



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

PETITION NO. 80 OF 2012

**IN THE MATTER OF: ARTICLE 22, ARTICLE 28, ARTICLE 47, ARTICLE 50,
ARTICLE 157 AND ARTICLE 165(3) OF THE CONSTITUTION OF KENYA AND THE
(SUPERVISORY JURISDICTION AND PROTECTION OF THE INDIVIDUAL) HIGH
COURT PRACTICE AND PROCEDURE RULES, 2006**

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF FUNDMENTAL RIGHT
AND FREEDOM UNDER ARTICLE 22, ARTICLE 28 AND ARTICLE 47 OF THE
CONSTITUTION REGARDING, RIGHT TO FAIR ADMINISTRATIVE ACTION AND
FREEDOM FROM INHUMAN TREATMENT RELATING TO THE PETITIONER BEING
PLACED IN DOUBLE JEOPARDY**

IN THE MATTER OF:

I. MSA HCCC NO. 11 OF 2012

PREMIER COOKES LTD. VS. NEW GENERATION SELF SERVICE STORES LTD.

II. MSA HCCC NO. 12 OF 2012

PREMIER FLOUR MILLS LTD. VS. NEW GENERATION SELF SERVICE STORES LTD.

III.MSA HCCC NO. 115 OF 2012

ATTA KENYA LTD. VS. NEW GENERATION SELF SERVICE STORES LTD.

IV.MSA HCCC NO. 119 OF 2012

PREMIER FLOUR MILLS LTD. VS. NEW GENERATION SELF SERVICE STORES LTD.

BETWEEN

1. NEW GENERATION SELF SERVICE STORES LIMITED

2. STEPHEN NGIGE KAHENI.....PETITIONERS

AND

1. DIRECTOR OF PUBLIC PROSECUTIONS

2. DISTRICT C.I.D. OFFICER

3. URBAND CID, MOMBASA.....RESPONDENTS

AND

1. ATTA (KENYA) LIMITED

2. PREMIER COOKES LIMITED

3. PREMIER FLOUR MILLS LTD.....INTERESTED PARTIES

RULING

1. The Ruling by Muriithi J. in D. J. Lowe & Company Limited concerned maintaining the status quo of a property, and not investigation whether an offence had been committed or not.

2. I adopt the language of Nyamu J. in the case of **Francis Mburu Mungai vs. Director of Criminal Investigations & Another** cited in the Ruling of Maureen Odero J. that:-

“detection, prevention and control of crime are values recognized by the Constitution and the court has a duty to weigh these values against any alleged violation of due process and in ascertaining whether the principle of legality is in place so as to justify any derogation.”

3. For those reasons, I decline the extension or imposition of any conservatory orders against any investigations in these matters.

Dated, Signed and Delivered in Mombasa this 15th day of May, 2015

M. J. ANYARA EMUKULE

JUDGE