



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC CONSTITUTIONAL PETITION NO. 15 OF 2020

(FORMERLY PETITION NO. 1 OF 2020)

IN THE MATTER OF

CONSTITUTION OF KENYA (SUPERVISORY JURISDICTION AND PROTECTION

OF HUMAN RIGHTS AND FREEDOM OF THE INDIVIDUAL)

HIGH COURT PRACTICE PROCEDURE RULES, 2013

AND

IN THE MATTER OF

ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER

ARTICLES 2, 10, 19(2), & (3), 20, 21, 22, 23(1) & (3), 27(1), 28, 43(1)(b), 47, 159,

165(1)(d) & (6), 258, 259 REGARDING PROTECTION OF

THE RIGHT TO FAIR ADMINISTRATIVE ACTION, FREEDOM OF

CONSCIENCE, BELIEF OPINION AND ASSOCIATION

GUARANTEED BY THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF

FAIR ADMINISTRATIVE ACTION ACT SECTION 4(3), (a), (b), (c), (e),

(f) AND (g), 7, 9(2), 9(4) OF THE RENT RESTRICTION ACT

AND

IN THE MATTER OF

SECTION 107, 108, 109, 110, 112, 115 AND 119 OF EVIDENCE ACT

NYATETE NYAKUNDI JUSTIN.....1ST PETITIONER

LUCY C. KIRUI.....2ND PETITIONER

VIVIAN CHELANGAT NGENO.....3RD PETITIONER

ANN MUMBI WARUI.....4TH PETITIONER
GEORGE MURIUKI KARINGO.....5TH PETITIONER
CLARRYS NYAMBURA WACHIRA.....6TH PETITIONER
SUSAN CHEBET RONO.....7TH PETITIONER
GEOFFREY CHESELO.....8TH PETITIONER
ANTHONY M. NJOROGE.....9TH PETITIONER
JANE W. MBUGWA.....10TH PETITIONER
WELLINGTON ODHIAMBO OKETCH.....11TH PETITIONER
EVANS NYARIBO.....12TH PETITIONER
NOAH BETT.....13TH PETITIONER
THEOPHILOUS KIRUI.....14TH PETITIONER
MARGARET KARIUKI.....15TH PETITIONER
BEN NJOROGE.....16TH PETITIONER
JIMFORD MOKUA.....17TH PETITIONER
JOSEPH CHEBOR.....18TH PETITIONER

VERSUS

PYRETHRUM PROCESSING COMPANY

OF KENYA LIMITED.....RESPONDENT

JUDGMENT

1. The petitioners filed the petition dated 11th September 2020 on 23rd September 2020. Through the petition the petitioners stated that were tenants of the respondent under various leases drawn in the year 2005 and 2010 which were renewed from time to time.

The petitioners' case

2. The petitioners averred that they were the residents of Estate 4 and Moi Flats (Lower residential) houses that belong to the respondent. The petitioners stated that on 5th June 2020 they were served with notices to vacate the premises on the grounds that the houses were in bad condition and needed to be repaired which repairs could not be undertaken whilst they were in occupation.

3. The petitioners averred that they learnt later that other tenants had been given notices to pay their rent to an agent by the name of Bonnkam Ventures Limited. That in 2015 the petitioners stated they had declined to deal with the said agent but they had always fully complied with the terms of their tenancy agreements. That in response to the eviction notices, the petitioners advocates wrote a letter dated 7th August 2020 indicating that they would not comply with the aforesaid notice.

4. The petitioners averred that on 8th September 2020 they received a notice addressed to the tenants of Pyrethrum Estate 4 from the respondent indicating that the respondent was in the process of ensuring that its houses were in habitable condition and therefore officers of the State Department of Public Works intended to visit the estate to assess the condition of all the houses. The petitioners stated this was after tiles had been removed from the roofs of some of the houses.

5. The petitioners averred that the respondent intended to put the petitioners in the streets which would amount to gross violation of their rights and therefore sought the following prayers:

(i) A permanent injunction do issue to the respondent barring it from evicting the any of the petitioners from the premises they presently occupy.

(ii) A declaration that all the leases entered into between each of the petitioners and the respondent are valid and still in force.

(iii) An order directing the Respondent to withdraw all notices of eviction issued to the petitioners.

(iv) Costs of this petition to be borne by the respondent.

The respondent's case

6. The respondent filed its replying affidavit sworn on 29th October 2020 by its Managing Director CPA Joseph W Muigai who deposed that he did not dispute the fact that the petitioners were served with three months' vacation notices on 4th June 2020. He contended that the said notices were issued pursuant to the letter from the County Government of Nakuru's Department of Land, Housing and Physical Planning dated 9th September 2019 which directed the removal of asbestos from all the residential buildings in Nakuru in compliance with NEMA Regulations and requirements.

7. The Managing Director deposed that for them to renovate and remove the asbestos as required, the petitioners had to give vacant possession of the houses. He stated that some of the petitioners had not been paying rent and that the notices to vacate were issued in accordance to the law.

8. The respondent further averred that the petitioners ought to have approached the tribunal that had the power to investigate any complaints relating to the tenancy of the premises before approaching this court. The respondent contended that the petition was prematurely before this court and should be dismissed with costs to the respondent.

Submissions of the petitioners

9. The petitioners filed their submissions dated 16th February 2021 on 18th February 2021. The first issue that the petitioners identified for determination was whether the respondent's notices to the petitioners to vacate the premises were justified. The petitioners submitted that neither of the parties was disputing the existence of the landlord and tenant relationship. The petitioners stated that they had through the annexures attached to the petition demonstrated the condition of the houses they occupied, furnished copies of their rental payment receipts to show that they paid their rents as required and hence submitted that they had been unfairly targeted for removal from the respondent's houses without any valid reason.

10. On the issue whether the notices issued by the respondent to the petitioners were valid, the petitioners argued that the notices issued on 4th June 2020 and 24th July 2020 were in disregard of the leases entered into from the year 2010 as they failed to meet the terms and conditions set out in those leases.

11. In conclusion the petitioners submitted that the notices of eviction issued to them were discriminatory as the petitioners were not consulted and that they had always met the conditions set out in their leases. The petitioners stated they were singled out for eviction as there were other tenants of the respondent who were not served with similar notices.

Respondent's submissions

12. The respondent filed its submissions on 9th November 2020 and identified the following issues for determination:

(i) whether the eviction notices were issued lawfully;

(ii) whether there exists a valid Landlord/tenancy relationship between the petitioners and the respondent; and lastly

(iii) whether the petition was competent.

13. On whether the eviction notices were issued lawfully, the respondent relied on Section 15 of the Rent Restriction Act and submitted that the three months' vacation notices was sufficient and lawful. The respondent further submitted that the notices to vacate were issued pursuant to the directive issued by the County Government of Nakuru, Department of Land, Housing and Physical Planning dated 9th September 2019 directing the removal of asbestos in residential buildings in Nakuru. The respondent stated that in order to comply with that directive, the respondent issued the notices to the petitioners to give vacant possession of the houses for the appropriate renovations/repairs to be undertaken.

14. The respondent further submitted that the allegations by the petitioners that they were discriminated against by the respondent are not supported by any evidence. The respondent relied on Section 107 of the Evidence Act Cap 80 Laws of Kenya and submitted that the notices to vacate issued to the petitioners were legal and justified. The respondent argued that the petitioners had not shown the notices were unlawful and/or unjustified.

15. On whether there existed valid tenancies between the petitioners and the respondent, it was submitted that the existing tenancies lapsed upon the end of the three months notice which was on or about 7th September 2020. The respondent submitted that the petitioners were in rent arrears and that they ought to have filed a normal suit instead of this constitutional petition as a normal suit in the civil court would have provided the appropriate forum for the parties to present and interrogate the evidence of either party.

16. In conclusion, the respondent submitted that the petitioners had failed to prove the unlawfulness of the vacation notices, breach of any

constitutional provision and were therefore not entitled to the orders sought in the petition.

Analysis and Determination

17. After considering the petition, replying affidavit and the submissions, the issues for determination are whether this petition meets the threshold of a constitutional petition and whether the petitioners are entitled to the reliefs sought.

18. On whether this petition meets the constitutional threshold of a constitutional petition, the court in the case of **Anarita Karimi Njeru vs. Republic (1979) eKLR** stated as follows:

“...if a person is seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be ingraind.”

19. The court of Appeal in the case of **Mumo Matemu -vs- Trusted Society of Human Rights Alliance & 5 others [2013] eKLR** reaffirmed the principle enunciated in the case of *Anarita Karimi Njeru* (supra) where at paragraph 44 of its judgment the court stated as follows:-

(44) We wish to reaffirm the principle holding on this question in Anarita Karimi Njeru (supra). In view of this, we find that the petition before the High Court did not meet the threshold established in that case. At the very least, the 1st respondent should have seen the need to amend the petition so as to provide sufficient particulars to which the respondents could reply. Viewed thus, the petition fell short of the very substantive test to which the High Court made a reference to in view of the substantive nature of these shortcomings, it was not enough for the superior court below to lament that the petition before it was not the “epitome of precise, comprehensive, or elegant drafting”, without requiring remedy by the 1st respondent”.

20. Lenaola, J (as he then was) in the case of **Patrick Mbabu Karanja -vs- Kenyatta University (2012) eKLR** held that it was imperative that the Bill of Rights and the constitutional interpretative mandate of the court ought not to be invoked where there are other remedies. In the case he stated thus:-

“ I maintain in this position and it is important that simple matters between individuals which are of a purely Civil or Criminal nature should follow the route of Article 165 (3) (a) and be determined as such. To invoke the Bill of Rights in matters where the state is not a party would certainly dilute the sanctity of the Bill of Rights”.

21. In the case of **Godfrey Paul Olutoyi & Another -vs- Habil Olaka & Another (2018) eKLR** Chacha, J stated as follows regarding instances where there could be an alternative remedy in lieu of constitutional remedies:-

It is time it became clear to both litigants and counsel that rights conferred by statute are not fundamental rights under the Bill of Rights and therefore a breach of such rights being a breach of an ordinary statute are redressed through a court of law in the manner allowed by the particular statute or in an ordinary suit as provided by procedure. It is not every failure to act in accordance with a statutory provision or where action is taken in breach of statutory provision that should give rise to a Constitutional Petition. A party should only file a Constitutional Petition for redress of a breach of the constitution or denial, violation or infringement of, or threat to a right of fundamental freedom. Any other claim should be filed in the manner allowed by the applicable law and procedure”.

22. This court in a somewhat similar petition as in the present petition in the case of **George Owino Odhiambo & 13 others -vs- Kenya Railways Corporation & Another (2020) eKLR** where the petitioners claimed to have been singled out and discriminated against by Kenya Railways Corporation and served notices terminating their residential tenancies in houses belonging to the Kenya Railways, the court was of the view that the acts complained of could not constitute a breach of the petitioners constitutional rights. The court held that the parties had private commercial contracts and the forum for any party who felt the contract had been breached, was before the ordinary Civil court for the issue to be adjudicated. The court held that the petitioners had not properly invoked the Constitutional jurisdiction of the court and dismissed the petition for being an abuse of the court process.

23. In the instant petition, all the petitioners were tenants of the Respondent within its Residential premises situated within Nakuru Municipality (Pyrethrum Estate 4). Each of the petitioners had executed a lease agreement with the Respondent for a term of one year running from diverse dates. The leases which were similar and provided for an option to renew the lease on expiry of the term and further also provided for termination upon notice of one month by either party to the other. The relationship between the petitioners and the respondent was in essence contractual and was regulated by the lease agreement that they had entered into between themselves. In my view, where parties enter into an agreement, the terms of the agreement have to be construed and considered to determine whether there has been any breach by either party. Whether or not there has been breach of a contract cannot be within the province of a constitutional court exercising its constitutional interpretative jurisdiction to determine but within the usual Civil Court.

24. The petition as drawn clearly does not plead which provisions of the constitution were breached and/or violated and how the same had been violated. In the absence of such specificity the respondent would not be in a position to answer to the allegations of breach of the constitution. The petition as pleaded is deficient and cannot satisfy the requisite constitutional threshold necessary for a Constitution Petition. It can never be enough to merely enumerate various constitutional provisions alleged to have been violated in the heading of the petition and leave it at that. The pleadings should set out the particulars of the alleged violations relating the same to the constitutional provisions said to have been violated. That is what distinguishes a constitutional petition from a normal suit. Muchemi, J in the case of **David Gathu Thuo -vs- Attorney General & Another (2021) eKLR** stated as follows:-

“The Articles of the constitution which entitles rights to the petitioner must be precisely enumerated and the claim pleaded to

demonstrate such violation with the violations being particularised in a precise manner. Furthermore, the manner in which the alleged violation were committed and to what extent must be shown by way of evidence based on the pleadings”

25. In my view the petitioners wrongly invoked this court’s constitutional jurisdiction. There is no competent constitutional petition before the court as it falls far short of the threshold established in the *Anarita Karimi Njeru* case (*supra*). It is devoid of merit and is hereby ordered dismissed. 26. Each party will bear their own costs of the petition. It is so ordered.

JUDGMENT DATED SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 24TH DAY OF MARCH 2022.

J M MUTUNGI

JUDGE