

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ELC PETITION NO. E005 OF 2025

IKAMBA NYAGA MWOGA.....
.....PETITIONER

VERSUS

CYRUS NJIRU.....1ST
RESPONDENT

ANTHONY NDII.....2ND
RESPONDENT

LAND REGISTRAR MBEERE NORTH.....3RD
RESPONDENT

SIKAGO MAGISTRATES COURT.....4TH
RESPONDENT

ATTORNEY GENERAL.....5TH
RESPONDENT

RULING

1. Vide the Notice of Motion application dated 18/08/2025, the Petitioner is seeking a conservatory order restraining the 1st and 2nd Respondents, their agents, servants or anyone acting under their instructions from interfering with the Petitioner's occupation of land parcel Nthawa/Gitiburi/886 now subdivided into Nthawa/Gitiburi/2440-2444.

2. The application is based on grounds on the face of the application supported by the affidavit of the Petitioner, Ikamba Nyaga Mwoga, sworn on 18/08/2025. She deposed that she was married to the late Nyaga Murete Mwoga who died on 21/07/1990 and who owned the suit land having purchased the same from one Ndereba Ndibiro of the Nditi Clan. She averred that pursuant to orders issued by the 4th Respondent, the said land was unlawfully subdivided into five equal portions and awarded to different people who are not members of her family without giving reasons whatsoever. She averred that the resultant subdivisions are currently registered in the names of the 1st and 2nd Respondents who are strangers to her. She averred further that she was threatened with eviction from the said land by strangers claiming ownership of the land which is where she has lived all her life and buried her kin.
3. The 1st Respondent in opposition to the application filed a replying affidavit dated 21/10/2025 and deposed that he is the registered owner of land parcels Nthawa/Gitiburi 2240, 2241, 2242, 2243 which he purchased from one David Waweru Njoroge. He averred that the said David Njoroge had previously sued him seeking to compel him to pay money that was owing to him over the said parcels of land. He averred that he was an innocent purchaser for value without notice of any defect in title held by the seller. He maintained that he has been in occupation of the lands since he bought them and that he was not aware of claims by any other party. He urged that the

application be dismissed. He attached to the affidavit copies of the transfer forms and application forms for registration and pleadings in Embu (OS) ELC Case No. E048 of 2020.

4. The 2nd Respondent in opposition to the application also filed a replying affidavit dated 16/10/2025 and deposed that the Petitioner had failed to disclose that there had been previous court proceedings by her sons over his land parcel Nthawa/Gitiburi/2444 on behalf of the family of the late Nyaga Murete Mwoga and which land he had lawfully purchased from one Nicholas Nguthi Kivinda. He averred that the entry of the late Nyaga Murete Mwoga's name in the register for land parcel 886 was not absolute but provisional under the Land Adjudication Act to wait the decision of an appeal to the Minister. He averred that the name of the late Nyaga Murete Mwoga's name was therefore lawfully and procedurally removed from the register of the said land upon determination of the appeal to the minister.
5. He contended that the Petitioner had not made a case for granting of conservatory orders as the decision of the Minister did not specify that the land should be in the name of her late husband but in the name of a person who was deemed fit by the Nditi Clan. He averred that the prayers sought by the Petitioner would unnecessarily restrict and infringe on his proprietary rights to his land parcel 2444. He urged that the application be disallowed. He attached to the affidavit, a copy

of a letter from the chief and a copy of the register for land parcel 2444.

6. When the application came up for directions, the parties agreed to canvass it by way of written submissions. The Petitioner filed submissions dated 16/10/2025 through the firm of Kamunda Njue and Company Advocates. She submitted that the principles governing the grant of interlocutory orders are set out in the case of *Giella versus Cassman Brown and Company Ltd (1973) EA* where it was stated that a party must show that they have a prima facie case with a probability of success, that they will suffer irreparable damage that cannot be compensated by an award of damages and thirdly if the court is in doubt it ought to consider the case on a balance of probability.
7. She submitted that on the existence of a prima facie case, the Petition raises serious concerns that ought to be heard and determined on merit as the subject matter relates to the ownership of land which is a serious matter deserving of a hearing on merit. She averred that the suit land herein which belonged to her late husband is presently registered to the 1st and 2nd Respondents who are strangers to her and they may dispose the subject land and or evict them before the matter is heard and determined fully causing her irreparable harm.
8. She submitted further that the balance of convenience tilts in her favour and that no apparent prejudice is likely to be suffered by the Respondents should the Court issue the orders

sought in the intervening period pending hearing and determination of the Petition.

9. The 1st Respondent did not file any submissions as at the time of writing this ruling. The 2nd Respondent filed submissions dated 16/10/2025 through the firm of Duncan Muyodi and Company Advocates. However, the submissions largely address the merits of the Petition rather than the application presently before the Court. Notwithstanding this, the Court has duly considered the same.
10. Having considered the application, the responses made thereto and the parties' submissions, the sole issue for determination is whether a conservatory order should be issued restraining the 1st and 2nd Respondents from interfering with the Petitioners occupation of land parcel Nthawa/Gitiburi/886.
11. In *Wilson Kaberia Nkunja versus The Magistrate and Judges Vetting Board & others* Nairobi High Court Constitutional Petition No 154 of 2016 (2016) eKLR the court summarized three main conditions to be fulfilled for the granting of conservatory orders as follows: -
 - i. 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.

- ii. Whether, if a conservatory order is not granted, the petition alleging violation of, or threat of violation of rights will be rendered nugatory; and
- iii. The public interest must be considered before grant of a conservatory order.

12. In the present case, the Petitioner contends that the suit land originally belonged to her late husband, having been purchased from one Ndereba Ndibiro, and that the 1st and 2nd Respondents, who are strangers to her, are now registered as proprietors. She avers that she has lived on the land since 1955 when she got married to her late husband where she also interred his remains. Her apprehension is that the Respondents may evict her and her family from the land or dispose of the same before the Petition is heard and determined.

13. The Respondents on their part, assert that they lawfully acquired their respective parcels of land. The 1st Respondent maintains that he is a bona fide purchaser for value without notice, while the 2nd Respondent contends that the registration of the Petitioner's late husband as proprietor was provisional during the adjudication process and was lawfully altered following the determination of an appeal to the Minister. They further contend that the orders sought would unjustifiably curtail their proprietary rights.

14. Without delving into the merits of the Petition, the Court is satisfied that the issues raised regarding the

adjudication process, the legality of the resultant titles, and the competing claims to ownership disclose a prima facie case deserving of full hearing. Further, there is a real risk that in the absence of the orders sought, the Petitioner may be evicted or the suit properties alienated, thereby rendering the Petition nugatory. The Court therefore finds that justice is best served by preserving the subject matter of the dispute pending determination of the Petition. The grant of a conservatory order in the circumstances will not determine the rights of the parties but will ensure that the substratum of the Petition is maintained.

15. In the circumstances, the Court is satisfied that the Petitioner has met the threshold for the grant of a conservatory order. Accordingly, a conservatory order is hereby issued restraining the 1st and 2nd Respondents, their agents, servants, or any person acting under their instructions from interfering with the Petitioner's occupation, use and possession of land parcel Nthawa/Gitiburi/886 (now subdivided into Nthawa/Gitiburi/2440-2444) pending the hearing and determination of the Petition.
16. Parties shall maintain the status quo obtaining as at the date hereof, and no further dealings in respect of the suit properties shall be undertaken pending the hearing and determination of the Petition.
17. Costs shall be in the cause.

**DATED, SIGNED AND DELIVERED AT EMBU THIS 16TH
APRIL, 2026**

**HON E. C. CHERONO
ELC JUDGE**

In the presence of;

1. Mr. Kamunda for the Petitioner
2. Mr. Kiongo for the 3rd-5th Respondents
3. Mr. Okwaro for the 2nd Respondent
4. Mr. Mwenda for the 1st Respondent
5. Diana Kemboi C/A