



**Embu County Government v University of Embu (Environment & Land  
Case 4 of 2021) [2022] KEELC 15529 (KLR) (6 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15529 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT & LAND CASE 4 OF 2021  
A KANIARU, J  
DECEMBER 6, 2022**

**BETWEEN**

**EMBU COUNTY GOVERNMENT ..... PLAINTIFF**

**AND**

**UNIVERSITY OF EMBU ..... RESPONDENT**

**RULING**

1. What is before the court for determination are two applications filed by way of notices of motion dated April 22, 2021 and May 21, 2021. Both applications are filed by the plaintiff/applicant.

**Applications**

2. The First application dated April 22, 2021 is expressed to be brought under the provisions of Order 40 Rules 1,2,4 & Order 51 of the *Civil Procedure Rules*, Sections 1A, 1B,1C of the *Civil Procedure Act*, CAP 21 Laws of Kenya, Article 40(1) of the *Constitution*, Inherent powers of the court and all other enabling provisions of the law.
3. The motion came with five (5) prayers, but prayers 1, 2 and 3 are moot. The prayers therefore for consideration are two, which are as follows: -

Prayer 4: That the Honorable Court be pleased to grant an order of injunction restraining the Defendant whether by its officers, servants, workmen, agents or otherwise howsoever from further evicting the Plaintiff, its officers, servants or agents from the Suit property and/ or the denying the Plaintiff access and use of portions of which the Plaintiff has been using including access to and use of offices, accommodation facilities, residential houses, training halls, kitchen, dining hall, demonstration farms and other Plaintiffs' facilities occupied and used by the Plaintiff's Agricultural Training Centre (ATC), Fisheries and Veterinary Departments pending the hearing and determination of this suit.



Prayer 5: That the Plaintiff be awarded the costs of this application.

4. The application is anchored on grounds on the face of it and the supporting affidavit sworn by Johnson Nyaga, the County Secretary of the County Government of Embu. He deposed, inter alia, that on April 21, 2021, the respondent accompanied by armed police officers stormed the Fisheries and Veterinary Departments ordering the applicant's officers to vacate the premises within one (1) hour. That they later locked the Fisheries and Veterinary Departments' offices denying them access to the facilities whilst they were yet to move the office and laboratory items from the premises. It was alleged that the notice given was short and illegal. It was further averred that the said offices had vital items including but not limited to office documents, equipment, furniture and sensitive laboratory materials such as semen, which could dry up and get spoilt if not properly managed.
5. The applicant further expressed fears that its officers from the Fisheries and Veterinary Department were on the verge of being evicted. They averred that the said officers were summoned by the Vice Chancellor on the same day, who is alleged to have ordered them to sign a document stating that they are in occupation of the respondent's property. Upon their refusal he informed them that they would be evicted. It was alleged that in January 2020, the respondent had attempted to evict the applicant's ATC officers from the Suit property and they partially succeeded as they locked the training and dining halls denying the officers' access to the facilities.
6. The applicant averred that in a bid to stop the eviction, they had filed a suit against the respondent in Civil Case No 4 of 2020 at the Chief Magistrate's Court at Embu but the same was dismissed on April 20, 2020 and efforts to have it transferred were unsuccessful. The applicant argued that it has a right to 50 acres of the defendant's property which had been re-allocated by the President via a letter dated July 9, 2012. They further argued that a part development plan had been approved by the Minister of Lands and they had followed all legal processes including public participation. It was said that efforts to secure registration of title for the portion had been futile, hence making it a subject of harassment from the respondent. The applicant argued that the respondent had acquired its' title illegally by registering the entire land as its own despite having the knowledge that the applicant had been re-allocated 50 acres of the said property.
7. In that regard, the applicant averred that it has a legal right to the Suit property and had therefore established a prima facie case to warrant grant of the orders sought. Further, it was stated that the orders should be granted to prevent the respondent from interfering with the property and the impeding eviction of its officers. The balance of convenience was also said to lie in favour of granting the orders sought.
8. The applicant filed a supplementary affidavit to the application. It was reiterated that the offices locked by the respondent had sensitive items that could get spoilt. There were annexed photos of the blocking of the office premises as evidence in support of the application. It was further alleged that upon service of the application on the respondent, they forcefully broke into the applicant's offices with the intention of removing the assets of the applicant and to illegally occupy the said offices. The applicant complained that the evictions were taking place despite the applicant having referred the matter to the Inter- Governmental Relations Technical Committee (IGRTC) who were willing to intervene and resolve the dispute amicably.
9. By a further supplementary affidavit dated May 3, 2021, the applicant averred that the Inter-Governmental Relations Technical Committee wrote to the parties *vide* a letter April 29, 2021 requesting the respondent to refrain from carrying out evictions to enable the Inter-Governmental Relations Technical Committee to resolve the dispute but that despite this, the respondent continued to evict the applicant from its facilities.



10. The applicant filed a second application dated May 21, 2021. In that application it sought orders that;
- i) The Honorable Court be pleased to grant a mandatory injunction compelling the Defendant to grant the Plaintiff access and quiet enjoyment of all the Plaintiff's facilities being offices, accommodation facilities, residential houses, training halls, kitchen, dining hall, demonstration farms and any other facilities belonging to the Plaintiff's Agricultural Training Centre (ATC), Fisheries and Veterinary Departments (the "Facilities") situated in title number LR No 30567 pending the hearing and of this suit.
  - ii) The Honorable Court be pleased to grant a mandatory injunction compelling the Defendant to reinstate all the assets belonging to the Plaintiff into the Plaintiff's Facilities situated in title number LR No 30567 pending the hearing and determination of this suit.
  - iii) The Honorable Court be pleased to grant any other orders as it may deem just.
  - iv) The Plaintiff be awarded the costs of this application.
11. That application was anchored on grounds that whilst the applicant had filed an application seeking to stop eviction from taking place, the respondent had moved with speed to ensure evictions had taken place before the Honourable Court could make a determination. It was said that when the matter was slated for directions before the court on May 5, 2021, the court was informed by the respondent's counsel that the evictions had actually taken place and that only the applicant's staff occupying the residential houses had not been evicted. The applicant contested that the move to take away its assets had significantly affected its operations yet it has a legitimate interest on the property. The applicant accused the respondent of trying to steal a march over them and averred that it was in the interest of justice, fairness and equity that the application be allowed as prayed.
12. The application was accompanied by the supporting affidavit sworn by the County Secretary, County Government of Embu, the Applicant herein. He reiterated the grounds in the application and the earlier supporting affidavit sworn in the application dated April 22, 2022. In addition, the applicant accused the respondent of gaining access to the applicant's offices, accommodation facilities, demonstration farms and taking away all the assets contained therein to an unknown place without the consent of the applicant. The applicant reiterated that if the orders to restore the applicant's position were not granted, they would continue to suffer irreparable loss and harm and would not be in a position to fulfil its constitutional mandate to the people of Embu.

## Response

13. The respondent opposed the suit by way of replying affidavit sworn by Prof Daniel Mugendi Njiru, the Vice Chancellor for the respondent. He deposed that the Respondent was the absolute and registered owner of the suit property and contended that the applicant could not apply for the reliefs sought as they had no beneficial, legal or registrable interest in the suit. According to him, the respondent was only hosting the applicant's Agricultural Training Centre (the ATC) on the suit property.
14. He gave a history of the establishment of the institution and the manner in which it had devolved from being a constituent college of the University of Nairobi to the current Embu University College. He deposed that the commissioner for lands on August 20, 1998 gave them an allotment letter for land measuring approximately 97.82Ha in favour of the EAST college, which was the institution that existed before the establishment of the Embu University College. He stated that the respondent hosted



- three institutions within its premises namely, the ATC, Fisheries and Veterinary Departments. He deposed that on March 23, 2012, the Embu West District Development Committee met and discussed among other issues a proposed excision of 50 acres of the land owned and occupied by the then Embu University College. That the said meeting was done without consultation of the applicant, who were the biggest stakeholders in the suit property.
15. That in a letter dated July 30, 2012, from the Permanent Secretary, Ministry of Education, Science and Technology, it was proposed that the request from the Embu West District Development Committee be put before the respondent's Council for consideration. This was done but the council declined the request for reason that it did not have enough land for its operations. It was decried that adequate land was one of the requirements for accreditation and subsequent award of Charter to the Respondent by the Commission of University Education (CUE) and reduction of the suit property would adversely impact on the compliance of the said requirements.
  16. The respondent avers that they communicated the said decline to the Permanent Secretary's and proceeded to write to the Commissioner of Lands requesting for the allotment of land number LR 112/20 to Embu University College and issuance of a title deed. This was subsequently issued on April 16, 2013 subject to the college's formal written acceptance of the conditions set forth therein and payment of Kenya Shillings Six Thousand Nine Hundred and Twenty-Two (Kshs 6,922/-). It was said that despite this, the District Physical Planner informed them of an alleged approval to excise 50 acres from the said land. That the respondent wrote a letter to the District Physical Planner informing him that the request to excise the said 50 acres of land had been declined by the respondent's Council.
  17. It was said that in a bid to resolve the issue the parties held a stakeholders' forum convened at the Respondent's premises on May 3, 2013 which included various stakeholders including the applicant representatives in which it was unanimously resolved that the University College's land should be left intact and that the Applicant should look for alternative land for purposes of relocating the ATC. The respondent further deposed that despite the said resolution there were still efforts to hive off the 50 acres of land. The respondent stated that at its request, the National Lands Commission intervened by holding meeting with relevant stakeholders and eventually assisted it in getting all approvals for the land.
  18. The respondent averred that upon acquiring title to the land, it held a meeting with the three institutions occupying it and resolved that they would be issued with a three (3) months' notice to vacate the suit property. The notices were said to have been issued on August 3, 2018 and a request was then made by the said institutions via a letter dated September 9, 2018 for extension of the notice period to enable the departments make alternative arrangements for accommodation. The extension was said to have been considered and duly granted and the applicant, in acknowledging the extension, indicated via a letter dated June 6, 2019 that it had already secured land and had made budgetary allocation to commence construction works in the 2019/20 financial year. It was contended that the equitable principle of estoppel prevented the Applicant from going back on its assertions and promises.
  19. The respondent decried that the applicant had now referred the matter to the Committee on Intergovernmental Assets and Liabilities. The respondent maintained that it being the registered proprietor of the lease over the suit property, it is vested with the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto. The respondent maintained that the applicant cannot move the court to injunct the Respondent from enforcing its rights over the suit property.
  20. The respondent referred to the suit filed by the Applicant in Civil Case No 4 of 2020 in the Chief Magistrate's Court in Embu seeking to stop it from lawfully exercising its rights as the registered



proprietor of the suit property and stated that the said suit had been struck out for want of jurisdiction. The respondent confirmed that on April 20, 2021 in what it terms as exercise of its rights, it took possession and occupation of the suit property and allocated the rooms for classroom and office use and stated that at the time there were court orders restraining it from exercising its such rights. The contested area of occupation was said to have been allocated for different use by the respondent.

21. With regard to the staff residing in the houses, it was said that they were doing so in their capacity and not as agents of the applicant as they were being deducted rent from their salaries, which was payable to the National Government. In that regard, the applicant was said not to have locus standi to institute or prosecute the matter on behalf of the National Government, on account of the landlord-tenant relationship which is between the occupants of the houses and the National government. The respondent stated that it has no issue with said staff occupying the houses on account of the National Government.
22. As for the goods said to have been confiscated, the respondent stated that they had been formally released to the applicant. The respondent further deposed that the President of the Republic of Kenya does not have the powers to allocate land as this mandate was solely vested in the National Land Commission. The respondent was lastly of the view that the threshold for grant of the orders sought had not been met.
23. In response to the replying affidavit, the applicant filed a further affidavit on September 7, 2021. It was averred that the ATC, were anchored in the government policies and legal framework and have been offering its services at the suit property. It was said that the institution carried out its operations on the land and the two institutions co-existed harmoniously until the registration of the shared Suit property in the name of the Respondent. The applicant decried that it's ATC had set up a wide variety of infrastructure to enable it meet its objectives and had made many attempts towards titling the land it occupied in the past. To support this, they shared correspondences relating to the titling of the suit property.
24. The applicant deposed that the harassment by the applicant started when the respondent acquired its title and maintained that they were allocated the said 50 acres of land. The applicant was of the view that the respondent's title could be impeached on account of irregularities at the time of registration for reason that they had misrepresented the applicant's interest in the suit property by having it registered as its own.

## Submissions

25. The court directed that the applications be determined jointly. The parties were directed to file their respective submissions. The applicant filed its submissions on February 23, 2022. They identified three issues for determination by the court. The first was whether they were deserving of the injunction restraining the respondent from further evicting it from the Suit Property. They submitted that for an interlocutory injunction to be granted, there were three conditions set in the celebrated case of *Giella v Cassman Brown & Company Ltd* (1973) EA 358. They relied also on the case of *Joel Kipkurui arap Koech v Alice Wambui Magandu & 3 others* [2018] eKLR where the court restated the three conditions to wit; an applicant must show that he has a prima facie case with a probability of success; that he stands to suffer irreparable damage; and where the court is in doubt as to the foregoing, it will decide the matter on the balance of convenience. On what was *prima facie* case, they relied on the definition as in the Court of Appeal case of *Mrao Ltd v First American Bank of Kenya Ltd* (2003) eKLR.
26. The applicant submitted that it had supplied sufficient evidence to show that the suit Property was partially allocated to it; that they have been in possession of the land; and that therefore had a legitimate



- claim to it. In essence, it was submitted that the applicant has established a prima facie case. The applicant was further of the view that as both parties were claiming ownership of the land, then it would be fair that the status quo prevailing be maintained. They further submitted that they stand to suffer irreparable damage should the orders sought not be granted as they would be dispossessed of the suit property and their rights curtailed even before it is heard.
27. The applicant further submitted that the court is not bound to the three (3) principles set out in the *Giella v Cassman Brown* case (supra) and may look at the circumstances of the case generally and the overriding objective of the law. On this, they relied on the case of *Suleiman v Amboseli Resort Ltd* (2004) KLR 589 which cited with authority the case of *Films Rover International* where it was stated, inter alia, that the court should take whichever course appears to carry the lower risk of injustice if it should turn out to have been ‘wrong’. The applicant stated that the guiding principle of the overriding objective is for the Court to do justice to the parties before it and their interests must be put on scales. The court was urged to grant interlocutory orders as there was real risk and danger that the applicant stood to suffer.
  28. The second issue for determination was whether the applicant is deserving of orders of mandatory injunction to have it reinstated into the suit property pending the determination of the suit. On this, they relied on the case of *Maheer Unissa Karim v Edward Oluoch Odumbe* [2015] eKLR where the Court observed that a mandatory injunction on an interlocutory application is granted where the case is clear and one which the court thinks it ought to be decided at once, or if the act done is simple and summary one which can be easily remedied, or where the defendant attempts to steal a march on the plaintiff. If all this, or at least some of it, is found to exist, then a mandatory injunction will be granted.
  29. The applicant submitted that they had co-existed harmoniously with the applicant, until the applicant unceremoniously evicted them from the Suit Property without valid justification and/or without following procedure as required under the *Land Act*. Reliance was made on Sections 152C and 152G on the manner and eviction of a party from public land. The applicant complained that the evictions were carried out brutally and without warning or due care to the sensitive items contained in the premises. Generally, the eviction was said to have been illegal and unprocedural and the applicant was of the view that they ought to be reinstated until the matter is substantively determined.
  30. Further reliance was made on the Court of Appeal case of *Jaj Super Power Cash and Carry Ltd vs Nairobi City Council & 20 others* CA 111/2002 where it was stated that it is the trespasser who should give way pending the determination of the dispute and it is no answer that the alleged acts of trespass are compensable in damages. The court was implored to allow the application and reinstate the applicant on the suit property and order reinstatement of all assets belonging to the applicant. On costs the court, was urged to be guided by Section 27 of the *Civil Procedure Act*, 2010 and award the costs in favour of the applicant.
  31. The respondent filed its’ submissions on October 21, 2022. The respondent too identified three issues for determination by the court. The first was whether the applicant should be granted an injunction from further eviction. They argued that the respondent is the registered owner of the suit and the applicant does not have any proprietary interest in the land. It was submitted that the applicant was seeking an injunction in order to remain on the land that it does not own and further that it had admitted that it was no longer on the land. In that regard, the motion for injunction was said to have become moot and that the court should determine it in favour of the respondent.
  32. To support its position, the respondent relied on the case of *Marcus Mutua Muluvi & another v Philip Tonui & Another* [2012] eKLR where the court denied to grant orders for an injunction where the applicants had failed to exhibit proprietary interest in the suit premises capable of being protected by



- an order of interlocutory injunction and where the respondents had allegedly trespassed upon. The court therein made a finding that the applicants had failed to demonstrate a prima facie case with a likelihood of success.
33. The respondent submitted on the rights of a title holder and argued that the applicant could not seek to move the court to injunct it yet the reasons given for seeking cancellation of the title were slim and could not warrant the court to make a finding that the applicant has established a *prima facie* case whose sub stratum needed to be protected by way of an injunction.
  34. The respondent argued that the applicant was no longer on the land and could not be granted an injunction. To support this, it relied on the case of *Habiba Ali Mursal & 4 Others V Mariam Noor Abdi* [2018] eKLR, where the court held that the purpose of an injunction was to restrain that which was threatened to occur or was in the process of being undertaken in breach of one's right but not to prevent that which has already occurred. Further reliance was made on the case of *Moses M Wairimu & 24 Others V Kenya Power & Lighting Company Ltd & Another* [2020] eKLR, where it was also held that an injunction cannot be granted to prevent what has already happened.
  35. The respondent was of the view that the applicant had not met the criteria for granting an injunction as laid down in the case of *Giella vs Cassman Brown & Company Limited* [1973] EA 361. It was stated that an interlocutory injunction is a discretionary and equitable relief and an applicant seeking such remedy ought to come to court with clean hands and make full and frank disclosure. The Applicant was accused of coming to court with unclean hands and it was contended that they were only hosted on the premises. It was also contended that turning the hospitality into an entitlement ought not be approved by the court.
  36. The second issue for determination was whether the Applicant should be granted a mandatory injunction to have it reinstated into the suit property. The respondent averred that they were hosting the (ATC) and had issued them with notice to vacate the suit property which were acknowledged and the applicant even requested for a meeting to deliberate on the issue. The respondent contended that when it took possession and occupation there were no court orders restraining it from exercising its right to the property.
  37. The respondent relied on the case of *Shepard Homes Versus Sandham* (1970) 3 WLR Pg 356 Case which gave a distinction between a Prohibitory injunction and a mandatory injunction where it was stated that a Mandatory Injunction requires the taking of positive steps, and may require the dismantling or destruction of something already erected, or constructed.
  38. Further reliance was made on the case of *Andrew Kamau Mucuba Versus Ripples Ltd* (2001) eKLR where the court stated that a Mandatory Injunction should only issue in exceptional, the clearest, and special cases only. It should only issue with utmost care and even reluctance. Lastly, they relied on the case of *Kenya Breweries Limited & Another vs Washington O Okeya* [2002] eKLR where it was held that a mandatory injunction ought not to be granted in an interlocutory application in the absence of special circumstances and then only in clear cases for instance where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedial or where the Defendants had attempted to steal a march on the plaintiff. It was argued that there were no special circumstances to warrant a mandatory injunction for reinstatement.
  39. On costs the respondent was of the view that the applicant having dragged them to court then it should bear the costs of the application.



## Analysis And Determination

40. I have considered the two applications before me, the response by the respondent, the rival submissions by the parties, and the court record in general. In the first application the applicant moved this court seeking injunction orders to stop the respondent from further evicting it, its officers or agents from the suit property and/or denying it access and use of portions occupied and used by the applicant's Agricultural Training Centre (ATC), Fisheries and Veterinary Departments pending the hearing and determination of this suit.
41. The substantive law on injunctions is Order 40 of the *Civil Procedure Rules*. The said provisions were partially re-emphasized by the court in the case of *Robert Mugo Wa Karanja Vs Ecobank (Kenya) Limited & Another* [2019] eKLR where it was stated that; "circumstances for consideration before granting a temporary injunction under order 40 rule 1 of the *Civil Procedure Rules* requires a proof that any property in dispute in a suit is in a danger of being wasted, damaged or alienated by any party of the suit or wrongfully sold in execution of a decree or that the Defendant threatens or intends to remove or dispose the property; the court is in such situation enjoined to a grant a temporary injunction to restrain such acts..."
42. The principles to be considered for grant of an order for injunction were well set out in the *Locus Classicus* case of *Giella vs Cassman Brown & Co Ltd* (1973) EA 358 in which it was held as follows: "... the conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience."
43. The applicants case is that it's ATC, Fisheries and Veterinary department have been in occupation of a portion of the suit parcel of land from the colonial era, and they were occupying and undertaking it's activities on a 50 acre parcel of land. It was said that the applicant, together with the respondent had peacefully co-existed on the premises while trying to acquire title for the portion they occupied respectively. The applicant stated that they were re- allocated 50 acres of land by the president via a letter dated July 9, 2012. They also argued that they were given various approvals for development of the land and have infrastructure on the said land. They complained that the respondent had now, acquired title to the entire portion and had moved to evict them from the land while giving them short notice without ample time to safeguard their items.
44. It was said that the matter had been referred to the Committee on Intergovernmental Assets and Liabilities which had recommended that the respondent refrain from evicting the applicant. The respondent was however accused of gaining access to the applicant's offices, accommodation facilities, demonstration farms and taking away all the assets contained therein, without the consent of the applicant. This was said to have been done after filing of this suit and before the court's determination of the same.
45. The respondent in it's defence stated that it was registered owner of the land and was merely hosting the applicant on it. It was argued that the applicant had no beneficial or registrable interest in the land and was taking advantage of their good will to seek entitlement to the land. The respondent gave a lengthy history of how they came to be registered as owners of the land and the numerous attempts by the applicant to excise 50 acres of land from it.
46. They respondent details of how they had involved various stakeholders who had resolved that the land ought to remain with the respondent as that vast land was one of the requirements for the applicant to



be issued with a charter for accreditation as a university. It was said that the applicant had been given notice for eviction, which notice they had duly acknowledged and even sought extension of time to enable them comply with the said notice but they had instead referred the matter to the Committee on Intergovernmental Assets and Liabilities for intervention. On the issue of eviction, the respondent acknowledged having already evicted the applicant from the premises and was of the view that in the circumstances orders for injunction could not be issued, being that the court could not prevent that which had already taken place.

47. It is not at all in dispute that the respondent is the registered owner of the suit parcel of land. It is also not in dispute that the applicant has already been evicted from the said land, an admission they have made in their pleadings. Further this eviction is what prompted the applicant to file the second application seeking orders of mandatory injunction to compel the respondent to allow it back into the property. In the circumstances can orders of interlocutory injunction be issued.
48. The purpose of an interlocutory injunction is well captured under the provisions of Order 40(1)(b) of the *Civil Procedure Rules* which is to ....”restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further.” An injunction serves to maintain the status quo by preventing alienation of the land or damaging and waste pending determination of the suit. In the instant case, the applicant has already been evicted from the land and granting an injunction to prevent such eviction will be an act in futility.
49. The court, in the case of *Habiba Ali Mursal & 4 Others V Mariam Noor Abdi* [2018] eKLR, on the purpose of an injunction stated thus “The purpose of an injunction is to restrain that which is threatened to occur or is in the process of being undertaken in breach of one’s right. It is never meant to prevent what has already occurred. It will therefore be futile to grant injunctive orders”. I share in the reasoning of the above case. An order for an injunction is granted to restrain a party from doing certain acts and where the acts sought to be restrained have already taken place, then the application cannot be granted as it will serve no purpose. Courts of law do not grant orders in vain.
50. The court, in an application for an injunction, is usually called upon to prevent irreparable loss from happening. But in this case, if at all there was any loss which would have incurred, the same has already been incurred. Further, an injunction being an equitable remedy, it is trite law that equity does not act in vain and the court cannot grant orders which will be unenforceable. In the circumstances the first application sought by the parties has already been overtaken by events and cannot be granted. I hereby dismiss it.
51. The second application filed is the one for grant for a mandatory injunction seeking for the court to compel the respondent to grant the applicant access and quiet enjoyment of all the applicant’s facilities being offices, accommodation facilities, residential houses, training halls, kitchen, dining hall, demonstration farms and any other facilities belonging to the applicant’s Agricultural Training Centre (ATC), Fisheries and Veterinary Departments (the “Facilities”) situated in title number LR No 30567 pending the hearing and determination of this suit. Further orders have been sought to compel the respondent to reinstate all the assets belonging to the applicant into the applicant’s facilities.
52. The principles for the grant of a mandatory injunctions are now settled. The Court of Appeal in the case of *Kenya Breweries Ltd & Another vs Washington O Okeya* [2002] eKLR stated as follows on mandatory injunctions “A mandatory injunction ought not to 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 directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a



march on the plaintiff. Moreover, before granting a mandatory interlocutory injunction, the court had to feel a higher degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction.”

53. Further, the court in the case of *Nation Media Group & 2 Others vs John Harun Mwau* [2014] eKLR, observed “It is trite law that for an interlocutory mandatory injunction to issue, an applicant must demonstrate existence of special circumstances... A different standard higher than that in prohibitory injunction is required before an interlocutory mandatory injunction is granted. Besides existence of exceptional and special circumstances must be demonstrated .....”
54. All the cases cited above are actually expressing a position in *Halsbury Laws of England* (4<sup>th</sup> Edition) para 948, as follows:

“A mandatory injunction can be granted on an interlocutory application as well as at the hearing but, in absence of special circumstances, it will not normally be granted. However, if the case is clear and which the court thinks ought to be decided at once, or if the act done is simple and a summary, one which can be remedied, or if the defendant tried to steal a march on the plaintiff ..... a mandatory injunction will be granted on an interlocutory application.”

55. The circumstances of this case do not, in my view, meet the high threshold required for a mandatory injunction to be granted. The respondent already has the title to the land. A notice of eviction was evidently issued to the applicant and it seems clear that the applicant was at first ready to leave and even pleaded for more time to do so. It is not desirable to say too much on this at this stage seeing as it is that the matter is yet to come for trial. I only mention it to show that even the applicant seems to have been convinced at one point that it was necessary to leave the land to the respondent.
56. The law applicable shows clearly that a mandatory injunction is only sparingly issued and the court is required to satisfy itself that the case before it is clear, straightforward, even incontrovertible. That is not the kind of case I have before me. I am therefore not persuaded that I should grant an order of mandatory injunction.
57. The upshot, when all is considered, is that the two applications have not had their merits demonstrated before me and I hereby dismiss them with costs.

**RULING DATED, SIGNED and DELIVERED in open court at EMBU this 6<sup>TH</sup> day of DECEMBER, 2022.**

In the presence of M/s Mwinja for Wamweya for plaintiff/Applicant and M/s Nzekele for Gitonga for respondent.

Court assistant: Leadys

**A.K. KANIARU**

**JUDGE**

