



REPUBLIC OF KENYA



**Mwaura & 211 others v Attorney General (Civil Case 138 of 2013)  
[2024] KEHC 12645 (KLR) (Civ) (8 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12645 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL  
CIVIL CASE 138 OF 2013**

**AN ONGERI, J  
OCTOBER 8, 2024**

**BETWEEN**

**JOSEPH IHUGO MWAURA & 211 OTHERS & 211 OTHERS & 211  
OTHERS ..... PLAINTIFF**

**AND**

**THE HON ATTORNEY GENERAL ..... DEFENDANT**

**JUDGMENT**

1. Joseph Ihugo Mwaura and 211 others filed this suit vide a plaint dated 24/4/2013 against the Attorney General seeking the following remedies;
  - i. An order for specific damages for Ksh.154,133,524.
  - ii. General damages for the loss and suffering occasioned to the plaintiffs.
  - iii. Punitive damages for the unlawful conduct by the defendant.
  - iv. Costs of this suit.
  - v. Interest on i, ii and iii above.
  - vi. Any other order and/or relief that this honourable court may deem fit to grant.
2. The damages were in respect of demolition of the plaintiff's houses at Kibera special settlement scheme. The plaintiffs avers as follows in their plaint dated 24/4/2013.
3. The plaintiffs were until, on or about the 12<sup>th</sup> day of January 2012, residents of and/or structure owners in Kibera Soweto A in Kibera Special Settlement Scheme.



4. The plaintiffs aver that in the year 2003, the Government of Kenya came up with a plan to systematically upgrade slums in urban areas to be implemented through the Kenya Slum Upgrading programme (KESUP) which was a collaborative effort between the Government and the UN-HABITAT.
5. Pending the complete development of Zone A through construction of high rise units, a notice dated 4<sup>th</sup> August 2009 was issued by the Permanent Secretary, Ministry of housing, Mr. Tirop Kosgei, to the occupants of the aforementioned zone among them the plaintiffs herein.
6. Being aggrieved by the said Notice, the plaintiffs herein together with others petitioned the High Court through Nairobi High Court Petition no. 498 of 2009; Joseph Ihugo Mwaura & 82 Others-Vs-the Hon. Attorney General & 2 Others. That Petition was heard by Hon. Justice D. S. Majanja and dismissed the same on the 5<sup>th</sup> of December 2011.
7. Being dissatisfied by the said decision, the Petitioners in the said Petition 498 of 2009 promptly filed a Notice of Appeal and made an application before the High Court seeking conservatory orders of injunction against the defendant herein seeking inter alia restraining orders against the government from demolishing their structures.
8. The plaintiffs aver that on 9<sup>th</sup> day of December 2011, the High Court gave conservatory orders in the following terms;

“THAT an injunction be and is hereby issued restraining the Respondents, by themselves, their servants and or agents from demolishing the homes of the Applicants herein or otherwise interfering with the quiet enjoyment of their homes or premises in Zone A, Soweto East within Kibera Settlement scheme, or possession of their respective plots on which their semi-permanent structures are situated pending hearing on 17<sup>th</sup> January, 2012.”

The said orders were duly served upon the defendant herein.
9. The plaintiffs aver that no sooner had the orders of 9<sup>th</sup> December 2012 been served than the officials of the Ministry of Lands and Housing accompanied by Regular and Administration Police officers descended on the plaintiffs' homes/structures in clear and blatant breach of the said orders on 12<sup>th</sup> January 2012.
10. The plaintiffs aver that the said contempt of Court was meant to pre-empt the inter-parties hearing of the plaintiffs' application for conservatory orders pending the hearing and determination of their intended appeal.
11. The plaintiffs aver that despite their Advocates demanding the removal of the security personnel (through a letter dated 28<sup>th</sup> January 2012) and Government bulldozers at the site and despite the threat to institute contempt of Court proceedings, the Respondent's officers remained at the site with impunity.
12. The plaintiffs aver that as a result of the demolition of their homes and/or semi-permanent structures they suffered great loss and some of what can be quantified.
13. The defendant filed a statement of defence denying the plaintiffs' claim. The defendant stated in the said statement of defence that the plaintiffs were trespassers on government land within Kibera settlement scheme area established by Section 43 of the Government Lands Act (repealed) a fact that was confirmed by Hon. Justice Majanja in his judgment delivered on 5/12/2011.



14. The defendant further stated in the statement of defence that a notice dated 14/8/2009 was issued to the plaintiffs by the then Permanent Secretary Ministry of Housing to vacate Zone A, Soweto East, Kibera.
15. Further that the said land in Zone A was required by the government through the Ministry of Housing for purposes of slum upgrading and construction of low cost housing, a project which is necessary to achieve the Millennium Development Goals (MDG) and vision 2030.
16. The defendant also stated in the statement of defence that the plaintiffs filed Nairobi Petition no. 498 of 2009 which was dismissed on 5/12/2011 for reasons among others that the land was government land.
17. The defendant also stated that the application seeking conservatory orders was served upon the defendant on 18/1/2012 after the eviction by the Ministry of Housing had been carried out on 12/1/2012.
18. This case was heard on 18/4/2023. The plaintiffs called one witness (PW 1) JOSEPH ODHIAMBO AUMA who is the 2<sup>nd</sup> plaintiff in this case.
19. PW 1 adopted his written witness statement dated 28/8/2019 as his evidence in chief.
20. PW 1 also produced a bundle of documents dated 24/4/2013 as the exhibits in support of the plaintiffs' case.
21. PW 1 said the plaintiffs filed Petition No. 498 of 2009 and judgment was delivered on 5/12/2011 dismissing the petition.
22. That the plaintiffs wanted to proceed to the Court of Appeal against the dismissal of their case.
23. They obtained orders of stay of execution dated 9/12/2011 but their houses were demolished on 12/1/2012. He said he was present when the demolition was done.
24. PW 1 said he gave the order to the OCS Kilimani police station but he called the order rubbish. He said the Permanent Secretary was also present during the demolition.
25. PW 1 said the evictions were done when there was a court order for stay dated 9/12/2011. He said they are now seeking compensation for the damage they suffered during the eviction.
26. The defendant did not call any witnesses. The parties filed written submissions as follows; the defendant submitted that Plaintiffs were issued a notice to vacate on 14/8/2009. They were to vacate by 15/9/2009 pursuant to the slum upgrading programme in Kibera.
27. The tenants and other occupants of the premises in Zone A of Soweto East Kibera were enumerated and given unique identity cards. The tenants were issued identity cards number C1 while the landlords/structure owners were issued with cards number B1. The persons enumerated would therefore become eligible for allocation of houses upon construction of one high rise housing units in Zone A, Soweto East, Kibera.
28. It was within the knowledge of the Plaintiffs that failure to vacate by 15/9/2009, clearance and relocation would commence by 21/8/2009. The threat of relocation caused some of the Plaintiffs to Petition the Court under section 84 of the former Constitution through High Court Petition Number 498 of 2009. A total of 83 Plaintiffs petitioned the Court.



29. The defendant contended that the court noted that the petitioners neither had leases nor letters of allotment to remove them from the purview of the unalienated government land. They did not therefore, possess any proprietary interest on the land they occupied recognized by statute.
30. The Petitioners were either trespassers or licencees who occupied the settlement with the implied permission of the Government. As a bare licence it can be determined and withdrawn at the licensor's pleasure. The court therefore held that it lacked the authority to issue any leases or create proprietary interests in unalienated government land as prayed by the petitioners.
31. The petitioners aggrieved by the decision delivered on 5/12/2011 filed an appeal and sought conservatory orders which was granted. the petitioners alleged however that despite the orders the respondent proceeded to demolish the houses.
32. The defendant submitted that petition No. 498 of 2009 the petitioners who moved the court to stop eviction were a total of 83 in number and from the present suit 212 plaintiffs have sued seeking compensation for loss suffered. Thus a total of 129 inhabitants never petitioned the court and are not entitled to any reliefs sought.
33. The defendant further submitted that the plaintiffs have further not proved special damages. It was the defendant's contention that special damages are those damages which are ascertainable and quantifiable at the date of the action. The plaintiffs were required to prove by way of the unique numbers supplied to them as either landlords or tenants so as to qualify for the compensation.
34. Further, that from the Plaint, the Plaintiffs seek compensation for rooms and household goods. From the hearing it was clear that the claim for rooms meant that one was a landlord. In the absence of the unique numbers supplied to them it would be difficult to know who was the landlord and who was a tenant.
35. The defendant argued that equally for the manner in which the items have been described is so vague and that placing a figure on such an item would be erroneous. All the plaintiffs seek lost livelihood but they have not expounded on the nature of business they were undertaking. It is therefore difficult to award the sums sought.
36. It is the duty of the plaintiffs to prove their case to the required standard in civil cases which is on a balance of probabilities.
37. The issues for determination in this case are as follows;
  - i. Whether the demolition was unlawful.
  - ii. Whether the plaintiffs are entitled to the remedies they are seeking against the defendant.
  - iii. Who pays the costs of this suit?
38. On the issue as to whether the demolition was unlawful, the plaintiffs said they had conservatory order issued on 9/12/2011 for stay of execution.
39. However, I find that there is no evidence that the said order was served upon the defendant.
40. It was the duty of the plaintiffs to state who was served with the order for stay of execution.
41. I therefore find that the plaintiffs have not proved to the required standard that the defendant was served with a notice to stop the eviction.



- 42. On the issue as to whether the plaintiffs are entitled to the remedies they are seeking, I find that the answer is in the negative since there is no evidence that the order for stay of execution was served upon the defendant.
- 43. Even if the same was served, the plaintiffs are seeking special damages which must not only be specifically pleaded but specifically proved.
- 44. In the case of Supermarine Handling Services Ltd vs Kenya Revenue Authority [2010] eKLR, this Court observed as follows:  

“The plaintiff’s case is founded mainly, on special damages which must not only be specifically pleaded but also strictly proved. The degree of certainty and the circumstances particularly of proof required depend on the circumstances and the nature of the acts themselves. See Hahn v Singh [1985] KLR 716.”
- 45. PW 1 did not produce receipts for the goods listed in the plaint.
- 46. I find that the plaintiffs have not proved their case to the required standard.
- 47. I accordingly dismiss the plaintiffs’ case.
- 48. On the issue as to costs and direct that each party bears its own costs of this suit.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 8<sup>TH</sup> DAY OF OCTOBER, 2024.**

.....  
**A. N. ONGERI**  
**JUDGE**

In the presence of:

..... for the Plaintiffs  
..... for the Defendant

