



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**JUDICIAL REVIEW APPLICATION NO. E1160 OF 2020**

**BETWEEN**

**EAST AFRICAN GROWERS FRESH**

**PRODUCE LTD .....APPLICANT**

**VERSUS**

**HORTICULTURAL CROPS DIRECTORATE .....1<sup>ST</sup> RESPONDENT**

**AGRICULTURE AND FOOD AUTHORITY.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The East African Growers Fresh Produce Limited, the Applicant herein, has filed an Originating Notice of Motion dated 16<sup>th</sup> December 2020, in which it is seeking the following orders:

- 1. The Application is certified urgent and dispensed with in the first instance in respect to prayers 2, and 3 (below).**
- 2. A temporary order of interdict be issued restraining the 1st and 2nd Respondents from taking any further prejudicial steps in relation to the Decision by the 1st Respondent contained in a letter dated 3rd December 2020 including; cancellation of exporting licences, imposing fines, making further decisions, and threatening the officials of the Applicant, pending the hearing and determination of these proceedings**
- 3. The Respondents be directed to forthwith forward to the Applicant:**
  - a) The legal notice/ statutory instrument under which they act;**
  - b) The Complaint that was filed before it by the Keitt Fresh Limited leading to the decision/ minutes/letter dated 3rd .December 2020 and the supporting documentary evidence;**
  - c) Minutes of any meetings held in regard to the said complaint;**
  - d) Communications made to any parties in the said complaint; and,**
  - e) The reasoned arbitral award/ decision.**

**4. A declaration be issued that the decision contained in the letter, minutes, decision dated 3rd December 2020 was and is unlawful.**

**5. The decision contained in the letter/minutes/ decision dated 3rd December 2020 be removed - and quashed . .**

**6. The costs of this application be provided for.**

2. The said Originating Notice of Motion is supported by an affidavit deposed to on 16<sup>th</sup> December 2020 by Nipul Dodhia, the Applicant's Managing Director. The Applicant states that it is an exporter of Fresh Produce, whose annual exporting licence is due for renewal every June of subsequent year, while the 1<sup>st</sup> Respondent is constituted under section 11 of the Agriculture and Food Authority Act. In March 2020, the Applicant was informed by the 1<sup>st</sup> Respondent that a dispute that had been filed with them by Keitt Fresh Limited, and following an arbitration process, the 1<sup>st</sup> Respondent issued a letter dated 3<sup>rd</sup> December 2020 requiring the Applicant to compensate Keitt Fresh Limited by paying it the sum of Kshs. 2,000,000/=.

3. The Applicant alleges that the purported arbitration between it and Keitt Fresh is not grounded in the Agriculture and Food Authority Act. In addition, that the 1<sup>st</sup> Respondent's decision does not state which part of the law was broken or which contract was breached by the Applicant, if any, nor does it state the reasons. Lastly, that the Applicant was denied a copy of the written complaint filed by Keitt Fresh, and a reasonable opportunity to state their case or be represented by counsel.

4. The Applicant annexed copies of the minutes of the arbitration meetings, and of the letter from the 1<sup>st</sup> Respondent dated 3<sup>rd</sup> December 2020 communicating the outcome thereof.

5. I have considered the application by the Applicant and note that while this Court is empowered to issue a temporary interdict or other temporary relief under section 11 (1) (i) of the Fair Administrative Action Act, some of the prayers sought in this regard are of a final nature, and cannot be granted at an *ex parte* stage. The only temporary relief that can be granted at this stage is with regards to the status quo to be maintained pending the hearing of the Originating Notice of Motion, so that the said Motion is not rendered nugatory. It is also notable in this respect that Keitt Fresh Limited which is likely to be affected by these proceedings is not a party herein.

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

**I. The Originating Notice of Motion dated 16<sup>th</sup> December 2020 is certified urgent ad admitted to hearing ex parte.**

**II. Keitt Fresh Limited is joined in this suit as an Interested Party.**

**III. The Applicant shall serve the Respondents and Interested Party with the Originating Notice of Motion dated 16<sup>th</sup> December 2020, a copy of this ruling and a hearing notice within fourteen (14) days of today's date.**

**IV. Upon service, the Respondents and Interested Party are granted leave to file and serve their response to the said Originating Notice of Motion dated 16<sup>th</sup> December 2020 within fourteen (14) days of service**

**V. The Originating Notice of Motion dated 16<sup>th</sup> December 2020 shall be heard on 28<sup>th</sup> January 2021 .**

**VI. A temporary interdict be and is hereby issued restraining the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, and the Interested Party from any further implementation of the letter dated 3rd December**

2020 in any manner, pending the hearing and determination of the Originating Notice of Motion dated 16<sup>th</sup> December 2020, or until further orders of this Court.

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 the Applicant's application on the basis of the electronic copies of the pleadings and written submissions filed by the parties.

VIII. The parties shall file their pleadings and written submissions electronically through the Judiciary's e-filing system, and by sending 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 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).

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

XI. The Deputy Registrar of the Judicial Review Division shall send a copy of these directions to the Respondent by electronic mail by close of business on Thursday, 24<sup>th</sup> December 2020.

XII. The Deputy Registrar of the Judicial Review Division shall put this matter on the Division's causelist for hearing on 28<sup>th</sup> January 2021.

XIII. Parties shall be at liberty to apply.

7. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 22<sup>ND</sup> DAY OF DECEMBER 2020

P. NYAMWEYA

JUDGE