



Butt (Suing as the Administrator and Legal Representative of Khalid Mahmoud Butt) & 3 others v Kanjabi & 2 others (Environment and Land Case 6062 of 1992) [2026] KEELC 681 (KLR) (12 February 2026) (Ruling)

Neutral citation: [2026] KEELC 681 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE 6062 OF 1992
OA ANGOTE, J
FEBRUARY 12, 2026**

BETWEEN

**HAWAN BIBI CASSAM BUTT (SUING AS THE ADMINISTRATOR AND LEGAL REPRESENTATIVE OF KHALID MAHMOUD BUTT) ... 1ST PLAINTIFF
EVANSON JIDRAPH KAMAU 2ND PLAINTIFF
BERTHA WANJIRU KAMUA 3RD PLAINTIFF
CHURCH COMMISSIONERS OF KENYA 4TH PLAINTIFF**

AND

**EDWARD RURII KANJABI 1ST DEFENDANT
RACOM LIMITED 2ND DEFENDANT
DAVID NYIKA 3RD DEFENDANT**

RULING

1. Before this court for determination is the 1st Plaintiff/ Applicant’s Notice of Motion Application dated 29th October, 2025 brought pursuant to the provisions of Sections 1A, 1B, 3A, and 63(e) of the *Civil Procedure Act*, and Order 40 Rules 1, 2, & 4 of the Civil Procedure Rules seeking the following reliefs:
 - i. That this Honourable Court be pleased to issue a mandatory injunction compelling the 1st Defendant/Respondent by itself, servant, agents, employees, proxies or any other person acting on its behalf to forthwith remove the barrier erected across the access road serving L.R. Nos. 158/68, 158/52–67 and L.R. No. 5832, thereby restoring full access to the 1st Plaintiffs, pending the hearing and determination of this suit.



- ii. That this Honourable Court be pleased to issue a mandatory injunction restraining the 1st Defendant from blocking, erecting barriers, restricting, or in any other way interfering with the Plaintiff's access and use of the access road serving serving L.R. Nos. 158/68, 158/52–67 and L.R. No. 5832, pending the hearing and determination of the main suit.
 - iii. That the Officer Commanding Station (OCS) be directed to ensure compliance with, and enforcement of the orders of this Court and be ordered to keep the peace.
 - iv. Costs of this Application be in the cause
2. The Motion is supported by the Affidavit of Hawan Bibi Cassam Butt, the 1st Plaintiff, of an even date. She deponed that she and her family have, for a long time, used the access road serving L.R. Nos. 158/68, 158/52–67 and L.R. No. 5832 which has been in existence since the subdivision of L.R. No. 158/6 on or about July 1946.
 3. It was deposed that the impugned road connects the affected properties to the Nairobi–Limuru Road as established in the Survey Report dated 18th September, 2023, filed by the State Law Office on 23rd September, 2023, to establish the historical existence of the road.
 4. The 1st Plaintiff deponed that the 1st Defendant, without any lawful justification, erected a barrier across the access road, thereby completely blocking her, her family and her customers access to and from her property; that this has resulted in substantial losses to her business and that these actions contravene existing court orders barring the 1st Defendant from interfering with or obstructing her use of the access road pending the final determination of the suit.
 5. In addition, she deponed, the alternative access road created by the 1st Defendant along the boundary of L.R. No. 5832 and L.R. Nos. 158/70 and 158/69 was created illegally and in total disregard of the court orders already issued, and that the main suit is yet to be determined and the 1st Defendant's actions are calculated to defeat the ends of justice and render the proceedings nugatory.
 6. According to her, the alternative route created by the 1st Defendant, which runs along the boundary line of L.R. No. 5832 and L.R. Nos. 158/70 & L.R. No. 158/69 was done illegally and in total disregard of court orders that had been issued; that the same has not been surrendered to the Government as a public road and could therefore be closed at any time and that unless the court urgently intervenes, she stands to suffer irreparable loss and inconvenience which cannot not be adequately compensated by an award of damages.
 7. No response was filed to the Motion. There are also no submissions on record as at 19th January, 2026.
 8. Having considered the Motion, the sole issue that arises for determination is whether mandatory injunctive orders should issue compelling the 1st Defendant to remove the barrier erected across the access road serving L.R. Nos. 158/68, 158/52–67 and L.R. No. 5832, and restraining him from restricting or otherwise interfering with the Plaintiff's access to, and use thereof?
 9. The 1st Plaintiff/Applicant seeks the grant of a mandatory injunction at the interlocutory stage. The applicable test for the grant of such relief is succinctly stated in Vol. 24 Halsbury's Laws of England 4th Edn. para 948 which reads:

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



attempted to steal a march on the plaintiff...a mandatory injunction will be granted on an interlocutory application.”

10. Further guidance is found in the case of *Locabail International Finance Ltd. vs Agroexport & Others* [1986] 1 All ER at pg. 901 wherein it was held:

“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 high 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.”

11. Closer home, the Court of Appeal in *Joseph Kaloki t/a Royal Family Assembly vs Nancy Atieno Ouma* [2020] KECA 831 (KLR) reaffirmed its decision in *Kenya Breweries Limited & another Vs Washington O. Okeyo* [2002] eKLR and stated that:

“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.”

12. The court also reaffirmed its decision in *Shariff Abdi Hassan vs Nadhif Jama Adan* [2006] eKLR where it had stated 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.”

13. The court is so guided.

14. As aforesaid, the 1st Plaintiff seeks mandatory injunctive orders compelling the 1st Defendant to remove a barrier placed on the access road, and restraining him from further interference with the aforesaid access road.

15. It is her case in this regard that she and her family have always used the access road, which serves L.R. Nos. 158/68, 158/52–67 and L.R. No. 5832, and which has been in existence since July 1946. She contends that the erection of the barrier by the 1st Defendant was unilateral, unlawful, and in direct contravention of subsisting court orders restraining any interference with the access road pending determination of the suit.

16. The blockage, she avers, has completely denied her ingress to and egress from her property, disrupted her business operations, and occasioned continuing loss and inconvenience.

17. It is trite that he who alleges must prove. This is set out in Section 107 and 108 of the *Evidence Act*. The fact that the Motion is unopposed does not in any way diminish the burden placed upon the Applicant to strictly establish the factual and legal basis for the relief sought. Indeed, the Court of Appeal in *Central Bank of Kenya vs. Uhuru Highway Development Ltd. & 3 Others* Civil Appeal No.



75 of 1998 found that it was erroneous for the court to hold that a failure to file grounds of opposition automatically entitled the Applicant to the orders sought noting that the Applicant is not relieved of the onus on him of justifying his application.

18. In support of the Motion, the 1st Plaintiff principally relies on photographs allegedly depicting a barrier erected across the access road, together with copies of orders issued in this matter on 9th July, 1999 and 20th August, 1999. The order of 20th August, 1999 restrained the 2nd Defendant, or anyone under him from constructing an alternative road over the Plaintiff's land known as L.R. No. 158/19 and from entering the said land pending inter partes hearing of the Motion.
19. The earlier order of 9th July, 1992 set aside the dismissal of the Plaintiff's suit and directed that any obstructions erected after 29th March, 1999 be removed so as to restore the parties to the position obtaining prior to that date.
20. Also relied upon is a ruling delivered on 23rd October, 1991 in Civil Case No. 1734 of 1991, in which the court issued temporary injunctive orders restraining obstruction of a designated right of way traversing L.R. No. 158/19, L.R. No. 5832 and adjoining parcels, and further restrained any construction on the said road pending determination of the suit.
21. Similarly adduced was a court order issued on 14th June, 1999 in Civil Suit No. 1161 of 1999, in which the Defendants were restrained from alienating L.R. No. 5832 running parallel to the right of way from the public road known as the School Road on L.R. No. 158/28; and transferring and unlawfully acquiring the piece of land being part of the Plaintiff's land known as L.R. No. 5832, adjacent to the 1st Defendant's dairy, or any other part of the Plaintiff's said land.
22. The orders relied upon by the Applicant emanate from proceedings dating back to the early and late 1990s, more than two decades prior to the present application. Those orders demonstrate that access and right-of-way issues were historically litigated and, at various times, attracted judicial protection in respect of the road in issue.
23. Furthermore, the 1st Defendant has not denied the factual deposition by the Plaintiff, and especially the deposition that the impugned road has always been used as an access road serving L.R. Nos. 158/68, 158/52–67 and L.R. No. 5832, and has been in existence since July 1946.
24. The 1st Defendant has also not denied the contention by the 1st Plaintiff that the erection of the barrier by the 1st Defendant was unilateral, unlawful, and in direct contravention of subsisting court orders restraining any interference with the access road pending determination of the suit.
25. Further, it has not been denied by the 1st Defendant that the blockage of the access road has completely denied her ingress to and egress from her property, disrupted her business operations, and occasioned continuing loss and inconvenience, and that the impugned action was undertaken notwithstanding the pendency of this suit.
26. That being so, the court is satisfied that the 1st Plaintiff has established the requisite grounds for an order of mandatory injunction. Consequently, the court finds the Motion dated 29th October, 2025 to be merited. The same is allowed as follows:
 - i. An order of mandatory injunction be and is hereby issued compelling the 1st Defendant/ Respondent by itself, servant, agents, employees, proxies or any other person acting on its behalf to forthwith remove the barrier erected across the access road serving L.R. Nos. 158/68, 158/52–67 and L.R. No. 5832, thereby restoring full access to the 1st Plaintiff, pending the hearing and determination of this suit.



- ii. An order of mandatory injunction be and is hereby issued restraining the 1st Defendant from blocking, erecting barriers, restricting, or in any other way interfering with the Plaintiff's access and use of the access road serving serving L.R. Nos. 158/68, 158/52–67 and L.R. No. 5832, pending the hearing and determination of the main suit.
- iii. The Officer Commanding Station (OCS) be directed to ensure compliance with, and enforcement of the orders of this Court and is hereby ordered to keep the peace.
- iv. Costs of this Application to be paid by the 1st Defendant.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 12TH DAY OF FEBRUARY, 2026.

O. A. ANGOTE

JUDGE

In the Presence of:

Mr. Odour for the 1st Plaintiff

Ms Were for the 2nd Defendant

Court Assistant: Tracy

