



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC PETITION NO. E066 OF 2025**

**IN THE MATTER OF: ARTICLES 3, 10, 22, 28, 35, 40, 43, 47  
AND 73 OF**

**THE CONSTITUTION OF KENYA**

**IN THE MATTER OF: SECTIONS 75, 152B, 152C, 152D, 152E,  
152G AND**

**152H OF THE LAND ACT**

**BETWEEN**

**LINDA AKINYI ONIMBO.....  
....PETITIONER**

**VERSUS**

**NAIROBI CITY COUNTY GOVERNMENT.....1<sup>ST</sup>  
RESPONDENT**

**LYDIA MATHIA, CHIEF OFFICER, HOUSING AND URBAN**

**RENEWAL, NAIROBI CITY COUNTY.....2<sup>ND</sup>**

**RESPONDENT**

**COUNTY EXECUTIVE COMMITTEE MEMBER,**

**BUILT ENVIRONMENT AND URBAN PLANNING**

**NAIROBI CITY COUNTY.....3<sup>RD</sup>**

**RESPONDENT**

**THE COUNTY ATTORNEY**

**COUNTY GOVERNMENT OF NAIROBI.....4<sup>TH</sup>**

**RESPONDENT**

**RULING**

1. By a Notice of Motion dated 7<sup>th</sup> August 2025 brought under Sections 1A, 1B, and 3A of the Civil Procedure Act, Order 40 Rule 1 of the Civil Procedure Rules, and Rules 4, 19, and 23 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, the Applicant seeks the following orders:

**a) *Spent.***

**b) *Spent.***

**c) *THAT this Honourable Court be pleased to grant interim orders allowing the***

***Petitioner/Applicant re-entry into the suit property pending the hearing and determination of the Petition.***

***d) Spent.***

***e) THAT this Honourable Court be pleased to grant interim orders restricting the Respondents and or their agents, servants, and whoever acting upon their instructions from evicting, terminating the lease or tenancy, transferring in any way, interfering, reallocating, or alienating the suit property pending the hearing and determination of the Petition.***

***f) THAT the OCS Pangani Police Station ensures compliance with the orders issued by this Honourable Court.***

***g) THAT the costs of this suit be provided for.***

2. The application is based on the grounds appearing on its face together with the supporting affidavit of Linda Akinyi Onimbo, sworn on even date.

### **THE APPLICANT'S CASE**

3. The Applicant averred that she is the lawful tenant of House No. 17 Old Ngara Estate, the suit property herein. She further averred that on 18<sup>th</sup> June 2025, the Respondents, using goons, evicted her from the suit property on the basis of alleged rent arrears.
4. She asserted that the impugned eviction infringed her right to dignity and to a fair administrative process, as enshrined in Articles 28 and 47 of the Constitution, since no demand, eviction notice, or court order was served upon her prior to the forcible eviction.
5. She maintained that the eviction was carried out solely to reallocate the property, as the renovation began immediately after the eviction.
6. She contended that she would suffer irreparable harm if the orders sought are not granted.

7. **THE RESPONDENT'S CASE**

8. The Respondents filed a replying affidavit sworn by Michael Kinoti, the acting director of Housing and Urban Renewal, Nairobi County Government, in opposition to the application.

9. The deponent averred that the suit property is part of the County's Housing Scheme, which is managed and allocated by the Nairobi County Government to tenants who are required to pay monthly rent in accordance with the terms of their tenancy.
10. He further averred that the tenancy agreement between the Petitioner and the Respondent was governed by the Housing Estate Rent Card, which, under Clause 1, provides that the tenant shall pay rent to the City Treasurer's office. He asserted that the Petitioner failed to pay rent, resulting in arrears of Kshs 950,000/= as of the time of eviction.
11. He asserted that pursuant to Clause 18 of the Housing Estate Rent Card, the tenancy may be terminated at the end of any calendar month by either party giving the other seven (7) days' prior written notice. He further asserted that any part of the rent in arrears for seven (7) days, whether formally demanded or not, or any breach of the conditions of tenancy, shall terminate the tenancy as if written notice to quit had been given and had expired. He maintained that the Respondent was lawfully entitled to re-enter and repossess

the premises upon the Petitioner's persistent default in paying the rent.

12. He clarified that the Petitioner's assertion that there was no notice is incorrect, as the tenancy agreement itself constitutes notice under Clause 18 if the tenant is in arrears for seven days.
13. He argued that reliance on Section 152E of the Land Act is misplaced because the provision applies only to unlawful occupants of private or public land and not to tenants in breach of tenancy terms under a public housing scheme.
14. He stated that the premises have since been reallocated to an applicant on the County's waiting list in accordance with the housing allocation policy.
15. He further stated that the Petitioners' reference to orders allegedly issued in another matter is inapplicable because the Petitioner was not a party to those proceedings and the orders were not directed to the Respondent regarding the suit property.

16. He maintained that the eviction was necessitated by the Petitioner's persistent default and failure to comply with the terms of the tenancy agreement.

17. In conclusion, the deponent urged the court to dismiss the application with costs.

### **THE RESPONSE**

18. In a further affidavit dated 26<sup>th</sup> November, 2025, the Applicant denied the contents of the affidavit. She reiterated that the court issued orders staying the eviction of residents of the old Ngara Estate, where the suit property is located, and that those orders have not yet been discharged or varied.

19. The application was canvassed by way of written submissions.

### **THE PETITIONER/APPLICANT SUBMISSIONS**

20. The Applicant filed her submissions dated 31<sup>st</sup> October 2025.

21. Counsel submitted that the Applicant had met the threshold for a conservatory order as set out in **Giella v Cassman Brown Ltd (1973) EA 358.**

22. Regarding the first condition, Counsel submitted that the Applicant had established a prima facie case by producing a

housing rent card showing that she is the registered tenant of the suit property.

23. Counsel further submitted that the Applicant has shown that she was forcibly evicted from the suit property without notice or a court order.

24. Regarding the second condition, Counsel submitted that the arbitrary eviction has rendered the Applicant and her family homeless, as they had lived there for many decades. Counsel relied on the case of **Victoria Pumps Limited v Kenya Ports Authority & 4 others (2015)** to argue that damages would not adequately compensate the Applicant for the loss.

25. Finally, Counsel submitted that the balance of convenience favours the Applicant. To support this point, reliance was placed on **Amir Suleiman v AMboseli Resort Limited (2004) eKLR** and **Paul Gitonga Wanjau v Gathuthi Tea Factory Ltd & 2 others (2016) eKLR**.

26. In conclusion, Counsel urged the court to allow the application as prayed.

27. At the time of writing this ruling, the Respondents had not filed their submissions as directed.

## **ANALYSIS AND DETERMINATION**

28. Having considered the application, the respective affidavits, and the Applicant's submissions, the following issues arise for determination:

*a) Whether the Applicant can be reinstated to the suit property; and*

*b) Whether the Applicant has met the threshold for the grant of a conservatory order.*

29. The Petitioner seeks reinstatement to the suit property. The law is clear that conservatory orders are preservative, not restorative. They are designed to maintain the status quo and prevent further prejudice, not to undo what has already occurred.

30. In **Martin Nyaga Wambora v Speaker of the Senate & 6 others (2014) eKLR**, the court held that:

***“Conservatory orders are not meant to remedy a wrong that has already been committed. They are meant to prevent threatened or continuing violations.”***

31. Similarly, in **Muslims for Human Rights (MUHURI) & Another v Attorney General & 2 others (2015) eKLR**, the court held that:

***“The purpose of conservatory orders is to preserve the subject matter of litigation and to ensure that the Petition is not rendered nugatory. They are not meant to reverse completed acts.”***

32. In the matter at hand, the Applicant is out of possession of the suit property.

33. The Respondent contended that the premises had been leased to a third party in accordance with the housing policy. Conservatory orders are not intended to resolve contested facts or to determine rights conclusively before hearing the evidence. Granting reinstatement would require the Court to displace a third party not before it and would effectively resolve the substantive issue of the legality of the eviction, thereby granting the final relief sought in the petition.

34. Regarding the second issue, Article 23(3) of the Constitution empowers a court to grant appropriate relief in any

proceedings brought under Article 22 when there has been a violation or a threat of violation of a fundamental right or freedom. The relief may include a conservatory order.

35. The law on the issuance of conservatory orders is well settled.

**In Judicial Service Commission v Speaker of the National Assembly & Another (2013) eKLR,** conservatory

orders were defined as follows:

***“Conservatory orders, in my view, are not ordinary civil remedies but are remedies provided for under the Constitution, the supreme law of the land. They are not remedies between one individual and another but are meant to keep the subject matter of the dispute in situ. Therefore, such remedies are remedies in rem as opposed to remedies in personam. In other words, they are remedies in respect of a particular state of affairs as opposed to injunctive orders which may only attach to a particular person.”***

36. In **Gitirau Peter Munya vs. Dickson Mwenda Kithinji & 2 Others (2014) eKLR,** the Supreme Court outlined the

principles governing the grant of interim conservatory orders as follows:

***“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. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes and priority levels attributable to the relevant causes.”***

37. In **Wilson Kberia Nkunja v The Magistrates and Judges Vetting Board and Others, Nairobi High Court**

**Constitutional Petition No. 154 of 2016**, the court summarized the principles for granting conservatory orders as follows:

***An applicant must demonstrate that he has a prima facie case with a likelihood of success and that, unless the court grants the conservatory order, there is a real danger that he will suffer prejudice as a result of the violation or threatened violation of the Constitution.***

***a) Whether a conservatory order is not granted, the petition alleging violation of or threat of violation of rights will be rendered nugatory.***

***b) The public interest must be considered before the grant of a conservatory order.***

38. The first issue for determination is whether the Applicant has established a prima facie case warranting the grant of conservatory orders. It has been held in various decisions that a prima facie case is not one that must succeed at the hearing

of the main case, but rather one that discloses arguable issues in a case alleging a violation of rights.

39. A prima facie case was defined in the case of **Kevin K Mwiti & Others vs Kenya School of Law & Others (2015) eKLR**, as follows:

***“.....A prima facie case, it has been held, is not a case which must succeed at the hearing of the main case. However, it is not a case which is frivolous. In other words, the Petitioner has to show that he or she has a case that discloses arguable constitutional issues.”***

40. It is not in dispute that a tenancy agreement governed by the Housing Estate Rent Card existed between the Applicant and the Respondent.

41. The Applicant asserts that the Respondent unlawfully evicted her from the suit premises without notice or a court order. She denied owing any rent. The Respondent asserted that it evicted the Petitioner for rent arrears totaling Kshs 950,000/=.

Based on the evidence presented by the parties, there is a dispute over whether the Petitioner was in rent arrears.

42. The applicability of Clause 18 and Section 152E of the Land Act is disputed. The court is not required to make a conclusive determination on whether the Applicant was in rent arrears or whether the eviction was lawful, as doing so would amount to deciding the Petition at the interlocutory stage.

43. The Applicant relied on ELCPET E038 of 2025 to assert that the Respondent had been prevented from evicting her from the suit property. She produced an order dated 9th June 2025 extending the interim orders. The order shows that the parties are Chege Mwaura and Raymond Tonui, and 2 others v Nairobi City County Government & 3 others. There is no indication in the order that she is a party to the suit.

44. At this stage, the court is required to determine whether the Petitioner has established a prima facie case with a likelihood of success. In an application for a conservatory order, the court must warn itself against making any definitive findings of fact or law.

45. This principle was articulated in **Kenya Association of Manufacturers & 2 Others v Cabinet Secretary - Ministry of Environment and Natural Resources & 3 Others (2017) eKLR**, where the court stated as follows:

***“In an application for a conservatory order, the court is not invited to make any definite or conclusive findings of fact or law on the dispute before it because that duty falls within the jurisdiction of the court which will ultimately hear the substantive dispute.*”**

46. Based on the evidence presented before me, I find that the Applicant has not established a prima facie case.

47. Before granting conservatory orders, the court must evaluate the pleadings and determine whether denying the orders would prejudice the Applicants. In **Centre for Rights Education & Awareness (CREAW) & Another vs. Speaker of the National Assembly & 2 Others (2017) eKLR**, the court held that;

***“A party who moves the court seeking conservatory orders must show to the*”**

***satisfaction of the court that his or her rights are under threat of violation, are being violated, or will be violated, and that such violations, or threatened violation, is likely to continue unless a conservatory order is granted. This is so because the purpose of granting a conservatory order is to prevent the violation of rights and fundamental freedoms and preserve the subject matter pending the hearing and determination of a pending cause or petition.”***

48. The Petitioner claims that she was evicted from the suit property without prior notice or a formal order. Having evaluated the material before me, I find that the Applicant will not suffer prejudice if the conservatory orders are not granted.

49. Regarding whether the public interest will be served or prejudiced by a decision to exercise discretion in granting or denying a conservatory order, I find that it will be better served by preserving the suit property pending the hearing and determination of the Petition. This can only be achieved by restraining the Respondent from alienating the suit

property pending the hearing and determination of the Petition.

50. The upshot of the foregoing is that the application dated 7<sup>th</sup> August 2025 is without merit and is hereby dismissed.

**RULING DELIVERED DATED AND SIGNED VIA MICROSOFT TEAMS THIS 20<sup>TH</sup> DAY OF FEBRUARY, 2026**

.....  
**T. MURIGI  
JUDGE**

**IN THE PRESENCE OF:**

Otebe for the Applicant  
Court Assistant - Ahmed