



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Petition 445 of 2012

**MANIAGO SAFARIS LIMITED ..... PETITIONER**

**AND**

**THE CHIEF MAGISTRATE MILIMANI LAW COURTS ..... 1<sup>ST</sup> RESPONDENT**

**THE DIRECTOR PUBLIC PROSECUTIONS .....2<sup>ND</sup> RESPONDENT**

**HON ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**ETHICS & ANTI CORRUPTION COMMISSION .....4<sup>TH</sup> RESPONDENT**

**RULING**

1. The petitioner is a limited liability company and it was the 4<sup>th</sup> accused, person in *Anti Corruption Case No. 17 of 2009; Republic v. Ong'ong'a Achieng, Duncan Muriuki Kaguuru, Rebeca Mwikali Nabutola and Maniago Safari's Limited*.
2. After trial, the accused were duly convicted by a judgment delivered on 10<sup>th</sup> September 2012. The 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> accused, who are interested parties in this matter, were all sentenced to serve jail terms. The petitioner now brings this petition to challenge the proceedings and judgment as against it on the ground that it was not accorded the right to a fair trial under **Article 50** of the Constitution.
3. When this matter came up for directions on 5<sup>th</sup> November 2011, I informed the parties that I was inclined to transfer this matter to be dealt with in the Criminal Division of the High Court so that the judge handling the interested parties appeals from the conviction and sentence would also deal with the matter.
4. Mr Nyachoti, counsel for the petitioner, noted that this petition concerns his clients' right to a fair hearing and that it was tried in absentia as such the matter is independent of the appeals that have been lodged by the interested parties challenging the judgment. Counsel contended that the appeal process was separate, that the appeals had not been admitted for hearing and it was in his client's interest not to be tied to the interested parties' fate. Counsel further submitted that the finding in the petitioner's favour may dispose of the appeals once and for all.
5. Mr Warui, counsel representing the Director of Public Prosecutions, was of the view that the matter should be considered alongside the appeals as the petitioner was duly served with the court process and was properly convicted. This position was supported by counsel or the Ethics and Anti Corruption Commission, Mr Ongondi.

6. Mr Ndeirtu, who appeared for the 1<sup>st</sup> interested party, Mr Duncan Muriuki Kaguuru, opposed the proposed transfer of the petition on the ground that no appeal had been filed by the petitioner. Furthermore, the petitioner raises various issues of fact and law, which his clients needed to respond to and which would prejudice his client case if prosecuted with appeals. Counsel stated he needed time to respond to the petitioner's depositions in the matter. Mr Ochola and Ms Mwenesi counsel for Mr Ong'ong'a and Ms Nabutola respectively supported this position.

7. I am alive that this petition and criminal appeal invoke two separate jurisdictions of the High Court. The petitioner invokes the procedure under **Article 22** to enforce fundamental rights and freedoms and the interested parties have chosen to exercise their undoubted right of appeal against the convictions. The common underlying factor is that both proceedings proceed on the basis that there is a valid judgement which is being challenged.

8. The problem with proceeding to attack the judgment in separate proceedings is that first, each court considering the matter may reach inconsistent decisions. This may affect the interested parties negatively. For example, if the petitioner succeeds, it will be entitled to have the proceedings and judgment set aside entirely but this may expose the interested parties to the possibility of a new trial. On the other side, if the judgment is upheld on appeal, the petitioner may not be in a position to agitate its rights alleged to be violated.

9. In my view, this must be dealt with practically to avoid situation that may embarrass the court or prejudice the parties. It is not necessary that the matters be consolidated but I think it is proper that one judge deals with all cases together. I also think that the interested parties' concerns can be taken care of by giving appropriate directions as to the exchange of pleadings, depositions and submissions, if necessary.

10. The order that commends itself to me is that the petition is hereby transferred to the Criminal Division of the High Court, Nairobi. It shall be mentioned before the Principal Judge of the High Court who is also the Presiding Judge of the Division for further directions and orders.

**DATED and DELIVERED at NAIROBI** this 7<sup>th</sup> day of November 2012

**D.S. MAJANJA**  
**JUDGE**

Mr P. Nyachoti instructed by Nyachoti and Company Advocates for the petitioner.

Mr M Warui instructed by the Director of Public Prosecutions.

Mr Ong'ondi instructed by the Ethics and Anti-Corruption Commission.

Mr W Nderitu instructed by Nderitu and Partners Advocates for the 1<sup>st</sup> interested party.

Ms Mwenesi instructed by Betty Mwenesi and Company Advocates for the 2<sup>nd</sup> interested party.

Mr Ochola instructed by Soita, Saende & Company Advocates for the 3<sup>rd</sup> interested party.