



REPUBLIC OF KENYA



**Kenya Railways Corporation v Birah & 14 others (Civil Appeal
E206 of 2021) [2025] KECA 545 (KLR) (21 March 2025) (Judgment)**

Neutral citation: [2025] KECA 545 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPEAL E206 OF 2021
MSA MAKHANDIA, HA OMONDI & LK KIMARU, JJA
MARCH 21, 2025**

BETWEEN

KENYA RAILWAYS CORPORATION APPELLANT

AND

FATUMA KHAMIS BIRAH 1ST RESPONDENT

RASHID SADI KEMIS 2ND RESPONDENT

KADMALA AHMED 3RD RESPONDENT

RUKIA KHAMIS 4TH RESPONDENT

NOOR RAJAB 5TH RESPONDENT

**MICHAEL ODHIAMBO (ON THEIR OWN BEHALF AND ON BEHALF
OF 3,500 CO-PETITIONERS BEING RESIDENTS OF KIBOS SETTLEMENT
LOCATED IN KISUMU FACING EVICTIONS) 6TH RESPONDENT**

**THE CABINET SECRETARY FOR TRANSPORT, INFRASTRUCTURE
HOUSING AND URBAN DEVELOPMENT 7TH RESPONDENT**

CABINET SECRETARY FOR LANDS 8TH RESPONDENT

**INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT 9TH
RESPONDENT**

NATIONAL LAND COMMISSION 10TH RESPONDENT

COUNTY GOVERNMENT 11TH RESPONDENT

ATTORNEY GENERAL 12TH RESPONDENT

**LEGAL ADVICE CENTRE (TRADING AS KITUO CHA
SHERIA) 13TH RESPONDENT**

KISUMU MUSLIM ASSOCIATION 14TH RESPONDENT



(Being an appeal from the judgment of the Environment and Land Court at Kisumu (A. Ombwayo, J.) dated 27th August 2021 in Petition No. E001 of 2020 Consolidated with E004 of 2021)

JUDGMENT

1. Fatuma Khamis Birah, Rashid Sadi Kemis, Kadmalah Ahmed, Rukia Khamis, Noor Rajab, and Michael Odhiambo, hereinafter “the 1st to 6th respondents” are members of the Nubian community, who claimed to have been in occupation of the disputed land parcel Kibos Informal Settlement within Kisumu County being Kibos Township Crown Land LR. No. 655, since the year 1937 after being moved from Old Kisumu (now Kisumu airport); and they had been in occupation and possession of the suit property since 1937 without any interruptions or eviction threats until 9th March 2020, when the appellant issued an eviction notice giving them 7 days’ to vacate.
2. As a result they filed two petitions before the Kisumu Environment and Land Court (“the ELC”) being Petition No. 1 of 2020 and Petition No 004 of 2020, on their own behalf as well as on behalf of 3500 other residents of Kibos Settlement alleging that they were forcibly and violently evicted from therefrom and their houses demolished, by the Kenya Railways (the appellant herein) and the Cabinet Secretary for Transport, Infrastructure Housing and Urban Development, The Cabinet Secretary for Lands, The Cabinet Secretary Ministry of Interior and Coordination of National Government, The National Land Commission, Kisumu County Government, and The Hon. Attorney General, being the 7th to 12th respondents. They alleged that the evictions were undertaken without following due process as required by *the Constitution* and the *Land Act*; that they were not offered any alternative settlement; and their inherent right to human dignity, right to protection of property and right to fair administrative action was violated.
3. The petitions were consolidated; and in response the appellants contended that the said suit property was surveyed demarcated and reserved as Kibos Railways Station Reserve forming part of the Kenya-Uganda Railway under Kenya Railways Land vide a Vesting Order 1986, contained in *Legal Notice No. 440 of 1963* and No 24 of 1986. They relied on the drawings, maps and survey plans obtained from the Office of the Director of Surveys to contend that Kenya Railways has never surrendered any part of that land to the government of Kenya for allocation to any party.
4. The appellant maintained that the demolitions were legal; done after notices had been duly issued and published in the daily newspapers; and were undertaken by a multi-agency operation team comprising National Government Administration Officers, Presidential Delivery Unit, National Police Service, and Kenya Railways officers. The appellant cross-petitioned, seeking to be declared the legal owner of the suit property; that the acquisition by the 1st to 6th respondents of the suit property was illegal, a nullity and any title held by them be cancelled; in addition, that any remaining occupant of the Kibos Station Reserve be evicted. The appellant urged the court to dismiss the petitions on grounds that the petitions had been overtaken by events as the demolitions had already been carried out.
5. On 27th August 2021, the court (Ombwayo,J) delivered a judgment allowing the petitions; and to the effect held that:



- i. The suit property was alienated Crown land given to the Nubian community; and the 1st -6th respondents were validly in occupation as they had long term licences given to them by the colonial government;
 - ii. the appellant and the 9th respondent violated 1st-6th respondents right to property through evictions and demolitions; and the respondents were entitled to compensation for the losses they suffered during the illegal demolition of their structures.
6. To understand the context in which the petitions found themselves in court, a brief background is necessary. In 1937, the colonial government moved the Nubian community to occupy [suit property], which they have remained in possession of to date. Pursuant to the said allocation of land, the Government of Kenya, under the Physical Planning Act (CAP 286), the Ministry of Lands in 2012 formally recognized the Kibos Township and prepared Development Plans for the area.
 7. On 23rd October 2012, the Ministry of Lands issued a notice for completion of the Development Plans under the Physical Planning Act and invited all interested persons to submit any objections to the Development Plans within 60 (sixty days) from the 23rd October 2012. The Kenya Railways Corporation did not submit any objection to the Development Plans of Kibos Township, nor did the Ministry of Lands, or Kisumu County Government have any objection to the Nubian Community being allocated the suit property.
 8. On 13th February, 2015, the Director of Physical Planning put a notice in the Nation Newspaper on formalization of Kibos Informal Settlement Upgrading Scheme. Through the formalization process of the Kibos settlement, Kibos settlement was to get letters of allotment awaiting a community Land Title Deed.
 9. However, on 9th March, 2020, the appellant wrote to the Kibos Community giving them a 7-day notice to vacate the suit property. The 1st to 6th respondents and the residents of Kibos Informal Settlement were on 16th March, 2020 evicted by the appellant from their settlement contrary to the Land Laws Amendment Act of 2016, which mandated a 90-day eviction period thus rendering them homeless and that the evictions were done in total disregard of the eviction processes.
 10. Aggrieved, the respondents instituted constitutional petitions seeking various declarations to wit;
 - i. A declaration that any forcible, violent, and brutal eviction through the demolition of homes of the Petitioners and any other residents of the Kibos Informal Settlement without according them alternative shelter and/or accommodation leaving them to live in the open, exposing them, to the elements and vagaries of nature is a violation of their fundamental right to life guaranteed by article 26 (1) and (3) of *the Constitution* of Kenya, 2020.
 - ii. a declaration that any forcible, violent and brutal eviction through demolition of homes of the Petitioners and other residents of the Kibos Informal Settlement, without according them alternative shelter and/or accommodation leaving them to live in the open exposed to the elements and vagaries of nature by the Respondents is unconstitutional contravening the national values and principals of governance that include human dignity, equity, social justice and need to protect the marginalized as enshrined in Article 10 (2) of *the constitution* of Kenya, 2010.
 - iii. declaration that any forcible, violent and brutal eviction through demolition of homes of the Petitioners and other residents of the Kibos Informal Settlement, without any warning, Court Orders, any or reasonable notice in writing or availing them information regarding the evictions and without according them alternative shelter and/or accommodation and leaving



them to live in the open exposed to the elements and vagaries of nature is a violation of their fundamental rights to inherent human dignity and the security of the person guaranteed by articles 28 and 29 (c), (d) and (f) of *the Constitution* of Kenya, 2010.

- iv. a declaration that any forcible, violent, and brutal eviction through demolition of homes of the Petitioners and other residents of the Kibos Informal Settlement, without warning, any or reasonable notice in writing or availing them information regarding the evictions is a violation of their fundamental right of access to information guaranteed by article 35 (1) of *the Constitution* of Kenya 2010 and that any forcible, violent and brutal eviction through demolition of homes of the Petitioners and other residents of the Kibos Informal Settlement, and the destruction of the building materials and their household goods in the process, without Court order/s and without according them an opportunity to salvage any of their belongings is a violation of their fundamental right to protection of property guaranteed by article 40 (1), (3) and (4) as read with article 21 (3) of *the Constitution* of Kenya.
- v. A declaration that any forcible, violent and brutal eviction through demolition of homes of the Petitioners and other residents of the Kibos Informal Settlement, without according them alternative shelter and or accommodation and leaving them to live in the open exposed to the elements and vagaries of nature is a violation of their fundamental rights to accessible and adequate housing, reasonable standards of sanitation, health care services, freedom from hunger and the right to clean and safe water in adequate quantities guaranteed by article 43 (1) read with articles 20 (5) and 21 (1), (2) and (3) of *the Constitution* of Kenya 2010 and that any violent and brutal eviction through demolition of homes of the Petitioners and other residents of the Kibos Informal Settlement, without any Court order/s, warning, any or reasonable notice in writing or availing them information and reasons regarding the demolitions and evictions is a violation of their fundamental right to fair administrative action guaranteed by article 47 of *the Constitution* of Kenya 2010.
- vi. a declaration that any forcible, violent and brutal eviction through demolition of homes of the Petitioners and other residents of the Kibos Informal Settlement without according them alternative shelter and/or accommodation and leaving to live in the open exposed to the elements and vagaries of nature is a violation of their fundamental rights to physical and mental health, and the fundamental right to physical and moral health of the family under articles 16 and 18 of the ACHPR read with article 2 I6) of *the Constitution* of Kenya 2010 and a declaration that any forcible, violent and brutal eviction through demolition of homes of the Petitioners without according their children alternative shelter and/or accommodation and leaving the children to live in the open exposed to the elements and vagaries of nature is a violation of the fundamental rights of children to basic nutrition, shelter and healthcare and protection from abuse, neglect and all forms of violence and inhuman treatment and to basic education guaranteed by article 53 (1) (b), (c), (d) and (2) read together with article 21 (3) of *the Constitution* of Kenya 2010 and article 28 of the ACHPR read with article 2 (6) of *the Constitution* of Kenya 2010.
- vii. A declaration that any forcible, violent, and brutal eviction through the demolition of homes of the elderly persons among the Petitioners without according them alternative shelter and/or accommodation rendering them to live in the open exposed to the elements and vagaries of nature is a violation of the fundamental rights of the elderly persons to the pursuit or personal development, to live in dignity, respect and freedom from abuse and to receive reasonable care and assistance from the state guaranteed by article 57 (b) (c) and (d) as read with article 21 (3) of *the Constitution* of Kenya 2010.



- viii. And prayed for an order that the 1st to 6th respondents bear the Petitioner's costs of this litigation while the Interested Parties each bear their own costs and a structural interdict or continuing mandamus under Article 23 of *the Constitution* of Kenya 2010, directing the 1st to 6th Respondents to file affidavits in court, within a period determined by the court, indicating their status of compliance with the orders issued in this petition.
11. In response to the petition, the appellant stated that vide a vesting order of 1986 contained in legal notice number 24 of 1986 which replaced and revoked the vesting of land regulation 1963 (L/N440/1963), the suit property was surveyed and reserved as Kenya Railways land. From the records at the appellant's and the Survey of Kenya, the suit property is clearly demarcated, surveyed, and alienated as the Kibos Railways station reserve.
12. It was the appellant's case that the suit property was designated and reserved for the Kibos Railways Station and is not un alienated land as per the Government *Land Act* so there was no way the same could have been alienated in favour of respondents.
13. It was further averred that the suit property was clearly earmarked as reserved for the Kibos Railway Station as such, there is no way the respondents could claim ownership or acquire any proprietary rights capable of protection by the law neither were they involved in the transfer of the suit property to the respondents.
14. Regarding the notices, the appellant maintained that the respondents and other encroachers and trespassers on Railway Lands and reserves had been given sufficient notices to vacate and/or remove any illegal structures. The first notice was a Public Notice in the Government Publication on 20th March 2018, another in the Daily Newspapers on the 27th of September 2019, and again on the 30th of September 2019. The respondents were also served with another public notice on 9th August 2020. The said notices remained in force for a year, and the respondents only came to court after the illegal structures were removed in February 2021.
15. In its cross-petition, the appellant stated that vide a deed plan No. 424626, survey plan No. 612/125, railway reserve layout- drawing No. 2206/1, and Aerial imagery overlaid by the station boundary from the director of survey, the suit property falls within the Kenya Railways operational land in Kibos Railway station and shows the location and extend of the Kibos Railway Station Operational area.
16. The appellant denied ever alienating, disposing of, or transferring ownership of the suit property or any part of their operational land in Kibos to the respondents neither had they surrendered the suit property or any part of their Kibos Railway land to the Government nor any other authority for allocation to any entity. It termed the said allocation of titles over the suit property as creatures of fraud, void, and of no legal effect.
17. In his determination, the learned judge found that the respondents had established that they still maintained a licence in respect of the disputed land and therefore have rights capable of being protected by the court. The learned judge noted that since the colonial government gave them property that can be described as a long-term licence during their lifetimes, the same cannot be taken away from them.
18. The learned judge found that the act of appellant evicting the respondents from the suit property in dispute was a violation of Article 40 of *the constitution* of Kenya, as it amounted to deprivation of property; and a deprivation of an interest in property that was given to the forefathers of the respondents in the year 1937, when the land tenure at that time was very informal and not as formal as it is today. The learned judge noted that the respondents could not be said to be in an illegal occupation of the land as they have a long term licence comprising a period of their lifetime.



19. The learned judge agreed with the respondents that the land occupied by them, all family members, and heirs to the original licencees to the portion of Kibos Township Crown Land LR NO.655, a subdivision of the original LR NO 654/38Riyec.1, never became part of the land vested in the appellant as the same had been alienated in 1937; and therefore, the eviction, destruction and demolitions of the respondent's property was an affront to the respondents' rights to property.
20. The learned judge found in favor of the respondents that the evictions were irregular, illegal, and unprocedural. The evictions were conducted contrary to the provisions of section 152B of the [Land Act 2012](#) which provides that evictions should be conducted in accordance with the Act and that any unlawful occupant of private, community, or public land shall be evicted in accordance with the Act.
21. The learned judge observed that by destroying the respondent's houses, hospitals and mosques, the appellant and the Cabinet Secretary, Ministry of Interior and Coordination of National Government denied the respondents their socio-economic and cultural Rights under Article 43 of [the constitution](#) of Kenya 2010 yet the State had a duty to refrain from interfering directly or indirectly with the respondent's enjoyment of their socio-economic rights, instead of stepping in and helping them as its citizens.
22. The learned judge concluded that the appellant and the 9th respondents never followed the above-stated procedure violating the respondent's rights to a fair administrative action contrary to Article 47 of [the constitution](#) and granted the various declarations sought.
23. Aggrieved by the judgment, orders, and directions given by the trial court, the appellant has lodged the instant appeal citing 13 grounds which can be compressed as follows: That the learned Judge erred in law and in fact by:
 - i. Finding that the 1st to 6th respondents still maintained a licence in respect of the suit land as such, their rights was protected under Article 40 of [the constitution](#).
 - ii. Finding that the suit land was alienated land and the 1st to 6th respondents held valid licences, yet the evidence tendered indicated that the suit land was alienated property vested in the corporation.
 - iii. Finding that the eviction was carried out without reasonable notice.
 - iv. Finding that a separate suit ought to be filed in a separate Civil Suit for compensation as damages incurred could not ascertained in the petition, yet the same could amount to res judicata.
 - v. Failing to analyse the evidence, shifting the burden to the appellant, and in considering irrelevant facts, ignoring the relevant facts thereby arriving at an erroneous conclusion.
24. At the hearing of this appeal, Mr. Ouma learned counsel appeared for the appellant, Mr. Maua learned counsel appeared for the 1st to 6th respondents while Mr. Nyamori appeared for the 13th respondents. The 7th, 8th, 9th, 10th, 11th, 12th, 14th, and 15th neither appeared nor filed submissions though properly served.
25. It is submitted on behalf of the appellant that the learned judge erred in finding that the 1st – 6th respondents had enforceable rights to property under Article 40 of [the Constitution](#) in respect to the suit property based on the licences issued to the Nubian soldiers in 1937.
26. It is contended that the 1st to 6th respondents never tendered any evidence they relied on, but instead, relied on the evidence tendered by the 13th respondent. From the said documents, the former Nubian



soldiers were moved from the old Kisumu Airport to Kasagam Area and some did not move, and then had to go to Kibos. Those who moved to Kibos, and even those who moved to Nubian villages in Kaloleni and Kasagam areas, were to move and occupy houses and plots that were given to them based on 50 x 50 parcels.

27. It is further submitted that by a letter dated 15th June 1936, the Commissioner of Lands noted that there were Nubians who did not want to go to Kasagam but wanted to move to other areas and requested to be paid money, that is, the houses they had been allocated would be sold; then they could be paid those monies, and they would move elsewhere; further that the said Nubians would get a temporary occupation license of land and would pay rent at the rate of Kshs.2/- per month.
28. Counsel submitted further that the said licences were temporary, and were to expire upon their death or the heirs paying monthly rents. Despite the heirs laying claim, the respondent claimed no evidence was tendered to establish the nexus; that there was no proof of payment of the rent in the temporary occupation; and there was no survey report confirming the extent of the parcel allotted to the respondents.
29. Regarding the eviction, the appellant submitted that three uncontested notices were issued over one year asking any person who had any grievance or any issue along the railway corridor from Nakuru to Kisumu to go to railways corridor and then confirm whether their land was on the reserve. None of the respondents went to appellant.
30. In opposing the appeal, learned counsel Mr. Maua relied on section 152(c) of the *Land Act* which specifically provides for a notice and who is mandated with the issuance of such notices. Counsel stated that no notice was ever issued by the National Land Commission, the 10th respondent.
31. It is contended further that Regulation 68 of the Land Regulations provides that an eviction is supposed to take place between 6 a.m. and 6 p.m. The impugned eviction however took place at 3:00 am, during the Covid-19 pandemic and when there was a curfew in place between 7 p.m. and 6 a.m.
32. On its part, the Legal Advice Centre t/a Kituo Cha Sheria, the 13th respondent, limited its submissions on the issue of ownership of the suit property. It was submitted that both the 1902 and 1915 Crown Lands Ordinances granted the Governor of the Colony and the Protectorate of Kenya the power to grant, lease, assignments, and licences or otherwise alienate Crown lands which power included the power to delegate some of his authority to other officers of the Colonial Government such as the General Manager of the Kenya-Uganda Railway and Harbors.
33. Pointing to the gazette notice of the Colony and Protectorate of Kenya (Vol. XXVIL-No. 1,036) dated 13th October 1925 it was submitted that it included a notice by the Colonial Secretary proposing to fix the boundaries of certain Native Reserves including township of Kisumu and the township reserves of Kibos and Kibigori and all railway station and other railway areas along the Uganda Railway from the northwest corner of L.O. No. 648/1 to Kisumu, together with the 100-foot northern and southern railway zones, be excluded from the Central Kavirondo Native Reserve. The listed areas were excluded from the application of the Native Lands Ordinances and left under the Crown Lands Ordinance with authority to make any alienation thereon reserved for the Governor of the Colony and Protectorate of Kenya.
34. Pursuant to the said powers, the Governor of the Colony and Protectorate of Kenya, after a protracted negotiation between the colonial government and representatives of the Nubian community in Kisumu, entered into an understanding with and authorized alienation of part of Kibos township to the benefit of the then approximately 66 Nubian families whose dwellings had been demolished at



the ‘Old Kisumu’ Nubian village but who dissented against the house grants offered by the colonial government at the Nubian village between Kaloleni and Kasagam areas.

35. The agreement allowed for continued occupancy of the disputed land in perpetuity by the heir of the licensees and the community to use the land for cultivation by the licensees and/or their members of the family and/or their heirs. The community has remained in possession and active occupation in continuity, in publicity, and to an extent that shows that their possession and occupation are adverse to any other past and/ or new claim to the said part of the Crown Land L.R. No. 655.
36. Having evaluated the rival written submissions by learned counsel, examined the record of appeal, and considered the authorities cited, the issues for determination in this appeal are whether the respondents’ rights were violated and whether the manner of the demolition and or eviction of the respondents by the appellants was justified. This being a first appeal, it is the Court’s duty to analyze and re-assess the evidence on record and reach its own conclusions in the matter as was appropriately held in *Kenya Ports Authority v Kuston (Kenya) Limited* [2009] 2EA 212:

“on a first appeal from the High Court, the Court of Appeal should reconsider the evidence, evaluate it itself, and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in that respect. Secondly that the responsibility of the court is to rule on the evidence on record and not to introduce extraneous matters not dealt with by the parties in the evidence...”
37. This Court will rarely interfere with findings of fact by a trial court unless it can be demonstrated that the judge has misdirected himself or acted on matters which he should not have acted upon or failed to take into consideration matters which he should have taken into consideration and in doing so arrived at a wrong conclusion.
38. Section 40 of *the Constitution* of Kenya, 2010 provides:
 1. Subject to article 65, every person has the right, either individually or in association with others, to acquire and own property—
 - a. of any description and
 - b. in any part of Kenya.
 2. Parliament shall not enact a law that permits the State or any person—
 - a. to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or
 - b. to limit, or in any way restrict the enjoyment of any right under this article on the basis of any of the grounds specified or contemplated in article 27(4).
 3. The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—
 - a. results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with chapter five; or
 - b. is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that—
 - i. requires prompt payment in full of just compensation to the person; and



- ii. allows any person who has an interest in, or right over, that property a right of access to a court of law.
4. Provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land.
 5. The rights under this article do not extend to any property that has been found to have been unlawfully acquired.
 6. The State shall support, promote, and protect the intellectual property rights of the people of Kenya. Article 43 of *the Constitution* of Kenya 2010 that provides for the socio-economic and cultural rights thus: -
 1. Every person has the right—
 - a. ...
 - b. to accessible and adequate housing and to reasonable standards of sanitation;
 - c. In their petition before the high court, the respondents alleged that they were not served with any notice in respect of the demolitions of 16 March 2020. They complained that Kenya Railways evicted them from their settlement contrary to the Land Laws Amendment Act of 2016, which mandated a 90-day eviction period. Worse, the eviction was effected at night and when a curfew of 6:00 pm to 6:00 am was in place.
39. The legal provision for an eviction from public land is provided for in Section 152G of the Land Laws Amendment Act 2016. It states that any evictees from public land should be notified in writing, by notice in the Gazette, and in one newspaper with nationwide circulation and by radio announcement, in a local language, where appropriate, at least three months before the eviction.
 40. The Kenyan Constitution establishes a non derogable bill of rights, and establishes the 10th respondent to manage public land on behalf of national and county governments. Since *the Constitution* does not have an article dealing with eviction, it therefore, must be construed together with other international principles which have been allowed under Article 2(6) and include international law dealing with human rights which protect evictees or those about to be evicted.
 41. Treaties and conventions ratified in Kenya form part of Kenyan law and are therefore binding to Kenya and can be interpreted as such by Kenya Courts. The Courts have recognized the UN Covenant on Economic, Social and Cultural Rights (CESCR). The Right to Adequate Housing which requires the state to refrain from forced evictions. However, where there is unlawful occupation, forceful eviction must be carried out in a humane manner. The procedures to be followed during forced evictions include;
 - i. an opportunity for genuine consultation with those affected;
 - ii. adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
 - iii. information on the proposed evictions and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
 - iv. especially where groups of people are involved, government officials or their representatives to be present during an eviction;



- v. all persons carrying out the eviction to be properly identified;
 - vi. evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise;
 - vii. provision of legal remedies; and provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.
42. From the foregoing, it is quite evident that the Statutory Procedure for evictions was not followed and that the respondents were not given sufficient notice. In any eviction, forcible or otherwise, adequate and reasonable notice should be given. Respect for human rights, fairness, and dignity in carrying out the eviction should be observed, and the constitutional and statutory provisions on fair administrative action must be adhered to.
43. Odunga, J. [as he then was] in *Kepha Omondi Onjuro & others v Attorney General & 5 Others* [2015] eKLR held that:
- “...it is imperative at this juncture to appreciate that there is no legal framework existent in Kenya guiding evictions and demolitions.... However, Article 2 (5) and
- (6) of *the Constitution* provides that the general rules of international law shall form part of the law of Kenya, and any treaty or convention ratified by Kenya is part of the law of Kenya. Based on Article 2 (5) and (6), the 1st respondent submitted that the trial court did not err in placing reliance upon the United Nations Declaration of Human Rights. Counsel submitted that the trial court did not err when it expressed that “where the State allows people to occupy land, be it government or private for a considerable period of time so that the people consider the said land to be their homes, it would be inhuman for the State to suddenly evict them forcefully therefrom without affording them an opportunity to seek alternative mode of accommodation...”
44. In the instant appeal, the respondent’s right to housing was violated as their houses were demolished without considering their welfare. By destroying the respondents’ houses, churches, and schools, the respondent denied the respondents’ socio- economic and cultural rights under Article 43 of *the Constitution* of Kenya 2010. We detect no error in law or on application of legal principles on the part of the learned judge, as to warrant interference with his decision.
45. Did the trial court properly evaluate the evidence tendered? In his determination, the learned judge noted as follows;
- “The petitioners have established that they still maintain a licence in respect of the disputed land and therefore have rights capable of being protected by the court. The colonial government gave them property that can be described as long term licence during their lifetimes and therefore, the same cannot be taken away. The act of Kenya Railways evicting the petitioners from the property in dispute is a violation of Article 40 of *the constitution* of Kenya as it amounts to deprivation of property of a description and a deprivation of an interest in property that was given to the forefathers of the petitioners in the year 1937 when the land tenure at that time was very informal and not as formal as it is today. The petitioners cannot be said to be in an illegal occupation of the land as they have a long term licence comprising a period of their lifetime.”



46. It is manifest from the excerpt of the judgment that the trial court considered and analyzed the evidence tendered. The appellant has not demonstrated that it suffered any prejudice or a miscarriage of justice. The trial court considered all relevant facts and points of law urged by the parties. The contention that the learned Judge did not analyse the evidence lacks merit consequently, the appeal is dismissed with costs to the 1st to 6th and 13th respondents.

DATED AND DELIVERED AT KISUMU THIS 21ST DAY OF MARCH, 2025.

ASIKE–MAKHANDIA

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JUDGE OF APPEAL

H. A. OMONDI

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JUDGE OF APPEAL

L. KIMARU

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR

