



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Petition 321 of 2012

PROF. MAINA WA KANYATTI 1ST PETITIONER

THE MAUMAU RESEARCH CENTRE 2ND PETITIONER

AND

MURANG'A COUNTY COUNCIL.....1ST RESPONDENT

THE NATIONAL MUSEUMS OF KENYA.....2ND RESPONDENT

THE MINISTER FOR CULTURE AND NATIONAL HERITAGE.....3RD RESPONDENT

THE ATTORNEY GENERAL.....4TH RESPONDENT

RULING

1. This matter concerns the national monument or a place of cultural significance known as Mukurwe wa Nyagathanga situated in Murang'a. Although the matter is being fought on affidavit evidence, this is a matter that was filed to enforce fundamental rights and freedoms and the decision of the court will affect this national monument one way or another.
2. Our Constitution now places national values and principles at its core and in every decision, this matter must be infused in those decisions. Key to litigation such as this are the values of public participation and devolution of power. These values must also be taken into account and applied by the Court. The dispensation of justice is not just an issue of reading of affidavits and advocates in Nairobi being inconvenienced. We accept to be inconvenienced because of the higher values which the Constitution demands.
3. This brings me to the issue of Access of Justice protected unclear **Article 48**. The duty of the court in relation to fundamental rights and freedoms under **Article 19** is not only to protect these rights but to promote them. The people closest to the cultural shrine must be able to see and hear the arguments being made in their case.
4. Devolution must also be given effect. Murang'a High Court is the court which is closest to the people where the subject of the case is.
5. I am afraid that provisions of **Order 47** of the *Civil Procedure Rules* cited by Ms Bubi must be read in accordance with the values and principles I have cited and in the circumstances the direction I give is that this matter is transferred to the Murang'a High Court for hearing and disposal.

DATED and DELIVERED at NAIROBI this 6th day of November 2012

D.S. MAJANJA
JUDGE

FURTHER ORDER: The DR to forward the file to the Murang'a High Court and the parties to be duly notified. Matter to be mentioned on 11.12.2012 in that court.

D.S. MAJANJA
JUDGE