



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

CONSTITUTION PETITION NO. 9 OF 2018

EDENSWIN TRADERS LIMITED.....1ST PETITIONER

EERICK MWIRIGI MBAABU..... 2ND PETITIONER

V E R S U S

THE CABINET SECRETARY,

MINISTRY OF AGRICULTURE

LIVESTOCK AND FISHERIES.....1ST RESPONDENT

ATTORNEY GENERAL..... 2ND RESPONDENT

MACADAMIA GROWERS ASSOCIATION.....INTERESTED PARTY

R U L I N G

1. This is a ruling on whether the interim orders issued on 10/07/2018 in the notice of motion dated 10/07/2018 should be suspended/set aside pending hearing inter partes of the application.
2. The notice of motion dated 9/06/2018 sought for several conservatory/injunctive orders to restrain the respondent from interfering with the petitioner's business of buying, selling, processing and or exportation of macadamia whether with or without shell.
3. The court after hearing the 2nd petitioner who was in person granted prayers 2 and 4 in the notice of motion.
4. The respondents in the petition are named as Cabinet Secretary, Ministry of Agriculture, Livestock and Fisheries and the Honourable Attorney General.
5. The notice of motion came for hearing inter partes on 25/07/2018. Mr. Madegwa of Jumba & Co. Advocates filed a notice of appointment and was put on record for the petitioners.
6. Mrs. Njoroge appeared for the 2nd respondent and was also put on record. He counsel told the court that she had been served only a day before and would not have managed to prepare and file the response to the petition and to the notice of motion.
7. The court was also informed that the petitioners after obtaining the interim orders had started threatening various government departments and more specifically the Kenya Revenue Authority (KRA). By a letter to the Authority whose copy was given to the court, the petitioners had issued real threats that they must obey the orders given by the court or else they will be held in contempt of court.
8. Before the court prepared this ruling, the interested parties Nut processors Association of Kenya (NUTPAK) on one part and Joseph Kamau Maina, Joshua Kamau Kuria, Joshua Gitau Thinguri, Alex Macharia Maina, Harun Kimani Wanjira, Wairimu Ruth Gichina on the other part joined this petition through their advocates Messrs Wanja Kibe & Co. and Messrs Khaminwa and Kaminwa advocates.
9. The counsels addressed the court on the urgency of their clients being enjoined in this petition.
10. Documents were produced to demonstrate that the petitioner had not come to this court in good faith in that he had withdrawn a similar

petition in Meru High Court No. 18 of 2018 which was coming for inter partes hearing of a notice of motion on 26/07/2018. the parties and their advocates had traveled to Meru just to find that the petition had been withdrawn without notice to the respondents.

11. Further that during the filing of this petition on 9/07/2018, the Nut processors Association of Kenya (NUTPAK) had been omitted in this petition as a party despite the fact that the Association is a major player in the industry dealing with nuts in Kenya.

12. I have looked at the letter dated 12/07/2018 addressed to the Commissioner Customs and Excise informing the office of the interim orders issued herein on 9/07/2018. The last paragraph reads:-

Take notice that by dint of the attached orders herein issued on 10th July 2018 your officers are ESTOPPED in any manner howsoever from harassing and/or interfering with petitioners macadamia business and are thus..... to ENSURE the petitioners smooth exportation of their macadamia products by FACILITATING expeditious clearance of the petitioners macadamia cargo by way of ISSUANCE of a NO OBJECTION NOTICE/LETTER to that effect FAILURE of which will amount to CONTEMPT OF A REGULAR COURT ORDER and will attract the prescribed sanctions as by law envisaged.

13. At the time the letter was written, the respondents had not been served with the orders of the court. This was confirmed from the submission of Mrs. Njoroge which was served only one day before the date of the inter partes hearing of the notice of motion. This kind of conduct by the petitioner was mischievous and meant to achieve self-actualization on the addressee using the court orders.

14. The petitioner brought the application under certificate of urgency. If the urgency was real, the orders issued were supposed to be served on the respondents immediately after extraction or to the most, the following day. The mischief of keeping the orders and the notice of motion for several days was not explained.

15. All that the petitioner was required to do was to serve the orders with utmost urgency and leave to the respondent to act. The petitioner went further to issue threats of the consequences of disobedience of the orders through a letter to Kenya Revenue Authority which body was not a party to this petition.

16. The conduct of the filing similar petitions in Meru and Embu and the withdrawal of one of them without notice to the respondents was another act of mischief on the part of the petitioners. The late service of the orders, the notice of motion and the petition was yet another act of mischief. The letter threatening Kenya Revenue Authority is not an exception to the petitioner's uncalled for conduct. It is imperative to note that most of the respondents in the Meru petition were not included in this petition.

17. The counsels for the respondents and for the interested parties told the court that the petitioner is not a licensed trader in the macadamia business. Although this is yet to be proved, it was brought to the attention of this court that the interim orders are likely to affect various economic interests in the macadamia trade and probably end up benefiting the petitioners more.

18. For the foregoing reasons, I am of the considered opinion that the existence of the orders may not serve the interests of justice.

19. I hereby order that the orders issued on 10/07/2018 be and are hereby lifted.

20. It is hereby so ordered.

DATED, DELIVERED AND SIGNED THIS 31ST DAY OF JULY, 2018.

F. MUCHEMI

JUDGE

In the presence of:-

Mr. Madegwa for Petitioner/Applicant

Mrs. Njoroge and Siro for 1st and 2nd Respondent

Mr. Kibe for Interested Parties (1-6)

Mr. Owuor for Dr. Khaminwa for 7th Interested Party

Mr. Kihara for proposed 8th Interested Party

Mr. Kariu for proposed 9th Interested Party