



**Kamire & 68 others v Uasin Gishu County Governemnt (Environment & Land  
Petition 4 of 2018) [2023] KEELC 210 (KLR) (26 January 2023) (Judgment)**

Neutral citation: [2023] KEELC 210 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND PETITION 4 OF 2018**

**EO OBAGA, J  
JANUARY 26, 2023**

**IN THE MATTER OF ARTICLES 1,2, 10, 22, 28, 40, 43, 47, 55, 57 & 186 OF  
THE CONSTITUTION OF KENYA, 2010ANDIN THE MATTER OF THE  
CONSTITUTION OF KENYA (PROTECTION OF RIGHTS & FUNDAMENTAL  
FREEDOMS) PRACTICE & PROCEDURE RULES, 2013AND IN THE MATTER  
OF ALLEGED CONTRAVENTION OF RIGHTS UNDER ARTICLES 28,40, 43, 55  
& 57 OF THE CONSTITUTION OF KENYA, 2010ANDIN THE MATTER OF THE  
REGULATION OF SMALL SCALE TRADE, LICENCING EXCLUDING PROFESSIONAL  
LICENCING AND FAIR TRADE PRACTICES IN UASIN GISHU COUNTYBETWEEN**

**BETWEEN**

**ISIAIAH KAMIRE & 68 OTHERS ..... PETITIONER**

**AND**

**UASIN GISHU COUNTY GOVERNEMNT ..... RESPONDENT**

**JUDGMENT**

**Introduction;**

1. The Petitioners who are small scale traders within Eldoret Town filed this Petition against the Respondent seeking the following reliefs: -
  - a. That a declaration do issue pursuant to Article 2(4) of *the Constitution* of Kenya, 2010 that the acts and/or omissions of the Respondent in failing to obtain a decree for eviction or pursuing the legally recognized legal channels for terminating an interest in land are a nullity and invalid for failure of compliance with Articles 1,10,28,40, 43, 47, 55, 57 and 186 of *the Constitution* of Kenya, 2010, it violates the tenet of legitimate expectation and the Respondent has no mandate whatsoever to evict the petitioners from the designated hawking zones without following the law and *the Constitution* of Kenya, 2010.



- b. That the Petitioner prays for damages for breach of the Constitutional rights under Articles 28,40, 43, 47, 55, 57 and 186 of *the Constitution* of Kenya, 2010.
- c. That the Respondent by itself, its servants and/or agents be compelled to return all metallic stands of the petitioner's which they use to display the wares, allow the Petitioners to occupy the same trade area and/or stalls as initially allocated within the Main Eldoret Bus Park and it be restrained from evicting and/or unlawfully removing the Petitioners or interfering with their trade activities
- d. That the costs of the petition be awarded to the petitioner.
- e. That any other appropriate relief that the court may deem fit to grant.

**Background;**

- 2. The Petitioners had been selling their wares around the main bus park for some time. The Respondent used to collect charges of Kshs 180/= from each of the traders on a weekly basis. With time as the number of traders increased, the traders extended their trade on to the back streets, pavements, and the roadside of streets within town.
- 3. The actions of the traders became a nuisance as they blocked entrances to business premises operated by other large scale traders, fire lanes, and colleges. As a result of this, there was garbage littered all over which became a health hazard and there was no passage for fire engines in case a fire broke out as the traders had blocked the fire lanes using their metallic stands where they used to display their wares.
- 4. As a result of the complaints from the other traders and colleges around town, the Respondent embarked on building and upgrading markets within the town Centre and surrounding estates where the traders were allocated stalls. Despite the traders being allocated stalls within the refurbished markets, the traders left the stalls and came to operate from the streets in town.
- 5. The Respondent had a meeting with the traders where they were informed of the need to take up the spaces where they had been allocated. The traders did not heed this. The Respondent was forced to issue a notice asking the traders to vacate. When the traders did not vacate, the Respondent moved in and evicted them from the streets. The Respondent also confiscated their metallic stands which were taken to its stores.
- 6. It is the Respondent's action which prompted the Petitioners to file this petition. The Petitioner contemporaneously filed an application seeking conservatory orders. When the application was placed before the court for hearing, the court directed that the Respondent do release the confiscated metallic stands. Conservatory orders were also granted pending hearing and determination of the application. The application was finally heard but was dismissed. No conservatory orders were granted.

**Petitioners' contention;**

- 7. The petitioners contend that their removal from where they were operating was done without any court order to do so and that as they had operated on the same area since 1983 and as the Respondent and its predecessor had permitted them to operate from there, their legitimate expectation had been interfered with without any justifiable reason. The Petitioners therefore contend that their constitutional rights had been violated.
- 8. The Petitioners contend that their removal from their area of operation amounted to deprivation of right to property contrary to Article 40 of *the Constitution*. They further contend that the Respondent violated their right to fair administrative action contrary to Article 47 of *the Constitution*.



9. The Petitioners state that the activities which they were carrying out was their main stay and a means of sustaining themselves financially and by the Respondent evicting them, this contravened their Constitutional rights which are protected under Article 43 of *the Constitution*.

#### **Respondent's contention;**

10. In response to the petition by the petitioners, the Respondent stated that the petition does not raise any constitutional issues and that the petitioners have not stated in which manner their rights were violated contrary to the principles laid down in the case of Amarita Karimi Njeru case.
11. The Respondent states that the Petitioners were called to a meeting where they were informed that there were complaints from members of the public on their activities which were interfering with the business of others. The meeting was followed by a notice to vacate after the Respondent had allocated stalls to the Petitioners across the markets in Eldoret suburbs.
12. The Respondent denies the Petitioners' contention that their legitimate expectation had been interfered with as the Respondent had given the Petitioners alternative areas from where to operate but instead the petitioners abandoned the stalls and flocked back to the town streets where they became a menace.
13. The Respondent contends that it is mandated by *the Constitution* and the relevant laws to ensure that there is order in the manner various businesses are carried out.

#### **Analysis and determination;**

14. The parties were directed to file written submissions in respect of the petition. The petitioners filed their submissions on 10<sup>th</sup> July, 2022. The Respondent filed its submissions on 2<sup>nd</sup> November, 2022. I have carefully considered the Petitioners petition as well and the opposition to the same by the Respondent. I have also considered the submissions filed by the parties herein. The only issue for determination is whether the petitioners have proved that their Constitutional rights were violated as alleged.
15. In the case of Anarita Karimi Njeru – Vs- Republic (1979) eKLR the Court stated as follows:-

“(c) we would, however, again stress that if a person is seeking redress from the High Court on a mater which involves a reference to *the constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions infringed, and the manner in which they are alleged to be infringed”.
16. In the instant petition, the Petitioners have merely stated that their constitutional rights under Articles 40, 43, 55, 57 and 186 of *the Constitution* were violated. They have not stated in which manner the alleged infringement occurred. It is not in contention that the petitioners had been allocated spaces from where they were operating. Instead of the Petitioners operating from their designated places, they went on to display their wares on verandahs, back streets, main streets and on fire lanes.
17. There were complaints from various individuals and entities. It became impossible for vehicle and humans to move around. The matatu owners wrote complaints on how the traders had made their movement within the stage impossible. The Medical Training College Eldoret complained of noise pollution as the Petitioners were operating right outside their college. Various business owners complained that the entrance to their business premises had been blocked.



18. There was filth all over as garbage could not be collected due to blockage by the Petitioners. As a result of this, there were meetings with the Petitioners where it was resolved that the Petitioners move out of the Central Business District. In this regard the Respondent prepared various markets to accommodate the Petitioners. The markets were Kahoya, Langas, Cherunya, Hawkers market and Kimumu market among others.
19. Though the petitioners were assigned stalls in these markets, they abandoned them and came back to operate from the streets. A notice had to be given after which the Petitioners were removed from the Central Business District.
20. The Petitioners contend that their eviction was without a court order contrary to Article 186 of *the Constitution*. The Respondent did not have to get a court order to remove them. There are by-laws and regulations which govern the orderly conduct of the business of small scale traders like the Petitioners. The Respondent did not therefore need a court order to remove them.
21. Article 186 of *the Constitution* deals with functions and powers of the National and County governments and has nothing to do with court orders. The allegation by the petitioners that their removal without a court order contrary to Article 186 of *the Constitution* is therefore misplaced.
22. The Petitioners contend that their rights under Article 47 of *the Constitution* were violated. They contend that they were not given any reasons for their removal. Article 47 of *the Constitution* provides as follows: -
  1. Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
  2. If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
  3. Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall;
    - a. Provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and
    - b. Promote efficient administration.
23. It is pursuant to Article 47 of *the Constitution* that the *Fair Administrative Action Act* was enacted. In the instant case, when the Respondent received complaints from the matatu organization within Eldoret and other organizations including the Fire Department of the Respondent, a meeting was convened where the Petitioners were represented. The Petitioners were informed of the need to move out of the Central Business District to the markets which had been set up within the suburbs of Eldoret Town.
24. The Petitioners were allocated stalls in these markets but they abandoned them. A 30-day notice was issued after which the Petitioners were removed. The Petitioners cannot therefore allege that they were not given a fair hearing before they were removed.
25. To demonstrate the urgent need for the removal of the petitioners, there was a fire incident which started from a hotel within Komora building in the town. The fire engine came but could not access the building because the Petitioners had blocked the fire lanes which the fire engine could have used to access the building in time to put out the fire.



26. The Petitioners were treated fairly. They were given adequate notice to move and were given reasons why they were being moved. I therefore find that the constitutional rights of the Petitioners under Article 47 of *the Constitution* were not violated.
27. The Petitioners contend that their rights under Article 40 of *the Constitution* were violated. They did not state in which manner their rights were violated under this Article. Article 40 of *the Constitution* states as follows:-
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 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.
28. The Petitioners were allocated stalls from where they were supposed to operate but they instead abandoned the stalls and came to the streets. The Petitioners had no proprietary rights over the verandahs and along the streets from where they were operating. They had not even been given temporary occupation licenses to operate on the road reserves or back streets. They cannot therefore allege that their eviction amounted to deprivation of their property rights.
29. Under the *Urban Areas and Cities Act* No 13 of 2011 the objectives of integrated urban and city development planning include nurturing and promotion of development of informal commercial activities in an orderly and sustainable manner. The other objective include contribution to the protection and promotion of the fundamental rights and freedoms contained in Chapter Four of *the Constitution* and the progressive realization of the Social economic rights.
30. The Urban Areas and Cites Act No. 13 of 2011 was assented to on 27<sup>th</sup> August 2011. It came into force after the first general elections under the 2010 Constitution. Parts of it like part VIII became operational after the repeal of the Local Government Act. The Respondent's action of removing the Petitioners from the Central Business District was in compliance with section 36 of the said Act under subsection (1) (c) and (e) as shown in paragraph 29 herein above.



31. The Respondent was under obligation to ensure that the small traders like the Petitioners conducted their business in an orderly manner. The Respondent could not watch as other persons businesses were blocked, fire lanes blocked and colleges subjected to noise and the degradation of the environment by the litter from the business of the petitioners. The Respondent was also obliged to ensure that there was free flow of vehicles.
32. In keeping with the progressive realization of the Social economic rights of the Petitioners as per section 36 (1) (c) of the *Urban Areas and Cities Act*, the Respondent opened various markets where the Petitioners were to operate from. There was therefore no violation of the Social economic rights of the Petitioners under Article 43 of *the Constitution* as alleged.
33. The Petitioners allege that there was violation of their right to legitimate expectation. In the case of Diana Kethi Kilonzo & another – Vs- The Independent Electoral & Boundaries Commissions (IEBC) & 2 others (2013) eKLR the court stated as follows:-
- “ At its core, and in its broad sense, the doctrine of legitimate expectation is said to arise out of a promise made by a public body or official which the person relying on anticipates will be fulfilled. It is also said to arise out of the existence of a repeated or regular practice of the public body or official which could reasonably be expected to continue. Essentially, once made, the promise or practice creates an estoppel against the public body or official, so that the person benefitting from the promise or practice would continue to so benefit, and that the promise or practice would not be withdrawn without due process or consultation.”
34. In Council of Civil Service Unions and others – Vs- Minister for the Civil Service (1985 A C 374 (408 -409), it was observed that for a legitimate expectation to arise, the decisions of the administrative authority must affect the person by depriving him of some benefit or advantage which either;
- i. He had in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or
  - ii. He has received assurance from the decision maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn.”
35. It is the petitioners’ contention that the Respondent violated that right to legitimate expectation. As can be seen from the case of Diana Kethi Kilonzo and Council of Civil Service Unions and others (Supra), there was no violation of the right to legitimate expectation by the Respondent. The Petitioners were given alternative markets from where they were to operate. These are Kahoya market, West Market, Kipkaren Market, Hawkers markets, Kapsoya market, Kimumu market, Langas market, Cherunya market and Kapsaret market.
36. The Petitioners were consulted and were given reasons why they were being moved out of the Central Business District. They cannot therefore claim that their rights to legitimate expectation was violated.
37. Article 55 and 57 of *the Constitution* deal with youth and minorities and marginalized persons respectively. The state is under obligation to ensure that these groups are catered for. There is nothing in the petition to show that any of the rights of the groups under those Articles were violated. As has been stated hereinabove, the Respondent acted within the confines of *the Constitution* and the statutes which govern their mandate. The metallic stands which had been confiscated from the petitioners were returned upon the court order directing the Respondent to do so.



**Disposition;**

38. It is clear from the above analysis that the Petitioners petition is misconceived. The same is dismissed.  
Each party shall bear their own costs.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 26<sup>TH</sup> DAY OF JANUARY, 2023.**

**E. O. OBAGA**

**JUDGE**

**In the virtual presence of;**

**Mr. Mogambi for Petitioners**

**Ms. Chesoo for Respondent.**

**Court Assistant – Akidor**

**E. O. OBAGA**

**JUDGE**

**26<sup>TH</sup> JANUARY, 2023**

