



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Petition 465 of 2012

ELIZABETH NJERI HINGAPETITIONER

AND

NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS.....2ND RESPONDENT

HONOURABLE ATTORNEY GENERAL.....3RD RESPONDENT

THE CHIEF MAGISTRATE’S COURT AT KIBERA.....4TH RESPONDENT

RULING

1. The grant of a conservatory order and indeed the reliefs set out in **Article 23** of the Constitution are a matter for the court’s discretion. The gravamen of the petition as raised in the application dated 11th October 2012 is that she faces two trials arising from the same facts.

2. In ***Kibera Criminal Case 1907/2012***, she is charged with an offence under **Section 58** of the ***Environment Management and Coordination Act (Act No. 8 of 1999)*** in which it is alleged that on 11th January 2011 she failed to submit a project report on quarrying activities undertaken on LR No. 11478, Mirema Drive Kasarani which she owns. The second count relates to failure to comply with an order issued by NEMA to stop quarrying activities.

3. In ***Kibera Criminal Case 4429/2012***, she is charged with the self same offences, that is the offence arising out of her failure to submit a project report contrary to the provisions of the Act and in a second count failing to comply with the environmental restoration order.

4. *Prima facie*, both cases deal with the similar offences and facts and I agree that the petitioner’s rights would be violated if the matters were to proceed tandem. This is not to say that the respondents are not entitled to prefer charges as it is the public interest that offenders be prosecuted to the fullest extent permitted by law.

5. The nature of a conservatory order is that the court is required to balance public interest and individual rights pending hearing and determination of the matter and in doing so, I think this balance will be struck by permitting one case to proceed and the other to be stayed.

6. The order that commends itself to me is as follows;

(i) A conservatory order be and is hereby issued restraining the respondents from prosecuting or in any way proceeding with ***Kibera Criminal Case 1907 of 2012*** pending the hearing and determination of this

cause or until further orders of the court.

(ii) Costs of the Chamber Summons dated 15th October 2012 shall be in the course.

DATED and **DELIVERED** at **NAIROBI** this 8th day of November 2012

D.S. MAJANJA

JUDGE

COURT –Ruling read and delivered in open court.

D.S. MAJANJA

JUDGE