

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT**  
**KERUGOYA**  
**ELC PET NO. E001 OF 2026**

**CHARITY WANGUI NJIRA ..... 1<sup>ST</sup>**  
**PETITIONER**

**ANN WANJA NJIRA .....2<sup>ND</sup>**  
**PETITIONER**

**DAVID MUGO NJIRA ..... 3<sup>RD</sup>**  
**PETITIONER**

**GRACE WAINOI NJIRA ..... 4<sup>TH</sup>**  
**PETITIONER**

**JANE WAIRIMU NJIRA ..... 5<sup>TH</sup>**  
**PETITIONER**

**JULIUS WAWERU NJIRA ..... 6<sup>TH</sup>**  
**PETITIONER**

**MARY WAKUTHI NJIRA ..... 7<sup>TH</sup>**  
**PETITIONER**

**PETER KARIMI NJIRA ..... 8<sup>TH</sup>**  
**PETITIONER**

**VERSUS**

**NATIONAL IRRIGATION AUTHORITY ..... 1<sup>ST</sup>**  
**RESPONDENT**

**DENNIS MAINA OKINYI ..... 2<sup>ND</sup>**  
**RESPONDENT**

**FRANCIS KINORO KARIUKI ..... 3<sup>RD</sup>**  
**RESPONDENT**

*[Notice of Motion dated 28<sup>th</sup> January 2026]*

**RULING**

1. The Notice of Motion dated 28<sup>th</sup> January 2026 filed contemporaneously with the Petition, seeks for conservatory relief pending inter partes hearing of the application and, thereafter, pending determination of the Petition. In substance, the orders sought are as follows:

- 1) Staying the implementation of an alleged “arbitration” decision made on or about 9th October 2025 concerning **Rice Holding No. 167** situated in **Tebere Section, Unit T.7, Mahigaini Village** within the **Mwea Irrigation Scheme**;
- 2) Restraining the Respondents from revoking, reallocating or otherwise interfering with the Petitioners’ tenancy over the said rice holding;
- 3) Restraining the 4<sup>th</sup> Respondent from entering upon or utilising the rice holding;
- 4) compelling the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to grant the Petitioners access to and use of the rice holding; and

5) Directing the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to furnish certified copies of the minutes, records, reasons and material relied upon in the impugned decision.

2. The application is supported by the grounds set out on its face and the affidavit in support of both the application and the petition, sworn by Charity Wangui Njira, the 1<sup>st</sup> petitioner, in which she inter alia deposed that the Petitioners are the lawful tenants of **Rice Holding No. 167** situated in **Tebere Section, Unit T.7, Mahigaini Village** within the **Mwea Irrigation Scheme**; that the rice holding was originally acquired by their late father, Gabriel Njira Mwaniki, from the 4<sup>th</sup> Respondent; that upon demise of their father, Succession Cause No. 15 of 2005 was instituted before the Magistrate's Court at Wang'uru to determine the distribution of his estate; that the 4<sup>th</sup> Respondent participated in those proceedings as an objector; that vide a judgment delivered on 14<sup>th</sup> May 2009, the court determined that the rice holding formed part of the deceased's estate and ordered that it be registered in the name of their late mother, Josephine Wanjiru Njira, to hold in trust for the Petitioners; that the judgment was neither appealed against nor reviewed and remains binding; that subsequent to the demise of their mother, the rice holding was subdivided and registered in the names of all the Petitioners; that in 2024, the 4<sup>th</sup> Respondent filed **Wang'uru CMCC No. E087 of 2024**

seeking to quash the said registrations and to have the rice holding registered in his name, but that suit was struck out through the ruling delivered on 20<sup>th</sup> May 2025 on the ground that the judgment in **Succession Cause No. 15 of 2005** remained valid, binding, and incapable of variation by the Magistrate's Court; that following that unsuccessful attempt, the 4<sup>th</sup> Respondent, in concert with the other Respondents, initiated what they describe as an administrative process, designed to reopen the question of ownership; that by a notice dated 28<sup>th</sup> August 2025, the 2<sup>nd</sup> Respondent invited them and the 4<sup>th</sup> Respondent to attend a "family arbitration" meeting concerning utilisation of the rice holding scheduled for 4<sup>th</sup> September 2025, but the notice reached the petitioners after the scheduled date; that upon learning of the intended process, they wrote a protest letter dated 18<sup>th</sup> September 2025 to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, asserting their lawful tenancy and drawing to their attention the subsisting court determinations; that notwithstanding that protest, they aver that on or about 9<sup>th</sup> October 2025, the Respondents proceeded to conduct the arbitration in their absence, and thereafter they learnt through the 3<sup>rd</sup> respondent public announcement that their tenancy had been revoked and reallocated to the 4<sup>th</sup> Respondent; that they wrote on 14<sup>th</sup> October 2025 requesting a fresh arbitration on the basis of a lack of notice, but the request was declined; that they also sought certified copies of the minutes, records, and reasons underpinning the decision, as well as

reconsideration of the revocation, but the 1<sup>st</sup> and 2<sup>nd</sup> Respondents allegedly declined to furnish the information or set aside the decision; that on 15<sup>th</sup> January 2026, the 1<sup>st</sup> Petitioner attempted to pay the requisite annual fees but was informed that payment could not be processed because the rice holding had already been reallocated to the 4<sup>th</sup> Respondent; that as a result of these actions, they have been denied access to and use of the rice holding, which they state is their sole source of livelihood and sustenance; that the impugned decision was made without notice, without hearing, and in disregard of binding court judgments, thereby violating the principles of natural justice and their constitutional rights, and they therefore urged the Court to grant the conservatory orders sought.

3. The 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents did not file any response to the application. The 4<sup>th</sup> Respondent opposed the application through his replying affidavit sworn on 3<sup>rd</sup> February 2026, inter alia deposing that the application is fatally defective for want of jurisdiction; that under **Sections 25 and 26 of the Irrigation Act No. 4 of 2019**, the National Irrigation Authority is vested with jurisdiction to hear and determine disputes relating to rice holdings within irrigation schemes. According to him, the **Act** and the **Regulations** thereunder provide a structured dispute resolution and appellate mechanism which must be exhausted before recourse to court, that the Petitioners

have not exhausted; that this Court had issued a circular directing courts not to handle disputes concerning rice holdings falling under the mandate of the National Irrigation Authority; that the arbitration proceedings were undertaken pursuant to a dispute over the subject rice holding that had been raised in **Wang'uru Misc. Succession Cause No. 15 of 2025** and referred for determination by the court; that the issue before the committee concerned guardianship and utilisation of the rice holding; that the Petitioners were duly notified of the arbitration sittings, vide the notices issued on 28<sup>th</sup> August 2025, in September 2025, and again for the sitting held on 9<sup>th</sup> October 2025, but the Petitioners declined to attend and, by a letter dated 18<sup>th</sup> September 2025, indicated that they would not participate in the proceedings; that the matter proceeded on 9<sup>th</sup> October 2025 and was determined in his favour; that the committee's decision has since been implemented, the farmer records were amended on 6<sup>th</sup> November 2025, he has been recognised as the holder of **Rice Holding No. 167** measuring approximately four acres, and has taken possession thereof; that he was the original holder of the rice holding and that in 1997 he transferred it to his brother, the late Gabriel Njira Mwaniki, to cultivate and to act as a guardian for his children; that the understanding was that the rice holding would eventually be transferred to his children upon attaining age of majority, but that this did not occur, as the deceased instead treated the rice holding as his

own, and the subsequent succession proceedings resulted in its registration in the names of the Petitioners; that issues relating to guardianship and allocation of rice holdings fall within the statutory mandate of the National Irrigation Authority and that the Petitioners cannot ignore that framework and seek to challenge its decision through the present Petition, and he urged the Court to dismiss the application with costs.

4. The application was canvassed by way of oral submissions. Mr. Muchiri, learned counsel for the petitioners, relied on the supporting and supplementary affidavits, and submitted that the Petitioners have been on the suit rice holding since 1997, when their late father acquired it. He reiterated that **Succession Cause No. 15 of 2005 at Wang'uru** culminated in a judgment delivered on 14<sup>th</sup> May 2009 declaring the rice holding to belong to the deceased and ordering that it be held in trust for the Petitioners by their mother. That judgment, counsel emphasised, has never been appealed against or set aside.

It was further submitted that in 2024, the 4<sup>th</sup> Respondent filed **Wang'uru CMCC No. E087 of 2024** seeking registration of the rice holding in his name, but the Petitioners raised a preliminary objection which was upheld in a ruling delivered in May 2025, thereby affirming the binding nature of the earlier succession judgment.

Counsel argued that notwithstanding those court decisions, the Respondents convened what was termed an arbitration on 9th October 2025 without adequate notice to the Petitioners and without affording them an opportunity to be heard.

It was submitted that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents thereafter revoked the Petitioners' tenancy and reallocated the rice holding to the 4<sup>th</sup> Respondent in disregard of the subsisting court determinations. Counsel maintained that the Petitioners have written to the Respondents requesting the minutes and records of the arbitration and drawing attention to the previous court decisions, but no satisfactory response was received.

On the threshold for conservatory orders, counsel submitted that the Petitioners have established a prima facie case with a likelihood of success and that, unless the orders sought are granted, the Petition would be rendered nugatory.

It was further submitted that the grant of conservatory orders would advance constitutional values and that no prejudice would be suffered by the 4<sup>th</sup> Respondent. Counsel relied on the case of **Board of Management of Uhuru Secondary School v City County Director of Education & 2 Others, Petition No. 359 of 2015**

**(Oguttu J, 22<sup>nd</sup> September 2015)**, on the principles governing conservatory relief.

5. Mr. Muriithi, the learned counsel for the 4<sup>th</sup> Respondent, opposed the application and relied on the replying affidavit, and submitted that prayers 2, 3, 4 and 5 of the application had been overtaken by events, as the rice holding had already been registered in the 4<sup>th</sup> Respondent's name, requisite dues paid, and possession granted. It was argued that **Sections 25 and 26 of the Irrigation Act (Cap 21)** vest the 1st Respondent with authority to initiate arbitration in disputes relating to rice holdings.

Counsel submitted that the Petitioners were summoned on three occasions but declined to participate in the arbitration, and that the proceedings were lawfully conducted on 9<sup>th</sup> October 2025, culminating in a decision in favour of the 4<sup>th</sup> Respondent.

It was further submitted that the 4<sup>th</sup> Respondent has since been issued with a licence. Counsel contended that **Regulation 35** of the applicable Regulations would be violated if the conservatory orders sought were granted.

On the nature of rice holdings, counsel relied on the case of **Catherine Wambui versus Mwea Irrigation Scheme (2014) eKLR and Naomi Njeri Ayub versus**

**Mary Nyambura & Another (2019) KELC 4198 (KLR)**, where it was held that rice holdings within the Scheme do not constitute personal property capable of distribution under the **Law of Succession Act**.

Counsel further submitted that the dispute had previously been referred by the Wang'uru Court to the 1<sup>st</sup> Respondent for determination, and that it was pursuant to that order that the impugned arbitration was conducted. It was therefore argued that the Petition has no likelihood of success and that the application should be dismissed with costs.

6. In reply, counsel for the petitioners disputed the assertion that the 4<sup>th</sup> Respondent had been issued with a licence or taken possession, contending that the Petitioners remain in possession and are the holders of valid licences.

7.

Counsel further relied on **Republic versus National Irrigation Board Ex Parte Anthony Munene Mbui & Another, JR No. 1 of 2017 (Mukunya J)**, for the proposition that the irrigation authority lacks jurisdiction to overrule or disregard a valid court order, and urged that the application to be allowed.

8. The following are the issues arising in this application for the court's determination:

- a. *Whether this Court has jurisdiction in light of Sections 25 and 26 of the Irrigation Act and the doctrine of exhaustion.*
- b. *Whether the Petitioners have met the threshold for the grant of conservatory orders.*
- c. *Who pays the cost?*

9. I have carefully considered the grounds on the application, the parties' affidavit evidence, oral submissions by the learned counsel, superior court decisions relied upon, and come to the following determinations:

- a. On the 1<sup>st</sup> issue, the objection raised by the 4th Respondent is anchored on **Sections 25 and 26 of the Irrigation Act, No. 4 of 2019. Section 25 of the Irrigation Act** provides that:

***“Disputes related to irrigation and drainage scheme development, management, water allocations and delivery, financing, operation and maintenance, and other matters shall be resolved within the Irrigation Water Users Association or at the irrigation scheme level, wherever possible.***

***(1) Each association which is legally registered shall have a Dispute Resolution Committee that consists of at least three members selected by its governing body.***

***(2) Decisions regarding any dispute contemplated under this section shall be made by the relevant Dispute Resolution Committee within thirty days of the hearing of the dispute in question.”***

And **Section 26** provides that:

***“Where the water users association or at the irrigation scheme level is unable to resolve a dispute, the same shall be referred to the Dispute Resolution Committee at the first instance to consider and determine the matter before the same is referred to Court.”***

The statutory framework, therefore, establishes a dispute resolution mechanism within irrigation schemes and provides for an appellate process under the **Regulations**.

- b. The doctrine of exhaustion is now a settled principle of law. **Section 9(2) & (4) of the Fair Administrative Action Act** provides:

***(2) The High Court or a subordinate court under subsection (1) shall not review an administrative action or decision under***

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***this Act unless the mechanisms including internal mechanisms for appeal or review and all remedies available under any other written law are first exhausted.***

***(4) Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the applicant, exempt such person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice.”***

The question that arises in the present case is whether the dispute before this Court is one that falls strictly within **Sections 25 and 26 of the Irrigation Act**, so as to bar the jurisdiction of this Court.

- c. The Petitioners have annexed a copy of the judgment in **Wang’uru Succession Cause No. 15 of 2005**, delivered on 14<sup>th</sup> May 2009, that determined that the suit rice holding belonged to their deceased father and ordered that it be registered in the name of their mother in trust for them; and the ruling in **Wang’uru CM ELCC No. E087 of 2024**, which upheld their preliminary objection and struck out the 4<sup>th</sup> respondent’s suit.

The ruling striking out **Wang'uru CM ELCC No. E087 of 2024**, that is annexed, concludes with the order that the plaintiff's suit is struck out with costs. It does not contain a referral of the dispute to the Scheme Manager. A court that upholds a preliminary objection and strikes out a suit disposes of the matter before it.

The record placed before this Court does not disclose an order in that suit referring the dispute to the Scheme Manager. The order relied upon by the 4<sup>th</sup> Respondent bears a different cause description and is not traceable to **Wang'uru CM ELC No. E087 of 2024** that is annexed.

- d. Conservatory orders in constitutional petitions are grounded in the Constitution and the **Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (the Mutunga Rules)**. **Article 23(3) of the Constitution** provides that:

***“In any proceedings brought under Article 22, a court may grant appropriate relief, including: -***

- (a) a declaration of rights;***
- (b) an injunction;***
- (c) a conservatory order;***

***(d) a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights;***  
***(f) an order of judicial review.”***

The power to issue conservatory orders is therefore expressly constitutional. **Section 4(1) & (3) of the Fair Administrative Action Act** provides that:

***“(1) Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable, and procedurally fair.”***

***(3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision-***

***(a) prior and adequate notice of the nature and reasons for the proposed administrative action;***

***(b) an opportunity to be heard and to make representations in that regard;***

***(c) notice of a right to a review or internal appeal against an administrative decision, where applicable;***

**(d) a statement of reasons pursuant to section 6;**

**(e) notice of the right to legal representation, where applicable;**

**(f) notice of the right to cross-examine or, where applicable, or**

**(g) information, materials, and evidence to be relied upon in making the decision or taking the administrative action.**

Further, **Rule 23(1) of the Mutunga Rules** provides:

***“Despite any provision to the contrary, a judge before whom a petition under Rule 4 is presented shall hear and determine an application for conservatory or interim orders.”***

The jurisdiction to issue conservatory orders is therefore, expressly provided for in both the Constitution and the Rules made thereunder.

- e. The Petition challenges the arbitration decision of 9<sup>th</sup> October 2025 on the grounds that:

- 1) *It was undertaken without notice or participation.*
- 2) *It disregarded subsisting court judgments;*
- 3) *It resulted in the cancellation of the Petitioners' tenancy and alteration of records.*

The Petitioners have annexed the 2009 judgment, and the 2025 ruling striking out **CM ELC No. E087 of 2024**. That are both in their favour. The 4th Respondent does not dispute the existence of those decisions, and that they pre-dated the impugned arbitration of 9<sup>th</sup> October 2025 and the decision thereof. There is therefore, an arguable question whether the impugned administrative action complied with **Article 47 of the Constitution and Section 4(3) of the Fair Administrative Action Act**.

- f. The material facts presented before the Court shows that the impugned arbitration decision has already been implemented and that the farmer's records were altered. The 4<sup>th</sup> Respondent asserts that he has taken possession. At the same time, the Petition raises serious and arguable constitutional questions concerning the legality of that decision and its consistency with subsisting court judgments.
- g. A conservatory order is intended to preserve the substratum of the Petition pending its determination.

It is not intended to grant final relief or conclusively determine the contested rights. In the circumstances of this case, restoration of the records to their previous state at this interlocutory stage would risk determining albeit indirectly, the substantive dispute before a full hearing. However, permitting further alteration, transfer, subdivision, or dealing with the suit rice holding, pending the hearing of the Petition, would expose the subject matter to further complication and potentially render the Petition nugatory. The interests of justice therefore favour preservation of the current status/position coupled with an order restraining further dealings that are likely to further change the legal status of the suit property, and expediting the hearing of the Petition.

h. On costs, and in view of the nature of the dispute herein and the familial relationship between the parties, the court is of the view that it abides the outcome of the petition.

10. Flowing from the foregoing conclusions on the application dated the 26<sup>th</sup> January 2026, the court finds and orders as follows:

**a. That pending the hearing and determination of the petition herein, the parties do maintain and**

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**preserve the current status quo as defined in (g) above, by ensuring no further dealing is undertaken that affects or is likely to affect the legal status of the suit property.**

**b. That the hearing of the petition to be expedited.**

**c. The costs in the application to abide the outcome of the petition.**

It is so ordered.

**DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 11<sup>TH</sup> DAY OF MARCH 2026.**

**S. M. Kibunja  
ELC**

**JUDGE**

**In the presence of:**

Petitioners – Mr. Wamai Muchiri

Respondents – Mr. Chacha for Muriithi for 4<sup>th</sup> Respondent

Kinyua - Court Assistant

**Kibunja.**

**JUDGE**

**S. M.**

**ELC**