



**Kivuti & 22 others v Secretary, County Government of Embu & 2 others (Environment and Land Petition 8 of 2019) [2026] KEELC 2617 (KLR) (30 April 2026) (Judgment)**

Neutral citation: [2026] KEELC 2617 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT AND LAND PETITION 8 OF 2019  
EC CHERONO, J  
APRIL 30, 2026**

**BETWEEN**

**FREDRICK KIVUTI & 22 OTHERS ..... PETITIONER**

**AND**

**THE SECRETARY, COUNTY GOVERNMENT OF EMBU ..... 1<sup>ST</sup> RESPONDENT**

**THE COUNTY EXECUTIVE COMMITTEE MEMBER FOR  
INFRASTRUCTURE, ENERGY, TRANSPORT AND HOUSING IN THE  
COUNTY GOVERNMENT OF EMBU ..... 2<sup>ND</sup> RESPONDENT**

**THE COUNTY GOVERNMENT OF EMBU ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. Vide a petition dated 17/11/2015 the petitioners herein seek the following orders;
  - a. A declaration that the Respondents intention to evict the Petitioners from House No's 22A, 28, 25B, 25A, 114, 24, 11A, 12, ADC 14, 10, 116, 22B, 116, 111, 119, ADC 13, 122, 11B, 115, 123, 7, 125 and 1 occupied by the 1<sup>st</sup> to 23<sup>rd</sup> Petitioners respectively, without any justifiable reason and in the absence of any default in rent payment or breach of the Tenancy terms and conditions on their part or on the basis of wrongs not committed by them, or imaginary wrongs, and re-allocating the said houses to other tenants, is discriminatory and a violation of the Petitioners Constitutional rights to equality and equal treatment, and to accessible and adequate housing and, is generally in breach of the Petitioners fundamental rights as enshrined in *the Constitution* of Kenya.
  - b. A declaration that the Petitioners as residents of Embu County and as citizens of Kenya, have the right to equal treatment and to accessible housing and the Petitioners therefore have the right to occupy and to be tenants in the houses owned by the County Government of Embu for as long as they comply with the terms and conditions of their tenancies and pay rent



as and when it falls due, and that the Petitioners should not be collectively blamed for the mistakes or wrongs of others or for wrongs not committed by them as that is a violation of the Constitutional rights.

- c. An order restraining the County Government of Embu from evicting the Petitioners from the aforementioned houses and or allocating them to other tenants without any justification.
2. In support of the Petition, they filed a supporting affidavit dated 17/11/2015 sworn by Fredrick Kivuti, the 1<sup>st</sup> Petitioner, on his behalf and on behalf of the other Petitioners. He deposed that the Petitioners were tenants of the afore stated houses belonging to the County Government of Embu and that between 09/11/2015 and 12/11/2015, they received notices from the County Government notifying them to give vacant possession of the houses within 30 days from 01/11/2015. He averred that the grounds given in the said notice were that: the County Government intended to carry out repairs and renovations; that some tenants had breached general covenants of tenancy by for example, subletting to unauthorized person without the landlord's consent; and for record taking and reallocation of the houses once the work was completed, to authorized tenants as provided for by law.
3. He averred that the grounds for eviction given in the said notice were unconstitutional, unconscionable, illegal, baseless and a violation of their constitutional rights. He argued that it was unreasonable and unjustifiable for the County Government to demand that the Petitioners vacate their houses to allegedly enable them carry out renovations as that could be done while they were still in occupation of the said houses. That, the Respondents had not stated which renovations were supposed to be carried out in each of the houses, whether valuations of the required repairs had been done, or whether the repairs could only be carried out if they vacated the houses.
4. He argued further that it was a violation of their rights and discriminatory to be condemned as a group for breach of the tenancy agreement specifically on the issue of sub-letting the houses. He contended that the County Government, in their notice, talked of reallocating the houses to authorized tenants as provided for by law but failed to specify which tenants they were referring to, who were authorized, and by which law; and that the Respondents did not indicate which persons were more deserving to be tenants. He added that it would amount to discrimination if they are evicted and other persons given the said houses, as such actions would not be based on any justifiable reason and would not be fair and just.
5. He maintained that the actions of the County Government were in gross violation of the Petitioners rights under Articles 27 and 43 of *the Constitution* of Kenya. He urged that the Petitioners should be allowed to continue occupying their respective houses unless any of them violated the terms of the tenancy or vacated the houses voluntarily. He annexed to the Supporting Affidavit an authority to swear, receipts for payment of rent, and a copy of the notice to vacate.
6. By way of a response and opposition to the Petition, the 3<sup>rd</sup> Respondent, the County Government of Embu, through the County Secretary, Raymond Kinyua filed a replying affidavit dated 20/05/2016. He deposed that the Petitioners were unlawful trespassers on the 3<sup>rd</sup> Respondents houses, as the houses in issue were built by the County Government of Embu for purposes of housing their staff and employees. He argued that even if the Petitioners were to be presumed to be tenants of the 3<sup>rd</sup> Respondent, the 3<sup>rd</sup> Respondent was still empowered by law to issue the notices for vacant possession for purposes of carrying out the repairs and that they had a constitutional duty to maintain and repair the property in furtherance of the right to property under Article 40 of *the Constitution*.
7. He averred that under section 134 of the *County Governments Act* 2012, the 3<sup>rd</sup> Respondents took over the property of the defunct Embu County Council and therefore they had the mandate to issue the



notice. He contended that the notice to vacate was not illegal neither was it irregular as it was envisaged in the Landlord Tenant Agreement and the same gave the County Clerk, the current County Secretary residual power on matters relating to the tenancy of the County houses. He maintained that the notice was properly issued under section 15 of the Rent Restrictions Act Cap 296 as required under the law. He urged that the petition was vexatious, scandalous and frivolous and ought to be dismissed as it refers to a matter arising from a breach of contract.

8. When the Petition came up for directions, the parties agreed that the same be canvassed by way of written submissions.
9. The Petitioners filed their submissions dated 02/05/2023 through the firm of Duncan Muyodi and Company Advocates. They submitted that the Respondents' notice would be in violation of their right to human dignity and security as well as their rights to housing under *the Constitution*. They averred that Constitution recognizes the right to housing in two aspects; as a general right under Article 43 and in the context of children specifically under Article 53(1)(c). They contended that the right to housing includes legal security of tenure, availability of services, materials, facilities and infrastructure, affordability, accessibility location and cultural adequacy. They averred that the Respondents should have prior to enforcing the notices and carrying out the evictions, ensured all feasible alternatives were explored in consultation with the Petitioners. They argued that the Respondents actions therefore amount to forced evictions which constitute a violation of fundamental rights and an abuse of inherent human rights and dignity under Article 43 of *the Constitution*.
10. Having considered the Petition, the affidavits in support and in opposition, the submissions by the parties, and the applicable constitutional and statutory framework, the Court identifies the central issue for determination as whether the intended eviction of the Petitioners from the County Government houses violates their constitutional rights, in particular the right to equality and freedom from discrimination under Article 27, and the right to accessible and adequate housing under Article 43 of *the Constitution* of Kenya.
11. It is common ground that the Petitioners are in occupation of the suit premises and have been paying rent. The Petitioners contend that they are lawful tenants who have complied with the terms of their tenancy and that the notice to vacate was arbitrary, discriminatory, and amounted to forced eviction. They rely on the principles articulated in *Satrose Ayuma & 11 Others v Registered Trustees of Kenya Railways Staff Retirement Benefits Scheme & 3 Others Nairobi HC Petition No. 65 of 2010*, which affirmed that the right to housing includes security of tenure which guarantees legal protection against forced eviction, harassment and other threats.
12. On the other hand, the 3<sup>rd</sup> Respondent, the County Government of Embu, maintains that the houses were constructed for staff accommodation and that the Petitioners are unlawful trespassers. They also maintained that they were empowered by law to issue the said notices for vacant possession. It is further contended that the notice was properly issued under Section 15 of the *Rent Restriction Act* and Section 134 of the *County Governments Act* to facilitate necessary repairs and renovations, and that such action falls within the Respondent's mandate.
13. The Court recognizes that the 3<sup>rd</sup> Respondent has the power to manage its houses, including giving notices to tenants to vacate, but this power must be exercised in line with *the Constitution*. In the present case, the notice issued to the Petitioners was general in nature. They cited intended renovations, alleged breaches of tenancy such as subletting by some tenants, and a proposed reallocation of the houses to authorized tenants. However, the Respondent failed to particularize these allegations or demonstrate how they applied to each Petitioner individually. The effect was to subject all the



Petitioners to a blanket eviction notice without considering their individual actions. That approach amounts to indiscriminate punishment.

14. Further, the justification advanced by the 3<sup>rd</sup> Respondent namely, the need to carry out repairs and renovations was not supported by sufficient evidence. There was no demonstration of the nature, scope, or urgency of the intended works, nor any evidence that such works could only be undertaken upon vacant possession of all the houses. Additionally, the Respondent did not show that it had considered less restrictive alternatives, such as phased renovations or temporary relocation. The right to accessible and adequate housing under Article 43(1)(b) encompasses not only the availability of shelter but also security of tenure and protection from arbitrary eviction. As emphasized in *Mitubell Welfare Society v Kenya Airports Authority & 2 Others* [2013] eKLR, even where a public authority asserts property rights, such rights must be balanced against socio-economic rights and exercised in a manner that is reasonable, proportionate, and procedurally fair.
15. In the instant matter, there is no evidence that the Respondent engaged in meaningful consultation with the Petitioners before issuing the notice, nor that it made any provision for alternative accommodation or other mitigating measures such as offering the Petitioners the first option to let and take possession of the houses after the alleged renovations. The Court therefore finds that the impugned notice to vacate was arbitrary, lacked procedural fairness, and amounted to a violation of the Petitioners' constitutional rights to equality and freedom from discrimination, as well as their right to accessible and adequate housing. Accordingly, the Court makes the following orders:
  1. A declaration is hereby issued that the Respondents' notice dated 30/10/2015 requiring the Petitioners to vacate the suit premises is unconstitutional, unlawful, and discriminatory.
  2. An order is hereby issued restraining the County Government of Embu from evicting the Petitioners or reallocating the houses to other tenants without due process, including individualized assessment of each case, consultation with the affected parties, and consideration of feasible alternatives
  3. The costs of the Petition are awarded to the Petitioners.

**DATED, SIGNED AND DELIVERED VIRTUALLY/AT EMBU THIS 30TH DAY OF APRIL, 2026.**

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**HON. E. C. CHERONO**

**ELC JUDGE**

In the presence of:

Mr. Okwaro for the Petitioners

Respondents/Advocate-absent

Diana Kemboi C/A

