



Watuthu & 2 others v State Department for Housing & 5 others (Petition E001 of 2025) [2026] KEELC 1234 (KLR) (26 February 2026) (Ruling)

Neutral citation: [2026] KEELC 1234 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
PETITION E001 OF 2025
LN MBUGUA, J
FEBRUARY 26, 2026**

BETWEEN

**JOHN THUKU WATUTHU 1ST PETITIONER
JAMES WAHOME NDEGWA 2ND PETITIONER
IRENE NJERI WAMITHI 3RD PETITIONER**

AND

**STATE DEPARTMENT FOR HOUSING 1ST RESPONDENT
THE ATTORNEY GENERAL 2ND RESPONDENT
THE HOUSING SECRETARY, MINISTRY OF LAND AND PUBLIC WORKS,
HOUSING AND URBAN DEVELOPMENT 3RD RESPONDENT
THE DIRECTOR OF HOUSING, STATE DEPARTMENT FOR
HOUSING 4TH RESPONDENT
TECTONICS INTERNATIONAL LIMITED (SUPERVISING
CONSULTANT) 5TH RESPONDENT
ECO-PARTNERS LIMITED (MAIN CONSTRUCTOR) 6TH RESPONDENT**

RULING

1. This suit was filed through a petition dated 24.9.2025 in which the petitioners contend that they own properties within Asian Estate in Nyahururu Town (hereinafter, the estate). They contend that the government through the 5th and 6th respondents is constructing a twelve storey Affordable Housing Project (hereinafter, the project) within the aforementioned estate yet, the estate is designated as a low density zone.



2. The petitioners also filed an application dated 24.9.2025 seeking conservatory orders restraining the respondents, their servants, agents, employees and/or contractors from continuing with the impugned project on the said estate pending the hearing and determination of the petition herein. The application came up before this court on 30.9.2025 when the court issued directions geared towards actively and expeditiously managing the case by granting orders of maintenance of status quo and filing of submissions. Had the said orders been complied with, perhaps the court would be finalizing this matter. As it were, the respondents did not adhere to the courts directions leading to an avalanche of other enforcement applications including; Application dated 15.10.2025 for contempt, Application dated 26.11.2025 seeking orders to enforce the interim orders and Application dated 6.1.2026. On 29.1.2026, the court gave directions to the effect that a ruling will be delivered by this court relating to all the pending applications.

Application Dated 24/9/2025

3. This is the first and the main application where the petitioners are seeking conservatory orders. The application is premised on grounds on the face of the application and the supporting affidavit of the 2nd petitioner. The deponent contends that the estate is a low density residential use area as per the zoning depicted in the development plan which has been availed as annexure 4. He contends that on 20.7.2025, peace in the estate was disrupted when heavy machinery was brought onto plots Nos. Nyahururu Municipality Block 4/9, 4/11 and 4/12 in the estate whereby an iron sheet was erected to fence the said plots awaiting excavation. He argues that there was no proper notice or advertisement of the project and there was no public participation in respect of the genuine stakeholders. It is argued that the heavy excavation is taking place next to the homes of the petitioners even late at night, causing severe vibrations and noise.
4. The deponent contends that no genuine Environmental and Social Impact Assessment (ESIA) was conducted.
5. Further, the project threatens to permanently alter the character of the estate thereby violating the petitioners rights to privacy under Article 31, property rights under Article 40, rights to a clean and healthy environment under Article 42 as well as rights to Fair Administration Act under Article 47.
6. The application was opposed by the Attorney General acting for the 1st to 4th respondents through Grounds of Opposition dated 31.10.2025. They argue that the right to housing is impeded in *the Constitution* of Kenya and therefore the aim of the affordable housing is to increase access to safe and decent shelter for low and middle income earners to breach the housing gap and to promote social and economic wellbeing of Kenyans.
7. They aver that before commencing the project in Laikipia West Constituency, they duly conducted public participation. That the project is very safe despite use of the very heavy machinery like excavators, that they have duly complied with the provisions of Sections 57A of the Environmental management and Coordination Act.
8. It is argued that under Article 23 (3) of *the Constitution*, Conservatory order are only available when a party is alleging that a fundamental right of freedom in the Bill of Rights has been infringed, denied or threatened. That for the case at hand, the petitioners have not demonstrated as to how their constitutional rights have been violated or threatened by the ongoing project. Further, both the application and the petition do not set out with a reasonable degree of precision the manner in which their constitutional rights have been infringed and that no prima facie case has been established in this case. It is also argued that the petitioners have not demonstrated that the substratum of the petition would be rendered nugatory if the conservatory orders are not granted.



9. The 5th and 6th respondents have not made an appearance in these proceedings despite the fact that they were served through substituted service in the Daily Nation of 17.1.2026.
10. The application was heard through written submissions. The submissions of the petitioners are dated 5.2.2026. It is argued that the 1st – 4th respondents elected to file grounds of opposition yet such grounds of opposition only raise pure points of law and cannot controvert facts. To this end, the petitioners rely on the case of Mohammed & Another v Haidera (1972) EA 166. They also add that submissions cannot replace evidence as was stated in the case of Moi v Muriithi & Another [2014] EKLK.
11. Citing the case of Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others [2014] EKLK, the petitioners argue that the substratum of the suit is the physical land, neighbourhood character, environmental integrity and zoning status. Thus once concrete is poured and structures are erected, no judgment can reverse the damage. Thus, the continued construction will render the petition nugatory.
12. It is further argued that the respondent's conduct of continuing with works in defiance of conservatory orders contravenes the rule of law. They argue that the right to housing cannot override other rights including zoning laws, environmental safeguards, private property rights and court orders.
13. The submissions of the Attorney General are dated 31.10.2025. They retaliate that the right to housing is embedded in *the constitution* and the government is only trying to realise this right for all the Kenyans through affordable housing. Citing the case of Wilson Kaberia Nkunjia v The Magistrate and Judges Vetting Board and Others Nairobi High Court Constitutional Petition No. 154 of 2016 and Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others EKLK, the Attorney General argues that a prima facie case has not been established, that there is no real danger or prejudice that will be occasioned and that the applicants have not demonstrated a public interest in the matter. Further, that the petitioners have failed to demonstrate that the substratum of the petition will be rendered nugatory if the conservatory reliefs are not granted.

Determination

14. I have considered the rival pleadings and submissions. The issue falling for determination is whether the conservatory orders to halt the project at this stage of the trial are merited. The legal regime governing the issuance of conservatory orders has aptly been captured by the protagonists in citing the case of Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others EKLK where it was held that;

“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 the case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes”.
15. I find that there are plausible reasons advanced by the 1st -4th respondents as to why the Affordable Housings are necessary. Indeed the provisions of Article 43(b) stipulate that;

“Every person has the right to accessible and adequate housing...”



16. While at Article 21 (2) there of, it is stated that;

“The state shall take legislative measures, including the setting of standards, to achieve the progressive realization of the rights guaranteed under Article 43”.

17. In the book, Constitutional Law Doctrines and the Litigation of Fundamental Rights and Freedoms, the authors (Isaac Lenaola, Judge of Supreme Court of Kenya and Arnold Ochieng Oginga) stated that;

“It is not possible to determine the minimum threshold for the progressive realization of the right of access to adequate housing without first identifying the needs and opportunities for the enjoyment of such a right. These will vary according to factors such as income, unemployment, availability of land and poverty. The differences between city and rural communities also determine the needs and opportunities for the enjoyment of this right. Variations ultimately depend on the economic and social history and circumstances of a country”.

18. This far it is crystal clear that Affordable Housing is a necessary project, but again, it ought to be considered and implemented in light of other rights and circumstances.

19. In the case at hand, the petitioners have raised fundamental issues relating to planning and environment. They argue that their area is a low density zone where by in their leases, condition 5 provides that;

“The land and building shall always be used for one private dwelling house excluding a guest house”

20. The petitioners have also availed annexure 4 which is the development plan for the area depicting a low density residential use.

21. Further, the petitioners contend that there was no public participation touching on the residents of the estate and that no ESIA was conducted for the project.

22. As rightly submitted by the petitioners, the Grounds of Opposition filed by the respondents have not in any way controverted the facts tabled by the petitioners.

23. On planning, the governing legal framework is primarily the *Physical and Land Use Planning Act* of 2019 (Plupa) whose preamble states that it is;

“AN ACT of Parliament to make provision for the planning, use, regulation and development of land and for connected purposes”.

Section 55 thereof provides for the objectives of development control which are;

- (a) To ensure orderly physical and land use development;
- (b) To ensure optimal land use;
- (c) To ensure the proper execution and implementation of approved physical and land use development plans;
- (d) To protect and conserve the environment;
- (e) To promote public safety and health;



- (f) To promote public participation in physical and land use development decision-making;
 - (g) To ensure orderly and planned building development, planning, design, construction, operation and maintenance; and
 - (h) To promote the safeguarding of national security”.
24. There is not the slightest evidence to indicate how the respondents embarked on complying with the statutory framework relating to planning, considering that the area is for low density developments, yet the project is a high rise 12 storey building.
25. On Environment, the applicable law is mainly *Environmental Management and Co-ordination Act* (EMCA) whose preamble provides that it is;
- “An Act of Parliament to provide for the establishment of an appropriate legal and institutional framework for the management of the environment and for matters connected therewith and incidental thereto”
26. The petitioners contend that an ESIA was not conducted. At paragraph 7 of the Grounds of Opposition, the respondents contend that a Strategic Environmental Assessment was conducted in terms of the provisions of Section 57A of EMCA. If this is the position, what was so difficult availing evidence to that effect?
27. In the case of *Amu Power Company Limited v Save Lamu & 6 others* (Environment and Land Appeal 6 of 2019) [2025] KEELC 7285 (KLR) (16 October 2025) (Judgment) Neutral citation: [2025] KEELC 7285 (KLR), the court had this to say with regard to a Strategic Environmental Assessment;
- “This court cannot fault that finding by the Tribunal. The very purpose of a Strategic Environmental Assessment (SEA) is to avoid, at the higher echelons of any administration, mere episodic bouts of attention to persistent environmental issues, or knee-jerk reactions to development proposals likely to have far-reaching ramifications, some deleterious to the environment, and to provide a reliable and planned framework for the protection of the environment for a foreseeable period of time within a defined geographical expanse”.
28. It is noted that the project in question is a high rise building within a low density residential area. It follows and as rightly submitted by the petitioners that the physical land and neighbourhood character will be affected and changed by the project. Section 1 of the second schedule of EMCA stipulates that in instances where there is a major change in land use, then an EAI study report ought to be submitted. Again there is no evidence of such a report from the respondents.
29. On public participation, I find that this is a National Value as enshrined under Article 10 of *the Constitution* where it is stated that;
- “(1) The national values and principles of governance in this Article bind all state organs, state officers, public officers and all persons whenever any of them-
 - a) applies or interprets this Constitution;
 - b) enacts, applies or interprets any law; or
 - c) makes or implements public policy decisions
 - (2) The national values and principles of governance include-



- (a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;
- (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised;
- (c) good governance, integrity, transparency and accountability; and
- (d) sustainable development”.

30. In the case of *British American Tobacco Kenya, PLC (formerly British American Tobacco Kenya Limited) v Cabinet Secretary for the Ministry of Health & 2 Others; Kenya Tobacco Control Alliance & another (Interested Parties); Mastermind Tobacco Kenya Limited (The Affected Party)* [2019] eKLR, cited in *Law Society of Kenya v Attorney General & 3 others (Environment and Planning Petition 2 of 2023)* [2023] KEELC 20682 (KLR) (12 October 2023) (Judgment) Neutral citation: [2023] KEELC 20682 (KLR), The Supreme Court of Kenya had occasion to delve into the discourse on Public Participation in the following words;

“From the foregoing analysis, we would like to underscore that public participation and consultation is a living constitutional principle that goes to the constitutional tenet of the sovereignty of the people. It is through public participation that the people continue to find their sovereign place in the governance they have delegated to both the National and County Governments. Consequently, while courts have pronounced themselves on this issue, in line with this court’s mandate under section 3 of the *Supreme Court Act*, we would like to delimit the following framework for public participation: Guiding Principles for public participation

- (i) As a constitutional principle under article 10(2) of *the Constitution* public participation applies to all aspects of governance.
- (ii) The public officer and or entity charged with the performance of a particular duty bears the onus of ensuring and facilitating public participation. (iii) The lack of a prescribed legal framework for public participation is no excuse for not conducting public participation; the onus is on the public entity to give effect to this constitutional principle using reasonable means.
- (iv) Public participation must be real and not illusory. It is not a cosmetic or a public relations act. It is not a mere formality to be undertaken as a matter of course just to ‘fulfil’ a constitutional requirement. There is need for both quantitative and qualitative components in public participation (v) Public participation is not an abstract notion; it must be purposive and meaningful.
- (vi) Public participation must be accompanied by reasonable notice and reasonable opportunity. Reasonableness will be determined on a case to case basis.
- (vii) Public participation is not necessarily a process consisting of oral hearings, written submissions can also be made. The fact that someone was not heard is not enough to annul the process.



- (viii) Allegation of lack of public participation does not automatically vitiate the process. The allegations must be considered within the peculiar circumstances of each case: the mode, degree, scope and extent of public participation is to be determined on a case to case basis.
- (ix) Components of meaningful public participation include the following;
 - a. clarity of the subject matter for the public to understand;
 - b. structures and processes (medium of engagement) of participation that are clear and simple;
 - c. opportunity for balanced influence from the public in general;
 - d. commitment to the processes, inclusive and effective representation;
 - f. integrity and transparency of the process;
 - g. capacity to engage on the part of the public, including that the public must be first sensitized on the subject matter” Emphasize added.

31. In *Amu Power Company Limited v Save Lamu & 6 others* (Supra), the Court while upholding the decision of the National Environment Tribunal (NET) to halt a government flagship project that is a coal fired power plant on the basis of lack of public participation stated thus;

“The Tribunal effectively disqualified as invalid all the mitigation measures set out in the ESIA study on the sole basis that they had not been subjected to public participation. This court has already found in the earlier parts of this judgment that there was no evidence of sufficient public participation in the ESIA study. It is plain to see overriding significance of the Constitutionally prescribed feature of public participation in all activities in the public sphere, without which any other compliance with the law fades into insignificance”.

32. In the case at hand, the petitioners contend that the alleged public participation took place on 20.8.2025 after the works had commenced, that there was no proper notice and that residents of Maina village which is one kilometer away and who do not relate to the project were mobilized to endorse the project while leaving out the genuine stakeholders who are the residents of the estate. The response given by the respondents on these averments was that;

“Before the commencement of the Asian AHP project in Laikipia West Constituency, Laikipia County, the 1st to 4th respondents properly conducted a public participation forum in respect to the project”

33. Again, if this was the case, what was so difficult in availing such supporting evidence instead of proffering a general statement.

34. This far, it is clear beyond peradventure that the respondents took a rather casual attitude to a very monumental project where they failed to respond to the issues of environment, planning and public participation raised by the petitioners. I am in agreement with the averments of the petitioners that any continued construction will compromise the environmental quality as well as alter the physical land use and character of the estate, thus the substratum of the Petition will be rendered nugatory if the orders sought for are not issued at this stage of the suit. What more, the government is not exempt from



the compliance standards set out in the statutory and constitutional framework on matters Planning, Environment and Public Participation no matter how well meaning a project is.

35. Apparently, the respondents have not heeded to the various court orders given by the courts going by the latest address made to the court by the petitioners on 29.1.2026. Obedience of court orders is fundamental to the rule of law and a party who disobeys court orders undermines the authority and dignity of the court. It therefore ought to prick the conscience of the respondents that by disobeying the court orders, the respondents are in essence disregarding the rule of law, yet this is a fundamental National Value and tenet enshrined in the Kenyan Constitution under Article 10.
36. In the final analysis, I find that the application dated 24.9.2025 is merited, the same is allowed with costs to the petitioners.

Application Dated 15/10/2025

37. In the above application, the petitioners seek the following orders:

- “ 1. That this honourable court be pleased to find and hold that the 5th and 6th respondents, Tectonic International Limited (Supervising Consultant) and Eco-Partners Limited (Main Contractor), together with their directors, site managers, and/or agents, are in contempt of court for wilfully disobeying the court’s order issued on 30th September 2025, directing maintenance of status quo in respect of L.R. Nos. Nyahururu Municipality Block 4/9, 4/11 and 4/12.
2. That Mr. Gideon Mutemi Mulyungi, being the sole director of the 5th respondent, Tectonics International Limited (Supervising Consultant), and Mr. Adi Yunis Guliye and Mr. Ali Yunis Guliye, being directors of the 6th respondent, Eco-Partners Limited (Main Contractor), together with their respective site managers and/or other responsible officers in charge of their operations on the said parcels, be summoned to personally appear before this Honourable Court to show cause why they should not be punished for contempt of court for wilful disobedience of the court’s order issued on 30th September 2025.
3. That upon such hearing, the said directors, site managers and/or responsible officers be committed to civil jail for a term not exceeding six (6) months, or such disobedience of the court’s order of 30th September 2025.
4. That the 5th and 6th respondents be forthwith ordered to cease all excavation, drilling, construction or related activities on the said parcels pending full compliance and further directions of this court.
5. That the Officer Commanding Station (OCS) Nyahururu Police Station do ensure enforcement and observance of the court order to prevent further disobedience and protect the petitioners’ lives and property”.

38. The petitioners aver that even after the orders of maintenance of status quo were issued on 30.9.2025, the respondents continued with excavation and accelerated the construction. Thus the petitioners did a search at the companies registries where they obtained Form CR12 to confirm the directors of the 5th and 6th respondents.



39. It is noted that no response was filed in respect of this application.
40. The court notes that as at the time the application of 24.9.2025 was filed, there were minimal works on site as seen from the photographs availed. There was an iron sheet fence, vegetation clearance was on going and there was a tractor on site. The deputy Registrar of this court visited the site on 10.12.2025 in the presence of advocates for the petitioners and 1st – 4th respondents. The findings thereof were as follows;
- “Upon arrival, the site was locked. The gate was however opened by the watchman who allowed us access. Inside the compound, we found construction going on. There were over fifty workers by my approximation at the site. The foreman even spoke to us requiring us to wear a protective clothing should we want to go closer to where the construction was going on. We remained a safe distance away. We also witnessed a lorry and an earth mover truck moving material within the site to where the construction was ongoing. There was relative noise common in any construction site of the magnitude seen based on the number of workers”
41. This far, it is crystal clear that the respondents have defied the court orders.
42. Section 5 of the Judicature Act provides for the punishment of contempt of court in the following terms:
- “(1). The High Court and the Court of Appeal shall have the same power to punish for contempt of court as is for the time being possessed by the High Court of justice in England, and that power shall extend to upholding the authority and dignity of the subordinate courts”.
43. Court orders are binding until set aside, thus, disobedience undermines judicial authority which is central to the rule of law as set out under Article 159 of the Constitution. Contempt jurisdiction therefore exists to protect constitutional order.
44. In the case of Republic v Mohammed & another (Criminal Application 2 of 2018) [2018] KESC 51 (KLR) (23 April 2018) (Ruling), the Supreme Court of Kenya had this to say on contempt;
- “The Court does not, and ought not to be seen to, make Orders in vain; otherwise the Court would be exposed to ridicule, and no agency of the Constitutional order would then be left in place to serve as a guarantee for legality, and for the rights of all people.”
45. While in Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & Another [2005] eKLR, it was stated that;
- “It is essential for the maintenance of the rule of law and order that the authority and dignity of our courts are upheld at all times... A party who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it.”
46. Thus there is no doubt that an act in contempt of the Court constitutes an affront to judicial authority and the Court has the liberty and empowerment to mete out penalty for such conduct in a proper case.
47. In light of the foregoing analysis, and the findings in the application dated 24.9.2026, I find that the application dated 15.10.2025 is merited to a large extent. I proceed to allow prayers 1, 2, 4 and 5 in



the said application. The petitioners are awarded costs of the application. The contemnors are hereby directed to appear before this court to show cause as to why they should not be punished for contempt.

Application Dated 26.11.2025

48. This is yet another application for enforcement of the court orders. In view of the orders given in the application dated 24.9.2025 and 15.10.2025, the above application is marked as SPENT. It is however noted that by the time the above application was filed, the court had on 6.11.2025 varied the orders of maintenance of status and substituted the same by granting the conservatory orders at prayer 2 in the application dated 24.9.2025.

Application Dated 6.1.2026

49. It is noted that the above application was filed due to the blatant disregard of court orders issued in this matter. The petitioners seek the following orders;

- a. That this honourable court be pleased to enforce, *ex debito justitiae*, the conservatory orders issued on 30th September and the enhanced conservatory orders issued on 11th November 2025.
- b. That the Inspector General of Police be and is hereby directed to forthwith enforce compliance with the said court orders by ensuring immediate cessation of all construction, excavation, drilling, ground preparation or related activities on LR. Nos. Nyahururu Municipality Block 4/9, 4/11 and 4/12.
- c. That the Officer Commanding Station (OCS), Nyahururu Police Station, and such other officers as may be directed by the Inspector General of Police to provide security and ensure full compliance with the said orders.
- d. That the 5th and 6th respondents, their directors, site manager, employees, servants and/or agents be restrained from accessing or conducting any works on the said parcels pending further orders of this Honourable Court.
- e. That costs of this application be provided for”.

50. When the application was placed before Judge Mugo, the following orders were given;

- a. That the application dated 6/1/2026 will be heard *inter-partes* on 29/1/2026.
- b. That the 5th and 6th respondents, their directors, site manager, employees, servants and/or agents be restrained from accessing or conducting any works on the said parcels pending further orders of this Honourable Court
- c. That in the meantime, the orders herein and the hearing notice be served upon all the respondents, by way of substituted service in the ‘Daily Nation’ Newspaper on or before Monday the 19/1/2026.
- d. That the Officer Commanding Nyahururu Police Station (OCS Nyahururu) is hereby ordered to ensure that the foregoing order is duly complied with.
- e. That the costs of this application will await the outcome of this suit”.



51. Again service was effected but no response was filed. However, despite the said orders, the petitioners informed the court on 29.1.2026 that the respondents continue to defy the court orders. The photographs availed indeed indicate that the works are still on going.

52. In the circumstances, I find that the above application is merited, the same is hereby allowed with costs to the petitioners.

**DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 26th DAY OF FEBRUARY 2025
THROUGH MICROSOFT TEAMS.**

LUCY N. MBUGUA

JUDGE

In the presence of:

Mathea for Petitioners.

Nyariki for 1st to 4th Respondent.

Nancy Mwangi – Court Assistant

