



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Petition 42 of 2013

JOSHUA KARIANJAH WAIGANJO.....PETITIONER

AND

THE ATTORNEY GENERAL.....1ST RESPONDENT

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

THE CHIEF MAGISTRATE'S COURT NAIVASHA.....3RD RESPONDENT

THE CHIEF MAGISTRATE'S COURT NAIROBI.....4TH RESPONDENT

THE CHIEF MAGISTRATE'S COURT NYERI.....5TH RESPONDENT

RULING

1. The matter before the court is a petition filed on behalf of one Joshua Karianjahi Waiganjo by an advocate, Mr Kibiru Njenga practising in the firm of *Khaminwa and Khaminwa Company Advocates*. The advocate is concerned that the said Waiganjo is being subjected to multiple proceedings in several courts.
2. Waiganjo is subject of *Naivasha Criminal Case No. 17 of 2013* where he is charged with several counts of Robbery with Violence contrary to **section 296(2)** of the *Penal Code* and personating a public officer contrary to **section 105(b)** of the *Penal Code*. In *Nairobi Criminal Case No. 64 of 2013*, he is charged with Obtaining Money by False Pretences contrary to **section 313** of the *Penal Code* and in *Nyeri Criminal Case No 755 of 2010* he is charged with stealing a motor vehicle contrary to **section 278(A)** of the Penal Code.
3. In addition to the criminal cases, Dr Khaminwa, counsel for the petitioner, stated that there is a Presidential Inquiry ongoing about his conduct where it is alleged that he impersonated a policeman but the deposition does not state the particulars or terms thereof. Dr Khaminwa has argued that this is untidy situation and Waiganjo should not be subject to dual processes which infringe his fundamental rights and freedoms. He noted that the High Court has jurisdiction to put a stop to all this, direct his release on bail and order stay of the trials.
4. Ms Kahoro, appearing on behalf of the Director of Public Prosecutions, opposed the application on the basis that the State required time to respond to the petition. In any event she stated that there is nothing in law that prevents dual processes such as the one the subject is undergoing. She submitted that the court cases are criminal cases while the inquiry is one dealing with professional conduct and the two could proceed simultaneously.

5. I have considered the matter and I am satisfied that I have jurisdiction to grant conservatory orders but the fact of this case, at this stage do not persuade me to exercise discretion in favour of Waiganjo.

6. Firstly, the petitioner is purporting to file this matter on behalf of Waiganjo, yet there is no nexus between the petitioner and Waiganjo demonstrated in the deposition. I appreciate that the, **Article 22(1)** and **(2)** has expanded the horizons of *locus standi* in matters of enforcement of fundamental rights and freedoms but even where one purports to enforce the rights of another there must be a nexus between the parties particularly where a case has a direct effect on the person whose rights are affected. After all, **Article 22(2)(a)** entitles a person to act, “*on behalf of another person who cannot act in their own name.*” It is not clear that Waiganjo cannot act in his own name.

7. Secondly, I do not have sufficient material in relation to the extent and nature of the “*Presidential Inquiry*” referred to by Dr. Khaminwa to enable me make an assessment as whether the proceedings would be prejudicial to Waiganjo. I am therefore reluctant to make a finding on this without giving the state a full opportunity to be heard on the matter.

8. Thirdly, it is not disputed that Waiganjo is in lawful custody, he is entitled to apply for a bail in each of the cases where he is a charged and the court is obliged to consider the circumstances in each case and grant bail where circumstances permits.

9. The result of my findings above is that I reject the application for conservatory orders.

Dated and Delivered at Nairobi this 4th February 2013

D.S. MAJANJA

JUDGE

Dr Khaminwa instructed by Khaminwa and Khaminwa and Company Advocates for the petitioner.

Ms Kahoro, State Counsel, instructed by the Director of Public Prosecutions.