



**Nyarangi & 6 others v County Government of Uasin-Gishu; Tororei
(Interested Party) (Environment & Land Case E003 of 2021)
[2023] KEELC 666 (KLR) (9 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 666 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE E003 OF 2021**

**EO OBAGA, J
FEBRUARY 9, 2023**

BETWEEN

**JOHN NYARANGI 1ST PETITIONER
CHRISTOPHER KARIUKI 2ND PETITIONER
ROSEMARY ACHANDO 3RD PETITIONER
ERAH HASSAN 4TH PETITIONER
ESTHER NJOKI 5TH PETITIONER
BANIFACE MWALE 6TH PETITIONER
JOSEPH KANGAI 7TH PETITIONER**

AND

COUNTY GOVERNMENT OF UASIN-GISHU RESPONDENT

AND

HILLARY TOROREI INTERESTED PARTY

JUDGMENT

1. The petitioners filed this petition in which they sought the following reliefs:-
 - a. Declaration that their rights and freedoms under articles 27, 28, 40, 43, 47, 56 and 174 have been violated by the actions of the Respondent.
 - b. An order of prohibition prohibiting the Respondent from evicting them from the suit land.



- c. A declaration that they are entitled to the parcel of land having been in continuous occupation thereof even before land adjudication process started.
2. The Petitioners contend that they have resided in an area known as Kambi Mawe or Kambi Miwa. They state that there is a dispute as to whether the area falls in Kakamega County or Uasin Gishu County but the place is generally administered by Uasin Gishu County Government.
3. The Petitioners state that they have lived in the area since the 1950's and that the occupants know each other well and they have established well known traditions which govern them.
4. The Petitioners further contend that they have had their businesses and residential houses on the area and their businesses were being granted licenses from the County Government of Uasin-Gishu. In or around 7th and 8th February, 2021, the Respondent moved to the area and fenced off their residences and business premises.
5. When the Petitioners inquired from the area Ward Administrator what was happening, they were informed that the area was fenced off in preparation for allocation to the Interested party. They contend that they were not given any notice and that their business premises and residences were demolished and were left destitute.
6. The Petitioners allege that the exercise was done in a discriminatory manner and this rendered them economically challenged. They therefore contend that their properties were forcefully taken over and this has infringed their constitutional right as enshrined in article 40 of *the Constitution*. They further state that the Interested party who is a stranger to them and is set to take their land has violated their rights under Article 27 of *the Constitution*.
7. The Petitioners state that they were prevented from collecting their tools of trade and this action infringed their rights under Article 28 of *the Constitution*. They state that they are a minority in the area and that there is intention to settle Kalenjins who are the majority in complete disregard of article 56 of *the Constitution*.
8. The Respondent opposed the Petitioners' petition based on a replying affidavit sworn on 29th June, 2022. The Respondent denies that any of the Petitioners' constitutional rights were violated as alleged and that they have failed to state in what manner the alleged violations occurred. The Respondent states that the Petitioners are merely seeking to lay claim to the area they had occupied by way of adverse possession which is not possible as the area was reserved for residential houses for staff of Wareng County Council which is now defunct.
9. The Respondent further states that the area in contention is Public land which was reserved for the defunct County Council of Wareng whose assets were taken over by the Respondent and that the Respondent has no mandate to allocate the same to either the Interested party or any other private person or entity.
10. The Interested party whom the Petitioners claim is set to be allocated the area in contention has his own land which is adjacent to the public land as clearly shown in the cadastral map of the area. On the issue of the demolished structures, the Respondent states that the structures were demolished as they were constructed without approval as provided under the Physical and Land Use Planning Act No 13 of 2019.
11. The Respondent denies the Petitioners claims that it sent its agents to fence off the area or to mark their structures with an X mark. The Respondent denies that there is any ongoing land adjudication



- in the area and if there were such plans, people within the area would benefit without any tribal considerations.
12. The Interested party opposed the Petitioners' petition based on a replying affidavit sworn on 27th April, 2021. The Interested party generally denied all the allegations of the Petitioners save to add that the land known as Kambi Mawe falls outside his land known as LR. No 6938/118 on which the Petitioners carry on small scale businesses for which they pay rent directly to him. He denies violating any Constitutional rights of the Petitioners.
 13. The parties herein were directed to file written submissions within given timelines but none filed. None even bothered to file submission when the date for judgment was reserved and parties were asked to file their submissions before the judgement date. However, be that as it may, I will proceed to determine this petition.
 14. The Petitioners allege that their Constitutional rights under Articles 27, 28, 40, 43, 47, 56 and 174 were violated. I will proceed to examine each of the Articles in light of what they allege was violated and determine whether there was any violation.
 15. Article 27 of the Constitutional deals with equality and discrimination. It provides 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).
 16. The Petitioners allege that their area called Kambi Mawe was fenced off and was earmarked for allocation to the interested party. They argue that as they had lived on the land for over 50 years, the allocation to the interested party was discriminatory against them particularly given the fact that they do not come from the Kalenjin Community who are dominant in the area.
 17. Black's Law Dictionary Tenth Edition defines discrimination as differential treatment; esp; a failure to treat all persons equally when no reasonable distinction can be found between those favored and those not favored.
 18. In the instant case, there was no allocation of land within Kambi Mawe area. What happened is that the Respondent removed structures which had been built without approvals as required. There was no evidence put forth by the Petitioners to show that only Kalenjins were allocated land. The Petitioners were alleging that their area was fenced off for the benefit of the interested party. It turned out that the interested party had his own plot which was adjacent to the public land called Kambi Mawe. Infact some of the Petitioners were tenants of the interested party and some of his houses were demolished. The Respondent was not allocating any public land to anyone. The allegations of discrimination on ground of tribe is therefore without basis.



19. Article 28 which deals with human dignity provides as follows:-

“Every person has inherent dignity and the right to have that dignity respected and protected.”

20. Black’s Law Dictionary 10th Edition defines dignity as the quality, state or condition of being dignified. The Petitioners allege that they were fenced off from land they called homes and places of business; that they were thrown into the streets in a manner which was not dignified. As I said in the preceding paragraph, the Petitioners business premises were removed for non-compliance with building approvals as required under the Physical and Land Use Planning Act of 2019. There is no one whose properties were thrown away or treated in a manner which was contrary to Article 28 of *the Constitution*. The allegations that they were not treated with dignity is without basis.

21. Article 40 of *the Constitution* deals with protection to right to property. 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— *Constitution of Kenya, 2010*
 - 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.

22. The Petitioners allege that they were evicted from an area they had called home for over five decades. Contrary to their allegations, it turned out that they were tenants of the interested party whose rental



- premises were brought down for non-compliance with the building approval laws. The Petitioners could not lay claim to another person's land. Some of the structures were encroaching on road reserves.
23. The Petitioners could not be allocated private land by the Respondent. The Respondent was categorical that land reserved for County Council of Wareng was not being allocated and the Petitioners were not there. The Petitioners were alleging that their land was allocated to the interested party but this turned to be not the case as the interested party had title to his own land and was actually leasing it out to some of the Petitioners.
24. In *Nelson Kazungu Chai & 9 others – Vs- Pwani University* the Court of Appeal was handling an appeal which was filed by ten individuals against Pwani University claiming that their right to property had been violated as they were being asked to move out of the land now occupied by Pwani University. In response to the submissions by their lawyer Dr. Khaminwa on alleged infringement of Article 40 of *the Constitution*, the Court of Appeal judges stated as follows:-
- “Before we conclude, we need to say something about Dr. Khaminwa’s submission about the Appellants’ human rights being violated, and also on forceful evictions. A right can only be protected when it exists in reality and not where it remains an illusion or a mere expectation. Right to property is not one of those rights that inhere to every human being upon birth. They are acquired in different ways after one comes into this world. One cannot acquire property rights over another’s property other than in a manner prescribed in law. In this case the Appellant’s’ claim to the suit property was in our view merely aspirational or rhetorical. This is so both under our very progressive Constitution and also under International Law. Indeed, other than call in aid International Law, learned Counsel Dr. Khaminwa did not cite any specific instrument that the Appellants can leverage on to elevate the Appellant’s right to practice and enjoy their culture on the Respondent’s property over the Respondents rights under Article 40 of *the Constitution*. In the absence of any right under the doctrine of legitimate expectation and of any other valid colour of right, the trial court could not have arrived at any other finding. Our conclusion is that the learned Judge arrived at the right decision based on the evidence placed before him, and it cannot be faulted.”
25. The land on which the Petitioners were basing their petition on was already reserved for the defunct County Council of Wareng residential houses. It could not be allocated to the Petitioners even if it turned out that they were actually on it and that they wanted to be given priority during allocation. It is therefore clear that the constitutional rights of the Petitioners under Article 40 of *the Constitution* were never violated.
26. Article 43 deals with economic and social rights. It provides 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.
27. The documents placed before the court show that the Petitioners were carrying on business on the interested party's land for which they were paying him. They could not complain that their economic and social rights were violated when they were operating from unapproved structures which were pulled down in accordance with the mandate of the Respondent. There was therefore no violation of the Petitioners' rights under Article 43.
28. Article 47 of *the Constitution* provides as follows: -
1. Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
 2. If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
 3. Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall— (a) provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and (b) promote efficient administration.
29. It is pursuant to Article 47 of *the Constitution* that the Fair Administrative Action Act was enacted. In the instant case, the interested party had been given notice to remove the unapproved structures which were on his land. Other structures were encroaching on road reserves. It was the duty of the Respondent to ensure that there was proper planning. The Respondent cannot therefore be faulted for carrying out its mandate after giving due notice.
30. Article 56 of *the Constitution* deals with minorities and marginalized groups. The Article provides as follows:-
- “The State shall put in place affirmative action programmes designed to ensure that minorities and marginalised groups—
- a. participate and are represented in governance and other spheres of life;
 - b. are provided special opportunities in educational and economic fields;
 - c. are provided special opportunities for access to employment;
 - d. develop their cultural values, languages and practices; and
 - e. have reasonable access to water, health services and infrastructure.
31. The Petitioners did not state in what manner the Respondent violated their rights as contemplated in this Article. I do not therefore see in which manner their rights were violated. While dealing with discrimination, I pointed out that there was no discrimination. Equally, their rights under article 56 of *the Constitution* have not been violated.
32. Article 174 of *the Constitution* deals with objects of devolution. The Respondent did not do anything outside its powers as provided in *the Constitution*. Whatever was done was done within the law. I therefore find that the Respondent did not violate Article 174 as alleged by the Petitioners.



33. It is clear from the above analysis that the Petitioners' petition is devoid of merit. The same is dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 9TH DAY OF FEBRUARY, 2023.

E. O. OBAGA

JUDGE

In the virtual absence of the Advocates for the parties.

Court Assistant –Akidor

E. O. OBAGA

JUDGE

9TH FEBRUARY, 2023

