



COMPROMIS 2020 KUSOL

ALL KENYAN MOOT COURT COMPETITION (AKMCC)

Dates: **19-21st March 2020**

Venue: **Kenyatta University School of Law**

Theme: **“The Rule of Law: Ensuring Government Accountability for the Protection of Human Rights”**

REPUBLIC OF UMMA

IN THE HIGH COURT OF UMMA AT MAMBOLEO

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

CONSTITUTIONAL PETITION NO. 1 OF 2020

UMMA HUMAN RIGHTS COMMISSION.....PETITIONER

-VERSUS-

THE ATTORNEY GENERAL.....1ST RESPONDENT

THE MINISTER OF LANDS AND PHYSICAL PLANNING.....2ND RESPONDENT

THE MINISTER OF TRANSPORT AND INFRASTRUCTURE.....3RD RESPONDENT

1. Umma is a country situated at the East side of Uwezo continent. Its capital city is Mamboleo. It is adjacent to the Bahari Ocean with a coastline of approximately 400 kilometres. Umma has a population of approximately 35 million people according to a census conducted earlier this year.

2. In the year 2010, Umma adopted a new constitution with an expansive bill of rights, a devolved system of government and new value-based principles of governance. The Constitution, Acts of Parliament, and Subsidiary Legislations of Umma are similar to those of Kenya, a neighbouring country.

3. Umma has a GDP per capita of around \$58.53 USD and has recorded a 2.3% growth rate in the economy in past five years. According to a report released by the World Bank, Umma is a third world country. Its poor economic status has been attributed to the several political coups experienced in the country which in turn destabilized the economy.

4. On 5th June 2019, the Government of Umma through an inter-ministerial committee consisting the National Land Commission, Ministry of Transport and Infrastructure, Ministry of Lands, Housing and Urban Development and Ministry of Interior and coordination of National announced that it

was going to evict all persons living within the area of Msoto to pave way for the construction of a major road. The Committee further announced that the people of Msoto had eleven (11) days to evacuate failure to which they would be forcefully evicted. Further, the government promised that it would compensate all persons who complied with the order. The road construction project would also pass through a leafy suburb, Masponyo estate, where the 'who-is-who' lived.

5. The population of Msoto largely comprises of internally displaced persons (IDPs) who were victims of the 2007/2008 post-election violence. According to a mini-census conducted by the Umma National Bureau of Statistics for purposes of resettlement of the IDPs, as of the year 2008, the total population of Msoto residents was 10,000 from 2800 households. Because they had lost their academic and property ownership documents in the skirmishes, they were and still are unemployed and survive through informal trading and piece jobs and persons employed in low-income jobs such as cleaners and security guards. Gradually, some wealthy people started erecting homes on the eastern side of Msoto hence Masponyo Estate

6. Following the announcement, the community leadership of Masponyo estate flanked by some political leaders issued a public statement saying that they would not vacate until the government agreed to engage them and discuss the welfare of the Project Affected Population (PAP) and come up with an action plan to ensure that their lives are not disrupted. The statement also read that it was representing the peasants from Msoto area.

7. However, the government stated that if it was to give any form of compensation to the PAP, it would be a token since all people who were the subject of the notice lived on a road reserve and hence were not entitled to any compensation. The Minister of Transport and Infrastructure in a press conference stated, "These people deserve nothing! We are actually doing them a favour by giving them something small, okay?!"

8. The Umma Human Rights Commission (UHRC), a constitutional body established under Article 59 of the Constitution of Umma and given effect by the Umma Human Rights Commission Act of 2011, filed a suit against the State arguing a violation of the constitutional right to a fair administrative action. UHRC sought an injunctive order restraining the government from proceeding with the demolition until the court determined the matter. A judge of the High Court of Umma at Mamboleo issued the restraining order, requiring the government to stall the demolition process until the suit was heard and determined.

9. However, in total disregard of the said order, the government brought in its infamous machinery to begin the demolition processes. No explanation was given as regards the enforcement of the court order. The only excuse advanced by the concerned government officials was that they had not been served with the said court orders.

10. The machines were strategically placed near Msoto area causing a public scare. Several families immediately signed up for the compensation scheme and started vacating before the 11-day deadline lapsed. However, most of them withstood the cold of the night waiting for the crackdown to begin, vowing to defend what was theirs unless the government yielded to their demands. The 11 days given lapsed without any meaningful engagement between the government and the people.

11. On 17th June 2019, the Minister of Transport and Infrastructure in a press conference, gave a statement that the demolition would not take place to allow for further negotiations on a more amicable compensation scheme. The Minister stated that this was in consideration of the fact that Masponyo residents had invested a lot in the area and therefore the losses would cause adverse impact to the economy. However, the Minister gave a caveat that the relief was only for those who had signed up for compensation. They included all families from Masponyo estate and a few from Msoto area.

12. These pronouncements resulted in a major riot in Msoto area, where the people decried that the government only protected the rich and had neglected the poor who had no bargaining power. A mammoth of Msoto residents, comprising mostly of rowdy youth, marched across Mamboleo town to the Ministry of Transport and Infrastructure, the Ministry of Land, Housing and Urban Planning, The Ministry of Interior and Coordination of National Government and Parliament, to lodge their petitions. They scattered rocks on the roads to form barricades, demanding to be heard by the leadership. However, they were met by the police who lobbed teargas on them and threatened to use more force if they did not desist from their action. The Police Commissioner through the media announced that the demonstration was unlawful and illegal because the demonstrators had not followed the legal procedure required to hold one. He advised the demonstrators to use diplomatic means of communication such as through their elected or community leaders.

13. The community leaders of Msoto area wrote an open letter to all the concerned government departments calling for an open meeting with the whole community to discuss the pertinent issues affecting the welfare and wellbeing of Msoto residents in the wake of the evictions. The government

organized a meeting at the local Msoto town hall and the Inter-ministerial committee members confirmed that they would attend.

14. During the meeting, low level officers from the Ministries were sent. They officers took the proposals and recommendations of Msoto residents but deferred them for decision by the inter-ministerial committee citing that they did not have authority to negotiate with the residents, even though they understood the direness and urgency of their crisis. However, they communicated that the Government had extended an olive branch to the residents of Msoto and had lifted the caveat to allow all affected persons to register for compensation. Some of the Msoto residents had cited the compensatory amounts as very little and impractical and proposed resettlement by the state over and above the amounts proposed in compensation by the government. However, the officials noted that their hands were tied and that the victims should wait for a response from the Ministers. Later that evening, the Ministers appeared in a TV show and dismissed the proposals by Msoto Residents for lack of viability and lacking common sense. Feeling insulted, a majority of Msoto residents boycotted the compensation registration process.

15. Further attempts by Msoto Residents to engage with the government bore no fruit and on 20th June 2019, the government began the demolition process of all temporary structures in Msoto area. The process started at around 2:00p.m and anyone found within the area was whipped, maimed or detained by the Anti-Riot Police Unit (ARPU) who had clear instructions not to tolerate any form of engagement with the public. The process was halted at around midnight following a heavy downpour. The government by then had demolished halfway through Msoto area and intended to continue immediately the rain stopped.

16. By morning, the rain had not yet stopped; the now agitated people of Msoto ganged up and destroyed the tractors and trucks that were being used in the demolition process. The community was led by a group of thirty people from Msoto. They were all dressed in combat-like paraphernalia showing the willingness to defend their property no matter the cost.

17. They used huge rocks and parts of the destroyed machinery to block access to the remaining zone. Their leaders cited that they were only interested in a just and equal treatment with the Masponyo estate residents whose property had not been demolished. The people from Msoto who had signed up for the compensation also came to the media citing that the government had failed to honour its promise since their property had already been demolished without compensation.

18. The government spokesperson condemned the destruction of the State property calling upon the residents of Msoto to exercise restraint. The government advised them to use other remedies such as courts to argue out their case in a manner that would resolve the stand-off peacefully. The government assured the protest leaders of immunity from any sanctions if they were willing to engage in any non-violent means of settling the dispute.

19. In light of the promises given, activists from the Msoto area sought to have a meeting with the inter-ministerial committee. However, when they went to the committee's offices, they were involuntarily confined in a room and were not accorded any meeting with any official. By the time the activists were released the government had finished demolishing Msoto area. The government had misinformed the public that the activists had admitted to wrong doing and had agreed to allow the demolitions continue as they deliberated on the proposals Msoto residents had earlier made. However, this was contradicted by a press statement by the activists after their release.

20. There was an outcry from various NGOs and civil societies on the conduct of the police officers during the demolition exercise. In fact, a video emerged of the police storming into one of the structures and dragging out an old lady throwing her to ground. Consequently a young man tries to stop the police and is kicked to the ground by one of the officers who proceeds to severally hit him by the baton he was carrying and finally stomping his feet on the young man's head. The officer is then seen walking away leaving the young man lying still on the ground with blood oozing profusely from his head.

21. Due to the public outcry and the looming unrest caused as a result of the said video, the police spokesperson held a press conference where he distanced the police service from the actions of the officer -depicted in the video and stated that the officer had been suspended and the government was investigating the alleged police brutality that occurred during the demolition exercise.

22. The UHRC in an effort to make good the case it had initiated before the demolitions used the protest-leaders as its witnesses relying on the grounds of denial of access to justice, police brutality as well as the preferential treatment accorded to Masponyo residents versus Msoto residents respectively. They got additional evidence to boost their case from Umoja Wetu NGO, which had worked closely with the Institute of Geospatial Engineers and Land Surveyors of Umma. They had generated a report showing the human rights impact of the project and provided an alternative route,

which the road could pass through although it was more expensive than the one adopted by the government. The document was received by the Ministry of Transport and Infrastructure on 10th January 2019 but not acted upon.

23. However, on the hearing date of the case, they were informed that their file was missing and their case postponed. Upon reconstruction of the file the case was again postponed since the court was on leave. On the subsequently allocated hearing date, the judge handling the matter was transferred and the case had to be delayed further. Eventually the new judge, historically celebrated as a pro-government judicial officer, issued a ruling in presence of advocates for both parties finding that the government had compelling reasons to demolish their property due to public interest. The ruling was however silent on the effect of the existing court order. UHRC did not appeal the ruling.

24. The internally displaced residents of Msoto moved into a section of the slum and started attacking the rich residents from Masponyo estate. The community's activists dressed in combat organized several rallies calling for mutiny against the government and terming it as illegitimate for failing to protect its people. Subsequently, the government compensated those who had registered for compensation and gave them fourteen (14) days to relocate. The affected Masponyo were relocated to other estates whose house prices had been subsidized for them.

25. During the demolitions of Masponyo estate, the group of residents from Msoto attacked the area, breaking into the houses and taking away property of unknown value. At the same time another group of Msoto residents were conducting a rally spearheaded by several well-known activists dressed in combat-like clothes. Some angry Masponyo residents, also dressed in combat-like clothing responded resulting to a clash between the two groups.

26. In the process, tens of people were arrested and detained. Eventually demonstrators from the Masponyo estate were released unconditionally as the police commissioner cited that they had been attacked by the opposing group and had acted in classical self-defence. Several of the Msoto demonstrators were charged with the offence of putting on combat-like clothes similar to those of the Umma military contrary to the law. None of the Masponyo demonstrators were charged with such an offence.

27. Given that the arrests were conducted on Friday, it was expected that the Msoto demonstrators would be produced in court on Monday. However, on Monday only three

demonstrators were produced in court. The court ordered the Inspector of the police to produce the remaining suspects within six hours.

28. By Tuesday morning no one knew of their whereabouts as no one could establish which police station they were booked into. The only evidence showing their arrest was a local media video footage showing them being hurdled into a police truck registration UG P 231X. Reports by an international non-governmental organization point to the fact that they were being held incommunicado and being forced into a merge settlement on behalf of the Msoto residents.

29. The court issued a contempt order when the Inspector General of police failed to comply with the orders of habeas corpus in the presence of State law office lawyers. The Inspector General failed to comply with the order and his communications secretary stated that no such order was received at his office. The government spokesperson issued a statement saying that the judiciary was interfering with the Executive's mandate and that such contempt orders would also be treated with contempt by the government.

30. The demonstrators were eventually produced in a courtroom at the far-west city of Omena after numerous regional and international calls to release them unconditionally. They were released on cash bail and ordered not to travel to the capital city until the case was heard and determined in a bid to frustrate continued fight to compensation of the Msoto residents.

31. It is now almost a year after the demolitions. Whereas the construction of the road is already underway, the uncompensated victims of the demolitions in Msoto still live in tents along the construction zone. Attempts by human rights activists to lobby the government to exercise justice have fallen on deaf ears.

32. The UHRC upon compiling reports by human rights activists into the actions of the State and its dealings with Msoto residents has filed a constitutional petition at the High Court of Umma alleging violation of the rule of law. The matter is now settled for hearing by way of oral and written submissions on the following issues;

- a) Whether the failure by Umma government to adhere to court orders was in violation of the right of access to justice of Msoto residents.
- b) Whether the actions of Umma government in the demolition process carried out on 20th June 2019 was in violation of the principle of due process of the law.
- c) Whether failure by the government to compensate Msoto residents amounted to a violation of their right under article 43 (1b) of the constitution.

Proceed to prepare arguments for both the petitioner and the respondents.

