



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

PETITION NO.13 OF 2015

CHARLES ADDAH

suing on behalf of Kisumu Street Traders.....PETITIONERS

VERSUS

KISUMU COUNTY GOVERNMENT.....1ST RESPONDENT

CITY MANAGER KISUMU COUNTY2ND RESPONDENT

THE ATTORNEY-GENERAL3RD RESPONDENT

RULING

By their application dated 27.11.2015 the applicants pray for the following reliefs:

- a. **That the 1st and 2nd Respondents be ordered to provide the petitioner and therefore all members of Kisumu Street Traders Association with new places of operation and or an alternative market site pending the hearing and determination of the application.**
- b. **That the 1st and 2nd respondent be ordered to provide the petitioner and therefore all members of Kisumu Street Traders Association with new places of operation and or an alternative market site/pending the hearing and determination of the petition.**

The application is supported by the sworn affidavit of **CHARLES ADDAH** dated 27.11.2015. He deposes that the petitioner is a duly registered body with several members carrying out its businesses within Kisumu City specifically along Angawa Street, Oile Market. That on 10th September, 2014 they received a notice of eviction posted on their place of business by the respondent. On 12th September, 2014 at night, they were forcefully evicted and their properties destroyed. He said that other traders along Angawa Street, lower side are still carrying out their businesses. As a consequence of the said eviction they have lost millions of shillings and their source of daily bread.

On its part the 1st and 2nd respondent's through one **STEPHEN SULE** the Director of City Planning swore a lengthy affidavit explaining the genesis of the eviction. According to him there were consultative meetings from 16.7.2014 which culminated into the eviction notice of 9.9.2014. On 12.9.2014 they received a court order vide case No.443/2014 Kisumu CMCC (Municipal Criminal Case) in which the court ordered that:

“I hereby issue an eviction order for all traders within Oile Park and the Director of Inspectorate and the OCPD to ensure compliance of the order.”

He also attached copies of court proceedings in case No. Kisumu CMCC 465/2014 in which the

parties seemed to have stood the matter down so as to transfer it to the High Court. This was on 24/9/2014 and the last order was that status quo be maintained.

At the time of filing the current application its evident that the applicants had been evicted and therefore the prayer for injunction is well spent. This is buttressed by the fact that the eviction took place on 12.9.2014 and whether the same was legal or otherwise shall be the subject of the substantive petition.

On the face of it therefore it appears that there is a dispute as to whether the applicants were not seized of the matter. From the attachments to the affidavit of Mr. Stephen Sule it appears that the applicants were aware or ought to have been aware of the consultative meetings. More importantly, it appears that there were other areas designated for the traders who included the Jubilee Market and those on Angawa Street have not been affected.

On the balance of convenience it would be onerous to allow the applicants application. Having been moved from the other market, there seemed to have been set another designated area namely Jubilee Market. Returning them to the same place will derail the City planning which is a legal preserve of the 1st and 2nd respondents.

Further and without prejudice to the substantive petition, the applicant can still seek legal redress including damages if any should the eviction be found to have been unlawful.

The application is disallowed. Costs shall abide the outcome of the petition.

Dated, signed and delivered this 27th day of April 2016.

H. K. CHEMITEI

J U D G E