



**Seneiya Special School Suing Thro' is Board of Management & 2 others
v Samburu Handicap Education & Rehabilitation Programme (Suing
Thro' Its Registered Trustees - SHERP) (Environment and Land Appeal
E010 of 2025) [2025] KEELC 1380 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1380 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT AND LAND APPEAL E010 OF 2025**

**LN MBUGUA, J
MARCH 20, 2025**

BETWEEN

**SENEIYA SPECIAL SCHOOL SUING THRO' IS BOARD OF
MANAGEMENT 1ST APPELLANT
MINISTRY OF EDUCATION 2ND APPELLANT
THE HON. ATTORNEY GENERAL 3RD APPELLANT**

AND

**SAMBURU HANDICAP EDUCATION & REHABILITATION PROGRAMME
(SUING THRO' ITS REGISTERED TRUSTEES - SHERP) RESPONDENT**

RULING

1. This suit was commenced by way of memorandum of appeal dated 28/2/2025 in which the appellants/ applicants are challenging the ruling of Hon. T.A Sitati (PM) delivered in Maralal court MCELC/ E011 of 2024 on 27/2/2025. The suit was filed contemporaneously with an application of even date in which the appellants are seeking an order of stay of the execution of the aforementioned ruling and any other consequential orders pending the hearing and determination of the appeal. The appellants also seek an order for stay of proceedings in the aforementioned court until the appeal is heard.
2. The application is premised on grounds set out on the face of the application and in the supporting affidavit of one Sonia Wanjeri, an Advocate of the High Court of Kenya who has conduct of this matter in the office of the Attorney General. She contends that in the ruling delivered on 27/2/2025, the orders are framed as temporary injunctions but in essence they are permanent in nature and have the effect of evicting the appellants, adding that the said orders are not in the best interest of the special needs



children currently housed in the suit property. It is further contended that pursuant to the said ruling, the respondent wrote a letter dated 28/2/2025 threatening to evict the appellants from the suit parcel.

3. The respondents filed a replying affidavit dated 7/3/2025 sworn by one Grace S. Lebei who introduces herself as the founder of the respondent organization. She contends that they had moved the trial court through an application under certificate of urgency to stop the appellant from constructing classrooms on the suit property LR 1834, Maralal Catholic area in Maralal Township and on 28/11/2024, the court granted interim orders of maintenance of status quo stopping any further construction. That after the application was heard inter parties, the court gave a ruling on 27/2/2025 restraining the current appellant from constructing on the suit property or further trespassing on the subject parcel.
4. In addition, the court gave orders for the suit to be heard within 60 days and is hence scheduled for hearing on 17/4/2025. The respondents deny that the ruling was in the nature of an eviction order and as such, the applicants were not evicted and are under no threat of eviction by the respondent.
5. I have considered all the arguments proffered herein. In particular, this court takes into account the fact that the substantive dispute is still live before the magistrates' court in which orders were given for the matter to be heard within 60 days.
6. A perusal of the orders sought in the application dated 22.11.2024 before the trial court reveals that the current respondents were seeking orders inter alia "a temporary injunction directed to the respondentfrom entering, remaining in trespassingon the subject property".
7. In the ruling delivered on 27.2.2025, the court gave orders as follows;

"In the interest of justice, the court issues a temporary injunction on condition that the applicants sets down the suit for hearing and determination within the next 60 days in light of the urgent interests of the special needs Children"
8. I am in agreement with the appellant that the blanket issuance of injunctive orders have the potential to cause the eviction of the appellants since the current respondents had sought orders to restrain the current appellants from remaining in the suit property or trespassing thereon.
9. The provisions of Section 3A of the *Civil Procedure Act* stipulate that;

"Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court"
10. I find that the appropriate orders to give in the circumstances of this case are those which the trial court had given at the interim stage and that is the maintenance of status quo.
11. In *Thugi River Estate Limited & another v National Bank of Kenya Limited & 3 others* [2015] eKLR, the court had this to say in relation to status quo orders;

"In land matters the maintenance of status quo order is now literally synonymous with the proceedings. As was held by the Court of Appeal in the case of *Mugah v Kunga* [1988] KLR 748, in land matters status quo orders should always be issued for purposes of preserving the subject matter.

Status quo orders will issue not just when the court is prompted by way of formal applications for injunction or conservatory or stay orders: see *Texaco Ltd v Mulberry Ltd* [1972] 1 WLR 814, but also



when the court is of the view that as a case management strategy it would be more proportionate and appropriate without prejudicing one party but both, to issue a “status quo” order”

12. While in *Shimmers Plaza Limited v National Bank of Kenya Limited* [2015] Eklr cited in *Daniel Kinyanjui Gitau & 227 others v Mary Ruguru Njoroge* [2020] eKLR, the Court of Appeal defined status quo as follows;

“Status quo” in normal English parlance means the present situation, the way things stand as at the time the order is made, the existing state of things. It cannot therefore relate to the past or future occurrences or events. We fail to see what can be ambiguous about that order. All it meant was that everything was to remain as it was as at the time that order was given”.

13. Guided by the aforementioned case law, I find that it is necessary for this court to define what status quo entails in relation to the dispute at hand. The court will do so in the final orders.

14. At this juncture, I make reference to the provisions of Section 78 of the *Civil procedure Act* where the powers of an appellate court are detailed as follows;

- (1) Subject to such conditions and limitations as may be prescribed, an appellate court shall have power—
 - (a) To determine a case finally;
 - (b) To remand a case;
 - (c) To frame issues and refer them for trial;
 - (d) To take additional evidence or to require the evidence to be taken;
 - (e) To order a new trial.
- (2) Subject as aforesaid, the appellate court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Act on courts of original jurisdiction in respect of suits instituted therein.

15. Considering that the parties have subjected themselves to a harangue revolving around issuance of injunctive orders, and noting that the court has found “a status quo order” to be the appropriate order in this case, further noting that the hearing is scheduled before the trial court in the month of April 2025, then this court will not escalate the proceedings herein to finality. Instead, the court proceeds to give the following orders;

1. An order of maintenance of status quo is hereby issued in place of the order of injunction given by the trial court on 27.2.2025. For avoidance of doubts; a) the appellants shall not be evicted from the suit property, b) The appellants shall not undertake any constructions on the suit property.
2. The dispute is remitted back to the trial court for hearing and determination in relation to the substantive issues.
3. This appeal file is marked as closed and each party is to bear their own costs of this appeal.

DATED, SIGNED AND DELIVERED AT NANYUKI THIS 20TH DAY OF MARCH 2025 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE



In the presence of:

M/S Wanjeri for Appellant

Lenkidi for Respondent

Nancy Mwangi – Court Assistantse

