



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC PETITION NO 21 OF 2018

SOPHIA NYAKERARIO MAINA AND SEBASTIAN ADALA (Suing on their own

behalf and in the interest of 440 other Applicants being inhabitants of Properties

known as Land Reference Number 209/12016).....PETITIONERS

=VERSUS=

KENYA AIRPORTS AUTHORITY.....1 ST RESPONDENT

KENYA CITY COUNCIL OF NAIROBI.....2ND RESPONDENT

MINISTER FOR INTERNAL SECURITY

PROVINCIAL ADMINISTRATION.....3 RD RESPONDENT

MINISTER FOR LANDS 4 TH RESPONDENT

HONOURABLE ATTORNEY GENERAL..... 5 TH RESPONDENT

JUDGMENT

1. Sophia Nyakerario Maina and Sebastian Adala initiated this suit on 10/6/2015 through a petition dated 30/4/2015. Those named as respondents in the petition were: (i) Kenya Airports Authority - 1st Respondent; (ii) Kenya City Council of Nairobi (**sic**) – 2nd Respondent; (iii) Minister for Internal Security Provincial Administration (**sic**) – 3rd Respondent; (iii) Minister for Lands (**sic**) – 4th Respondent; and Honourable Attorney General – 5th Respondents. [I have deliberately reproduced the names of respondents verbatim for reasons that will emerge later in this judgment]. The two petitioners contended that they were suing on their own behalf and on behalf of 440 other persons who were inhabitants of Land Reference Number 209/12016 situated in Embakasi, Nairobi

2. The petitioners sought the following verbatim orders against the named respondents:

a) A declaration that the said actions and omissions of the respondents in destroying, demolishing the petitioners household properties, permanent and semi-permanent structures on the suit premises and the subsequent evictions were unlawful, illegal, unprocedural, unjustified, inhuman and violation of the constitution more so in breach of petitioners fundamental rights and freedoms as espoused under Article 27,28,29,31,40,43,45,47,53,54,56 and 57 of the Constitution of the Republic of Kenya.

b) A declaration that the said actions and inactions of the respondents in destroying, demolishing the petitioners' household properties, permanent and semi-permanent structures on the suit premises and the subsequent evictions espoused under the Universal Declarations of Human Rights, 1966, the International Covenant on Economic Social and Cultural Rights and African (Banjul) Charter on Human and People's Rights.

c) A declaration that the said actions and inactions of the respondents in destroying, demolishing the Petitioners households properties, permanent and semi-permanent structure on the suit premises and the subsequent evictions were in breach of the principles of legitimate expectation, the doctrine or (sic) reasonableness and proportionality.

d) A declaration that the respondent, particularly the 4th respondent have a duty to formulate with citizen participation, regulations, policies and standards of evictions which are in tandem with international principles, that avoid undue declaration and violation of the rights of citizens.

e) An order of mandatory injunction compelling the respondent compelling them to avail all such information relating to the suit

premises including but not limited to the following; resolution of all organs of the respondent that authorizes the demolition, alienation of the suit premises and subsequent eviction of the petitioners.

f) An order for restoration of possession of the suit premises to the petitioners herein and their families restoring the petitioners herein into possession of the suit premises and upon such orders the respondents be restrained by way of permanent injunction restraining them whether by themselves, their agents, servants or any other persons or state official, organ/or institution from in any way interfering with the petitioners such possessions until further orders of this Honourable Court.

g) An order for compensation of the petitioners by the respondents for unlawful, illegal, unjustified and unconstitutional evictions for the losses and damages suffered by the petitioners in terms of the valuation report annexed herein.

h) An order for general, exemplary and punitive damages on an aggravated scale for the damage caused by the government of the Republic of Kenya through the respondents acting through its agents, servants and/or officials.

i) Any further orders, writs directions as this honourable court may deem fit to grant.

3. The court record does not bear any evidence of compliance with the legal framework relating to representative suits, namely Order 1 rule 8 of the Civil Procedure Rules. The legal ramifications of the two petitioners' failure to comply with the mandatory requirements of Order 1 rule 8 of the Civil Procedure Rules will be discussed later in this judgment.

Petitioners' Case

4. The petition was supported by two affidavits both sworn on 30/4/203015 by Sophia Nyakerario Maina and Sebastian Adala respectively. It was also supported by a further affidavit sworn on 8/1/2019 by Sophia Nyakerario Maina. Lastly, the Petitioner's case was canvassed through written submissions dated 28/5/2019 and filed on 29/5/2019 by the petitioners advocates, M/s Swanya & Swanya Advocates.

5. The case of the petitioners was that they were the lawful legal owners and inhabitants of Land Reference Number 209/12016 situated in Embakasi, Nairobi (hereinafter referred to as "the **suit property**"). They had developed permanent and semi-permanent dwelling houses, academic, medical and religious institutions on the suit property. On 29/10/2011, at around 7.00 am in the morning, security officers acting on instructions of state officials, without prior notice, descended on the petitioners' premises with bulldozers and earth movers and illegally and violently evicted the petitioners' from the suit property. Upon eviction, officers of the respondents proceeded to demolish the petitioners' developments on the suit property. The petitioners contended that they were not granted an opportunity to salvage their property and goods which were on the suit property. Consequently, the petitioners had incurred losses amounting to millions of shillings.

6. It was the petitioners' case that the said eviction and demolition of properties were executed in an inhuman manner and were thus in gross violation of the petitioner's constitutional rights, namely: (i) the right to human dignity, freedom and security of persons under Article 29; (ii) the right to privacy under Article 31; (iii) the right to property under Article 40; (iv) the right to accessible and adequate housing and reasonable standards of sanitation under Article 43; (v) the right to family under Article 45; (vi) the right to fair administrative action under Article 47; (vii) the rights of children under Article 53; (iii) the rights of persons with disabilities under Article 54; (ix) the rights of minorities and marginalized persons under Articles 56; and (x) the rights of older members of society under Article 57.

7. The petitioners further contended that the alleged actions were in breach of Articles 3,5,7, 12, 17 and 28 of the Universal Declarations of Human Rights 1948 and Articles 2, 6, 7, 10, 17, 23 and 26 of the International Covenant on Civil and Political Rights 1966. The petitioners added that the alleged actions were in breach of their rights under the International covenant on Economic, Social and Cultural Rights, more particularly, the articles relating to access to adequate housing. Lastly, the petitioners contended that the alleged actions were in breach of the international rules, principles and guidelines on eviction procedures by the United Nations which required due process. They urged the court to grant the prayers sought in the petition.

8. In his written submissions, counsel for the petitioners identified the following as the nine issues falling for determination in the petition: (i) Whether the unlawful eviction of the petitioners violated the petitioners' right to privacy; (ii) Whether the unlawful eviction of the petitioners violated the petitioners' right to property (iii) Whether the unlawful eviction of the petitioners violated the petitioners' right to accessible and adequate housing; (iv) Whether the unlawful eviction of the petitioners violated the petitioners' right to fair administrative action; (v) Whether the unlawful eviction of the petitioners violated the petitioners' children's right to education and the right to be protected from abuse, neglect, all forms of violence, inhuman treatment and punishment; (vi) Whether the unlawful eviction of the petitioners violated the national values and principles of governance; (vii) Whether the unlawful eviction of the petitioners violated the petitioners' right to human dignity and security of the person; (viii) Whether the petitioners are entitled to compensation and general damages for the infringement of their constitutional rights; and (ix) Whether the 1st respondent should be struck out of the proceedings.

9. It was argued by counsel for the petitioners that the petitioners' right to privacy under Article 31 was infringed through the manner in which their properties were ransacked and searched at the instance of the respondent whose officers participated in the ransacking and demolitions. Reliance was placed on the decisions in: (i) **Joseph K Nderitu & 23 others v Attorney General & 2 Others [2014] eKLR**; and **June Seventeenth Enterprises Limited v Kenya Airports Authority & 4 Others [2014] eKLR**.

10. Counsel further argued that the fact of occupation of property entitles a person to protection under Article 40 of the Constitution. He contended that the respondents had no basis to demolish the petitioners' properties. It was further argued that the respondents did not observe due process when demolishing the petitioner's premises. Counsel argued that the respondents' unlawful actions of abruptly and suddenly evicting the petitioners without notice and neglecting to accord opportunity for the petitioners to salvage their property amounted to a violation of the petitioners' right to property under Article 40 of the Constitution. Reliance was placed on (i) **June Seventeenth Enterprises Limited v Kenya Airports Authority & 4 Others [2014] eKLR** and (ii) **Moses Ondiri v Kenya Ports Authority & 4 others [2017] eKLR**.

11. Counsel for the petitioners further argued that demolition of the petitioners' business premises, sewer systems, water storage tanks and dwelling houses was an outright violation of their right to adequate housing. Reliance was placed on the decision in **Government of the Republic of South Africa and Others v Grootboom and Others (CCT 11/00) [2000] ZACC 19, 2001 (1) SA 46; 2000 (11) BCLR 1169**.

12. The petitioners' counsel added that to the extent that the evictions and demolitions were executed without any prior notice whatsoever, it was an unfair administrative action. He contended that the petitioners were, in the circumstances, entitled to compensation for breach of their right to due process. Relying on the finding in **Multiple Hauliers East Africa Limited v Attorney General & 10 Others [2013] eKLR** counsel urged the court to award the petitioners Kshs 2,000,000 as damages for violation of their right to fair administrative action.

13. It was further submitted that the respondents violated the petitioners' children's right to education because the alleged evictions were commenced when exams were about to commence in some of the schools which were on the suit property and this breached the children's rights under Article 53 of the Constitution. Reliance was placed on **Sacrose Ayuma & 11 Others v Registered Trustees of the Kenya Railways Staff Retirement Benefits Scheme & 3 Others**.

14. Counsel for the petitioners added that it was a fundamental duty of the state and every state organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights, and to the extent that the respondents failed in their duty to observe, promote, protect and fulfill the Bill of Rights, they were in breach of Article 10 of the Constitution.

15. Counsel added that the respondents had violated the petitioners' rights to human dignity, freedom and security of the person under Articles 28 and 29 by violently evicting the petitioners without prior notice or court order and without according the petitioners alternative shelter and/or accommodation. Counsel argued that the petitioners were, in the circumstances, entitled to damages. Reliance was placed on the decision in **Moi Education Centre Company Limited v William Musembi & 16 Others 2017 (eKLR)**.

16. Counsel for the petitioners further argued that Article 23(3) (e) of the Constitution empowered the court to award both special and general damages where breach of a constitutional right is established. Lastly, counsel submitted that the 1st respondent's contention that it was not privy to the eviction and/demolition was false because the police officers who participated in the demolition acted at the behest of the 1st respondent. Counsel urged the court to grant the prayers sought in the petition.

Case of the 1st Respondent

17. The 1st respondent opposed the petition through grounds of opposition dated 9/9/2016. The 1st respondents also adopted the depositions contained in the affidavit sworn by Katherine Kisila on 22/2/2017 and filed on 23/2/2017. Lastly, the 1st respondent filed written submissions dated 17/9/2019.

18. The case of the 1st respondent was that Land Reference Number 209/12016 was outside its jurisdiction and it had nothing to do with the alleged evictions and demolitions. It added that it issued notices in relation to Land Reference Number 21919 and Land Reference Number 209/13080, being Kyangombe Village and Syokimau at Jomo Kenyatta International Airport and Mitumba Village at Wilson Airport. It denied being privy to evictions and/or demolitions relating to the suit property (Maasai Village). The 1st respondent contended that the petition did not disclose any cause of action against them and was an abuse of the process of the court. The 1st respondent added that the allegations contained in the petition were heard and conclusively determined by Majanja J in **Nairobi High Court Constitutional Petition No 356 of 2013** in which the claim against the 1st respondent was dismissed.

19. In its written submissions dated 17/9/2019, the 1st respondent itemized the following as the two key issues falling for determination in the petition: (i) Whether the 1st respondent ought to be struck out from this suit; and (ii) Whether the orders sought by the petitioners can, and/or should issue.

20. Counsel for the 1st respondent submitted that the petition herein was defective because it did not particularize the respondents' breaches and the officials of the respondents who were involved in the alleged evictions. Counsel added that there was inconsistency in the petitioners' two respective affidavits sworn on 30/4/2015 in that whereas the 1st petitioner contended that the evictions and demolitions took place on 29/10/2011 at 7.00am, the 2nd petitioner contended that the demolition and eviction took place on 20/11/2011 at 7.00am. Counsel added that the Parliamentary Report which the Petitioners had relied on did not cover evictions on Land Reference Number 209/12016. He added that the Parliamentary Report did not assign culpability against the 1st respondent in relation to demolitions and evictions on the suit property, Land Reference Number 209/12016.

21. Counsel for the 1st respondent submitted that the petition herein was in the nature of a representative suit and the two petitioners were obligated to comply with the mandatory requirements of Order 1 rule 8 and Order 1 rule 13 of the Civil Procedure Rules. Counsel argued that there was no evidence of compliance with the above mandatory requirements. It was contended that in the absence of compliance, the plea for compensation and damages could not stand.

22. Counsel for the 1st respondent further submitted that the pleas for restitution, compensation and damages were founded on ownership of the suit property but the petitioners had failed to prove ownership. Reliance was placed on the decision in: (i) **Labh Singh Harman Singh Limited v Attorney General of the Republic of Kenya [2015] eKLR** and (ii) **John Mukora Wachuhi & Others v Minsiter of Lands & 6 Others Nairobi High Court Petition No 82 of 2010 [Consolidated]**.

23. It was further submitted that the petitioners had not established the key ingredients of adverse possession and could not therefore claim to have obtained title to the suit property under the doctrine of adverse possession.

24. In response to the petitioners' reliance on the award in **June Seventeenth Enterprises Limited (suing on its own behalf and on behalf of and in the interest of 223 Other persons v Kenya Airport Authority & 4 Others [2014] eKLR**, counsel for the 1st respondent submitted that the claimant in the cited case laid credible evidential basis to show ownership through purchase and payment of purchase

price. In response to the petitioners' reliance on the decision in **Moses Onchiri v Kenya Airports Authority & Others [2014] eKLR**, counsel for the petitioners submitted that the claimant in the said case entered into a consent on liability.

25. On the petitioners plea for declaratory orders under Articles 27, 28, 29, 31, 40, 43, 45, 47, 53, 54, 56 and 57 of the Constitution, counsel for the 1st respondent argued that it was unlikely that this court had jurisdiction to grant the orders, contending that the proper forum was the High Court.

Case of the 2nd Respondent

26. The 2nd respondent filed a replying affidavit sworn on 21/3/2019 by Wilfred Wanyonyi Masinde. It subsequently filed written submissions dated 4/10/2019. The case of the 2nd respondent was that the suit property was at all material times owned by Ravi Bhusani Baradwai and Suhrit Bharadway as trustees of Bharadwaj Welfare Trust and the petitioners were not the legal owners or legal occupiers of the suit property as alleged in the petition. The 2nd respondent stated that the suit property measured one and a half acres and could not possibly accommodate 440 families as contended by the petitioner.

27. The 2nd respondent added that it was not privy to the impugned eviction and/or demolition. The 2nd respondent contended that the petitioners had not demonstrated existence of any lawful structures on the suit property. It was further contended that the petitioners had not demonstrated how each of the respondents contributed to the cause of action giving rise to the claim in this petition.

28. The 2nd respondent added that the petition herein was bad under the doctrine of res judicata because the claim and the issues in this suit were the same as the claim and issues in **Nairobi High Court Petition No 38 of 2012; Moses Onchiri v Kenya Ports Authority & 4 Others[2017] eKLR**.

29. The 2nd respondent further contended that save for the two, deponents the identity of the other petitioners was unknown. The 2nd respondent added that the valuation report which formed the foundation of the petitioners' case was of no evidential value because it did not identify the exact land and developments to which it related. It was further contended by the 2nd respondent that the entire petition was a contradiction because whereas the petitioners pleaded for Kshs 2.1 Billion, in their subsequent written submissions, they asked the court to award them Kshs 1.29 Billion.

30. The 2nd respondent added that the alleged 440 petitioners did not exist and had not proved that their rights had been violated. On costs, the 2nd respondent urged the court to award the respondents costs of the suit.

Case of the 3rd, 4th and 5th Respondents

31. There were no responses and/or submissions by the 3rd, 4th, and 5th respondents. Similarly, the court record did not bear any affidavit of service relating to service of the petition on the 3rd, 4th and 5th respondents. Although there are affidavits of service relating to service of hearing notices on the Attorney General none of them relates to service of the petition itself.

Analysis & Determination.

32. I have considered the petition together with all the responses to the petition. I have similarly considered the parties' submissions, together with the cited law and authorities. I have equally considered the relevant constitutional and legal frameworks together with the relevant jurisprudence on the key issues in this petition.

33. Parties to this petition did not agree on a common set of issues. Having considered the parties' pleadings, evidence and submissions, the following are, in the court's view, the four key issues falling for determination in this petition: (i) Whether Sophia Nyakerario Maina and Sebastian Adala have satisfied the criteria for obtention of representative judgment on behalf of the 440 other persons; (ii) Whether at all material times, the petitioners were the lawful owners and inhabitants of the suit property, Land Reference Number 209/12016; (iii) Whether the petitioners have established violation(s) of their right(s) by any of the respondents; (iv) Whether the petitioners are entitled to any of the reliefs set out in the petition against any of the respondents.

34. Before I analyse and make pronouncements on the above key issues, I will make some observations relating to some of the parties whom the petitioners sued and against whom they sought the orders set out in the petition. Firstly, identified as 2nd respondent in this petition is "**Kenya City Council of Nairobi**". It is not clear which entity this is. All the documents placed before court by the petitioners, including submissions, refer to this unknown entity. This petition was filed in the High Court in 2015. Local authorities no longer existed. There was no known public entity known by this name. The court is invited to enter judgment against this unknown entity. Without saying much, it is trite law that for a claimant to maintain a suit and obtain judgment against an entity, the entity must be one which exists. Judgment cannot be pronounced or enforced against or in favour of a non-existent entity.

35. Sued as 3rd respondent is what the petitioners described as "**Minister for Internal Security Provincial Administration**" (sic). This petition was filed in June 2015. The first general election under the Constitution of Kenya 2010 was held in March 2013. The executive arm of Government was constituted soon after the new president was sworn into office in 2013. In 2015, the Republic of Kenya did not have the Office of Minister for Internal Security Provincial Administration (sic) capable of being sued and or accepting service of the petition herein. It should therefore not surprise the petitioners that there was no response filed by the 3rd and 5th respondents in answer to this petition. Put differently, in 2015, there was no "Minister for Internal Security Provincial Administration" capable of being sued and capable of responding to the petition herein. Again, the petitioners did not find it necessary to amend the petition to bring the relevant Cabinet Secretary on board. As things stand now, the petitioners want judgment against a constitutional office which did not exist in 2015 and which does not exist now. In my view, that is legally untenable. I now turn to the key issues falling for determination in this petition.

36. The first issue is whether Sophia Nyakerario Maina and Sebastian Adala have satisfied the criteria for entry of judgment on behalf of the

440 other persons on whose behalf they contend to have brought this suit. The petition herein was expressed as having been brought by the two petitioners "suing on their own behalf and in the interest of 440 other applicants being inhabitants of properties known as Land Reference Number 209/12016". The petition was similarly expressed as having been brought under Article 22 of the Constitution. The respondents contended that this being a representative suit, the two petitioners were obligated to comply with the mandatory requirements of Order 1 rules 8 and 13 of the Civil Procedure Rules and because they failed to comply with those requirements, the claim representative should not be awarded.

37. There is no doubt that Article 22 permits the initiation of a representative suit to ventilate a right under the Bill of Rights. Ventilation of that right through a representative suit is, however, governed by mandatory legal requirements which must be satisfied before a party initiating a representative suit qualifies to be given an award on behalf of the persons he claims to be representing. Firstly, the person(s) initiating the representative suit must serve notice of the suit to all the persons on whose behalf he purports to be litigating. Service of the notice can either be personal or through a public advertisement, as directed by the court. Secondly, every person who sanctions the continuation of the representative suit on his behalf is required to apply to the court to be made a party to the representative suit. Thirdly, only those persons who apply to be made parties to the suit under Order 1 rule 13(3) are admitted as parties to the suit. If none makes an application to be admitted to the suit, the suit cannot be said to be a representative suit.

38. Even if one were to argue that the framework in order 1 rule 8 does not apply to a representative suit brought under Article 22 of the Constitution, there would still be need for formal authority to one person to bring suit and receive an award on behalf of others.

39. In the petition under consideration, no application was made by the two petitioners for directions on service of the petition on the 440 persons on whose behalf the petition was allegedly instituted. Secondly, there is no evidence to suggest that any of the alleged 440 was served with a notice under Order 1 rule 8(2) of the Civil Procedure Rules. Thirdly, none of the alleged 440 persons applied to be made parties to this petition. Fourthly, none of the alleged 440 persons executed a written authority authorizing the two petitioners to initiate and prosecute this petition on their behalf in terms of Article 22 of the Constitution. Order 1 rule 13 (2) of the Civil Procedure Rules requires the authority to be writing and to be signed by the party giving it. I have looked at the papers filed by the petitioners. There is no evidence of any authority. Authority under Order 1 rule 13(2) should be unequivocal. A mere list of names without any text unequivocally denoting authority to initiate and prosecute a representative suit cannot be said to be a written authority.

40. It does therefore emerge from the materials placed before court that no interested party was served and no interested party authorized the two petitioners to prosecute this suit on their behalf. The net result is that this petition cannot be said to be a representative suit. It is a suit by the two petitioners, Sophia Nyakerario Maina and Sebastian Adala. It therefore follows that the two petitioners have not satisfied the criteria for obtention of judgment on behalf of the 440 other persons whom they contended were interested in this petition. That is my finding on the first issue.

41. The second issue is whether at all material times the petitioners were the lawful owners and inhabitants of the suit property, Land Reference Number 209/12016. What emerges from the pleadings is that the suit property was a surveyed and registered piece of land. The petitioners contended that they were the lawful owners and inhabitants of the suit property. They did not, however, place before court any official search or certified extract of the parcel register to prove ownership and lawful occupation. If the petitioners acquired prescriptive rights over the suit property, they were obligated to join as a party to the suit, the registered proprietor of the suit property and demonstrate to the court that indeed they had become owners of the suit property under the doctrine of adverse possession. There is however no conclusive evidence placed before the court to demonstrate that the petitioners were lawful owners and inhabitants of the suit property which is a registered piece of land whose proprietor may not be aware of this suit. My finding on the second issue therefore is that the petitioners were not lawful owners and inhabitants of the suit property, Land Reference Number 209/12016.

42. The third issue is whether the petitioners have established violation(s) of their right(s) by any of the respondents. The petitioners contended that they were lawful owners and inhabitants of the suit property. They further contended that the respondents illegally evicted them and demolished their properties. A reading of the petition reveals that the petition is founded on the fact of the petitioners' ownership and lawful occupation of the suit property. Regrettably, the petitioners failed to place before court evidential material to demonstrate that they were the lawful owners of the suit property and they were at all material times in lawful occupation of the suit property. They did not place before court any conclusive evidential material to enable the court arrive at a conclusion that they were the owners of the suit property and that their alleged occupation of the suit property was lawful.

43. Secondly, the evidence tendered by the two petitioners in relation to the alleged eviction and demolition was contradictory. At paragraph 7 of her affidavit, Sophia Nyakerario Maina deposed that the alleged evictions and demolitions took place on **29th October 2011 at 7.00am**. At paragraph 7 of his affidavit, Sebastian Adala deposed that the alleged evictions and demolitions took place on **20th November 2011 at 7.00 am**. Given that what is alleged to have given rise to the cause of action is the alleged evictions and demolitions, the inconsistency in the evidence of the two petitioners is not a matter to be taken lightly. With the above, inconsistency, it cannot be said that the two petitioners have proved on a balance of probabilities that the alleged evictions and demolitions took place.

44. In so far as the claim against the 1st respondent is concerned, there was no evidence to suggest that the 1st respondent participated in the alleged eviction and/or demolition in any way. The court therefore has no basis upon which to make a finding of liability against the 1st respondent.

45. Liability will not attach against the 2nd and 3rd respondents, firstly because they did not exist and they do not exist as entities against whom to enter judgment. Secondly, the petitioners having failed to prove the fact that they were the lawful owners and occupiers of the suit property, the very foundation of the petition, they cannot be said to have established a basis for a claim of violation of any of their rights as enumerated in the petition.

46. No evidence was tendered to suggest liability on part of the 4th respondents. The petitioners did not in any way suggest that the 4th respondents was part to the alleged eviction and/or demolition.

47. Although the petitioners stated that the 5th respondent is the principal legal advisor of the Government of Kenya, they did not specify the Government Department or Ministry on whose behalf they were suing the 5th respondent. No evidence of any statutory notice was tendered to suggest that the 5th respondent was put on notice and was subsequently sued on behalf of a particular Government Ministry or Department. Lastly, there was glaring inconsistency on the date when the alleged evictions and demolitions took place. The petitioners cannot therefore be said to have proved their claim against the 5th respondent on a balance of probabilities.

48. My finding on the third issue therefore is that the petitioners have not established violation of their rights by any of the respondents

49. The last issue is whether the petitioners are entitled to any of the relief set out in the petition against any of the respondents. Having found that the petitioners have not proved lawful ownership and occupation of the suit property and have similarly failed to establish violation(s) of their constitutional right(s) by any of the respondents, it follows that they have failed to prove their petition on a balance of probabilities. The net result is that they are not entitled to any of the reliefs sought in the petition.

50. In light of the above findings, the petition herein is dismissed. However, in view of the fact that this was a claim under the bill of rights against existing and non-existent entities, each party shall bear their respective costs of the petition.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 5TH DAY OF MAY 2020.

B M EBOSO

JUDGE

In the presence of:-

Mr Akach for the 1st Respondents

Court Clerk - June Nafula