



**Mwaura v Nairobi City County & another (Environment & Land Petition  
65 of 2019) [2023] KEELC 17117 (KLR) (27 April 2023) (Judgment)**

Neutral citation: [2023] KEELC 17117 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND PETITION 65 OF 2019**

**LN MBUGUA, J  
APRIL 27, 2023**

**BETWEEN**

**HON CHEGE MWAURA ..... PETITIONER**

**AND**

**NAIROBI CITY COUNTY ..... 1<sup>ST</sup> RESPONDENT**

**JABAVU VILLAGE LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. This suit was filed by way of a Petition dated and filed on 9.12.2019 and was supported by the affidavits of the petitioner (Hon Chege Mwaura), Leonard Obonyo and Stephen Mwathi, the first two being residents of Bachelors/Jeevanjee Estate while the latter identifies himself as someone who took photographs. The dispute relates to the massive Urban Renewal and Redevelopment of the County's dilapidated estates, whereby the suit property (Bachelors/Jeevanjee Estate) was one of the affected estates. The project entailed the demolition of the old houses.
2. The Petitioner later brought forth an amended petition dated 28.6.2021 on behalf of the Residents of Bachelors/Jeevanjee estate, Ngara Ward seeking the following reliefs;
  - i. A declaration do hereby issue that the Respondents by proceeding to issue threats to forcefully evict the residents of Bachelors/Jeevanjee Estate from their current houses on Land LR No. 209/5458 without a clear program on how the re-allocation of the newly developed houses would be done have violated or threatened Bachelors/Jeevanjee Estate residents' right to dignity, freedom of security of the person, access to information, property, fair administrative action and access to affordable housing.
  - ii. A declaration that the Respondents' eviction of the residents of Bachelors /Jeevanjee Estate from their current previous houses on LR No.209/5458 without a clear agreement on how



the decantation process and re-allocation of the newly developed houses will be done/ was to be done is illegal, unlawful and unconstitutional.

- iii. A declaration do hereby issue that the evictions by the Respondents of the residents of Bachelors/Jeevanjee Estate and or taking possession and or otherwise in any manner that interfered with the residents peaceful occupation of their houses in the Estate which sat on LR No.209/5458, whether by themselves and or their employees and or their servants and or their agents or anyone that acted on their behalf and or under their mandate and or instructions was unconstitutional and thus illegal.
  - iv. A declaration do hereby issue that the harassment and or the threatening and /or the intimidation and/or the coercion of the residents of Bachelors /Jeevanjee Estate to sign the agreements to forfeit tenancy was unconstitutional and thus illegal.
  - v. The Respondents do deliver duly executed agreements to the residents of Bachelors /Jeevanjee Estates specifying the exact housing units in which the residents will be resettled once the new housing units are completed, the rent and purchase price to be paid by the residents in respect of the new housing units.
  - vi. The Respondents do give the residents of Bachelors /Jeevanjee Estate 1<sup>st</sup> priority and the option to rent or purchase by way of tenant purchase of their choice as per the vacation Notice of 14.11.2019.
  - vii. The Respondents do jointly and severally pay general and aggravated damages to the residents of Bachelors/Jeevanjee Estate for violating and or threatening their rights and fundamental freedoms enshrined in the Bill of rights.
  - viii. Costs of this petition shall be borne by the Respondents.
3. On 27. 10.2022, the court gave directions for the petition to be heard by way of written submissions.

### **Case for the Petitioners**

4. It is the Petitioner's case as set out in the petition that in 2015, the 1<sup>st</sup> Respondent embarked on a project dubbed Nairobi City County Urban Renewal Housing Project with the intention to undertake a massive urban renewal and redevelopment of dilapidated estates within Nairobi's Eastlands area and other parts of Nairobi County. The project was to be undertaken through a joint venture between the 1<sup>st</sup> Respondent and various private investors. The 2<sup>nd</sup> Respondent is the private investor who was to undertake development of the modern apartments in Bachelors/Jeevanjee estate.
5. The said estate was among 6 other estates then identified as pilot estates for the project being New Ngara Estate, Pangani Estate, Ngong Road (Meteorological Department) Estate, Uhuru Estate and Suna Road Estate.
6. The petitioner contends that the goal of the project was to demolish the old and stand-alone buildings in those estates and in place put up modern apartments that had the capacity to accommodate more residents. The residents of those houses to be demolished would be offered alternative accommodation for the redevelopment period and upon completion of the new apartments, they would be given 1<sup>st</sup> priority to rent the new apartments on better terms than those of new tenants in the estate.
7. That it was not until 20.12.2018 that the urban Housing Renewal and Regeneration Policy prepared to guide the 1<sup>st</sup> Respondent's housing project was presented to the Nairobi City Council Assembly for adoption. The County Assembly's committee on planning and Housing considered the renewal



- and regeneration policy and prepared a report that was presented and approved by the assembly on 27.2.2019 with various recommendations.
8. Among the recommendations by the County Assembly were that the renewal and regeneration policy would guide all existing and future regeneration programs, the creation of programs to ensure that targeted persons (persons with an income of less than ksh. 150,000/= benefit from the project) and that the 1<sup>st</sup> Respondent would submit a county bill establishing a Housing Authority to oversee the project before the County Assembly within 60 days.
  9. Even before the establishment of the Housing Authority meant to oversee the project, residents of Bachelors/Jevanjee estate were forced to move out because they were threatened that their houses would be brought down like the ones in Pangani and they have not been given any substantive executed sale agreements since then.
  10. It is also his case that the residents of Bachelors/Jeevanjee estate right to dignity, freedom of security of the person, access to information, property, fair administrative action and access to affordable housing were violated. He also contends that Respondents are proceeding with the implementation of the Urban Housing Renewal and Regeneration policy without engaging the Residents of Bachelors/Jevanjee Estate thus violating Article 10 and 47 of the Constitution.
  11. He further pleads that on 14.11.2019, the 1<sup>st</sup> Respondent issued notices to residents of Bachelors/Jevanjee Estate to vacate their houses by 15.12.2019. Alongside the notices, they were given 3 sets of agreements which required them to forfeit their current tenancies without an indication of the housing units that would be re-allocated to them. They were also threatened with evictions.
  12. The Petitioner did not file any supporting affidavit(s) to the amended petition, thus I take it that the initial three affidavits are the ones being relied upon by the petitioner, all of them dated and filed on 9.12.2019. In the Affidavit of the petitioner, he has reiterated the averments set out in the petition.
  13. The deponent known as Leonard Obonyo describes himself as the Secretary of Jeevanjee Quarters Welfare Group, which comprises of about 200 residents of 80 housing units comprised in Bachelors/Jevanjee Estate. He deposes that as residents, they welcomed the 1<sup>st</sup> Respondents idea of construction of new housing units as it had encouraged them and assured them through consultative forums in 2015 and 2016 that the project would not render any of the residents homeless.
  14. He further deposes that on 30.10.2019, he received a letter from the 1<sup>st</sup> Respondent indicating that residents of Bachelors/Jeevanjee estate were being invited to attend a meeting at Southern Blue hotel in Ngara on 5.11.2019 to discuss how the housing project would be run in Jevanjee Estate. He attended the meeting alongside 50 other residents of Bachelors/Jevanjee, but it was called off prematurely following the residents demand to be given draft agreements spelling out the terms of the alternative accommodation they would be offered as well as the terms of their settlement after the redevelopment is completed before they could sign any attendance sheets for the said meeting.
  15. He avers that on 12.11.2019, he received a letter of even date inviting the residents of Bachelors/Jeevanjee Estate for a consultative meeting with the 1<sup>st</sup> Respondent on 14.12.2019 at City Hall which was only attended by 4 residents of Bachelors/Jevanjee Estate and was broadcasted live on Facebook. On the evening of that meeting, the 1<sup>st</sup> Respondent's officials visited Jevanjee Estate and served the Notice dated 14.11.2019 on residents of the estate, himself included, to vacate their respective houses within 30 days. Alongside the Notice, they were handed 3 sets of agreements and were threatened to sign by 15.12.2019.



16. The other deponent is one Stephen Mwathi who has not given a description of who he is in the dispute. He deposes that he is aware that sometime in July 2019, the 1<sup>st</sup> Respondent evicted residents of Pangani Estate from their houses and thereafter demolished them. He avers that on 2.12.2019, he took photographs of the site of the demolished houses in Pangani Estate using his personal camera of Nikon D750 make and can confirm the Petitioner's averments that as at 2.12.2019, no construction works had begun on the land on which the demolished houses used to stand on and the photographs annexed to the Petitioner's affidavit are true copies of the photographs he took of the demolished Pangani Estate.

### **Case of the 1<sup>st</sup> Respondent**

17. The 1<sup>st</sup> Respondent's notice to enter appearance was filed on 16.12.2019 by J. Harrison Kinyanjui & co Advocates. However, they failed to file a response despite being actively involved in the litigation history of this matter. On 22.9.2021, Counsel for the 1<sup>st</sup> respondent made a request to file their response to the petition within 21 days, of which the request was granted but there was no compliance.

### **Case of the 2<sup>nd</sup> Respondent**

18. The 2<sup>nd</sup> Respondent opposed the suit *vide* the Replying Affidavit sworn by its director one Abdulkadir Hussein Ahmed on 7.9.2021. He admits that the 2<sup>nd</sup> Respondent entered into a joint venture agreement with the 1<sup>st</sup> Respondent in the year 2016 for redevelopment of old housing scheme being Bachelors/Jevanjee Estate located in Ngara at the junction of Ring Road and Quarry Road.
19. He further deposes that the property in question wholly belongs to the 1<sup>st</sup> Respondent before it transferred the same to a special purpose vehicle created for the construction of the apartments, to this end, he availed the title to the suit property, LR No.209/5458.
20. He avers that the 2<sup>nd</sup> Respondent in conjunction with the 1<sup>st</sup> Respondent held numerous public participation meetings with the tenants to inform them of the project and their need to vacate the property. He adds that none of the residents in the said property were owners, they were all tenants who paid monthly rent to the 1<sup>st</sup> Respondent. He annexed copies of tenant cards.
21. He also deposes that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents undertook to help relocate all tenants from the said property and gave them khs.600,000/ in that regard as a gesture of good faith. He annexed copies of cheques payment made to the tenants of the estate.
22. He avers that the tenants will be given 1<sup>st</sup> priority to rent the 1<sup>st</sup> Respondent's units according to their ability as the 2<sup>nd</sup> respondent has allocated some of the apartments in the scheme to the 1<sup>st</sup> Respondent. He admits that a notice was issued to the tenants of Jevanjee /Bachelors Estate to vacate the premises to pave way for the construction of modern affordable housing. He avers that the Respondents never forced any tenant to vacate, they left the premises on their own free will and were even allowed to take anything they wanted from their houses including doors. The form they executed was an acknowledgement that they had indeed received the relocation amount and an agreement to forfeit tenancy was for the purpose to protect the interests of all parties.
23. Mr. Ahmed also deposes that as at the time of vacating the premises in December 2019, even drawing/plans had not been approved, the request for allocation of non-existent units at the time would have been premature.

### **Submissions**

24. The submissions of the petitioner are dated 7.2.2023, where they address the following issues;



- a. Whether the Respondent's eviction of the Residents of Bachelors/Jevanjee Estate from their houses without a clear agreement on how the decantation process and the re-allocation of the newly developed houses was to be done is illegal,unlawfull and unconstitutional.
  - b. Whether the evictions by the Respondents of the residents of Bachelors/Jevanjee Estate and or taking possession and or otherwise in any manner interfered with the resident's peaceful occupation of their houses in the Estate was unconstitutional.
  - c. Whether the harassment and /or threatening and or the intimidation and or coercion to the residents of Bachelors/Jevanjee Estate to sign the agreement to forfeit tenancy was unconstitutional.
  - d. Whether the Petitioner acting in public interest is entitled to the prayers sought in the amended petition.
25. It is the Petitioner's submission that to the extent that that the Respondents proceeded with the implementation of the Urban Housing Renewal and degeneration policy without engaging the residents of Bachelors/Jevanjee Estate as per the policy adopted by Nairobi City County Assembly connotes a violation of Article 10 of the Constitution which provision enlists public participation and respect for the rule of law among the national values and principles of good governance. He cites the case of Simeon Kitbeka & 18 others v County Government Machakos & 2 others [2018] eKLR as well as the case of Mugo & 14 others v Matiaing'i & another; Independent Electoral and Boundary Commission of Kenya & 19 others (Interested party) (Constitutional Petition 4 of 2019) [2022] KEHC 158 (KLR) (12 January 2022).
  26. The Petitioner also submits that the residents of Bachelors/Jevanjee Estate were entitled to access information held by the Respondents in order to exercise their rights under Article 28,29,40,43 and 47 of the Constitution. He cites the case of Nairobi Law Monthly Company Limited v Kenya Electricity Generating company & 2 others [2013] eKLR as well as the case of Katiba Institute v Presidents Delivery Unit & 3 others [2017] eKLR.
  27. He also submits that the county executive committee member responsible for land matters is mandated under Section 98 of the Land Law (Amendment) Act 2016 as read with Section 152 B of the Land Act, to issue eviction notices in accordance with the Act. However, Section 152c of the said Act provides that the National Land Commission shall cause a decision relating to an eviction from public land to be notified to all affected persons, in writing by notice in the Gazette and in one newspaper of nationwide circulation.
  28. He Relies on the "United Nations basic principles and Guidelines" on evictions and the case of Republic v Cabinet Secretary Ministry of Transport and Infrastructure & 3 other ex parte Francis N. Kiboro & 198 others [2015] eKLR to submit that the residents of Jevanjee/Bachelors Estate right to dignity were violated.
  29. It is also the Petitioner's submission that the residents of Jeevanjee's rights under Article 19, 20, 21 and 43 of the Constitution have been violated. He cites the Supreme Court case of Mitu-Bell Welfare Society v Kenya Airports Authority & 2 others; Initiative for strategic Litigation in Africa (Amicas Curiae) Petition 3 of 2018[2021] KESC 34(KLR) (11 January 2021).
  30. He relies on the case of Edward Akong'o Oyugi & 2 Others v Attorney General [2019] eKLR the case of Abdullahi Mohammud Farah & 3 others v County Government of Mandera & another [2022] eKLR ,the case of Njeri & 8 others v Nyakiongora & 3 others; National Land Commission & another (Interested Party) (Environment & Land Petition 47 of 2018) [2022] KEELC 2366 (KLR) (28 June



- 2022) as well as [William Musembi & 13 others v Moi Education Centre Co Ltd & 3 others](#) [2021] eKLR to submit that the Residents of bachelors/Jevanjee Estate are entitled to damages for unlawful eviction and urges the court to award the same at ksh.500,000 to each of the residents of the aforementioned estate.
31. The Petitioner also urges the Court to issue structural interdicts in the following reliefs;
- i. That the 1<sup>st</sup> Respondent provides a list of the names together with the National Identity Numbers of the residents who were evicted.
  - ii. That the 1<sup>st</sup> and 2<sup>nd</sup> Respondent issue a report on the progress of the construction of the new houses and provide information on how many have been completed and how many have not been completed.
  - iii. That the court directs that no one should be allocated units until the former residents are allocated units especially especially the ones handed over to NMS.
  - iv. That if any of the units handed over to NMS have been assigned to other people, the 1<sup>st</sup> Respondent to compensate the residents.
  - v. That the 1<sup>st</sup> Respondent be directed to communicate with the former residents of Bachelors/Jevanjee Estate and notify them of court orders and entitlement to be the 1<sup>st</sup> option in obtaining the new houses.
  - vi. That the Respondents provide an updated list of those who received the ksh.600,000/= and advertise for those who have not yet received payment.
  - vii. That the court grants general damages.
32. The 1<sup>st</sup> Respondent did not file any submissions.
33. The submissions of the 2<sup>nd</sup> respondent are dated 26.1.2023 where they contend that the case herein does not raise constitutional issues as none of the questions and/or allegations brought herein invites the court to consider constitutional rights/values. They rely on the case of [Justus Mathumbi & 9 others v Cabinet Secretary, Ministry of Land, Housing and Urban Development & 4 others](#) [2018] eKLR as well as the case of [Legal Advice Centre & 3 Others v County Government of Mombasa & 4 others](#) [2016] eKLR.
34. It was submitted that it is not enough for a party to mention perceived violations of the [Constitution](#), but such a party must go a step further and show how the alleged offending party had violated the same. It was pointed out that no proof has been brought before this Court that forceful eviction of the tenants took place nor harassment /threatening /intimidation and the question of loss and damage does not arise.
35. It was also argued that the Petitioner misconstrued the tenancy relationship with the 1<sup>st</sup> Respondent and assumes that the Respondents were/are under an obligation to provide tenants with alternative housing.
36. Reference was made to the case of [Kituo Cha Sheria & another v Central Bank of Kenya & 8 others](#)[2014] eKLR to submit that the 2<sup>nd</sup> respondent has remained transparent with the tenants and that they have never sought any information which was denied.

### **Determination**

37. The issues falling for determination are;



- a. Whether the alleged evictions of residents of Bachelors/Jevanjee estate was unlawful and unconstitutional.
  - b. Whether the process of signing agreements to forfeit tenancy in relation to residents of Bachelors/Jevanjee estate amounted to harassment and whether the said process was unconstitutional.
  - c. Whether the residents of the suit property are entitled to damages.
38. The Petitioner herein represents former residents of Bachelors/Jevanjee estate who resided on about 80 homes built on LR No.209/5458. The Petitioner argues that the residents' eviction to pave way for a project called Nairobi City County Urban Renewal Housing project was unlawful and unconstitutional. He states that it was a violation of Articles 10,19,20,21,22,23,65,258,35,40,43,47,28 and 29 of the constitution.
39. The law frowns upon forceful evictions. Evictions are now to be carried out in an orderly manner as set out under Section 152 (A)-152 (I) of the land Act. The Court of Appeal in Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR, stated that a party alleging violation of constitutional rights must demonstrate the rights alleged to have been violated and the manner of violation. The question is; Has the Petitioner outlined and demonstrated the grievances of the alleged evictees?
40. The 2<sup>nd</sup> Respondent produced rent cards indicating that the residents of Bachelors/Jevanjee Estate were tenants on the suit premises. It also produced tenancy agreements between the said tenants and the 1<sup>st</sup> Respondent. It argues that the Petitioner misconstrued the residents' tenancy relationship with the 1<sup>st</sup> Respondent and assumes that the Respondents were to provide alternative accommodation.
41. From the evidence presented by the parties, the residents of Jeevenajee/Bachelors estate moved out of the suit premises. Were they evicted? The Petitioner avers as follows in the instant amended petition, "...eventually they were forced to move out because they were threatened that their houses would be brought down."
42. It is the view of this court that the Petitioner did not demonstrate that the residents moving/signing agreements to forfeit their tenancies was due to threats by the Respondents. In Teresia Irungu v Jackson Ocharo & 2 others [2013] eKLR cited by the Court of Appeal in Moi Education Centre Co. Ltd v William Musembi & 16 others [2017] eKLR the Court held as follows;
- "It is trite law that unless the tenant consents or agrees to give up possession the landlord has to obtain an order of a competent court or a statutory tribunal (as appropriate) to obtain an order for possession."
43. By signing the forfeiture agreements, the Petitioner gave up possession willingly. Further, the Petitioner failed to demonstrate that the residents signed the forfeiture agreement under duress or undue influence. Further, the residents did not take any steps to avoid any probable contractual obligation. Infact, they accepted kshs.600, 000/= paid to them to help them relocate and left the premises peacefully. The 2<sup>nd</sup> Respondent has availed minute details of the payment exercise where the particulars of the residents were captured including; both sides of the identity card, the telephone numbers, house numbers and signatures of the tenants. The payments appear to have commenced around 25.11.2019 all the way to mid December of the same year. The petitioner, has opted to be mute on this exercise, nevertheless, the said exercise is inconsistent with the claim of eviction. I am inclined to believe that the residents ratified the contracts.



44. The Respondents were not obliged to offer alternative accommodation to the residents either. In *Moi Education Centre Co. Ltd v William Musembi & 16 others* (*supra*), the Court held that;

“...In our view, the Judge misdirected herself in extending the obligation for provision of alternative land or shelter to the Appellant. Under Article 21(2) of the Constitution it is the duty of the State to take measures, “legislative, policy and other measures” to achieve the progressive realization of the rights guaranteed under Article 43. Those rights include the right “to accessible and adequate housing” and “to reasonable standards of sanitation.” Whereas the appellant is under an obligation not to violate the evictees’ Rights in that regard, it is not under a “positive” obligation to provide the evictees with housing. There is therefore merit in the Appellant’s complaint that the Judge erred in holding that it has an obligation to provide the evictees with alternative accommodation or shelter.”

45. The Affidavit of Leonard Obonyo also gives a sense that there was adequate public participation as the Respondents engaged the residents in public forums from inception of the project. He avers that they were agreeable to the project provided that they were given alternative housing and given priority upon construction of new apartments. Paragraph 11 of the affidavit of Leonard Obonyo demonstrates that the residents are the ones who scuttled the public participation processes, as they even declined to sign the attendance sheet!

46. It is pertinent to consider the bundle of rights and interests held by the residents in the suit premises. They were apparently tenants and not owners of the suit properties. The projected development was in a sense an opportunity for the said residents to be home owners. After considering a similar matter in Mombasa, the Court held as follows in *Justus Chai Mbaru & 12 others v County Government of Mombasa; National Land Commission & 19 others (Interested Parties)* [2021] eKLR,

“the need to have the petitioners and other tenants vacate the premises so that they can be renovated, will of course lead to some inconvenience. But if you balance the inconvenience that the tenants will suffer, with the general public good, it is apparent that in this instance, the inconvenience to the tenants must give way to public good. It is in the interest of the public to have more housing and it is also in the public interest to have an avenue for a graduation from tenancy to ownership. The inconvenience to the petitioners has in fact been tempered by the respondent through the ex gratia payments made, and by the respondent giving the tenants a term of notice that is longer than is stipulated in their tenancy agreement.”

47. In the final analysis, I find that this petition is not merited. On costs, I again make reference to the above case of *Justus Chai Mbaru & 12 others v County Government of Mombasa* (*supra*) and find that the residents were given an ex-gratia payment of sh 600 000 each to assist them get alternative accommodation. They accepted the same but still came to court. In the circumstances, the petitioner is condemned to pay costs of this suit to the 2<sup>nd</sup> respondent.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27TH DAY OF APRIL, 2023 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

M/s Muiruri holding brief for S.C Mr. Kanjama for Petitioner



H. Kinyanjui for 1<sup>st</sup> Respondent

Nyambura for 2<sup>nd</sup> Respondent

Court assistant: Vanilla

