

Forced evictions illegal declares Kenya court

Amicus curiae - Eviction - Kenya - Constitutional Rights - International Law - Ibrahim Sangor Osman - Garissa Case

Ibrahim Sangor Osman & 1,122 others v The Minister of State for Provincial Administration and Internal Security & 10 others [2011] Constitutional Petition No. 2 of 2011, High Court at Embu.

The Community Law Centre, Faculty of Law, University of the Western Cape jointly with six other human rights organisations of the ESCR-Net International Adjudication Working Group, was involved as *amicus curiae* in a forced eviction case in Kenya: *Ibrahim Sangor Osman & 1,122 others v The Minister of State for Provincial Administration and Internal Security & 10 others* [2011] Constitutional Petition No. 2 of 2011, High Court at Embu.

The petitioners in this case, 1,122 evictees of Medina location, Municipal Council of Garissa, were rendered homeless in December 2010 and personal property, building materials and household goods destroyed during an eviction by state agents to pave way for the construction of a road. The petitioners had occupied the subject unalienated public land since the 1940's, initially as grazing land but in the 1980's they put up permanent and semi-permanent dwellings in which they were living prior to eviction. It was established that prior to the eviction, there was no written eviction notice or court order served on the petitioners, nor was there engagement or consultation with the respondents on the eviction process. Following the eviction, the residents were not provided with alternative land or alternative housing. The eviction resulted in residents' relocation to areas where access to essential services was compromised with no access to free and compulsory basic education for children.

Consequently, the petitioners filed a petition before the High Court in Embu seeking several declarations and orders, among them, that the forcible, violent and brutal eviction through the demolition of their homes without according them alternative settlement was a violation of their fundamental rights as enshrined by the Constitution.

The *amici* sought to assist the Court with the application of relevant international law, including as a means of interpreting the Constitutional provisions relied upon by the petitioners. The *amici* also provided at the merits phase an analysis of international law as well as comparative law dealing with relevant constitutional rights and application of international law.

The main application was heard on 4 July 2011.

The judgment was delivered on 16 November 2011.

- The court observed that there was no written notice served upon the petitioners and no adequate information given concerning the usefulness of the road *vis-à-vis* the petitioners' occupation of the land, and there was no indication that they would be afforded alternative settlement.
- Further, for the evictions to be justified pursuant to the relevant provisions of the international instruments ratified by Kenya, they ought to be carried out in the most exceptional circumstances after all feasible alternatives to eviction were explored in consultation with the affected community and after due process had been afforded to the individual or group.
- The court made an order compelling the respondents to return the petitioners to the subject land, reconstruct reasonable residence and alternative accommodation for them, which would include all amenities and facilities subsisting at the time of the eviction and demolitions.
- The court further ordered a permanent injunction restraining the respondents from future evictions and demolitions unless the law was followed.

Read *Amicus Curiae* brief [here](#).

Read Judgement [here](#).