



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC L PETITION NO. E010 OF 2026

**IN THE MATTER OF ARTICLES 10, 21, 22, 23, 40, 46, 47,
50, 259**

AND 260 OF THE CONSTITUTION OF KENYA

AND

**IN THE MATTER OF SECTIONS 152A, 152B, 152E,
152F, 152G, 152H**

AND 152I OF THE LAND ACT NO. 6 OF 2012

AND

**IN THE MATTER OF THE THREATENED VIOLATIONS OF
THE**

**FUNDAMENTAL RIGHTS OF THE PETITIONER TO OWN,
ENJOY,**

**CONTROL, AND PROTECT PROPERTY AND TO SEEK
REDRESS AND**

**CONSERVATORY RELIEF FOR INFRINGEMENT
THEREOF**

**AMIC CLEANING SERVICES
LIMITED.....PETITIONER/APPLICANT**

-VERSUS-

**PETER KIMEU.....1ST
RESPONDENT**

**MWAURA KAIGAI.....2ND
RESPONDENT**

**JOSEPH NDUNGI.....3RD
RESPONDENT**

**JOHN WAGUIRE.....4TH
RESPONDENT**

**LILIAN WAMBUI.....5TH
RESPONDENT**

RULING

1. Before me for determination is the Notice of Motion dated 10th February 2025, brought under Articles 2, 10, 19, 20, 21, 22, 23, 40, 47, 50 and 159 of the Constitution of Kenya 2010, Sections 3, 11 and 13 of the Environment and Land Court Act No. 19 of 2011, Sections 152A, 152B, 152E and 152G of the Land Act 2012, and Order 40 Rules 1, 2 and 4 and Order 51 Rule 1 of the Civil Procedure Rules, in which the Applicant seeks the following orders: -

a) Spent.

b) Spent

c) THAT pending the hearing and determination of the Petition, this Honourable Court be pleased to issue an order directing that the Respondents, their agents, servants, associates or any persons claiming be restrained from demanding, receiving, collecting or in any manner dealing with rental income from the illegal structures erected on the suit property and that all tenants and occupants be directed to deposit any rent due or accruing into Court or into such interest earning account as the Court may direct under the supervision of the Officer Commanding Station (OCS) Kwa Reuben Police Station and the OCPD Embaksai South.

d) THAT pending the hearing and determination of the Petition, the Honourable Court be pleased to issue an order of eviction against the Respondents and all persons claiming through them from L.R. No. 209/9824 with the assistance of the OCS Kwa Reuben Police Station.

e) THAT the costs of this application be provided for.

2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Samuel Kamau

Kigamba, a director of the Petitioner Company, sworn on even date.

THE APPLICANT'S CASE

3. The deponent averred that the Applicant is the registered proprietor of land parcel No. 209/9824 measuring approximately 1.098 hectares (hereinafter referred to as the suit property). He further averred that, in late 2025, the Respondents unlawfully, forcibly, and without any legal right, entered the suit property and began constructing semi-permanent structures thereon.
4. He asserted that, despite amicable efforts, the Respondents have refused to vacate the suit property and have instead intensified their illegal activities, thereby threatening to alter the character of the land, which prompted the Petitioner to issue a 21-day notice to vacate.
5. He asserted that the Respondents' actions violate Article 40 of the Constitution and have deprived the Petitioner of possession, use, and enjoyment of its property. He further asserted that the loss suffered by the Petitioner cannot be remedied by an award of damages. Additionally, he indicated that the Respondents had colluded with unscrupulous politicians who were inciting them to unlawfully occupy the suit property.
6. He argued that the Respondents have persisted in their unlawful activities despite a Sub-County security meeting held on 4th February 2026 at the Deputy County Commissioner's

office in Embakasi South, confirming they have no legal claim to the suit property.

In conclusion, he urged the Court to grant the application as prayed.

THE RESPONDENT'S CASE

1. The Respondents filed a replying affidavit sworn by Peter Kimeu, the 1st Respondent, in opposition to the application.
2. The deponent stated that residents have occupied the suit property since 1997, following a government settlement after the El Niño floods. He also stated that in July 1997, the late Hon Henry Rohia, then a Member of Parliament, tabled a motion in Parliament which was subsequently approved, allowing the resettlement or provision of alternative land for the flood victims.
3. He further stated that the settlement of residents from Mukuru Kwa Njenga, Mukuru Kwa Reuben, Maili Saba, and other villages within Embakasi settlement on the land was officially conducted by the then Provincial Commissioner Cyrus Maina. He asserted that the community has continuously occupied the suit property since 1997, and many children born and raised there are now adults.
4. He further stated that Laboratory and Allied, the original grantee of the land, was issued a grant on 1st November 1993 but failed to meet the requirements to develop a light industry within the specified period ending on 2nd November 1995,

resulting in the land being surrendered or reverting to the government.

5. He stated that following the Nairobi City County Government's declaration of Mukuru Kwa Njenga, Mukuru Kwa Reuben, and Viwandani as a Special Planning Area, a comprehensive collection of spatial and socio-economic data within the area indicates that there are 89 semi-permanent structures housing 886 families, with an estimated population of 3500 people.
6. He argued that the Petitioner was incorporated on 20th March 2025, long after the residents had settled on the land in 1997. He maintained that the Petitioner has not demonstrated that it is the registered owner of the suit property. It was contended that the sale of the suit property to Hydro Developers on 25th March 2014 and the subsequent sale to the Petitioner were irregular, unlawful, and violated the conditions set out in the original grant.
7. He further asserted that the 21-day notice issued by the Applicant is ultra vires and void ab initio, as Sections 152E and 152F of the Land Act explicitly require that a person in occupation must be given at least 90 days' written notice prior to eviction.
8. He argued that the Petitioner has not demonstrated that it would suffer any substantial loss if the orders sought are not granted. Conversely, he contended that the Respondents would suffer irreparable harm, as their families could be displaced, resulting in the loss of their shelter. He maintained

that the Respondents are entitled to petition elected leaders to advocate for their rights.

THE RESPONSE

9. In a further affidavit dated 11th March 2026 the Applicant stated that the Respondents claim that the Government settled people on the suit property in 1997 following the El Niño floods is merely an unsubstantiated assertion, as no allocation letter, gazette notice, compulsory acquisition instrument, compensation record, or official government directive has been produced to prove that the suit property was ever acquired, surrendered, or designated for resettlement purposes.
10. The deponent argued that the alleged parliamentary motion tabled by the late Hon Henry Rohia does not qualify as a valid instrument for land transfer or acquisition, nor can it establish a legal interest in land or override a registered proprietor's rights.
11. He reiterated that the Petitioner is the registered owner of the suit property, as its title has not been set aside, cancelled, or impeached by any Court. He argued that the suit property measures 2.71 acres and not 1,098.27 acres as claimed by the Respondents. He asserted that the Respondents' claims that the previous transfers of the suit property were irregular are speculative and outside their personal knowledge, since they were not parties to any past transaction regarding the

property and therefore lack standing to challenge those transactions.

12. He asserted that prolonged occupation by a trespasser does not confer ownership or any legal interest against a registered proprietor.
13. He further argued that Sections 152E and 152F do not apply to trespassers on private land. He also contended that the Respondents' claims regarding population and infrastructure are exaggerated, since no official census records, County planning reports, or records of infrastructure development have been produced. He maintained that the suit property measures 2.71 hectares and cannot physically accommodate 886 households or 3500 persons.
14. He argued that the balance of convenience favours the Petitioner, as it is the registered owner of the suit property. He emphasized that the Respondents lack legal rights to the property and therefore, are, not entitled to invoke the Court's protection.
15. The application was canvassed by way of written submissions.

THE PETITIONER/APPLICANT'S SUBMISSIONS.

16. The Applicant filed its submissions dated 10th March 2026.
17. On behalf of the Petitioner, Counsel outlined the following issues for the Court's determination:

- a) Whether the Applicant has established a prima facie case with a probability of success to warrant the grant of a conservatory order;*
- b) Whether the balance of convenience favours the Applicant*
- c) Whether damages would be an adequate remedy in the circumstances;*
- d) Whether the eviction orders sought can be granted at the interlocutory stage; and*
- e) Whether the Respondents' defences in their replying affidavit have any merit.*

- 18.** Regarding the first issue, Counsel cited the legal principles governing the issuance of conservatory orders as outlined in **Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others and in the case of Centre for Rights Education and Awareness (CREAW) & 7 others v Attorney General (2011) eKLR.**
19. Regarding the first condition, Counsel submitted that the Applicant has established a prima facie case, as it is the registered owner of the suit property, whose title remains unchallenged. Counsel contended that the Respondents admitted to being unlawful occupants of the suit property and have persisted in exploiting the land by collecting rent from 150 to 200 tenants.
- 20.** On the second condition, Counsel submitted that the Applicant is suffering irreparable harm due to the daily erection of semi-permanent structures and the collection of

unlawful rent to the detriment of the Applicant. To support this argument, Counsel relied on **Giella v Casman Brown & Co Ltd and on Samuel Kamau Machaia & another v Kenya Commercial Bank Limited & 2 others (2012)**.

21. Counsel submitted that the balance of convenience favours the Applicant because it is the registered owner of the suit property. Counsel relied on **Mathayo Joseph Musambi v Ali Abdu Rashid & another (2014) eKLR** to submit that occupation obtained unlawfully cannot be protected on the grounds of hardship.
22. Counsel further submitted that the Respondents have neither asserted that the Applicant acquired its title through fraudulent means nor demonstrated that the transfer was irregularly obtained.
23. In conclusion, Counsel urged the Court to allow the application as prayed.

THE RESPONDENTS SUBMISSIONS

24. The Respondents filed their submissions dated 19th March 2026.
25. On behalf of the Respondents, Counsel outlined the following issues for the Court's determination:
 - i) *Whether the Petition underpinning the application offends the doctrine of constitutional avoidance.*
 - ii) *Whether interlocutory eviction orders can be issued.*
26. On the first issue, Counsel cited the Supreme Court case of **Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others and Ndungu & another v Wachira & another (2014) eKLR** to argue

that the Petition offends the doctrine of constitutional avoidance.

27. Counsel contended that the substratum of the Petition concerns a land matter involving the validity of title, the legality of transfers, occupation and adherence to eviction procedures.
28. Counsel contended that constitutional litigation should not be used to circumvent standard procedures or to turn every dispute into a constitutional matter.
29. Regarding the second issue, Counsel submitted that eviction orders are final and cannot be issued at the interlocutory stage, as doing so would cause irreparable harm, including mass displacement and loss of shelter.
30. Counsel argued that the Petitioner has not established a prima facie case, as the Respondents have demonstrated that they have occupied the suit property since 1997. It was further submitted that the Petitioner has not shown it would suffer irreparable loss if the orders sought are not granted. It was submitted that the balance of convenience favours the Respondents because they are in possession of the suit property.
31. In conclusion, Counsel urged the Court to strike out the Petition with costs.

ANALYSIS AND DETERMINATION

32. Having considered the application, the respective affidavit and the rival submissions, the following issues fall for determination:

- a) *Whether the Applicant has met the threshold for the grant of conservatory orders; and*
- b) *Whether eviction orders should issue in the interim.*

33. The Respondents raised a preliminary issue in their submissions, contending that the Petition contravenes the doctrine of constitutional avoidance, asserting that the dispute should have been initiated through a suit, as it involves the validity of the title, the legality of the transfers, and eviction procedures.
34. The doctrine of constitutional avoidance is well established. In **Speaker of the National Assembly v Karume (19192) KLR 21**, the court held that where a clear procedure for the redress of a particular grievance is prescribed by the law, that procedure ought to be strictly followed. The Supreme Court in **Communications Commission of Kenya & 5 others v Royal Media Services Ltd & 5 others (2014) eKLR** emphasized that Court's should refrain from determining constitutional questions where a matter can be resolved on another legal basis.
35. The doctrine is, however, not absolute. The Court must interrogate the substance of the Petition to determine whether it raises bona fide constitutional questions or merely addresses an ordinary dispute in constitutional garb.
36. In the matter at hand, the Court notes that the Petitioner has alleged a violation of constitutional rights, including the rights to property and a fair hearing. These claims raise

arguable constitutional issues that cannot be summarily dismissed at this stage without interrogation of the facts and evidence. Although some of the issues raised are capable of resolution through ordinary civil proceedings, that alone is insufficient to oust this court's jurisdiction where constitutional violations are alleged. In the circumstances, the Court is not persuaded that the Petition offends the doctrine of constitutional avoidance.

37. Regarding the first issue, the Petitioners seek orders to restrain the Respondents from demanding, receiving, or collecting rental income from the structures erected on the suit premises. Since this matter is a Petition, the remedy is for conservatory orders rather than a temporary injunction, which is primarily sought in civil suits.
38. Article 23(3) of the Constitution empowers a Court to grant appropriate reliefs in any proceedings brought under Article 22 where there has been a violation or a threat of a violation of a fundamental right or freedom. The relief may include a conservatory order.
39. The law governing the issuance of conservatory orders is well established. Conservatory orders were defined in **Judicial Service Commission v Speaker of the National Assembly & Another (2013) eKLR**, 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.”

- 40.** The principles governing the grant of interim conservatory orders were outlined by the Supreme Court in **Gatirau Peter Munya vs Dickson Mwenda Kithinji & 2 Others (2014) EKR**, where the Court stated as follows:

“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”,

41. In **Wilson Kaberia 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:

a) 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.

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

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

42. Similarly, in **Board of Management of Uhuru Secondary School v. City County Director of Education and 2 Others (2015) eKLR**, the Court summarized the principles for granting a conservatory order as follows:

“a) First, an Applicant must demonstrate an arguable prima facie case with a likelihood of success, and to show that in the absence

of the conservatory orders, he/she is likely to suffer prejudice.

b) The second principle is whether the grant or denial of the conservatory relief will enhance the constitutional values and objects of a specific right or freedom in the Bill of Rights.

c) Thirdly, the Court should consider whether, if an interim conservatory order is not granted, the Petition or its substratum will be rendered nugatory.

d) The final principle for consideration is whether the public interest will be served or prejudiced by the decision to exercise discretion to grant or deny a conservatory order.”

43. The first issue for determination is whether the Petitioner has established a prima facie case that justifies 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 trial but rather one that raises arguable issues in a case alleging violation of rights.
44. A *prima facie* case was defined in **Kevin K Mwiti & Others v 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.”

45. The Petitioner asserts that it is the registered owner of the suit property and that the Respondents have unlawfully occupied it since 2025, during which they erected structures and leased them to third parties. The Petitioner produced a copy of the certificate of title indicating that the property was transferred and registered in its name on 3rd November 2025. It also produced a 21-day notice to vacate issued to the occupants, along with photographic evidence, including Google Maps images, showing multiple structures on the suit property.
46. The Respondents do not deny occupying the suit property. However, they claimed that their occupation, dating back to 1995, resulted from a government-approved resettlement programme. Although this assertion presents a competing claim to ownership, it does not, at this interlocutory stage, outweigh the evidentiary significance of the Petitioner’s registered title. Based on the evidence before me, I find that the Applicant has established a prima facie case.
47. Regarding whether the grant of conservatory relief promotes the constitutional values or the purpose of a specific right, the Petitioner contends that the Respondents continue to derive commercial benefits from the suit property in a

manner that conflicts with its proprietary rights under Article 40 of the Constitution. The right to property under Article 40 encompasses not only ownership but also the peaceful possession, use, and enjoyment of land.

48.

49. In that regard, the ongoing collection of rent from structures erected on the suit property, without any proven legal entitlement, prima facie infringes upon the Petitioner's proprietary rights and violates the constitutional protection against arbitrary deprivation of property.

50. Regarding whether the Petition or its substratum would be rendered nugatory if conservatory orders are not granted, the Court notes that the orders sought aim to preserve the income from the property and would therefore directly affect the claim for mesne profits. Based on the foregoing, the Petition's substratum, which involves assessing the legality of the Respondents' occupation and the alleged trespass, would be rendered nugatory.

51. The final consideration is where the public interest lies. While it is evident that the Respondents' occupation involves several third-party occupants, this must be balanced against the need to protect the sanctity of title and uphold the rule of law. The legal framework governing land does not permit unlawful occupation or the commercial misuse of private property. Allowing such conduct to continue without oversight would undermine the integrity of the land registration system. The Court must also exercise caution to

ensure that interim relief does not cause undue hardship or disorder, especially when third parties are involved.

52. In light of the foregoing, the Court is satisfied that preserving the subject matter requires restraining further commercial dealings with the suit property until the hearing and determination of the Petition.
53. In the result, the Court finds that the Petitioner has met the threshold for the grant of conservatory orders.
54. Regarding the second issue, the Petitioner seeks a mandatory injunction for eviction orders at an interlocutory stage under police supervision.
55. In **Locabail International Finance Ltd -v- Agro - Export & Another (1986) I ALLER 901** the Court stated that:

“A mandatory injunction ought not be granted on an interlocutory application in the absence of special circumstances and then only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was at a simple and summary act which could easily be remedied or where the defendant had attempted to steal a match on the plaintiff. Moreover, before granting a mandatory Injunction, the court had to feel a high sense of assurance that at the end of the trial it would appear that the injunction had rightly been granted, that being a

different and higher standard than required for a prohibitory injunction.”

56. Mandatory injunctions at the interlocutory stage ought to be granted sparingly and only in the clearest cases. In **Nation Media Group & 2 others v. John Harun Mwau (2014) KECA 308 (KLR)**, the Court of Appeal held that:

“It is trite law that for an interlocutory mandatory injunction to issue an applicant must demonstrate existence of special circumstance.

... A different standard, higher than that in a prohibitory injunction, is required before an interlocutory mandatory injunction is granted. Besides, the existence of exceptional and special circumstances must be demonstrated, as we have stated, a temporary injunction can only be granted in exceptional and in the clearest of cases.”

57. Although the Petitioner has demonstrated a prima facie proprietary interest in the suit property, the rights of the parties over the suit property remain contested and can only be determined upon a full hearing.

58. To grant eviction orders at this stage would effectively determine proprietary rights without the benefit of evidence, thereby occasioning prejudice to the Respondents.

59. Considering the circumstances, the Court is not convinced that this matter justifies granting eviction orders at an

interlocutory stage. The interests of justice would be better served by preserving the subject matter with conservatory orders, while allowing the substantive issues to be determined at a full hearing. Accordingly, the prayer for interim eviction orders is denied.

60. The upshot of the foregoing is that the application dated 10th February 2026 partially succeeds on the following terms:

a. Pending the hearing and determination of the Petition, an order is hereby issued restraining the Respondents, their agents, servants, associates, or any persons claiming through them, from demanding, receiving, collecting, or in any manner dealing with rental income arising from the structures erected on the suit property. All tenants and occupants of the said property shall deposit any rent due or accruing into a joint interest-earning account to be held in the names of the Advocates for the Petitioner and the Respondents.

b. The prayer for eviction orders in the interim is declined.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 17TH DAY OF APRIL 2026

.....
T. MURIGI
JUDGE

IN THE PRESENCE OF:

Wanjiru holding brief for Njenga for the Applicant
Ondiegi for the Respondent
Vena Court Assistant

ORIGINAL