

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT**  
**KITALE**

**ELC PETITION NO. E009 OF 2025**

**IN THE MATTER OF**  
**ARTICLES 2, 10, 19, 20, 21, 22, 23, 40, 47, & 50**  
**OF THE CONSTITUTION OF KENYA**

**AND IN THE MATTER OF**  
**SECTIONS 4, 6, & 7 OF THE FAIR ADMINISTRATIVE**  
**ACTION ACT, NO. 4 OF 2015**

**AND IN THE MATTER OF**  
**MINISTER'S APPEAL DECISION DATED 24<sup>TH</sup> MAY**  
**2022 MADE IN THE APPEAL TO THE MINISTER**  
**CASE NUMBER 167 OF 1995 IN RESPECT OF**  
**PARCEL NUMBER 375 (L.R. WEST**  
**POKOT/CHEPARERIA/375) IN CHEPARERIA**  
**ADJUDICATION SECTION**

**BETWEEN**

**SAMSON NAKIYO**  
*(Administrator of the Estate of*  
**KALINYONGOR**

**-Deceased)**

-----**PETITIONER**

**AND**

**THE CABINET SECRETARY, MINISTRY OF LANDS,**  
**HOUSING & URBAN DEVELOPMENT-----1<sup>ST</sup>**

**RESPONDENT**

**DIRECTOR OF LAND ADJUDICATION-----2<sup>ND</sup>**

**RESPONDENT**

**THE DEPUTY COUNTY COMMISSIONER**

**KIPKOMO SUB-COUNTY-----3<sup>RD</sup>  
RESPONDENT**

**THE HON. ATTORNEY GENERAL-----4<sup>TH</sup>  
RESPONDENT**

**AND**

**ELIUD KAMAMA THEOPHILUS  
(Administrator of the Estate of  
PALOO CHEPKOROU PTOTOTICH -Deceased) -----  
INTERESTED PARTY**

**RULING**

- 1.** The application dated **16/12/2025** seeks conservatory orders restraining the respondents from implementing, enforcing, registering, acting upon, or in any manner giving effect to the Minister's Appeal Decision dated **24/5/2022** in **Appeal No. 167 of 1995**, regarding parcel No. **375-Chepareria** Adjudication Section.
- 2.** In the second prayer, the court is asked to restrain the Land Registrar, West Pokot County, from registering any subdivision, transfer, transmission, entry, or dealings on the register for L.R. No. **West Pokot Chepareria/375**, pursuant to the challenged Minister's decision.
- 3.** The grounds are set out on the face of the application and in a supporting affidavit sworn by Samson Nakiyo on **10/12/2025**. It is deposed that the applicant holds a limited grant of letters of

administration for the estate of the late Nakio Kalonyongor, his late father, who had a dispute with the interested party's father at the demarcation stage. The interested party had lodged an objection with the Land Adjudication Committee and later with the Arbitration Board, leading to decisions dated **15/9/1982** and **30/11/1984**, respectively. He annexed copies of the limited grant and the two decisions as annexures marked **NK-(01)**, **(02)**, and **(03)**, respectively.

4. The applicant deposes that the interested party later objected to the Adjudication Register under **Section 26** of the Land Adjudication Act, whose decision was delivered on **19/8/1992**, confirming the earlier decisions as per annexure marked **NK-(4)**. The applicant deposes that, dissatisfied with the Adjudication Officer's decision, an appeal was lodged with the Minister on **16/9/1992**, as per the annexure marked **NK-(5)**.
5. The applicant deposes that pending the Minister's decision, the late father was registered as owner of the **West Pokot Chepareria/375** subject to a restriction, but died on **24/3/2008**, before the Minister's appeal was heard and determined, as according to the death certificate attached as **NK-**

**(6)**, while the interested party's father passed on, on **15/10/1999**.

- 6.** Further, the applicant deposes that after **30** years, the Minister's appeal was heard on **12/7/2022** and a decision was made on **24/5/2022**, while there were no letters of administration in respect to the estates of the deceased parties. The applicant faults the hearing, proceedings, and the decision was made in vain, was done by parties and by a tribunal lacking jurisdiction, hence the parties were not accorded a fair hearing.
- 7.** The applicant deposes that the effect of the Minister's decision was to overturn all the prior decisions awarding the suit land to the applicant, and only retaining **5** acres as per annexure marked **NK-7(A)** and **(B)**.
- 8.** The applicant deposes that the redistribution of the suit land was made without valuation, reasons, or legal basis, without considering the previous evidence by the Land Adjudication Officer, but instead received fresh evidence from different witnesses without giving reasons for diverting from the previous decision.
- 9.** The applicant deposes that by a letter dated **26/3/2025**, the County Surveyor was directed to implement the decision as per annexure marked

**NK-(8)** proceeded to issue a notice dated **11/2/2025** to the parties to visit the land as per annexure marked **NK-(9)**. The applicant deposes that he became aware of the decision when he obtained the County Surveyor's letter dated **1/10/2025**, hence leading to the filing of this petition.

**10.** The applicant deposes that the decision purports to divert the estate off the suit land, expose it to loss of possession, occupation, and use, contrary to **Articles 40, 47, and 50** of the Constitution, with an imminent threat of eviction, subdivision, and re-demarcation, effectively altering the physical boundaries, causing displacement, disruption of possession and rendering the petition nugatory.

**11.** The application was supported by oral submissions by Mr. Magal, advocate, emphasizing the contents of the application that it was in the public interest to issue conservatory orders.

**12.** Learned counsel for the respondents, Miss. Chilaka submitted that they were opposed to the application, but left it to the court, since no replying affidavit had been filed. Learned counsel, Miss. Chebet, for the interested party, relied on grounds of opposition dated **28/1/2026**, that the court lacks jurisdiction to entertain the application and the

petition, since no judicial review application was filed on time to quash the impugned decisions.

- 13.** Learned counsel submitted that the applicant had failed to exhaust the alternative available mechanisms. Further, learned counsel submitted that the parties' representatives were in attendance at the Minister's appeal proceedings, and they did not raise the issue of capacity then, and have also been on the suit land all this time.
- 14.** In a rejoinder, Mr. Magal, advocate, submitted that the two parcels are Nos. **374** and **375**, and the effect of the implementation is that the whole **17** acres of the land will go to the interested party, while his client will only retain **5** acres, hence there will be irreparable loss or damage, unless the orders are issued. Learned counsel submitted that the petition will be rendered nugatory.
- 15.** Learned counsel submitted that the jurisdiction of the court was properly invoked, given that judicial review is now subsumed under the new Constitution.
- 16.** The jurisdiction to issue conservatory orders is discretionary. Such orders are not granted as a matter of course. They are exceptional reliefs intended to preserve the substratum of a constitutional dispute, without determining it in

advance. The parameters to consider were set out in **Gatirau Peter Munya -vs- Dickson Mwenda Kithinji & Others [2014] eKLR**. An applicant must establish a *prima facie* case, demonstrate real danger of prejudice if the order is not granted, and the court must weigh and balance the public interest. The three considerations must be established conjunctively. Absence of one is fatal.

**17.** A conservatory order is a judicial remedy sought or issued by a court to preserve a subject matter until a petition is heard. It seeks to restore the status *quo ante*, to ensure the petition is not rendered nugatory. At an interim stage, the court does not delve into the merits of the case, but looks at the overview of the substance to establish if a *prima facie* case has been established, to warrant the orders sought. See **Mrao Ltd -vs- First American Bank (K) Ltd [2003] eKLR**.

**18.** Conservatory orders bear a public law connotation. They are granted on the inherent merits of a case. The court looks at the public interest, constitutional values, principles, proportionate magnitudes, and the priority levels attributed to the relevant causes.

**19.** In **Muslims for Human Rights (MUHURI) & 2 others -vs- Attorney General & 2 others [2011] KEHC 4291 (KLR)**, the court warned that it

must not make final findings or conclusive determination.

- 20.** In this application, the jurisdiction of the court is attacked by the interested party, since there was a non-exhaustion of the judicial review process to invalidate the Minister's appeal. In **Amarnath (Suing on Behalf of the Estate of the Late Amarnath Gupta) -vs- Kazungu & 2 others [2023] KECA 1280 (KLR)**, the issue was the jurisdiction of the Environment and Land Court to entertain a challenge of a Minister's decision made pursuant to Section **29** of **Cap 284**.
- 21.** The court held that the only option for the appellant was to pursue judicial review and could therefore not reopen the case and challenge it except through judicial review. The court cited **Julia Kaburia -vs- Manene Kabeere & 6 Others [2007] KECA 61 (KLR)** and **Tobias Achola Osindi & 13 others -vs- Cyprianus Otieno Ogalo & 6 others [2013] KEHC 2165 (KLR)**, that the court's jurisdiction is ousted by **Cap 284**.
- 22.** In this application, the applicant seeks, through the petition, to challenge the Minister's decision made on **24/5/2022**, three years after it was made outside the alternative process provided under the Land Adjudication Act, **Cap 284**. The applicant has

not sought leave to challenge the decision out of time or explained the delay in lodging the petition, other than a judicial review application.

**23.** In the Minister's appeal, the applicant was a participant at the hearing and cannot turn around and deny knowledge of the dates for the hearing and the outcome of the decision, as well as his capacity at the time.

**24.** In **Musila -vs- Thengi & 2 others [2025] KECA 750 (KLR)**, the court observed that **Article 50** of the Constitution addresses the right to have a dispute fairly resolved. The law is not that a party must be heard in every litigation, so long as a reasonable opportunity is given, and where it is not utilized, then the only point on which a party not utilizing it can be heard is why he did not utilize it.

**25.** The applicant was given an opportunity to appeal against the Minister's decision, but failed to exhaust the available opportunity on time or at all within **6** months of the decision. Invoking the jurisdiction of this court through a petition instead of judicial review to undo the decision **3** years down the line is an abuse of the court. The court agrees with the interested party that it lacks jurisdiction not only to grant conservatory orders, but also to entertain this petition.

**26.** The upshot is that the petition and the application dated **16/12/2025** are hereby struck out and or dismissed respectively, for lack of jurisdiction and merits.

**27.** Costs to the interested party. File closed.

**28.** Orders accordingly.

**Ruling dated, signed, and delivered** via **Microsoft Teams/Open Court** at **Kitale** on this **25<sup>th</sup>** day of **February 2026**.

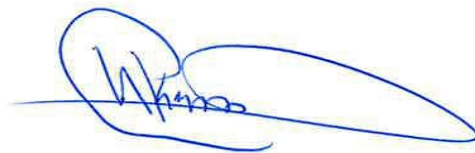
**In the presence of:**

Court Assistant - Dennis

Magal for petitioner present

Sugut for Chebet for the interested party present

No appearance for the respondents



**HON. C.K. NZILI**  
**JUDGE, ELC KITALE.**