

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ELC CASE NO. E044 of 2025

ISIAH OTIENO AKANGO.....1ST
PLAINTIFF

STEPHEN OMONDI OWINO.....2ND
PLAINTIFF

PATRICIA AWUOR OYOLA.....3RD
PLAINTIFF

JANE AWINO OGOYE.....4TH
PLAINTIFF

MOSES OGOLA ODHIAMBO.....5TH
PLAINTIFF

MATINE ODUOR.....6TH
PLAINTIFF

GETRUD OKUMU.....7TH
PLAINTIFF

RONALD ONYANGO.....8TH
PLAINTIFF

KENNETH O. ONYANGO.....9TH
PLAINTIFF

EMMAH ONYANGO.....10TH
PLAINTIFF

EVEPHINE MBEYA.....11TH
PLAINTIFF

STELLA ODUOR MBEYA.....12TH
PLAINTIFF

VERSUS

DAVID ONYANGO HAGONO.....1ST
DEFENDANT

**ALICE WAKEKE KARANJA.....2ND
DEFENDANT**

**SIAYA COUNTY GOVERNMENT.....3RD
DEFENDANT**

THE HON ATTORNEY GENERAL

**SUED ON BEHALF OF SIAYA COUNTY COMMISSIONER &
CABINET SECRETARY MINISTRY OF PETROLEUM &
MINING.....4TH
DEFENDANT**

AND

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY
PUBLIC HEALTH AND SANITATION OFFICER...1ST
INTERESTED PARTY**

**SIAYA COUNTY GOVERNMENT.....2ND
INTERESTED PARTY**

RULING

1. The plaintiffs have brought the Notice of Motion application dated 5/11/2025 seeking the following verbatim orders; -
 - 1) SPENT
 - 2) THAT pending the service and inter-parties hearing of this application there be an order of Temporary Injunction restraining the Defendants/Respondents by themselves, their lessees, agents, servants and or whomsoever is acting in pursuit of a common goal with the Respondents from carrying out mining activities on the parcel of land Central

Alego/Komolo/3435 and more specifically from interfering with the Applicants right to a clean and healthy environment by carrying out mining and other related activities on the parcel of land Central Alego/Komolo/3435.

3) THAT an order of Temporary Injunction be issued against the Defendants/Respondents by themselves, their lessees, agents, servants and or whomsoever is acting in pursuit of a common goal with the Respondents from carrying out mining activities on the parcel of land Central Alego/Komolo/3435 and more specifically from interfering with the applicants right to a clean and healthy environment by carrying out mining and other related activities on the parcel of land Central Alego/Komolo/3435 Pending the hearing and determination of this suit.

4) THAT the costs of this Application be in the cause.

2. The application is premised on the grounds on its face and the supporting affidavit sworn by ISIAH OTIENO AKANGO the 1st plaintiff.
3. The deponent states that he is a resident of Kobare Village, North Alego Location in Siaya County by birth which is a residential area with various homesteads occupying adjoining parcels of land. That no commercial activities are carried out within the vicinity and the nearest urban center is Kobare market.

4. That he is aware that apart from residing on their respective parcels, the owners of the various parcels of land carry out subsistence farming on their respective portions and different age groups reside in the area including toddlers, minors, teenagers, adults and very elderly people.
5. He depones that the community has been peaceful and quiet until sometime on or about 25th October 2025 when they were informed that the 1st and 2nd Defendants had discovered gold on the parcel of land Central Alego/Komolo/3435 and upon the said discovery the 1st and 2nd Defendants by themselves and or their lessees and or agents commenced mining activities on the suit land.
6. It is averred that as a result of the mining activities people started descending on the suit land in droves which resulted into a sudden population explosion in the village. That there are no public toilets and or other sanitary amenities which have been built on the suit land by either the 1st and 2nd Respondents or the county government of Siaya to serve the increased population with the attendant consequence that there is open defecation by the miners.
7. Additionally, it is stated that the persons who have descended on the mining site are strangers who are unknown to the residents and no measures have been taken to identify them with the result that there is a breakdown of security and law and order as the minors

who are a law unto themselves have prevented the residents from passing through the mining area.

8. It is stated that the mining activities have resulted into serious noise pollution which continues unabated day and night due to the fact that the Respondents and or their agents have brought generators and other machineries to the site which was and is purely a residential. Further the mining activities commenced on the parcel of land Central Alego/Komolo/3435 the miners are currently mining beneath other adjoining parcels of land even though they have not been authorized by the owners to do so.
9. It is deponed that the mining activities have further caused serious challenges to the residents due to the fact that the mining activities have severely affected the structural stability of the houses adjoining the mining site leading to cracking of walls and buildings. That while the applicants have requested to be shown the license authorizing the respondents to mine gold in the area none has been availed. That upon visit to the NEMA offices located at Siaya to lodge a complaint and inquire about the mining activities the officials informed them that they were not aware of the site nor had they carried out any environmental impact assessment within the subject area to pave way for mining nor approved the same.
10. That the applicants visited the offices of Siaya County to confirm whether they had approved a change of user for land parcel Central Alego/Komolo/3435 who have failed

and or refused to supply them with the necessary information.

11. The activities of the 1st and 2nd Defendants are termed to be manifestly illegal and unlawful for want of proper and lawful authorization from the relevant authorities being the ministry of mining, the National Environment Management Authority and the local community who were never consulted before commencement of the mining.
12. That the mining activities by the Respondents amount to compulsory acquisition of private land by the 1st and 2nd Respondents without proper compensation contrary to statutory provisions as the mining has now extended beneath private parcels of land not owned by the Respondents.
13. The Attorney General filed a Memorandum of Appearance dated 3/12/2025 but did not respond to the application. I must also note that Mr. Ooro also informed the court on 5/12/2025 that he had not served the 2nd defendant. That he had however spoken to the 1st defendant who had indicated that he would appoint a lawyer. The CTS bears an affidavit of service sworn by Mr. Ooro sworn on 2/12/2025 which only confirms service upon the AG, the county Attorney Siaya and NEMA.
14. Mr. Osala attended court on 5/12/2025 on behalf of the 3rd defendant when the application was fixed for directions. He sought to be served with the application and suit papers as he had only been served with a Mention Notice.

The Court directed that he be served before close of business on 5/12/2025. I gave the respondents 10 days to respond to the application with corresponding leave to the applicants to respond further. The application was to be canvassed by way of written submissions and I issued appropriate orders and reserved the application for ruling on 9/01/2026 having certified it urgent.

15. The court further directed Mr. Ooro to serve the courts directions upon the parties and file a return of service.
16. I have looked into the Case Tracking System (CTS) and none of the parties complied with the courts directions issued on 5/12/2025. The court also notes that no Return of Service has been filed and it is not clear whether the courts directions were served upon the parties except Mr. Osala who was present when the same were issued. As it is I also do not have proof of service upon the 1st and 2nd defendant.

Submissions

17. The applicant did not file submissions to the application.

ANALYSIS AND DETERMINATION

18. The foregoing notwithstanding, this application having been certified urgent I'm inclined to proceed and render a determination based on the material placed before me by the applicants. While the application has not been opposed it must be considered on its merits.

19. The main issue for determination is whether the Plaintiff has met the criteria for the grant of an order of temporary injunction pending the hearing and determination of this suit.
20. The application is brought under the provisions of Sections 1A, 1B, 3A, and 63 (e) of the Civil Procedure Act and Order 40 Rule 1 and Order 51 of the Civil Procedure Rules 2010 and Under Section 68 of the Land Registration Act No. 3 of 2012.
21. Order 40 Rule 1 provides as follows; -

"Where in any suit it is proved by affidavit or otherwise—

(a) That any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or

(b) That the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or

disposition of the property as the court thinks fit until the disposal of the suit or until further orders.."

22. While the grant of injunction is discretionary, discretion must be exercised on the basis of the law and evidence as will be discussed later in this ruling.

23. The guiding principles for the grant of orders of temporary injunction are well settled and are set out in the case of **Giella Versus Cassman Brown** (1973) EA 358. This position has been reiterated in numerous decisions by Kenyan courts and more particularly in the case of **Nguruman Limited versus Jan Bonde Nielsen & 2 others CA No.77 of 2012 (2014) eKLR** where the Court of Appeal held that;

“in an interlocutory injunction application the Applicant has to satisfy the triple requirements to a, establishes his case only at a prima facie level, b, demonstrates irreparable injury if a temporary injunction is not granted and c, ally any doubts as to b, by showing that the balance of convenience is in his favour.

These are the three pillars on which rest the foundation of any order of injunction interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and

logical hurdles which the applicant is expected to surmount sequentially”.

24. Consequently, the parties ought to, first, establish a prima facie case. The Court of Appeal in **Mrao Ltd Versus First American Bank of Kenya Ltd (2003) ECLR** gave a definition on a prima facie case. The court stated that:

“... in civil cases, it is a case in which, on the material presented to the court a tribunal properly directing itself will conclude that there exists a legal right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

25. Guided by the above I will proceed to review the material placed before this court.

26. The court has noted the robust depositions in the supporting affidavit herein and which I have already outlined. I may not have any doubt that the applicants are residents of Kobare village and have a right to a clean and healthy environment as guaranteed by the Constitution of Kenya. Allegations have been raised as to the effects of the activities of the 1st and 2nd respondents including compromising the structural stability of the houses adjoining the mining site leading to cracking of walls and buildings, noise and deterioration of hygiene standards due to open defecation by the miners.

27. No material or evidence whatsoever has been placed before this court to show the mining activities, the cracking of houses and any measurements or report on the noise levels as being detrimental or as envisaged under Environmental Management & Coordination (Noise and Excessive Vibrations Pollution Control) Regulations 2009. The applicants have also not demonstrated that they have made any formal complaints about the alleged activities to the relevant authorities which support their allegations that no responses or information was forthcoming from the county government and National Government agencies. Maybe the court would have relented.
28. It is the duty of the applicants to place evidence and material before the court that will enable the court to arrive at preliminary conclusion of a prima facie case. And in this regard, I'm not referring to the merits of the case but for the purpose of the application and orders sought. The applicants have only presented a copy of the search to the suit property where the mining activities are alleged to be taking place. But this perse is not proof of the activities and the alleged effects and harm it is causing the villagers that are sought to be stopped at this stage pending the hearing of the matter.
29. Based on the material placed before this court, this court is not persuaded that a prima facie case has been made to warrant the grant the orders of injunction at this stage of the proceedings.

30. The upshot of the foregoing is that the application dated 5/11/2025 is dismissed. No orders as to costs.

It is so ordered.

Dated, signed and delivered at Siaya this 29th day of January 2026.

HON. LADY JUSTICE A. E. DENA

JUDGE

29/01/2026

**Ruling delivered virtually through Microsoft Teams
Video Conferencing Platform in the Presence of:**

Mr. Ooro E for applicants

Mr. Okoth Holding Brief for Ms. Essendi for 3rd and 4th
Respondents

No appearance for the rest of the respondents.

Court assistant: Ishmael Orwa