



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

(Coram: Ojwang, J.)

PETITION NO. 2 OF 2011

- 1. KENYANS FOR JUSTICE AND DEVELOPMENT TRUST (KEJUDE TRUST)**
- 2. ANDREW OKIYA OMTATAH OKOITI**
- 3. JANE FLORENCE NJIRU**
-PETITIONERS**
- 4. NETO AGOSTINHO**

VERSUS

- 1. THE ATTORNEY GENERAL**
- 2. THE INSPECTOR GENERAL**
-RESPONDENTS**
- 3. THE O.C.S. MAKUPA POLICE STATION**

RULING

The main cause is in Petition No. 2 of 2011 filed together with the instant application, on **20th January, 2011**. In the supporting affidavit, it is deponed that the Coast Forum for Human Rights had, on **17th January, 2011** notified the OCS, Makupa Police Station of a public meeting scheduled for **22nd January, 2011** by a letter dated **19th January, 2011**. The 3rd respondent duly approved the proposed meeting which was to take place at Tononoka Grounds. The organizers, consequently, proceeded to make all the necessary arrangements for the said public meeting.

There is nothing before this Court to negate the representation that the intended public meeting was, indeed, duly approved.

Today’s application, coming by the Chamber Summons of **21st January, 2011** is based on the contention that the 3rd respondent has acted in violation of the petitioners’ rights of association and of holding meetings, contrary to the guaranteed rights of the Constitution, particularly as stated in Articles 19 (2), (3) (a) (c); 20 (1), (2), (3) and (4); 21 (1); 22 (1), (2) and (3); 24 (1), (3).

So close to the day of the proposed meeting, on **20th January, 2011** at 4.30 p.m., the 3rd respondent changed his mind, and verbally informed the applicants that he had cancelled the scheduled public meeting for “security reasons” which he would not disclose.

Learned counsel, **Mr. Abubakar** has urged that the Police authorities, under the enlarged freedoms of the

Constitution of Kenya, 2010, cannot at the bare whim, take away the individual's freedom of assembly and association, without giving any reason and before seeking Court orders on the matter. In this case, the 3rd respondent had purported to resolve the issue of fundamental rights and freedoms just by himself, without any recourse to the judicial institution which is the custodian of the rights and liberties safeguarded under the Constitution. Counsel urged that the 3rd respondent's action was not covered by the Police Act (Cap. 84, Laws of Kenya), which does not accord the Police authorities arbitrary powers that stand in contradiction to the Constitution.

The Police authorities have not sought an appearance before the Court to make a case for limiting the *prima facie* lawful rights of the applicants to exercise their constitutional rights of assembly and association.

Therefore, any reasons which the Police authorities may have for curtailing the rights and freedoms of the applicants, are **private** reasons which have not been placed on the public table of legality and for validation by the Courts of law; which reasons cannot be upheld by this Court. This Court is the primary organ for the pronouncement of the validity of claims touching on the guarantees of the Constitution; and all the public authorities operating in the country, must commit themselves to a practice of transparency, and submission to the public table of determination of relevant issues; they are not allowed to privatize public issues and to assume judgment over these, in such a manner as to compromise the safeguards of the Constitution of Kenya, 2010.

While the more detailed arguments in this matter will await *inter partes* hearing, I will grant prayer No. 2 of the applicants' Chamber Summons of **21st January, 2011** immediately:

Pending the hearing and determination of the Petition, an injunction is hereby issued against the respondents, restraining them and/or the officers working under them, from preventing the petitioners from proceeding with their public meeting scheduled for 22nd January, 2011 at Tononoka Grounds, Mombasa. The rest of the application shall be listed for *inter partes* hearing on 24th February, 2011. Orders accordingly.

DATED and DELIVERED at MOMBASA this 21st day of January, 2011.

**J. B. OJWANG
JUDGE**

Coram: **Ojwang, J.**

Court Clerk: **Ibrahim**

For the Petitioners/Applicants: **Mr. Abubakar**