



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI**

**MILIMANI LAW COURTS**

**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION PETITION NO. 376 OF 2012**

**BETWEEN**

**MOSES ONCHIRI**

**(Suing on his own behalf and in the interest of 475 other persons being former inhabitants of KPA  
MAASAI VILLAGE,**

**EMBAKASI WITHIN NAIROBI) ..... 1<sup>ST</sup> PETITIONER**

**AND**

**KENYA AIRPORTS AUTHORITY.....1<sup>ST</sup> RESPONDENT**

**CITY COUNCIL OF NAIROBI.....2<sup>ND</sup> RESPONDENT**

**THE MINISTER FOR INTERNAL SECURITY**

**PROVINCIAL ADMINISTRATION.....3<sup>RD</sup> RESPONDENT**

**THE MINISTER FOR LANDS.....4<sup>TH</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL.....5<sup>TH</sup> RESPONDENT**

**JUDGMENT**

1. This matter was commenced by a petition dated 3<sup>rd</sup> February 2012. The petitioners, who were at all material times residents of KPA Maasai Village, allege that they were evicted from their homes situated at Maasai Village, North Airport Road on or about 29<sup>th</sup> October 2011 by agents of the respondents. They allege that as a result their fundamental rights and freedoms were violated.
2. This is the second suit involving evictions from the area. In a similar case *Nairobi Petition No. 356 of 2013 June Seventeenth Enterprises Ltd (Suing on behalf of and in the interest of 223 Others) v Kenya Airports Authority and Others*, I considered the issue whether the evictions of residents of Maasai Village constituted a violation of fundamental rights and freedoms. By a judgment delivered on 14<sup>th</sup> February 2014, I made the following reliefs;
  - a. *The case against Kenya Airports Authority and Nairobi City Council is dismissed with no order as*

- to costs.
- b. *It is declared that the State has violated the provisions of Article 21 by failing to develop and enact a policy and legislation to deal with forced evictions.*
  - c. *It is declared that the rights and fundamental freedoms protected under Articles 28, 29, 43 and 47(1) of the Constitution of the occupants of LR No. 209/13418, 209/13419, 209/13420 and 209/13421 situated along Airport North Road otherwise known as Maasai Village were violated by the 3<sup>rd</sup> and 4<sup>th</sup> respondents when they were evicted from the said land on 29<sup>th</sup> October 2010.*
  - d. *Each of the 223 persons represented in these proceedings represented by the petitioner is awarded Kshs.150,000/= as damages for violation of their fundamental rights.*
3. At the commencement of the hearing of the present case, I requested the parties to address the Court on the import of the said judgment. All parties are agreed that as the judgment involves the same cause of action and subject matter, it should be binding and applied in this matter. Mr Ojwang', counsel instructed by the Attorney General, is of the view that although liability is established, the Court should consider the issue of damages separately. Mr Ayekha, counsel for the petitioner, is also of the view that liability is established and that damages should be considered separately.
  4. I am in agreement with counsels' views that liability for events that occurred at Maasai Village on 29<sup>th</sup> October 2010 has been established by the judgment dated 14<sup>th</sup> February 2014 in ***Petition No. 356 of 2013*** and it is to that extent adopted in this matter.
  5. This leaves the issue of reliefs. Apart from the declarations, the petitioners have sought damages for loss based on the preliminary report and assessment of properties prepared by Dantu Valuers dated 13<sup>th</sup> January 2012. The valuation report shows that the total value of loss as a result of the eviction for the vacant plots, semi-permanent buildings, single and double story amounts to Kshs 1,557.7 billion. Mr Ayekha urged the Court to grant the said amount.
  6. Mr Ojwang' contended that damages should be limited to the 40 persons who signed the authority to institute the proceedings, as attached to the petition. He contends that the valuation relied upon by the petitioner is nonfactual and cannot be a basis for assessing loss and damage.
  7. The principles upon which the Court grants special damages are well settled. They must be pleaded and proved. This has not been done in the petition and furthermore, even the evidence, while demonstrative of some loss, does not point to specific loss by specific individuals. In the circumstances, the pleadings do not support the claim and the evidence lacks a factual basis.
  8. Whether the Court should award damages to all the persons whose names are stated is an important issue. In a representative suit such as this one, the parties represented must consent to their names being used in the suit by appending their signatures or some explanation must be given as to the failure to do so. Unlike in ***Petition No. 356 of 2013***, where the petition was not opposed on that basis in this matter, it has been raised in this matter. The signatures on the list confirm that the persons listed therein have agreed that they be represented in the suit.
  9. In the circumstances, I find and hold that unless the other claimants establish that their instructions were given at the time of filing the suit, the damages shall be limited to those who have signed the authority.
  10. In view of the foregoing, I now enter judgment in this matter on the following terms;
    - a. **The case against the 1<sup>st</sup> and 2<sup>nd</sup> respondent is dismissed with no order as to costs.**
    - b. **It is hereby declared that the State has violated the provisions of Article 21 by failing to develop and enact a policy and legislation to deal with forced evictions.**
    - c. **It is hereby declared that the rights and fundamental freedoms protected under Articles 28, 29, 43 and 47(1) of the Constitution of the occupants Maasai Village situated along North**

**Airport Road, Embakasi (“the suit property”) were violated by the 3<sup>rd</sup> and 4<sup>th</sup> respondents when they were evicted from the said land on 29<sup>th</sup> October 2010.**

- d. The represented persons who have executed the legal authority are awarded Kshs 150,000/= as damages for violation of their fundamental rights and freedoms.**
- e. The petitioner is awarded costs of the suit.**

**DATED and DELIVERED at NAIROBI this 18<sup>th</sup> March 2014.**

**D.S. MAJANJA**

**JUDGE**

Mr Ayekha instructed by Khaminwa and Khaminwa Advocates for the petitioners.

Mr Mutua instructed by E.K. Mutua and Company Advocates for the 1<sup>st</sup> respondent.

Mr Omwebu instructed by Prof Tom Ojienda Advocate for the 2<sup>nd</sup> respondent.

Mr Ojwang’, Litigation Counsel, instructed by the State Law Office for the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents.