



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CIVIL MISC APP 10 OF 2016

IN THE MATTER OF BREACH OF THE CONSTITUTION AND FUNDAMENTAL RIGHTS AND FREEDOMS ARTICLES 10, 19 (2), 20 (1), (2), (3) AND (4), (21) (1), 40, 47 (1) AND (2), 50 AND 165 (1) AND (2) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS)PRACTICE AND PROCEDURE RULES, 2013

AND

IN THE MATTER OF ARTICLES 2, 3, 4, 7, 13 AND OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS AND OTHER PROVISIONS THEREON

AND

IN THE MATTER OF THE STANDARDS ACTS, CHAPTER 496 OF THE LAWS OF KENYA

AND

IN THE MATTER OF BEEKEY SUPPLIES LIMITED AND DEVKI STEEL MILLS LIMITED

BETWEEN

BEEKEY SUPPLIES LIMITED

DEVKI STEEL MILLS LIMITED.....PETITIONERS

VERSUS

THE ATTORNEY GENERAL

KENYA BUREAU OF STANDARDS.....RESPONDENTS

RULING

1. The petitioners have sought a temporary conservatory order to restrain the respondents from evicting them from their respective residential houses, which the petitioners have occupied, whose particulars are set out in the notice of motion dated 17th November 2015.

2. The petitioners have raised 7 grounds in support of their application. In ground 1 they have stated that they are tenants in the residential premises of the Embu County Government. In ground 2 they have stated that they were issued with a notice to vacate the premises on the grounds that the County Government intends to carry out repairs and renovations. Additionally, they have stated that the County Government has alleged that the petitioners are in breach of the covenant of the tenancy and that it requires to take an inventory of the premises and thereafter re-allocate the same to authorized tenants, once the repairs have been completed.

3. The applicants have also stated that they are likely to be evicted from the houses they occupy unless the respondents are restrained from doing so. Furthermore, they have stated that they are likely to suffer irreparable loss and damage and that the intended eviction will amount to a violation of their constitutional rights as set out in Articles 27 and 43 of the 2010 Kenya Constitution.

4. Furthermore, their application is anchored in the supporting affidavit sworn to by Fredrick Kivuti, which affidavit contains 27 paragraphs. In that affidavit, the deponent has indicated the premises occupied by each tenant. He has also deponed to the same matters raised in the grounds in support of the application in paragraphs 7 and 8 of his affidavit.

5. He has further deponed that the grounds advanced in support of the eviction are unconstitutional, unconscionable, illegal, baseless and they are in violation of their constitutional rights. He has also deponed that the respondent has not stated which renovations are required to be carried out in each of the premises occupied by the petitioners. Additionally, he has deponed that the respondent has not shown any valuations required in respect of the repairs to be carried out. He has further deponed that the respondents have not stated which persons are more deserving as potential tenants than the petitioners and has not stated the criteria to be used in determining the suitability of such potential tenants.

6. The foregoing are the factual matters that the petitioners have relied on in support of their application.

7. The respondents through Raymond Kinyua have filed a replying affidavit in opposition to both the substantive petition as well as the notice of motion brought by the applicants. His affidavit contains 13 paragraphs. He has deponed that the petitioners are unlawful trespassers on the 3rd respondent's houses. He has further deponed that the houses were built by the 3rd respondent for purposes of housing its staffs and employees.

8. He has also deponed that the 3rd respondent is empowered by law to issue notices to vacate the suit premises for purposes of carrying out repairs as set out in the notice dated 30th October 2015. The respondent has also deponed that she is the lawful landlord of the suit premises by virtue of section 134 of the County Government Act of 2012, which entitled her to take over the property of the predecessor defunct Embu County Council.

9. I have considered the affidavit evidence of both parties and their submissions. I find that the petitioners have been served with the notice to vacate the suit premises. The third respondent in her affidavit has deponed that the applicants are trespassers.

10. In the circumstances I find that the threat of eviction is real. I further find that unless the a restraining conservatory order is granted the applicants are likely to suffer irreparable damage. I therefore find that the applicants have made out a case for the issuance of a conservatory order pending the hearing and determination of the substantive petition. I hereby grant prayer (a) (ii) of the notice of motion dated 17th November 2015 pending the hearing and determination of the petition.

11. Costs of this application will be costs in cause.

RULING DELIVERED, DATED and SIGNED in open court at **EMBU** this **12th** day of **OCTOBER, 2016**.

In the presence of Ms Njiru holding brief for Mr. Okwaro and in the absence of the respondent
Court clerk Njue

J.M. BWONWONGA

JUDGE

12.10.16