



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA
AT ELDORET

E&L PETITION NO. 18 OF 2013

SAMUEL K. MAIYO..... 1ST APPLICANT

KEN OTIENO 2ND APPLICANT

JOSEPH OBONDO 3RD APPLICANT

GABRIEL KHAYEDI NGAIRA 4TH APPLICANT

PATRICK MUSYOKA MUNYU 5TH APPLICANT

JOHN OLOO ODONGO 6TH APPLICANT

(Suing as tenants on their own behalf and on behalf of other tenants and residents and as the representative of the tenants of Mayabi, Uhuru, Kamanda, Kuria, Tom Mboya, St. Mary Kodhek, Kilimani and Macharia Estates)

VERSUS

COUNTY GOVERNMENT OF UASIN GISHU 1ST RESPONDENT

UASIN GISHU COUNTY BOARD 2ND RESPONDENT

THE HON. ATTORNEY GENERAL 3RD RESPONDENT

RULING

This ruling is in respect of an application dated 9 September 2014 made by the petitioners, to stay an order of eviction issued to them by the 1st respondent pending the hearing of this suit.

This suit was instituted by way of a Constitutional Petition on the 24 December 2013. It is scheduled for formal hearing on 21 October 2014.

The petitioners are tenants of the County Government of Uasin Gishu in various housing estates owned by the County Government. These estates are Mayabi, Uhuru, Kamanda, Kuria, Tom Mboya, St. Mary's Kodhek, Kilimani, and Macharia estates. The genesis of this petition is that the County Government of Uasin Gishu through its Finance Act of 2013, increased the rent payable by the petitioners as tenants. The petitioners argue that the said increase of rent is a matter of public importance and that there needed to be public participation involving all stakeholders. It is claimed that the said increase is a breach of their Constitutional rights. Articles 46 (3) and 184 (c) of the Constitution of 2010 have been cited.

Together with the Petition, the petitioners filed an application seeking stay of the new rent. In my discretion, I ordered that the Petition itself be heard, and as I have earlier mentioned, the same is due for hearing on 21 October 2014.

In the meantime, on 19 May 2014, the County Government of Uasin Gishu issued notices to the residents of Kodhek Estate, terminating their tenancy and asking them to vacate the said houses within 90 days. In the notice it is stated that according to their tenancy agreement, either party can terminate the tenancy by giving a one month notice but 90 days is given. Aggrieved by the Notice, the petitioners filed a Judicial Review application for orders of certiorari to quash the said Notice. This was filed as Eldoret High Court Judicial Review Application No. 6 of 2014. Leave was granted to commence the suit, but stay was denied. The court (Kimondo J) was not too amused with the multiplicity of suits being filed by the petitioners, as this suit was still pending. He was of the view that they can seek remedy in this suit. Moreover, the learned judge was not too impressed with the case of the applicants, as in his view, the suit was based on a contractual relationship between landlord and tenant. The ruling was delivered on 13 August 2014. That suit was then withdrawn.

In this application, the applicants want orders that the status quo be maintained pending the hearing of this petition. They therefore want the notice to vacate stayed. It is their view that the respondents are stealing a march on them as the main Petition is soon to be heard. Mr. Mugun for the petitioners further argued that the applicants will only have a paper judgment if they succeed. He further averred that it will be difficult for the applicants to get alternative housing.

Mr. Yego for the respondents was of the view that this application is *res judicata*, as the matter was determined by Justice Kimondo in the judicial review matter. He also stated that the the petitioners were issued with a 90 days notice way back on 19 May 2014 which expired on 19 August 2014 and they were again given a further 30 days notice, yet they have failed to move out. He submitted that the tenants need to vacate so that the County Government of Uasin Gishu can undertake repairs.

I have considered the application. All that the petitioners want is an order of status quo, which essentially means that they continue being resident in the houses pending a determination on this matter. The Court has discretion to maintain the subject matter of litigation depending on the surrounding circumstances of each case. The case of the petitioners is challenging the right of the County Government to increase rent on the premises. If they are evicted, then of course there will be no case to be determined, because the petitioners will no longer be tenants of the respondents. I agree that the County Government as landlord may have a right to evict the petitioners owing to their contractual relationship of landlord/tenant. However, I do not see what harm the County Government will suffer if the petitioners continue residing in the said houses for the duration of this suit, so long as they are paid the rent that they have demanded. The matter is due for hearing in about one month, and a decision, once and for all, will probably be rendered, less than two months from now.

I believe the interests of the County Government is to receive the rent which in its view reflects a fair return on its investment in housing. They have already stated what that rent is, in as much as the petitioners have challenged it. I think no prejudice will be occasioned to the respondents if the petitioners pay the rent that the County Government has demanded, while this suit is being heard, and the petitioners remain in occupation of the houses. If the petitioners succeed in their case, they can always claim the additional rent paid from the County Government or set it off against future obligations. If they fail, the County will have received what will have been determined to be rightfully theirs. No harm will be occasioned to either party if I stay the eviction and make an order for the new rent to be paid pending hearing of the case. In any case, it is only for a duration of about two months or so.

For the above reasons and given the surrounding circumstances of this case it is in my view fair that I make the following orders :-

(i) I stay the eviction notice seeking to have the petitioners evicted from their residences pending hearing and determination of this petition.

(ii) The above order is subject to the petitioners paying the new prescribed rent.

(iii) If the petitioners do not pay the new prescribed rent, as they await the outcome of their suit, then they must move out of the premises or they risk being evicted.

It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 16TH DAY OF SEPTEMBER 2014

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET.

Delivered in the presence of:

N/A for M/s Onyinkwa & Co. for the petitioners/applicants.

Mr. F.O Mukabane holding brief for M/s Z.K Yego for the 1st and 2nd respondents.

Mr. J.M Ngumbi of the State Law office present for 3rd respondent.