



Oyugi & another v County Government of Nairobi; Procurement Regulatory Authority & another (Interested Parties) (Environment and Land Petition E050 of 2025) [2026] KEELC 1174 (KLR) (20 February 2026) (Ruling)

Neutral citation: [2026] KEELC 1174 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND PETITION E050 OF 2025**

TW MURIGI, J

FEBRUARY 20, 2026

IN THE MATTER OF ARTICLES 10, 19, 20, 21, 22, 23, 27, 40, 47, 50, 162(2)(B), 258 AND 259 OF THE CONSTITUTION OF KENYA, 2010

-AND-

IN THE MATTER OF SECTIONS 3, 13 AND 13(7) OF THE ENVIRONMENT AND LAND COURT ACT, NO. 19 OF 2011

-AND-

IN THE MATTER OF SECTIONS 4, 5 AND 7 OF THE FAIR ADMINISTRATIVE ACTION ACT, NO. 4 OF 2015

-AND-

IN THE MATTER OF THE PHYSICAL AND LAND USE PLANNING ACT, NO. 13 OF 2019

-AND-

IN THE MATTER OF PLACEMENT OF CABROS BY THE NAIROBI CITY COUNTY

-AND-

IN THE MATTER OF PUBLIC PARTICIPATION BILL 2025

BETWEEN

EZEKIEL OYUGI 1ST PETITIONER

JOHN KARUU 2ND PETITIONER

AND

COUNTY GOVERNMENT OF NAIROBI RESPONDENT

AND

PROCUREMENT REGULATORY AUTHORITY INTERESTED PARTY



ETHICS AND ANTI-CORRUPTION COMMISSION INTERESTED PARTY

RULING

1. By a Notice of Motion dated 10th December 2025 brought under Articles 159 (2) (a) and (d) of the Constitution, Sections 1A, 1B, and 3A of the Civil Procedure Act, and Order 22 Rule 22 of the Civil Procedure Rules, 2010, the Petitioners/Applicants seek the following orders:
 - a. Spent.
 - b. Spent.
 - c. That this Honorable Court do grant conservatory orders stopping, halting, and discontinuing any further development and construction activities on the property Tom Mboya Street, Tom Mboya Walk, Moi Avenue, Latema Road, and City Hall Way, and on any other place within the CBD by the Respondent, or any other persons pending hearing and determination of the Petition hereof.
 - d. That this Honorable Court do grant and issue conservatory orders, compelling the Interested Parties jointly, to take immediate measures to stop, prevent, investigate, and discontinue any construction and development activities, or any act or omission by the Respondent, their agents/ proponents, or any other persons, pending the hearing and determination of this Petition.
 - e. That any other relief or order that this Honorable Court may deem just, appropriate, and expedient to grant in order to uphold the Constitution, safeguard the public interest, and protect the fundamental rights and freedoms of the people of Kenya.
 - f. That the costs of this application be provided for.
2. The application is based on the grounds appearing on its face.

The Applicants Case

3. The Petitioners contend that the Respondent has unlawfully and without due process issued directives ordering the eviction of traders and other city residents, thereby violating their constitutional rights and the principles of natural justice.
4. They further contended that they have already been ordered to vacate their current location or face imminent eviction.
5. They argued that the contested actions were carried out without public participation, contrary to the legal requirements.
6. Based on the foregoing, the Petitioners argued that their rights under Articles 25, 26, 28, and 47 of the Constitution of Kenya were violated.
7. The Petitioners contend that they will suffer further injustice unless this Court intervenes and grants the orders sought.



The Respondent's Case

8. The Respondent filed Grounds of Opposition dated 15th January 2026 in opposition to the application. The Respondent contends that the application is vexatious, bad in law, an abuse of the Court process, and that it does not disclose any cause of action.
9. It was argued that the application is not supported by any affidavit and is therefore unsupported by evidence.
10. It was contended that the Applicants have not presented any evidence specifying the exact locations of their businesses or demonstrating how they would be affected by the contested development and construction activities.
11. The Respondent argued that without specific allegations or proof of rights infringement, there is no basis for issuing a conservatory order.

The 2nd Interested Party's Case

12. The 2nd Interested Party opposed the application through the Grounds of Opposition dated 29th December 2025. The 2nd Interested Party contended that the Petition does not allege any specific infringement or violation of the Petitioners' rights attributable to the 2nd Interested Party.
13. It was further asserted that no evidence has been presented showing that the Petitioners lodged any complaint with the 2nd Interested Party to initiate an investigation. The 2nd Interested Party is improperly joined to these proceedings because it lacks jurisdiction to investigate matters relating to the eviction of commuters, *matatu* SACCOS, taxi operators, and traders to make way for the installation of cabros.
14. The application was canvassed by way of written submissions.
15. As of the time of writing this ruling, the Petitioners had not filed their submissions as directed.

The 2nd Interested Party's Submissions

16. The 2nd Interested Party filed its submissions dated 21st January 2026.
17. Counsel argued that, under Article 252 (1) (a) of the *Constitution*, the 2nd Interested Party has the authority to initiate investigations either on its own initiative or upon a public complaint.
18. Counsel submitted that Section 11(1)(d) and (e) of the *Ethics and Anti-Corruption Commission Act* require the 2nd Interested Party to investigate and recommend to the Director of Public Prosecutions the prosecution of acts of corruption, bribery, economic crimes, violations of codes of ethics, or other matters prescribed under the Act or any law enacted pursuant to Chapter Six of the *Constitution*, and to recommend appropriate action against State or public officers alleged to have engaged in unethical conduct. To support this point, Counsel relied on *Alfred N. Mutua v. Ethics and Anti-Corruption Commission and 4 others* [2016] eKLR, where the Court underscored that upon concluding investigations, the 2nd Interested Party reports to the Director of Public Prosecutions, who then independently evaluates the evidence and determines whether to institute criminal proceedings.
19. Counsel contended that no complaint was lodged with the 2nd Interested Party to initiate an investigation within its mandate. Counsel argued that even if a complaint were inferred from the Petition, the dispute concerns the eviction of commuters, *matatu* SACCOS, taxi operators, and the



placement of cabros, which falls outside the 2nd Interested Party's investigative jurisdiction. On that basis, it was contended that the 2nd Interested Party is improperly joined to these proceedings.

20. In light of the foregoing, Counsel submitted that the Petition fails to disclose any cause of action against the 2nd Interested Party, constitutes an abuse of the Court process, and should be struck out with costs.

Analysis and Determination

21. Having considered the application in light of the Petition, the Grounds of Opposition, and the 2nd Interested Party's submissions, the following issues arise for determination:

- a. Whether the Notice of Motion dated 10th December 2025 is competent and properly before the Court.
- b. Whether the 2nd Interested Party is properly joined to the Petition
- c. Whether the Applicants have met the threshold for the grant of a conservatory order.

22. Regarding the first issue, the Respondent argued that the application is incompetent because it is not supported by affidavit evidence and fails to disclose a cause of action. It was further contended that no material was presented to the Court showing the specific locations of the Petitioners' businesses or the manner in which they would be affected by the impugned activities. The 2nd Interested Party argued that the application and Petition do not disclose a cause of action against it, that no complaint was lodged to initiate its mandate, and that the subject matter falls outside its jurisdiction.

23. Rule 19 of the [Constitution of Kenya \(Protection of Rights and Fundamental Freedoms\) Practice and Procedure Rules](#) provides that a formal application under the Rules shall be made by Notice of Motion and may be supported by an affidavit.

24. However, constitutional litigation is guided not only by procedural rules but also by the dictates of Article 159(2)(d) of the [Constitution](#), which commands courts to administer justice without undue regard for procedural technicalities. The Mutunga Rules are designed to facilitate access to justice and to ensure that procedural requirements do not impede the enforcement of fundamental rights.

25. The court has taken judicial notice that the Petition is supported by an affidavit setting out the factual basis of the dispute. The application relies substantially on the same facts and does not introduce new contested matters that would require a fresh evidentiary disposition. In the circumstances, I find that the absence of a supporting affidavit is not fatal to the application.

26. The Respondent further contended that the application fails to state a cause of action. [Black's Law Dictionary](#), 9th Edition, defines a cause of action as

“[a] group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person.”

27. In [Attorney-General v Oluoch](#) [1972] 1 EA 392 as cited in [BOG Misyani Girls Secondary School v Joseph Mutiso Kioko](#) [2019] KEHC 1367 (KLR), the East African Court of Appeal stated that:

“In deciding whether or not a suit discloses a cause of action, one looks, ordinarily, only at the plaint and assumes that the facts alleged in it are true.”

28. The Petitioners claim that the Petition is filed on behalf of commuters and traders operating within the Nairobi Central Business District who have been issued eviction directives by the Respondent due



to ongoing construction activities that were allegedly undertaken without public participation and in violation of constitutional safeguards.

29. At this interlocutory stage, the Court is satisfied that these allegations disclose a factual and constitutional grievance that is capable of judicial interrogation. In light of the foregoing, I find that the application is competent and properly before the Court.
30. Regarding the second issue, the 2nd Interested Party argued that it was improperly joined to the proceedings.
31. Rule 5(d) of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules* empowers the Court, at any stage of the proceedings, either on application or on its own motion, to strike out the name of any improperly joined party.
32. The guiding consideration in matters of joinder is whether the presence of a party is necessary to enable the Court to effectively adjudicate and settle all questions involved in the Petition. In *Meme v. Republic* [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the following reasons:
 - i. Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;
 - ii. joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
 - iii. joinder to prevent a likely course of proliferated litigation.”
33. In the matter at hand, the dispute concerns actions undertaken by the Respondent regarding the development of walkways within the Central Business District, as well as the alleged enforcement measures directed at commuters, *matatu* SACCOS, taxi operators, and traders.
34. In their Petition, the Petitioners seek the following orders:
 - a. A declaration that the Enforcement Notice issued in respect to the construction and placement of cabros in Nairobi is unlawful, unconstitutional, and of no legal effect.
 - b. A declaration that the Petitioners are in lawful possession of all necessary statutory approvals and consents to undertake alterations and development works on the suit property.
 - c. A declaration that the actions and conduct of the Respondent, including attempts to halt, obstruct, or interfere with the Petitioners' business and operations, amount to a violation of the Petitioners' constitutional rights under Articles 27, 40, 43, 47, 48, and 50 of the *Constitution of Kenya, 2010*.
 - d. A declaration that there was no public participation contrary to Articles 10 and 118 of the *Constitution*, and the same is, therefore, unconstitutional, null, and void.
 - e. A Declaration that the affected commuters, *matatu* SACCOS, taxi operators, and traders, having suffered direct and quantifiable loss due to the Respondent's unlawful acts, are entitled to compensation for financial losses, reputational harm, and breach of legitimate expectations, subject to verification by this Honorable Court.
 - f. An Order of Certiorari to bring into this Honorable Court and quash the decision of the Respondent issuing directives to commuters, *matatu* SACCOS, taxi operators, and traders



- g. An order restraining the Respondent, their servants, agents, members, and/or assigns from further interfering with, obstructing, or in any way halting the Petitioner's ongoing development works on the suit property.
 - h. An order directing the Respondent to formally withdraw the Enforcement Notice and to issue written confirmation of the Petitioners' compliance with all statutory approvals.
 - i. General damages for breach of the Petitioners' constitutional rights, including but not limited to loss of business opportunity, reputational harm, and disruption of day-to-day operations.
 - j. Costs of this Petition be awarded to the Petitioners.
 - k. Such other or further relief as this Honorable Court may deem just and expedient in the circumstances.
35. The Ethics and Anti-Corruption Commission is an independent constitutional commission established under Article 79 of the [Constitution](#) and Section 3 of the [Ethics and Anti-Corruption Commission Act](#). Its mandate, as set out in Section 11 of the [Act](#), includes investigating corruption, economic crimes, and breaches of ethical standards by public officers.
36. Section 28 of the [EACC Act](#) expressly safeguards the Commission's independence by providing that it shall not, in the performance of its functions, be subject to the direction or control of any person or authority. The Court cannot compel the Commission to commence investigations in the absence of a properly lodged complaint under the statutory framework.
37. The Petition does not identify any specific act, omission, or threatened violation of rights by the 2nd Interested Party. Its inclusion appears to be based on the expectation that it should investigate or intervene in the Respondent's actions. Its presence is not necessary for the resolution of the constitutional questions before the court.
38. The Court therefore finds that the 2nd Interested Party is improperly joined and should be struck out from these proceedings. This finding does not prejudice the Petitioners, who remain free to pursue any lawful complaint before the Commission.
39. Regarding the third 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.
40. The law governing 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 against 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.”
41. In [Gitirau Peter Munya vs. Dickson Mwenda Kitinji & 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.”

42. 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.

43. The first issue for determination is whether the Petitioner 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.

44. A *prima facie case* was defined in the case of Kevin K Mwit & Others vs Kenya School of Law & Others (2015) eKLR, in which the court stated:

“.....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.”

45. The Petitioners allege that the Respondent’s development activities within the Nairobi Central Business District were undertaken without public participation and in violation of fair administrative action.

46. Although the Petitioners allege imminent eviction, no eviction notice or enforcement instrument has been presented to the Court. Without such material, the Court cannot determine the nature, scope, or immediacy of the alleged administrative action.

47. Although the Petition raises questions about public participation and procedural fairness, these questions are not sufficiently crystallized in the material presently before the Court to establish an arguable violation, as opposed to a generalized grievance about the manner in which the County Government is exercising its functions.

48. The Court is therefore not satisfied that the Petitioners have established a *prima facie case* warranting the grant of conservatory relief.

49. In an application for a conservatory order, the court must warn itself against making any definitive findings of fact or law. 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.

50. 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.”

51. Having evaluated the material before me, I find that the Applicant will not suffer prejudice if the conservatory orders are not granted. The Petitioners have not demonstrated that the Petition would be rendered nugatory in the absence of interim orders.

52. In the end, the 2nd Interested Party is hereby struck out from the proceedings herein

53. The upshot of the foregoing is that the application dated 10th December 2025 is devoid of merit and is hereby dismissed.

RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 20TH DAY OF FEBRUARY, 2026.

.....

HON. T. MURIGI

JUDGE

In the presence of:

1st Petitioner in person.

Cheriyout for the Respondent.

Wairimu Kamau for the 2nd Interested Party.

Court Assistant - Ahmed.

