



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CONSTITUTION PETITION NO. 23 OF 2015

REGINA WAMBUI KIMEMIA PETITIONER

VERSUS

KEFA KIBAGENDI1ST RESPONDENT

TRUPHOSA KEMUNTO MARORO2ND RESPONDENT

THE DEPUTY COUNTY COMMISSIONER - SAMETATHIRD PARTY

RULING

1. This petition dated 19th June 2015, was haphazardly crafted and filed in court on the 22nd June 2016, by a widow called **Regina Wambui Kimemia**, and an outfit calling itself **The Bill of Human Rights**, against Assistant Chiefs, **Kefa Kibagendi** and **Truphosa Kemunto Maroro** and the Deputy County Commissioner Sameta.

The basic order sought in the Petition and/or notice of motion is for the removal of the respondents state officials from public office on account of abuse of office and misuse of power as well as failing to adhere to fair administrative action thereby violating Article 47 of the Constitution of Kenya, 2010.

2. The matter was brought in court under a certificate of urgency on the 24th June 2015, whereupon this court (**Wakiaga J.**) certified it urgent and directed that a date be fixed in the registry for inter-parties hearing. In that regard, the matter was fixed for hearing on 15th October 2015, on which date it was adjourned to enable the second petitioner through one Reverend Momanyi to regularize its status in this matter.

A mention date for directions and to confirm compliance was slated for 9th December 2015, but was pushed forward to 2nd February 2016, on which date observations were made by this court (**Okwany J.**) to the effect that the second petitioner had failed to comply with the directions given by the court to regularize their status. Consequently, the second petitioner's claim against the respondents was struck out with costs.

3. The first petitioner therefore remained the sole petitioner. It was on that 2nd February 2016, that she started expressing non-confidence in this court in hearing the Petition. This was eventually followed by her present application dated 15th November 2016, for transfer of this matter to Kisumu for the sake of justice to both parties.

The application is based on the grounds and averments contained in the supporting affidavit filed herein

on 23rd March 2017, but wrongly described as a replying affidavit.

The respondents through the learned litigation counsel, **M/s Ochwal**, opposed the application on the basis of the averments contained in her “further” replying affidavit dated 28th March 2017.

4. Upon due consideration of the grounds in support of the application and those in opposition thereto, it is clear that the petitioner is apprehensive that if the Petition continues within this jurisdiction of Kisii County where the respondents are based she may be subjected to threats, attacks or harassment from them. She implies that such acts have already been manifested to the extent that she had already been displaced from her residential premises within the County and effectively rendered an internally displaced person (IDP). She therefore feels that justice will not be served if the Petition continues to hearing in this court. Her allegations against the respondents have vehemently been denied by them.

5. To this court, the petitioner’s apprehension and/or fear is not based on cogent grounds but on mere suspicion that the respondents are likely to interfere with this case simply because they are still in office within this jurisdiction and may complicate a fair hearing of the case if it remains in this court.

It is instructive to note that the petitioner is not really expressing non-confidence in this court but her frustration in having the matter heard and concluded expeditiously.

6. Her letter filed herein on 15th April 2016, was a request to the court to disqualify itself from handling the Petition, but it was devoid of any reasons for such disqualification and her loss of faith in the court. It would appear that she made the request at the behest of a shadowy figure who was merely using her as a robot in order to further his unlawful intention of shopping for the “right” judge to hear the Petition.

Be that as it may, justice must not only be done but also be seen to be done. Considering that the Petitioner is appearing in person in this matter, justice will be seen to be done and to continue being done if the matter is transferred to a court outside the County of Kisii with a warning that the costs shall invariably shoot up and the Petitioner may bear the brunt if she does not ultimately succeed in her spirited efforts to hound the respondents out of office.

7. Accordingly, this matter be and is hereby transferred to the High Court registry not in Kisumu but Homa Bay for mention before the Resident Judge in that court with a view to fixing a hearing date.

The parties are now directed to appear before the Resident Judge at Homa Bay on 25th April 2017, for necessary action.

Ordered accordingly.

Delivered and signed this 4th day of **April 2017** in the presence of Applicant and first/second respondents.

J. R. KARANJAH

JUDGE