

REPUBLIC OF KENYA

IN THE HIGH OF KENYA AT NAIROBI

MILIMANI LAW COURTS

Petition 320 of 2012

ZAHURA JUMA KABUTOPETITIONER

AND

**THE CHIEF JUSTICE (*sued through the Registrar of the High Court*).....1ST
RESPONDENT**

THE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

The application before the Court seeking the following orders namely that pending the hearing and determination of the petition, the court be pleased to issue a conservatory order of prohibition restraining the 1st respondent from directing officers of the High Court including judges of the High Court of Kenya to proceed on summer vacation or any other vacation as provided in the *Judicature Act (Cap 8 of the Laws of Kenya)*.

The petition is founded primarily on the ground that the court vacation limits the right of every citizen to approach a court of law at any time when a dispute arises.

According to the petitioner she has been involved in *Embu HCCC 116 of 2012* which is a land dispute. She is 90 years old and wishes to prosecute her case during the vacation.

The application is opposed by the State on the basis that the *Judicature Act* and the *High Court Practice and Procedure Rules* entitle the petitioner to move the court during the vacation in the event the matter is one of urgency. Furthermore, counsel avers that this application has been brought late in the day and the petitioner is undeserving of discretion in her favour.

In an application such as this the court is required to consider whether there is a prima facie case with a probability of success. In my view, the petitioner may have an argument to make about the High Court vacation but her rights are not threatened in any manner.

The High Court (Practice and Procedure) Rules entitle her and other Kenyans to move the court to be heard during the vacation. Furthermore, arrangements are in place to ensure that courts are sitting to deal with cases during vacation.

The application is dismissed with no order as to costs.

DATED and DELIVERED at NAIROBI this 30th day of July 2012

**D.S. MAJANJA
JUDGE**

Mr M. Kivuti instructed by Gachie Mwanza and Company Advocates for the petitioner.

Mr L. Muiruri, Senior Litigation Counsel, instructed by the State Law Office for the respondents.