

released, the sugarcane that was being transported to the Plaintiff's factory was never recovered.

ii) that the sugarcane was being transported lawfully and the drivers of the tractors and motor-vehicles had the cane contracts and/or letters from the Chief and/or land search certificate indicating that the sugarcane was lawfully obtained.

iii) that as at the date of filing the Application, tractor registration number KAY 025 X and motor-vehicle registration no. KAW 944 B had yet to be released together with 8.7 tones of sugarcane.

iv) that as a result of the Defendant's unlawful actions, the Plaintiff and its contracted cane farmers stand to suffer irreparable loss and damage.

3. That the injunction should therefore be granted to secure the Plaintiff's business interests from the destructive actions of the Defendant, its agents and/or employees.

4. In response, the Defendant filed a Replying Affidavit sworn on 4.10.2010 by Benson Khatwenge, its Company Secretary and its case can be summarized as follows;

5. That at no time did it impound any of the tractors or motor-vehicles alleged by the Plaintiff and that if any of them were impounded, then that was the work of the police and that was because the Plaintiff was interfering with the Defendant's "*nucleus farms and/or outgrowers being loaded with sugarcane in which the Defendant company has heavily invested in terms of ploughing and farm inputs.*" Further, that the Plaintiff through its agents and/or servants have interfered with the Defendant's operations by poaching and [encouraging] the breach of contracts by the Defendant's outgrowers" by alleging that the canes were being sold to it by private cane owners.

6. Another point raised by the Defendant is that the present suit is "sub judice", a misnomer in any event, but further that the dispute before this court should be resolved in the Sugar Arbitration Tribunal as established under the Sugar Act.

7. I note that since the Defendant categorically denied having impounded motor vehicle registration no. KAY 025 X and tractor registration number KAW 944 B, on 5.10.2010 I ordered the release of the two vehicles from whoever had their custody, a matter that remains contested because in his latter Affidavit, Kannuswamy Theerthomalai still insisted that the Defendant still had custody of them but had refused to release them inspite of the court order.

8. Before going to the merits of the Application, I deem it fit to deal with the issue of jurisdiction first. I have perused the Sugar Act No. 10 of 2001 and I note as follows; S. 31 provides that;

"(1) There is established a tribunal to be known as the Sugar Arbitration Tribunal for the purpose of arbitrating disputes arising between any parties under this Act

(2)The Tribunal shall consist of-

(a) a chairman who shall be a person qualified for appointment as a judge of the High Court of Kenya and

(b) two other members, being persons with expert knowledge of the matters likely to come before the Tribunal and who are not persons with a direct material interest in the sugar industry, all of who shall be appointed by the Minister in consultation with the Attorney General.."

(3) The members of the Tribunal appointed under subsection (2) shall hold office for such period, not exceeding three years, on such terms and conditions as shall be specified in the instrument of appointment but shall be eligible for re-appointment for one further term of a period not exceeding five years.

(4) The provisions set out in the Third Schedule shall have effect with respect to the meetings and procedure of the Tribunal.

(5) Except as provided in the Third Schedule, the Tribunal shall regulate its own procedure.”

9. It is agreed that the parties to this suit are also parties to the Act because the dispute relates to matters between “*millers*” and “*outgrowers*” within the meaning of the Act. It follows therefore that, whereas this court has unlimited original jurisdiction in matters of a civil nature, the present dispute would best be settled at the Sugar Arbitration Tribunal.

10. In any event, having looked at the Application before me and the way it is framed, once I ordered the release of motor vehicle registration number KAY 025 X and tractor registration number KAW 944 B, there is little else to be said because the remaining prayer is ambiguous, and I cannot issue orders in anticipation of an unknown event predicated on not a single certain clear and known event. A blanket order as is sought in prayer (d) cannot determine the sugar wars between the parties and the Tribunal is best suited to do that.

11. Further, it would seem that the parties are fighting over control of sugarcane in the Misikhu area and the Defendant seems to hold the Plaintiff as the aggressor and whatever the merits of that argument, I cannot in the Application before me see that an order in the words of the prayer (d) aforesaid is untenable in the present circumstances.

12. In the event, while dismissing the Application dated 30.9.2010 save for prayer (c), let each party bear its costs and they should move to the Tribunal if they are minded to do so.

13. Orders accordingly.

Delivered, dated and signed at Kakamega this 22nd day of February, 2011

**ISAAC LENAOLA
J U D G E**