



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI LAW COURTS

ELC PETITION 39 OF 2018

IN THE MATTER OF ARTICLE 21,22,23(3),28,40 AND 43 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF SECTION 4,5,6,9, AND 11 OF THE FAIR ADMINISTRATIVE ACTIONS ACT NO.4 OF 2015

AND

IN THE MATTE ROF PLANNED ILLEGAL EVICTION OF TENANTS OF ZIWANI EX-KBL ESTATE BY NAIROBI CITY COUNTY

BETWEEN

JAMES ADALA MAGANGA.....1ST PETITIONER

ESTHER MUKAMI NJENGA.....2ND PETITIONER

FRANCIS NJENGA MUNGAI.....3RD PETITIONER

JOHN ONYANGI QMBAKALWA.....4TH PETITIONER

JOSEPH OCHIENG ABUNGU.....5TH PETITIONER

{Suing on their own behalf and on behalf of behalf of over 250 persons residents of Ziwani ex KBL Estate}.

VERSUS

NAIROBI CITY COUNTY.....1ST RESPONDENT

MARION RONO.....2ND RESPONDENT

RULING

1. The five petitioners/applicants filed a petition against the respondents in which they allege that their constitutional rights have been violated and threatened to be violated. They contemporaneously filed an application in which they seek the following orders:-

1) Spent

2) Spent

3) An order compelling the respondents to reconnect water and other essential services disconnected pending the hearing and determination of the petition.

4) An order of injunction be and is hereby issued restraining the respondents, their agents and or servants from evicting ,demolishing, terminating tenancies, transferring and or alienating houses situate in LR No.209/1498/3 Ziwani Ex KBL

Estate pending the hearing of this petition.

5) Costs of this application.

2. In the alternative to the prayers in the main petition, the applicants are seeking to be given one year's notice to vacate the suit premises. A brief background of this petition is that the petitioners and others are occupying houses erected on *LR No.209/1498/3* commonly known as Ziwani Ex KBL Estate. The estate used to be occupied by staff of Kenya Breweries Ltd (KBL) who had a lease from Nairobi City Council who were predecessors of Nairobi City County. The lease which KBL had expired. KBL applied for its renewal but the application was rejected by the city council. Somehow KBL managed to have the lease extended for 47 years. KBL then sold the suit premises to a company called Assets Procurement and Development Company Limited which then put in tenants. The company in 2010 sued KBL and two others in ELC 331 of 2010. This is after the then area councillor who was sued as the third defendant incited tenants not to pay rent to the company on the ground that the suit premises was council property. The tenants of the company who are now the petitioners refused to pay rent with effect from 2010.

3. Judgement in ELC 331 OF 2010 was delivered on 19th April 2018 whereby it was held that the purported extension of lease to KBL was obtained fraudulently and that the property still belonged to Nairobi City County. It is following this decision that the first respondent issued notices to the occupants of the houses on the suit premises to vacate. This is what prompted the applicants to move to court seeking the orders stated in paragraph one (1) hereinabove.

4. The applicants contend that their constitutional rights to housing and dignity have been violated. This is the basis upon which they seek protection through the orders prayed for.

5. The respondents have opposed the applicants' application based on the replying affidavit sworn on 16th July 2018. The respondents contend that there are no constitutional issues raised herein to warrant protection in the manner the applicants are seeking. The respondents further state that the suit premises consists of only 42 units which cannot accommodate 250 persons as alleged and that the applicants have not come to court with clean hands and have not met the threshold for grant of injunction.

6. I have considered the application by the applicants as well as the opposition to the same by the respondents. I have also considered the submissions by the parties herein. The only issue for determination is whether the applicants have met the threshold for grant of injunction or what is called conservatory orders in constitutional petitions. The background as given in paragraph 2 and 3 herein above show that the applicants as well as others were brought into the suit premises by Assets Procurement and Development Company Limited as its tenants. They were paying rent to the company until 2009 when the then area councillor incited them against paying rent to the company. The applicants have since the year 2010 not been paying rent to either the company or the County Government of Nairobi.

7. When the ownership dispute ended, the applicants tried to engage the respondents to allow them pay rent. These efforts seem not to have borne any fruits. The applicants are now seeking to come to court alleging that their constitutional rights have been violated. The history of this matter shows that the applicants have not come to court with clean hands. Their intention appears to be to continue staying in the houses without paying rent. No court of law can grant an injunction to such kind of persons who are out to use courts to avoid meeting their obligation. The petitioners cannot seek to come under the grounds which have been discussed in the cases cited in the submissions of the applicants. The petitioner's case is quite different from the vulnerable groups which were litigating in the cases cited in the submissions. As at the moment, there is no tenancy relationship between the Petitioners and the first respondent to warrant issuance of injunctive orders or orders to re-connect power and water to the suit premises. I therefore find that the applicants' application lacks merit. The same is hereby dismissed with costs to the respondents.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 24th day of January 2019.

E.O.OBAGA

JUDGE

In the presence of;-

M/s Luvai for Mr Kwanga Mboya for respondent

Court Assistant: Hilda

E.O.OBAGA

JUDGE