



Ibrahim Sangor Osman v. Minister of State for Provincial Administration and Internal Security

(2011) eKLR (Kenya).

Country: Kenya

Region: Africa

Year: 2011

Court: High Court of Kenya at Embu

Health Topics: Diet and nutrition, Health care and health services, Violence, Water, sanitation and hygiene

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment, Right of access to information, Right to due process/fair trial, Right to housing, Right to liberty and security of person, Right to life, Right to water and sanitation

Facts

The petitioners claimed that a group of armed police officers arrived on their land and without warning or a court order begun demolishing the houses and structures of the petitioners, leaving them homeless. Further, they alleged that police used tear gas and physical violence to evict the petitioners, who were resisting the demolition. The petitioners were granted an interim mandatory injunction providing them with alternate housing, food, clean and safe drinking water, and health care. Since the incident, the petitioners have returned where their homes were demolished. The petitioners alleged that this forcible, violent and brutal eviction without providing alternative shelter, leaving them homeless, with no written notice and without the possibility of saving any of their belongings was contrary to the provisions of Constitution of Kenya and the relevant international instruments.

In particular, a representative petitioner, Mr. Osman, filed a petition against the Minister of State for provincial administration and internal security of Kenya on his behalf and on the behalf of 1,122 persons who were evicted from the Medina location. They alleged that this eviction breached a number of provisions of the Constitution of Kenya, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the African Charter on Human and Peoples' Rights (ACHPR), including the right to access to information, to due process, to food, to health, to housing, to liberty and security of the person, to life, to water, and the freedom from torture and cruel, inhuman or degrading treatment.

Decision and Reasoning

The Court concluded that Kenya was in breach of its obligations under the constitution, the ICESCR, and ICCPR to respect, protect and enforce the rights therein. Specifically, the Court held that Kenya was in violation of the right to life, the right to adequate housing, the right to sanitation, the right to physical and mental health, the right to clean and safe water, the right to education, the right to be free from hunger as well as the right of the elderly to pursue personal development, to live in dignity respect and freedom from abuse and to receive reasonable care. The Court observed that any treaty or convention ratified by Kenya forms part of the laws of Kenya. Further, they affirmed the justiciability of both civil and political rights, as well as social and economic rights, and found that their interdependence is "out of realization that people living without the basic necessities of life are deprived of human dignity, freedom and equality." The Court considered the circumstances surrounding the eviction, notably the absence of written notice, the brutality and violence used, and the lack of total care for the health and sanitation of the population evicted.

Decision Excerpts

"(...) the purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to build a society which is based on social justice and in which the potential of each person is freed." Page 7.

"Kenya ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 3/1/1976 and consequently became bound to respect, protect and enforce the rights therein, including the right to

adequate housing and the related prohibition of forced evictions as guaranteed by article 11 of the Covenant and the right to education as guaranteed under article 13." Page 8.

"For the evictions to be justified under the ICESCR, they must be carried out in the most exceptional circumstances after all feasible alternatives to eviction are explored in consultation with the affected community and after due process protections are afforded to the individual, group or community." Page 9.

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