



Obuya & 3 others v County Government of Kisumu & 4 others (Constitutional Petition E001 of 2024) [2024] KEELC 4814 (KLR) (20 February 2024) (Ruling)

Neutral citation: [2024] KEELC 4814 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
CONSTITUTIONAL PETITION E001 OF 2024**

SO OKONG'O, J

FEBRUARY 20, 2024

IN THE MATTER OF ARTICLES 1, 2, 3, 10 (1) & 2, 19, 20 (1), (2), & (4), 21, 22, (1), & (3), 25(C), 27 (1), & (2), 40, 43, 47 (1) & (2), 50 (1), 61 (1), 64 (B), 67, 68, 73 (1) & 75 (1), (2) & (3), 159, 162, 176, 184 & 232 (1) OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF ENVIRONMENT AND LANDS COURT ACT, 2011

AND

IN THE MATTER OF THE LAND REGISTRATION ACT 2012

AND

IN THE MATTER OF FAIR ADMINISTRATIVE ACTION ACT NO. 17 OF 2015

AND

IN THE MATTER OF URBAN AREAS AND CITIES ACT NO. 13 OF 2012

AND

IN THE MATTER OF NATIONAL LAND COMMISSION ACT NO. 5 OF 2012

AND

IN THE MATTER OF LEADERSHIP AND INTEGRITY ACT NO. 19 OF 2012

AND

IN THE MATTER OF PUBLIC OFFICER ETHICS ACT NO. 4 OF 2003

AND

IN THE MATTER OF CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013

BETWEEN

CHARLES OMONDI OBUYA 1ST PETITIONER



JAMES OCHIENG OMWA 2ND PETITIONER
PETER ODUOR OJWANG 3RD PETITIONER
MATATU OWNERS ASSOCIATION, KISUMU 4TH PETITIONER

AND

COUNTY GOVERNMENT OF KISUMU 1ST RESPONDENT
CITY MANAGER, KISUMU CITY 2ND RESPONDENT
CHAIRMAN KISUMU COUNTY TRANSPORT AND SAFETY
COMMITTEE 3RD RESPONDENT
REGIONAL COMMISSIONER, KISUMU COUNTY 4TH RESPONDENT
THE ATTORNEY GENERAL 5TH RESPONDENT

RULING

1. The petitioners/applicants brought this petition on 15th February 2024 against the respondents challenging the planned relocation of their activities from Kisumu Town Centre to Mowlem Bus Park. The petitioners have alleged several violations of the *Constitution* and statute law.
2. Together with the petition, the petitioners filed an application for conservatory orders pending the hearing and determination of the petition. The application for conservatory orders came up for directions on 16th February 2024 when the court certified it as urgent and directed that the same be served forthwith for hearing today. The application was served upon the respondents on 19th February 2024.
3. When the application came up for hearing this morning, the advocates for the 1st, 4th and 5th respondents told the court that they were not ready to argue the application and that they needed time to respond to the same. The advocate for the petitioners told the court that he had no objection to the request by the advocates for the said respondents. He however urged the court to grant interim orders in terms of prayers 2 and 4 of the application for conservatory orders. The advocate for the 1st respondent opposed the application for interim conservatory orders while the advocate for the 4th and 5th respondents had no objection to the same.
4. I have considered the submissions by the advocates for the petitioner and the 1st respondent on the issue. The purpose of an interim order in the circumstances of this case would be to ensure that the substantive orders sought in the application are not defeated.
5. In their application, the petitioners have contended that the respondents are planning to forcefully move them from their usual places of business within Kisumu Town to Mowlem Bus Park without consultation and in breach of several provisions of the law. The advocate for the 1st respondent has not denied the planned relocation. The 1st respondent has contended that the relocation is lawful and that there was public participation on the same. The respondents are yet to file their responses to the application and the petition. The court will have an opportunity to consider the rival contentions and will decide whether or not the planned relocation is lawful and whether the petitioners were consulted.
6. For now, I am persuaded that the purpose of the application before me will be defeated if no interim orders are granted to maintain the status quo. I am of the view that it would only be just and fair



that the petitioners are given an opportunity to argue their application before the planned relocation exercise is carried out.

7. For the foregoing reasons, I am satisfied that a case has been made out for the grant of the interim orders sought. I therefore make the following orders.
 1. The respondents shall file and serve their response to the application within 7 days from the date hereof.
 2. The petitioners shall file their submissions together with a supplementary affidavit if necessary within 7 days of service of the 1st respondent's response.
 3. The respondents shall file their submissions within 7 days from the date of service of the petitioners' submissions.
 4. The matter shall be mentioned on 20th March 2024 for a ruling date.
 5. Until then, prayers 2 and 4 of the application are granted on a temporary basis.

DELIVERED AND DATED AT KISUMU ON THIS 20TH DAY OF FEBRUARY 2024

S.OKONG'O

JUDGE

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Mr. Mwamu for the Petitioners

Ms. Awuor for the 1st Respondent

Mr. Kajo for the 4th and 5th Respondents

Ms. J.Omondi-Court Assistant

