



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**PETITION NO. 62 OF 2010**

**CONSOLIDATED WITH PETITION NO. 63 OF 2010 AND**

**PETITION NO. 64 OF 2010**

**IN THE MATTER OF SECTIONS 19(1) 92) AND 93), 20(1) 92)**

**(3) AND (4), 22(1)(2), 23(1) (3), 24(1)(2), 27(1)(2), 40(1), 41(1), 159(2),**

**165(3) (b) AND (D) AND (4) AND SECTION 260 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF THE ALLEGED CONTRAVENTION**

**OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER**

**SECTION 27, 40, AND 41 OF THE CONSTITUTION OF KENYA**

**BETWEEN**

**UNILEVER TEA KENYA LIMITED.....PETITIONER**

**VERSUS**

**THE KENYA PLANTATIONS & AGRICULTURAL**

**WORKERS' UNION.....RESPONDENT**

**JUDGEMENT**

**THE PETITION**

1. The Petitioner through a Petition dated 14<sup>th</sup> October, 2010 after the Respondent demanded the immediate ban or withdrawal of its tea harvesting machines; sought the Protection of its rights to mechanise and adopt technology in its operations. The Petition is supported by the Petitioner's supporting Affidavit sworn on 14<sup>th</sup> October 2010.
2. From the Petition the substantive orders sought by the Petitioner relate primarily to the protection of the Petitioner's right to mechanise in its operations as a Constitutional right falling within the purview of *Articles 27(1) and (2) and 40(1)(a) (b) of the Constitution*. It seeks the protection of its right to property against the Respondent's demand for the immediate withdrawal and/or ban of he machines.
3. The parties herein urge that following the delivery of the judgement of the Court of Appeal sitting in *Nairobi in Civil Appeal No. 189 of 2009 Kenya Plantation & Agricultural Workers Union and James Finlay (K) Limited, Sotik Tea Company Limited and the Minister for Labour and Human Resource Development (Coram: Kiage, M'Inoti & Murgor, J.J.A* where the Court held inter alia as follows:-

***“It is for the employer to make the commercial and business judgment whether it will adopt technology or not in its operations, subject to following all prescribed procedures should its adoption of technology result in a redundancy situation. In Kenya***

*Airways Corporation v Tobia Oganya Auma & 5 Others [2007] eKLR this court held that it is not the role of the court to prevent an employer from restricting or adopting modern technology in his business, so long as he observes all the relevant regulations. (see also Kenya Airways Ltd v Aviation Workers Union of Kenya & 3 Others [2014] eKLR.*

*In this appeal we have noted that the adoption of machines by the respondents in their operations did not, and has not resulted in any redundancy. We therefore do not see any legitimate basis upon which the Minister ordered the respondents to withdraw their machines.”*

The Petitioner’s Petition was compromised.

4. Miss Onyango learned Counsel for Petitioner and Miss Odour for Respondent appeared before this Court electronically on 24<sup>th</sup> November 2020. Miss Onyango urged that she had filed her submissions in this matter on 24<sup>th</sup> November 2020, served the same and now seeks adoption of the decision of the **Court of Appeal No. CA 189 of 2009** attached to her submissions. Miss Oduor, on her part stated that she was fully associating herself with the Petitioner’s Counsel Submissions.

5. In the attached Court of Appeal Judgment dated 13<sup>th</sup> July 2018 by Hon. P. O. Kiage, K. M’noti and A. K. Murgor J.J.A in CA No. 189 of 2009, the Petitioner’s and Respondent’s Counsel with reference to the holding of the Court of Appeal as set out in the judgement, contend and are in agreement, that the issues arising for determination in this petition as regards the Petitioner’s right to make commercial and business judgment on whether to adopt technology in its operations has been settled in the affirmative.

6. In the premises, and in line with the holding of the Court of Appeal in **Civil Appl No. 189 of 2009 Kenya Plantation & Agricultural Workers Union and James Finlay (K) Limited, Sotik Tea Company Limited and the Minister for Labour and Human Resource Development (Coram Kiage, M’Inoti & Murgor, J.J.A)** the parties have agreed that the issues in this matter relating to the employer’s right to mechanise has already been determined.

7. In view of the aforesaid and as agreed by both Petitioner’s and Respondent’s Counsel, I find as decided in the Court of Appeal decision herein above, the Petitioner has a right to mechanise and adopt technology in its operations. The matter in dispute is therefore effectively concluded and settled in terms hereinabove stated.

**Dated, Signed and Delivered at Nairobi on this 28<sup>th</sup> day of January, 2021.**

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**J. A. MAKAU**

**JUDGE**