



**Mareta v CECM Lands, Physical Planning, Urban Development,  
Housing & Public Works & another (Environment & Land Petition  
E008 of 2024) [2024] KEELC 6091 (KLR) (18 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6091 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND PETITION E008 OF 2024**

**CK NZILI, J**

**SEPTEMBER 18, 2024**

**IN THE MATTER OF BREACH OF THE CONSTITUTION AND  
SPECIFICALLY ARTICLES 1 (1) AND 1(3), 2(1), 3(1), 19 (1) AND  
(2), 20, 21 (1) AND (3), 22(1) AND (2), 23, 25(C), 27 (1), (2), (4)  
AND (5), 28, 40 (1) (A) AND (B), 47 (1), 48, 50 (1) AND (4), 159,  
165 (1) (A) AND (B) AND 165 (6) AND (7), 258 AND 259 OF THE  
CONSTITUTION**

**AND**

**IN THE MATTER OF THE LAND REGISTRATION ACT**

**AND**

**IN THE MATTER OF THE LAND ACT**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION  
OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND  
PROCEDURE RULES, 2013**

**BETWEEN**

**RAJAB OSMAN MARETA ..... PETITIONER**

**AND**

**CECM LANDS, PHYSICAL PLANNING, URBAN DEVELOPMENT, HOUSING  
& PUBLIC WORKS ..... 1<sup>ST</sup> RESPONDENT**

**MERU COUNTY GOVERNMENT ..... 2<sup>ND</sup> RESPONDENT**



## RULING

1. The Court is asked by an application dated 20.5.2024, to issue a temporary order of injunction pending the hearing and disposal of the petition before it. The reasons are contained on the face of the application and in a supporting affidavit of Rajab Osman Marete sworn on 20.5.2024.
2. It is averred that the applicant and a son of the registered owner of Plot No Meru Municipality/Old Town (Majengo) 67, to which the respondents have threatened to enter and demolish with no color of right. The applicant has attached annexure ROM 2 (a) & (b)” a copy of a confirmation of ownership and a list from the district physical planner indicating the respective names of plot owners in Majengo village.
3. Again, applicant avers the purported committee committed a mistake in taking measurements of plots without coming to the ground to verify the same and or follow the correct procedure. The applicant also avers that in 2000, the issue was brought to the attention of the director of physical planning to no avail, and thus, in 2006, the area members of parliament sought the assistance of the area chief in vain as per annexure marked “ROM 3”.
4. Additionally, the applicant avers that in 2017, several persons were issued with title deeds attached as annexures marked ROM 4 (a) – (e) which do not reflect the actual position where the suit properties are situated. The applicant avers that frequent pleas to the respondents, both verbal and in writing, to intervene, have been disregarded only for a demolition notice to be issued dated 18.7.2023, which was responded to by a demand letter dated 26.7.2023 marked as annexure ROM 6.
5. The applicant avers that the residents other than the ancestral boundaries, are unaware of the new boundaries, hence the need for the respondents and their officers to conduct a fresh survey before tampering with the suit properties to avoid clashes with the residents. Moreso, the applicant avers that on 21.5.2024, the respondents were seen in the area trying to enforce the said illegal act, which, if undertaken, shall cause them irreparable loss and damage.
6. Though the application was served upon the respondents, none has filed a response.
7. A party seeking temporary orders of injunction must establish a *prima facie* case, confirm there will be irreparable loss and damage, and lastly, show the balance of convenience tilts in favor of granting the orders sought. See *Giella v Cassman Brown & Company Limited* (1973) E.A 358.
8. What is before this Court is a constitutional petition brought against the respondents who are said to have issued a notice to demolish encroachment on road reserves within Majengo village Meru Municipality over Plot No 65 under the Constitution and Sections 66 and 72(1) & (2) of the physical and Land Use Planning Act 2019.
9. The petitioner brings this petition in his capacity as an affected owner of Plot No 67, formerly Plot No’s. 67. He terms the demolition notice as illegal and unconstitutional. Further, he pleaded in paragraphs 3, 4, 5, 6, 7 & 8 of the petition the alleged acts of breach by the respondents and other officers, which started between 2000 and 2006, whose grievances were yet to be addressed.
10. In essence, the petitioner now seeks conservatory orders, though pleaded as a temporary order of injunction.
11. In *Gatirua Peter Munya v Dickson Mwenda Kithinji & others* (2014) eKLR, the court observed that conservatory orders bear a public law connotation and are issued to facilitate ordered functioning



- within public agencies, to uphold the adjudicatory authority of the court in the public interest. The Court said that unlike interlocutory injunctions linked to private party issues where the *Giella v Cassman Brown (supra)* apply, conservatory orders would be granted on the inherent merit of a case bearing in mind the public interest the constitutional values, the proportionate magnitudes and priority levels attributable to the relevant courses.
12. In *Muslims for Human Rights, (MUHURI) & others v A.G. & others* (2011) eKLR, the court observed that it had to be careful not to reach conclusions or make final findings on matters to be determined in the main petition upon prosecution by the parties.
  13. A conservatory order is a judicial remedy granted by the court by way of an undertaking that no action of any kind is to be taken to preserve the subject until the suit is heard. It is an order of *status quo* for the preservation of the subject matter. See *Invesco Assurance Co. Ltd v M.W. (minor suing through next friend and mother (H.W.))* (2016) eKLR.
  14. Conservatory orders are not ordinary civil law remedies but are remedies provided by the *Constitution*, issued in rem as opposed to in personam. See *JSC v Speaker of the National Assembly & another* (2013) eKLR. A court must exercise caution when dealing with any request for such prayers the rest if it finally deals with matters that are the preserve of the main petition at interlocutory stage. See *CREAW & others v AG* (2011) eKLR, *KAM & others v C.S Ministry of Environment and Natural Resources & others* (2017) eKLR.
  15. In *BOM of Uhuru Secondary School v City County Director of Education & others* (2015) eKLR, the court held that an applicant must demonstrate an arguable *prima facie* case with a likelihood of success and show that in the absence of a conservatory order he was likely to suffer prejudice that by granting the orders, the constitutional rights, values and objects of his right will be enhanced, that the petition will be rendered nugatory in the absence of the conservatory orders and lastly, that public interest will be served or prejudiced by a decision not to exercise discretion to grant or deny a conservatory order. See also *Wilson Kaberia Nkunja v The Magistrates and Judges Vetting Board & others* (2016) eKLR.
  16. A *prima facie* case exists where, based on the material placed before the court there exists a right which has been infringed by the opposite party as to call for an explanation or rebuttal from the latter. See *Mrao v First American Bank of (K) Ltd and other* (2003) eKLR.
  17. In *David Ndi & others v A.G. & others* (2021) eKLR, the Court observed that it must be shown that a case that discloses arguable issues has been raised. In this case, the petitioner has to show that the has raised arguable constitutional issues. See *Mirugi Kariuki v AG* (1993) KLR 8, *Re Bivac International S.A (Bureau Veritas)* (2005) 2 E.A. 43 and *Naftali Rutbi Kinyua v Patrick Gachure & another* (2015) eKLR.
  18. There is no dispute that the petitioner has a right to institute a petition as provided under Articles 221 (1) & 258 (1) of the *Constitution*.
  19. It is not clear if the petitioner invoked the internal dispute mechanism under *Physical Land Use and Planning Act* (PLUPA) to challenge the notice issued under that Act by the respondents. Boundary determinations also fall under the jurisdiction of the land registrar and had a surveyor under Sections 13-18 of the *Land Registration Act*. The delay to challenge the notice since August 2023 till May 2024 is not explained at all. Imminent danger of demotion and or eviction is not pleaded.
  20. In the premises I am not convinced that conservatory orders would be the appropriate remedy at this stage or that their non-issuance would render the main petition nugatory. It is not in the public interest to grant the orders sought. Let the petition be served upon the respondents for hearing on a priority basis. The application stands dismissed with no order as to costs.



**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON  
THIS 18<sup>th</sup> DAY OF SEPTEMBER, 2024.**

In presence of

C.A Kananu

Petitioner

Otieno C for the applicant

**HON. C K NZILI**

**JUDGE**

