



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MILIMANI LAW COURTS, NAIROBI
ELCEP PETITION NO. E003 OF 2026

BETWEEN

**LANKANA SACCO, NABOKA SACCO, KADANA T. SACCO,
 BY BUSS SACCO, LUMINOUS
 SACCOPETITIONERS**

-VERSUS-

**KENYA RAILWAYS CORPORATION.....1st
 RESPONDENT**
**NAIROBI CITY COUNTY GOVERNMENT2nd
 RESPONDENT**

AND

**KAREN LANG'ATA DISTRICT ASSOCIATION.....1st
 INTERESTED PARTY**
**KENYA URBAN ROADS AUTHORITY2nd
 INTERESTED PARTY**

RULING

The Application

1. The application before Court is the Notice of Motion dated 26th January 2026. It is brought pursuant to **sections 13(3) and (4) and 19(2) of the Environment and Land Court Act, Order 42 Rule 6 of the Civil Procedure Rules, Articles 42, 69 and 70 of the Constitution, and sections 1A, 1B and 3A of the Civil Procedure Act.** Through the application, the Petitioners seek, inter alia, conservatory orders restraining the Respondents, their servants, agents or contractors from constructing a railway line, evicting, demolishing or interfering with buildings, installations or erections on land situated near the Karen Roundabout, currently serving as a matatu terminus within the Karen Area, pending the hearing and determination of the Petition.
2. The application is premised on the grounds set out on its face and is supported by the Supporting Affidavit sworn on 26th January 2026 by Julius Nyabuti Ogeto, the Chairman of the 1st Petitioner, who depones that he is duly authorised to swear the affidavit on behalf of the other Petitioners. It is deponed that the Petitioners are duly registered Matatu Savings and Credit Cooperative Societies operating public service vehicles within Nairobi County and neighbouring counties, and that they have invested heavily in their operations, including acquisition of vehicles, route licences, employment of staff and compliance with applicable traffic regulations.
3. The deponent further avers that, with the approval of the Nairobi City County Government and the Kenya Urban Roads Authority, the Petitioners have for the past two years operated from a road reserve along Ngong Road near the Karen Roundabout, which has served as the designated matatu terminus for public service vehicles within the Karen Area. It is deponed that the 1st Respondent has commenced surveys with the intention of constructing a railway terminus on the said land without public participation, consultation or notice, and that unless restrained,

the Petitioners stand to suffer unlawful eviction, loss of livelihood and irreparable harm, as well as disruption of essential public transport services relied upon by members of the public.

Response

4. In response, the application is opposed through the Replying Affidavit sworn on the 16th February 2026 by Engineer John Maina on behalf of the 1st Respondent, who depones that he is the Planning, Design and Environmental Manager of the 1st Respondent and is directly involved in the oversight of the Ngong-Riruta Commuter Meter Gauge Railway Project. He avers that the Project is a mixed-traffic railway corridor intended for both passenger and freight transport and is designed to enhance last-mile connectivity and integration with the Standard Gauge Railway. It is deponed that the Project is a critical public infrastructure undertaking whose suspension would be prejudicial to public interest.
5. The deponent further states that the allegations made by the Petitioners regarding surveys, imminent eviction and displacement are unverified, speculative and unsupported by cogent evidence. He challenges the photographs annexed by the Petitioners as unclear and incapable of proving any ongoing surveys on the road reserve. It is further deponed that the Petitioners have not exhibited any licence, grant or lawful permission authorising their occupation and use of the road reserve as a matatu terminus, the same being public land reserved for public use. The deponent asserts that the Application is intended to protect private interests and defeat a public project undertaken for the benefit of the wider public.
6. Additionally, the 1st Respondent avers that the Project has already undergone an Environmental and Social Impact Assessment, which was approved on 17th May 2024, and that public participation was duly

conducted and confirmed. It is deponed that the issue of public participation was conclusively determined by this Court in Milimani ELC Petition No. E028 of 2024, where the adequacy of public participation and the ESIA process was upheld. The deponent further states that the Project was approximately 40.50% complete at the time of filing the Application and that conservatory orders had already been issued in Milimani HCCHR Petition No. E843 of 2025, thereby rendering the present Application unnecessary, duplicative and contrary to public interest.

Further Affidavit

7. In a Further Affidavit sworn on 18th February 2026, Julius Nyabuti Ogeto, on behalf of the Petitioners, responds to the 1st Respondent's Replying Affidavit by asserting that while the railway project is claimed to be of public importance, thousands of commuters equally depend on the existing matatu terminus for their daily transport needs and would suffer irreparable harm if displaced. He specifically depones that on 12th September 2025, he personally witnessed employees or representatives of the 1st Respondent sealing off the matatu terminus, drilling holes and conducting surveys on the road reserve with the intention of establishing a railway terminus, and that they declined to engage or provide information to the matatu operators, photographs of which were annexed.
8. He further avers that the 1st Respondent's failure to expressly deny its intention to construct a railway terminus on the land, or to produce a map showing the railway route and terminus location, reinforces the Petitioners' fears of imminent eviction without public participation, consultation, compensation or provision of an alternative site.

9. The deponent also challenges reliance on conservatory orders issued in Milimani HCCHR Petition No. E843 of 2025, stating that the Petitioners are not parties thereto and that the existence of such orders does not bar this Court from granting relief, and maintains that no meaningful public participation involving the Petitioners was undertaken, thereby rendering the threatened displacement unconstitutional and harmful to both the Petitioners and the public they serve.

Submissions

10. The application proceeded by way of written submissions.

Petitioners Submissions

11. The **Petitioners** submitted that the sole issue for determination at this interlocutory stage is whether they have met the threshold for the grant of conservatory orders pending the hearing and determination of the Petition. Relying on **Gatirau Peter Munya -Vs- Dickson Mwenda Kithinji & 2 Others [2014] eKLR, Board of Management of Uhuru Secondary School -Vs- City County Director of Education & 2 Others [2015] eKLR, and Mrao Ltd. -Vs- First American Bank of Kenya Ltd & 2 Others [2003] eKLR**, the Petitioners argued that they had established a prima facie case by demonstrating arguable constitutional violations relating to lack of public participation, breach of fair administrative action under Article 47, threatened eviction without due process, and violation of socio-economic rights under Article 43.

12. They further relied on **Doctors for Life International -Vs- Speaker of the National Assembly, Suchan Investment Ltd. -Vs- Ministry of National Heritage & Culture, Kenya Railways Corporation -Vs- Sifuna, Mitu-Bell Welfare Society -Vs- Kenya Airports Authority, and Satrose Ayuma & Others -Vs- Registered Trustees of the Kenya Railways Staff Retirement Benefits Scheme** to submit that

eviction without notice, consultation and provision of alternatives is unconstitutional, that the Petition would be rendered nugatory if construction proceeds, that the harm occasioned would be irreparable, and that public interest favours preservation of the status quo to protect commuters and livelihoods pending determination of the Petition.

Respondents Submission

13. On the other hand, the 1st Respondent submitted that the issues for determination were whether the Petitioners had satisfied the legal threshold for grant of conservatory orders and who should bear costs. Relying on **Judicial Service Commission -Vs- Speaker of the National Assembly & Another [2013] eKLR, Abdullahi Mohammed Farah & 3 Others -Vs- County Government of Mandera & Another [2021] eKLR, Mrao Ltd. -Vs- First American Bank of Kenya Ltd. & 2 Others [2003] eKLR**, and **Isaiah Luyara Odando & Another -Vs- Kenya Revenue Authority & 6 Others [2022] eKLR**, the 1st Respondent argued that conservatory orders are exceptional public law remedies which should not issue on the basis of speculation or unsubstantiated allegations.

14. It was submitted that the Petitioners had not demonstrated a prima facie case, real prejudice, or infringement of constitutional rights, and that public participation and ESIA processes had already been undertaken and upheld in prior litigation. The 1st Respondent further contended that there existed subsisting conservatory orders in Milimani HCCHR Petition No. E843 of 2025, that the railway project was approximately 40.5% complete and funded by public resources, and that stopping the project would severely prejudice public interest, prudent use of public funds, and completion of a major national infrastructure project, thereby justifying dismissal of the Application with costs.

Issues for Determination

15. Having considered the Notice of Motion dated, the affidavits filed both in support of and in opposition thereto together with the annexures, as well as the written submissions and authorities cited by the parties, the Court is of the view that the issues falling for determination are as follows: —

- a) Whether the Petitioners have satisfied the legal threshold for the grant of conservatory orders pending the hearing and determination of the Petition.
- b) Who should bear the costs of the application.

Analysis and Determination

16. It is now established in Kenya that the principles for consideration in determining whether a temporary injunction may be granted are well settled in **Giella -Vs- Cassman Brown & Co. Ltd (1973) EA 358**, where the Court held that: *“First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”* Guided by the foregoing principles, I now consider whether the Petitioners have satisfied the three limbs sequentially.

17. On the first limb, whether a prima facie case has been established, I have considered the Notice of Motion, the Supporting and Further Affidavits sworn on behalf of the Petitioners together with the annexures thereto, as well as the Replying Affidavit sworn on behalf of the 1st Respondent and the documents exhibited therein. The Petitioners allege threatened eviction, lack of consultation and intended construction of a

railway terminus on the land they currently occupy. However, at this interlocutory stage, and based on the material presently before Court, the Petitioners have not exhibited any lease, licence, grant, allotment letter or other documentary instrument demonstrating proprietary or exclusive rights over the road reserve in question. Their claim to continued occupation is therefore contested and, on the material placed before Court at this stage, is not supported by documentary evidence establishing an enforceable legal interest for purposes of interim relief.

18. Conversely, the 1st Respondent has placed before Court documentation demonstrating that the railway project is a public infrastructure project undertaken pursuant to statutory approvals and relevant governmental processes, including an Environmental and Social Impact Assessment. In addition, it is not disputed on the record that there exist conservatory orders issued by a court of equal jurisdiction in respect of the same railway project. On the basis of the material before Court, and applying the test articulated in **Mrao Ltd. -Vs- First American Bank of Kenya Ltd & 2 Others [2003] eKLR**, I am not persuaded that the Petitioners have, at this stage, demonstrated a prima facie case warranting the grant of interlocutory relief.

19. With respect to irreparable harm, the Petitioners contend that they will suffer loss of livelihood and disruption of operations should the orders sought not be granted. While these assertions are set out in the affidavits on record, the Petitioners have not, at this interlocutory stage, placed before Court evidence demonstrating that such loss, if ultimately established, would be incapable of compensation by an award of damages. The material before Court does not demonstrate that the alleged harm is permanent, irreversible or incapable of quantification. In the circumstances, and without prejudice to the substantive issues to be determined at the hearing of the Petition, I am not satisfied that the

second limb of the *Giella* test has been met.

20. On the balance of convenience, I have considered the competing interests disclosed by the material on record. The Petitioners seek orders whose effect would be to restrain further implementation of an ongoing public infrastructure project. The 1st Respondent has placed before Court progress reports showing the status of the project and the extent of public funds already expended. Granting the orders sought would have the effect of interrupting or delaying the implementation of a project undertaken pursuant to statutory authority. In the absence of demonstrated violation of a legally protected right at this interlocutory stage, the balance of convenience does not favour the grant of conservatory or injunctive relief.
21. Courts have consistently cautioned that conservatory or injunctive relief, particularly where it would have the effect of halting or delaying an ongoing public infrastructure project, ought not to be granted in the absence of clear, cogent and compelling evidence of constitutional or legal violation. In **Judicial Service Commission -Vs- Speaker of the National Assembly & Another [2013] eKLR**, the Court emphasised that conservatory orders are remedies in rem intended to preserve the constitutional order and should not be issued so as to impede lawful governmental action without sufficient basis. Similarly, in **Abdullahi Mohammed Farah & 3 Others -Vs- County Government of Mandera & Another [2021] eKLR**, the Court held that an applicant must demonstrate real prejudice and a clear violation of rights, and that public interest is a central consideration. On the evidence placed before this Court, that threshold has not been met.

Final Orders

22. In the result, and for the reasons set out hereinabove, the Court makes the following orders: —

- a) The Petitioners' Notice of Motion dated 26th January 2026 is hereby dismissed for lack of merit.
- b) The costs of the Application shall be in the cause.

It is so ordered!

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **20TH** day of **FEBRUARY, 2026.**

MOHAMMED N. KULLOW
JUDGE

Ruling delivered in the presence of: -

Mr. Ondego..... for the Petitioners

Ms. Karagi..... for 1st Respondent

N/A..... for 2nd Respondent

N/A..... for the 1st Interested Party

Ms. Njuguna..... for the 2nd Interested Party

Philomena W...... Court Assistant