



**REPUBLIC OF KENYA**

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

**CONSTITUTIONAL AND HUMAN RIGHTS COURT**

**PETITION 23 OF 2018**

**ROSEMARY KARIMI & 59 OTHERS.....PETITIONERS**

**VERSUS**

**THE CABINET SECRETARY, MINISTRY OF AGRICULTURE,**

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

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

**JOSEPH NGETICH.....3<sup>RD</sup> RESPONDENT**

**AND**

**KENYA REVENUE AUTHORITY.....1<sup>ST</sup> INTERESTED PARTY**

**COUNCIL OF GOVERNORS.....2<sup>ND</sup> INTERESTED PARTY**

**AND**

**JOSEPH KAMAU KURIA & 6 OTHERS.....1<sup>ST</sup> INTENDED INTERESTED PARTY**

**MACADAMIA GROWERS ASSOCIATION...2<sup>ND</sup> INTENDED INTERESTED PARTY**

**KENYA NUT.....3<sup>RD</sup> INTENDED INTERESTED PARTY**

**NUT PROCESSORS ASSOCIATION.....4<sup>TH</sup> INTENDED INTERESTED PARTY**

**RULING**

1. This is a consolidated Ruling with regard to the applications dated 2<sup>nd</sup> October 2018 and 3<sup>rd</sup> October 2018, respectively by the intended Interested Parties. The 1<sup>st</sup> intended interested party, Alex Gitonga Ndumbi & 6 others, seek to be enjoined in their capacity as independent licensing Marketing Agents within Meru, Muranga, Kiambu & Nairobi Counties and sponsored by the various Nut Processing and exporting Companies.

2. The 2<sup>nd</sup> intended Interested Party, Macadamia Growers Association, seek to be enjoined on the premise that it is associated with putting together growers from various parts of the Country so as to centralise and work in cooperation together in addressing the challenges of Macadamia Farmers. It also contends that it has been equally engaged in the Embu High Court Petition No. 18 of 2018 and other Stakeholders forums.

3. The 3<sup>rd</sup> Intended Interested Party, Kenya Nut’s interest emanates from its being the leading growers of Macadamia Nuts in Kenya and Africa. It also premises its interest in the fact that it has 2,000 employees and operates 2 farms on 8,000 Acres.

4. The 4<sup>th</sup> Intended Interested party, Nut Processors Association contends that it represents 12 processing Companies which collectively

control 85% of the nut produce in Kenya. Its mandate is however not specific to Macadamia nuts but also entail other products eg. Cashew-nuts and groundnuts.

5. The Petitioners have objected to the applications by all the Intended Parties. The petitioners submitted that the intended Interested parties did not properly articulate their interest in the petition nor did they demonstrate the prejudice to be occasioned in case of a non- joinder. They submitted that the same would be a waste of judicial time and contrary to Rule 2 (the Constitution of Kenya (Protection of Fundamental Freedoms) Practice & Procedure Rules, 2013. They also relied on several authorities which this court has considered.

6. The intended interested parties have presented their application as various stakeholders in the Macadamia industry. They have disclosed how they are interested in the farming, processing and marketing of Macadamia in Kenya and abroad.

7. On the other hand, the petition before court relate to the sale, use, export, import and purchase of Macadamia nuts, macadamia nuts without shell, mature Macadamia and machine dried Macadamia. It also relates to the interpretation of **Section 43 of the Agriculture, Fisheries and Food Authority (AFFA) Act 2013** with regard to the constitutional meaning of "Raw Macadamia". It also seeks a declaration that registration, licensing and regulation of agricultural crops is a preserve of the County Governments amongst other declarations.

8. The **Agriculture, Fisheries and Food Authority Act at Section 43** provides: -

***"A person shall not export raw cashew nuts, raw pyrethrum, raw bixa or raw macadamia except with the written Authority of the Cabinet secretary issued with the approval of the National Assembly".***

9. The guiding principle that govern the joinder and non- joinder of parties to a suit is **Order 1 Rule 10 (2) of the Civil Procedure Rules** which provides: -

***"(2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added".***

10. In **Benjamin Kipketer Tai V Kenya Commercial Bank Kisumu High Court Civil Case Number 87 of 2003** the Court held that; the test to be applied in an application for joinder is whether the relief claimed by the plaintiff in the suit will directly affect the intervener (applicant) in the enjoyment of his rights. The intervener must show that he has a direct and legal interest in the relief the plaintiff is seeking, and a person is legally interested in a relief if he can show that the result of the suit will affect him legally. The Applicant must be bound by the result of the action and the question to be settled therefore must be a question in the action which cannot be effectively and completely settled unless he is a party. **See Also Digest on Civil Case Law and Procedure Law Africa Publishing (K) Ltd Odunga G.V. Pg. 597 to 602**

11. In **Trusted Society of Human Rights Alliance V Mumo Matemo & 5 others [2014]** where the Supreme Court of Kenya held;

***"Suffice it to say when an interested party has a 'stake/interest' directly in the case an amicus's interest is its "fidelity" to the law: than an informed decision is reached by the Court having taken into account all the relevant laws, and entertained legal arguments and principles brought to light in the Courtroom***

***[18] Consequently, an interested party is one who has a stake in the proceedings, though he was not a party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings and champion's his or her cause.....'***

12. It is on the foregoing principles that this court will consider the present applications. The 1<sup>st</sup> intended interested party contends that they enjoy the current regulatory atmosphere created by, inter alia, the law sought to be voided. If that law is voided, their enjoyment of the current regulatory atmosphere will be irreversibly affected. It therefore follows that they will be legally affected by the outcome of the petition.

13. The position of the 2<sup>nd</sup> intended interested party to this petition has not been substantially proven. It gives its objective as that of putting together growers from various parts of the country so as to centralise and work in cooperation. It was not shown that it was registered and/or how it was operating. Its association with stakeholder forums or in a similar matter in Embu High Court Petition No. 18 of 2018 does not justifiably give it sufficient interest in this suit vis a vis the prayers sought by the petitioner in the petition.

14. The position of the 3<sup>rd</sup> and 4<sup>th</sup> intended interested party are strikingly similar. The 3<sup>rd</sup> Respondent is a registered Company with 2000 employees on 8,000 Acres of farm land that predominantly grows Macadamia nuts. It alleges to be a leading grower and processor of Macadamia nuts in Kenya. The 4<sup>th</sup> intended interested party describes itself as an umbrella body of 12 processing companies thereby holding 85% of the industry.

15. The petition seeks to challenge the legal framework that relate to the marketing and export of "Raw" Macadamia nuts and products incidental thereto. The position of the processors is therefore fundamental to these proceedings as they equally encompass the processing of the Macadamia nuts as opposed to their Export.

16. In the premises, I find merit in the application by the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> intended interested parties and allow their inclusion as interested

parties to this petition. The application by the 2<sup>nd</sup> intended interested party is dismissed. I will not make any order as to costs.

**DATED and DELIVERED at Meru this 29<sup>th</sup> day of November, 2018.**

**A. MABEYA**

**JUDGE**