

REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT NAIROBI
PETITION NO. E004 OF 2022

**IN THE MATTER OF ARTICLES 2, 10, 19, 20, 21, 22, 23,
27,28,29,35,40 43, 47, 50 & 53 OF THE CONSTITUTION OF KENYA
2010 [CoK] AND ALL OTHER ENABLING PROVISIONS OF THE LAW.**

BETWEEN

WINNIE GAKENA NGAHU	-	1ST PETITIONER
THOMAS ODHIAMBO	-	2ND PETITIONER
NATHAN NTHULI SIMON	-	3RD PETITIONER
RUTH AMBUJO	-	4TH PETITIONER
ZABLON OKUMU KOKEYO	-	5TH PETITIONER
MESHACK OJWANG ONGARA	-	6TH PETITIONER

VS

NAIROBI METROPLITAN SERVICES	-	1ST RESPONDENT
INSPECTOR GENERAL OF POLICE	-	2ND RESPONDENT
NAIROBI CITY COUNTY	-	3RD RESPONDENT

JUDGMENT

The Petitioner's case

1. Vide the amended Petition dated the 14/4/23, the petitioners moved this court and urged the following prayers;
 - a. That the demolition of the petitioners' premises and eviction by the Respondents was unconstitutional and inhuman.
 - b. An award of special damages to each Petitioner as particularized in Para 17 of the Petition and interest from the time of the filing of the petition
 - c. General damages to each petitioner for violation of their constitutional rights and interests from the time of filing the petition

d. Costs of the petition

2. It is the petitioners' case that they were bona fide purchasers of various plots within LR 13468 at Kasarani Constituency in Nairobi City County since 2016, where each had constructed various types of houses with the knowledge of the 1st and 2nd Respondents.
3. On various dates between 27/3/21 and 5/4/21, the Respondents, along with their servants, agents, and workers, unlawfully invaded, trespassed, evicted, and demolished the petitioners' properties without any lawful authority, notice, or valid reasons for the intended demolition.
4. That the respondents' actions violated their fundamental rights to fair administrative action under Art 47 of the Constitution, 2010. The particulars of the breach of the petitioners' constitutional rights were pleaded and detailed in para 16 of the said petition as follows: damages, both special and general, to the petitioners; violation of their rights under Art 47 of the CoK; breach of the petitioners' right to a fair hearing under Art 50 of the CoK; and violation of their right to human dignity by the manner in which the eviction was carried out, which was inhuman, cruel, and degrading.
5. The petitioners have alleged special damages incurred by each petitioner and that they were condemned unheard and evicted without due process of law, in violation of their rights under the Constitution.
6. The petition is supported by the affidavit sworn on 14/4/21 by Winnie Gakenia Ngahu, who reiterated the contents of the petition and added that the eviction and the demolition of their properties were unconstitutional and inhuman. The eviction and demolition of their properties have caused them financial and psychological suffering to date, including special and general damages. The petitioners were forced to find other schools for their children, and furthermore, their families were compelled to sleep outside in the cold during the rainy season.
7. On 17/4/23 the case against the 1st Respondent was withdrawn, leaving the 2nd and 3rd Respondents in the suit.

8. The 2nd Respondent failed to enter an appearance or file any response thereto.
9. The 3rd Respondent denied the Petitioners' claims in its replying affidavit sworn on 17/2/2022, by Eric Odhiambo, the acting County Solicitor of the 3rd Respondent. He stated that there are no documents to prove the petitioners' ownership and occupation of the suit land, and that their claims are merely unsubstantiated. Additionally, no evidence of construction approvals was presented to the court. Furthermore, the 3rd Respondent was not involved in any demolitions carried out against the petitioners, as alleged. If any demolitions were indeed carried out, as denied, they were conducted lawfully, in good faith, and within the statutory mandate of the executing authority.
10. Regarding the prayers, the 3rd respondent argued that the petitioners have not shown any prima facie case to justify the granting of the orders sought.
11. In her further affidavit, the petitioners stated that the houses were demolished by the respondents without following the due process of the law. A number of photographs were annexed, which, according to the petitioners, confirmed the demolitions.
12. Counsel for the petitioner submitted that courts have stated that even squatters or unlawful occupiers have rights to adequate housing that must be respected in evidence. That the petitioners were not served with notices and the reasons for the said evictions.
13. The case of *Mitu Bell Welfare Society vs Kenya Airports Authority & 2 others* [PET 3 of 2018] was referred to the court, where the court held that;

Even though squatters do not acquire title to the land, they have a protectable right to housing on that land which the state must recognise. This affirms Section 152 of the Land Act, and therefore, where eviction is justified, it must still be carried out lawfully and with respect for the evictees, as provided for in law.

14. With regard to damages, the petitioners submitted and relied upon the tabulated amounts spent on construction and the attached receipts. They further contend that they are entitled to general damages for the distress caused by their inhumane eviction and have proposed a figure of Kshs 500,000/- as compensation for each petitioner.
15. The 3rd Respondent submitted that the petitioners have failed to prove their claims. For example, they have not demonstrated that they are bona fide purchasers of the suit land, nor that they were in possession of it. Furthermore, the petitioners have not proven any demolition, and, in any event, the photos have not been accompanied by an electronic certificate as required by law. The court was urged to disallow the award of the damages sought. The court was further urged to find that the petitioners had failed to establish a cause of action against the 3rd Respondent.
16. Having perused the petition, the written submissions and all the material placed before the court, the court finds that the following issues fall for determination;
 - a. Whether the petitioners have proved their case against the 3rd Respondent
 - b. Are damages awardable in the circumstances
 - c. Who meets the costs of the petition?
17. The law on eviction of persons in possession of any parcel of land is now settled. The provisions of the Land Act are sufficient to protect any person from unlawful eviction and/or the demolition of structures. Section 152G of the Land Act provides as follows;

“Notwithstanding any provisions to the contrary in this Act or in any other written law, all evictions shall be carried out in strict accordance with the following procedures—(a)be preceded by the proper identification of those taking part in the eviction or demolitions;(b)be preceded by the presentation of the formal authorizations for the action;(c)where groups of people are

involved, government officials or their representatives to be present during an eviction;(d)be carried out in a manner that respects the dignity, right to life and security of those affected;(e)include special measures to ensure effective protection to groups and people who are vulnerable such as women, children, the elderly, and persons with disabilities;(f)include special measures to ensure that there is no arbitrary deprivation of property or possessions as a result of the eviction;(g)include mechanisms to protect property and possessions left behind involuntarily from destruction;(h)respect the principles of necessity and proportionality during the use of force; and(i)give the affected persons the first priority to demolish and salvage their property.”

18. The Petitioners contend that they were bona fide purchasers of the plots situated in LR No 13468, where they had acquired possession and commenced building various types of houses. They assert that they were evicted by the respondents without following proper legal procedures, including notification and explanation of the reasons for eviction and demolition. They have also claimed both special and general damages from the respondents.

19. The 3rd Respondents have denied the claims of the petitioners and put them on strict proof.

Whether the petitioners have proved their case against the 3rd Respondent

20. Section 109 of the Evidence Act states as follows;

“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

21. In the instant case the burden of proof lies with the Petitioners to proof their case.

22. Section 106B of the Evidence Act provides as follows;

“Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on paper, stored, recorded or copied on optical or electro-magnetic media produced by a computer (herein referred to as “computer output”) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in E17-38 [Issue 1]CAP. 80 Evidence [Rev. 2014] question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein where direct evidence would be admissible. (2) The conditions mentioned in subsection (1), in respect of a computer output, are the following— (a) the computer output containing the information was produced by the computer during the period over which the computer was used to store or process information for any activities regularly carried out over that period by a person having lawful control over the use of the computer; (b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities; (c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its content; and (d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

23. In this case, the petitioners failed to comply with the above law by producing the certificate of electronic verification for the photographs adduced in evidence. In the absence of such a certificate, the photographs remain inadmissible in evidence.

24. In support of their case against the 3rd Respondent, the petitioners have annexed photographs dated 30/4/2025 to demonstrate that there was indeed a demolition and eviction from the land in 2021. However, the photographs, taken in 2025, are questionable as to whether they truly refer to the alleged eviction and demolition that occurred in 2021. There is also no evidence that, if indeed demolition or eviction took place, the 3rd Respondent was responsible for carrying out the same.
25. The petitioners' claim is that they are bona fide purchasers of the plots; however, the petitioners failed to provide any tangible evidence in support of any purchase, be it sale agreements and or payments for the plots. It is trite that even squatters have rights on the suit land, which in the event of a demolition, the said rights must be respected. However, the petitioners did not lead any evidence to show that they were in possession of the land, either as purchasers or squatters.
26. The answer to this issue is in the negative.
- Are damages awardable in the circumstances?**
27. Having made a finding that the petitioner failed to prove their petition, the court is unable to find for any award in their favour. The same is unmerited.
28. In the end I find the petition is unmerited. It is dismissed with no orders as to costs.
29. Orders accordingly

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 14TH DAY OF
APRIL 2026 VIA MICROSOFT TEAMS.**

**J. G. KEMEI
JUDGE**

Delivered online in the presence of;

1. Mr Oduor for the Petitioners
2. N/A for the 2nd Respondents
3. Mr Kisigwa for the 3rd Respondent
4. C/A - Ms Elizabeth