



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CONSTITUTIONAL PETITION NO. 26 OF 2014

IN THE MATTER OF: THE CONSTITUTION OF THE REPUBLIC OF KENYA

AND

IN THE MATTER OF: ARTICLES 10, 20, 21, 22, 23, 258 & 259 (Enforcement of the Bill of Rights) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF: ALLEGED CONTRAVENTION AND VIOLATION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF INDIVIDUALS AS ENshrINED UNDER ARTICLE 27, 40, 47 AND 50 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF: THE AGRICULTURAL FISHERIES AND FOOD AUTHORITY ACT, 2013 AND THE CROPS ACT, 2013

BETWEEN

WEST KENYA SUGAR COMPANY LIMITEDPETITIONER

-VERSUS-

AGRICULTURAL FISHERIES AND FOOD AUTHORITY.....1st RESPONDENT

SUGAR DIRECTORATE2nd RESPONDENT

ALFRED BUSOLO TABU.....3rd RESPONDENT

ROSEMARY MKOK.....4th RESPONDENT

CABINET SECRETARY, MINISTRY OF

AGRICULTURE, LIVESTOCK AND FISHERIES5th RESPONDENT

HON. ATTORNEY GENERAL6th RESPONDENT

BUTALI SUGAR MILLS LIMITED7th RESPONDENT

-AND-

WILLIAM KOPI & OTHERS1st INTERESTED PARTY
COUNTY GOVERNMENT OF KAKAMEGA.....2nd INTERESTED PARTY
UNIONISABLE STAFF OF BUTALI
SUGAR MILLS LIMITED.....3rd INTERESTED PARTY
KENYA NATIONAL FEDERATION
OF SUGAR CANE FARMERS.....4th INTERESTED PARTY
KABRAS ELDERS SELF-HELP GROUP.....5th INTERESTED PARTY

JUDGMENT

Introduction:

1. By a Petition dated 04/12/2014 and filed on 15.12.2014, the Petitioner sought for declarations and other orders variously against the Respondents on the basis of alleged contravention of its constitutional rights and fundamental freedoms. The Petition was opposed by all the Respondents. The 7th Respondent filed a Cross-Petition likewise seeking declarations and other orders against the Petitioner on similar grounds; that is contravention of its constitutional rights and fundamental freedoms. Both the Petitioner and the 7th Respondent operate sugar cane milling plants within Kakamega County in the Republic of Kenya.

2. The Petitioner and the 7th Respondent likewise filed interlocutory applications seeking *inter alia* the closure of the other's milling plant. The applications were heard together and dismissed vide the ruling of this Court delivered on 23/03/2016.

3. As the matter progressed, the Petitioner, with the leave of this Court, amended its Petition whereas the 7th Respondent withdrew its Cross-Petition. The Amended Petition was heard on the strength of Affidavit evidence and written submissions which parties highlighted upon. This judgment relates to the Amended Petition.

The Parties:

4. The Petitioner, **West Kenya Sugar Company Limited**, is a limited liability company incorporated pursuant to the provisions of the repealed Companies Act, Chapter 486 of the Laws of Kenya.

5. The 1st Respondent, the **Agricultural Fisheries and Food Authority**, is a legal entity created under the Agriculture, Fisheries and Food Authority Act (hereinafter referred to as the '**AFFA Act**') whereas the 3rd Respondent, **Alfred Busolo Tabu**, is the Interim Director General of the 1st Respondent. The 2nd Respondent, the **Sugar Directorate** is one of the Directorates established under the AFFA Act and the 4th Respondent, **Rosemary Mkok** is the Acting Head of the 2nd Respondent. The 5th Respondent is the **Cabinet Secretary, Ministry of Agriculture, Livestock and Fisheries** who is responsible for the oversight, policy implementation and administration of both the AFFA Act and the Crops Act whereas the 6th Respondent, the **Hon. Attorney General** is the principal legal advisor to the Government of the republic of Kenya under **Article 156 of the Constitution of Kenya, 2010**

6. The 7th Respondent, **Butali Sugar Mills Limited**, is also a limited liability company incorporated under the repealed Companies Act.

7. The 1st Interested Party, **William Kopi & Others**, comprises sugar cane farmers within the Kabras Zone in Kakamega County and the 2nd Interested Party, **County Government of Kakamega** is a County Government established pursuant to **Article 176** of the **Constitution**. The 3rd Respondent, the **Unionisable Staff**, comprises members of staff of the 7th Respondent who are affiliated to various trade unions. The 4th Interested Party, the **Kenya National Federation of Sugar Cane Farmers**, is an association of farmers dealing in sugar cane while the 5th Interested Party, the **Kabras Elders Self-Help Group**, is comprised of the Council of Elders within Kabras region in Kakamega County.

Background of the Amended Petition:

8. The amended Petition (hereinafter referred to as '**the Petition**') is dated 03/02/2016. It is supported by various Affidavits sworn by one Tejveer Singh Rai, the Managing Director of the Petitioner. The Petition is founded on the allegations of contravention of the Petitioner's rights and fundamental freedoms under **Articles 27, 40, 47 and 50** of the Constitution and it seeks the enforcement of those rights and fundamental freedoms in line with **Articles 10, 20, 21, 22, 23, 258 and 259** of the Constitution in terms of declarations and other reliefs.

9. The Petition has a long history and it traces its background to the entrance of the Petitioner into the sugar sector. From the Affidavits filed by the parties and the documents annexed thereto, the Petitioner was licensed by the Ministry of Agriculture to operate a sugar cane milling plant within the Kabras Zone (now part of the Kakamega County) under the old legal regime – The Crop Production and Livestock (Sugar Factory) Rules made under the **Crop Production and Livestock Act**, Chapter 321 of the Laws of Kenya (now repealed). Under that Act, a sugar factory could only be set up at least 25 kilometres from the location of an existing sugar factory. It is contended that as a result of that legal requirement, the Ministry of Agriculture by its letter dated 11/10/2000 demarcated the Petitioner's sugar zone which included parts of Malava Division within the then Kakamega District. That position was reaffirmed by the defunct **Kenya Sugar Board** (hereinafter referred to as '**the Board**') by the Board's letter dated 07/07/2004. It is further averred that the Board assured the Petitioner by its letter dated 23/09/2004 that no other sugar milling plant would be allowed to be installed within its zone and the Petitioner was even authorized to expand its factory's milling capacity which it readily did.

10. The Petitioner further avers that when the 7th Respondent was incorporated in August 2004, it unsuccessfully made three applications for a manufacturing licence to the Board. The reason was that the 7th Respondent intended to set up its milling plant within a distance of about 10 kilometres from the Petitioner's factory. The 7th Respondent was advised to look for an alternative suitable location. However, to the Petitioner's utter shock and surprise, the Board approved the 7th Respondent's application and issued it with a Certificate of Registration on 13/04/2005 thereby authorizing the 7th Respondent to construct a sugar milling plant on the parcel of land known as **Kakamega/Malava/1303** in contravention of the then existing law.

11. That decision of the Board was the birth of the plethora of disputes between the Petitioner and the 7th Respondent which have since then arisen. This matter is part of those disputes. These disputes have invariably been referred to as 'the sugar wars'. Both the Petitioner and the 7th Respondent have so far seriously litigated over various issues in many Courts in Kenya including the High Courts at Milimani (Nairobi), Kakamega and Kisumu. It is the litigation in Kisumu High Court that prompted this Petition. That was **Kisumu High Court Judicial Review No. 17 of 2010** which we shall refer to as '**the Review**' in this judgment.

12. The review culminated in an order *inter alia* compelling the Board to grant an operating licence to the 7th Respondent. It is on record that the Board issued the manufacturing licence to the 7th Respondent on the strength of that order. There was also an earlier order of the High Court that had denied the participation of a party known as West Kenya Outgrowers Company Limited (Weko) in the Review. These two findings were the subject of **Kisumu Court of Appeal Civil Appeals No. 89 of 2011 and 90 of 2011** which appeals were consolidated and heard together. The judgment thereof was delivered on

19/09/2014.

13. The Court of Appeal in the said judgment allowed both appeals and accordingly set aside the High Court orders. In essence, the manufacturing licence issued to the 7th Respondent by the Board on the basis of the High Court order was revoked. The 7th Respondent then reverted to its former position that **it had no licence**. The Court further made an order of mandamus compelling the Board to hear and determine the application for a manufacturing licence by the 7th Respondent dated 10/04/2010 within a reasonable time according to law and to accord the Petitioner a right to be heard in opposition. The reasoning of the Court of Appeal was that the High Court had overstepped its jurisdiction by ordering the Board to issue a manufacturing licence to the 7th Respondent where it was the duty of the Board to consider whether to grant a licence.

14. It is on the strength of that judgment that the Petitioner filed this Petition seeking various orders. For clarity and ease of reference we will reproduce *verbatim* all the prayers in the Amended Petition as under:

“a) A DECLARATION that the operation by the 7th Respondent of a sugar factory and or manufacturing of sugar and its by-products on land parcel No. L.R. No. KAKAMEGA/MALAVA/303 without an operating or manufacturing licence from the 1st Respondent is unconstitutional, illegal and contravenes the provisions of Section 16, 18, 19 and 20 of the Crops Act 2013.

b) A DECLARATION that the failure, neglect and or refusal by the 1st and 2nd Respondents to stop the 7th Respondent from operating a sugar factory and or manufacturing of sugar and its by-products on land parcel No. L.R.No. KAKAMEGA/MALAVA/303 without an operating and or manufacturing licence from the 1st Respondent is unconstitutional, illegal and contravenes the provisions of Sections 16, 18 19 and 20 of the Crops Act 2013 and Articles 3, 10, 27 and 47 of the Constitution.

c) A DECLARATION be issued to declare that the 3rd and 4th Respondents have violated their constitutional and statutory duties under Section 10 and 11 of the Agriculture, Fisheries and Food Authority Act, 2013 read with Article4, 10, 47 and 75 of the Constitution.

d) AN ORDER of mandamus be issue to compel the 1st – 4th Respondents to discharge their statutory duties under Sections 19 and 20 of the Crops Act, 2013 to stop the 7th Respondent from operating a sugar factory and a manufacturer of sugar and its by-products on land parcel No. L. R. No. KAKAMEGA/MALAVA/303.

e) A DECLARATION be issued to declare that the Respondents herein have jointly and/or severally violated, aided and abetted the contravention of the Petitioner’s right to protection of law and freedom from discrimination guaranteed by Article 27 of the Constitution.

f) A DECLARATION that the Petitioner’s right to own property and enjoy any interest derived from it as guaranteed by Article 40 of the Constitution of Kenya has been violated by the action of the 1st Respondent and 2nd Respondent in allowing the 7th Respondent to deal in scheduled crop and or operate a sugar mill without an operating or manufacturing licence.

g) A DECLARATION that the Petitioners’ right to own property and enjoy any interest derived from it as guaranteed by Article 40 of the Constitution of Kenya has been violated by the action of the 1st Respondent and 2nd Respondent in allowing the 7th Respondent to deal in scheduled crop and or operate a sugar mill without an operating or manufacturing licence.

h) A DECLARATION be issued to declare that the 5th and 6th Respondents have violated

Articles 3, 10, 22 and 73 of the Constitution by aiding and abetting the operations of the 7th Respondent without a licence in contravention of Section 19 of the Crops Act, 2013.

i) A DECLARATION be issued to declare that the Petitioner is entitled to compensation for the loss occasioned by the failure of the 1st – 6th Respondent's jointly and severally to enforce Section 19 of the Crops Act, 2013 to ensure that the 7th Respondent stops to operate unless and until it obtains a licence under Section 20 of the Crops Act.

j) A DECLARATION that the Petitioner's right to fair administrative action as guaranteed by Article 47 of the Constitution of Kenya has been violated by the action of the 1st Respondent and 2nd Respondent in allowing the 7th Respondent to deal in scheduled crop and or operate a sugar mill without an operating or manufacturing licence.

k) AN ORDER of a permanent injunction restraining 7th Respondent, its agents, employees and / or representatives from in any way operating its factory and or milling of sugarcane at its factory situated on land parcel L. R. No. KAKAMEGA/MALAVA/303 in Kakamega County without an operating or manufacturing licence.

l) AN ORDER of PROHIBITION to restrain the First Respondent – Agriculture Fisheries and Food Authority – from considering the application of a licence by the 7th Respondent – Butali Sugar Mills Ltd – until the 7th Respondent stops the milling of Sugar cane in compliance with Sections 19 and 20 of the Crops Act, 2013.

m) A DECLARATION be issued to declare that the 3rd and 4th Respondents have grossly abused their power and wilfully abdicated from their statutory duties in refusing, neglecting or otherwise failing to stop the 7th Respondent from operating its sugar mill pending the consideration of its application for an operating licence in accordance with the law.

n) AN ORDER of PROHIBITION to prohibit the 3rd and 4th Respondents from any involvement or role in considering the 7th Respondent's dated 10th April, 2010 for a sugar manufacturing licence.

o) AN ORDER of MANDUMUS to compel the 7th Respondent to dismantle and relocate its sugar factory from land parcel L.R. No. KAKAMEGA/MALAVA/303 in Kakamega County.

p) AN ORDER OF COMPENSATION of the Petitioner by the 1st and 2nd Respondents and the Government of Kenya for the loss suffered by the Petitioner since 13th January, 2011 until the delivery of Judgment of the Court of Appeal in Court of Appeal in Kisumu Civil Appeals No. 89 and 90 of 2011 on 19th September, 2014.

q) AN Order of compensation of the Petitioners by the Respondents jointly and/or severally for the Petitioners' loss of sugarcane occasioned by the operation of the 7th Respondent since the delivery of the Court of Appeal Judgment in Civil Appeal No. 89 of 2011 Consolidated with Civil Appeal No. 90 of 2011 West Kenya Sugar Company Ltd Vs. Kenya Sugar Board & Butali Sugar Mills Limited on 19th September, 2014 until the grant or refusal of the 7th Respondent's application for licence by the First Respondent.

r) Compensatory damages for the violation of the Petitioner's rights and freedoms under Articles 27, 40, 47 and 50 of the Constitution.

s) Interest of (p) (q) and (r) above

t) THAT a declaration be issued to declare that the renewal licence No. AFFA-SD/MLIC-

0001/2015 issued to the 7th Respondent by the First Respondent vide a letter dated 3rd July, 2015 is illegal, null and void ab initio.

u) *THAT a declaration be issued to declare that the issuance of the renewal licence No. AFFA-SD/MLIC-0001/2015 to the 7th Respondent by the First Respondent vide a letter dated 3rd July, 2015 constitutes a violation of the Petitioner's rights and freedoms guaranteed by Articles 27, 40, 47 and 50 of the Constitution.*

v) *THAT an Order of CERTIORARI be issued to declare that the issuance of the renewal licence No. AFFA-SD/MLIC-001/2015 issued to the 7th Respondent by the First Respondent vide a letter dated 3rd July, 2015.*

w) *THAT a declaration be issued to declare that the issuance of the renewal licence No. AFFA-SD/MLIC-001/2015 issued to declare that the issuance of the renewal licence No. AFFA-SD/MLIC-001/2015 issued to the 7th Respondent by the First Respondent vide a letter dated 3rd July 2015 amounts to subversion of Rule of Law, miscarriage of justice and gross abuse of the court process.*

x) *THAT a declaration be issued to declare that the 1st and 2nd Respondents have no power to renew a licence to an Applicant which does not have an original Manufacturing Licence issued under Section 20 of the Crops Act, 2013.*

y) *THAT an order of PROHIBITION be issued to prohibit the 1st and 2nd Respondents to issue a renewal licence to the 7th Respondent unless and until the 7th Respondent has obtained a manufacturing licence under Section 20 of the Crops Act, 2013 pursuant to its application for a licence dated 10th April 2010.*

z) *THAT the 1st and 2nd Respondent be ordered to pay compensation to the Petitioner for the loss and damage occasioned by the issuance of renewal licence No. AFFA-SD/MLIC-001/2015 to the 7th Respondent.*

t) *Cost of and incidental to this Petition; and*

u) *Any other order that this Honourable court deems fit and just to grant in the circumstances."*

The Petitioner's Case:

15. The Petitioner's case is two-fold. First, the Petitioner contends that it is exclusively entitled to the Kabras sugar growing zone within Kakamega County since it has all along taken the farmers as its business partners and has developed their sugar cane under contract. It contends further that the close proximity (a distance of 16kms between its factory and that of the 7th Respondent) has split its zone into two and has thus reduced the availability of the raw cane thereby compromising its operations. The Petitioner now contends that its right under **Article 40** of the **Constitution** is infringed.

16. Secondly, the Petitioner avers that it is discriminated against by the Respondents since whereas it has complied with the law and obtained all the necessary licenses, the 7th Respondent has instead been allowed to operate without any license and in flagrant contravention of the Constitution and the Crops Act to the total detriment of the Petitioner. The Petitioner contends that under **Article 27** of the **Constitution** it has a right to equal protection of the law and freedom against discrimination and that the 7th Respondent ought to be subjected to the law of the land as well.

17. Flowing from the above, the Petitioner further contends that its rights under **Articles 47** and **50** of the **Constitution** continue to be contravened. It is the Petitioner's case that the 1st Respondent, being a State

entity, has unreasonably and in contempt of court failed to implement the decision of the Court of Appeal and has in exercise of its quasi-judicial powers failed to be impartial and has taken upon itself to champion the cause of the 7th Respondent by unlawfully issuing it with a renewal license despite the fact that the 7th Respondent has never been granted an initial manufacturing licence. The Petitioner further avers that as a result of the actions of the 1st Respondent, its rights to fair administrative action and fair hearing remain contravened.

18. It is also contended by the Petitioner that the Respondents are in breach of the mandatory fiduciary duty vested upon them in **Article 3(1)** of the **Constitution** to respect, uphold and defend the Constitution and that they are also in breach of the national values and principles of governance under **Article 10** of the **Constitution**.

The Respondents' Cases:

19. The Petition is opposed. The Respondents deny that any of the Petitioner's rights and fundamental freedoms under the Constitution have been breached by any or either of them as alleged or otherwise. They also deny that they are in breach of the Constitution in any way. Apart from the 5th and 6th Respondents who filed Grounds of Opposition to the Petition, the rest of the Respondents filed several detailed Affidavits and referred to many documents.

20. On the allegation that the 7th Respondent is discriminately operating illegally, it is now the position of the 1st to 4th Respondents and the 7th Respondent that the 7th Respondent is not operating illegally since **Section 42(2)(b)** of the Crops Act repealed all the licences issued or issuable under any of the repealed Acts and placed all sugar millers on the same footing; that is without any licences. They contend that the Petitioner stands in no better position than the 7th Respondent.

21. In respect to the issue of an exclusive Kabras zone by the Petitioner, the Respondents contend that the law does not permit such a practise as it contravenes **Article 40** of the **Constitution** and that in any event the cane belongs to the farmers who have a right to dispose it off as they please. They aver that the position is well within the knowledge of the Petitioner.

22. Further, the 7th Respondent contends that the issue of zoning has been subject of several litigations in which the Petitioner had been sued by other millers contending that the Petitioner was encroaching into their exclusive zones and in all those litigations the Petitioner was very clear and categorical that the contention by a miller that it was entitled to an exclusive zone or exclusive mill command zone has no basis in law since the market had been liberalized and farmers were at liberty to sell their cane to any miller subject to contracts. The 7th Respondent accuses the Petitioner of approbating and reprobating on the issue of exclusive zones by millers.

23. The Respondents further contend that the cumulative effect of the Petitioner's conduct in filing various litigations in different Courts on the same issue even after the same was well settled, approbating and reprobating and pleading inconsistent grounds in different courts to gain advantage amounts to abuse of the process of the Court.

24. As to whether the 1st Respondent is in contempt of court by refusing to comply with the order of the Court of Appeal, the 1st to 4th Respondents contend that they took steps towards complying with the said court order but their attempts were thwarted by the Petitioner in filing **Nairobi High Court Judicial Review Application No. 426 of 2014 (2015) eKLR** contending that the 1st Respondent was not properly constituted to consider the application and that the leave granted therein was to operate as a stay of any of its further proceedings and as such the allegation of contravention of **Articles 47** and **50** of the **Constitution** cannot stand.

The Interested Parties' cases:

25. The Interested parties are likewise opposed to the Petition. Through their Affidavits, the interested parties contend that the farmers within the Kabras zone by right own their crops and are at liberty to decide on what they want to do with them and that such right cannot be taken away as it is constitutionally protected. It is also contended that granting a miller an exclusive zone is tantamount to monopolizing the sugar sector and that that in itself is unconstitutional and contrary to Vision 2030 and the UN Sustainable Goals among other international instruments.

26. On the closure of the 7th Respondent's milling plant, it is averred that the closure would have very devastating effects not only to the farmers whose livelihoods depend on the cane but to all sector players and that the economies of both the Kakamega County and national governments will immensely suffer from loss of revenue. It is also contended that since **Section 42(2)(b)** of the Crops Act repealed all the licenses which had been previously issued or were issuable under the repealed Acts, that placed all the millers on the same footing and that none of the millers is entitled to seek the closure of any other mill on grounds of lack of any licence.

The Petitioner's submissions:

27. The Petitioner filed detailed and well researched submissions in support of the Petition. As the Petitioner expounded on its case as put forth, it made reference to several decisions. In concretizing its submission that the 1st Respondent is discriminating against it given that the 7th Respondent continues to operate its milling plant without a manufacturing licence or at all, and that the 7th Respondent is subject to the Rule of Law just like any other person or legal entity in Kenya, the Petitioner referred to the Court of Appeal cases of **Gusii Mwalimu Investment Co. Ltd & 2 Others vs. Mwalimu Hotel Kisii Ltd (1996) eKLR**, **Kamau Muruha vs. The Ripples Ltd (1993) eKLR**, **Kasigau Ranching (DA) Ltd vs. Kihara & 2 others KLR (E&L) 1** and **Murungaru vs. Republic (citation not provided), Commercial Bank of Africa vs. Ndirangu (1990-1994) EA 69** and also the High Court cases of **Republic vs. Agricultural Fisheries and Food Authority & 3 Others exparte West Kenya Sugar Company Limited (2015) eKLR (Nairobi High Court Judicial Review Application No. 426 of 2014, Sea Star Mwalimyu Ltd vs. Kenya Wildlife Services KLR (E&L)1, Madhwa & Others vs. City Council of Nairobi (1968) EA 406, Martin Nyaga Wambora & Others vs. Speaker of the Senate & 6 Others (2014) eKLR, Coalition for Reform and Democracy (CORD) & Another vs. Republic of Kenya & Others (2015) e KLR, Kinyanjui vs. Kinyanjui (1995-1998) 1 EA 146, Republic vs. Attorney General ex parte Kamau & Another (2006) 1 KLR (E&L) 441**. The English cases of **Bennett vs. Horseferry Road Magistrate's Court and Another (1993) 3 All ER 138** and **Olmstead vs. United States, 227 US (1928)** were also cited.

28. In buttressing the submission that the 1st and 2nd Respondents are in contravention of **Articles 47 and 50 of the Constitution**, the Petitioner referred to the Court of Appeal decisions in **Civil Appeal No. 89 of 2011 consolidated with Civil Appeal No. 90 of 2011 at Kisumu - West Kenya Sugar Company Limited vs. Kenya Sugar Board & Butali Sugar Mills Limited** and **Kamau Mushuha vs. The Ripples Ltd (1993) eKLR** as well as the High Court decisions in **Oluoch Dan Owino & 3 Others vs. Kenyatta University (2014) eKLR** and the **Republic vs. Registrar of Societies & 5 others exparte Kenyatta & 6 others (2008) 3 KLR (EP)**.

29. In urging this Court to award damages as a result of the violations, the Petitioner cited the cases of **Macharia vs. Mwangi (2001) EA 110, Attorney General vs. Ramanpoop (2005) LRC 303, Nairobi High Court Petition No. 248 of 2013 Arnacherry Ltd vs. The Attorney General (unreported)** and **Nairobi High Court Petition No 625 of 2006 Mwangi Stephen Muriithi vs. The Hon. Daniel arap Moi (unreported)**.

The 1st to 4th Respondents' submissions:

30. These Respondents made intensive submissions in expounding their common position that the Petition ought to fail. They made reference to the case of **Nancy Mwangi t/a Worthin Marketers vs. Airtel Networks (K) Ltd (formerly Celtel Kenya Ltd) & 2 Others (2014) e KLR** and the English case

of McFoy vs. United Africa Co. Ltd (1961) 3 ALL ER 1169.

The 5th and 6th Respondents' submissions:

31. In their brief submissions the 5th and 6th respondents opposed the Petitioner's amended petition and urged the court to dismiss the same on grounds that it had no merit.

The 7th Respondent's submissions:

32. In opposing the Petition, the 7th Respondent, just like the Petitioner, made very elaborate and well researched submissions. It endeavoured to demonstrate how none of the Articles of the Constitution have been contravened. Several cases were referred to. In respect to the allegation of discrimination under **Article 27**, the High Court decision in the case of Nyarangi & 3 Others vs. Attorney General HCCP No. 298 of 2008 (2008) KLR 688 was cited.

33. On the issue of abuse of the process of the Court, the following decisions were referred to: Showing Industries Ltd vs. Guardian Bank Ltd & Another HCCC No. 273 of 2003 (2002) 2 KLR 378, (2002) 1 EA 284, Republic vs. Agricultural Fisheries and Food Authority & 3 Others ex parte West Kenya Sugar Company Limited (2015) eKLR (Nairobi High Court Judicial Review Application No. 426 of 2014, Mwai Kibaki vs. Daniel Toroitich arap Moi (1999) eKLR, Evans Odhiambo Kidero & 4 Others vs. Ferdinand Ndungu Waititu & 4 Others (2014) eKLR, Muchanga Investments Limited vs. Safaris Unlimited (Africa) Ltd & 2 Others Civil Appeal No. 25 of 2002 (2009) KLR 229, Mitchell and Others vs. Director of Public Prosecutions and Another (1987) LRC (const) 128, Rev. Madara Evans Okanga Dondo vs. Housing Finance of Kenya Nakuru HCCC No. 262 of 2005, Karuri & Others vs. Dawa Pharmaceuticals Company Limited and Others (2007) 2 EA 235.

34. Other decisions cited include Kevin K. Mwiti & Others vs. Kenya School of Law & Others (2015) eKLR, Centre for Rights Education and Awareness (CREAW) & 7 Others vs. Attorney General (2011) eKLR and Republic vs. Agriculture Fisheries and Food Authority & 3 Others ex parte West Kenya Sugar Company Limited (2015) eKLR.

The 1st Interested Party's submissions:

35. The 1st Interested Party filed detailed submissions as well. In opposing the issue of exclusive zoning, the 1st Interested Party referred to the decision of Gideon Angachi Anyinga & 10 Others vs. West Kenya Sugar Company Limited (2012) eKLR.

36. On the aspect of the Petitioner approbating and reprobating, the decision in Republic vs. Agricultural Fisheries and Food Authority & 3 Others ex parte West Kenya Sugar Company Limited (2015) eKLR (Nairobi High Court Judicial Review Application No. 426 of 2014 was cited and in respect to the abuse of the process of the Court several decisions were referred to. They include Republic vs. Agricultural Fisheries and Food Authority & 3 Others ex parte West Kenya Sugar Company Limited (2015) eKLR, George Gikubu Mbuthia vs. Jimba Credit Corporation Ltd & Another (2001) eKLR, Republic vs. National Social Security Fund & Others ex parte Real Appraisal Limited (2015) eKLR and Republic vs. National Transport and Safety Authority & 2 Others ex parte Metrotrans East Africa Ltd (2016) eKLR.

The 2nd Interested Party's submissions:

37. The 2nd Interested Party vehemently opposed the Petitioner's petition, save for the description of the parties. Citing the various provisions of the Constitution the 2nd Interested Party submitted that the spirit of the amended petition is contrary to the principles of Article 10 of the Constitution and more specifically the principle of equal opportunities and inclusivity as the Petitioner seeks to close down the 7th Respondent, thereby seeking to deny the people of Kakamega in general and the 2nd Interested Party

in particular from enjoying the regional benefits to its exclusivity.

38. The 2nd Interested Party also submitted that the constitutional provisions cited in paragraphs 9 to 18 of the Petition, as well as the provisions of the Crops Act as cited by the Petitioner at paragraphs 19 to 25 of the Petition apply equally to both the Petitioner and the 7th Respondent and that neither the Petitioner nor the 7th Respondent is prejudiced thereby, since the farmers in the region rely on the two protagonists in this Petition for their livelihood.

39. The 2nd Interested Party further submitted that in resolving the dispute herein, the court should have regard to the interests of the Petitioner, the 7th Respondent as well as the farmers.

The 3rd Interested Party's submissions:

40. The 3rd Interested Party's submissions strenuously submitted against the issue of exclusive zoning terming it not only unconstitutional but also contrary to various international instruments. The case of **Republic vs. Agricultural Fisheries and Food Authority & 3 Others exparte West Kenya Sugar Company Limited (2015) eKLR** was cited.

The 4th Interested Party's submissions:

41. Relying on the case of **Republic vs. Agricultural Fisheries and Food Authority & 3 Others exparte West Kenya Sugar Company Limited (2015) eKLR**, the 4th Interested Party urged this Court to disallow the Petition as the Petitioner had failed to demonstrate breach of its rights.

The 5th Interested Party's submissions:

42. The 5th Interested Party submitted that the closure of the 7th Respondent's milling plant would be unconstitutional and contrary to the national value of sustainable development. The case of **Republic vs. Public Procurement Administrative Review Board & Another exparte Avante International Technology Inc. (2012) eKLR** was referred to.

Analysis and Determinations:

43. Having carefully read and understood the pleadings, submissions and authorities cited by the parties before this Court and taking into account the various issues for determination as framed by the parties, we hereby frame the issues for determination in this Petition as follows: -

- (a) **The validity and consequences of the licences issued to the 7th Respondent by the 1st Respondent;**
- (b) **Whether the Petitioner's rights under the Constitution have been violated as alleged and whether the reliefs sought can be granted?**
- (c) **Costs of the proceedings;**
- (d) **Way forward.**

We shall consider each issue separately.

(a) The validity and consequences of the licences issued to the 7th Respondent by the 1st Respondent.

44. The issue at the core of the dispute between the Petitioner and the 7th Respondent is the issuance of the licence to the 7th Respondent pursuant to the order of the Court of Appeal of 19th September 2011.

45. According to the Petitioner, that licence is invalid for reason that it was not issued in accordance with the decision of the **Court of Appeal of Kisumu Civil Appeal No. 89 of 2011** consolidated with **Civil Appeal No. 90 of 2011 West Kenya Sugar Company Limited vs. Kenya Sugar Board & Butali Sugar Mills Limited** and the decision by **Odunga, J.** in **Nairobi High Court Judicial Review Application No. 426 of 2014 (Republic v. Agricultural Fisheries and Food Authority & 3 others ex parte West Kenya Sugar Company Limited (2015) eKLR)** and that therefore the 7th Respondent is operating in contravention of the law and ought to be shut down.

46. On the other hand, the 7th Respondent together with 1st to 4th Respondents who comprise of the sugar sector regulator contend that the licence was issued in compliance with the Court of Appeal and the law; the law now being the **Crops Act, No. 16 of 2013**. The 5th and 6th Respondents as well as the Interested Parties support the position taken by the 7th Respondent and the 1st to 4th Respondents.

47. As briefly mentioned above, the decision of the Court of Appeal in Civil Appeals No. 89 and 90 of 2011 (consolidated) arose out of the decision by the **High Court at Kisumu in Judicial Review No. 17 of 2010** in which the High Court had excluded the Petitioner herein and another body, West Kenya Out Growers Co. Ltd (Weko), from participating in the Judicial Review application and had issued an order of mandamus compelling the Board to grant an operating licence to the 7th Respondent. The Court of Appeal allowed both appeals, set-aside the orders of the High Court and made the following order: -

“... In place of the order of mandamus compelling KSB to issue an operating licence we grant an order of mandamus compelling KSB to hear and determine the application for a licence by Butali Sugar Mills Ltd dated 10th April 2010 within a reasonable time and according to the law giving the appellant a right to be heard in opposition.”

48. The Petitioner contends that the effect of the Court of Appeal decision is that the 7th Respondent became an unlicensed miller and should have ceased its operations until the 7th Respondent's application was successfully heard and determined. The Petitioner urges this Court to uphold that position since the order of the Court of Appeal has never been complied with or varied.

49. On the other hand, the 7th Respondent contends that it has made a massive investment in putting up its factory and that it was a continuing miller which had fully complied with the order of the Court of Appeal by making its application and was only awaiting directions from the 1st Respondent on the said application. hearing and determination of its application. As such it should not be shut down as it stands to suffer irreparable loss. The 7th Respondent further contends that it had twice formally written to the 1st Respondent urging it to deal with its application with the urgency it deserves and in line with the order of the Court of Appeal. To the 7th Respondent, shutting down its factory would further throw the sugar sector into disarray and cause immense confusion as the farmers would undergo untold economic sabotage and suffering as they would be forced to solely deal with the Petitioner against their will.

50. On their part, the 1st to 4th Respondents allege that they took steps towards complying with order of the Court of Appeal but their attempts were thwarted by the Petitioner filing **Nairobi High Court Judicial Review Application No. 426 of 2014 (Republic v. Agricultural Fisheries and Food Authority & 3 others ex parte West Kenya Sugar Company Limited (2015) eKLR)** wherein it contended that the 1st Respondent was not properly constituted to consider the application by the 7th Respondent and that the leave granted by the Court therein was to operate as a stay of any further proceedings by the 1st Respondent. The 1st to 4th Respondents are strenuously opposed to the closure of the 7th Respondent's milling factory. They contend that such an act would be too drastic and have far reaching implications in the sugar sector further resulting into loss of millions of shillings not only by the millers and its employees but also the farmers.

51. The Interested Parties were equally opposed to the closure of the 7th Respondent's milling plant. They contend that by doing so they would be forced to sell their cane to the Petitioner which is unconstitutional as it would infringe on the farmers' right to property and their freedom to choose whom to sell their cane to not to mention the untold suffering it would meet to the employess of the 7th Respondent.

52. Contemporaneously with the filing of the original Petition, the Petitioner had filed a Notice of Motion dated 04/12/2014 seeking interim orders on the closure of the 7th Respondent's milling plant. The 7th Respondent had also filed a Notice of Motion dated 06/03/2015 seeking to suspend the milling licence issued to the Petitioner on 05/08/2014 and the closure of the Petitioners plant. We consolidated the two applications and heard them together and by our ruling rendered on 23/03/2016 dismissed them principally on the ground that the Petitioner and the 7th Respondent stood on the same footing by dint of **Section 42 (2) (b)** of the Crops Act. This is what we stated: -

“107. However, a closer look at the averment reveals that the Authority only dealt with the issuance of the milling licences to the millers which had applied to the Board. Given that Section 42 (2) (b) of the Crops Act had repealed all licenses, permits and statutory instruments and noting that the Authority issued mill licences to all millers including the Petitioner and the Cross – Petitioner, the question which now begs an answer is this: What is the legal position of the milling licences? It is also not clear to us whether the Authority was properly constituted as at 5th August 2015 when it issued the licences to the Petitioner and Cross –Petitioner.

108. Based on the foregone inadequacy of the information before us now or the lack of it, the best we can do is to place both the Petitioner and Cross-Petitioner on the same level. May be that position will be put into the right perspective as the matter proceeds further.”

53. In an attempt to address that inadequacy, the Petitioner through the Further Affidavit of Tejvir Singh Rai sworn on 17/10/2016 and in its final submissions took the position that until the Court of Appeal delivered its judgment the Petitioner and 7th Respondent were on the same footing as both had manufacturing licenses, the 7th Respondent's licence having been issued pursuant to the order of mandamus in the High Court of Kenya at Kisumu. That position however changed when the 7th Respondent was stripped of its manufacturing licence by the decision of the Court of Appeal and as such it cannot be argued that **Section 42(2)(b)** of the Crops Act placed the Petitioner and the 7th Respondent on the same footing.

54. The Petitioner further contends that the 1st Respondent by its conduct saved its manufacturing licence under **Section 42(2)(b)** of the Crops Act and that the licence was indeed statutorily secured by **Section 43(1)** of the Crops Act. In addition, the Petitioner contends that **Section 42(2)(b)** of the Crops Act is a clear drafting error.

55. The 7th Respondent agreed with this Court's decision rendered on 23/03/2016 to the effect that all licences issued or issuable under the repealed laws stood repealed under **Section 42(2)(b)** of the Crops Act and after the decision of 23/03/2016, it withdrew its Cross-Petition.

56. The 1st to 4th Respondents also agreed that all the licences issued or issuable under the repealed laws were repealed since the 1st Respondent never issued any directions towards saving any of them. The 1st Respondent however argue that it exercised its discretion under **Section 3** of the Crops Act and allowed all the millers to operate without any licences up to 30th June 2015. Further, that **the first formal licences** under the Crops Act were issued in July 2015.

57. The general consensus by the Interested Parties is that the effect of **Section 42(2)(b)** of the Crops Act is that all millers were placed on the same footing which is none has a licence.

58. **Sections 42 and 43** of the Crops Act provide as follows:

“42. Repeal and saving

(1) The written laws specified in the Second Schedule are repealed.

(2) Notwithstanding the provisions of subsection (1)

(a) Anything done under the provisions of the repealed law shall, unless the Authority otherwise directs, be deemed to have been done under this Act;

(b) Permits, licenses and all statutory instruments issued or issuable under the repealed Acts shall, unless the Authority otherwise directs, be deemed to have been repealed;

(c) Revocation of a license, permit or registration under this Act shall not indemnify the licensee from any liabilities to which the person may have become liable under the repealed law;

(d) Fees, levies and all other charges imposed under the repealed laws shall cease to be chargeable upon the expiration of a period of six months from the date of commencement of this Act;

(e) Subsidiary legislation issued under the repealed law shall continue to apply up to the thirtieth June, 2013.

43. Saving and transitional provisions with respect to rules, order etc.

(1) Any rule, order, regulation, notification or other administrative act made or issued before the commencement of this Act under any repealed law, if it could have been made or issued under a corresponding provisions of this Act, continue in force and shall have effect as if it had been so made or issued.

(2) The transitional provisions set out in the Third Schedule shall apply upon commencement of this Act.”

59. Our reading of **Section 42(2)(b)** of the Crops Act is that all permits, licences and statutory instruments issued or issuable under the repealed laws were repealed unless the 1st Respondent expressly directed otherwise. The 1st Respondent is on record as admitting that it did not direct otherwise. The **Second Schedule** to the Crops Act lists all the repealed Acts which include the **Crop Production and Livestock Act**, Cap. 321 (under which the manufacturing licence of the Petitioner was issued), the **Sugar Act** No. 10 of 2001 among many others. In essence, any licences issued whether to the Petitioner or the 7th Respondent under any of the repealed Acts stood repealed as at 01/08/2014 when the Crops Act came into operation. We do not agree with the Petitioner’s contention that its initial manufacturing licence was saved by the conduct of the 1st Respondent. Why do we say so? First, the language of **Section 42(2)(b)** of the Crops Act is clear and unambiguous. Second, the 1st Respondent being a public body is required under **Article 47** of the Constitution and **Section 4** of the **Fair Administrative Act, 2015** to communicate in writing. We do not therefore agree with the submission that the inaction on the part of the 1st Respondent saved any of the licenses.

60. With regard to the argument that **Section 42(2)(b)** of the Crops Act is a drafting error in view of **Section 43** of the Crops Act our position is that the two sections are distinct and deal with different issues altogether. There is no ambiguity or vagueness in the wording of the two sections that would warrant us to make a finding. This is because **Section 42(2)(b)** deals with permits, licences and statutory instruments whereas **Section 43** deals with rules, orders, regulations, notifications or any other administrative acts. In our view issuance of permits, licences and statutory instruments is a statutory act and cannot be an administrative act as contemplated under **Section 43** of the Crops Act.

61. There is also the issue of the effect of **Section 42(2)(b)** of the Crops Act on the application by the 7th Respondent to the Board. The Court of Appeal ordered “*the Kenya Sugar Board to hear and determine the application for a licence by the Respondent dated 10/04/2010 within a reasonable time.*” It is instructive to note that by the time the Court of Appeal made that order the legal regime had changed by the repeal of the Sugar Act, 2001 and the enactment of the Crops Act. Our view therefore is that the application by the 7th Respondent was for an **issuable licence** under the Sugar Act. Consequently, the resultant licence adverted to by Alfred Busolo Tabu in his Replying Affidavit sworn on 08/08/2016 was caught up by the provisions of **Section 42(2)(b)** of the Crops Act since that application, like all others, was not saved by any directions of the 1st Respondent.

62. This now brings us to the issue of the licences issued by the 1st Respondent in July 2015 and whether in issuing those licenses the 1st Respondent complied with the Crops Act. The law in this case is **Section 20** of the Crops Act which provides as follows: -

“20 Issues of Licences

- (1) A licensing authority shall issue licenses to applicants subject to such law conditions as the authority may determine.***
- (2) Every licence shall specify the premises upon which the business specified in the licence may be carried on.***
- (3) Licenses issued under this Act shall remain in force until the thirtieth of June next following the date of issue, unless earlier cancelled.***
- (4) There shall be payable for the issue of licenses under this Act such fees as the licensing authority, after consultation with the Cabinet Secretary or county executive as the case may be prescribe.***
- (5) The total fees charged under subsection (4) shall depend on the turnover of the dealer and shall not overburden small scale dealers and the cumulative total of all levies and fees payable shall in any event not exceed ten per cent of the gate value of the agricultural or aquatic product.***
- (6) The licensing authority shall, at least thirty days before granting a licence under this Act, give notice of the proposed grant in the Gazette and in such other manner as the authority may determine***
- (7) The notice referred to in subsection (6) shall –***
 - (a) Specify the name or other particulars of the person or class of persons to whom the licence is to be granted;***
 - (b) State the purposes for the proposed licence and indicate the date such licence is proposed to be issued to the successful applicant; and***
 - (c) Invite objections to the proposed grant of licence and direct that such objections be lodged with the Authority within fourteen days next following the date of the notice***
- (8) The licensing authority may after considering the objections, if any, made under this section, grant the licence applied for, subject to such terms and conditions as may be specified therein.***
- (9) The issuance of a license to an applicant under this Act shall not be withheld without reasonable cause.***
- (10) A licence issued under this Act shall not be transferable.”***

63. Whereas the 1st Respondent alleges to have issued the said licences under the Crops Act, there is no evidence that **Section 20** of the Crops Act was complied with. For instance, under **Sub-Section (6)** the licensing authority is required to give notice of the proposed grant in the Gazette and under **Sub-Section (7)(c)** invite objections to the proposed grant of licence. In the absence of such compliance, the licences are a nullity.

64. We therefore reiterate our earlier finding that the Petitioner and the 7th Respondent are on the same footing. Neither of them has a valid manufacturing licence under the Crops Act.

b) Whether the Petitioner's rights under the Constitution have been violated as alleged and whether the reliefs sought can be granted?

65. The Petitioner's claim to the violation of its rights under the Constitution is premised on the contention that the 1st and 2nd Respondents have refused to stop the unlicensed operations of the 7th Respondent and the belief that the Petitioner is entitled to an exclusive Kabras zone.

66. On the issue of the Petitioner being entitled to an exclusive zone, the Crops Act does not make any such provision. **Article 40** of the **Constitution** protects the right of any person to acquire and own property of any description in any part of the country. In this case, the farmers plant, maintain and develop the cane in their respective parcels of lands either individually and/or collectively. The law therefore protects the right of those farmers to own that cane absolutely and such farmers reserve their rights to dispose of their cane as they desire. The farmers are however at liberty to enter into contracts with any miller or millers towards the development of the cane and in such cases the farmers' right to the cane will be subject to the contract or contracts as the case may be.

67. In our considered opinion, the law as it stands does not provide for exclusive zones for any miller. Indeed, the **Competition Act**, No. 12 of 2010 and **Section 3** of the Crops Act seem to frown upon the practice.

68. The above stated position is not foreign to the Petitioner. It is on record that the Petitioner has successfully articulated that position to its advantage in several cases, namely; **Kakamega High Court Judicial Review No. 3 of 2013 Republic vs. Kenya Sugar Board ex-parte West Kenya Sugar Company Limited**, **Kisumu High Court Civil Case No. 175 of 2012 Chemilil Sugar Company Limited vs. West Kenya Sugar Company Limited**, **Bungoma Resident Magistrate's Court Civil Case No. 476 of 2012 Nzoia Sugar Company Limited vs. West Kenya Sugar Company Limited** and **Kakamega High Court Civil Case No. 223 of 2012 Mumias Sugar Company Limited & Others vs. West Kenya Sugar Company Limited**.

69. The 7th Respondent has further demonstrated that the Petitioner, among other millers, have milling plants within closer proximity than the 16 kilometres the Petitioner is complaining about in this Petition, but in those other instances the Petitioner has no single complaint. The Petitioner has not denied that position.

70. The Petitioner has therefore taken the contrary position in this Petition with full knowledge that it is a beneficiary of the very position it now articulates against. As correctly submitted by the Respondents and the Interested Parties, the Petitioner is **approbating and reprobating** on the issue of exclusive zones. Considering the conduct of the Petitioner and in view of the multiplicity of suits on the same issue, it is our finding that the Petitioner is abusing the court process. We therefore concur with our brother **Odunga, J.** in **Nairobi High Court Judicial Review Application No. 426 of 2014 (Republic v. Agricultural Fisheries and Food Authority & 3 others ex parte West Kenya Sugar Company Limited (2015) eKLR** where the Learned Judge found the very Petitioner in this matter to be in abuse of the court process as a result of the conduct complained of.

71. On the contention that the Petitioner is discriminated against since whereas it has acquired all the requisite licenses in law, the 7th Respondent has been allowed not to be subject to the law of the land by

operating without any license, we believe we have said enough on that aspect when we were dealing with the first issue of determination in this judgment. We have already dealt with the impact of the Crops Act on the licences **issued and/or issuable** under the repealed Acts at great length and placed all millers on the same footing; that none has any valid licence. As a result, the contention that the Petitioner's right under **Article 27** of the **Constitution** is contravened cannot stand.

72. The consequence of the above finding would be to order the closure of both the Petitioner's and the 7th Respondent's milling plants pending compliance with the Crops Act. However, we have opted not to take that avenue for two reasons. First, is the issue of public interest. We remain alive to the level of investment involved in putting up and running a milling plant and note that the closure of the mills would adversely affect the farmers, millers, the County Government of Kakamega, the general public among other sector players. The economy of the region and the country as a whole would also be adversely affected given that agriculture still remains the economic backbone of our country. Second, we note that whereas **Section 19** of the **Crops Act** creates offences relating to dealing with scheduled crops without licences, it does provide for closure of milling plants as penalty.

73. With regard to the alleged contravention of **Articles 47** and **50** of the **Constitution**, we find the contention to be premature since the Petitioner's right to raise objection is yet to crystalize. This is because the 1st Respondent is yet to consider applications under **Section 20** of the Crops Act. In any event, as we have stated above the process of considering the application for a manufacturing licence for the 7th Respondent as ordered by the Court of Appeal was caught up by **Section 42(2)(b)** of the Crops Act.

74. The upshot is that the Petitioner has not demonstrated any breach or threat of its rights and fundamental freedoms under **Articles 27, 40, 47** and **50** of the **Constitution**.

(c) Costs:

75. The Cross-Petition by the 7th Respondent was withdrawn thereby leaving only the Amended Petition for determination. In that case, the Petitioner would ordinarily be entitled to costs of the Cross-Petition. On the other hand, the Amended Petition, has not been successful. That, in our view would also entitle all the Respondents to costs. It is therefore our considered view that each party do bear its costs.

(d) Way Forward:

76. This matter has brought out some of the intrigues and challenges in the sugar sector. The sector has been undergoing changes since colonial times characterized by the repeal and the enactment of various laws culminating in the enactment of the present Crops Act. In every single instance, the laws have endeavoured to initiate changes towards attaining the highest standards in accelerating the growth and development in the sector so as to enhance productivity and improve the livelihoods of the people.

77. A closer look at the Crops Act reveals that various institutions were created with specific mandates. Unless and until those institutions discharge those statutory responsibilities, the challenges in the sector some of which are part of this Petition are not about to come to an end. It is our considered view that the sugar sector regulator which consists of the 1st and 2nd Respondents as well as any other sector player including the 5th and 6th Respondents must take action towards compliance with the Crops Act.

78. As we come to the conclusion of this judgment, we wish to express our sincere and immense gratitude to all Counsel who appeared in these proceedings for their fervor and depth of research; together with the detailed submissions, both oral and written, and the authorities referred to which we have found truly useful. If we have not expressly referred to any authority cited, that it is not out of disrespect or lack of appreciation for their industry.

Conclusion

79. We now make the following final orders: -

a) Prayers (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (u), (v), (w), (y) and (z) of the Amended Petition be and are hereby dismissed.

b) A declaration be and is hereby issued that the Renewal Licence No. AFFA-SD/MLIC-0001/2015 issued to the 7th Respondent by the 1st Respondent vide a letter dated 3rd July 2015 is illegal, null and void. For the avoidance of doubt, the manufacturing licence issued to the petitioner under the repealed sugar act is likewise null and void

c) A declaration be and is hereby issued that the 1st and 2nd Respondents have no power to renew a licence to an Applicant who does not have a Manufacturing Licence duly issued under Section 20 of the Crops Act, 2013.

d) The 1st and 2nd Respondents be and are hereby ordered to comply with the Crops Act, 2013 within a period of 12 months from the date of this judgment.

e) Each party shall bear its own costs of these proceedings.

JUDGMENT DELIVERED, DATED and SIGNED at KAKAMEGA this 21st day of June 2017.

RUTH N. SITATI

E. N. MAINA

A. C. MRIMA

JUDGE

JUDGE

JUDGE