



Isanda & 30 others v China Henan International Cooperation Group (CHICO) & 11 others (Environment and Planning Petition E002 of 2025) [2026] KEELC 3 (KLR) (8 January 2026) (Ruling)

Neutral citation: [2026] KEELC 3 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT AND PLANNING PETITION E002 OF 2025**

M SILA, J

JANUARY 8, 2026

BETWEEN

THOMAS NYANDORO ISANDA & 30 OTHERS PETITIONER

AND

CHINA HENAN INTERNATIONAL COOPERATION GROUP (CHICO) & 11 OTHERS & 11 OTHERS RESPONDENT

RULING

1. What I have before me is an application dated 24 October 2025, seeking orders of injunction pending the hearing and determination of this petition. Before I embark on the application, I find it necessary to first lay down the case of the applicants as pleaded in the petition.
2. The petition itself is dated 16 June 2025 and was filed on 17 June 2025 by residents of Bosinange area in Kisii County. The petition is rather long running into more than 30 pages. However, in a nutshell, the applicants aver that the 1st respondent (China Henan International Cooperation Group), a road construction company, was in 2017 or so, awarded a contract to construct major highways, roads and bridges, around Kisii, Homabay and Migori Counties. As a result, she leased the land parcels South Mugirango/Bosinange/203, 205 and 206, for purposes of operating a quarry. She was issued with an EIA licence No. NEMA/EIA/PSL/8046 for the quarry operations which the applicants contend was not lawfully issued. The applicants complain that this quarry was not operated in an environmentally friendly manner, led to pollution, and caused them great loss. Subsequently, the 1st respondent entered into an agreement with the 2nd respondent (Aztec Infrastructure Kenya Limited) and transferred the quarry operations to the 2nd respondent. The applicants add that the 2nd respondent has also taken over the land opposite the quarry and established an asphalt plant without first applying for and obtaining an EIA licence. They thus contend that this asphalt plant is illegal. They have pleaded that they made some complaints to the offices of the 3rd respondent (NEMA) who issued a restoration order upon



the lessor of one of the parcels of land, one David Mauti, which they find to be unusual. They aver that the part being quarried remains unrehabilitated and a danger to the inhabitants of the area as it is not being operated in an environmentally safe manner. It is their case that the quarry and the asphalt plant operations infringe on their constitutional rights, inter alia, the right to a clean and healthy environment under Article 42 of *the Constitution*.

3. In the petition, they have sought a raft of orders, including a declaration of breach of Article 42 of *the Constitution*, cancellation of the EIA licence NEMA/EIA/PSL/8046, a permanent injunction to restrain the 1st and 2nd respondents from operating the quarry and asphalt plant without an EIA Study Report and licence duly obtained, that the quarry and asphalt plant be subjected to environmental audit, restoration orders, general and special damages.
4. In this application, the petitioners seek orders of injunction which I categorize into four being:
 - i. To restrain the 1st and 2nd respondents from operating the quarry and asphalt plant in issue pending hearing and determination of this petition.
 - ii. To restrain issuance of an EIA licence to the 1st and 2nd respondents without an EIA Study of the impacts of the projects.
 - iii. To restrain the 12th respondent (Ministry of Mining) from issuing a mining permit to the 1st and 2nd respondents without an EIA Study of the impact of the project.
 - iv. To restrain the 1st and 2nd respondents from closing and/or decommissioning the quarry and asphalt plant for the purpose of restoring the environment to its original state.
5. They base their application more or less on the issues raised in the petition which I have already outlined above.
6. The 1st and 2nd respondents filed grounds of opposition and a replying affidavit to oppose the motion. In the grounds, it is more or less averred that what the petitioners seek are similar to the final orders in the petition. The replying affidavit is sworn by Christopher Nelson Abuor, a director of the 2nd respondent. He deposes inter alia that the 1st respondent obtained an EIA licence to operate the quarry, which is the licence No. NEMA/EIA/PSL/8046. He avers that it was obtained after an Environmental Impact Assessment report was done. He admits that residents flagged several issues regarding operations of the quarry, including their roofs being destroyed by flying rocks, dust, noise, vibrations, hazardous materials and waste. He asserts that mitigation measures were put in place by the 1st respondent which are captured in a report dated 10 January 2023, including compensation of those affected. He deposes that on 28 November 2024 an improvement notice was issued inter alia seeking rehabilitation of the quarry to remove the rocky edges and reduce gradient, and drain the water in the quarry. On 16 December 2024, the 2nd respondent informed NEMA of the transfer of responsibility for the quarry from the 1st respondent to herself. He contends that the 2nd respondent has adhered to the requirement to blast off the rocky edges for a slower gradient into the quarry. On the stagnated water, he contends that it is on the property owned by David Mauti, who refused to comply with the NEMA directives vide the improvement notice No. 4421. He points out that David Mauti is petitioner No. 6 yet he is the one who created the problem. Regarding the asphalt plant, he deposes that the same is yet to receive an EIA licence and it is not yet operational. He however states that NEMA has conducted the assessment but the report is not yet published. He asserts that there was public participation that was held. He does not believe that there is any irreparable harm demonstrated by the applicants and the application should be dismissed.



7. The 3rd, 4th, and 5th respondents (respectively, NEMA, Director General-NEMA, and the County Director Kisii County – NEMA) filed a replying affidavit sworn by Simon Tonui, the County Director of Environment, Kisii County. Inter alia, he avers that NEMA issued an EIA licence to the 1st respondent which was subsequently transferred to the 2nd respondent in 2023. He acknowledges complaints made by residents particularly regarding flying rocks. The site was visited and a restoration order issued on 13 January 2023 requiring the suspension of blasting operations and remedial measures to restore the structures damaged and compensate the victims. He avers that the EIA licence was procedurally issued. He adds that the 2nd respondent sought her own EIA licence for a stone crushing yard which was issued on 27 August 2024 after it was established that public participation was done. He avers that they visited the site on 5 August 2025 and established that the crusher was operational, that the quarry site had not been secured, that there was no rehabilitation plan for the quarry, and that the 2nd respondent had established an asphalt plant on the opposite land without an EIA licence though the asphalt plant was not yet operational. It is his view that the asphalt plant was illegally installed. He avers that they issued an improvement order on the same date i.e. 5 August 2025, ordering the 2nd respondent to provide copies of the EIA licence for the quarrying activities, crusher and asphalt plant, stop dust pollution and put measures to mitigate dust, and secure the quarrying site by putting up a fence and provide a rehabilitation plan.
8. The 11th respondent, the County Government of Kisii, also filed a replying affidavit where they assert that they are improperly joined. I have not seen a reply from the other parties.
9. Counsel filed written submissions which I have considered.
10. This is an application for injunction and the principles that a court needs to consider were well established in the case of *Giella vs Cassman Brown* (1973) EA 358. An applicant needs to establish a prima facie case with a probability of success, demonstrate irreparable injury, and where the court is in doubt it will consider the application on a balance of convenience. I have these factors in mind as I decide this application. I have also taken note of the other authorities cited by counsel in their submissions including the case of *Nguruman Limited vs Jan Bonde Nielsen & 2 Others* (2014)eKLR and *American Cyanamid Co vs Ethicon Ltd* (1975) 1 All ER 504 cited by counsel for the 1st & 2nd respondents.
11. What I see in this petition, and this application, is complaint on operations of two projects, that is the quarry, and the asphalt plant.
12. It is common ground that the quarry operations were first under the control of the 1st respondent before transferring responsibility to the 2nd respondent. The applicants of course contend that the EIA licence issued to the 1st respondent was not lawfully issued and also the transfer was irregular. The 1st and 2nd respondents assert otherwise. I think the question of the validity of the initial EIA licence No. NEMA/EIA/PSL/8046 will require evidence and determination after the hearing of the petition and is not an issue that I can determine at this stage. It is indeed one of the main prayers in the petition (prayer (ii) in the petition).
13. Having said that, there is acknowledgment that the quarry operations at some point led to flying rocks and loss to some residents. There is also admission in the affidavit of Mr. Abuor that the quarry needed rehabilitation. In his affidavit, Mr. Tonui has mentioned that they visited the site and issued an improvement order dated 5 August 2025. I have seen the improvement order which inter alia raises the following observations on the operations of the 2nd respondent:
 - i. Operating a crusher producing aggregate which activity emanates dust into the atmosphere.



- ii. Installing an asphalt plant without an EIA licence.
 - iii. Operating a quarry whose site is not secure hence endangering the neighbouring community. That order demands the following (paraphrased):
 - i. Ensure that the quarry site is secured by putting up a fence within 7 days.
 - ii. Provide copies of EIA within 21 days.
 - iii. Provide copy of EIA for the quarry site, crusher, and asphalt site within 7 days.
 - iv. Stop dust pollution and put measures to control dust pollution immediately.
14. I have gone through the affidavit of Mr. Abuor. I do not see any acknowledgement of the improvement order of 5 August 2025 in his affidavit yet it is a very vital issue in the case. I wonder if he wished to conceal this improvement order from the court. I however see that he deposes that the 2nd respondent has fenced the land and he has annexed a photograph. I regret my inability to tell from the photograph whether this fencing is in line with the restoration order. That will need confirmation from NEMA who are the ones that issued the improvement order. Moreover, it is not said in his affidavit when this fencing was done or whether NEMA is satisfied with the nature and quality of the fencing.
15. Regarding the asphalt plant, I already mentioned that there is acknowledgment that no EIA licence was issued before the asphalt plant was put up. It is trite, pursuant to Section 58 of the Environmental Management and Coordination Act, 1999 (EMCA) that no proponent should put up a development without first conducting an EIA and obtaining an EIA licence, yet here we have a plant already established without an EIA licence being issued. I do not see how the 2nd respondent can try to hide behind the claim that the plant is not yet operational to conceal her mischief. The 2nd respondent cannot run away from the fact that the law required there to be an EIA licence first before the plant was established. At this juncture, I need to mention that in the submissions of counsel for the 1st & 2nd respondents, it was submitted that on 25 November 2025, NEMA issued to the 2nd respondent an EIA licence No. Nema/envis/CPR/LIC 0778 for operating the asphalt plant. I observe that the affidavit of Mr. Abuor was sworn on 19 November 2025 before the said submissions were made but you cannot introduce new evidence in submissions. I have not seen this licence annexed to any affidavit and this court cannot give credence to the submissions of counsel without seeing the licence. In any event, I wonder how such licence was issued without the petitioners being aware yet they are critical stakeholders. You do not apply for, or get such licences, through stealth and secrecy. Whatever the case, as I have mentioned, I haven't seen the licence, and without having seen it, I can only proceed on the basis that there is no such licence.
16. Given the foregoing, I am persuaded that the petitioners have put up a prima facie case that the operations of the quarry and related activities such as crushing and processing of stones, are a danger to the inhabitants of Bosinange, and that its operations are a threat to their Article 42 right to a clean and healthy environment. Indeed, they appear to have support from NEMA to a certain extent on their claims, and as I have mentioned, I have not seen a direct answer from the 2nd respondent regarding the restoration order by NEMA. The 2nd respondent has not stated in her affidavit what mitigation measures it has taken to stop dust pollution from the quarry. It will be unfair to have the residents bombarded with dust and pollution from the quarry for the duration of this litigation. Such activities can lead to long term health hazards which can even lead to loss of life. I am persuaded that irreparable harm is established. I am convinced that in order to prevent injury and loss to the residents of Bosinange, it is necessary to issue orders stopping the operations of the quarry until NEMA is satisfied that the operations are safe to the environment and to the residents, or until this suit is heard



and determined, whichever comes first. If NEMA is so satisfied that operations of the quarry can continue safely, an application may be filed for consideration by court on whether or not the order of injunction may be lifted, but before any such order is issued the quarry operations must cease until the suit is heard or until the court orders otherwise.

17. On the asphalt plant, the petitioners certainly do have a prima facie case regarding the establishment of the asphalt plant because it is apparent that it was put up without there first being an EIA licence. I already stated that I am not persuaded by the submissions of counsel that there exists a licence for its operations. I am thus convinced that the asphalt plant ought not to commence operations until this petition is heard and determined. I issue an order of injunction stopping the commencement of any operations on the asphalt plant or if any operations have begun then the same must cease forthwith until the finalization of this suit.
18. The 3rd limb of this application regards issue of a mining licence. I am not too sure of its place as not much of it was mentioned in the affidavits. I opt not to make any orders on the same. That will await determination after the hearing.
19. The 4th and last limb of the application is the order to stop decommissioning of the quarry and asphalt plant. I am also finding difficulty in seeing the place for these orders. I am also unable to make any orders in that regard. They can await the hearing of the case.
20. For the avoidance of doubt, these are the orders that I have made on this application:
 1. That the 1st and 2nd respondents are restrained from further operations of the quarry or related works, including crushing and processing of quarry stones, until NEMA is satisfied that any such operations are safe and environmentally friendly, or until this suit is heard and determined, whichever comes first. If NEMA is so satisfied that operations of the quarry can continue safely, an application may be filed for consideration by court on whether or not the order of injunction may be lifted, but before any such order is issued the quarry operations must cease until the suit is heard or until the court orders otherwise.
 2. That the asphalt plant ought not to commence operations until this petition is heard and determined. If any operations have begun then the same must cease forthwith until the finalization of this suit.
 3. The petitioners will have the costs of this application as against the 2nd respondent.
21. Orders accordingly.

DATED AND DELIVERED THIS 8 DAY OF JANUARY 2026.

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of:

Mr. Magara for the petitioners/applicants

Other parties and counsel – Absent

Court Assistant – Michael Oyuko.

