



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC PETITION NO. 43 OF 2017**

**(FORMERLY PETITION NO. 438 OF 2014)**

**BALJIT SOKHI**

**PARAMJEET SOKHI.....PETITIONERS**

**VERSUS**

**HON. CHARITY NGILU, CABINET SECRETARY, MINISTRY OF LANDS,**

**HOUSING AND URBAN DEVELOPMENT.....1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**JUDGEMENT**

1. The Petitioners are male and female adults respectively, residing and trading for gain in Nairobi. The 1<sup>st</sup> Respondent was sued in her capacity as the Cabinet Secretary, Ministry of Lands, Housing and Urban Development at the time when the Petitioners contend that their property rights were breached. The Petitioners claimed that they are the registered proprietors of land reference number 209/8660/6 (“the Suit Property”) which they claim they purchased for valuable consideration in 1996. That desirous of constructing a residential dwelling house on the land, the Petitioners applied for and were granted approvals from various regulatory organs including the City Planning Department of Nairobi County Government, the Ministry of Lands, Housing and Urban Development, the National Environment Management Authority (NEMA) and the Water Resources Management Authority. The Petitioners claimed that pursuant to the grant of those approvals they commenced construction on the Suit Property in October 2013 and the construction was at an advanced stage when the Respondent in her capacity as the Cabinet Secretary for Lands, Housing and Urban Development drove into the site with her security detail and ordered the contractor Sagar Builders Limited who were on site to stop construction on the allegation that there was a breach of the riparian land.

2. The 1<sup>st</sup> Petitioner averred that he called the 1<sup>st</sup> Respondent on 9/8/2014 and scheduled a meeting. When he went for the meeting the Respondent informed him that she was a resident of Hill View Estate, Spring Valley and that she passed outside the Petitioners’ property on a regular basis and had noted that the building was less than 30 meters from Mathare River which was in contravention of the riparian reserve.

3. The Petitioners claimed that they informed the Respondent that they had obtained all the requisite approvals from all the regulatory authorities. They beseeched the Cabinet Secretary to write to them officially and give the reasons for stopping the development. The Petitioners claimed that the Cabinet Secretary informed them that she would not allow the construction to continue and any breach of her directive would invite severe penalties including arrest and destruction of their structure.

4. The Petitioners claimed in the petition that they had been unlawfully deprived of their right to property, its use and quiet enjoyment. They also claimed that they had suffered and would continue suffering substantial and irreparable losses from lack of use of the Suit Property. They claimed that the Respondent had violated Articles 20 and 40 of the Constitution the latter of which protects the right of any person from being deprived of their property except in the manner set out in the Constitution.

5. The Petitioners sought a declaration that their interests and rights over the Suit Property as guaranteed by Articles 40 of the Constitution had been violated, breached and or infringed upon by the Respondent. They also sought a permanent prohibitory injunction to restrain the Respondent or her agents from interfering with their quiet possession and use of the Suit Property. They sought damages for the loss they had incurred and costs of the petition.

6. The petition was supported by the affidavit of the 1<sup>st</sup> Petitioner, who annexed a copy of the Petitioners' title over the Suit Property. He attached a copy of the approval given by the Director of City Planning on 22/11/2011 for the proposed construction of a domestic building. He attached copies of various documents including a sketch map of the layout for the proposed development on the land; the approval given by NEMA on 10/9/2012; the approval from the Nairobi City County given on 10/4/2014; and the letter dated 11/8/2014 from Sagar Builders Limited addressed to Studio Infinity Architect stating that they stopped work on the site from the previous Saturday because the 1<sup>st</sup> Respondent ordered the work to be stopped and for the site to be closed. He also attached a copy of the letter dated 13/8/2014 from the Architectural Association of Kenya addressed to the Petitioners' architects which emphasized that any stoppage of construction should be communicated officially in writing while noting that the Association was not aware of any law that permitted verbal stoppage of work.

7. The 1<sup>st</sup> Petitioner produced a copy of his advocates' letter dated 25/8/2014 addressed to the Respondent. The letter requested the Respondent to give written communication on the stoppage of the work and indicated that the Petitioners would commence construction on 30/8/2014 or move the court for appropriate orders. He also produced a copy of the letter from the architect dated 26/8/2014 which invited the consultants to visit the site and evaluate the cost implication of the stoppage of the work with a view to assessing damages. The consultant's letter dated 1/9/2014 gave the cost of Kshs. 2,198,257.91/= which included the preliminary cost of Kshs. 19,904.31/= per week with additional costs for the exposed reinforcement of the first floor slab and exposed electrical and plumbing pipes.

8. The 1<sup>st</sup> Respondent filed grounds of opposition in which she contended that the Petitioners did not have approved part development plans prepared for the Suit Property and that the Commissioner of Lands could not validly have granted title to the Petitioners under the Government Lands Act because the land fell within a riparian reserve. She contended that the suit land was a riparian reserve bordering Mathare River and was reserved by virtue of Section 82 of the Government's Land Act. Further, that Regulation 6 (c) of the Environmental Management and Coordination (Water Quality) Regulations, 2006 prohibited any person from cultivating or undertaking any development activity within the width of a river or stream for minimum of 6 meters and a maximum of 30 meters on either side based on the highest recorded flood level. The 1<sup>st</sup> Respondent contended that the Petitioners did not comply with the 6-meter way leave when carrying out construction on the Suit Property.

9. Martin Opondo Oloo, the legal adviser to the Cabinet Secretary swore the affidavit in opposition to the petition. He averred that they had checked the records kept at the Ministry of Lands and confirmed that no part development plan existed or was prepared for purposes of alienation and issue of title over the Suit Property. He added that the Suit Property fell within a riparian reserve. He relied on the deed plan dated 5/8/1992 which he claimed showed that the Suit Property bordered Mathare River. He deponed that the Suit Property and all the adjacent plots were reserved and were to be held by the Commissioner of Lands in trust for the people of Kenya under the repealed Government Lands Act. He averred that the Petitioners had breached Regulations 6 of the Environment Management and Coordination (Water Quality) Regulations and Regulation 37 (1) of the Physical Planning (Building and Development) (Control) Rules, 1998 which require any person who has obtained approval of a local authority to erect any proposed building to do so in accordance with the approved plans. He contended that in requesting the Petitioners to stop developing a riparian reserve, the Cabinet Secretary in charge of the Ministry of Lands, Housing and Urban Development was insuring compliance with law.

10. The 1<sup>st</sup> Petitioner, Baljit Sokhi swore the further affidavit which was filed in court on 17/1/2015 in response to the 1<sup>st</sup> Respondents replying affidavit. He averred that no personal entity had ever challenged his ownership of the Suit Property since he acquired the land. He averred that he had not subdivided the land and had not been involved in the preparation of part development plan. He added that his advocate had informed him that the part development plan did not form part of the completion documents that he should have acquired prior to conveyance of the Suit Property.

11. Mr. Sokhit denied that the Suit Property fell within a riparian reserve and relied on F/R 260/17 showing the layout of the land. He averred that the Water Resources Management Authority and NEMA prepared a construction report and Environment Impact Assessment license respectively. He averred that NEMA recommended that 6 meters from the highest flood mark together with the flood plain were to be reserved as a riparian reserve. He added that they had maintained a minimum of 6 meters from the riparian reserve.

12. He stated that he commissioned Opiyo and Associates to conduct a cadastral boundary re-establishment and confirm whether the construction complied with riparian regulations. The surveyor concluded that the setting out of the building was right within the plot boundary and the prescribed setback requirements. He maintained that Mr. Martin Oloo had misadvised the 1<sup>st</sup> Respondent.

13. The 2<sup>nd</sup> Respondent filed grounds of opposition dated 17/5/2015 and contended that the National Government was not liable to the Petitioners for the alleged violation of fundamental rights and freedoms outside the 1<sup>st</sup> Respondent's official duties. Additionally, that the 1<sup>st</sup> Respondent was personally liable for actions done outside the scope of her official duties under the doctrine of strict liability.

14. This matter was first heard by the Constitutional Division of the High Court before it was transferred to the Environment and Land Court in October 2017.

15. Parties filed submissions which the court considered. The Petitioners submitted that the issues for determination were whether the Respondents' actions violated or threatened the Petitioners property rights under Article 40 of the Constitution; whether the Respondents' actions violated the right to fair administrative action; whether the Petitioners were entitled to damages and reliefs sought in the petition. The Petitioners submitted that it was not controverted or denied that the 1<sup>st</sup> Respondent went to the Petitioners' property and ordered the contractor to halt construction on the basis that they were infringing on riparian land.

16. The Petitioners submitted that the contention that the building on the Suit Property would be demolished because it was in breach of riparian land had no basis because the Petitioners obtained the necessary approvals before commencing the work and they requested the 1<sup>st</sup> Respondent to officially communicate the basis for her assertion that the Petitioners had breached the riparian reserve. The Petitioners argued that even after instituting this claim the Respondents had been afforded numerous opportunities to challenge the Petitioners' claim but had failed to do so. The Petitioners relied on the letter from the Architectural Association of Kenya, which they claimed had independently arrived at the finding that there was no infringement of the riparian land.

17. The Petitioners argued that their right to fair administrative action was violated by the 1<sup>st</sup> Respondent who did not grant them a hearing before issuing the directive stopping the Petitioners construction on the Suit Property. They added that the 1<sup>st</sup> Respondent's action of interfering with their title without affording them a hearing was in violation of the rules of natural justice. They relied on the decisions in **John Mukora Wachihi v Minister for Lands & 6 others [2013] eKLR**; **Compar Investments Limited v Kenya Urban Roads Authority [2014] eKLR**; and **Emange Se-semata Investments Limited v Attorney General & 4 others [2012] eKLR**.

18. The Petitioners submitted that they were entitled to damages and relied on the assessment given by M/s Tower Courts Consultants which gave the summary of the loss as Kshs. 2,198,257/= as at 1/9/2014. The Petitioners relied on the decisions in **Multiple Hauliers East Africa Limited v Attorney General & 10 Others [2013] eKLR** in which the court awarded damages of Kshs. 2,000,000/= for violation of the Petitioners' right to fair administration action. The Petitioners urged the court to award them damages of Kshs. 3,000,000 as a reasonable amount for violation of their right to fair administrative action.

19. The 1<sup>st</sup> Respondent submitted that the issue for determination was whether the construction undertaken by the Petitioners was encroaching on a riparian reserve and whether the Petitioners were entitled to the reliefs sought. She relied on Article 60 (e) of the Constitution which provides that land in Kenya should held, used and managed in a manner that is equitable, efficient, productive and sustainable in accordance with principles which include the sound conservation and protection of ecologically sensitive areas. She also relied on the definition of public land in Article 62 (1) (l) of the Constitution which includes the land between the high and low water marks. She also relied on Section 2 of the Water Act which defines a riparian habitat and Regulation 6 (c) of the Environmental Management and Coordination (Water Quality) Regulations, 2006 which prohibits the cultivation or undertaking development activities within full width of a river or stream to a minimum of 6 meters and a maximum of 30 meters on either side based on the highest recorded flood level.

20. The 1<sup>st</sup> Respondent submitted that the construction undertaken by the Petitioners was in breach of clause 2 of the Environmental Impact Assessment licence issued to the Petitioners requiring them to maintain a 6 meter riparian reserve. Further, that since riparian land is public land a request to the Petitioners to halt the construction was intended to ensure non-interference with public land in accord with the obligation under Article 3 of the Constitution. It was submitted that the 1<sup>st</sup> Respondent was discharging her constitutional duty.

21. The 1<sup>st</sup> Respondent relied on **Cortec Mining Kenya Limited v Cabinet Secretary Ministry of Mining and 9 others [2015] eKLR** where the court held that the doctrine of public trust and public interest could not be expunged from the proceedings in the case which involved the Mining Act. The court observed that the Minister was the ultimate custodian of the public trust and interest in matters that fell under his docket and that it was the Minister to take responsibility because the buck stopped at his desk. The court found that in the circumstances of that case the Minister was right and was entitled to act in the manner he did in the public interest once he was satisfied that the Commissioner of Mines had acted in violation of the law when he issued the licence to the applicant.

22. The 1<sup>st</sup> Respondent submitted the construction undertaken by the Petitioners encroached on the riparian reserve and was therefore unlawful. She relied on the decision in **A.T Kaminchia v NEMA & Another Tribunal Appeal Number NET05/2005** where the Environmental Tribunal observed that a riparian land owner was not at liberty to use the land falling outside the riparian wayleave without taking into consideration the relevant laws that protect the riverine environment.

23. The 1<sup>st</sup> Respondent contended that the objective of Article 60 (e) of the Constitution and the reservation of riparian land was to protect the environment and our natural resources. She argued that the Petitioners' actions were in breach of Article 60 (e) of the Constitution.

24. The 1<sup>st</sup> Respondent relied on Article 69 of the Constitution which enjoins the State to eliminate processes and activities that are likely to endanger the environment and obligates every person to cooperate with state organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources. The 1<sup>st</sup> Respondent submitted that by dint of Article 69 the Petitioners had a duty to ensure that their development did not endanger the riparian reserve along Mathare River and the construction was conducted in accordance with approvals granted. She relied on the decision in **V/D Berg Roses & Project Agro Lease Limited v Attorney General and Minister for Environment and Mineral Resources [2016] eKLR** where Munyao Sila J. observed that there was no absolute right for one to use his land as he wished and that all land must be used in the manner that does not endanger the environment. The Judge added that the use of land should conform to the obligation to protect the environment as provided in the Constitution.

25. The 1<sup>st</sup> Respondent submitted that the Suit Property and the adjacent parcels of land were reserved to be held in trust by the Commissioner of Lands for the people of Kenya hence any allocation of the land to private citizens was null and void. She argued that the Commissioner of Lands breached the trust by allocating the Suit Property to an individual and the Petitioners were therefore not entitled to the reliefs they seek because no proprietary rights under Article 40 could accrue to them over public land. She referred to the decision in **Kenya Industrial Estate Limited v Anne Chepsiror and 5 others [2015] eKLR** where the court observed that public land must be protected by all persons especially the Commissioner of Lands or his successor whom the administration of public land was entrusted to. The judge expressed his deep disappointment that the Commissioner of Lands proceeded to distribute to private individual's land that was set aside for public purposes. The 1<sup>st</sup> Respondent urged where there is a conflict between private and public interest, public interest should prevail and relied in the decision in **Susan Waithera Kariuki & 4 Others v Town Clerk City Council of Nairobi & 2 Others [2011] eKLR** where the court stated that a balance between private rights and the public interest is required under the Constitution.

26. The 1<sup>st</sup> Respondent submitted that the Petitioner was invited for a meeting on 11/8/2014 where the reasons for stopping the construction were tendered and he was advised that construction on a riparian reserve was unlawful. She indicated that she informed the Petitioners that she resided in Hill View Estate, Spring Valley and regularly passed by Petitioners property and had noted that the construction had breached the 30 metre riparian wayleave. The 1<sup>st</sup> Respondent denied that the Petitioners' right to fair administrative action was violated while maintaining that the reasons why the 1<sup>st</sup> Respondent faulted the ongoing construction were duly given.

27. The 1<sup>st</sup> Respondent invited the court to uphold Article 60 (3) of the Constitution and find that 1<sup>st</sup> Respondent's actions were intended to

protect the environment and natural resources. She urged the court to dismiss the petition.

28. The 2<sup>nd</sup> Respondent submitted that Mumbi Ngugi J. granted the orders sought by the Petitioners on 22/9/2014 and pointed out that Hon. Charity K. Ngilu was sued in these proceedings in her personal capacity as the 1<sup>st</sup> Respondent which is why she instructed private advocates to defend her in the matter. The Attorney General pointed out that even though the 1<sup>st</sup> Respondent was sued in her personal capacity, she was sued because of the actions she undertook as the Cabinet Secretary of Lands in the Ministry of Lands, Housing and Urban Development and in the course of her duties.

29. The 2<sup>nd</sup> Respondent stated that it came on record as the Attorney General to defend the interest of the Ministry of Lands, Housing and Urban Settlements by virtue of Article 156 of the Constitution and the Office of the Attorney General Act as the principal legal adviser and representative of National Government in legal proceedings owing to allegations that the Ministry was in breach of the Petitioners' right to own property.

30. The Honourable Attorney General pointed out that the legitimacy of the Petitioners title over the suit land was not in dispute. However, to the extent that the Petitioners were alleged to have constructed close to the riparian land it submitted that that would have been in violation of Section 17 of the Water Act which provides for protected areas and prohibits construction on the protected zone.

31. The Attorney General went further to submit that the matter had to be resolved by technical persons like surveyors and environmental experts. The Attorney general submitted that the 1<sup>st</sup> Respondent issued verbal instructions for stoppage of the construction without advice or documentation from relevant experts in the ministry or other statutory bodies and that this fell outside her duty and responsibilities as Cabinet Secretary of Lands, Housing and Urban Development.

32. The Attorney General further submitted that the 1<sup>st</sup> Respondent's action was contrary to the right to fair administrative action under Article 47 of the Constitution. The Attorney General added that as at 17/3/2016 when it filed its submissions, the Ministry had not furnished it with sufficient instructions to enable it prepare his response as directed by the court. The Attorney General further submitted that since the 1<sup>st</sup> Respondent was sued in her personal capacity and she instructed a private advocate to represent her in these proceedings, the National Government through the Ministry of Lands, Housing and Urban Development would not bear any liability for matters done outside her official duties. Further, that for any liability to attach to the Government from the 1<sup>st</sup> Respondent's actions, those actions had to be mandated by law and be within the scope of the official duties of the 1<sup>st</sup> Respondent as Cabinet Secretary.

33. The Attorney General submitted that the immunity and protection for government officials from personal liability in civil proceedings under Section 4 of the Government Proceedings Act only extended to actions done in official capacity within the constitutional or statutory mandate. The Attorney General referred to Section 10 of the National Government Coordination Act which stipulates that each Cabinet Secretary is responsible for the functions assigned to him or her by the President, the Constitution or any other written law.

34. The Attorney General referred to the decision in **Harlow v Fitzgerald 457 U.S 800, 818 (1982)** on the principle that the qualified immunity doctrine protected government officials from liability from civil damages where their conduct did not violate clearly established statutory or constitutional rights which a reasonable person would have known. The AG urged that the court went further to hold that to determine whether an official was entitled to qualified immunity, the specific right allegedly violated had to be identified and a determination made as to whether it was clearly established and whether a reasonable officer would have believed that his conduct was lawful. The Attorney General urged the court to dismiss the Petition against it based on the fact that the orders sought did not relate to the performance of the 1<sup>st</sup> Respondent's official duties and responsibilities at the Ministry of Lands, Housing and Urban Development.

35. The High Court issued summons for the appearance of the Land Registrar and Director of Surveys in court. The Director of Surveys prepared a report which this court noted on 15/5/2019 did not show the developments on the Suit property and whether they encroached on the riparian reserve. This court issued an order for the Director of Physical Planning Nairobi County and the Director General of NEMA to prepare reports on the development of Suit Property and indicate the distance from the river to the development as well as the riparian reserve on Mathare River. The Petitioners advocate informed the court on 16/7/2020 that the two reports had been prepared.

36. The court notes that the report dated 3/9/2019 prepared by NEMA indicated that the Suit Property was situated within Mathare River Valley and that the proponent of the development was issued an EIA licence on 10/9/2012. NEMA observed that the ground measurements taken established that the proponent of the development had observed a riparian reserve of 17 meters being 11 meters from the flood plain and 6 meters from the highest flood mark. In the report, NEMA recommended that the development was in compliance with the prescribed riparian reserve protection distances and in accordance with the EIA licence. The report went further to recommend that no activity was to be undertaken on the reserve without the approval of the relevant lead agencies. Further, that the riparian reserve to be kept free from any development. The Water Resources Authority vide its letter dated 2/9/2019 addressed to NEMA confirmed that the conditions recommended by that office for a flood plain of 11 meters from the edge of the river and 6 meters from the highest flood mark had been adhered to.

37. The Director of Surveys forwarded his report on 10/5/2019 in which he indicated that whether or not the Suit Property fell on a riparian reserve was a development issue while pointing out that the Physical Planning Act required the provision of a 10-meter-wide riparian wayleave which is what was observed in survey plan number 532/180. The Director of surveys advised the parties' advocate to contact the relevant bodies concerned with development and riparian reserves.

38. After the filing of the reports in court, the Petitioners filed further written submissions and relied on Section 23 of the Registration of Titles Act on the protection afforded to registered proprietors of land. The Petitioners contended that no proceedings had been filed in court challenging their ownership of the Suit Property and maintained that the challenge on the title by the 1<sup>st</sup> Respondent was an afterthought because she had earlier contended that the Petitioners were building on a riparian reserve. The Petitioners contended that no evidence was tendered before the court to show that the Suit Property and the adjacent parcels of land were unlawfully allocated. The Petitioners contended that they had fully complied with Regulation 6 of the Environmental Management and Coordination (Water Quality) Regulations. They urged that the reports prepared by NEMA, Water Resources Management Authority and the Planning Compliance and Enforcement report

dated 29/7/2020 were unanimous that the Petitioners had complied with the relevant laws and licences or approvals given. The Petitioners agreed with the 2<sup>nd</sup> Respondent that the 1<sup>st</sup> Respondent acted arbitrarily without input from experts who would have advised her on the correct riparian reserve.

39. The main issues for determination are whether the 1<sup>st</sup> Respondent breached the Petitioners' rights as alleged in the petition and whether the court should grant the orders sought in the petition.

40. There is no dispute as to the Petitioners' ownership of the Suit property and up to now the title the Petitioners hold over the Suit Property has not been challenged. The right to own and use property is not absolute for were it so then the Petitioners would not have needed to obtain licenses before developing the Suit Property as they did from various regulatory organs including the City Planning Department of Nairobi County Government, the Ministry of Lands, Housing and Urban Development, the National Environment Management Authority (NEMA) and the Water Resources Management Authority.

41. It is apparent from the definition of "environment" under EMCA that land is inextricably linked to the environment and in fact is part of the environment both in its natural and built forms. The definition of public land under Article 62 of the Constitution includes the riparian reserve which is defined as the land between the high and low water marks. River Mathare, as a body of water is included in the definition of land under Article 260 of the Constitution. From the title and the office that the 1<sup>st</sup> Respondent held, her docket involved land generally and urban development.

42. The importance of the environment to the people of Kenya is demonstrated by the fact that respect for the environment as our heritage forms part of the preamble to our Constitution. Chapter 5 of our Constitution is dedicated to land and the environment. The Constitution states that land in Kenya must be held and used in a manner that is equitable, efficient, productive and sustainable in line with the principles that land as a resource, must be managed in a sustainable and productive way, and that sound conservation mechanisms must be employed. Sound conservation for the riparian reserves would entail the prevention of soil degradation and protection of the river water. To this end, Regulation 6(c) of the Environmental Management and Co-ordination (Water Quality) Regulations of 2006 prohibits the cultivation and development of the land that is within the minimum width of 6 metres and maximum width of 30 metres of a river or stream. These measurements are to be based on the highest recorded flood level.

43. The reports prepared by both NEMA and the Water Resources Authority confirmed that the Petitioners' development had observed a riparian reserve of 17 meters being 11 meters from the flood plain and 6 meters from the highest flood mark in line with the conditions NEMA gave the Petitioners. In this court's view, it was not unreasonable for the 1<sup>st</sup> Respondent to have discerned that on the face of it the Petitioners appeared to be undertaking construction on the riparian reserve since from the report it is apparent that the construction was undertaken 6 metres from the flood plain. The 1<sup>st</sup> Petitioner stated that the 1<sup>st</sup> Respondent informed him that she was stopping the construction because it had encroached onto the riparian reserve. Based on the circumstances of this case, the court is not persuaded that the 1<sup>st</sup> Respondent breached the Petitioners' right to property or that the Petitioners' right to fair administrative action was contravened by the 1<sup>st</sup> Respondent.

44. The 2<sup>nd</sup> Respondent maintained that the 1<sup>st</sup> Respondent should first have sought expert advice on whether the Petitioners' development was on the riparian reserve before issuing the directive to stop the construction. It is doubtful that that advice would have been forthcoming to the 1<sup>st</sup> Respondent based on the fact that the AG's counsel disclosed in their submissions that the Ministry of Lands had not provided sufficient instructions to enable the Office of the Attorney General prepare an affidavit in response to the petition as the court had directed.

45. The 2<sup>nd</sup> Respondent adopted the stance that when the 1<sup>st</sup> Respondent stopped the Petitioners' development, she acted outside her powers and the functions assigned to her as the Cabinet Secretary in the Ministry of Lands, Housing and Urban Development and that she was therefore personally liable for her actions. The question then becomes, did the Constitution stop the 1<sup>st</sup> Respondent from taking steps to protect the environment? This court does not think so. The State is required by the Constitution to eliminate processes and activities that are likely to endanger the environment. NEMA and other entities involved in land use planning, development and environmental conservation may at times omit to do what falls within their mandate or they may act beyond their powers. With this in mind, the Constitution at Article 69 (2) enjoins every person to cooperate with State organs and other persons to protect and conserve the environment. That included the 1<sup>st</sup> Respondent such that even though at the time she was the Cabinet secretary in the Ministry of Lands, Housing and Urban Development, she had a role to play in the protection and conservation of the environment. By raising concerns and stopping construction that appeared to be undertaken on a riparian reserve, the 1<sup>st</sup> Respondent was taking steps to protect and conserve the riparian reserve from activities that were likely to damage the Mathare River and its riparian reserve.

46. Environmental protection and conservation are mostly put on the back burner by citizens unlike the enforcement of private rights over land which is more common by registered or beneficial owners. We must have people championing the cause of environmental protection and conservation if we are to live up to the Constitutional aspirations enshrined in the Constitution. It would not bode well for environmental protection and conservation if those who dare to speak up for the environment as the 1<sup>st</sup> Respondent did are condemned by the courts to pay damages claimed by those suspected to have engaged in activities that may lead to environmental degradation or damage.

47. The court declines to grant the orders sought in the petition dated 3/9/2014. Each party will bear its own costs.

**DELIVERED VIRTUALLY AT NAIROBI THIS 3<sup>RD</sup> DAY OF MAY 2021**

**K. BOR**

**JUDGE**

**In the presence of: -**

Mr. K. Maina holding brief for M. Waiganjo for the Petitioner

Ms. Sharon Lipwop for the 1<sup>st</sup> Respondent

Mr. Motari Matunda for the 2<sup>nd</sup> Respondent

Mr. V. Owuor- Court Assistant