

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**  
**ELC L. PETITION NO E006 OF 2025**

**RIFT VALLEY MEAT SUPPLIERS MULTI-PURPOSE**

**CO-OPERATIVE SOCIETY LTD ..... APPLICANT**

**VERSUS**

**THE PRINCIPAL SECRETARY, STATE DEPARTMENT FOR LANDS  
AND PHYSICAL PLANNING ..... 1<sup>ST</sup>  
RESPONDENT**

**COUNTY GOVERNMENT OF NAKURU ..... 2<sup>ND</sup>  
RESPONDENT**

**DIRECTOR, LAND SURVEY ..... 3<sup>RD</sup>  
RESPONDENT**

**COUNTY LAND REGISTRAR, NAKURU ..... 4<sup>TH</sup>  
RESPONDENT**

**RULING**

1. This ruling is in respect of the Petitioner/Applicant’s Notice of Motion dated 18<sup>th</sup> September, 2025, seeking the following orders:
  - a) *Spent.*
  - b) *THAT pending the hearing and determination of the instant application inter-partes, this Honorable Court be and is hereby pleased to issue interim orders lifting the caveat unlawfully lodged by the Respondents either by themselves, their agents their proxies and/ or their*

*assignees and estop any hired goons from entering, utilizing and/or dealing in any way with all that property known as NAKURU MUNICIPALITY BLOCK 15/935.*

*c) THAT pending the hearing and determination of the instant application inter-partes, this Honorable Court be and is hereby pleased to issue interim temporary injunctive orders restraining the Respondents either by themselves, their agents their proxies and/ or their assignees from entering, alienating, selling, disposing renting, leasing, utilizing and/or dealing in any way with all that property known as NAKURU MUNICIPALITY BLOCK 15/935.*

*d) THAT pending the hearing and determination of the main suit, this Honorable Court be and is hereby pleased to issue conservatory injunctive orders restraining the Respondents either by themselves, their agents, their proxies and/ or their assignees from enter-mg, alienating, selling, disposing, renting, leasing, utilizing and/or dealing in any way with all that property known as NAKURU MUNICIPALITY BLOCK 15/935.*

*e) THAT the Costs of this application be borne by the Respondents.*

2. The application is supported by the annexed affidavit of Ronald Ngala, the Chairperson of the Petitioner/Applicant, sworn on 18<sup>th</sup> September 2025 where he deponed that the Petitioner/Applicant is the registered

owner of all that parcel of land known as **NAKURU MUNICIPALITY BLOCK 15/935**, which parcel is excised from all that parcel known as **NAKURU MUNICIPALITY BLOCK 15**.

3. He further deponed that the Petitioner was incorporated in 1943, and subsequently registered on 13<sup>th</sup> November, 1996, with the mandate of running a slaughterhouse established by the Kenya Meat Commission as a Rift Valley Branch. Mr. Ngala also stated that the Petitioner was allocated a parcel of land measuring 15 acres, on which they established the slaughterhouse to serve the community.
4. It was the Applicant's averment that in 1990, various officials of the Municipal Council of Nakuru begun re-allocating the said land which had not been registered in the Petitioner's name, which culminated in the land being registered in the names of new proprietors.
5. The Applicant deponed that the dispute has previously been litigated in the High Court vide **NAKURU HIGH COURT CIVIL SUIT NO. 152 OF 2000** and the Court of Appeal where the Petitioner lost huge chunks of its original parcel of land in which the courts cited the '*interest of the development of the town*'
6. Mr. Ngala stated that the reallocation to private individuals defeats the purpose for compulsory acquisition depriving the Petitioner of its parcel without compensation. That the Petitioner instituted proceedings in the Municipal Liaison Committee concerning further alienation of the 6 acres of land remaining from the encroachment of the 15 acres originally allocated to the Petitioner.

7. The Applicant deponed that the Liaison Committee decide in favour of the Petitioner's entitlement to 6acres resulting from the PDP of 1992 and directed the 2<sup>nd</sup> Respondent (as it then was) and practically the 1<sup>st</sup> 3<sup>rd</sup> and 4<sup>th</sup> Respondents to implement the decision, which has neither been controverted nor set aside. It was the Applicant's case that the relief sought in this petition is for the recognition of the acreage delineated by the Liaison Committee.
8. According to the Applicant, the Petitioner was only left with 1.5 acres which was subsequently registered in its name and issued with a Certificate of Lease dated 23<sup>rd</sup> April 2009, for **NAKURU MUNICIPALITY BLOCK 15/935. Measuring 0.5449 Ha**, which was communicated to the Town Clerk vide a letter dated 21<sup>st</sup> July 1999, upon the grant of the lease.
9. The Applicant averred that the respondents have continued to interfere with the parcel of land by unlawfully occupying the suit land through its agents, and threatening the peaceful occupation and enjoyment of the suit parcel of land.
10. Mr. Ngala stated that the Respondent lodged a caveat without a claim to the parcel of land which violates the Petitioners' rights and urged the court to allow the application as prayed.
11. The 1<sup>st</sup> 3<sup>rd</sup> and 4<sup>th</sup> Respondents filed grounds of opposition dated 24<sup>th</sup> November 2025, and stated that the Petitioner has not met the threshold

for the grant of the orders sought and urged the court to dismiss the application with costs.

12. The 2<sup>nd</sup> Respondent neither filed any response nor submissions to the Application.

### **PETITIONER'S SUBMISSIONS**

13. Counsel for the Petitioner filed submissions dated 14<sup>th</sup> January 2026 and identified the issues for determination as follows:

- a) Whether the Applicant has met the threshold for lifting of the caveat lodged against the suit property.*
- b) Whether the Applicant is entitled to interim and temporary injunctive relief.*
- c) Whether conservatory orders are warranted pending the hearing and determination of the suit.*
- d) Who should bear the costs of the Application?*

14. Counsel submitted that it is not in dispute that the Applicant is the registered proprietor of the suit property, and that the title has never been challenged through any lawful process. Further, Section 71 of the Land Registration Act provides that a caveat may only be lodged by a person claiming a registrable interest in land.

15. Mr. Ogola, further submitted that the Respondents have failed to demonstrate any proprietary or equitable interest capable of sustaining the caveat, or any allotment letter, lease, conveyance, court order, or equitable instrument conferring upon them any interest whatsoever in the suit

property, hence the continued existence of the caveat has effectively denied the Applicant access, use, and enjoyment of its land, contrary to Article 40 of the Constitution of Kenya, 2010.

16. Additionally, counsel urged the court to allow the application and submitted that the Applicant has met the threshold for grant of an order of injunction to preserve the substratum of the case. He relied on Section 73(1) of the Land Registration Act, and the cases of **Giella v Cassman Brown & Co. Ltd [1973] EA 358**, **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2012] eKLR**, **Mrao Ltd v First American Bank of Kenya Ltd & 2 Others [2003] KLR 175**, **Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] eKLR**, **Joseph Siro Mosioma v Housing Finance Company of Kenya Ltd & 3 Others [2008] eKLR**, **Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] eKLR**.
17. Mr. Ogola also submitted that the conservatory orders are distinct from injunctions and are rooted in the constitutional protection, to preserve the subject matter to safeguard the rights pending the hearing and determination of the dispute. Counsel relied on the cases of **Judicial Service Commission v Speaker of the National Assembly & another [2013] KEHC 911 (KLR)**, **Board of Management of Uhuru Secondary School v City County Director of Education & 2 Others [2015] eKLR**, and urged the court to allow the application as prayed.

### **THE 1<sup>ST</sup> 3<sup>RD</sup> AND 4<sup>TH</sup> RESPONDENTS'SUBMISSIONS**

18. Counsel for the 1<sup>st</sup> 3<sup>rd</sup> and 4<sup>th</sup> Respondents relied on the grounds of opposition dated 24<sup>th</sup> November 2025 together with submissions and identified the issues for determination as follows:
- a) Whether this Honorable Court should issue an order lifting the caveat or caution.***
  - b) Whether the Applicant/Petitioner has met the threshold for the grant of orders sought.***
  - c) Who should bear the costs?***
19. On the first issue as to whether the court should issue an order lifting the caveat, counsel, relied on Sections 71 to 75 of the Land Registration Act, 2012 which provides for the lifting of caveats or cautions. The Act provides that the person who placed the caution can withdraw it voluntarily by submitting a formal request to the Land Registrar.
20. It was counsel's submissions that the Applicant has not proved that they made any formal application to the Land Registrar as a proprietor or interested party for the removal of the Caution and the same was denied. Counsel stated that Section 75 of the Land Registration Act, 2012 provides that placing a caution without reasonable cause is against the law and an individual responsible may be required to pay damages to the registered owner for any losses that occur as a result. Counsel therefore submitted that the caveat was legally placed on the land as it was done in accordance with the law.

21. Counsel submitted that the Court may only make an order for the removal of a caution or caveat under Section 73(1) of the Land Registration Act on various grounds, including if the cautioner lacks a legitimate interest in the land, the caution was lodged without reasonable cause or the issue leading to the caveat has been resolved and all the above has not been proved by the Applicant/Petitioner to warrant the court to order the removal of the caution.
22. On the second issue as to whether the Applicant has met the threshold for the orders sought, counsel relied on Article 23(3) (c) of the Constitution provides that the court can grant conservatory orders among other reliefs, however the person seeking the orders must prove a fundamental right or freedom in the Bill of Rights has been or is likely to be infringed. Counsel further submitted that the Petitioners/Applicant has not demonstrated that any of their constitutional rights have been violated and/or threatened by the Respondents.
23. Counsel also relied on the principles for the grant of injunctions and stated that the Applicant has not met the threshold and urged the court to dismiss the application with costs.

### **ANALYSIS AND DETERMINATION**

24. The issues for determination are as to whether the court should lift a caveat lodged on the suit land, whether the Applicant has met the threshold for grant of conservatory orders and injunction.

25. On the first issue whether the court should lift the caveat lodged on the suit parcel of land, Section 73(1) of the Land Registration Act, 2012, provides that a caution may be withdrawn by the cautioner or removed by an order of the court.

26. Section 2 of the **Land Registration Act** sets out the definition of a caution to mean:

*“a notice in the form of a register to the effect that no action of a specified nature in relation to the land in respect of which the notice has been entered may be taken without first informing the person who gave the notice; or  
a caveat.”*

27. Section 71 (1) of the Act sets out the criteria of persons eligible to register a caution as follows:

*“71. (1) A person who-*  
*(a) claims the right, whether contractual or otherwise, to obtain an interest in any land, lease or charge, capable of creation by an instrument registrable under this Act;*  
*(b) is entitled to a licence; or*  
*(c) has presented a bankruptcy petition against the proprietor of any registered land, lease or charge.”*

28. In the case of **Boyes Vs Gathure (1969) EA 385**, the Court of Appeal held that:

*“... a caveat is intended to serve a twofold purpose: on the one hand, it is intended to give the caveator temporary protection, and on the other, it is intended to give notice of the nature of the claim to the person whose estate in the land is affected and to the world at large.”*

29. Similarly, in the case of **Sammy Nganga Ngatiri S.S Vs. George Ngatiri & 2 Others (2021) eKLR**, the court held that a caveat/caution should only serve as a temporary measure and should not be used to limit or deprive the applicant of his right to property indefinitely. Lodging a caveat/caution in itself is not illegal, as it is meant to preserve the suit property pending the adjudication of the ownership dispute, but a person must follow the laid down procedures provided for under Section 71 to 75 of the Land Registration Act.
30. The Applicant deponed in the supporting affidavit that the Petitioner is the registered owner of the suit parcel of land and the Respondents do not dispute this. This dispute has a long tortuous history over a long period of time.
31. The Respondents have not denied that there is a caveat that was lodged on the suit parcel of land. They have also not stated why the caveat/caution should continue being in existence on the suit parcel of land and what purpose it serves for a long period. A caveat should be a temporary measure as earlier stated, to preserve the suit parcel pending the resolution of a dispute.

32. I find that the Applicant is entitled to an order of removal of the caveat lodged on parcel No. **NAKURU MUNICIPALITY BLOCK 15/935**, measuring 0.5449 Ha. The Land Registrar Nakuru is hereby directed to remove the caveat within 14 days from the date of this ruling.
33. On the issue whether the Applicant is entitled to a conservatory order in the case of **Gatirau Peter Munya -v- Dickson Mwenda Kithinji & 2 Others (2014) eKLR**, the Supreme Court discussed, at paragraph 86, the nature of conservatory orders 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 Applicant’s case for orders of stay.”*

34. Similarly, in the case of **Invesco Assurance Co. Ltd vs. MW (Minor suing thro' next friend and mother (HW) [2016] eKLR**, the Court of Appeal defined a conservatory order 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.”*

35. In the case of **Board of Management of Uhuru Secondary School vs. City County Director of Education & 2 Others [2015] eKLR**, the Court summarized the principles for grant of conservatory orders as:

- (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.*

36. The Applicant has elaborately explained the genesis of the suit land and the dispute, the process of acquisition of the suit land and how it has been reduced from the original acreage to the status, which is captured in the title. These have proved that the Applicant has a *prima facie* case, therefore entitled to the orders sought. The court will not go to the substance of the case, which will be dealt with at the hearing of this petition.

37. There is a need to preserve the substratum of the case, and this being a slaughterhouse that serves the public, I find that it is in the interest of justice to grant a conservatory order. I further grant orders of temporary injunction restraining the Respondents, their agents or servants from interfering in anyway with the peaceful occupation and enjoyment of the suit parcel of land known as **NAKURU MUNICIPALITY BLOCK 15/935**.

38. The costs of the Application are in the cause.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 13<sup>TH</sup> DAY OF FEBRUARY 2026.**

**M. A. ODENY  
JUDGE**