



**Ethics & Anti-Corruption Commission v Nzoka & another (Environment & Land Case E005 of 2022) [2023] KEELC 652 (KLR) (9 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 652 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KITUI  
ENVIRONMENT & LAND CASE E005 OF 2022  
LG KIMANI, J  
FEBRUARY 9, 2023**

**BETWEEN**

**ETHICS & ANTI-CORRUPTION COMMISSION ..... PLAINTIFF**

**AND**

**BISHOP GIDEON MUNENI NZOKA ..... 1<sup>ST</sup> DEFENDANT**

**THE CHURCH COMMISSIONERS FOR KENYA ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This ruling is in respect of the Plaintiff/Applicant's Notice of Motion application dated 8<sup>th</sup> June 2022 filed under a Certificate of Urgency seeking for orders:
  1. Spent
  2. Spent
  3. That pending hearing and determination of this suit, this Honourable Court be pleased to issue a temporary injunction restraining the Defendants/Respondents by themselves, their agents, servants and/or employees from alienating, selling, charging or further charging, leasing, transferring, wasting, disposing, construction, development or in any other similar manner dealing with the parcels of land with land planned vide Part Development Plan No. KIT/29/06/3 dated 13<sup>th</sup> November 2006 and allocated to Kitui Integrated Programme for the visually impaired.
  4. That a mandatory injunction do issue against the Defendants/Respondents, their servants or agents or any one authorized by them or claiming under them directing the Defendants/Respondents to vacate and hand over the possession of land, planned vide Part Development Plan No. KIT/29/06/3 dated 13<sup>th</sup> November 2006 and allocated to Kitui Integrated Programme for the visually impaired forthwith and unconditionally reinstate the possession



of the demised suit premises to the Integrated Programme for the Visually impaired pending the hearing and final determination of the suit filed herein.

5. The costs of this application be provided for.
2. The grounds relied on are that on or about February 2020, the Plaintiff/Applicant received an allegation that land measuring 0.77 HA or thereabouts together with all the developments thereon situate in Kitui town reserved for Kitui Integrated Programme for the Visually Impaired planned vide Part Development Plan No. KIT/29/06/3 dated 13<sup>th</sup> November, 2006 was illegally and or irregularly alienated to the Anglican Church of Kenya (ACK), Diocese of Kitui. Further allegations were that the defendants were in breach of their trust by removing the visually impaired pupils, the beneficiaries from the land and letting the premises for gain.
3. Upon investigating the matter, the Plaintiff/Applicant found that the suit land was granted to the Integrated Programme vide an allotment letter for a lease of 99 years. It was found that the land allocated is government land and/or public land reserved for public purpose, namely, the construction of hostel/accommodation facilities for the integrated programme for the visually impaired. However, the Defendants allegedly breached their trust by illegally evicting the visually impaired pupils, selling properties and items used by the said pupils and leasing out the center to private persons and even made attempts to have the parcel of land registered as property of the ACK Diocese of Kitui.
4. The Plaintiff/Applicant is therefore apprehensive that the Defendant/Respondents may further interfere with the suit property and lease, dispose of or transfer all or part of the property to frustrate any decree that may be passed against them and urge the court to preserve the property by way of temporary injunction.
5. The application is supported by two affidavits sworn by Asha Hamis, a forensic investigator working with the Plaintiff/Applicant who deposed as much stating that investigations revealed that the ACK Church was appointed as the trustee of the beneficiaries of the programme following a requirement by Chrstoffel Blinden Mission, a donor. That the integrated programme was under the ministry of education but has an autonomous management committee whose roles and mandate are stipulated by the Ministry. The program was initiated in 1982 by Founder member Festo Ndonge and Coordinate Itinerant Teacher (CIT) oversighted by the office of the District Education Office.
6. After land was allocated, and a Part Development Plan No. KIT/29/06/3 dated 13<sup>th</sup> November 2006 was prepared and a letter of allotment dated 12<sup>th</sup> August 2006 was issued to ACK, Diocese of Kitui. It has now been discovered that the land was leased out to Jordan Hospital Medical College (Block A and C), Kavete Mutisya of Uniq Academy (Block D) and Mary Mutua of Township Nursery School which is contrary to its intended use as public land for the construction of hostel/accommodation facilities for the integrated programme for the visually impaired. The investigations are now complete and the Plaintiff/Applicant intends to recover the suit property.

### **1<sup>st</sup> Respondent's Replying Affidavit**

7. The Respondents filed a replying affidavit sworn by the 1<sup>st</sup> Respondent deposing that the application is fatally defective and incapable of being granted because there is no such legal entity known as Kitui Integrated Programme for the visually impaired capable of owning property. That the suit property was allocated to the ACK, Diocese of Kitui.
8. The Respondents also denied that the 2<sup>nd</sup> Defendant was appointed as trustee of the beneficiaries of the programme or that the programme was under the Ministry of Education.



9. Further, the 1<sup>st</sup> Respondent denied that Mr. Festo Ndonge is the one who initiated the programme for the visually impaired in 1982. Instead, he deposed that the programme was initiated by the 2<sup>nd</sup> Defendant back then when it was known as the Church Province of Kenya under the diocese of Machakos. Since the programme did not have any land or premises of its own, they had to hire premises from where they would house the visually impaired students and the rent for these premises would be paid by the Christoffel Blinden Mission, a Non-Governmental Organization. Mr. Ndonge was only the programme's project correspondent who was only assisting on the request of the church which owned the programme.
10. The Respondents stated that they identified a plot for the construction of the hostels for the visually impaired students under the programme financed by the Christoffel Blinden Mission.
11. The 1<sup>st</sup> Respondent vehemently denied that the parents of the visually impaired students were incited to remove the children from the hostels but that the hostels were not in use for about two years and started to get dilapidated. Consequently, they decided to lease out the property. They denied that the church that removed the children from the hostels.
12. The 1<sup>st</sup> Defendant stated that the Plaintiff/Applicant has failed to establish a prima facie case to warrant the orders sought and they have failed to demonstrate that it will suffer irreparable injury and deposed that the balance of convenience lies in declining the grant of orders and urged the court to dismiss the application with costs.

#### **Plaintiff/Applicant's submissions**

13. The Plaintiff/Applicant submitted and reiterated the matters deposed to in the supporting affidavits and the same need not be repeated here. The Applicant submits that investigations established that under the Integrated Programme, each of the integrated schools have autonomous management committees whose role and mandate are stipulated by the Ministry of Education. According to their investigations, Festo Malundu Ndonge, the founder member who was the centre manager for the Integrated Programme sought permission of the Clerk, Town Council of Kitui to start construction of hostels for the handicapped and sought to be allocated land which request was granted,
14. The Plaintiff submits that they have been able to illustrate that the suit land was planned/reserved for the visually impaired and that they are serious issues that are triable and justify the grant of injunctive orders. On whether the Applicant would suffer irreparable loss that cannot be compensated by award of damages, they submitted that there is denial of access to the use of the suit land by the visually impaired and that the Defendants will continue to use the suit land for their own private use to the detriment of the Integrated Programme for the visually impaired.
15. Further, they submitted that the Defendant's act being possibly unlawful, the issue of whether or not damages can be an adequate remedy does not fall for consideration. They relied on the case of *Said Ahmed v Mannasseh Denga & Another* (2019) eKLR where the court of appeal held that if the Plaintiff has a strong case that the defendant's act may very well be unlawful, the issue of whether or not damages are an adequate remedy does not fall for consideration.
16. On balance of convenience, the Applicant submitted that the integrated programme stands to be inconvenienced if the injunctive orders are not granted as the suit land is being used for other purposes contrary to the purpose for which the suit land was granted.
17. Submitting that it is trite in law that interlocutory mandatory injunctions are only granted in special circumstances, they quoted from the case of *Nation Media Group & 2 others v John Harun Mwau*



[2014] eKLR and the case of Joseph Kaloki t/a Royal Family Assembly v Nancy Atieno Ouma [2020] eKLR.

18. The special circumstance of this case is that the visually impaired are in dire need of the suit land and they need it for their accommodation and/or use as they are currently hosted in a hall in Central Primary School which is congested and unsuitable for persons with disabilities. They submit that the persons occupying the suit property should vacate and hand over possession.
19. Noting that the title has not been issued to the 2<sup>nd</sup> Defendant and it cannot assert any registered interests over the same, they relied on the case of Wreck Motors Enterprises v Commissioner of Lands [1997] eKLR and Joseph N.K Arap Ngok v Moijo ole Keiwa & 4 others [1997] eKLR. The Plaintiff concluded that they have demonstrated a strong prima facie case and pray that the Notice of Motion be allowed in its entirety.

#### **Defendant/Respondent's written submissions**

20. The Respondents submitted that the Plaintiff has failed to satisfy the criteria set out in the case of Giella v Cassman Brown [1973] EA 358, specifically failing to establish a prima facie case. They claim that the Plaintiff has misapprehended the facts of the case by alleging that the suit property was allocated to the 'Kitui Integrated Programme for the Visually Impaired' when it also contradicts itself by saying it was allocated to the Church Province of Kenya (CPK) former ACK Church.
21. The Respondent also submitted that no evidence has been adduced to show any illegality in the allocation of the land and that no such entity as Kitui Integrated Programme for the Visually Impaired' exists or is under the Ministry for Education. They also submitted that the applicant has adduced no evidence to show that the suit property was allocated to the 2<sup>nd</sup> Defendant to hold in trust for the Government of Kenya or the Ministry of Education. Further they claim that no evidence has been adduced to show that the 2<sup>nd</sup> Defendant removed the students from the hostels or that the Defendants sold or disposed of any movable assets.
22. The Respondents submitted that the Plaintiff does not stand to suffer any irreparable injury since the visually impaired students were removed from the hostels by their parents sometime in 2018. They confirm that they are more than ready to accommodate them and that they do not intend to sell or dispose of the suit property.
23. Relying on the precedents in the cases of Pius Kipchirchir Kogo v Frank Kimeli Tenai [2018] eKLR and Ngurumann Limited v Jan Bonde Nielsen & 2 others [2014] eKLR the Respondents submitted that it is not enough to merely allege that the plaintiff will suffer irreparable loss and damage but must be demonstrated, which has not been done. The Respondents therefore submitted that the balance of convenience tilts in their favour for the reason that the first two conditions for grant of injunction have not been met. They submit that the Plaintiff herein is not the registered owner of the suit property and is not claiming any beneficial interest and that they have failed to prove that they would suffer any greater loss than the Defendants if the orders are not granted. Therefore, the Respondents urge the court to dismiss the application with costs.

#### **Analysis and Determination**

24. I have considered the Notice of Motion dated 8<sup>th</sup> June, 2022, supporting affidavits, replying affidavit, submissions filed by Counsel and the authorities cited and find that the following issues arise for determination in this matter:



- a) Whether the Plaintiff/Applicant’s Application has met the threshold established in *Giella vs Cassman Brown*.
- b) Whether the Applicant should be granted orders of Mandatory injunction at this interlocutory stage.
- c) What orders should the court make?
- d) Who shall bear the cost of the Application?

**a) Whether the Applicant’s Application has met the threshold established in *Giella v Cassman Brown*.**

25. The Applicant is established by Article 79 of *the Constitution*, which provides that:

“Parliament shall enact legislation to establish an independent ethics and anti-corruption commission, which shall be and have the status and powers of a commission under Chapter Fifteen, for purposes of ensuring compliance with, and enforcement of, the provisions of this Chapter.”

26. As a commission, it is granted powers and functions under Article 252 of *the Constitution* namely:

“Each commission, and each holder of an independent office—

- (a) may conduct investigations on its own initiative or on a complaint made by a member of the public;
  - (b) has the powers necessary for conciliation, mediation and negotiation;
  - (c) shall recruit its own staff; and
  - (d) may perform any functions and exercise any powers prescribed by legislation, in addition to the functions and powers conferred by this Constitution.
- (2) A complaint to a commission or the holder of an independent office may be made by any person entitled to institute court proceedings under Article 22 (1) and (2).”

27. Among the many additional functions of the Plaintiff/Applicant stipulated by Article 11 of the Ethics and Anti-Corruption Act No. 2 of 2011, Section 11(1)(a)(j) gives the Plaintiff/Applicant the power to:

“institute and conduct proceedings in court for purposes of the recovery or protection of public property, or for the freezing or confiscation of proceeds of corruption or related to corruption, or the payment of compensation, or other punitive and disciplinary measures.”

28. The Plaintiff/Applicant has the mandate to institute court proceedings with a view to recover public property as it has done in this case. Mumbi Ngugi J (as she then was) in the case of *Ethics And Anti-Corruption Commission v Patrick Ochieno Abachi & 6 others* [2021] eKLR explained the Plaintiff Commission’s mandate as such:

“There is no dispute that the ‘Commission’ vested with the mandate to pursue recovery of unexplained assets under section 55(2) of ACECA is the plaintiff. Section 11(1)(j) of the EACC Act provides that:

“In addition to the functions of the Commission under Article 252 and Chapter Six of *the Constitution*, the Commission shall... institute and conduct proceedings in court for



purposes of the recovery or protection of public property, or for the freeze or confiscation of proceeds of corruption or related to corruption, or the payment of compensation, or other punitive and disciplinary measures. The plaintiff is also empowered under Article 252 of *the Constitution* to “conduct investigations on its own initiative or on a complaint made by a member of the public.” It is also mandated, in accordance with the provisions of the Convention against Corruption (UNCAC) which is applicable to Kenya in accordance with Article 2(6) of *the Constitution*, to institute these proceedings as consistent with the United Nations Convention against Corruption which Kenya signed and ratified on 9th December 2003. The Convention allows for the prevention, investigation and prosecution of corruption and to the freezing, seizure, confiscation and return of the proceeds of offences established in accordance with the Convention. “Confiscation”, which includes forfeiture where applicable, is taken to mean permanent deprivation of property by order of a court or other competent authority under Article 2(g).”

29. I have considered the application herein and the documents gathered in support of the application and I am satisfied that investigations have been carried out concerning the Integrated programme for the visually impaired in Kitui and the allocation of land for the purpose of construction of a hostel for the said programme. It has been shown that the land allocated for that purpose being UNS Plot For Existing Site For The Kitui(ACK) Intergrated Programme For The Visually Impaired on plan number KTI/2906/3 was allocated to ACK diocese of Kitui by a letter of allotment dated 12<sup>th</sup> August 2008. It has further been shown that the said property was developed and is currently leased out to tenants by the names Jordan Hospital Medical College (Block A and C), Kavete Mutisya of UniQ Academy (Block D) and Mary Mutua of Township Nursery School. The applicants claim that the leasing of the property as shown above is contrary to its intended use as public land for the construction of hostel/ accommodation facilities for the integrated programme for the visually impaired.
30. The Respondent on the other hand claims that the entire integrated programme for the visually impaired was a programme undertaken by the defendants with the assistance of donors and very minimal participation by the Ministry of education and the claim that the land allocated is public land is untrue.
31. The legal provisions for the courts power to grant temporary injunctions is under Section 63 (c ) of the *Civil Procedure Act* which provides that;

“ In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed grant a temporary injunction and in case of disobedience commit the person guilty thereof to prison and order that his property be attached and sold
32. Further, Order 40 Rule 1 of the Civil Procedure Rules provides for cases in which temporary injunctions may be granted and states as follows;

“ Where in any suit it is proved by affidavit or otherwise—

  - a. that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
  - b. that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit



the court may by order grant a temporary injunction 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 orders.”

33. The conditions set for consideration in granting an injunction are now well settled in the case of *Giella v Cassman Brown & Company Limited* [1973] E A 358, where the court expressed itself on the conditions that a party must satisfy for the court to grant an interlocutory injunction: -

“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.”

34. The first issue for consideration is whether the Applicant has established a prima facie case with a probability of success. Black’s Law Dictionary 11<sup>th</sup> Edition defines a prima facie case as “the establishment of a legally required rebuttable presumption. A parties production of enough evidence to allow the fact –trier to infer the fact at issue and rule in the party’s favour”

35. The applicant has shown by establishing that there were investigations conducted against the Anglican Church of Kenya (A.C.K) Kitui Diocese for the integrated programme for the visually impaired. The correspondence attached to the applicants and the respondents affidavit show involvement of various parties in the programme. Some of the parties involved are the ministry of education, what has been referred to in correspondence as The (CPK) Integrated Programme for the Handicapped Kitui, The Christoffel Blindenmission and the Town Council of Kitui. I am of the view that the proof and full import of documents herein will be fully scrutinized and interpreted during the main hearing of the suit.

In the case of *Vivo Energy Kenya Limited v Maloba Petrol Station Limited & 3 others* [2015] eKLR, the Court of Appeal detailed what probability of success means when it stated that:

“In *Habib Bank Ag Zurich v Eugene Marion Yakub*, CA NO. 43 OF 1982 this Court considered the role of the court when determining whether or not a prima facie case has been made out. The Court expressed itself thus:

“Probability of success means the court is only to gauge the strength of the Plaintiff’s case and not to adjudge the main suit at the stage since proof is only required at the hearing stage.”

The same caution was repeated in *National Bank of Kenya v Duncan Owour Shakali & Another*, CA No. 9 of 1997 when Omolo JA stated:

“The question of finally deciding whether or not there is a contract between the parties and if there is what terms ought to be implied in the contract is not to be determined on affidavits. All a Judge has to decide at the stage of an interlocutory injunction is whether there is a prima facie case with a probability of success. A prima facie case with a probability of success does not, in my view, mean a case, which must eventually succeed.”

Yet again in *AGIP (K) LTD v VORA* [2000] 2 EA 285, at page 291, while reversing a grant of an order of injunction by the High Court, this Court stated:

“With reference to ground 19 of the appeal, it is as well to remember that the Commissioner had before him an application, which by law required him to consider whether on all the



facts in support or in opposition, a prima facie case with a probability of success had been made out to justify the grant of an injunction. In our view, the Commissioner was not entitled to delve into substantive issues and make finally concluded views of the dispute. He was not at that interlocutory stage of the matter, to condemn one of the parties before hearing oral evidence that party being condemned had in opposition to the claims in the suit.” (Emphasis added).”

36. It is noted that at this stage of the suit, the court is required to decide whether there is a prima facie case with a probability of success. The issues raised of whether or not the suit land is public land, whether the integrated programme for the visually handicapped was a programme by the plaintiff or the defendants and whether the programme is a legal entity that can own properties are all issues that will be determined at the trial.
37. However, I have looked at the letter of allotment of the suit plot and note that the intended user of the said land and buildings thereon is for Residential Purposes (hostels). All the correspondence attached to the applicants and the Respondents affidavits show that the allocation of the land was for hostels to accommodate children in the integrated programme for the visually impaired. It is admitted by the Respondents that the land and the buildings are not currently being used for that purpose. I am therefore satisfied that prima facie, the Respondent is in breach of the conditions of the grant issued.
38. It is noted that the suit land is leased out to third parties who are not parties to this suit and their rights and interest will be affected by the orders of this court. This court is of the view that it would be in the best interest of justice to preserve the property until the final hearing and determination of the matter since we are at the interlocutory stage and the documents produced by the Plaintiff cannot yet be fully scrutinized and proven until the main hearing.
39. As to whether the Applicant stands to suffer irreparable injury incapable of being compensated by damages, the law is clear that if the act complained of is unlawful, then the issue of whether damages is and adequate remedy shall not be considered.
40. Section 45 of the *Anti-Corruption and Economic Crimes Act* provides that:
- A person is guilty of an offence if the person fraudulently or otherwise unlawfully—
  - (a) acquires public property or a public service or benefit;
  - (b) mortgages, charges or disposes of any public property;
  - (c) damages public property, including causing a computer or any other electronic machinery to perform any function that directly or indirectly results in a loss or adversely affects any public revenue or service; or
  - (d) fails to pay any taxes or any fees, levies or charges payable to any public body or effects or obtains any exemption, remission, reduction or abatement from payment of any such taxes, fees, levies or charges.
41. In the Court of Appeal case of *Said Ahmed v Mannasseh Denga & Another* (2019) eKLR cited by the Plaintiff/Applicant, the court quoted two decisions in agreeing that if the act complained of is unlawful, then the issue of whether damages is and adequate remedy is not a factor for consideration.

“It is, of course, not in every case that damages would be an adequate remedy. Irreparable injury, that is, 'where there is no standard by which the amount can be measured with reasonable accuracy or the injury or harm is of such a nature that monetary compensation, of



whatever amount, will never be adequate remedy' - is exempted. So too, ' where, going by the material placed before it at an inter-parte hearing of an application for injunction, it appears to the court that the plaintiff has a strong case, like where it is clear that the defendant's act complained of is or may very well be unlawful, the issue of whether or not damages can be an adequate remedy for the plaintiff does not fall for consideration. A party should not be allowed to maintain an advantageous position he has gained by flouting the law simply because he is able to pay for it. Support for this view is to be found in the Court of Appeal decision in the case of *Aikman v Muchoki* [1984] KLR 353. See the case of *Joseph Mbugua Gichanga v Co-operative of Kenya Ltd* [2005] eKLR per Maraga, J. (now former retired Chief Justice).”

42. Therefore, if the acquisition of property is determined to be unlawful, the Plaintiff's rights to protection of property are extinguished as was held by the Court of Appeal in the case of *Stanley Mombo Amuti v Kenya Anti-Corruption Commission* [2019] eKLR.

“In this matter, persuaded by the merits of the UK comparative jurisprudence, we are satisfied that the provisions of Sections 26 and 55 (2) of the ACECA do not violate the right to property as enshrined in Article 40 of *the Constitution*. In any event, constitutional protection of property does not extend to property that has unlawfully been acquired.”

43. This court finds that the balance of convenience tilts towards the preservation of the suit property until the final determination of the case and not necessarily in favour of one party.

**b) Whether the Plaintiff/Applicant should be granted orders of Mandatory injunction at this interlocutory stage.**

44. Apart from an interlocutory injunction, the Applicant has sought for a mandatory injunction to vacate and hand over possession of the suit land. The court of Appeal addressed the matter of whether mandatory injunctions can be granted in interlocutory applications in the case of *Joseph Kaloki t/a Royal Family Assembly v Nancy Atieno Ouma* [2020] eKLR and quoted its previous decisions thus:

“As this Court stated in *Kenya Breweries Limited & another vs. Washington O. Okeyo* [2002] eKLR a mandatory injunction can be granted on an interlocutory application as well as at the hearing but should not normally be granted in the absence of special circumstances but that if a case is clear and which the court thinks it ought to be decided at once, a mandatory injunction will be granted at an interlocutory application.

The Court also stated in *Shariff Abdi Hassan v Nadhif Jama Adan* [2006] eKLR that:

“The courts have been reluctant to grant mandatory injunction at the interlocutory stage. However, where it is prima facie established as per the standards spelt out in law as stated above that the party against whom the mandatory injunction is sought is on the wrong, the courts have taken action to ensure that justice is meted out without the need to wait for full hearing of the entire case.”

45. I do not find it necessary to ask the Respondents to vacate the suit premises at this interlocutory stage as it would be tantamount to deciding the suit in favour of the Plaintiff/Applicant and the said orders would involve third parties not party to this suit. It is therefore in my opinion that there are no compelling circumstances that warrant the grant of the order to vacate at this stage before the full determination of the matter.



### c) What orders should the court make?

46. Having considered all the above, I find that an order of status quo specifically to preserve the suit land and preventing the alienating, selling, charging, transferring, wasting, disposing of the suit property would apply best in this circumstance. It was held as follows in the case of Nairobi Civil Appeal 33 of 2012 Shimmers Plaza Limited v National Bank of Kenya Limited [2015] eKLR the court noted that:

“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.”

47. It was also observed by the court in Thugi River Estate Limited & another v National Bank of Kenya Limited & 3 others [2015] eKLR that a status quo order must be specific and clear to the parties. The court observed as follows:

“Status quo” in this respect, as maintained by an injunctive or conservatory or stay order, is the then existing state of affairs. Often the order is very specific and descriptive in such instances and parties are expected, nay bound, to observe the order. The order will often be issued after a balance of all the factors and circumstances. As was stated by Lord Diplock in *American Cyanid Co. v Ethicon* [1975] 1 All ER 504 at 511 “where factors appear to be evenly balanced, it is a counsel of prudence to take such measures as are calculated to preserve the status quo.....” The second or alternative order for status quo is the one issued by the court as a case management strategy. It is issued to provide assistance to the case. It also maintains a particular state of affairs or set of facts. Unlike a conservatory order or injunctive order it is not descriptive. It is originated either by the court or by the consent of the parties. Often the court would not have been moved by either party. The court then expects an existing state of affairs or facts be preserved until a particular occurrence or until the courts’ further orders. It is intended to also freeze the state of affairs. State of affairs however do not always remain static, so it is always crucial for the court to be very specific and neat in its description of what state of affairs is to be preserved. Ordinarily where it is the court that has prompted a status quo order or has prompted the parties to it, it is more appropriate and exceedingly relevant to describe clearly the state of affairs at the time the order for status quo is issued. It is undesirable to simply make an order of status quo to be maintained without clearly describing the state of affairs then existing and being preserved. Assistance of the counsel should always be sought in such instances otherwise each party may walk away with its own state of affairs in mind.”

48. Due to the complex nature of the issues raised and the sensitive nature of the needs for the visually impaired students, the expeditious determination of this matter is in the best interest of justice.

49. For the foregoing reasons, I make the following orders:

1. Pending hearing and final determination of this suit, the prevailing status quo in relation to the suit property planned vide Part Development Plan No. KIT/29/06/3 and letter of allotment reference 209163/A/11/51 dated 12<sup>th</sup> August 2008 be maintained. The current status quo is that the respondents will preserve the suit land as it is and not alienate, sell, charge, dispose of or waste the suit property and the structures therein.
2. Hearing and final determination of this suit be expedited and be heard on priority basis.
3. Pre-trial directions to be taken within 14 days from the delivery of this ruling



4. Costs of the application shall be in the cause

**DELIVERED, DATED AND SIGNED AT KITUI THIS 9<sup>TH</sup> DAY OF FEBRUARY, 2023.**

**L. G. KIMANI**

**JUDGE**

**ENVIRONMENT AND LAND COURT, KITUI**

**Ruling read in open court and virtually in the presence of:**

**Musyoki Court Assistant**

**M/S Munyalo Advocate for the Applicant**

**Wandati Advocate for the Respondents**

