



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

PETITION NO. 18 OF 2013

SAMUEL K. MAIYO.....1ST PETITIONER/APPLICANT

KEN OTIENO.....2ND PETITIONER/APPLICANT

JOSEPH OBONDO.....3RD PETITIONER/APPLICANT

GABRIEL KHAYEDI NGAIRA.....4TH PETITIONER/APPLICANT

PATRICK MUSYOKA MUNYU.....5TH PETITIONER/APPLICANT

JOHN OLOO ODONGO.....6TH PETITIONER/APPLICANT

(Suing as tenants on their own behalf and on behalf of other tenants and residents and as the representative of the tenants of Mayabi, Uhuru, Kamanda, Kuria, Tom Mboya, St. Mary Kodhek, Kilimani and Macharia Estates)

VERSUS

COUNTY GOVERNMENT BOARD.....1ST DEFENDANT/RESPONDENT

UASIN GISHU COUNTY BOARD.....2ND DEFENDANT/RESPONDENT

THE HON. ATTORNEY GENERAL.....3RD DEFENDANT/RESPONDENT

RULING

[NOTICE OF MOTION DATED 17TH JULY, 2019]

1. The Petitioners moved the Court through the Motion dated the 17th July, 2019 seeking for the following prayers;

“(a) Spent.

(b) Spent.

(c) Orders of status quo issued on 19th January, 2015 per the judgment delivered on 27th November, 2014, and the subsequent orders issued by Justice A. Ombwayo on 11th February, 2019 be maintained until the Respondents fully comply with the terms of the said judgment and the orders.

(d) Consequent to prayer (c) above, the newspaper advertisement/Notice as published in the Standard Newspaper on 14th May, 2019 by the 1st Respondent be and is hereby stayed, quashed and/or set aside ex debito justitiae.

(e) The Court be pleased to issue such order/further orders to avert the course of justice from being defeated.

(f) Costs of this application be borne by the Respondents.”

The application is based on the twelve (12) grounds on its face, and supported by the affidavits sworn by **Patrick Musyoka Munyu**, the 5th

Petitioner, on the 17th July, 2011 and 11th November, 2019 respectively. That it is the Petitioners' case that the Court in its judgment of the 27th November, 2014 directed the Respondents to credit to the account of the tenants of the listed estates the rent they paid between 1st April, 2014 to 27th November, 2014 but has not done so. That through the ruling of the 25th January 2019, the Court ordered for the status quo to be maintained upto the 30th June, 2019. That instead of the Respondents complying with the judgment of 27th November, 2014, and ruling of 11th February, 2019, they advertised a notice through the Standard Newspaper of 14th May, 2019 that was vague, draconian, and punitive requiring the tenants in houses owned by 1st Respondent to pay all their outstanding rent arrears on or before 30th June, 2019 or vacate in seven days of the expiry of the said notice. That the notice is a perpetuation of contempt of Court, and is intended to circumvent the judgment of 27th November, 2014. That unless the orders of status quo are extended, the Respondents are likely to forcefully evict the tenants.

2. The application is opposed by the 1st and 2nd respondents through the replying affidavit sworn by **Ruth J. Rop**, the Chief Officer, Lands and Housing, Uasin Gishu County Government, on the 20th September, 2019. That it is their case that the status quo that was ordered to be maintained in the judgment of 27th November, 2014 was through the ruling in the contempt application dated the 11th March, 2015 held to have been for the period of the financial year ending on 30th June, 2014. That however, the Court on its own Motion extended it to 30th June, 2019. That there are no *status quo* order in force restricting the levying of rent on the current rates, destressing for rent or evicting tenants after termination of tenancy after 30th June, 2019. That the Petitioners had applied for similar orders like in this matter in **Eldoret High Court Judicial Review No. 6 of 2014 Republic Vs Uasin Gishu Board & Another** but lost in the ruling of 13th August, 2014. That subsequently, the Petitioners requested for, and were granted 30 days stay of eviction by the 1st Respondent to enable them look for alternative accommodation, and were to move out by ***“15th September, 2019 but five years later, they have neither vacated the premises nor paid rent.”*** That the status quo order meant the tenants were to pay the rent of the 2013 financial year at the old rates, and any amount paid above that old rate was to be credited to the tenants' account for that financial year. That no appeal was filed, and the Petitioners are in arrears at more than Kshs.30,521,606. That the Petitioners are determined to subvert the course of justice, and this application is designed to advance their scheme.

3. The learned Counsel for the Petitioners, and 1st and 2nd Respondents filed their written submissions dated the 17th January, 2020 and 9th March, 2020 respectively. The learned Counsel for the 3rd Respondent notified the Court that their client was not participating in the hearing of the application and was not filing submissions.

4. The following are the issues for the Court's determinations;

(a) Whether there exists status quo order capable of being maintained or extended.

(b) Whether the Petitioners have established grounds to impugn the notice by the 1st Respondent of 14th May, 2019, and if so, whether the notice should be quashed and or set aside.

(c) What orders to issue, and who pays the costs of the application?

5. The Court has carefully considered the grounds on the Motion, the affidavit evidence, the submissions by both Counsel, the record of the Court and come to the following findings;

(a) That vide the ruling delivered on the 16th September, 2014 in respect of the Motion by the Petitioners dated the 9th September, 2014, the Court stayed the eviction notice by the Respondents seeking to have the Petitioners evicted pending the hearing and determination of the petition on condition that the Petitioners pay rent under the new rates. That the court further ordered that those of the Petitioners failing to pay rent under the new rates while the petition was pending, then they ***“must move out of the premises or they risk being evicted.”*** That after the petition was heard, the court delivered its judgment dated the 27th November, 2014 in which it made the following orders;

“(1) The issue whether or not the Finance Act, 2013 of Uasin Gishu County is unconstitutional, has already been decided in Eldoret High Court, Constitutional Petition No. 3 of 2014, The North Rift Motor Bike Taxi Association (NRMBTA) Vs The Uasin Gishu County Government.

(2) In the said decision, the said Finance Act, 2013, of Uasin Gishu County has already been held to be unconstitutional, null and void.

(3) It follows therefore, that the parties herein need to be placed in the position that they were prior to the enactment of the Finance Act, 2013, and any monies paid in accordance with the new rent needs to be credited to the tenants. The status quo pending before the Finance Act, 2013 of Uasin Gishu County, in so far as the Petitioners are concerned be maintained.

(4) I make no orders as to costs.

Orders accordingly.”

That subsequently, the Court pronounced itself through the ruling dated the 25th January, 2019 relating to the contempt and injunction application dated the 11th March, 2015. The court found **Peter Leley**, the County Secretary, to be in contempt, and issued the appropriate sanction. The Court declined to issue injunction observing that ***“there is an order of status quo which serves as an injunction.”*** The Court

further observed, and directed as follows about the status quo order of 27th November, 2014;

“For the avoidance of doubt, the status quo as ordered by the Court could not have gone beyond the financial year in ending 2014 as the Finance Act being challenged was the one of Finance Act, 2013.

The Court observes that the order of status quo is still in force as it was a final order of the Court, and has not been set aside or reviewed, however, the same was to lapse by implication with the lapse of the financial year. Granting an order of injunction as prayed would be superfluous there being an order of status quo. To avoid confusion in this dispute, this Court extends the order of status quo up to, and until the 30th June, 2019. Order accordingly.”

(b) That the Court’s order (3) of the judgment of 27th November, 2014 was in effect remedying the disadvantage suffered by the Petitioners of being made to pay rent at the new rates prescribed by the Finance Act, 2013 that had been declared unconstitutional in Eldoret Hcc Petition No. 3 of 2014 while the petition’s hearing was pending. The court order obligated the 1st Respondent herein to credit the amount paid above the old rates to the Petitioners’ rent account from the start of that financial year to the date of the judgment. That the order should not be interpreted to mean that it stopped or barred the 1st Respondent from subsequently prescribed new rent rates in accordance with the applicable law, and requiring the affected tenants, including the Petitioners herein, to comply in accordance with the applicable tenancy agreements. That indeed, the status quo that the Court ordered to be maintained in the last sentence of Order (3) of the judgment was in respect of the rate of rent to be paid. That the Petitioners were to continue paying to the 1st Respondent rent at the rate that was prescribed before the Finance Act, 2013, that was declared unconstitutional, was passed and assented.

(c) That the status quo in Order (3) of the judgment dated 27th November, 2014 that allowed the Petitioners to continue paying rent in the old rates was to continue in force until the end of that Financial Year, that is 30th June, 2014 or until the enactment of the next Finance Act. That however, through the ruling of the 25th January 2019, the Court on its own Motion extended the status quo order to the 30th June, 2019. That extension has not been challenged as the Court has not been informed of any appeal having been preferred to-date. That it is therefore, apparent that the Petitioners were expected to pay rent of the premises they each occupy that is owned by the 1st Respondent at the prevailing rates as from 1st July, 2019. That any Petitioner failing to pay rent, at the rates prevailing as from 1st July, 2019 would not be exempted by the orders issued in the Judgment, and rulings in this Petition.

(d) That while the Petitioners have held the position that the 1st Respondent is yet to credit to their respective rent accounts, the amounts paid above the old rates pursuant to the impugned Finance Act 2013, the 1st Respondent has maintained the position that they have, and that indeed the Petitioners had engaged them for more time to vacate, and were to do so by 15th September, 2019. That the Court is of the considered view that each of the Petitioners could easily visit the 1st Respondent offices, and obtain a statement on their rent account for the relevant period to confirm against the receipts in their possession the excess amount they had paid, and whether or not it had been credited as ordered through the judgment of 27th November, 2014. That where one finds the excess has not been credited, they could raise the matter with the 1st Respondent office for attention, and if not acted upon, move the Court for redress for the specific amounts. That alternatively, the 1st Respondent could be proactive by preparing, and issuing copies of the rent accounts for the Petitioners for the period affected by the Court order of the 27th November, 2014, and file the same with the Court with copies being served upon Counsel for the Petitioners. That as neither the Petitioners, and nor the 1st Respondent has provided such statements to show the details of crediting or non-crediting, the Court finds no basis has been presented by the Petitioners to merit the extension of the status quo order beyond the 30th June, 2019 directed in the ruling of the 25th January, 2019. That further, the Court finds the Petitioners have failed to lay basis of impugning the 1st Respondent’s notice advertised in the Standard Newspaper of 14th May, 2019 as it was to affect the tenants who were in arrears, and failed to pay such “outstanding rent arrears on or before 30th June, 2019.” The Court takes note that the due date of 30th June, 2019 was also the date the status quo order extended on 25th January, 2019 was lapsing.

(e) That the totality of the foregoing is that the Petitioners’ Motion dated the 17th July, 2019 is without merit. That however, as no costs had previously been granted, no costs are allowed in the application.

6. That in view of the findings above, the Petitioners’ application dated the 17th July, 2019 is without merit, and is dismissed with no order as to costs.

Orders accordingly.

Delivered and signed at Eldoret this 6th day of May, 2020

S. M. KIBUNJA

JUDGE

Ruling read in the absence of all the Parties/Counsel and is to be transmitted by the Deputy Registrar digitally through the electronic mail addresses provided.

Court Assistant: Christine