



**Naikuni v Chairman Board of Trustee Purko Development Trust
- Seleila Ole Mwanik & 3 others (Environment and Land Petition
E013 of 2025) [2026] KEELC 663 (KLR) (12 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 663 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND PETITION E013 OF 2025
LN GACHERU, J
FEBRUARY 12, 2026**

BETWEEN

DR NCHORIRA NAIKUNI PETITIONER

AND

**THE CHAIRMAN BOARD OF TRUSTEE PURKO DEVELOPMENT TRUST -
SELEILA OLE MWANIK 1ST RESPONDENT**

**CHIEF EXECUTIVE OFFICER PURKO DEVELOPMENT TRUST - JOSEPH
NKAIWUATEI 2ND RESPONDENT**

PURKO DEVELOPMENT TRUST 3RD RESPONDENT

FRESHCROP LIMITED 4TH RESPONDENT

RULING

1. The Petitioner/Applicant, filed a Notice of Motion Application dated 26th September 2025, brought under various provisions of the Constitution and law, among them Articles 22, 23(1) & 3, 27(1), 27(4), 27(5), 28, 35, 10(2), 47(2), 48, 63, 159, 160, 165, 236(b), 259 & 260 and 159(2) of the Constitution and Rules 23 and 24 of the Constitution of Kenya (protection of rights and fundamental freedoms) Practice and Procedure Rules, 2013, Section 14(2) National Government Co-ordination Act of 2013, Section 5(1) Fair Administrative The Petitioner/Applicant seeks for orders;-
 - i. That the pending the inter parties hearing and determination of this application this court be pleased to issue a conservatory order restraining the 1st, 2nd, 3rd, and 4th Respondents, their agents, servants or assigns from leasing community land Known as Cis-Mara/Entiani/1 held in trust by the 2nd Respondent.



- ii. That pending the hearing and determination of the Petition herein, this court be pleased to issue a conservatory order restraining the 1st, 2nd, 3rd and 4th Respondents, their agents, servants or assigns from leasing community land known as Cic-Mara/Entiani/1 held in trust by the 2nd Respondent.
 - iii. That the Respondents to bear the costs of this application.
2. The application is supported by the grounds set out on the face of the Application and on the Supporting Affidavit of Dr. Nchorira Naikuni the Petitioner/Applicant.
3. Among the grounds in support of the Application are; the Petitioner/Applicant is a member of the Purko Community and a member of Purko Development Trust General Assembly, as established under Article 2 of Purko Trust Deed, which holds the land in question as Community land within the meaning of Article 63 of *the Constitution*.
4. The Petitioner/Applicant averred that on 8th August 2025, the 1st Respondent advertised a tender to lease 500 acres of parcel of land Cis-Mara/Entiani/1 belonging to Purko Development trust without approval by Purko Development Trust General Assembly.
5. Further the Petitioner/Applicant averred that the 1st, 2nd, 3rd and 4th Respondents irregularly and unlawfully engaged the 4th Respondent without proper public participation, community consent or compliance with Procurement and Environment regulations as required by law, and that their action is in breach of trust and violated the Petitioner's/Applicant's right to Fair Administrative Action.
6. In his Supporting Affidavit, Dr. Nchorira Naikuni reiterated the contents of the grounds in support of the application, and also averred that the awarding of the tender to Freshcrop Limited was done without public participation, and thus was in total violation of Article 10 of *the Constitution* and the *Community Land Act*. Further, that it also violated Article 2.4(iv) and 5.8(ii) of the Purko Trust Deed, and the Petitioner/Applicant urged the court to allow the instant application for the interest of justice, fairness and public accountability.
7. The 1st and 3rd Respondents opposed the application through the Replying Affidavit dated 18th November 2025, sworn by Seleila Ole Mwanik, the 1st Respondent and Chairman of the Board of Trustees of the 3rd Respondent.
8. The 1st Respondent averred that the advertisement to lease 500 acres of land, part of the land parcel known as CISMARA/ENTIANI/1, was done on 8th August 2025, and was carried out procedurally and in accordance with the provisions of the Trust Deed. He further averred that the 2nd Respondent, as the then Secretary to the Board of Trustees, acted on instructions of the Board's Resolutions, which authorized the leasing of the said parcel of land through advertisement and competitive bidding, as evidenced by the Minutes of 7th August 2025.
9. The 1st Respondent further emphasized that the advertisement and subsequent leasing were conducted in compliance with the law and the Trust Deed, with approval from the Patron, Deputy Patron, and Leadership Council. He also referred to Article 4.5 of the Trust Deed, which empowers the Trustees to approve tenders for goods and services. The 1st Respondent argued that the Petitioner's claims of violation of Article 227 of *the Constitution* and the *Public Procurement and Asset Disposal Act* were speculative and unsupported by evidence.
10. Further, the 1st Respondent contended that the Petitioner/Applicant had misconceived the provisions of Article 63 of *the Constitution*, and failed to demonstrate how the community had been disenfranchised or denied access to the land. He clarified that only 207 acres of the 500 acres earmarked



for leasing had been leased, leaving 293 acres available for leasing, including to the community members.

11. Additionally, the 1st Respondent contended that the leasing of the land was done procedurally, with proper documentation of contracts and income expectations. He highlighted that the engagement involved leasing the land, not selling or transferring the title, and that the lessee was obligated to use the land in an environmentally sustainable manner, and return it upon lease expiration. He emphasised that the leasing arrangement had significantly increased the Trust's income, with the lease amount reaching Kshs. 40,000/= per acre for one season of 12 months.
12. The 1st Respondent also addressed the Petitioner's allegations of collusion between the Respondents, and the 4th Respondent, stating that no evidence had been provided to substantiate such claims. He reiterated that the leasing process was conducted transparently and in compliance with best agricultural practices, and that the community land remained the property of the Purko Development Trust, with no title transfer to the 4th Respondent or any other party.
13. In conclusion, the 1st Respondent argued that the Petition was unmerited, raised no triable issues, and did not reveal any violations of the law or community members' rights. He requested that the Petition and Application be struck out with costs to the Respondents.
14. In response to the application dated 26th September 2025, the 2nd Respondent, Joseph K. Nkaiwatei, the CEO of Purko Development Trust, filed his Replying Affidavit dated 8th October 2025, and averred that the lease of Purko land to FreshCrop Limited was against the wishes of the Purko Community, as the Trust was already engaged in potato seed production through ADC, and leasing the land would invite competition, undermining the Trust's operations.
15. It was his disposition that the Purko Development Trust was working through a joint Potato Seed multiplication venture with FreshCrop since the year 2021, to April 2025, having planted potato seed in Purko Trust land for 7 multiplication seasons of 6 months each. He contended that the Purko Development Trust Deed and procurement processes were ignored by the Board of Trustees, who signed undisclosed contracts with Fresh Crop Limited.
16. The 2nd Respondent stated that an advert was sent out to invite bids for the lease of 500 acres of land to potential farmer who would pay a leasing fee of Ksh.40,000/=, per acre per year, to Purko Trust. That the advert irregularly advised lessees to send their bid to the Chairman, Board of Trustees, who had forcefully assumed Executive roles against the Trust deed and other policies of the Trust.
17. The 2nd Respondent contended that the Annual General Meeting (AGM) scheduled for May 2025, was not held as required by the Trust Deed, to approve annual reports and plans, making the lease irregular. He emphasized that the Chairman of the Board of Trustees had no mandate to interfere with the management role or the General Assembly, as this caused role conflict.
18. The deponent supported the application for transparency and adherence to due procedure, stating that it was legally sound, progressive, and community-centered. Further, the deponent urged the court to allow the application in the interest of justice and equity, but without costs, as it was a public-spirited case.
19. The 4th Respondent filed its Replying Affidavit dated 17th November 2025, in opposition to the application through its Director Gasperi M. Christopher. The deponent averred that the conservatory orders ought not to be granted as the application is fatally defective, incompetent and an abuse of court process and ought to be dismissed in the first instance.



20. The 4th Respondent further deponed that the 4th Respondent was leased the land following a successful tender, and with the full approval of the Board of Management of Purko Development Trust and the 1st, 2nd and 3rd Respondents can confirm. He also contended that the allegations of illegal, irregular or non-participatory leasing of the community land are false, misleading and malicious since the Board Lawfully exercised its statutory mandate in identifying, advertising and awarding a lease of the land Cis-Mara/Entiani/1, to the 4th Respondent after competitive and transparent, and community-driven process.
21. The 4th Respondent further averred that the Petitioner/ Applicant has not demonstrated any violation of Articles 10,40, 60 or 63 of *the Constitution* as alleged. Further, that the Petitioner/ applicant has not shown that they will suffer irreparable harm incapable of being compensated by an award of damages should the orders sought be declined. He argued that granting the order sought would cause grave prejudice to the Respondents and halt project already approved and commenced pursuant to law.
22. The application was canvassed by way of written submissions, and the parties herein filed their respective submissions as follows;
23. The Petitioner/Applicant filed his written submissions dated 14th December 2025, through the Law Firm of Karia Kipkogei & Associates and raised the following issues for determination;
 - i. Whether the land in question is Community Land protected under Article 63 of *the Constitution*.
 - ii. Whether the Respondents violated the Constitutional requirements of public participation.
 - iii. Whether the Respondents acted ultra vires against the Purko Development Trust Deed.
 - iv. Whether the Procurement process violated the *Public Procurement and Asset Disposal Act, 2015*.
 - v. Whether the failure to conduct an Environment Impact Assessment (EIA) violated the law
 - vi. Whether the Petitioner has met the threshold for grant of Conservatory Orders.
24. On whether the land in question is Community Land protected under Article 63 of *the Constitution*, the Petitioner/Applicant submitted that Cis-Mara/Entiani/1, is traditionally owned and held by the Purko Community and managed through the Purko Development Trust, for the benefit of its members. He argued that the Respondents failed to convene a General Assembly since, 2021, thereby acting without authority and in blatant violation of both statutory and constitutional safeguards.
25. On whether the Respondents violated the Constitutional requirements of public participation, the Petitioner/Applicant relied on the case of British American Tobacco Ltd vs Cabinet Secretary for Health [2017]eklr, and submitted that the Respondents failed to conduct consultations through Barazas, Churches, Vernacular radio, or community forums, despite being fully aware that most community members are illiterate.
26. On whether the Respondents acted ultra vires against the Purko Development Trust Deed, the Petitioner/Applicant submitted that the 1st Respondent acted beyond his powers by advertising the tender unilaterally and without approval of the General Assembly.
27. On whether the Procurement process violated the *Public Procurement and Asset Disposal Act, 2015*, the Petitioner/Applicant submitted that there was lack of competitiveness, conflict of interest, failure to disclose evaluation criteria and locking out local community members.



28. On whether the failure to conduct an Environment Impact Assessment (EIA) violated the law, the Petitioner/Applicant submitted that the Respondents failed to involve NEMA while leasing 500 acres, as it is mandatory under EMCA, Cap 387, thereby exposing the community to irreversible environmental health risks. The Petitioner/Applicant also argued that the Respondents also failed to give notices, provide reasons for the lease and failed to supply requested information by the Petitioner thus violated fair administrative action.
29. On whether the Petitioner/Applicant has met the threshold for grant of Conservatory Orders, the Petitioner/Applicant relied on the case of Centre of Rights Education and Awareness(CREAW) & 7 others vs Speaker of the National Assembly & 4 others [2017] eKLR, which set out the principles governing the grant of conservatory orders.
30. Further, the Petitioner/Applicant submitted that he has clearly satisfied the threshold for grant of conservatory orders in that; he has established a prima facie case, demonstrating violations of Articles 10, 27, 47, 63 and 174 of *the Constitution*, there exists a real imminent risk of irreparable and irreversible prejudice and that the matter raises issues of overwhelming public interest.
31. The Petitioner/Applicant urged the court to grant conservatory orders, declare the procurement process and lease null and void, compel the Respondents to convene a General Assembly and award costs of the Petition to the Petitioner.
32. 1st and 3rd Respondents filed their written submissions dated 18th November 2025, through the Law Firm of , Musyoka, Shikumo & Associates, and raised the following issues for determination:
 - i. What is the nature of conservatory order?
 - ii. What are the guiding principles of conservatory orders and applicability of the guiding principles to the application?
 - iii. Has the Applicant established a prima facie case with chance of success?
 - iv. Who bears the cost of this Application?
33. On the nature of Conservatory Orders, the 1st and 3rd Respondents cited the case of Gatirau Peter Munya v. Dickson Mwenda Kithinji & 2 Others (2014) eKLR and Judicial Service Commission vs. Speaker of the National Assembly & Another [2013] eKLR, to emphasize that conservatory orders are remedies in rem, designed to uphold the adjudicatory authority of the court, and ensure the ordered functioning of public agencies. They submitted that the members of the community had ceded their power and allowed the Trust to run all the affairs touching the Community land and all its affairs, through the Trust.
34. The 1st and 3rd Respondents further submitted that there was no evidence proffered to suggest that the Petitioner/ Applicant or any willing bidders were rigged out or barred in any way from participation.
35. On the Guiding Principles of Conservatory Orders, the 1st and 3rd Respondents referred to the case of Board of Management of Uhuru Secondary School vs. City County Director of Education and 2 Others (2015) eKLR, which outlined the principles for granting conservatory orders. It was their submissions that the Petitioner/ Applicant has not proffered any evidence to suggest that the Board of Trustees acted illegally in making the decision, and was not properly constituted. They also submitted that the Petitioner/ Applicant has not demonstrated which provisions of the Trust Deed were contravened.



36. On Prima Facie Case, the 1st and 3rd Respondents argued that the Petitioner/ applicant failed to establish a prima facie case with a likelihood of success, citing the case of *Wilson Kaberia Nkunja v. The Magistrates & Judges Vetting Board & Others* (2016) eklr, wherein the court held that a party must demonstrate a prima facie case with a likelihood of success and show that it would suffer prejudice if conservatory orders are not granted.
37. The 1st and 3rd Respondents further submitted that the Petitioner/ Applicant has not indicated and/or adduced any evidence to show whether he participated in the tender process, and was unfairly discriminated and/or denied his rights. It was their further submissions that the said suit land has since been leased out at the time of filing this Petition, and therefore the application is overtaken by events, and conservatory order will not correct any infringed rights, if any exists.
38. On Public Interest, the 1st and 3rd Respondents emphasized that public interest would be prejudiced if conservatory orders were granted, as the leasing of the land benefits the community through revenue generation, job creation, and socio-economic growth. They argued that the Petitioner/ applicant failed to demonstrate how the community's rights or his specific rights were infringed. Further, they submitted that the leasing process was transparent and competitive, and the applicant did not provide evidence of any irregularities.
39. On Costs of the Application, the 1st and 3rd Respondents relied on Section 27 of the *Civil Procedure Act* and urged the court to exercise its discretion in favour of the 1st and 3rd Respondents and award them costs.
40. In conclusion, the 1st and 3rd Respondents submitted that the Petitioner/ Applicant's application lacked merit, failed to meet the principles for granting conservatory orders, fatally defective, a non-starter and should be dismissed with costs.
41. The 4th Respondent filed its written submissions dated 16th December 2025, through Law Firm of Muchiri Gathecha & Co Advocates, and submitted that the leasing process was conducted transparently, competitively and in a participatory manner including, public consultations and sensitization meetings with members of the Purko Community, public advertisement, inviting bids for leasing of the subject land and competitive bidding, evaluation and award in accordance with the Trust's mandate.
42. The 4th Respondent raised the following issues for determination;
- i. Whether the Petitioner/Applicant has the requisite authority and locus standi to institute the Petition.
 - ii. Whether the threshold for grant of conservatory orders has been met.
 - iii. Whether there has been any violation of Articles 10, 40, 60 or 63 of *the Constitution*
 - iv. Where the balance of convenience lies.
43. On whether the Petitioner/Applicant has the requisite authority and locus standi to institute the Petition, the 4th Respondent submitted that the Petitioner/applicant failed to demonstrate that he has any resolution, authority or mandate from the members of the Purko Community authorizing him to file the present Petition and Application.
44. On whether the threshold for grant of conservatory orders has been met, the 4th Respondent submitted that the Petitioner/Applicant failed to establish a prima facie case. It argued that the lease to the 4th



- Respondent was lawful, procedurally fair and undertaken pursuant to the statutory mandate of the Board of Management of Purko Development Trust.
45. For the above submissions, the 4th Respondent relied on Article 23(3) of *the Constitution*, and cases of Centre for Rights Education and Awareness and 7 others vs The Attorney General[HCCP No. 16 of 2011] and Kevin K. Mwiti & Others vs Kenya School of Law & 2 Others [2015]eklr.
 46. On whether there has been any violation of Articles 10, 40, 60 or 63 of *the Constitution*, the 4th Respondent submitted that the Petitioner/Applicant merely cited constitutional provisions without demonstration how they have been violated.
 47. On where the balance of convenience lies, the 4th Respondent submitted that it is already in lawful possession pursuant to a valid lease obtained after a competitive tender process. Further, that the granting of the conservatory orders sought would occasion undue prejudice to the 4th Respondent, disrupt lawful contractual arrangements and undermine confidence in transparent community-driven investment process.
 48. In conclusion the 4th Respondent submitted that the Petitioner/applicant has failed to meet the legal and constitutional threshold for granting of conservatory orders and prays that the application dated 26th September 2025, be dismissed with costs to the 4th Respondent.
 49. The above are the arguments in support and opposition to the instant Application, wherein the Petitioner/Applicant has sought for conservatory orders to restrain the 1st, 2nd, 3rd and 4th Respondents or their agents or servants from leasing community land known as Cis Mara/Entiani/1 held in trust by the 2nd Respondent.
 50. The 2nd Respondent herein is Joseph Nkaiwatei, who filed his Replying Affidavit dated 11th November 2025, and supported the instant Application. In his Replying Affidavit, Joseph averred that he is the Chief Executive Officer(CEO) for Purko Development Trust, the 3rd Respondent herein. From the documents attached to the Petition and Application, Purko Development Trust is the registered owner of the suit land Cis Mara/ Entiani/1, through the Title Deed issued on 6th March 2009.
 51. Further from the annexures attached to the Replying Affidavit of Seleila Ole Mwanik, the Chairman of the 3rd Respondent, annexure SM2, are Minutes of the Board of Trustees, which was attended by sixteen members, among them Joseph Nkaiwatei, the 2nd Respondent who is in support of the instant Application, and he appeared as the CEO and Secretary to the Board.
 52. In the said minutes, Minutes of 9th May 2025, was discussed and the issue of lease of land was discussed and it was resolved that there was to be a lease of 500 acres of land at ksh 40,000/= per acre, and this lease was to anyone who was willing to lease the land at ksh 40, 000/= per acre and advertisement was to be carried out, through Radio stations.
 53. The 1st and 3rd Respondents also attached Minutes of 2nd October 2025, wherein 15 members were present. The Agenda was to discuss the conduct of the CEO, and the CEO was Joseph Nkaiwatei, whose conduct was discussed as is evident from Minutes 3/2/10/2025.
 54. After a lengthy discussion, the said CEO was suspended for 45 days and in his place Tom Olonana Maleto was appointed to act as the CEO. This Petition and Application was filed on 26th September 2025, a few days before the CEO was suspended. In the said meeting of 2nd October 2025, the Petitioner/Applicant was labelled a proxy of the suspended CEO Joseph Nkaiwatei.



55. The Applicant/Petitioner and the 2nd Respondent have averred that the Respondents leased the suit land, about 500 acres to the 4th Respondent without involving the community, and public procurement, and thus the reasons for filing the instant Petition, and Application for Conservatory Orders.
56. The 1st, 3rd and 4th Respondents have averred that indeed the Purko Development Trust, advertised for lease of 500 acres, which was open to the public, 4th Respondent included, plus any member of the community, so long as the said person was to meet the criteria of paying ksh 40, 000/= per acre per year. They also averred that they only leased 207,acres to the 4th Respondent, who had been leasing from the said trust, for the last 7 years.
57. The Petitioner/Applicant alleged that he had brought this Petition on behalf of the Purko Community. However, this court has not seen any authority granted to him by the said Purko Community to file this Petition and Application on their behalf. Does he have capacity to institute this Petition on their behalf?
58. Be that as it may, the Petitioner/Applicant has sought for conservatory orders, which orders are anchored on the Articles of *the Constitution*. It is evident that conservatory Orders are; are court-issued, temporary directives meant to preserve the status quo and protect the subject matter of a law suit until a Petition is fully heard and determined. These conservatory orders are rooted in Article 23 of *the Constitution*, and are meant to prevent actions that could render a case moot or nugatory. See the case of *Mwaniki v Ndiga & 3 others* (Constitutional Petition E020 of 2024) [2025] KEHC 9562 (KLR) (1 July 2025) (Ruling), where the court held;
- “A conservatory order is a judicial remedy 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 or so that the same is not rendered an academic exercise.”
59. This Petition and Application are premised on various articles of *the Constitution* of Kenya 2010. The main issue for determination is whether the application meets the threshold for the issuance of conservatory orders.
60. The principles for grant of conservatory orders were well elucidated in the case of *Board of Management of Uhuru Secondary School -vs- 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.”



61. The Supreme Court of Kenya in the case of *Gatirau Peter Munya -vs- Dickson Mwendwa Kithinji and Another*(Supra) held;

“Conservatory Orders” bears a more decided public law connotations: for these orders are to facilitate ordered function within public agencies as well as to uphold the adjudicatory authority of the court is the public interests. Conservatory orders, therefore, are not, unlike interlocutory injections, 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.
62. From the above holding of the Supreme Court of Kenya; it is evident that conservatory orders are aimed at preserving the substratum of the matter pending the determination of the main issues in dispute. That there is need for a court to exercise caution when dealing with any request for such prayers for the reason that matters which are a preserve of the main Petition are not to be dealt with finality at the interlocutory stage. See the case of *Centre for Rights, Education and Awareness (CREAW) & 7 Others -vs- the Attorney General* (2011) eKLR.
63. Further, in the case of *Wilson Kaberia Nkunja -vs_ The Magistrates & Judges Vetting Board & Others* (2016) eKLR the court held that a party must demonstrate that he has a prima facie case with a likelihood of success, and that unless the conservatory orders are granted, there is a real danger that he will suffer prejudice as a result of the violation or threatened violation of *the Constitution*.
64. The Applicant must also demonstrate that, if a conservatory orders are not granted, the Petition alleging violation of or threat of violation of rights will be rendered nugatory, and that the public interest must be considered before grant of a conservatory order. See the case of *Gitarau Peter vs Dickson Mwenda Kithinji & others* (2014) KESC 30 (KLR) 2ND April 2014)
65. For the applicant herein to succeed in the instant Applicant, he must establish the well settled principles which guides the court in determining whether or not to issue conservatory orders, and the Petitioner/ Applicant needed to establishes that he has prima facie case with high likelihood of success and in the absence of the conservatory order, he is likely to suffer prejudice.
66. Further, the applicant had a duty to demonstrate that if the orders are 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 Petitioner/Applicant must also demonstrate that if interim conservatory orders are 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.
67. Bearing in mind the above principles, the court will consider the available evidence, and juxtapose it with the instant Application and the opposition of the same, and then comes to its conclusion on whether the Applicant is deserving of the Conservatory orders sought.
68. The Petitioner/Applicant averred that he is a member of Purko Community and a member of Purko Development Trust General Assembly, which is established under Article 2 of the Purko Trust Deed. Though he presumed to bring this Petition and Application on behalf of the Purko Community, there is no Authority granted to him by the members of this Purko Community to institute this Petition, and also seek for Conservatory orders on their behalf.
69. The court has seen the Board Meeting which Approved the lease of 500 acres from the suit land to any person who was willing to leases such land at Ksh 40, 000/= per acres. Is the Petitioner/Applicant bringing this Petition as a dissatisfied member or on behalf of the community?



70. Even if the Petitioner/Applicant has authority to plead for the Purko Community, he seeks for conservatory orders to restrain the Respondents from leasing the suit land. However, it is clear that some land out of the mother title has already been leased to 4th Respondent who engages in potatoes farming. Can conservatory orders be issued against an event that has already happened?
71. A conservatory order cannot quash a decision or undo an event that has already been fully completed, because such orders are basically issued to preserve the status quo, and it is inherently prospective—meant to prevent future harm rather than correct past actions. Since the 4th Respondent has already leased 207 acres from the suit land, then issuing the conservatory orders will be an academic exercise. See the case of ELRC Petition No. E215 of 2023.
72. With the above analysis, the court finds and holds that the Petitioner/Applicant has not established a prima facies with probability of success to warrant issuance of conservatory orders. See the case of Law Society of Kenya -vs- Attorney General & Judicial Service Commission (2020) eklr, where the court held that:
- “At this stage I am alive to the fact that the court is not supposed to examine the merits of the petition but has to consider whether the petitioner has established a prima facie case to warrant interim orders of protection in order to secure the substratum of the suit and not to render the petition herein nugatory and become a mere academic exercise.”
73. On whether, the conservatory orders will enhance constitutional values, the Petitioner/Applicant has not come out clearly how the leasing of part of the suit land has violated his right, and how the grant of the same will enhance constitutional values. What are the fundamental rights that have been breached? How will the conservatory orders maintain the rule of land and ensure stability?
74. How will the failure of grant the conservatory orders affect the substratum of the land? The Respondents have leased the suit land, about 207 acres to the 4th Respondent, and not sold the said portion of land. If after hearing the main Petition, the action of the Respondents is found wanting, then the court will proceed and cancel the said lease with or without costs. The court finds that the Petitioner has not met this threshold.
75. Is this application and the conservatory orders sought necessary for the public interest? The Petitioner/Applicant was not able to demonstrate this principle of public interest. The issue raised by the Petitioner/Applicant can only best be resolved after availing of evidence in the main Petition, by calling witnesses and tabling evidence.
76. Public interest is defined in the Black Law Dictionary 10th Edition as;
- “The general welfare of a populace considered as warranting recognition or protection. Something in which the public as a whole has stake especially in something that justifies government regulation”
77. Further public interest litigation was described by the Court of Appeal in the case of Tom Mboya Odege vs Edick Peter Omondi Anyanga & 2 others (2018) eklr as follow;
- “A legal action initiated in court of law for the enforcement of public interest or general interest in which the public or class of the community have pecuniary interest or interest which their legal rights on habitations are affected.”



78. Has the Petitioner/Applicant herein demonstrated the above? Given that the Applicant has no evidence of authority from the members of Purko Community to represent them in this suit, the issue of public interest can only be determined after the full trial of the main Petition.
79. For the above reasons, the court finds and holds that the Petitioner/Applicant herein is not deserving of the conservatory orders sought in his Notice of Motion Application dated 26th September 2025.
80. Let the parties herein prepare the main Petition for hearing, and the same be heard expeditiously. Consequently, the instant Application dated 26th September 2025, is found to have no merit, and the same is dismissed entirely with costs to the 1st, 3rd and 4th Respondents.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAROK THIS 12TH DAY OF FEBRUARY 2026.

L. GACHERU

JUDGE

Delivered at Narok Online in the presence of

Elija Meyoki Court Assistant

Mrs Karia for Petitioner/Applicant

Mr Musyoka for 1st Respondent

Mr C Langat for 2nd Respondent

Mr Musyoka for 3rd Respondent^{{{^}}}

M/s Nyabuto H/B for Ms Gathecha for 4th Respondent

