



**IN THE HIGH COURT AT NAIROBI**

**MISC. CIVIL CASE NO. 877 OF 2000**

**REPUBLIC.....APPLICANT**

**-VERSUS-**

**CHIEF MAGISTRATE, NAIROBI.....RESPONDENT**

**EX PARTE.....PETER MWANGI GATHIMBA**

**RULING**

Mr. Ngatia for the Applicant in this Application says that he would like to have the matter referred to a Constitutional Court to determine whether KACA can prosecute cases under the Penal Code. Mr. Kangata opposes the suggestion on the ground that there is no proper application before the court asking for reference for constitutional consideration of the matter. He further contents that these constitutional references are hampering the efforts of KACA to prosecute cases. He asks that the application should be heard as it is at the present.

The application before the court is a Notice of Motion asking for an order of prohibition directed to the Chief Magistrate's Court, Nairobi prohibiting him from hearing or determining the Chief Magistrates Criminal Case No. 1387/200 at Nairobi against the accused persons namely Zipporah Mbesa Wandera and 3 others. This application was filed after leave under Order 53 of the Civil Procedure Rules was granted on 11.8.2000 by the Court.

The application as it is does not require more than one judge to determine but Mr. Ngatia expressed the view that they will during the hearing raise the question of capacity as to whether the KACA can prosecute cases under the Penal Code which may require constitution rules interpretation.

Taking into account the provisions of order 53 of the Civil Procedure Rules which does not allow an applicant to rely on grounds other than those for which leave was granted, the only matter which the Chief Justice may be required to determine is whether the application as it is requires more than one judge to determine.

The parties will appear before the Chief Justice on 31.8.2000.

**Dated and delivered on 30th day of August, 2000.**

**KASANGA MULWA**

**JUDGE**