



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL CASE NO. 262 OF 2013

IN THE MATTER OF: AN APPLICATION BY GLADYS TUTUI, ABDILNASSIR WANJALA AND HAMISI FOSI KITENDO FOR ORDERS OF CERTIORARI AND PROHIBITION; AND

IN THE MATTER OF: COUNTY GOVERNMENTS ACT, NO. 17 OF 2012, LAWS OF KENYA AND FOURTH SCHEDULE, PART 2 OF THE CONSTITUTION OF KENYA; AND

IN THE MATTER OF: KAJIADO COUNTY GOVERNMENT;

IN THE MATTER OF: THE DECISIONS MADE ON 5TH MAY, 2013, 18TH JUNE 2013, 26TH JUNE, 2013, 16TH JULY, 2013 AND 6TH AUGUST 2013 BY KAJIADO COUNTY GOVERNMENT.

REPUBLICAPPLICANT

VERSUS

KAJIADO COUNTY GOVERNMENT.....RESPONDENT

AND

FLORENCE NTUNTU.....1ST INTERESTED PARTY

SERA GUYO.....2ND INTERESTED PARTY

LINET R. SEKENTO.....3RD INTERESTED PARTY

EVA NAIPAI.....4TH INTERESTED PARTY

VIVIAN SELEINA.....5TH INTERESTED PARTY

MUSTAFA ABDI JAMAA.....6TH INTERESTED PARTY

MARY N. MATINDI.....7TH INTERESTED PARTY

JOSEPH M. MUCHANGI.....8TH INTERESTED PARTY

HAMUD MOHAMED OSMAN.....9TH INTERESTED PARTY

OSMAN RABII.....10TH INTERESTED PARTY

AHMED MOHAMED.....11TH INTERESTED PARTY

PETER MOIKO.....12TH INTERESTED PARTY

S. OLE TIMOI.....13TH INTERESTED PARTY

EXPARTE APPLICANTS: GLADYS TUTUI, ABDILNASSIR WANJALA

AND HAMISI FOSI KITENDO

RULING

1. The application dated 20/11/13 seeks orders as follows:
 - a. ***An order of Certiorari to remove into this Honourable court and quash all those decisions taken on 5th May 2013, 18th June 2013, 26th June 2013, 16th July 2013 and 6th August 2013 by the Respondent.***
 - b. ***An order of prohibition to prohibit the Respondent from acting on their notices dated 18th June 2013, 16th July 2013 and 6th August 2013 by evicting the Applicant and the Interested Parties from the suit premises.***
 - c. ***Costs of this application and the entire proceedings be awarded to the ex parte applicants.***
2. According to the affidavits and the statutory Statement, the *ex parte* applicants (*hereinafter applicants*) and the interested parties are tenants of the Respondent in the *urban estate* of County Government of Kajiado. The said tenants have been issued with a three months notice to vacate the houses that they rent from the Respondent. It is stated that the tenants have resided in the houses in question for a period of 10 -15 years. The tenants are apprehensive that the intention of the Respondent is to allocate the houses to a third party. That the tenants have renovated the said houses with the understanding of the local Government that if it needed the premises, it would give the tenants sufficient time to construct their own premises.

That the tenants own plots in the adjacent estate but the Respondent has barred them from constructing on the said plots or selling them. The Applicants' contention is that the Respondents decisions are unlawful.
3. The application is opposed. It is deponed in the replying affidavit that the relationship between the parties herein is contractual in nature and the remedies thereof are to be found in the realm of private law. That the applicants have failed to demonstrate any breach of their public rights. That the tenancy in question is a month to month tenancy terminable upon notice to the tenant.
4. It is further contended that the houses in question are in a deplorable state of disrepair and require renovations in a harmonized and uniform manner, hence the notices served. That upon renovation each of the tenants will be afforded an opportunity to rent the renovated houses. It is denied that the Respondent intends to allocate the houses in question to any third parties.
5. On the question of suspension of development, it is asserted that the same is in line with the provisions of the Physical Planning Act and the exercise is aimed at structuring development activities in the county. It is further stated that the applicants and the interested parties have not exhibited any documents to show that they own land within that estate affected by the suspension. That there is also no proof of any arrangement made between the applicant, the interested parties

- and the County Council authorizing tenants to renovate houses and to reside in them until the tenants can construct their own houses. The respondent has further stated that some of the tenants have come to court with unclean hands for failure to pay rent.
6. The application was canvassed by way of written submissions which I have duly considered.
 7. It is not in dispute that the Respondent owns the premises in question; that the Applicants and the Interested party are tenants therein; that the Respondent has given the applicants and interested parties notice to vacate the premises; and that some of the tenants have not paid their dues.
 8. The matter before the court is that of a landlord and tenant relationship. This relationship is governed by the law of contract. It is therefore a matter that falls within the realm of private law. (See **Ezekiel Misango Mutisya vs. The National Lands Commission & 6 Others [2014] eKLR**.)
 9. I am persuaded by the reasoning in **Republic -vs- Sports Stadia Management Board Judicial Review Case No. 18 of 2011 ex parte Michael Kinyua Njeru (2013) eKLR** where it was held as follows:

“What the applicants have placed before this court is purely a land lord – tenant issue which ought to be sorted out through private law”.

10. See also **KAPA Ltd & Anor –vs- Pyrethrum Board of Kenya Pet No. 4 of 2012 (2013) eKLR** where it was held as follows;

“..... lease agreement gives rise to private contractual rights enforceable in ordinary civil courts”.

11. However, even if one was to presume the issues herein fall within the domain of public law, Judicial Review is concerned with the decision making process rather than the merits of the decision. Judicial review will not in the circumstances of this case be an efficacious remedy. Assuming that the orders of *certiorari* and orders of prohibition sought herein are granted, the respondent can move to issue new notices, thereby rendering the problem at hand cyclic.

12. On the question of the alleged illegality of the process, it is observed that the tenants have been given three months notice. For a month to month tenant, that is reasonable notice. It is also observed that the applicants and the interested parties have not annexed any documents on the alleged memorandum of understanding regarding any renovations or any evidence of ownership of plots in the adjacent estate. The photographs exhibited by the Respondents show houses which are in a poor state of despair.

13. With the foregoing, I find no merits in the application and dismiss the same with costs.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 6th day of May 2015

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JUDGE