



**REPUBLIC OF KENYA**

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

**JUDICIAL REVIEW APPLICATION NO. E003 OF 2020**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**THE CABINET SECRETARY, MINISTRY**

**OF AGRICULTURE, LIVESTOCK,**

**FISHERIES AND COOPERATIVES.....1<sup>ST</sup> RESPONDENT**

**AGRICULTURAL FOOD**

**AND FISHERIES AUTHORITY.....2<sup>ND</sup> RESPONDENT**

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

**AND**

**JACOB KAMAU KAHIU.....1<sup>ST</sup> INTERESTED PARTY**

**IRUNGU NYAKERA.....2<sup>ND</sup> INTERESTED PARTY**

**MANGARER LANGAT.....3<sup>RD</sup> INTERESTED PARTY**

**FREDRICK MUTHURI MURIITHI.....4<sup>TH</sup> INTERESTED PARTY**

**JOHN KAMAU.....5<sup>TH</sup> INTERESTED PARTY**

**DAVID CHOMBA GACHOKI.....6<sup>TH</sup> INTERESTED PARTY**

**CATHERINE NYAMBOKE MOGENI (Mrs).....7<sup>TH</sup> INTERESTED PARTY**

**WANJA Y. MICHUKI (Ms.).....8<sup>TH</sup> INTERESTED PARTY**

**WACHIRA MAINA.....9<sup>th</sup> INTERESTED PARTY**

**PERIS WATAU MUDIDA (Ms.).....10<sup>TH</sup> INTERESTED PARTY**

**AND**

**EAST AFRICAN TEA**

**TRADE ASSOCIATION.....PROPOSED NTERESTED PARTY/APPLICANT**

**EX PARTE:**

**KENYA TEA DEVELOPMENT AGENCY HOLDINGS LIMITED**

**RULING NO 2**

**The Application**

1. The East African Tea Trade Association, the Applicant herein, has filed an application by way of a Notice of Motion dated 20<sup>th</sup> July 2020 seeking the following orders:

- I. THAT this application is certified urgent and service be dispensed with in the first Instance.**
- 2. THAT this application be heard before 21<sup>st</sup> September 2020 when the matter is scheduled to be mentioned for further directions.**
- 3. THAT the Court be pleased to enjoin East African Tea Trade Association as an Interested party in these proceedings.**
- 4. Costs of this application be provided for.**

2. The Applicant states that it has been directly targeted by the impugned Gazette Notice No. 4469 published in the Special Issue of the Kenya Gazette Notice dated 29<sup>th</sup> June 2020 by the 1<sup>st</sup> and 2<sup>nd</sup> Respondent, which is seeking to interfere with its normal operation to manage the Tea Auction in Kenya. The Applicant thus seeks audience to participate and support the present application which is seeking to have the said Gazette Notice quashed, and the 1<sup>st</sup> and 2<sup>nd</sup> Respondent prohibited from implementing the Gazette Notice.

3. Further, that the Applicant was in the process of filing its own application for leave to commence judicial review proceedings against the Respondents herein, when it learnt of the current application and orders issued on 10<sup>th</sup> July 2020, and which prayers were of similar nature. Lastly, the Applicant seeks to be included in the current proceedings as any orders issued and outcome of the judicial review application will directly affect its mandate, and so that it can be enabled to file its response and submissions to the substantive Notice of Motion before the Court gives further directions on 21<sup>st</sup> September 2020.

4. The application is supported by an affidavit sworn on 20<sup>th</sup> July 2020 by Edward Mudibo, the Applicant's Managing Director. He attached copies of draft pleadings by the Applicant seeking to commence judicial review proceedings against the Respondents with respect to the impugned Gazette Notice.

**The Determination**

5. I have considered the application dated 20<sup>th</sup> July 2020 and the reasons offered in support of the urgency, and I am satisfied that the *ex parte* Applicant has demonstrated that this matter is urgent in light of the scheduled mention of this matter on 21<sup>st</sup> September 2020.

6. As this is an application that seeks to join a party who claims to be directly affected, and therefore a necessary party in this suit within the meaning of Order 53 Rule 3 (2) and (4) of the Civil Procedure Rules, I find that the application can be heard *ex parte*. In addition, the Applicant has provided evidence that it will be affected by the impugned Gazette Notice that is the subject of this application, and that it had intended to bring similar judicial review proceedings against the Respondents. In addition, to the extent that it has a grievance and interest in the actions undertaken by the Respondents to reform the tea sector, and will be adversely affected by the said action, I find that it is a necessary party in the instant proceedings.

**The Orders**

7. In the circumstances, I hereby direct and order as follows:

- I. The Notice of Motion application dated 20th July 2020 is certified urgent and is admitted to hearing *ex parte*.**
- II. East African Tea Trade Association is hereby joined to this suit as the 11<sup>th</sup> Interested Party.**
- III. The *ex parte* Applicant shall serve the 11<sup>th</sup> Interested Party with the substantive Notice of Motion and submissions thereon, and the Chamber Summons dated 9<sup>th</sup> July 2020 and its supporting documents within seven (14) days of service of this ruling.**
- IV. Upon being served with the said pleadings, the 11<sup>th</sup> Interested Party shall be required to file their responses to the substantive Notice of Motion and submissions thereon within twenty-one (21) days from the date of service by the *ex parte* Applicant.**
- V. The costs of the Notice of Motion dated 20<sup>th</sup> July 2020 shall be in the cause.**

VI. This matter shall be mentioned on 21<sup>st</sup> September 2020 for further directions.

VII. In view of the Ministry of Health directives on the safeguards to be observed to stem the spread of the current COVID-19 pandemic, this Court shall hear and determine the *ex parte* Applicant's substantive Notice of Motion on the basis of the electronic copies of the pleadings and the written submissions filed by the parties.

VIII. All the parties shall file their pleadings electronically, by filing them with the Judiciary e-filing system, and send copies by electronic mail to the Deputy Registrar of the Judicial Review Division at [judicialreview48@gmail.com](mailto:judicialreview48@gmail.com) and [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).

IX. The electronic copies of pleadings and documents sent by the parties shall be clearly and correctly titled to indicate the J.R Case Number, the description of the Party sending it (that is whether the *Ex Parte* Applicant, Respondent or Interested Party), and the nature of the pleading or document.

X. The service of pleadings and documents directed by the Court shall be by way of personal service and electronic mail, and in the case of service by way of electronic mail, the parties shall also email a copy of the documents so served to the Deputy Registrar of the Judicial Review Division at [judicialreview48@gmail.com](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).

XI. The parties shall also be required to send the respective affidavits of service by way of electronic mail to the Deputy Registrar of the Judicial Review Division at [judicialreview48@gmail.com](mailto:judicialreview48@gmail.com) with copies to [asunachristine51@gmail.com](mailto:asunachristine51@gmail.com).

XII. The Deputy Registrar of the Judicial Review Division shall send a copy of this ruling to the *ex parte* Applicant by electronic mail by close of business on Tuesday, 4<sup>th</sup> August 2020.

XIII. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for mention on 21<sup>st</sup> September 2020, and bring it to the attention of a Judge in the Division on that date for directions.

XIV. Parties shall be at liberty to apply.

8. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 3<sup>RD</sup> DAY OF AUGUST 2020

P. NYAMWEYA

JUDGE