REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT VOI

ELCLC NO. E019 OF 2025

GIBSON MNYIKA MWAWASI

…….PLAINTIFF/APPLICANT

=VERSUS=

KENYA NATIONAL HIGHWAYS AUTHORITY……1ST DEFENDANT/RESPONDENT

THE ATTORNEY GENERAL……..2ND DEFENDANT/RESPONDENT

RULING

1. This ruling is in respect to the Applicant/Plaintiff's application dated 22nd December 2025 seeking the following reliefs:-

   (i) Spent…

   (ii) Spent…

   (iii) THAT pending the hearing and determination of this application, this Honourable Court be pleased to issue injunction orders restraining the 1st Respondent from demolishing, removing

or interfering with the Applicant's property located at Caltex along Mombasa A8 Road – Taita Taveta County.

(iv) THAT this Honourable Court be pleased to issue an injunction restraining the 1st Respondent from demolishing, removing or interfering with the Applicant's property located at Caltex along Mombasa A8 Road – Taita Taveta county pending the hearing and determination of the main suit.

(v) THAT this Honourable Court be pleased to issue restraining orders to the 1st Respondent from disconnecting water and electricity services to the suit property as threatened in the notice.

(vi) THAT the costs of this application be in the case.

2. The application was premised on the grounds on its face and supported by the Affidavit sworn by the Applicant/Plaintiff on 22nd December 2025**.**
3. It was averred that the Applicant/Plaintiff is the registered and beneficial owner of parcel known as Title No. L.R No.

4637/7 (Grant No. CR. 46572) (hereinafter “the suit property”) located in Voi in the Taita Taveta County.

4. On the 17th December 2025 the 1st Respondent visited the premises and proceeded to affix notices on his containers. The 1st Respondent further proceeded to mark the suit property with ‘X’ interfering with the peaceful habitation of the tenants therein.
5. It was further averred that the actions of the 1st Respondent has caused substantial anguish and turmoil to enjoy his property rights as enshrined under Article 40 of the Constitution of Kenya.
6. It was also averred that the 1st Respondent’s actions are in outright violation of Fair Administrative Action as provided for under Article 47 of the Constitution in that no valid reasons were provided in their thirty (30) day notice.
7. THAT further, litigation took place in **Voi ELC J.R. Appl. No. E002 of 2024 Gibson Mnyika Mwawasi v. CECM Lands Taita Taveta County, Kenya National Highways Authority (KeNHA) & 3 Others** wherein the court approved his building plans.

8. On the 2nd August 2025 following the above referenced judgment, the County Government of Taita Taveta approved and issued him with approval plans for the development he undertook in the suit property.
9. The Plaintiff averred that he has invested heavily in the suit property following the County Approvals marked as annexture GMM-6. The suit property currently has 12 stalls with some of the units rented out.
10. No fresh survey report has been provided to contradict the existing court findings and the validity of his title and they are simply acting on whim and malice.
11. The application was opposed vide a replying affidavit sworn by **Felix Orina** on 11th February 2026. It was averred that the Honourable Court in the referenced judgment did not approve the Applicant's building plans, but merely quashed the initial decision of the County Director of Physical and Land Use Planning Taita Taveta rejecting the Applicant's application for building plans approval for the suit property dated 28th April 2023.
12. The Court quashed the above referenced decision of the County Director of Taita Taveta solely for the reasons

that the Applicant was not granted an opportunity to be heard before the County Physical and Land Use Planning Liaison Committee and that no written reasons were given for the rejection save for the oral communication from Mr. Eric Kennedy Ochieng representing the County Government of Taita Taveta and as such by virtue of the doctrine of separation of powers the Court cannot direct constitutional or statutory bodies on how to exercise their mandates, nor can they validate developments that offend the law.

13. It was averred that the Applicant's assertion under paragraphs 9 and 10 of its Supporting Affidavit sworn on 22nd December 2025 that the said Judgment conferred proprietary or development rights is therefore false, misleading and legally untenable.

14. THAT additionally, the court in the above referenced matter only sat for judicial review and did not determine the issue of ownership or encroachment over the suit property.

15. Further the approval of the building plans by the County Government of Taita Taveta did not and could not

confer or validate ownership of the suit property, the same being merely an administrative act undertaken pursuant to Sections 57 to 63 of the Physical and Land Use Planning Act, No. 13 of 2019 and does not override questions of title, public land status or compliance with other applicable laws.

16. It was averred that whereas the Applicant alleges to be the registered proprietor of Title No. C.R 46572 (hereinafter "the suit property") by virtue of a Letter of Allotment Ref. No. 37173/XVIII dated 5th May 1998, the said parcel of land lies wholly within a public road reserve and was at no time available for alienation or allotment.

17. THAT as evidenced by the Cadastral Survey Plan F.R No. 120/86, the suit property was unlawfully hived off from the Nairobi-Mombasa Highway (A8) road reserve, contrary to law.

18. According to the 1st Respondent, the suit property was reserved as a sight triangle, that is, an area where part of a corner is truncated or reshaped to provide drivers and pedestrians with clearer sight lines and additional

space to manoeuvre at the Mombasa Road – Voi Road T-junction, to enhance visibility, safety, and traffic flow.

19. It was stated that the suit property forms part of the Taveta, Voi-Mombasa road under the mandate and custody of KeNHA, and its road reserve constitutes public land protected under Articles 62 and 40(6) of the Constitution of Kenya, 2010.

20. THAT as evidenced by the Cadastral Survey Plans F.R. No. 124/135, 8/91 and 152/91, similar truncations and safety measures have been provided at other junctions along the road leading to Taveta.

21. It was further stated that the suit property, has been confirmed through multiple authoritative verifications (including the National Land Commission, Ministry of Lands and National Director of Physical Planning) to be part of a public road reserve under the custody of the 1st Respondent. The evidence establishes:

(i) The property lies within the Nairobi-Mombasa Highway (A8) road reserve;

(ii) Documents used to allocate the property, such as the Part Development Plan and allotment letter, are unauthentic;

(iii) The property was previously reserved as a sight triangle surrendered during a subdivision and could not lawfully be allocated to private entities; and

(iv) That the PDP No. TTA/64/96/4/B dated 14th February 1996 is not in the records of approved plans under the custody of National Director of Physical Planning.

22. It was averred that in view of the fact that the suit property is a public road reserve invalidates the Applicant's claim of ownership and extinguishes any alleged proprietary, developmental or tenancy rights.

23. It was further averred that the notices issued by the 1st Respondent were neither malicious nor issued in bad faith. The notices were issued following due process, in furtherance of public safety and in compliance with applicable law and policy.

24. It was also averred that the Applicant has been accorded adequate notice and an opportunity to comply with the law by purging the illegal encroachment and that

Article 47 of the Constitution does not require a formal hearing in circumstances involving removal of unlawful encroachments on public land.

25. According to the 1st Respondent, Article 40(6) of the Constitution expressly excludes protection of property that has been unlawfully acquired and no equitable relief can issue in favour of the Applicant.

26. The Applicant's developments were undertaken at their own peril, without lawful authority and cannot be used to sanitize an illegality or estop the 1st Respondent from discharging its statutory duty to protect road reserves.

27. The Applicant has not demonstrated a prima facie case, nor any legal right capable of protection by conservatory or injunctive orders. The application is an abuse of the court process, is devoid of merit and is intended to perpetuate an illegality on public land.

28. It was stated that is in the public interest, road safety, and the rule of law that the Applicant's application be dismissed with costs to the Respondents.

29. The Plaintiff also field written submissions dated 16th February 2026. Counsel submitted on the following issues:

(i) Whether the application meets the threshold.

(ii) Whether the Applicant has established a prima facie case with a probability of success.

(iii) Whether the Applicant will suffer irreparable injury if the injunction is not granted.

(iv) Where the balance of convenience lies in favour of the Applicant.

30. It was argued that the Plaintiff has established a prima case by providing clear evidence of ownership though a registered title deed and building approvals from the County Government of Taita Taveta. It was also submitted that loss of a home or business can't be remedied by money alone and further the 1st Respondent's Notice violates Article 47 of the Constitution. Reliance was placed on the cases of **Mrao Ltd =Versus= First American Bank of Kenya & 2 Others (2003) KLR 125, Highbury Properties Ltd =Versus= Nairobi City County (2017) eKLR and Hosea Nyandika Mosagwe =Versus= county Government of Nyamira (2016)**

eKLR and Ibrahim Sango Osman =Versus= Minister of State of Provincial Administration (2011) eKLR.

31. The Court was urged to grant the reliefs sought.

32. The 1st Respondent filed written submissions dated 27th February 2026. Counsel submitted on the following issues

i) Merit of the Applicant's application

ii) Costs

33. Citing the cases of **Nguruman Limited Vs Jan Bonde Nielson & 2 Others [2014] eKLR and Giella vs Cassman Brown & Co Ltd (1973) EA 358** it was argued that the application does not meet the threshold set out in the said cases to warrant the grant of the orders sought.

34. It was submitted that no prima facie case has been presented. The suit parcel lies on public land being on a road reserve. The uncontroverted evidence demonstrates that the suit property lies wholly within the Nairobi-Mombasa Highway (A8) road reserve and constitutes a sight triangle at the Mombasa Road-Voi Road T-junction, reserved for traffic visibility and safety. The property forms part of the national road network under the statutory

mandate of the Kenya National Highways Authority and is therefore public land within the meaning of Article 62 of the Constitution of Kenya, 2010 and that public land reserved for road purposes is not available for private allocation. Any purported allotment or title issued in respect thereof is null and void ab initio.

35. It was further submitted that the Judicial review judgment did not vindicate the Applicant but merely quashed the County Director's decision to reject the Applicant's building plans without according him an opportunity to be heard. The Applicant's assertion that the judgment conferred proprietary or developmental rights is therefore legally untenable.

36. On the Applicant's allegation of breach of fair administrative action, the 1st Respondent, it was submitted that adequate notice was issued, the applicant was given an opportunity to comply, removal of unlawfully encroachments on public land do not require a formal hearing and that admnistrative action taken to enforce clear statutory and constitutional provisions does not

become unlawful merely because it is adverse to the recipient.

37. In respect to irreparable loss, it was submitted that any alleged financial loss is quantifiable and compensable in damages, should the Applicant ultimately succeed and further the Applicant's developments, if any, were undertaken at its own peril on land forming part of a road reserve. Therefore, where occupation is unlawful, removal of the encroachment cannot amount to irreparable harm.

38. In respect to balance of convivence, it was submitted that the suit property constitutes a sight triangle designed to enhance road safety at a busy junction along the Nairobi- Mombasa Highway (A8). The public interest in road safety, orderly planning, and protection of public land far outweighs any private commercial interest asserted by the Applicant. The 1st Respondent is under a statutory obligation to protect and maintain national road reserves in the public interest and thus the balance of convivence tilts in favour of the 1st Respondent.

39. The court was urged to dismiss the application with costs.

40. The issue calling for determination is whether the Applicant herein has made a case for grant of the reliefs sought.

41. The principles governing the grant of interlocutory injunctions were set out in the well-known case of **Giella v Cassman Brown & Co. Ltd [1973] EA 358**, where the court held that an applicant must establish:

a) a prima facie case with a probability of success;

b) irreparable injury which cannot be adequately compensated by damages; and

c) if the court is in doubt, the matter should be determined on a balance of convenience.

42. These principles were further clarified by the Court of Appeal in **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR**, where the Court emphasized that the three conditions are sequential and each must be satisfied before the court exercises its discretion.

43. In the instant case, the Applicant relies on a registered title to the suit property and approvals issued by the County Government of Taita Taveta. The copy of

the title was annexed as “GMM2.” However, the Respondent has placed before the Court evidence suggesting that the suit property lies within a road reserve forming part of the Nairobi–Mombasa Highway (A8).

44. The 1st Respondent has further furnished this Court with Cadastral Survey Plans F.R No. 120/86, F.R No. 124/135, F.R No. 8/91 and F.R No. 152/91, which according to the 1st Respondent demonstrate that the suit parcel falls within the Nairobi–Mombasa Highway (A8) road reserve and forms part of a sight triangle reserved for purposes of traffic visibility and road safety at the Mombasa Road–Voi Road junction. These survey plans constitute technical documents prepared by survey professionals in the course of their statutory duties and therefore amount to expert evidence. Significantly, the Applicant has not placed before this Court any contrary survey report or expert opinion to challenge or controvert the findings contained in the said cadastral survey plans.

45. In the present case, the technical survey evidence produced by the 1st Respondent has not been challenged by any independent survey report from the Applicant. In

the absence of such rebuttal, the survey material placed before the Court remains largely uncontroverted at this interlocutory stage, thereby lending credence to the 1st Respondent's contention that the suit property lies within a road reserve.

46. The Court of Appeal has consistently held that expert reports can only properly be rebutted by another expert opinion. In **Williams & Kennedy Limited & 3 Others v Gicharu & 10 Others [2026] KECA 130 (KLR) (Court of Appeal)** the Court reaffirmed that where expert reports are presented before the court, the appropriate manner of challenging such reports is through a report from another qualified expert and in the absence of such rebuttal the expert findings may remain uncontroverted. Likewise, in **Ali Mohamed Sukar v Diamond Trust Bank Kenya Limited [2011] eKLR (Court of Appeal)** and **Parvin Singh Dhalay v Republic [1997] eKLR (Court of Appeal)** the Court of Appeal held that an expert report which is not challenged by contrary expert report ordinarily remains persuasive and may properly be relied upon by the court.

47. It is noteworthy that the Applicant seeks to protect a private commercial interest. The 1st Respondent seeks to protect a "sight triangle" on a major international highway (A8). The safety of the public using the Nairobi-Mombasa Highway and the preservation of road reserves far outweigh the private commercial interests of an individual. Public interest is a central pillar in Land and Environment matters and this is a factor to be consider in determining the application herein.

48. Having carefully considered the application, affidavits, submissions and the applicable law, the Court finds that the Applicant has failed to satisfy the threshold for grant of an interlocutory injunction.

49. In view of the foregoing, the Notice of Motion dated 22nd December 2025 is hereby dismissed. Costs of the application shall abide the outcome of the main suit.

Dated, Signed and Delivered Virtually at Voi this 12th day of March, 2026.

E. K. WABWOTO
JUDGE

In the presence of: -

Mr. Olendi for the Plaintiff/Applicant.

Mr. Cheruiyot h/b for Mr. Mbogo the 1st Defendant/Respondent.

N/A for the 2nd Defendant/Respondent.

Court Assistant: Mary Ngoira.