



**Nyaga & 8 others v County Government of Kiambu (Environment & Land  
Petition E005 of 2021) [2022] KEELC 2570 (KLR) (30 June 2022) (Judgment)**

Neutral citation: [2022] KEELC 2570 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND PETITION E005 OF 2021**

**JG KEMEI, J**

**JUNE 30, 2022**

**IN THE MATTER OF ARTICLES 2(1), 19, 20(1), (2) (3)(B) & 4, 21(1), 22(1),  
23(1) & (3), 28, 40(1), (2), (3) & (4), 162(3) (B) AND 259(1) (A) & (B) OF THE  
CONSTITUTION OF KENYA, 2010. AND IN THE MATTER OF ALLEGED  
CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER  
ARTICLES 27, 40, 43(1) (B) OF THE CONSTITUTION OF KENYA, 2010**

**BETWEEN**

**CATHERINE NYAGA ..... 1<sup>ST</sup> PETITIONER  
JAMES M KARIUKI ..... 2<sup>ND</sup> PETITIONER  
JOHN MACHARIA ..... 3<sup>RD</sup> PETITIONER  
NGANGA KARIUKI ..... 4<sup>TH</sup> PETITIONER  
JAMES N KUNGU ..... 5<sup>TH</sup> PETITIONER  
PETER KINYANJUI ..... 6<sup>TH</sup> PETITIONER  
MICHAEL G KIBATHI ..... 7<sup>TH</sup> PETITIONER  
BEATRICE MUNGAI ..... 8<sup>TH</sup> PETITIONER  
RUIRU KANGANGI ESTATE WELFARE ASSOCIATION ..... 9<sup>TH</sup> PETITIONER**

**AND**

**COUNTY GOVERNMENT OF KIAMBU ..... RESPONDENT**



## JUDGMENT

### The Petitioners Case

1. The 1<sup>st</sup> -8<sup>th</sup> Petitioners have described themselves as members of the 9<sup>th</sup> Petitioner and rent paying tenants of house Nos. 11013-11020, belonging to the Respondent and known as Kangangi Estate - Ruiru.
2. The 9<sup>th</sup> Petitioner on the other hand is duly registered under the *Societies Act* Cap 108 Laws of Kenya with the objective of advancing and promoting the welfare and interests of its members who included the 1<sup>st</sup> – 8<sup>th</sup> Petitioners.
3. The Respondent is the County Government of Kiambu. It is established under Article 176(1) of *the Constitution* of Kenya and empowered by the County Government Act No 17 of 2012 to manage the affairs of the County of Kiambu. It is the successor of the defunct Municipal Council of Ruiru which was a body corporate established under the then Local Government Act (now repealed).
4. It is the Petitioners' case that despite paying rent, undertaking repairs and maintenance of the houses, the Respondent issued them notices to vacate their respective units provoking this Petition.
5. In the said Petition, the Petitioners have alleged a raft of Constitutional violations as set out in the face of the Petition and in particular averred that the Respondents notices to vacate dated the 9/4/2021 are discriminatory, unlawful, irregular and malicious as they were issued in bad faith aimed at curtailing the Petitioners realization of their legitimate expectation to be accorded the preference and priority in the disposal of the house units. In addition that the Petitioners were not notified or engaged by the Respondent in its quest to remove them thus violating their rights and fundamental freedoms to the protection of property and to housing respectively under Article 40 and 43(1) (b) of *the Constitution*.
6. The Petitioners have sought the following orders against the Respondent;
  - a. A declaration be and is hereby issued declaring that the 1<sup>st</sup> to 8<sup>th</sup> Petitioners' right to equality and freedom from discrimination under Article 27 of *the Constitution* of Kenya 2010, were violated by the Respondent's unjustified and unlawful and discriminatory issuance of the Notices to Vacate dated 9<sup>th</sup> April 2021.
  - b. A declaration be and is hereby issued declaring that the 1<sup>st</sup> to 8<sup>th</sup> Petitioners' legitimate expectation to the protection of property and to housing respectively under Articles 40 and 43(1)(b) of *the Constitution* of Kenya, 2010 were violated/infringed by the Respondent's unjustified, unlawful and discriminatory manner in issuance of the notice to vacate dated 9<sup>th</sup> April 2021.
  - c. A declaration be and is hereby issued declaring that the 1<sup>st</sup> to 8<sup>th</sup> Petitioners are entitled to a 1<sup>st</sup> priority consideration by the Respondent in the disposal of the housing units numbers 11013, 11014, 11015, 11016, 11017, 11018, 11019 and 11020 erected in Kangangi Housing Estate within Ruiru Town.
  - d. A declaration be and is hereby issued declaring that the 1<sup>st</sup> to 8<sup>th</sup> Petitioners are entitled to general damages as a consequence of the breaches of their rights and fundamental freedoms by the Respondent as prayed for under reliefs (a) and (b) above.



- e. General damages for the breaches of the 1<sup>st</sup> to 8<sup>th</sup> Petitioners' rights and fundamental freedoms as prayed for under reliefs (a) and (b) above.
  - f. An order of certiorari be and is hereby issued to remove into this Honorable Court for purposes of being quashed each of the Respondent's Notices to vacate dated 9<sup>th</sup> April 2021 issued to the 1<sup>st</sup> to 8<sup>th</sup> Petitioners.
  - g. An order of mandamus be and is hereby issued compelling the Respondent to issue the 1<sup>st</sup> to 8<sup>th</sup> Petitioners with new Tenancy agreements and House cards for their respective house units as per the legitimate expectation arising from the 1<sup>st</sup> to 8<sup>th</sup> Petitioners' compliance with the requirements in the Respondent's memo of 30<sup>th</sup> January 2020.
  - h. A permanent injunction restraining the Respondent whether by itself, employees, agents and any other persons under its instructions from evicting and/or causing to vacate the 1<sup>st</sup> to 8<sup>th</sup> Petitioners from their housing units numbers 11013, 11014, 11015, 11016, 11017, 11018, 11019 and 11020 erected in Kangangi Housing Estate within Ruiru Town pursuant to the Respondent's Notice to vacate to each of these Petitioners dated 9<sup>th</sup> April 2021.
  - i. Any other relief this Honorable Court deems fit to grant to meet the ends of justice.
  - j. Costs of this Petition.
  - k. Interests on (e) and (j) above at Court rates from the date of filing this Petition until payment in full.
7. The Petition is supported by the affidavit of Catherine Nyaga sworn on the 7/6/2021 on her behalf and that of the 2<sup>nd</sup> - 9<sup>th</sup> Respondents.
  8. That she and the 2<sup>nd</sup> to 8<sup>th</sup> Petitioners are registered members of the 9<sup>th</sup> Petitioner, a Society registered under the Societies Act, CAP 108 Laws of Kenya as evidenced by CN2a & CN2b being copies of its Constitution and Certificate. That for more than forty years, the 1<sup>st</sup> to 8<sup>th</sup> Petitioners have lived as tenants in House Units numbers 11013, 11014, 11015, 11016, 11017, 11018, 11019 and 11020 all erected in Kangangi Housing Estate within Ruiru Town which Estate is now owned by the Respondent in place of the defunct Municipality Council of Ruiru (the Council). Copies of some of the Tenancy Agreements were attached as CN-3.
  9. The deponent states that at all material times while in occupation of the houses they have dutifully and diligently paid monthly rental and undertaken repair and maintenance at their own costs.
  10. That by a letter dated the 7/10/2002 the Town clerk notified the tenants of Kangangi Housing Estate that the house register was being updated thus for the following purposes; to determine the occupants of the houses noting that some tenants had either passed away or left Ruiru Town with no notification to the council to allow it amend the register; part of the implementation of a government policy to dispose off government and council houses with the occupants being given preference to buy; need for the existing tenants to present their documents in support of tenancy and rent payments receipts; the Council had no intention to evict anyone with genuine documentation subject to the Council's satisfaction and lastly the houses in the estate would be sold to the residents on a priority basis.
  11. That they complied with the letter of the 7/10/2002 and on the assurances contained above they continued to pay their rents and occupy the houses in anticipation of allocation and transfer of the houses by the Respondent upon the Respondents take over of the duties and functions of the Ruiru Town Council.



12. That by a memo dated the 30/1/2020 the Ruiru Sub County Administrator informed them that the Respondent was in the process of updating the estate inventory to establish the status and occupancy of the house extensions in all the estates and issuance of new tenancy agreements and cards. The tenants, the Petitioners included were called upon to present themselves to the offices of the Respondent with; original identity card and copy; original rent receipts for the December 2019 as well as at least 3 months latest payment receipts or at least 3 months' pay slips for employees paying through check off system; two passport photographs; original house card; details of occupants in house extensions.
13. It is the case of the Petitioners that despite complying with the memo, the Respondent failed to issue them with new tenancy agreements and cards for the houses.
14. That on the 9/4/2021 the Respondent issued them with 60 day notices to vacate the houses by the 9/6/2021 failure to which the Respondent will take action to procure vacant possession of the units. That this was done despite their legitimate expectations arising from the earlier assurances given to them by the council.
15. That despite demand by their lawyers written to the Respondent on the 19/5/2021 the said notices are yet to be withdrawn.
16. According to the Petitioners the notices to vacate the houses are unlawful, irregular, malicious and were issued in bad faith while aimed at curtailing the realization of their legitimate expectation of preferential treatment in the disposal of the units. That they were not engaged on the change in the assurance given to them by the council and the Respondent.
17. That no known criteria was used to select which houses should be vacated noting that not all the tenants got the notices. In the absence of any selection criteria, the Petitioners aver that the notices were discriminatory in nature.
18. That unless the Petition is allowed they shall be evicted from their units despite dutifully paying rent and shall be rendered homeless and destitute.
19. It is their case that their rights and fundamental freedoms to the protection of property and to housing respectively under Art 40 and 43 (1) (b) of *the Constitution* have been violated and threatened. In addition, substantial prejudice and injustice shall be occasioned should the Petition be disallowed.

### **The Respondent's Case**

20. The Petition is opposed vide the replying affidavit of Mary W Kamau sworn on the 21/6/2021. She described herself as the Chief Executive Committee Member (CECMC) for Education, gender, culture and social services at the Respondent's office.
21. She contends that the Petition is premised on erroneous and misleading grounds. She gave a detailed history of the housing units. That Kangangi Estate Ruiru was developed in 1974 by Kiambu County Council to provide housing to Ruiru Municipal Council employees. The said Municipal Council managed the houses from 1986 and later on the Respondent after devolution. That the houses comprise of Block 7, 8, 9 and 10 housing unit Nos. 11013 - 11020.
22. That the houses are strictly staff rental units with one month notice if required by the Respondent. That though the defunct Municipal Council of Ruiru vide ref RMC/PW/F/6/VOLII/161 dated the 7/10/2002 had plans to sell the houses the said plans were shelved due to change of policy and government fiscal needs, hence the continuation of tenancy agreements.



23. It was conceded by the Respondent that the tenants have been maintaining the rental houses including installing fencing security grills among others. That this may have given the tenants a false sense of ownership entitlement to the units yet they are tenants of the Respondent. Referring to Clause 9 of the tenancy agreement, the Respondent reiterated the term in the agreement which prohibited subletting without the prior written consent of the landlord on terms deemed necessary by the land lord.
24. According to the Respondent children and grandchildren have inherited the houses from their parent's contrary to the terms and conditions of the tenancy agreement.
25. That some of the Petitioners do not have tenancy agreements and therefore have no right to and or claim to file the Petition.
26. Whilst maintaining that the Petitioners are not the employees of the County Government of Kiambu, the Respondent referred the Court to Clause 12 of the tenancy agreement which states;
 

“The landlords premises are strictly staff rental housing and any tenant can be given one months’ notice to vacate for any purposes required by the landlord.”
27. That inspite of the above the Petitioners were given 60 days to vacate and instead rushed to Court with unclean hands claiming violation of Constitutional rights and freedoms.
28. Further the Respondent gave a detailed account of the manner in which the proposal to terminate the leases of the Petitioners was arrived at.
29. That on receipt of a report from the judiciary indicating that 48 Sexual Gender Based Violence (SGBV) cases were in need of safe houses for the protection, CECMC for Education, Gender culture and social services prepared a cabinet paper for the rehabilitation and conversion of 8 units at Kangangi Estate for the purpose of housing the SGBV survivors.
30. That following the proposal, the County Executive Committee under Min No MIN/CEC/CS/VOL1/099 resolved to; terminate the lease for the current occupants and compensate the occupants; rehabilitate the 4 residential house units in Kangangi Estate, Biashara Ward, Ruiru Sub County; approve the conversion of the rehabilitated facilities into safe spaces for SGBV; factored the creation of the safe house in the 2020/2021 financial year. On the basis of the resolution, on the 9/4/2021 60 days’ notice to vacate was issued to the Petitioners.
31. In challenging the authority of the 1<sup>st</sup> Petitioner to act on behalf of the other Petitioners, the Respondent contended that the 2<sup>nd</sup> - 9<sup>th</sup> Petitioners have not signed any document to give the 1<sup>st</sup> Petitioner authority to swear an affidavit on their behalf as there are no minutes of the alleged meeting held on the 2/6/2021 by the Petitioners. That the Constitution of the 9<sup>th</sup> Petitioner provides that minutes of every meeting should be documented and the same confirmed in the subsequent meeting. That absent the said minutes it cannot be said that the meeting of the 2/6/2021 was quorate.
32. With respect to locus the Respondent contends that the 9<sup>th</sup> Petitioner lacks locus standi to file suit. That the 3<sup>rd</sup> 4<sup>th</sup> 5<sup>th</sup> and 8<sup>th</sup> Petitioners have no tenancy agreements and thus have no cause of action against the Respondent.
33. That though the 1<sup>st</sup> 2<sup>nd</sup> 6<sup>th</sup> and 7<sup>th</sup> Petitioners have tenancy agreements they are not employees of the Respondent and cannot rely on them since they are not employees as stated in Clause 12 of the agreements. In any event the said tenancy agreements expired on the 9/5/2021 after the issuance of the notices to vacate. Further that the all the Petitioners are not employees of the Respondent and



- therefore are occupying the premises illegally. The tenancy agreements have no provision requiring the Respondent to give reasons for the termination of the same.
34. That the Court's role is in a case such as this is limited to interpretation of the tenancy agreements. It is the province of the parties to create or make agreements for themselves.
  35. That the 60 days' notice was adequate for the tenants to procure alternative housing. That the tenants are at liberty to source housing for rentals from other quotas other than the Respondent. That no violation of any rights under *the Constitution* let alone Article 27 and 43 have been infringed by the Respondent issuing notices to its tenants to vacate.
  36. That Article 43 obligates the State to provide social security and not housing and or alternative housing to persons who are unable to support themselves and their dependants. That the Petitioners do not fall in that category.
  37. That the notices having been issued in accordance with the tenancy agreements shows that the same are in conformity with contractual obligations and nothing done by the Respondent can be said to be illegal and or unconstitutional. That there cannot be legitimate expectation against the clear provisions of the law.
  38. According to the Respondent the alleged violation of the right to property is totally unfounded as no provisions of Constitutional rights have been proven at all. That all the Petitioners are indirectly seeking are judicial review orders of mandamus and certiorari through a Petition without following the law. That those orders are not merited in the case at hand.
  39. In the end the Respondent averred that public interest outweighs an individual expectation and that the Respondent has acted within the law in line with the principle of legality.
  40. In a rejoinder, the Petitioners filed a supplementary affidavit dated 5/10/2021. It was averred that they were not informed of the purported change of policy and government fiscal plans to effect the earlier proposal by the Town Clerk. They denied any false entitlement as deponed by the Respondent and maintained that their legitimate expectation stemmed from their dutiful payment of rent to the Respondent as agreed. That the Respondent has not produced any evidence of subletting the house units and insisted that they have not approached this Court with unclean hands as stated. They impugned the cabinet memorandum proposing termination of their leases as it did not expressly specify which houses were to be converted to rescue centers. That despite the resolution targeting 4 houses, its suspicious that the Respondent issued notices to 8 houses.
  41. The deponent defended her capacity to act in this Petition pursuant to Article 22(2)(b) Constitution of Kenya and also for being a tenant in the Estate. That the 1<sup>st</sup> to 8<sup>th</sup> Petitioners are tenants because they duly paid their rent to the Respondent as shown in annexure MWK4 to the Replying Affidavit. The Petitioners prayers were also defended as the Petition sought to challenge the Constitutionality of the notices to vacate and not the Respondent's decision to rehabilitate and convert the house units.
  42. On the 4/11/2022 parties elected to canvass the Petition by way of written submissions. The firm of Mohammed Muigai LLP filed written sub missions on behalf of the Petitioners whilst that of the Respondent were filed by Ms JJ Cheserek, Legal Counsel acting for the County Counsel of the County Government of Kiambu.
  43. As to whether the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Petitioners have the locus to file suit, the Petitioners submitted and relied on the case of Mumo Matemu Vs Trusted Society of Human Rights Alliance & 5 Others (2014) where locus was defined as the right to bring an action or be heard in Court. That Article 22 (2)(d) of *the Constitution* permits the 9<sup>th</sup> Petitioner to sue as an association acting in the interest



of one or more of its own members. That the 9<sup>th</sup> Petitioner can sue being a Society duly registered under the Societies Act with the objective of advancing and promoting the welfare and interests of its members who include the 1<sup>st</sup> – 8<sup>th</sup> Petitioners. In so far as the locus of the 9<sup>th</sup> Petitioner is concerned the Respondents urged the Court to adopt the enlarged definition of locus as given in the case of Mumo Matemum above and hold that the 9<sup>th</sup> Petitioner has locus to appear and sue in the proceedings on behalf of the 1<sup>st</sup> - 8<sup>th</sup> Petitioners who are its members.

44. The Petitioners argued that the 3<sup>rd</sup> 4<sup>th</sup> 5<sup>th</sup> and 8<sup>th</sup> Petitioners have procured receipts with respect to rental payments, which rent has been acknowledged by the Respondent and therefore have locus to file this suit as their locus is traceable to Article 22 (10 and 258(1) of the Constitution.
45. As to whether the 1<sup>st</sup> Petitioner has the legal authority to act in Petition, the Respondents submitted that the 1<sup>st</sup> Petitioner is a tenant as acknowledged by the Respondent; Article 22 (2) (b) of the Constitution gives the 1<sup>st</sup> Petitioner the right to act on behalf of the 2<sup>nd</sup> - 8<sup>th</sup> Petitioners who are tenants in the estate and on behalf of the 9<sup>th</sup> Petitioner by dint of her membership. The 9<sup>th</sup> Petitioner has exhibited a resolution mandating the 1<sup>st</sup> Petitioner to so act which minutes have not been challenged.
46. With respect to the issue whether the 1<sup>st</sup> -8<sup>th</sup> Petitioners' tenancies are in dispute, it was argued on behalf of the Petitioners that the Respondent has acknowledged the Petitioners as their tenants in the tenant schedule presented by the Respondent. In addition it was submitted that the Petitioners have a legitimate expectation arising from the assurances given to them by the Respondent and its predecessor that they shall be accorded preference and priority in the disposal of the houses as communicated in the letter dated the 7/10/2002 and the memo dated the 30/1/2020. That no notice or reason was given to the Petitioners as to the change of the assurances aforesaid. That the averments that there is no provision for giving reasons for the termination of the tenancy is unfair.
47. That the Respondent has failed to provide alternative housing for the Respondents or funds for the purposes of procuring alternative accommodation
48. Further that the Respondent has misconstrued Clause 12 of the Tenancy agreement which correctly is interpreted to mean that the landlord has to state the purpose or the reason for evicting the tenants under Clause 12 and not that it has a right to evict the tenants without giving reasons for eviction. It was also submitted that no evidence was tendered to show that the other tenants are employees of the Respondent so as to receive different and or preferential treatment.
49. As to whether the Petitioners right of equality and freedom from discrimination under Article 27 were violated by the unlawful unjustified and discriminatory issuance of the notices to vacate dated the 9/4/2021, the Petitioners submitted in the affirmative based on the grounds; the Petitioners have legitimate expectation arising from the assurances of preferential treatment in the disposal of the houses; notices issued to the Petitioners and not all the tenants without any criteria for the selection on which of the tenants to be evicted having been communicated to the Petitioners; none of the Petitioners were consulted on the proposal to rehabilitate and convert the houses as safe houses for the SGBV survivors; none of the Petitioners were informed of the decision to terminate their tenancies. Needless to state that the proposal by the County Executive Committee did not expressly identify the Petitioners houses for rehabilitation and conversion and further the resolution only stated 4 houses without identifying which of the 4 were going to be affected and yet the Respondent has issued notices for 8 houses without any reason or criteria of arriving at the decision and in particular how houses Nos. 11013-11020 were selected in view of the 20 houses in the estate.
50. Citing the case of *Jacqueline Okeyo Manani & 5 others v Attorney General & Another* [2018] eKLR the Petitioners submitted that the actions of the Respondent in issuing notices to vacate targeting the



Petitioners was heavily geared and prejudiced against the Petitioners while the other tenants remained unaffected. That although reasons for discrimination does not entirely fall within the scope of race, sex, pregnancy, marital status, ethnic, social, origin, colour, age, disability, religion, conscience belief, dress, language or birth set out in Article 27 of *the Constitution*, it falls under other grounds/reasons for discrimination and urged the Court to read the said provision with an expanded approach in interpreting that Article as was held in the case of *Mohammed Abduba Dida v Debate Media Limited & another* [2017] eKLR. That having discharged the burden on their side the Respondent has failed to demonstrate that the notices were rational and legitimate.

51. Was the Petitioners' legitimate expectation to the protection of property and housing respectively under Article 40 and 43(1) (b) of *the Constitution* of Kenya violated by the issuance of the notice? Citing the case of *Communications Commission of Kenya & 5 others Vs Royal Media services Limited & 5 others* (2014)eKLR the Court was urged to adopt the meaning of legitimate expectation has developed and recognized by the Courts over the years.
52. The Petitioners cited the decision of the Court in the case of *Pevans East Africa Limited Vs Betting Control and Licensing Board & 2 others; Safaricom Limited & Anor* (interested parties) 2019 eKLR where the Court stated as follows;
  120. A procedural legitimate expectation rests on the presumption that a public authority will follow a certain procedure in advance of a decision being taken. In adjudicating legitimate expectation claims, the Court follows a two-step approach. First, it asks whether the administrator's actions created a reasonable expectation in the mind of the aggrieved party. Second, if the answer to this question is in affirmative, the second question is whether that expectation is legitimate. If the answer to the second question is equally affirmative, then the Court will hold the administrator to the representation, and enforce the legitimate expectation.
  121. The first step in the analysis has both an objective and a subjective dimension. First, it is asked whether a reasonable expectation of a certain outcome was created. The representation itself must be precise and specific and importantly, lawful. This requirement also implies that individuals are required to know what the law is and consequently when a representation is lawful or not and hence can be relied upon or not.<sup>[33]</sup> Once a reasonable expectation exists, the administrator is required to act in accordance with that expectation, except if there are public interest considerations, which outweighs the individual's expectation.
  122. The basic premise underlying the protection of legitimate expectations seems to be the promotion of legal certainty.<sup>[34]</sup> Individuals should be able to rely on government actions and policies and shape their lives and planning on such representations. The trust engendered by such reliance is said to be central to the concept of the rule of law.<sup>[35]</sup> Forsyth describes the impact of such trust and the role the protection of legitimate expectations play in this regard aptly as follows:-

“Good government depends in large measure on officials being believed by the governed. Little could be more corrosive of the public's fragile trust in government if it were clear that public authorities could freely renege on their past undertakings or long-established practices.”
53. It was the submission of the Petitioners that the Respondent made the promises to the Petitioners that; the Petitioners would not be evicted; that the Petitioners would be issued with new tenancy agreements/cards; the houses would be sold to them on a priority basis. That the Petitioners acted on the promises and complied and submitted all the documents required and in addition continued to occupy the premises and paid rent whilst awaiting the delivery of the outcomes promised by the Respondent. They submit that these actions created a reasonable expectation which they are terming



legitimate expectation from the Respondents. Further it is their submission that the promises were clear unambiguous, and within the power of the Respondent to make and fulfil. And that their legitimate expectation is not unreasonable but lawful in every sense.

54. The Petitioner submitted that the Respondent cannot claim public interest so as to defeat the legitimate expectation of the Petitioners since the Petitioners were not consulted in the quest of the Respondent to rehabilitate and convert the houses into a safe house; the Executive committee resolution did not identify the Petitioners houses for the purpose and neither was this communicated to the Petitioners and their comments were not sought. No law which will be breached has been identified by the Respondent if it actualizes the expectation of the Petitioners.
55. The Petitioners urged the Court to find that the notice to vacate dated the 9/4/2021 extinguishes their legitimate expectation not to be evicted from their houses units; that rules of natural justice would prevail in determining the matter supported by twin principles of transparency and accountability; the updating of house estate inventory would result in an updated inventory of all tenants; establishment of status and occupancy of house extensions in all estates and the issuance of new tenancy agreements; be accorded preference and priority in the disposal of the house units.
56. As to whether the Petitioners are entitled to a 1<sup>st</sup> Priority consideration by the Respondent in the disposal of the housing units, the Petitioners submitted in the affirmative in line with the Respondent's letters dated the 7/10/2002 and 30/1/2020 and that the Petitioners remain entitled to a first priority preference and consideration by the Respondent in the disposal of the housing units.
57. As regards the question of general damages the Petitioners submitted that their rights have been breached and citing the case of *Gitobu Imanyara & Others vs Attorney General* (2016) eKLR where the Court of Appeal cited with approval various authorities on the principle applicable to awards of assessment of damages for the violation of Constitutional rights of an individual by the state.
58. The Court was urged to make a finding that the Petitioners are entitled to the orders of certiorari to remove into this Court for purposes of being quashed the notices to vacate issued to the Petitioners dated the 9/4/2021. The decision in the case of *Felix Kiprono Mategei vs The Hon AG* (2021) eKLR was cited in support. In summary the Petitioners submitted that an order of certiorari can issue to quash the notice to evict the Petitioners.
59. It was the submission of the Petitioners that they are entitled to be issued with New Tenancy Agreements having complied with the request to submit documents in fulfilment with the legitimate expectation created by the Respondent.
60. The Petitioners submitted that they are entitled to orders of permanent injunction having established the presence of legitimate expectation in their favour.
61. The Petition is opposed by the Respondent. It was submitted by the Respondent that the Court does not have the jurisdiction to make agreements for the parties save to interpret the issues arising from the agreements. The case of *Areva T & D India Limited Vs Priority Electrical Engineers & Anor* (2012) eKLR was cited in support.
62. The Respondent was adamant that the Petitioners are not employees of the Respondent and are occupying the houses illegally. That there are no tenancy agreements between the defunct Municipal Council and the 3<sup>rd</sup> 4<sup>th</sup> 5<sup>th</sup> and 8<sup>th</sup> Petitioners and are therefore strangers before the Court while the 1<sup>st</sup> 2<sup>nd</sup> 6<sup>th</sup> and 7<sup>th</sup> Petitioners are not employees of the Respondent and they cannot rely on the tenancy agreements in support of their claim. It was further submitted by the Respondent that in any event



- the tenancy agreement allowed it to issue 30 days' notice to vacate without the giving any reasons for the eviction.
63. The Respondent was of the opinion that the 1<sup>st</sup> Respondent has no authority to act and swear the affidavit on behalf of the other Petitioners in the absence of any document given to her to act or swear the affidavit on their behalf. Equally it was submitted that the 9<sup>th</sup> Petitioner has no locus to file suit in its name. Section 41 (1) of the [Societies Act](#) states that a Society can only appear in a suit through an appointed representative acting on its behalf. It was the opinion of the Respondent that the suit as filed as regards the 9<sup>th</sup> Petitioner is incompetent and therefore a nullity in law.
  64. According to the Respondent no Constitutional issues have been raised by the Petitioners as the notices issued by the Respondent were in conformity with the contractual obligations and terms of the tenancy agreements and Constitutional violations cannot be read into a termination of such an agreement. In addition, that the Respondent adhered to the law and issued adequate notices requiring the Petitioners to vacate the houses. That the Petitioners have failed to demonstrate any alleged violation of rights and their claims are unfounded and urged the Court to dismiss them. It was its firm view that legitimate expectation cannot be founded against clear provisions of the law.
  65. The Court was called upon to balance the interest between public and an individual expectation and make a finding that public interest tilts against those of an individual especially where in upholding individual expectation the decision maker should make an unlawful decision.
  66. The Respondent faulted the Petitioners for seeking orders of mandamus and certiorari without following the due process of the law including first seeking the leave of the Court.
  67. The Petitioners framed 11 issues while the Respondent framed 7 issues for determination. Having read and considered the Petition the rival affidavit evidence, the written submissions and all the materials placed before me, I shall proceed to frame the issues that in my considered opinion will dispose of the Petition;
    - a. Whether the Petitioners have locus to file suit.
    - b. Whether the notice to vacate dated the 9/4/2021 violated the rights of the Petitioner to equality and freedom from discrimination their legitimate expectation to the protection of property and to housing under Article 40 and 43 of [the Constitution](#).
    - c. Are the Petitioners entitled to general damages?
    - d. What reliefs should the Court grant?
    - e. Who meets the costs of the Petition?
  68. It is common ground that the 1<sup>st</sup> – 8<sup>th</sup> Petitioners are in occupation of the suit premises namely House Units No. 11013 – 11020 at Kangangi Estate, Ruiru. It is also commonly agreed that the estate and the houses, the subject of this Petition belongs to the Respondent having been developed by the Kiambu County Council in 1974 to provide housing to Ruiru Municipal Council employees. Upon completion the houses were handed over to the management of Municipal Council of Ruiru in 1986. With the advent of the devolved system the County Government of Kiambu acceded to the assets in 2012/2013.
  69. The case of the Petitioners is that they have occupied the houses for a period of over 40 years paid rent dutifully, undertaken repair and maintenance of the units in tenantable and habitable conditions at their own costs and in the knowledge of the Respondent. That on its own volition and without any nudging, the Respondent vide two letters dated the 7/10/2002 and the 30/1/2020 gave them



assurances and promises which in their opinion created legitimate expectation to the right to property and housing as set out in *the Constitution*. That despite complying with the conditions in the two letters, they were shocked when on the 9/4/2021 the Respondent issued them with a notice to vacate within a period of 60 days provoking the filing of this Petition on the 8/6/2021.

70. In the main the Respondents case is that this is a land lord tenant dispute and the claim of infringement of Constitutional rights do not arise on the part of the Respondent in favour of the Petitioners. According to the tenancy agreement in question, the Respondent is entitled to issue 30 days' notice to vacate to its tenants without giving any reason and in this case it generously gave a 60 day notice instead. That the house units are strictly for rental for its employees. In shot that the Petitioners are neither tenants strictly speaking for want of tenancy agreements and neither are they employees of the 1<sup>st</sup> Respondent. The Respondent urged the Court to make a finding that the claim of the Petitioners is unfounded.

71. I will now address the issues framed above starting with the three preliminary objections raised by the Respondent to wit; that the 1<sup>st</sup> Petitioner has no authority to act on behalf of the co-Petitioners; the 9<sup>th</sup> Petitioner has no locus to file suit; the Petitioners have not shown any cause of action against the Respondent.

The authority of Ms Catherine Nyaga to swear affidavit and act for the 2<sup>nd</sup> - 8<sup>th</sup> Petitioners.

72. The Petition has been supported by the affidavit sworn by one Catherine Nyaga, the 1<sup>st</sup> Petitioner, on her own behalf and with the authority of the 2<sup>nd</sup> - 9<sup>th</sup> Petitioners. The Respondent has challenged the authority of the deponent on the grounds that the 2<sup>nd</sup> -9<sup>th</sup> have not signed any document giving her authority to act and swear the affidavit on their behalf.

73. The Petitioners have argued that the 1<sup>st</sup> Petitioner has legal authority to act and swear the affidavit for the reasons that she is a tenant of the Respondent; has disclosed authority to so act and the disclosed authority is complete and duly executed by the officials of the 9<sup>th</sup> Petitioner.

74. In ordinary civil cases initiated by way of plaint the requirement to authorize one of the parties to swear an affidavit on behalf of the others in case where the parties are more than one is provided for under Order 4 rule 2- 6 of the Civil Procedure Rules. The affidavit accompanies the plaint and its aim is to verify the correctness of the contents of the plaint and to guard against pleading falsehoods and obviate the possibility of usurpation.

75. *The Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedural Rules, 2013 provides that where a right or fundamental freedom provided in *the Constitution* is violated, infringed or threatened , a person so affected or likely to be affected may file suit in the High Court.

76. In addition to a person acting in their own interest, Court proceedings under sub rule (1) may be instituted by-

- i. A person acting on behalf of another person who cannot act in their own name;
- ii. A person acting as a member of, or in the interest of, a group or class of persons;
- iii. A person acting in the public interest; or
- iv. An association acting in the interest of one or more of its members.”

77. Section 2 of the said rules defines a “person” to include an individual, organization, company, association or any other body of persons whether incorporated or unincorporated.



78. According to the record the association was incorporated on 23/11/2018 under Certificate of Registration No. R51246 under its Constitution dated 24/6/2018 its objects are among other things to advance and promote the welfare of the residents of Kangangi Estate.
79. I have carefully perused the resolution by Ruiru Kangangi Estate Welfare Association annexed to the affidavit and marked CN-1 in a members meeting held on the 2/6/2021. It was resolved and agreed to appoint Ms Nyaga to represent the 8 members who had been served with eviction notices. The resolution is signed by Messrs Antony Kamuna as Chairman, Moses B Gitahi for the Secretary and Ms Irene C Gitanga. There is no evidence that has been led by the Respondent to show that the resolution suffers from any defect or taint.
80. The tenant schedule provided by the Respondent on record acknowledged the Petitioners as tenants in the estate. The 1<sup>st</sup> Petitioner like the rest of the Petitioners have interest in the estate by virtue of their occupation of the houses and have been affected by the notice to vacate dated the 9/4/2021. I have perused the tenancy agreement of the 1<sup>st</sup> Petitioner signed on the 29/6/1990 and am satisfied that she has demonstrated sufficient interest in this Petition.
81. It is therefore my finding that the 1<sup>st</sup> Petitioner has demonstrated that she has the requisite authority from the rest of the Petitioners to act and swear the affidavit on her own behalf and that of her co-Petitioners.

#### **The Locus of the 9th Petitioner**

82. It has been argued by the Respondent that the 9<sup>th</sup> Petitioner being the Ruiru Kangangi Estate Welfare Association has no locus to institute this Petition. That the *Societies Act* provides that a Society can only file a suit through an appointed representative acting on its behalf. The case of *Peter Taracha & Anor Vs Holiness Church & Anor* (2016) eKLR was cited in support of this proposition.
83. The Petitioners have asked the Court to give a purposive interpretation of the definition of a Society in the *Societies Act* in line with the provisions of Article 260 of *the Constitution* to justify the categorization of the Society as a person for purposes of instituting Constitutional Petitions.
84. Black's Law Dictionary defines locus standi as follows;
- “The right to bring an action to be heard in a given forum.”
85. Article 22 of *the Constitution* states as follows ;
- “Every person has the right to institute Court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.”
86. Article 258 of *the Constitution* of Kenya 2010 (COK) states as follows;
- (1) Every person has the right to institute Court proceedings claiming that this Constitution has been contravened, or is threatened with contravention.
  - (2) In addition to a person acting on their own interest, Court proceedings under Clause (1) maybe instituted by-
    - a) a person acting on behalf of another person who cannot act on their own name;
    - b) a person acting as a member of or in the interest of a group or class of persons;



- c) a person acting in public interest or;
- d) an association acting in the interest of one of its members.”

87. Under Article 260 of *the Constitution*, the term person is defined to include a company, association or other body of persons whether incorporated or unincorporated.
88. A Society is defined in Section 2 of the *Societies Act* to include any club, company, partnership or other association of ten or more persons. According to *the Constitution* a person includes an association or any other body of persons whether incorporated or unincorporated.
89. I am alive the provisions of Section 41 (1) of the *Societies Act* which provides that proceedings should be conducted as follows
- “Where a Society is charged with an offence under this Act or any rules made thereunder, the Society may appear by a representative, who may enter a plea on behalf of the Society and conduct the Society’s defence on its behalf.”
90. The 9<sup>th</sup> Petitioner is a Society comprised of the members being the occupants of Kangangi Estate. According to *the Constitution* and rules of the Society its main objective is the promotion of the welfare of the residents of Kangangi Estate within Ruiru Town. Unchallenged evidence was led that the 1<sup>st</sup> - 8<sup>th</sup> Petitioners are members of the 9<sup>th</sup> Respondent.
91. In this case the Society in its resolution dated the 2/6/2021 mandated the 1<sup>st</sup> Petitioner to act for the members including the Society itself. The provisions of Section 41 (1) of the Society’s Act states that the Society may appear by a representative. It is my view that the nexus between the 1<sup>st</sup> Petitioner and the 9<sup>th</sup> Petitioner has been created by the resolution dated the 2/6/2021.
92. I agree with the holding of the Court of appeal in the case of *Mumo Matemu vs Trusted Society Human Rights Alliance & 5 Others* (2014) eKLR that the promulgation of *the Constitution* enlarged the scope of locus in Kenya with the provisions of Article 22 and 258 empowering any person whether corporate or non-incorporated to move the Courts contesting any contravention of the bill of rights. In the light of the spirit of the above provisos read together with Article 48 of *the Constitution* I am of the view that the 9<sup>th</sup> Petitioner is properly before this Court being represented by the 1<sup>st</sup> Petitioner.
93. The second reason why I am inclined to adopt the broad and expanded approach is because the provisions of *the Constitution* which is the supreme law are clear that a person shall include a corporate or unincorporated association like the one before me. The provisions of *the Constitution* cannot be overwritten by a statute in line with the hierarchical nature of our laws.
94. Even if I was to be wrong on the issue Section 7(1) of the sixth schedule stipulates that all law in force before the effective date (promulgation of *the Constitution*) continues in force and shall be construed with all the alterations adaptations qualifications and exceptions necessary to bring it in conformity with *the Constitution* and to afford a party the right to be heard in its Constitutional dispute. I have taken the enlarged approach and construed the meaning of a person to include a Society like the 9<sup>th</sup> Petitioner and in my considered view I find that the 9<sup>th</sup> Petitioner has locus to sue as it did. Even if it was to bereft of locus the Petition would not be defeated by reason of misjoinder of the 9<sup>th</sup> Petitioner and the Court would still be seized of its jurisdiction to determine the matter in dispute. See the provisions of Section 5 (b) of *the Constitution* of Kenya (Protection of Rights & Fundamental Freedoms) Practice & Procedure Rules, 2013.



### **The cause of action by 1st - 8th Petitioners**

95. It is the argument of the Respondent that the houses are strictly for housing its employees and since the Petitioners are not employees they have no cause of action against the Respondent as they remain strangers in the suit premises and hence the notice of eviction. That the situation has not been made any better by the lack of tenancy agreements by the 3<sup>rd</sup> 4<sup>th</sup> 5<sup>th</sup> and 8<sup>th</sup> Petitioners. Further that though the 1<sup>st</sup> 2<sup>nd</sup> 6<sup>th</sup> and 7<sup>th</sup> Petitioners have relied on tenancy agreements attached to the Petition, they are not employees of the Respondent.
96. The Petitioners have dismissed the arguments as misguided on account that they pay rent which rent has been accepted and acknowledged by the Respondent; that the Respondent acknowledged their tenancies hence the issuance of notice to vacate and is now estopped from alleging the Petitioners are not tenants and or that they have no tenancy agreements.
97. According to the material placed before this Court in form of tenancy agreements, rent payment receipts, tenant schedule of the Respondent, correspondences from the Respondent, the Court is satisfied that the Petitioners are occupants of the houses and they have come to Court to challenge the notices issued by the Respondent dated the 9/4/2021, which notices were addressed to each one of them.

### **The Legitimate Expectation.**

98. It is on the basis of the two letters taken together with the long occupancy and payment of the rent that the Petitioners have raised a claim on legitimate expectation with respect to the rights to property and housing and their occupation of the houses.
99. The Respondent on the other hand has vehemently refuted this claim on grounds that; there is no violation of Constitutional rights that have been proven; the relationship of the parties is contractual so much so that the tenancy agreement provided for termination of the tenancy by issuing 30 days' notice; nothing illegal about the issuance of the said notices upon the Petitioners; the Respondent can only provide alternative housing subject to availability of funds and in line with County Government Integrated development plan; no infringement of the Petitioners rights as guaranteed under Article 40 and 43 of *the Constitution*; and that in any event public interest outweighs individual expectation.
100. The question is whether the letters dated the 7/10/2002, 30/1/2020 and the conduct of the parties created a legitimate expectation to the protection of property and housing respectively under Article 40 and 43(1) of *the Constitution*. The second limb is whether the said rights were violated by the notice to vacate dated the 9/4/2021.
101. Article 40 of *the Constitution* provides as follows;
- (1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—
    - (a) of any description; and
    - (b) in any part of Kenya.
  - (2) Parliament shall not enact a law that permits the State or any person—
    - (a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or



- (b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis of any of the grounds specified or contemplated in Article 27(4).
- (3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—
- (a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or
  - (b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that—
    - (i) requires prompt payment in full, of just compensation to the person; and
    - (ii) allows any person who has an interest in, or right over, that property a right of access to a Court of law.
- (4) Provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land.
- (5) The State shall support, promote and protect the intellectual property rights of the people of Kenya.
- (6) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.”
102. The right to housing is provided for under Article 43(1) (b) of *the Constitution* as follows;
1. Every person has the right-
    - a. To the highest attainable standard of health, which includes the right to health care services, including reproductive health care;
    - b. To accessible and adequate housing, and to reasonable standards of sanitation;
    - c. To be free from hunger, and to have adequate food of acceptable quality;
    - d. To clean and safe water in adequate quantities;
    - e. To social security; and
    - f. To education.
  - (2) A person shall not be denied emergency medical treatment.
  - (3) The State shall provide appropriate social security to persons who are unable to support themselves and their dependants.”
103. In the case of *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* [2014] eKLR the Supreme Court stated that:-
- “Legitimate expectation would arise when a body, by representation or by past practice, has aroused an expectation that is within its power to fulfil. Therefore, for an expectation to be legitimate, it must be founded upon a promise or practice by public authority that is expected to fulfil the expectation.”



104. The doctrine of legitimate expectation was first developed in English law as a ground of judicial review in administrative law to protect a procedural or substantive interest when a public authority rescinds from a representation made to a person. A claim of legitimate expectation is based on the assumption that, where a public body states that it will or will not do something, a person who has reasonably relied on that statement should be entitled to enforce it; if necessary, through the Courts.
105. For a legitimate expectation to arise, the public body's statement must be clear, unambiguous and without qualification. Interference with legitimate expectations may be justified on public policy grounds. The classic, and strongest, claim is one based on a clear and unambiguous promise, relied on by a person to their detriment.
106. In the case of *Republic v Principal Secretary, Ministry of Transport, Housing and Urban Development Ex parte Soweto Residents Forum CBO* [2019] eKLR the Court stated as follows;
- ‘In adjudicating legitimate expectation claims the Court follows a two step approach. Firstly it asks whether the administrator’s actions created a reasonable expectation in the mind of the aggrieved party. If the answer to this question is affirmative, the second question is whether that expectation is legitimate. If the answer to the second question is equally affirmative, then the Court will hold the administrator to the representation that is enforce the legitimate expectation. The first step in the analysis has both an objective and a subjective dimension. It is firstly asked whether a reasonable expectation of a certain outcome was created. The representation itself must be precise and specific and importantly, lawful. Once a reasonable expectation exists the administrator is required to act in accordance with that expectation, except if there are public interest considerations which outweighs the individual’s expectation.
107. The requirements for the existence of such an expectation were set out in the Supreme Court of Appeal in the case of *South African Veterinary Council and another v Szymanski* 2003 (4) BCLR 378 (SCA) and are stated as (i) that there must be a representation which is “clear, unambiguous and devoid of relevant qualification”, (ii) that the expectation must be reasonable in the sense that a reasonable person would act upon it, (iii) that the expectation must have been induced by the decision-maker and (iv) that it must have been lawful for the decision-maker to make such representation.
108. It is trite that there can never be a legitimate expectation against the provisions of the law or *the Constitution*. Inter alia, this was the holding of the Court in the case of *Involate Wacike Siboe vs Kenya Railways Corporation & Another* [2017] eKLR where the Court of Appeal considered the issue of legitimate expectation and held as follows:
- “... No legitimate expectation can arise if effectuating the expectation would result in violation of a statute. The contours of the doctrine are well mapped. Legitimate expectation arises where representation by a decision maker has created a genuine legitimate expectation within his power to honour and make good. The law however does not protect every expectation; it protects only legitimate expectations. Where the representation is one, which the decision maker is not competent to make, reliance on it cannot in law give rise to legitimate expectation. Hence legitimate expectation cannot arise when the decision maker is acting ultra vires his or her powers. In addition, where the words of a statute are clear and express, they must override any expectation to the contrary that a party may claim to have. On the same note, where a public authority has made a representation that it does not have power to make, it is not estopped from asserting the correct position in law.”
109. If such an expectation exists it will be incumbent on the administrator to respect it and afford the individual holding that expectation due procedure before the expectation is disappointed. Failing such



procedure, the individual may approach a Court to review the administrator's actions on the ground of procedural unfairness. If the Court finds that a legitimate expectation did in fact exist, it will ordinarily invalidate the administrative action and refer the matter back to the decision-maker to deal with it in a procedurally fair manner. Thus, a decision maker cannot be required to act against clear provisions of a statute just to meet one's expectations otherwise his decision would be outrightly illegal and a violation of the principle of legality, a key principle in the Rule of Law. There cannot be legitimate expectation against the clear provisions of a statute. See *Republic v Principal Secretary, Ministry of Transport, Housing and Urban Development Ex parte Soweto Residents Forum CBO* [2019] eKLR (supra)

### **The letter dated the 7/10/2002**

110. The cause of action of the Petitioners is primarily anchored on two letters authored by the Respondent dated the 7/10/2002 and 30/1/2020 and addressed to the residents of Kangangi Estate at Ruiru. I shall reproduce them verbatim for purposes of effect and extent as follows;

“MUNICIPAL COUNCIL OF RUIRU  
ANC/PW/F/6/VOL. II/161 TOWN HALL,  
BOX 170,  
RUIRU  
7<sup>TH</sup> OCTOBER, 2002  
TO: All Tenants,  
MAJENGO/KANGANGI HOUSING ESTATE  
RE: UPDATING OF HOUSE REGISTER  
MAJENGO/KANGANGI HOUSING ESTATES

The Municipal Council of Ruiru is in the process of up-dating the Housing Register in respect of occupants of the houses at Kangangi and Majengo Housing Estates. We are aware that some tenants have either died or left Ruiru Town and no notification was made to the Council for amendment of the Housing Register.

The up-dating exercise is necessary in the ongoing preparation for implementation of the Government policy to dispose off both Government and Council Houses with those occupying them being given the preference to buy them. If you are occupying any of the above houses as an original tenant or tenant replacing a dead original tenant or somebody who left Ruiru Township and did not formalize its allocation to yourself come forward and present your case to the Council's Housing Section on or before 30/10/2002 with any document to support tenancy and rent payment receipts.

The Council have no intention of evicting anybody with genuine papers or who mitigates his/her case to its satisfaction. The houses will be sold to those occupying them on a priority basis. Rules of Natural Justice will prevail in determining the matter supported by transparency and accountability principles.

G. M. MWANGI  
TOWN CLERK  
C.C.  
All Councillors,



MUNICIPAL COUNCIL OF RUIRU

Town Treasurer

MUNICIPAL COUNCIL OF RUIRU

District Officer

RUIRU”

111. According to the letter the aim was to update the house registers. The Respondent was aware that some of its tenants have either died or moved out of town. It was aware that unregistered occupants being either relatives of the original tenants and unrelated parties were residing in the houses. The exercise was in preparation of ongoing disposal of government and council houses where the Respondent held out a promise to the occupants of the estate, the Petitioners included, that the houses would be sold to them on priority basis. The Respondent undertook to regularize the tenancies of the occupants and documents were called to aid in the exercise, which documents included rent payment receipts and/or tenancy agreements. The Respondent promised that those with tenancy documents or with such other mitigating circumstances to the satisfaction of the Respondent would not be evicted; most importantly the council would adhere to the rules of natural justice twinned with accountability and transparency in the process.
112. What the Petitioners were required to do in the above set of affairs was to submit documents to the Respondent by the 30/10/2002. The Petitioners have led unchallenged evidence that they complied with the letter and continued in their occupation and payment of the rent to the Respondent.
113. Nothing has been placed before the Court by the Respondents to state otherwise. In addition the Respondent has not alleged that the documents supplied were wanting in any way or that they were inadequate.
114. It is also clear that the Respondent has not withdrawn the letter even as the time of writing this Judgement.

**The letter dated the 30/1/2020**

115. Eight years later the Respondent follows the earlier later with the one of 30/1/2020 addressed to all the occupants of the Ruiru County Government Housing Estates, Kangangi Estate included. The letter is signed by a Mr Stephen Kiiru, the Ruiru sub County administrator. It stated as follows;

“FROM :

TO : Occupants of Ruiru County Government Housing Estates

REF :

DATE :

SUBJECT: UPDATING OF COUNTY HOUSING ESTATES INVENTORY

The County Government is in the process of updating the county housing estates inventory and verifying of tenants in the said estates. This is pursuant to its mandate given by *the constitution* under schedule 4 on devolved functions.

In line with the above, please note that the county will be updating records of tenants living in the said estates for the next 21 days from the date of this notice. The key outputs of this exercise will include:-



- i. An updated inventory of all tenants
- ii. Establishment of status and occupancy of house extensions in all estates
- iii. Issuance of new tenancy agreement and cards

In the same note, kindly note that the exercise will take place at the designated offices of the officer in charge of Housing and Community Development at the sub-county level. All tenants occupying county houses are therefore required to present themselves and in person to the respective housing officers with the following documents-

- a. Original ID card and a copy
- b. Original rent receipts for months paid upto December 2019 and where applicable a copy of these latest payment receipts or 3 latest pay slips for employees paying through the check off system.
- c. 2 passport photographs.
- d. Original House card.
- e. If a tenant has constructed house extensions, the details of the occupants should be given.

MR. STEPHEN KIIRU,  
RUIRU SUB COUNTY ADMINISTRATOR

CC:

Director – Housing and Community Development  
Director-Administration”

116. This exercise was meant to achieve the update of the inventory of all tenants; establishment of the status and occupancy of the house extensions in all estates and issuance of new tenancy agreements and cards. The letter was issued pursuant to its mandate given by *the Constitution* under Schedule 4 on devolved functions. In that respect County housing is a devolved function. The action of the Respondent was therefore lawful.
117. The tenants were required to submit documents to wit; original ID and a copy; original receipts for the months paid upto December 2019/ copy of the last payment receipts or 3 months’ pay slips for employees paying through check off; 2 passport photographs; original house cards and details of occupants of extensions where applicable.
118. It is the case of the Petitioners that they duly complied and supplied the documents requested. That notwithstanding compliance the outcome of the exercise has never been communicated to them by the Respondent. That they however continued occupying the houses and paying rent which rent was duly accepted by the Respondent.
119. No evidence that the above letter was withdrawn by the Respondent has been availed to the Court.
120. The Respondent is a County Government established pursuant to Article 176 (1) of *the Constitution* of Kenya and empowered by the County Government Act No 17 of 2012. It is the legal successor of Kiambu County Council which was a body corporate established pursuant to the Local Government Act.



121. From the two letters it is clear that the letters were issued without solitation by the Petitioners. The update of the house register is within the power of the Respondent hence the calling of the submission of documents to support the exercise from the Petitioners. This is an administrative function within its mandate as the owner and manager of the housing estate given that it is within its devolved function. The letter of 2002 must be read in context. The exercise of updating the register was necessary in the ongoing preparation of the implementation of Government policy to dispose of the houses. The disposal of the houses was anchored on the implementation of a Government Policy. It is therefore not pegged on a wishful or whimsical thought. The Respondent has not explained whether there was a change of Government policy and if any the impact of that policy on the promises made by the Respondent. No evidence has been led in that regard. The council was therefore competent to make the promises. Nothing has been led before the Court to show that the said promises were unlawful at all. I say so because the houses belonged to the Respondent and had the power to dispose them and or deal with them as it desired.
122. It is true as argued by the Respondent that some of the Petitioners did not have tenancy agreements. It is evident from the letters by the Respondent that the promise was made to the Petitioners not as tenants or employees but as occupants of the houses. It is clear from the record and the conduct of the Respondent that the Respondent had over the years acquiesced to the occupation of the houses by the Petitioners. As early as 2002 the Respondent was aware that some of the original tenants had either died, relocated or moved out of the houses. Indeed, one of the objectives of the 2002 exercise was to capture the details of the occupants of the houses. It is to be noted that as at 2020 the Respondent was acutely aware that the Petitioners had made developments to the houses such as installation of perimeter fences, security grills, gates, painting and construction of house extensions so much so that the Respondent called for the details of the occupants of the extensions from the Petitioners.
123. The import of the two letters above, in my view had the effect of varying any existing tenancy agreements between the Petitioners and the Respondent.
124. The promise in my view was a reasonable one that a reasonable person occupying the houses would rely on to organize his affairs in expectation that their tenancies would be regularized and at the time of disposal they would be accorded the first priority having been in occupation and paying rent to the Respondent. The promise not to be evicted was clear and unambiguous and issued by a body duly empowered to do so in law as well as relying on the promises the Petitioners have led evidence that they continued to occupy the houses, maintain the houses constructed fences, security extensions and paid rent perhaps to the risk of foregoing other opportunities to acquire houses elsewhere.
125. The second letter called for documents to enable the County update the records of the tenants. The key outputs included updated inventory; status and occupancy of the house extensions in all estates and issuance of new tenancy agreements and cards. It is been admitted by the Respondent that some tenants have developed extensions to their houses and this was captured in the letters when the concerned tenants were requested to give details on the occupation of the same.
126. There is clear and unambiguous expectation in this letter that the Petitioners were to be given new tenancy agreements as well as cards. This is a promise that is both lawful and reasonable and was within the mandate of the Respondent to fulfil.
127. From the foregoing, I make a finding that the promise was lawful, clear, unambiguous and given by a competent body. I also find that the Petitioners acted on the promise by submitting the documents requested by the Respondent, making continuous improvements to the houses, occupying the houses, paying rent, which rent was continuously accepted by the Respondent. All these were done in



anticipation of the regularization of their tenancies, finalization of the tenancy register, issuance of new tenancy agreements and cards awaiting prioritization in the disposal of the houses.

**Were the Petitioners discriminated by the notice dated the 9/4/2021.**

128. Article 27 of *the Constitution* prohibits all forms of discrimination and it states as follows;
1. Every person is equal before the law and has the right to equal protection and equal benefit of the law.
  2. Equality includes the full and equal enjoyment of all rights and fundamental freedoms.
  3. Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.
  4. The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.
  5. A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in Clause (4).
  6. To give full effect to the realization of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.
  7. Any measure taken under Clause (6) shall adequately provide for any benefits to be on the basis of genuine need.
  8. In addition to the measures contemplated in Clause (6), the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.”
129. The burden to proof discrimination lies in the person who alleges the same.
130. According to the schedule of tenants by the Respondent there are about 20 tenants who occupy the houses and only 8 of the 20 were issued with notices to vacate for the reason that the houses were needed for the creation of safe houses. Given the length of time the Petitioners have occupied the houses and that they have been paying rent, it has not been explained why the 8 were selected, the criteria used to arrive at converting their houses for the purpose that the Respondent intend to. In the absence of any explanation it is my view that the Petitioners were discriminated.
131. The Respondent led a detailed process through which the decision to rehabilitate and convert the houses into a safe house were carried out internally. No evidence was led by the Respondent to show that the Petitioners having been given promises of tenancy regularization (new tenancy agreements and cards) and first priority in the disposal of the houses since 2002 were consulted engaged and or informed of the changes that would affect their crystalized legitimate expectation. They were not informed of the reasons for the termination of their tenancies in view of the promise that none would be evicted. They learned of this new development way after they had been served with eviction notices and had filed suit. It is not clear whether the Petitioners were to vacate from the house extensions that may have been developed with the knowledge and acquiescence of the Respondent. The committee resolved to terminate the tenancies and pay compensation as proposed. There is no evidence that the Petitioners



were consulted on the issue of compensation nor that they have been compensated as intended by the Respondent. In that regard, I find that the Petitioners were discriminated by the said notice.

132. In view of the Respondents promise to the Petitioners that the exercise of house register update and the disposal of the houses would be carried out in keeping with the principles of natural justice, transparency and accountability being paramount, I find that the conduct of the Respondent in attempting to rehabilitate and convert the houses into a different user did not accord with the principles of natural justice, an expectation that was already given to the Petitioners. The Petitioners were not heard on the rehabilitation, conversion and the attempted eviction from their houses.
133. The Respondent cannot be allowed to escape its own promise to its tenants given freely and without any provocation. I am not satisfied that public interest has been proven that warrants the extermination of the legitimate expectation of the Petitioners that has arisen.
134. On the basis of the apparent discrimination of the Petitioners that is to say that no reason was given for their eviction, the Court will remove into this Court for purposes of quashing the notice dated the 9/4/2021 issued to the Petitioners.
135. Are the Petitioners entitled to general damages? The Court is of the view that this claim has not been supported and it is disallowed. The Petitioners did not lead evidence to show the injury suffered and in any event they have not been evicted and continue to occupy the premises.
136. Given the holding in the previous paras I am satisfied that the orders of certiorari, and permanent injunction are awardable.
137. With respect to the order of mandamus I find that the disposal of the houses has not happened and therefore this remedy is not yet ripe. It is for that reason that it is declined.

### Costs

138. Section 27 of the *Civil Procedure Act* provides as follows:-
  - a. Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the Court or Judge, and the Court or Judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the Court or Judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:  
  
Provided that the costs of any action, cause or other matter or issue shall follow the event unless the Court or Judge shall for good reason otherwise order.
  - b. The Court or Judge may give interest on costs at any rate not exceeding fourteen per cent per annum, and such interest shall be added to the costs and shall be recoverable as such.”
139. The Petitioners have largely succeeded in their case and I see no reason to deny them costs.
140. Final orders and disposal
  - a. Prayers No. a, b, f, g, h are allowed.
  - b. Prayer g is allowed provided the Petitioners meet the conditions of issuance of the tenancy agreements/cards in compliance with the Memo of 30/1/2020.
  - c. Prayers c, d, e, i and k are disallowed.



d. Save for the 9th Petitioner, costs shall be in favour of the Petitioners.

**DELIVERED, DATED AND SIGNED AT THIKA THIS 30TH DAY OF JUNE 2022 VIA MICROSOFT TEAMS.**

**J G KEMEI**

**JUDGE**

**Delivered online in the presence of;**

Wakhisi for 1st – 9th Petitioners

Ms. Cheserek for Respondent

Court Assistant – Phyllis Mwangi

