



REPUBLIC OF KENYA
ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 59 OF 2011

ZIPPORAH C. MAIYO

RAEL CHEPNGETICH.....PLAINTIFFS

LILIAN CHEPTANUI KEMEI

VERSUS

TITO KIPLIMO CHEPKWONY.....1ST DEFENDANT

SILAS KIPTANUI.....2ND DEFENDANT

RULING

1. This is a ruling in respect of a notice of motion dated 31.8.2015 which is expressed to be brought under the provisions of Article 2 (5 and 6), 10, 23 (a) (d), 24 (1) (d) and (e), 28, 29 and 50 of the constitution. The application seeks to have the notice to show cause herein declared unconstitutional and the same be set aside or lifted. The application is supported by the supporting affidavit of Zipporah Maiyo sworn on 31.8.2015.

2. The applicant contends that the respondents intend to put her in civil jail with her two sisters and that unless the notice to show cause is stayed or lifted, she and her sisters will be put in civil jail and they will thus be embarrassed.

3. The application is opposed by the respondents based on grounds of opposition filed in court on 30.9.2015. The respondents contend that the application is an abuse of the process of the court which is seeking stay of execution which stay has already been determined by the court.

4. The applicant herein had brought an application in which she wanted stay of execution pending appeal and setting aside the bill of costs which had been taxed. This application was heard and the same was dismissed in a ruling delivered on 26.5.2015. The respondents then proceeded to file an application to show cause why the applicant and her sisters could not be committed to civil jail. This is what prompted the applicant to file the current motion.

5. I have gone through the application and the only issue for determination is whether the notice to show cause is unconstitutional. The applicant is seeking to obtain what had been rejected vide ruling of 26.5.2015. She had wanted the bill of costs set aside. This was rejected. The respondents then proceeded to file a notice to show cause which is proper in law and provided for. Instead of the plaintiff/applicant coming to court to show cause, she came and filed the present application clothed

under the provisions of the constitution but essentially seeking to stay what the court had already rejected. The applicant has not demonstrated in what manner her constitutional rights have been violated or likely to be violated. The application is a clear abuse of the process of court. It cannot be allowed. The same is hereby dismissed with costs to the respondents.

It is so ordered.

Dated, signed and delivered at Kitale on this 29th day of February,2016.

E. OBAGA

JUDGE.

In the presence of Mr. Bororio for respondents

Court Assistant - Isabellah.

E. OBAGA

JUDGE

29/2/2016