Applicants were all issued with title deeds for their respective land parcels, and have been in possession of the same, until when the 1<sup>st</sup> Respondent cancelled their title deeds,



without any communication to them, and reverted the land back to the original owner Lepish Ole Muntet(deceased).

76. The 3<sup>rd</sup> Respondent alleged and averred that his late father Lepish Ole Muntet never subdivided his original land No. 793, nor sold it to anyone. He claimed that the petitioners /applicants acquired the said titles fraudulently after the death of his father.
77. However, attached to the Petitioners Petition is a sale agreement dated 10<sup>th</sup> May 2010, between Lepish Ole Muntet, for sale of 20 acres to Kiaranto Olooirusha from land parcel No. Cis Mara/Lemek/793. A title deed was issued in favour of Kiranto Olooirusha on 5<sup>th</sup> November 2010. This was during the lifetime of Lepish ole Muntet, who died on 26<sup>th</sup> June 2011, as per the death certificate attached to the replying Affidavit of Langutut Muntet.
78. The allegations by the Petitioners/ Applicants and the counter-allegations by 3<sup>rd</sup> and 4<sup>th</sup> Respondents are competing interests, which can only be determined after calling of evidence. However, what is evident is that the 1<sup>st</sup> Respondent did cancel all the resultant titles emanating from land Parcel No Cis Mara/Lemek/793, and the suit reverted to the original title registered in the name of Lepish Ole Munte.
79. Did Lepish Ole Muntet sell a portion of his suit land to the 1<sup>st</sup> Applicant, and did the other Petitioners legally purchase the suit land from the beneficiaries of Lepish Ole Muntet? These questions can only be answered after calling of evidence.
80. What is evident, is that the Petitioners/Applicants had certificates of titles issued on diverse dates, but they were later cancelled by the 1<sup>st</sup> Respondent, and their parcels of land were reverted to land parcel No 793,
81. In their Petition, the Petitioners/Applicants have alleged that the actions of the 1<sup>st</sup> Respondent violated their constitutional right to own property under Article 40, to fair administrative action under article 47, 27 and 50 of the Constitution.
82. The Petitioners/Applicants have urged the court to declare that the actions of the 1<sup>st</sup> Respondent was illegal and was an infringement of their constitutional rights . they also sought for orders of certiorari and mandamus to quash the decision of the 1<sup>st</sup> respondent.
83. Being clear that the Petitioners/Applicants titles were cancelled, without having been given an opportunity to present their side of the story, it is evident that they have a prima-facie case, with likelihood of success.
84. Further, if conservatory orders are not issued, they stand to suffer prejudice, and since the right to hear is a constitutional guarantee, the conservatory orders will ensure restoration of constitutional order.
85. Further, it is for the public interest and good to ensure that any cancellation of title is done after a fair hearing, Do Land Registrars have statutory powers to cancel title deeds or they do so with clear orders of the court? See the case of Kuria Greens limited v Registrar of Titles & Another[2011]KEHC 4290 (KLR).
86. The court has considered the totality of the evidence presented before this court, and it finds and holds that the Petitioners have established that they have a prima facie case, and are deserving of conservatory orders. See the case of Law Society of Kenya v Attorney General and Judicial service Commission ( 2020) eKLR, where the court held;

“ 53. In sum, therefore, in determining whether a prima facie case is demonstrated a court must look at the case as a whole. It must weigh, albeit preliminarily,



the pleadings, the factual basis, the respective parties' positions, the remedies sought and the law.”

87. On prayer No 5, of restraining or prohibiting the Respondents from making entries, transferring and or dispossessing the Petitioners/Applicants of ownership of the suit properties, wherein they had titles, and later this titles were cancelled, the court finds that before the main Petition is heard and determined, it is prudent to maintain the status quo that prevailed before the petitioners titles were cancelled.
88. Consequently, the court allows prayer No.5 of the Instant Notice of Motion Dated 28<sup>th</sup> March 2025.
89. In a nutshell, the court finds the Notice of Motion Application dated 28<sup>th</sup> March 2025, merited, and the same is allowed in terms of prayers No, 4 and 5, with costs to the Petitioners/Applicants.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK THIS 18<sup>TH</sup> DAY OF DECEMBER 2025**

**L. GACHERU**

**JUDGE**

Delivered online in the presence of

Elijah Meyoki - Court Assistant

Mr. Mutisya holding brief for Ogolla for Petitioner/Applicant

Mr. Kipella holding brief for Kamwaro for 3<sup>rd</sup> and 4<sup>th</sup> Respondents

N/A for 1<sup>st</sup> and 2<sup>nd</sup> Respondents

**L. Gacheru**

**Judge**

