



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
MILIMANI LAW COURTS
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION PETITION NO. 376 OF
2012

BETWEEN

MOSES ONCHIRI

(Suing on his own behalf and in the interest of 475 other persons being former inhabitants of KPA MAASAI VILLAGE,

EMBAKASI WITHIN NAIROBI) 1ST PETITIONER

AND

KENYA AIRPORTS AUTHORITY.....1ST RESPONDENT

CITY COUNCIL OF NAIROBI.....2ND RESPONDENT

THE MINISTER FOR INTERNAL SECURITY

PROVINCIAL ADMINISTRATION.....3RD RESPONDENT

THE MINISTER FOR LANDS.....4TH RESPONDENT

THE HON. ATTORNEY GENERAL.....5TH RESPONDENT

JUDGMENT

1. This matter was commenced by a petition dated 3rd February 2012. The petitioners, who were at all material times residents of KPA Maasai Village, allege that they were evicted from their homes situated at Maasai Village, North Airport Road on or about 29th October 2011 by agents of the respondents. They allege that as a result their fundamental rights and freedoms were violated.

2. This is the second suit involving evictions from the area. In a similar case *Nairobi Petition No. 356 of 2013 June Seventeenth Enterprises Ltd (Suing on behalf of and in the interest of 223 Others) v Kenya Airports Authority and Others*, I considered the issue whether the evictions of residents of Maasai Village constituted a violation of fundamental rights and freedoms. By a judgment delivered on 14th February 2014, I made the following reliefs;

a. *The case against Kenya Airports Authority and Nairobi City Council is dismissed with no order as to costs.*

b. *It is declared that the State has violated the provisions of Article 21 by failing to develop and enact a policy and legislation to deal with forced evictions.*

c. *It is declared that the rights and fundamental freedoms protected under Articles 28, 29, 43 and 47(1) of the Constitution of the occupants of LR No. 209/13418, 209/13419, 209/13420 and 209/13421 situated along Airport North Road otherwise known as Maasai Village were violated by the 3rd and 4th respondents when they were evicted from the said land on 29th October 2010.*

d. *Each of the 223 persons represented in these proceedings represented by the petitioner is awarded Kshs.150,000/= as damages for violation of their fundamental rights.*

3. At the commencement of the hearing of the present case, I requested the parties to address the Court on the import of the said judgment. All parties are agreed that as the judgment involves the same cause of action and subject matter, it should be binding and applied in this matter. Mr Ojwang', counsel instructed by the Attorney General, is of the view that although liability is established, the Court should consider the issue of damages separately. Mr Ayekha, counsel for the petitioner, is also of the view that liability is established and that damages should be considered separately.

4. I am in agreement with counsels' views that liability for events that occurred at Maasai Village on 29th October 2010 has been established by the judgment dated 14th February 2014 in *Nairobi Petition No. 356 of 2013* and it is to that extent adopted in this matter.

5. This leaves the issue of reliefs. Apart from the declarations, the petitioners have sought damages for loss based on the preliminary report and assessment of properties prepared by

Dantu Valuers dated 13th January 2012. The valuation report shows that the total value of loss as a result of the eviction for the vacant plots, semi-permanent buildings, single and double story amounts to Kshs 1,557.7 billion. Mr Ayekha urged the Court to grant the said amount.

6. Mr Ojwang' contended that damages should be limited to the 40 persons who signed the authority to institute the proceedings, as attached to the petition. He contends that the valuation relied upon by the petitioner is nonfactual and cannot be a basis for assessing loss and damage.

7. The principles upon which the Court grants special damages are well settled. They must be pleaded and proved. This has not been done in the petition and furthermore, even the evidence, while demonstrative of some loss, does not point to specific loss by specific individuals. In the circumstances, the pleadings do not support the claim and the evidence lacks a factual basis.

8. Whether the Court should award damages to all the persons whose names are stated is an important issue. In a representative suit such as this one, the parties represented must consent to their names being used in the suit by appending their signatures or some explanation must be given as to the failure to do so. Unlike in *Petition No. 356 of 2013*, where the petition was not opposed on that basis in this matter, it has been raised in this matter. The signatures on the list confirm that the persons listed therein have agreed that they be represented in the suit.

9. In the circumstances, I find and hold that unless the other claimants establish that their instructions were given at the time of filing the suit, the damages shall be limited to those who have signed the authority.

10. In view of the foregoing, I now enter judgment in this matter on the following terms;

a. The case against the 1st and 2nd respondent is dismissed with no order as to costs.

b. It is hereby declared that the State has violated the provisions of Article 21 by failing to develop and enact a policy and legislation to deal with forced evictions.

c. It is hereby declared that the rights and fundamental freedoms protected under Articles 28, 29, 43 and 47(1) of the Constitution of the occupants Maasai Village situated along North Airport Road, Embakasi (“the suit property”) were violated by the 3rd and 4th respondents when they were evicted from the said land on 29th October 2010.

d. The represented persons who have executed the legal authority are awarded Kshs 150,000/= as damages for violation of their fundamental rights and freedoms.

e. The petitioner is awarded costs of the suit.

DATED and DELIVERED at NAIROBI this 18th March 2014.

D.S. MAJANJA

JUDGE

Mr Ayekha instructed by Khaminwa and Khaminwa Advocates for the petitioners.

Mr Mutua instructed by E.K. Mutua and Company Advocates for the 1st respondent.

Mr Omwebu instructed by Prof Tom Ojienda Advocate for the 2nd respondent.

Mr Ojwang’, Litigation Counsel, instructed by the State Law Office for the 3rd, 4th and 5th respondents.



While the design, structure and metadata of the Case Search database are licensed by [Kenya Law](#) under a [Creative Commons Attribution-ShareAlike 3.0 Unported License](#), the texts of the judicial opinions contained in it are in the [public domain](#) and are free from any copyright restrictions. Read our [Privacy Policy](#) | [Disclaimer](#)