

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
ELC L CONSTITUTION PETITION NO. E091 OF 2024

IN THE MATTER OF DEFENCE OF THE CONSTITUTION
AND

**IN THE MATTER OF CONTRAVENTION OF ARTICLES 2, 3,
10, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 35, 40, 43, 129,
165 (2), 258 AND 259 OF THE CONSTITUTION**

AND

**IN THE MATTER OF CONSTITUTION OF KENYA
(PROTECTION OF RIGHTS AND FUNDAMENTAL
FREEDOMS) PRACTICE AND PROCEDURE RULES, 2019**

AND

**IN THE MATTER OF DISASTER MANAGEMENT AND
FORCIBLE EVICTIONS BY THE STATE**

BETWEEN

YUSUF IBRAHIM 1ST

PETITIONER

MACHARIA SAMUEL MAINA 2ND

PETITIONER

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JOYCE WANGUI 3RD
PETITIONER

AND

**CABINET SECRETARY FOR
INTERIOR & COORDINATION OF
NATIONAL GOVERNMENT 1ST**
RESPONDENT

**CABINET SECRETARY FOR LANDS,
PUBLIC WORKS, HOUSING AND
URBAN DEVELOPMENT 2ND**
RESPONDENT

NATIONAL LAND COMMISSION 3RD
RESPONDENT

**SCHOOL EQUIPMENT PRODUCTION
UNIT LIMITED 4TH**
RESPONDENT

THE HON. ATTORNEY GENERAL 5TH
RESPONDENT

RULING

1. What are before the Court for determination are the Petitioners' three Notice of Motion applications dated 13th November, 2024, 3rd December, 2025 and 8th December, 2025.

2. In the application dated the 13th November, 2024, the Petitioners seek the following Orders:

1) Spent

2) Spent

3) That in the interim and pending the hearing and determination of this Petition, this Honourable Court be and is hereby pleased to issue a conservatory order staying the implementation of the Respondents' decision to evict/ and demolish the Petitioners' dwelling places on land known as LR No. 209/14009 - SEPU Area of Mukuru Kwa Njenga.

4) Costs be provided.

5) Any other order as this Court will deem just and appropriate to issue.

3. In the application dated the 3rd December, 2025, the Petitioners' seek the following Orders:

1) Spent

2) Spent

3) That this Honourable Court be pleased to direct the instant Application to be heard together with the initial Notice of Motion Application dated 13th December, 2024.

4) Costs be provided for.

5) Any other order as this Court will deem just and appropriate to issue.

4. In the application dated the 8th December, 2025, the Petitioners' seek the following Orders:

1) Spent

2) Spent

3) That in the alternative, this Honourable Court be pleased to set down the instant application dated 8th December, 2025 and the one dated 3rd December, 2025 for directions on any day before 12th December, 2025 when the impugned

demolitions are intended to be carried out by the 1st and 2nd Respondents herein.

4) Costs be provided for.

5) Any other order as this Court will deem just and appropriate to issue.

5. The three applications are supported by an affidavit sworn by YUSUF IBRAHIM.

6. The 3rd Respondent opposed the application through an affidavit sworn by BRIAN IKOL, its Director Legal Affairs and Dispute Resolution.

Analysis and Determination

7. Upon consideration of the three aforementioned applications including the respective affidavits, the only issue for determination is whether conservatory orders should issue restraining the Respondents from land known as LR No. 209/14009 - SEPU

Area of Mukuru Kwa Njenga, pending herein and determination of the Petition.

8. The Petitioners claim that the Respondents have issued eviction notices to remove them from LR No. 209/14009 - SEPU Area of Mukuru Kwa Njenga, hereinafter referred to as the 'suit land', which they have occupied for many years. It is their contention that they also represent other groups who reside on the said suit land. The 3rd Respondent in its replying affidavit, denied the Petitioners' averments. It argued that government projects should not be held in abeyance for the benefit of a select group at the expense of the greater public. It insisted that the Petitioners have not demonstrated any cause of action as against it.
9. The principles guiding the granting of conservatory orders was outlined by the Supreme Court in **Gatarau Peter Munya v Dickson Mwenda Kithinji & 2 others (2014) eKLR** where it stated 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.” Emphasis

Mine

10. Further, in **Samuel Sabuni & 2 others v Court Martial & 8 others [2014] KEHC 4683 (KLR)**, it was held that:

“Although the most appropriate action is to forestall a threatened breach of constitutional rights, at times the public interest outweighs the

perceived fears held by the individual citizens that their rights are about to be breached.”

Emphasis Mine

- 11.** On perusal of the respective affidavits including the Petition, I note the Petitioners who are only three claim to represent the interest of others residing on the suit land but have not provided any list of the said persons. The Petitioners have admitted that there was a public engagement and annexed a Notice to that effect dated the 5th November, 2024. They have also annexed an attendance sheet of people who attended the said public engagement.
- 12.** Based on the facts as presented while associating myself with the decisions cited and applying them to the circumstances at hand, I find that the Petitioners have not adequately demonstrated a prima facie case to warrant the conservatory orders as sought. Further, in associating myself with the decision in **Multiple Hauliers East Africa Limited**

V Attorney General & 10 others (2013) eKLR, I find that
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the import of the project, which is in public interest outweigh the Petitioners' interest. To my mind, I find that there was public participation as there is even a list of attendees and since it is not clear how many people reside on the suit land, I find the said list of attendees would suffice. Further, I note the Notice the Petitioners have presented is for November 2024 and it is over one year, and they have not indicated if they have been evicted from suit land.

13. I hence find that the interim reliefs sought will paralyze the implementation of the project. In the circumstances, I find that the Petitioners have not established a prima facie case to warrant the grant of conservatory orders as sought.
14. In the foregoing, I find the three instant Notice of Motion applications unmerited and will disallow them.
15. Costs will be in the cause.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS
15TH DAY OF JANUARY, 2026**

CHRISTINE OCHIENG
JUDGE

In the presence of:

Omayio and Wachira for Petitioners

Allan Kamau for Kubai for 1st, 2nd, 5th Respondents

Court Assistant: Joan

ORIGINAL