

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT SIAYA
ENVIRONMENT & PLANNING PETITION NO. E 004 OF 2025

WILLIAM ODHIAMBO

OMBENG.....PETITIONER/APPLICANT AND GREEN
NGORIA SUPLIES LIMITED.....1ST RESPONDENT

CAREN OTIENO OHITO.....2ND
RESPONDENT JOSEPH OBONYO

OMBENG.....3RD RESPONDENT SULMENA
AKOTH OMBENG.....4TH RESPONDENT

RULING

1. The Petitioner filed this petition dated 21/11/2025. Together with the Petition was a Notice of Motion application of even date. The motion was filed under certificate of urgency

1) SPENT

2) THAT a temporary conservative order be issued restraining the 1st Respondent, its agents, employees, servants or assigns from continuing with any mining operations, excavation, mineral extraction or any activities whatsoever on land parcel number **BONDO NYANGOMA/2405** pending the hearing and determination of this Application.

3) THAT an order of temporary injunction be issued restraining the 1st Respondent from entering,

remaining on, leasing, constructing structures, depositing waste, or interfering with the suit land in any manner pending the hearing of the Petition.

4) THAT the Honourable Court do issue an order compelling NEMA to visit the suit land and file a report on the extent of environmental degradation caused by the Respondent's operation within (14) days or as the Court may direct.

5) THAT a conservatory order do issue stopping all mining activities by the 1st Respondent on the suit land pending the hearing and determination of the

6) entire Petition.

7) THAT the purported lease or agreement under which the Respondent claims authority to be on the deceased's land be declared invalid and unenforceable pending the hearing of the Petition.

8) THAT the Court grants any further or better orders in the interest of justice.

2. The application is supported by the Affidavit of WILLIAM ODHIAMBO OMBENG sworn on 21st November, 2025 and is premised on the grounds that:

i. The Respondents have no valid mining licences, permits or authorisations from the relevant statutory authorities.

ii. The Respondents have admitted that they are merely in the process of obtaining the said licences.

- iii. The suit property forms part of the estate of a deceased person, and succession proceedings are ongoing.
 - iv. The lease agreement relied upon by the Respondents was entered into with persons who had no legal capacity or authority to lease the property as the beneficiaries had not been granted representation.
 - v. Not all beneficiaries of the deceased's estate including the Petitioner/Applicant herein were consulted or gave consent to enter into the said lease agreement.
3. The applicant depones that he is a beneficiary of the Estate of the Walter Ombeng (deceased) who is the registered owner of the parcel Bondo/Nyangoma/2405 (suit property). That the respondents have unlawfully entered into lease agreement dated 29/7/2025) in relation to the suit property without the consent of the other beneficiaries and commenced gold mining therein. They have excavated soil, removed minerals and set up Mining Structures.
4. The lease agreement is termed illegal as it has been entered with a lessor who has no legal capacity to enter the same as no grant of administration has been obtained by anyone on the estate of the deceased to enable such transaction.

5. It is deponed that aforesaid mining activities are being undertaken without the requisite Mining licence and that the respondent has failed to obtain an EIA contrary to the Mining Act and Environmental Management & Coordination Act (EMCA). Further no community/public consultation has ever been conducted as required before commencement of such activities.
6. It is averred that the operations have cause severe environmental degradation including destruction of vegetation, deep open dangerous pits, pollution of water resources, Noise and air pollution and unsafe disposal of Mining waste. That children and livestock could fall into the pits, and interference with community access to clean water and violation to right to clean and healthy environment under article 42 of the Constitution.
7. It is further deponed that the operations continue to expand thus compounding the harms and will cause irreversible damage. That the subject matter of the petition will be rendered nugatory. That the interim conservatory orders should be granted to preserve the environment, protect the estate property and the community pending the determination of the Petition.

RESPONSE

8. The application is opposed vide the depositions in the replying affidavit of Davis Mragha director of the respondent sworn on 5/12/2025.

9. On advice of his lawyers the deponent outlines the principles governing the grant of the reliefs sought a) A prima facie case with a probability of success; b) That the applicant will suffer irreparable injury which cannot be compensated by an award of damages; c) Where the court is in doubt, it will decide the application on a balance of convenience.
10. That test, for grant of constitutional conservatory orders requires an applicant to demonstrate urgency, a clear right threatened, and that the substratum of the petition would be destroyed unless the order is granted.
11. It is stated that none of the above tests have been met by the applicant for the reasons that while the applicants case is predicated on the allegation that the 2nd , 3rd, and 4th Respondents had "no legal capacity" to lease the suit property the said Respondents were listed as applicants for letters of administration followed by a formal appointment via a Grant of Letters of Administration Intestate issued on 7th August 2025 by the Chief Magistrate's Court at Bondo in Succession Cause No. E110 of 2025. Copies of Gazette Notice and Grant are annexed DMN-1 & 2 respectively.
12. It is deponed that the Lease Agreement with the 1st Respondent was executed on 29th July 2025, after their names had been gazetted and in the interregnum between application and the formal grant, during which they were lawfully entitled to preserve the estate's assets.

A copy of the said lease agreement is annexed as "DMN-3".

13. It is averred the 1st Respondent was a bona fide lessee for value acting on publicly available and court-sanctioned information and that the law supports the protection of such innocent third-party transactions.
14. It is deponed the allegations of operating without a mining licence, EIA licence, and causing "severe irreversible degradation" are vague, unsubstantiated, and amount to mere sensationalism. The same have not been corroborated by any report from Environment Management Authority (NEMA), the Ministry of Mining, or any independent expert. That he relies solely on unprovenanced photographs which have not been served upon the respondents.
15. The 1st Respondent states it is a responsible corporate entity and has commenced the requisite licensing processes with the relevant agencies. That the allegations of illegality cannot be sustained through hearsay and conjecture but with conject evidence.
16. Further that the Applicant claims no personal proprietary interest in the land that is recognized in law. His alleged injury is speculative and collective (environmental), which,

even if proven, is quantifiable and remediable through monetary compensation or a restoration order at the trial. The alleged harm is not, in his case, "irreparable." Conversely the 1st Respondent stands to suffer true, substantial, and quantifiable irreparable harm if the injunctive orders are granted having invested over Kenya Shillings Fifty Million in site development, machinery, security, and community engagements based on a valid lease. That an injunction would halt all operations, lead to massive daily losses, cause breach of contracts with suppliers and off-takers, force employee layoffs, and potentially collapse the business.

17. That such commercial paralysis and financial ruin cannot be adequately compensated by the Applicant, who has not demonstrated any financial capacity to satisfy a potential damages award. Therefore, the balance of convenience tilts overwhelmingly in the 1st Respondents favor. The court should weigh the likely mischief or inconvenience to each party.
18. That this Court must thus preserve the status quo that existed before the present litigation was commenced namely Respondent is in possession and operating under a colour of right established by court documents.
19. THAT further, the instant application lacks urgency and is an after-thought.

20. That the equitable remedies of injunction and conservatory orders are discretionary and only available to a party with "clean hands." That the Applicant has failed to disclose to the Court the existence of the Grant of Letters of Administration thus guilty of material non disclosure.
21. It is deponed the jurisdiction of this Court is being invoked under the guise of environmental protection to litigate what is, in essence, a private succession dispute. An abuse of court process. The genesis of this dispute is not environmental degradation, but a private contest over the administration of the estate of the late Walter Okello. The demand letter ("DMN-4".) contains only a single passing, and unparticularized line alleging "excavation" and "destroying the environment." No mention is made of the Mining Act, EIA licences, NEMA, or the constitutional right to a clean environment.
22. That is only after the letter was rebuffed by letter ("DMN-5".) and his lack of locus standi was laid bare that the Applicant, through the same advocate, concocted the present environmental petition. Cloaking a private property dispute in the gravitas of public interest. That using constitutional petitions to pursue private disputes that can be resolved under ordinary law should be strongly opposed by this Court.
23. Applicant's conduct is inconsistent with a genuine environmental crusader. A person truly aggrieved by

"severe, ongoing and irreversible environmental degradation" would have immediately reported the matter to NEMA or the National Police Service or filed suit promptly. Instead, he first sent a demand letter focused solely on title and lease validity. The environmental allegations are therefore a manufactured, secondary pretext to gain a litigation advantage, which disentitles him to the Court's equitable discretion.

24. Additionally, it is deponed the Applicant has not offered any meaningful undertaking as to damages in view of the 1st Respondent's investment and the catastrophic losses an injunction would cause. That it is inconceivable that the Applicant could honour such an undertaking a further compelling reason to deny the interlocutory relief.
25. The court is invited to dismiss the Petitioner/Applicant's Notice of Motion dated 21st November 2025 as against the 1s Respondent with costs or in the alternative. That should the Court be inclined to grant any orders (which is strenuously opposed), direct the Applicant to provide a bank guarantee or cash deposit of KShs. 50,000,000 as security for costs and damages within 7 days, failing which the orders to automatically lapse.

SUBMISSIONS

26. The court issued directions on filing submissions on the application. The Petitioners applicants filed theirs dated 18/12/2025. The Respondents were not in the CTS as at the time of preparing this ruling in February 2026.

ANALYSIS AND DETERMINATION

27. The orders sought in the present application have already been outlined elsewhere in this ruling. The grounds upon which the application is opposed are also clear from the depositions of the 1st Respondent.
28. In the main petition the Petitioners seek the following orders;-
- a) A declaration that the Respondent's mining activities on Land Parcel No. BONDO/NYANGOMA/2405 are illegal, unlawful and unconstitutional.
 - b) A declaration that the Respondent has violated the Petitioners' right to a clean and healthy environment under Article 42 of the constitution.
 - c) An order of permanent injunction restraining the Respondent, its agents, servants or assigns from carrying out any mining operations on the suit land without proper licenses, approvals and consent of the lawful beneficiaries.
 - d) An order of immediate cessation and shutdown of all mining activities on the suit land.
 - e) An order directing NEMA to conduct an environmental assessment and file a report on the extent of environment degradation caused by the Respondent.
29. Having considered the orders sought in the application vis a vis the final orders in the petition noting it is now established that when looking at an application for

interlocutory orders the court is required to be careful not to delve into the merits of the main matter herein the Petition. Each party has ventilated for and against the orders sought at interlocutory stage. Arguments have been raised which could determine the main petition at interlocutory stage which the court must avoid.

30. The court has also taken time to appraise itself with the Mining Act 2016 and the licencing regime therein.
31. Therefore, it is the courts considered view that this petition proceeds for full hearing once and for all to enable the court freely delve into the merits by interrogating the depositions made on both sides of the divide. This will be a more efficient way of handling this petition.
32. There is also need for the court to visit the locus in quo to appreciate the situation on the ground in view of the emerging litigation surrounding the gold mining activities in the county of Siaya. This is not the first litigation before this court. I do not see any prejudice to be caused to any party as the court will have a general appreciation of the ground.
33. Parties shall be given an opportunity to have an input into the report and submit on it as part of the final submissions.
33. The application therefore is disposed in the following terms; -

- 1) That the application dated 21/11/2025 and the supporting affidavit thereto shall form part of the Petition
- 2) The Respondents Replying Affidavit sworn shall form part of the 1st respondent's response to the Petition.
- 3) There be a site visit by the court and the parties to plot no. Bondo Nyangoma/2405 to appreciate the environment. Parties who have not responded to the Petition will be at liberty to attend the visit subject to regularization of the record.
- 4) The parties shall appear before the DR ELC to agree on a suitable date on priority basis subject to the ELC court diary and finer administrative details of the site visit.
- 5) The Petition is fixed before the DR ELC on 25th February 2026 in view of (4) above.

Orders accordingly.

Dated, signed and delivered at Siaya this 17th day of February 2026

HON. LADY JUSTICE A. E. DENA

JUDGE

17/2/2025

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

Mr. Ogada for the Petitioners
Mr. Kalume for 1st Respondent.
Court assistant: Elisha Mboya