



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MARSABIT
CONSTITUTIONAL PETITION NO.2 OF 2016

1. JEDIDAH WANJA MATHARA
2. ANGELA KANANU
3. AGNES KARIMI
4. ROSE MAKANDI
5. JAPHET KIREMA
6. JUDY MWENDA PETITIONERS

VERSUS

1. THE HON. ATTORNEY GENERAL
2. THE INSPECTOR GENERAL OF POLICE
3. THE O.C.S MARSABIT
4. THE S.R.M MARSABIT
5. THE DIR. OF PUBLIC PROSECUTIONS..... RESPONDENT

RULING

The petition by the petitioners is brought by way of notice of motion dated 14th October 2016 pursuant to Articles 10,19,20,21(2),22,23, 28, 29,47,50,157 and 165(3) of the Constitution of Kenya, 2010. The petitioners are seeking orders as follows:-

1. an order directed to the 4th respondent by himself, his servants and /or agent or any other judicial officer for the time being seized to bring to the court for the purpose of being quashed the proceedings in Marsabit SRM's criminal cases Nos.130, 131, 132, and 554 of 2016 against 2nd,3rd, 4th,5th and 6th petitioners respectively.

2. A declaration that the seizure and confiscation of the 1st petitioner's Alcoholic Drinks License by the 2nd and 3rd respondents police officers without warrants or by any court orders rendering the 1st petitioner unable to carry out her businesses within the terms of her license and to earn a livelihood are violations of 1st petitioner's fundamental rights to life, to the protection and benefit of the law, human dignity and privacy guaranteed by the constitution.

3. An order for general, exemplary/vindictory and/or punitive damages against the respondents consequential to declarations of violations of the fundamental rights and freedoms of the petitioner in prayers (1) to (3).

4. Costs be provided for.

The respondents have contended that they were discharging their mandate within the law.

I have perused the affidavits by both parties and the submissions by their respective counsel. The application is seeking for orders that can only be granted after hearing of evidence from both parties.

What the petitioners put forth in support of the petition can be adequately examined during the hearing of the criminal matters that are pending.

The constitution and the other relevant laws have put in place sufficient safeguards to ensure that nobody is prejudiced by institution of criminal proceedings.

In granting any of the orders sought by the petitioners, I will be rendering the other organs ineffective in their mandates. I will also be granting the said orders on the basis of very scanty evidence at my disposal.

The petition must fail with costs to the respondents.

The pending trials shall proceed and where possible on a day to day basis.

Orders accordingly.

DATED at MARSABIT this 19th Day of April 2017

KIARIE WAWERU KIARIE

JUDGE.