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Court upholds rule of law to protect the environment

Nairobi, 8 December 2021 – Environment and Land Court granted conservatory orders yesterday, Tuesday 7 December, stopping the felling of trees and any other renovations at Uhuru Park.

Natural Justice is thrilled with this ruling because it reaffirms that even government agencies must follow the rule of law. Earlier this month, Katiba Institute and Natural Justice, as members of the Daima Coalition, submitted an access to information letters to the National Environment Management Authority (NEMA) seeking information on whether an Environmental Impact Assessment (EIA) was done before the renovations at Uhuru Park commenced. Indeed, NEMA confirmed to the court that no Environmental Impact and Social Assessment (ESIA) report was submitted for consideration.

We also sent access to information letters to Nairobi Metropolitan Services (NMS), the Ministry of Tourism and the Nairobi County Assembly asking that, in addition to providing a copy of all reports and proposals relating to the project, they also give the names of agencies or persons involved in the development of environmental impact assessments relating to the project, and evidence of public participation before the start of the project.

We categorically state that we shall remain vigilant and vehemently oppose any attempts at undermining the inclusion of the public in the decision making of projects in public spaces. The government must uphold Article 69(1)(d) of the Constitution, which provides that the State shall encourage public participation in the environment's management, protection, and conservation.

We also strongly condemn the actions of the County Assembly – a law making body that ought to represent all Nairobi residents – that appear to subvert the power of the people by adopting the motion to renovate the park without public participation, contrary to regulation 17 of the Environment Management and Coordination (Impact Assessment and Audit) Regulations, 2003.

The judge referred to the Mui Basin case that affirmatively asserted that the management of the environment is “best handled” when citizens are involved. In the same reference, the Mui Basin case relied on the definition of public participation provided by Principle 10 of the Rio Declaration on Environment and Development, 1992, “States shall facilitate and encourage public awareness and participation by making information widely available.”

“The ruling is unequivocal on the right to public participation and the central role of EIAs in good governance,” said Nyaguthii Chege, Natural Justice Director, East Africa Hub.

We agree with the ruling that conservatory orders in public law litigation are meant to facilitate ordered functioning within the public sector and uphold the court's adjudicatory authority in the public interest.

Since 2019 when the government indicated plans to hive-off part of Uhuru Park to construct the Nairobi Expressway, Kenyans have remained vigilant on the activities around the park. In this regard, the Daima Coalition has been at the forefront of mobilising Nairobi residents to protect the shrinking green spaces.

"Regrettably this goes beyond Uhuru Park as Nairobi residents have witnessed the indiscriminate loss of tree cover raising concerns around potential climate impacts .", said Mark Odaga, a lawyer with Natural Justice.

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