**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT VOI**

**VOI LAW COURTS**

**ELC PETITION NO. E009 OF 2025**

**UNIVERSAL RESOURCES INTERNATIONAL LIMITED……PETITIONER**

**-VERSUS-**

**THE DIRECTOR OF MINES……1ST RESPONDENT**

**MINERAL RIGHTS BOARD…… 2ND RESPONDENT**

**CABINET SECRETARY FOR MINING BLUE ECONOMY AND MARITIME AFFAIRS …… 3RD RESPONDENT**

**THE ATTORNEY GENERAL……4TH RESPONDENT**

**BROWN FIELDS MINING LIMITED……5TH RESPONDENT**

**GREEN NGORIA SUPPLIES LIMITED……6TH RESPONDENT**

**ELIJAH MWANDOE……7TH RESPONDENT**

## RULING

1. This ruling is in respect to the petitioner's application dated 5th August 2025seeking for the following reliefs; -

   ***i. Spent …***

   ***ii. Spent…***

   ***iii. THAT pending the hearing and determination of this application, this court does issue a conservatory order prohibiting and or barring the 2nd and 3rd Respondents herein, from considering the Prospecting Permit No. App***

***No. 7001 by the 5th Respondent made on 1st July 2025 and having mineral discovery Application No. MINDISC/00009 by the 7th Respondent made on 1st March 2025 all made over all the area covered by the Petitioner's Prospecting Licence PL/2018/0195 Taita Taveta.***

***iv. THAT pending the hearing and determination of this application this court does issue a conservatory order prohibiting and or barring the 5th, 6th and 7th Respondents from undertaking any mineral exploration, mineral prospecting and or in any manner interfering with the Applicant's mineral rights under Prospecting Licence PL/2018/0195 Taita Taveta.***

***v. THAT pending the hearing and determination of this application, this court does issue a conservatory order prohibiting and or barring the 1st, 2nd and 3rd Respondents from***

***interfering with the Applicant's mineral rights under Prospecting Licence PL/0195 Taita Taveta.***

***vi. THAT pending the hearing and determination of this Application, this court does issue an order staying the decision of the 2nd Respondent contained in the letter dated 20th September 2024 recommending the rejecting of the Application for renewal of Prospecting Licence PL/2018/0195 Taita Taveta.***

2. The application is supported by the affidavit sworn by Mark Lloyd Stephenson on 5th August 2025.

3. The grounds in support of the application are that the petitioner obtained various prospecting and special licenses including an exclusive prospecting license number 270 Voi Area in 2011

4. Further that on 28th November 2012 and in compliance with court orders issued in Millimani High Court HCCC for 494 of 2012, the Commissioner of Mines reissued the petitioner the

said licenses and was renewed to exclusive prospecting license No. 316

5. Upon repeal of the mining Act Cap 306, the new act mining Act 2016 introduced a whole raft of changes and procedures for the application and renewal of new licenses. Under the enactment of the Mining Act 2016, the petitioners license translated to a prospecting License OL/2018/095

6. On 23rd July 2015, the petitioner applied for the renewal of the exclusive prospecting license for 270 now know as prospecting license PL/2018/0195.

7. On 6th February 2017, the petitioner paid for the renewal of the said License and was issued with a receipt.

8. Further in 2016, the petitioner applied for a mining license over a portion of 2 square Kilometers to be hived from the area covered under the prospecting license PL/2018/0195 and retraced the same area.

9. According to the petitioner, the 1st respondent approved the application for the mining licenses and granted the petitioner a mining license ML/2018/0046 dated 15th February 2019.

10. Subsequently on 5th September 2019, the petitioner wrote to the 1st respondent seeking the letter of offer but no response was received. Later in early June 2018, the petitioner enquired from the 1st respondent how he was going to pay for the due ground rent premises that were pending as the cadaster was not reflecting invoices. The 1st respondent issued the petitioner only one invoice No. 001504 for a sum of Kshs 4,093,945.55 regarding prospecting license PL/2018/0195.

11. The said sum was paid up on 4th June 2018 by the petitioner and the petitioner later learnt on 6th June 2018 that the paid sum was exaggerated having been overpaid by Kshs 1,371,769.60 vide a letter dated 6th June 2018, the petitioner wrote a letter to the 1st respondent requesting the addressee to utilize the said funds for the renewal of the licenses.

12. It was stated that the petitioner vide the 1st respondent is aware that its renewal of a property license had been successfully approved by the 2nd respondent awaiting Cabinet Secretary's approval for its gazettement and public participation.

13. It was further stated that the petitioner proceeded to have in place the community development committee agent dated 25th January 2023 with the aid of the 1st respondent's officers and further wrote to the 1st respondent appraising him of the same vide a letter dated 27th January 2023.

14. It was averred that the petitioner was then locked out of the mining cadaster portal and was nor able to view any updates of communication neither was it able to communicate with the ministry.

15. It was further averred that when the 1st respondent disputed his consent vide a letter dated 9th April 2022, it responded and re-affirmed that it had obtained consent on 15h March 2014 and further entered into an agreement with the Ndara community land management committee dated May 2023.

16. It was contented that the respondents' actions violated the petitioner's rights for the benefit of the 4th,5th and 6th respondents. The 1st and 2nd respondents have deliberately put obstacles in every inch of the way so as to put the petitioner in a difficult situation.

17. It was the petitioner's case that the respondents' actions amount to gross violation of Articles 2, 3, 10, 20, 21, 22, 23, 27, 40, 47, 73 (2) and 260 of the constitution and hence the need to grant the orders sought.

18. The application was opposed by the respondents. The 1st, 2nd, 3rd and 4th Respondents filed a replying affidavit sworn by Gregory Kituku, Director of Licensing, Compliance and Enforcement, State Department of Mining on 23rd September 2025 and also written submissions dated 3rd November 2025.

19. It was deposed that he petitioner did not have any valid prospecting license at the commencement of the Mining Act 2016 since he had been granted an exclusive prospecting license EPL/843 (PL/2018/0195) on December 2011 for a term of 1 year which expired on 7th December 2012.

20. It was averred that the petitioner accordingly made a fresh application for grant on 29th September 2017 which was evaluated and assigned the reference PL/2018/0195, however the said reference did not in itself constitute a valid license.

21. It was the 1st and 3rd respondents' case that the petitioner never progressed to the license issuance stage since it failed to treat the minimum statutory requirement.

22. In respect to the purported consent, it was averred that the said consent was given by an entity called Wakitina Wa Kilamba Community. Several Land owners being Ndara Community Land Management Committee and Mr. Michael Fundi Mwanzoka lodged objection, respecting only of their land parcels citing lack of valid landowner consent. The petitioner was notified of the development but failed to provide any valid landowner consent.

23. It was also averred that the 85th Mineral Rights Board meeting held on 29th August 2024 vide minute No. MRB/08/29/08/24 recommended that the cabinet secretary reject the application being incomplete and non-complicit with section 72 of the Mining Act 2016. The applicant did not submit proposal for the employment and training of Kenyan citizens with a budget proposal for procurement of goods and services with a budget, landowner constants and settlement of annual ground rent arrears of Khs

5,281,189.50 for the period 09/12/2018 – 06/12/2024 and specific mineral of interest.

24. It was further averred that vide a letter dated 20th September 2024, the petitioner was granted a 7 day window to submit the missing documents failure of which he will be removed from the online mining Cadaster. The petitioner failed to submit all the requested document and pursuant to the 91st MRB Meeting of 6th December 2024, it was recommended that the petitioner be removed from the online Mining Cadaster for failure to submit the required application document.

25. Accordingly, the petitioner was removed from the online mining Cadaster and hence the petitioner's application before court has no basis and the order sought ought not to be granted.

26. In their submissions dated 3rd November 2025, the following two issues were outlined for consideration by this court; -

    i. ***Whether the conservatory orders sought should be granted***

### ii. *Whether the petition will be regarded mandatory unless the conservatory application is allowed*

27. On the conservatory order sought, it was submitted that the petitioner doesn't not have a Prima face case, the exclusive prospecting license EPL/843 (PL/2018/0195) on 8th December 2011 for a term of 1 year which expired on 7th December 2012. The same has never been renewed and thus cannot confer any enforceable rights.

28. As to whether the petition would be rendered nugatory if the conservatory orders sought are not granted, it was submitted that the petitioner has not demonstrated any unlawfulness or otherwise in respect to the actions of the 2nd and 3rd respondents and as such the petition would not be rendered nugatory.

29. The court was urged to dismiss the application with costs to the 1st, 2nd and 3rd respondents.

30. The 5th respondent opposed the application vide a replying affidavit sworn by John Munyuoki Nzioka on 25th August 2025 and a further affidavit sworn on 20th November 2025 and written submissions dated 11th December 2025.

31. It was the 5th respondents' case that the 5th Respondent was granted an exclusive prospecting license EPL No. 2015/1060 on 8th February 2015 covering an area of approximately 3.5703 Square Kilometers within Ndaa B Ranch.

32. According to the 5th Respondent, the purpose of the EPL was to prospect and explore for the one land management. The 5th Respondent obtained all the requisite statutory consents and from approved land owners of the Ndaa B Ranch, the County Government of Taita Taveta and Ndaa.

33. It was stated that pursuant to clause 21 of its EPL, it was provided that for its renewal, however the same was not renewed despite concerted effort to the 3rd respondents.

34. It was averred that sometime in the year 2020, the 5th respondent discovered that its EPL had been revoked by the 3rd respondent and its position in the cadaster map was appearing a company known as Universal Resources International Limited.

35. It was further argued that after several correspondences with the 3rd respondent to no avail, they were advised by the 1st, 2nd and 3rd respondents to abandon its quest for renewal

of the EPL No. 2013/1060 and to apply for a prospecting permit under the Mining Act. The Application was allocated a reference No. PP/2025/0258 and is pending document verification.

36. In its submissions, the 5th Respondent submitted on the following preliminary issues being whether the petitioner has the legal capacity to institute the petition and whether the further affidavit sworn by Mark Steohenson on the 29th October 2025 ought to be expunged from the record.

37. The 5th Respondent also submitted on the main issue of whether the petition is entitled to the conservatory orders sought.

38. On the preliminary issues raised, it was submitted that the petitioner has not produced any board resolutions to institute the suit and authorizing the appointment of Kago Mburu Associates to act for them in the matter and hence pursuant to order 9 Rule 2 of the Civil procedure Rules, the petitioner does not have the legal capacity to institute he petition, the case of **Affordable home Africa Limited -vs-**

**Herson and 2 others Nairobi (2004)e KLR was cited in support**.

39. On whether the further affidavit sworn by Mark Stephenson on 20th October 2025 ought to be expunged from the court record, it was submitted that the said affidavit is inadmissible in evidence and ought to be struck out for the reasons that, it does not indicate at what place it was taken or before whom it was taken by a Notary public and that the signature and seal of the attestation affixed there was that of such a notary public. The cases of **Bruten Gold Trading LLC -VS- Aura Atieno Amad, Amad and Associates Advocated & 6 others (2023) e KLR and Pastifico Lucio Grafao SPA -VS- Security and Fire Equipment Company & Another (2007) e KLR** was cited in support.

40. As to whether the petitioner is entitled to the conservatory orders sought, it was argued that the reliefs sought cannot be granted since the petitioner does not meet the threshold of the same.

41. The 6th and 7th Respondents filed Replying Affidavits to the application. This included the Affidavit sworn by Raymond

Nyange Ngoo on 25th August 2025 and the Affidavit sworn by Elijah Mwamidi Mwandoe on 25th August 2025.

42. It was averred that the 6th Respondent's activities do not threaten the petitioner's rights under prospecting licence PL/2018/0195.

43. It was further averred that the 6th Respondent's interest are strictly confined to MGENO COMMUNITY LAND and not NDARA B COMMUNITY RANCH as alleged by the petitioners.

44. It was contended that the 6th Respondent followed the due process as per the Mining Act and obtained necessary consents as required under Sections 37, 38 and 128 of the Mining Act concerning operations on community land and the 6th Respondent has invested substantial capital in equipment, manpower and community development projects based on the legitimate expectation created by its license.

45. In respect to the orders sought, it was contended that the same if granted would punish the 6th Respondent who is a bonafide investor that had complied with the law.

46. It was further contended that the 6th Respondent would suffer more irreparable harm since the Petitioner's conduct

in seeking to monopolize a vast track of land it has no current claim over it.

47. In respect to the 7th Respondent, it was averred that he has no such application no. MINDISC/0009 and any purported reference to the same belonging to him is false.

48. It was contended that no prima facie case has been established against the 7th Respondent and hence the said application ought to be dismissed.

49. The 6th and 7th Respondents filed joint submissions and submitted on the following issues; whether the applicant has presented a prima face case against the 7th Respondent to justify the grant of the conservatory orders, whether the Applicant has demonstrated a prima facie against the 6th Respondent, specifically regarding and alleged interference with its mineral rights, whether the Applicant holds any valid enforceable mineral right under the Mining Act capable of forming the basis for the conservatory orders sought and whether the Applicant has satisfied the tripartite test for the grant of conservatory orders.

50. It was submitted that the 7th Respondent has never applied for any mineral discovery license and hence the application is based on falsehood.

51. It was also submitted that there is no geographical or legal overlap between the parties' interest. Mgeno and Ndara B are separate, distinct and legally recognized community land.

52. Citing the case of **Gatirau Peter Munya vs Dickson Mwenda Kithinji & 2 Others [2014] eKLR,** it was submitted that the Applicant has not met and demonstrated the principles for grant of conservatory orders and as such the said application ought to be dismissed.

53. The Court has considered the substance of the application, the grounds upon which the application for a conservatory order is based, the parties affidavit and oral and written submissions made and has outlined the following issues for determination;

    i) **Whether the Petitioner has legal capacity to institute the Petition.**

ii) **Whether this court should strike out the Petitioner's further affidavit sworn by Mark Stephenson on 20th October 2025**

iii) **Whether the Petitioner has made a case for grant of the conservatory orders sought.**

54. The court shall now proceed to consider the said issues sequentially.

55. The issue as to whether or not the Petitioner has the legal capacity to file the instant petition was raised by the 5th Respondent. It was submitted that the petitioner has not produced any board resolutions to institute the suit and authorizing the appointment of Kago Mburu Associates to act for them in the matter and hence pursuant to order 9 Rule 2 of the Civil procedure Rules, the petitioner does not have the legal capacity to institute he petition, the case of **Affordable home Africa Limited -vs- Herson and 2 others Nairobi (2004)e KLR was cited in support**.

56. In considering this issue, the court makes reference to the case of **Leo Investments Ltd v Trident Insurance Company Ltd (2014) eKLR Odunga J.(as he then**

**was)** found that the mere failure to file the resolution of the Corporation did not invalidate the suit and the Learnd Judge associated himself with the decision of **Kimaru J. (as he then was)** in the case of **Republic vs. Registrar General and 13 Others Misc. Application No. 67 of 2005 [2005] eKLR where the court held as follows:-**

> ***" …such a resolution by the Board of Directors of a company may be filed at any time before the suit is fixed for hearing as there is no requirement that the same be filed at the same time as the suit. Its absence is, therefore, not fatal to the suit."***

57. In the case of **Spire Bank Limited v Land Registrar & 2 others [2019] eKLR the Court of Appeal** stated as follows: -

> ***"…It is essential to appreciate that the intention behind order 4 rule 1 (4) was to safeguard the corporate entity by ensuring that only an authorized officer could institute proceedings on its behalf. This was***

***to address the mischief of unauthorized persons instituting proceedings on behalf of corporations, and obtaining fraudulent or unwarranted orders from the court. The company's seal that is affixed under the hand of the directors ensured that they were aware of, and had authorized such proceedings together with the persons enlisted to conduct them. And where evidence was produced to demonstrate that a person was unauthorized, the burden shifted to such officer to demonstrate that they were authorized under the company seal. With this in mind, we dare say that the provision was not intended to be utilized as a procedural technicality to strike out suits, particularly where no evidence was produced to demonstrate that the officer was unauthorized."***

58. In view of the above, it is clear that it was sufficient for the authorized person to depose that he or she was duly authorized, but in the event of a complaint that such person was unauthorized then it was upto the disputing party to demonstrate with evidence that there was no such authority or that the person was not a director of the Company. In the instant case, it has not been disputed that MARK LLOYD STEPHENSON is not a director of the Petitioner and further the main petition is yet to be set down for hearing and as such the said objection fails.

59. As to whether the court should proceed to strike out the further affidavit sworn on 20th October 2025. It is evident that upon careful perusal of the said further affidavit sworn by Mark Lloyd on 20/10/2025, it does not indicate at what place it was taken, or before whom it was taken or any proof that it was taken by a Notary Public, and that the signature and seal of attestation affixed thereto was that of such a Notary Public.

60. The defects raised on the Applicant's further affidavit herein are not mere technicalities but touches on a point law

as it is in breach of the provisions of the Oaths and Statutory Declarations Act. This court therefore strikes out the further affidavit dated 20th October 2025 as it is incurably defective. The non-compliance of the same cannot be cured by Article 159 of the constitution.

61. Turning to the instant Application, is the Applicant deserving of the conservatory orders sought? The prayers sought are ***conservatory orders*** which are issued to ***preserve*** the ***status quo*** of a matter until a Petition or suit in relation to that matter is heard and determined.

62. The ***conservatory orders*** are sought when there is a risk to the effect that the subject of the Petition or the Petition itself might be rendered ***meaningless or nugatory*** by the actions taken in the interim period, and if such conservatory orders are not issued. See the case of **David Ndii & others – Versus - Attorney General & others [2021eKLR** ***, where the court held that:-***

> ***"..... Such orders (conservatory) are granted to preserve the substratum of the Petition and therefore, where it is contended that***

***there is a threat of violation of the Constitution, any stage in the chain of a constitutional process under challenge may properly be the subject of a conservatory order as long as that action is consequential to the process under challenge..."***

63. In the case of **Muslim for Human Rights (Milimani) & 2 Others vs Attorney General & 2 Others (2011) eKLR**, the Court stated as follows:-

"***The court must be careful for it not to reach final conclusion and to make final findings. By the time the application is decided; all the parties must still have the ability and flexibility to prosecute their cases or present their defences without prejudice. There must be no conclusivity or finality arising that will or may operate adversely vis-a vis the case of either parties. The principle is similar to that in temporary or interlocutory injunctive in civil matters. This is a cardinal principle and happily makes my functions and work here much easier***

***despite walking a tight legal rope that I could easily lose balance with the slightest slip due to any laxity or being carried away by the passion or zeal of persuasion of any one side."***

64. It is trite that **conservatory orders** maintain the situation as it is or it was by ***preventing*** any action that would alter the subject matter of the dispute by ensuring that the said subject matter is ***preserved*** before the final decision is given.

65. Therefore, the court can rightly state that ***conservatory orders*** are issued to preserve the subject matter, when an action is being challenged through a Petition. They are interim reliefs; which are temporary, and are granted before full trial commences. See the case of **Katiba Institute versus Judicial Service Commission & 2 others; Kenya Magistrates and Judges Association & 2 others (Interested Parties) (Constitutional Petition E128 of 2022) [2022] KEHC 438 (KLR) (Constitutional and Human Rights) (3 June 2022) (Ruling),**

66. In the case of **Njagi Zacharia Mwaniki vs Ndiga & 3 others [2023] KEHC 9562,** the court while quoting the case of **Board of Management of Uhuru Secondary School vs City County Director of Education and 2 others [2015] eKLR** summarized the principles of grant of conservatory orders as follows; -

***i) The need for the applicant to demonstrate an arguable prima facie case with a likelihood of success, and to show that in the absence of the conservatory orders, he is likely to suffer prejudice.***

***ii) The second principle is whether the grant or denial of the conservatory relief will enhance the constitutional values and objects of a specific right or freedom in the Bill of Rights.***

***iii) Thirdly, 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 will be served or prejudiced by a decision to exercise discretion to grant or deny a conservatory order.***

67. These principles were also emphasized by the Supreme Court in the case of **Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others [2014] eKLR** as follows; -

***[86] "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 supplicant'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 causes.”*** *(Emphasis added).*

67. Therefore, from the above cited authorities, it is evident that ***conservatory orders*** are a judicial remedy sought or issued by the 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, so that the said Petition is not rendered an academic exercise. See the case of **Nairobi Civil Appeal 151 of 2011 Invesco Assurance Co. Ltd vs. MW (Minor suing thro' next friend and mother (HW) [2016] eKLR**, where the court defined conservatory orders as follows: -

> ***“A conservatory order is a judicial remedy granted by the court by way of an undertaking that no action of any kind is taken to preserve the subject until the motion of the suit is heard. It is an order of status quo for the preservation of the subject matter***."

68. It is well settled principle that in determining whether to grant or not to grant conservatory orders, the court will be guided on whether the party has established a *prima-facie case with high probability of success*, *whether the party is likely to suffer irreparable prejudice in the absence of conservatory orders.*

69. Further, the court will consider whether if the Conservatory order is not granted or is granted, will it enhance the constitutional values, and the objects of the specific rights or freedoms in the bill of rights. The party seeking such orders must also demonstrate that if the interim conservatory orders are not granted, the Petition or its substratum will be rendered nugatory. Further, the court will consider whether the granting of the ***conservatory order*** is necessary in the public interest.

70. In the instant case, a perusal of the the documents and affidavits filed in court reveal that the Petitioner herein was issued with a prospecting licence No. PL/2018/0195 issued on 8/12/2011, for a term of one (1) year, and expired on 7/12/20212.

71. Section 18(4) of the repealed Mining Act, Cap 306 stipulated that; "An exclusive prospecting licence shall be valid for one (1) year from the date thereof, subject, on acceptance of a satisfactory program of further development, to renewal as to the whole or any portion of the area in respect of which the original licence was granted, at the discretion of the Commissioner, for further terms of one (1) year each up to a maximum of five (5) years from the date of the original grant.

72. Section 74 of the Mining Act 2016 circumscribes the duration of a prospecting licence to three (3) years, whereas Section 83 stipulates that such a licence shall not be renewed for more than two (2) terms after the initial grant.

73. A further perusal of the documents filed by the Petitioner clearly show that although the Petitioner applied for and was granted a prospecting licence to explore for industrial minerals in the year 2011, the Petitioner commissioned a geologist and a geophysicist to conduct surveys for, and quantify manganese, iron ore and copper. Their conduct violated section 20 of the repealed Mining Act.

The holder of a prospecting licence had the right to prospect, remove and dispose of any minerals, provided such minerals are those in respect of which the licence was granted. The Petitioner therefore failed to observe all terms and conditions of the licence in the manner provided in section 22 of the repealed Act.

74. It is therefore evident that the petitioner doesn't not have a prima face case, the exclusive prospecting license EPL/843 (PL/2018/0195) was issued on 8th December 2011 for a term of 1-year which expired on 7th December 2012. The same has never been renewed and thus cannot confer any enforceable rights.

75. Having found that no prima facie case has been established I need not address myself on whether or not the other principles have been met.

76. In conclusion, it is the finding of this court that the application dated 5th August 2025 is not merited and the same is dismissed with costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 14TH JANAURY 2026.**

**E. K. WABWOTO**
**JUDGE**

**In the presence of: -**

Mr. Kago for the Petitioner.

Mr. Kalume for the 6th and 7th Respondents.

N/A for other parties.

Court Assistant; Mary Ngoira.