



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

(Coram: A. C. Mrima, J.)

CONSTITUTIONAL PETITION NO. E243 OF 2020

BETWEEN

KENYA TEA DEVELOPMENT AGENCY

HOLDINGS LIMITED & 55 OTHERS.....PETITIONERS

AND

THE CABINET SECRETARY,

MINISTRY OF AGRICULTURE, LIVESTOCK,

FISHERIES & CO-OPERATIVES & 2 OTHERS.....RESPONDENTS

KENYA SMALL TEA HOLDERS GROWERS

ASSOCIATION (KESTEGA) & OTHERS..... INTERESTED PARTIES

AND

CONSTITUTIONAL PETITION NO. 334 OF 2020

(Formerly Mombasa High Court Constitutional Petition No. 87 of 2020)

BETWEEN

EAST AFRICA TEA TRADE ASSOCIATIONPETITIONER

AND

THE CABINET SECRETARY,

MINISTRY OF AGRICULTURE, LIVESTOCK,

FISHERIES & CO-OPERATIVES & 2 OTHERS.....RESPONDENTS

AND

KENYA TEA DEVELOPMENT AGENCY

HOLDINGS LIMITED & OTHERS..... INTERESTED PARTIES

RULING ON DIRECTIONS

1. The directions in this ruling relate to two Petitions. They are Constitutional Petition No. E243 of 2020 and Constitutional Petition No. 334

of 2020 (formerly Mombasa High Court Constitutional Petition No. 87 of 2020).

2. Constitutional Petition No. 334 of 2020 was transferred to this Court from Mombasa High Court *vide* an order made on 26th November, 2020.

3. Due to the nature of the Petitions, I called upon the Counsel in both matters to tender their proposals on the way forward. One of the issue was whether the Petitions be consolidated. They were two divergent views. One view favoured consolidation of the Petitions whereas the other rooted for separate, but back-to-back hearing of the Petitions by the same Court. Other proposals on the Petitions were variously put forth for the Court's consideration.

4. I have considered the proposals on the Petitions. I have also carefully considered the Petitions. The main and common issue in both Petitions is the constitutionality and operationalization of the Tea Regulations contained in Gazette Notice No. 4469 dated 25th June, 2020. The rest of the issues are ancillary thereto. Further, the Respondents in both Petitions are the same.

5. Given the commonality of the issues, the need to determine the Petitions at the same time and, so, earliest possible, cannot be gainsaid. Consolidation of the Petitions will aid in attaining that desired goal. I say so because both Petitions will be dealt with at the same time with each party granted an opportunity to fully present its case. Consolidation will, therefore, accord the Court the obvious advantage of dealing with and determining the Petitions at the same time and in a single Court file.

6. I have noted that there are several pending applications in Petition No. 334 of 2020. Necessary directions will have to issue to bring both Petitions at par.

7. To that end, I hereby make the following orders: -

(a) Constitutional Petition No. E243 of 2020 and Constitutional Petition No. 334 of 2020 are hereby consolidated.

(b) Constitutional Petition No. E243 of 2020 shall be the lead file.

(c) The parties in the Consolidated Petitions shall, henceforth, appear as follows:

(i) The 1st and 2nd Petitioners shall be the parties appearing as the 1st and 2nd Petitioners in Constitutional Petition No. E243 of 2020;

(ii) The 3rd to 54th Petitioners shall be the parties appearing as the 3rd to 54th Petitioners in Constitutional Petition No. E243 of 2020;

(iii) The 55th Petitioner shall be East African Tea Trade Association;

(iv) The Cabinet Secretary Ministry of Agriculture, Livestock, Fisheries and Co-operatives shall be the 1st Respondent.

(v) The Honourable Attorney General shall be the 2nd Respondent;

(vi) The Agriculture and Food Authority shall be the 3rd Respondent;

(vii) As the Honourable Attorney General filed a Cross-Petition in Constitutional Petition No. 334 of 2020, the Honourable Attorney General shall, therefore, be the Cross-Petitioner whereas the Petitioners and Respondents in (i), (ii), (iii) and (iv) above shall be Cross-Respondents in the Cross-Petition. For clarity, the Petitioners and Respondents in (i), (ii), (iii) and (iv) above shall be the 1st to 58th Cross-Respondents respectively;

(viii) Kenya Small Tea Holders Growers Association (Kestega) shall be the 1st Interested Party;

(ix) The Council of Governors shall be the 2nd Interested Party;

(x) The 2nd to 22nd Interested Parties in Constitutional Petition No. 334 of 2020 shall be the 3rd to 24th Interested Parties respectively;

(d) The three pending applications in Constitutional Petition No. 334 of 2020 shall be heard together. The applications are the Notice of Motion dated 10th August, 2020 filed by the now 54th Petitioner (East African Tea Trade Association) and two Notices of Motion dated 12th October, 2020 and 1st December, 2020 respectively both filed by the Honourable Attorney General.

(e) Any party opposing the Notice of Motion dated 10th August, 2020 shall file and serve its response thereto within 14 days of this order. The Applicant shall thereafter be at liberty to file and serve any supplementary response, if need be, within 7 days of service;

(f) Any party opposing the Notice of Motion dated 12th October, 2020 shall file and serve its response thereto within 14 days of this order. The Applicant shall thereafter be at liberty to file and serve any supplementary response, if need be, within 7 days of service;

(g) The Notice of Motion dated 1st December, 2020 and the Notice of Withdrawal of the Interested Party in Constitutional Petition No. 334 of 2020 dated 23rd November, 2020 shall, within 7 days, be served upon all the parties in this matter including the intended contemnors. Upon service, any party opposing the application and/or the Notice of Withdrawal shall file and serve its response thereto within 14 days. The Applicants shall thereafter be at liberty to file and serve any supplementary responses, if need be, within 7 days of service;

(h) Parties in support of the Notice of Motion dated 10th August, 2020 shall file and serve their respective submissions within 14 days of (e) above. The parties opposed to the application shall, thereafter, file and serve their respective submissions within 14 days of service;

(i) Parties in support of the Notice of Motion dated 12th October, 2020, the Notice of Motion dated 1st December, 2020 and who are also opposed to the Notice of Withdrawal shall file and serve their respective submissions within 14 days of (f) and (g) above respectively. The parties opposed to the applications and who are also in support of the Notice of Withdrawal shall, thereafter, file and serve their respective submissions within 14 days of service;

(j) Parties are at liberty to either file composite or separate responses or submissions;

(k) This matter shall be fixed for a Mention to confirm compliance and for further orders on 23/02/2021.

(l) All rulings, including that on the Notice of Motion dated 12th October, 2020, shall, upon further directions and orders, be delivered concurrently.

(m) In view of the nature of these directions, the Deputy Registrar shall avail copies of this ruling to all the parties within 5 days.

Orders accordingly.

DELIVERED, DATED and SIGNED at NAIROBI this 17th day of December 2020

A. C. MRIMA

JUDGE

Ruling virtually delivered in the presence of:

Mr. Wafula holding brief for Mr. Millimo, Counsel instructed by the firm of Messrs. Millimo, Muthomi & Company Advocates for the 1st and 2nd Petitioners and 1st and 2nd Cross-Respondents.

Mr. Ngatia, SC, instructed by the firm of Messrs. Ngatia & Associates Advocates for the 3rd to 54th Petitioners and the 3rd to 54th Cross-Respondents.

Mr. Mwangi Kibicho, instructed by the firm of Messrs. K. K. Kibicho & Company Advocates for the 55th Petitioner and the 55th Cross-Respondent.

Mr. Nguyo Wachira, Counsel instructed by the Hon. Attorney General for the 1st and 2nd Respondents and the Cross-Petitioner.

Miss. Nkonge, Counsel holding brief for Mr. Gitobu Imanyara for the 3rd Respondent and 59th Cross-Respondent.

Mr. Ndolo, Counsel instructed by the firm of Messrs. Solomon Mugo & Company Advocates for the 1st Interested Party.

No appearance for Counsel for the 2nd Interested Party.

Mr. Ngunjiri, Counsel instructed by Messrs. Patricks Law Associates Advocates for the 3rd to 24th Interested Parties.

Dominic Waweru – Court Assistant