



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**PETITION NO. 5 OF 2011**

**GEOFFREY GITHIRI KAMAU.....1<sup>ST</sup> APPLICANT**  
**JOHN MBURU KIMANI.....2<sup>ND</sup> APPLICANT**  
**VERSUS**  
**CHIEF MAGISTRATE'S COURT NAIVASHA.....1<sup>ST</sup> RESPONDENT**  
**THE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**RULING**

On 23<sup>rd</sup> March 2011 I certified as urgent, a Chamber Summons dated, filed on that date, under a Certificate of Urgency of the same date. In it the Petitioners sought three prayers -

(1) *that the application be certified as urgent,*

(2) *that there be a stay of proceedings in Naivasha SPM Cr. Case No. 65 of 2010 - Republic vs. Geoffrey Githiri Kamau and John Mburu Kimani (the Petitioners),*

(3) *that costs of the application be provided for,*

The Chamber Summons (*the application*) was premised upon the Supporting Affidavit of the Petitioners, the grounds on the face thereof, and a host of the provisions of the Constitution - Article 22(1), (3) & (4), 23(1), 25, 28, 29(a) (c) (d) (e) & (f), 49(1)(f), 50(1)(2)(a)(c)(d)(e), 165(3)(h) (4), (6)(7), 259(1)(b) and S. 123 of the Criminal Procedure Code.

As already observed, I certified the application as urgent, and directed that the same be served upon the Provincial State Counsel and that the application be heard on 28<sup>th</sup> March, 2011.

On 28<sup>th</sup> March 2011 Lady Justice Wendoh gave leave for the Attorney General to file a Repling Affidavit, and directed the matter be heard on 30<sup>th</sup> May 2011. When the applicants appeared, Her Ladyship on 30<sup>th</sup> May 2011, the Attorney General's Repling nowhere the Learned Judge directed that the application be heard by another judge. It was my fortune to be dealing with criminal hearing on 7<sup>th</sup> June 2011, when the application came before me.

The application was argued by the 1<sup>st</sup> Petitioner, Geoffrey Githiri Kamau, and he said, on his own behalf, and on behalf of his co-petitioner, John Mburu Kimani. This Petitioners told the court that they relied on this Supporting Affidavit and the Further Supporting Affidavit sworn by both on 14<sup>th</sup> April 2011 and filed on 18<sup>th</sup> April 2011.

In the Further Affidavit the Petitioners were candid enough to attach the Ruling of the Court (1) Lady Justice Wendoh on 11<sup>th</sup> March 2011. I have read that Ruling in relation to the Application herein.

I appreciate the rights of the Applicants to seek and ensure that their fundamental rights and freedoms are not abridged or in any way contravened. The Constitution of Kenya gives these guarantees, but the courts are the ultimate custodians of these fundamental rights and freedoms. That is the duty of the courts under Article 23 of the Constitution. These rights may however be limited in order to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others.

Where a person is suspected of having committed, or about to commit a crime, it means that, that person is prejudicing the rights of others or another person, the complainant, and it is the duty of the State organ to investigate, and where the investigation reveals that an offence has been committed to bring such person before court and charge him.

Once a person has been charged his first line of attack to maintain his freedom is to apply for bail. Having been granted, the accused person is entitled to a fair trial within a reasonable time.

In this case, the Applicants are frustrating that process by instituting a multiplicity of applications for stay of proceedings in Naivasha SPMC Cr. Case No. 65 of 2010. The Petition No. 12 of 2010, on exactly the same Articles of the Constitution was considered and dismissed in a well considered Ruling by Lady Justice Wendoh delivered on 11<sup>th</sup> March 2011. I have no intention of repeating what the learned Judge said, and traversing the same road.

I think the application herein is an abuse of the process as Mr. Omutelema learned Senior Principal State Counsel submitted. The issues raised in this Petition relate to the same events in Petition No. 12 of 2011. A party cannot insist that the court rules in his favour. It is indeed correct that Article 165 of the Constitution confers supervisory jurisdiction upon this court over all subordinate courts. There is however no ground for the Petitioner's prayer for transfer of the case from Naivasha to Nakuru. That would be forum shopping and is unacceptable. There are no circumstances revealed here for such an order.

I entirely agree with Lady Justice Wendoh's Ruling of 11<sup>th</sup> March 2011, and if the Petitioners were aggrieved by it, the proper forum would be an appeal to the Court of Appeal.

For those reasons, I find no merit in the Petitioners Chamber Summons of 23<sup>rd</sup> March 2011 and dismiss the same. I direct that the proceedings in Naivasha SPM Cr. C. No. 65 of 2010 do proceed to their logical conclusion as scheduled. A copy of this Ruling and the Ruling of 11<sup>th</sup> March 2011 be sent to learned Senior Principal Magistrate for information and guidance.

**Dated, delivered and signed at Nakuru this 10<sup>th</sup> day of June 2011**

**M. J. ANYARA EMUKULE**  
**JUDGE**