



REPUBLICAPPLICANT

VERSUS

THE TEA BOARD OF KENYARESPONDENT

AND

AFHAM TRADING LTD.EX-PARTE APPLICANT

RULINGS

Pursuant to the leave granted by this court on 12th March 2009, Afham Trading Ltd hereinafter referred to as the applicant, took out the notice of motion dated 20th March 2009 in which it sought for the following orders:

(a) *Certiorari to bring to the High Court and quash the proceedings leading to the decision of 10/9/2008, the purported findings, reports, recommendations, quash the decision of 10/9/2008 of the Respondent purporting to determine a commercial dispute between the ex-parte applicant and the buyer herein and ordering the ex-parte applicant herein to compensate the buyer and cancelling the ex-parte applicant's EATTA registration, and quash the letter dated 10/9/2008 for being ultra-vires the powers of the powers of the Respondent and or having been made in violation of the rules of natural justice.*

(b) *Declaration that the proceedings leading to the decision of 10/9/2008, and 30/1/2009 the purported findings, reports, recommendations, the foresaid decision of 10/9/2008 and 30/1/2009 of the respondent, and the letters dated 10/9/2008 and 30/1/2009 are null and void for being made contrary to the rules of natural justice as against the ex-parte applicant and or being ultra vires- of the powers of the Respondent.*

(c) *A prohibition to prohibit the respondent and the buyer from acting on, adducing as evidence in any court or tribunal, using, tendering, or in any other way referring to the foresaid reports, findings, decision recommendations, or letter dated 10/9/2008.*

(d) *Certiorari to bring to the High Court and quash the decision of the Respondent dated 30/1/2009 suspending registration of the ex-parte applicant as a tea buyer for being made in violation of rules of natural justice and being procedurally and substantively ultra-vires the powers of the Respondent.*

(e) *Prohibition to prohibit the Respondent board from purporting to retry the commercial dispute between the ex-parte applicant and the buyer, making any findings or recommendations on the dispute and or re-suspending, cancelling or otherwise interfering with the ex-parte Applicant's registration and or renewal of registration as a tea buyer on account the dispute with the material buyer herein.*

(f) *Costs of the application.*

The motion is accompanied by a statement of facts and is verified by the affidavit of Awadh Bayusuf sworn on 6th March 2009. The affidavit of service of Terrence Omondi sworn on 24th June 2009 shows

that the motion was served upon the Kenya Tea Board of Kenya the Respondent herein. There is no evidence that the Respondent filed any replying affidavit nor grounds of opposition. Being satisfied that the motion was properly served, this court permitted the applicant's advocate to prosecute the motion *ex parte*.

The motion is stated to be brought under section 8(2) of the Law Reform Act and Order LIII rule 3 (1) of the Civil Procedure Rules. The main complaint raised by the applicant against the Respondent in this motion is that on the 10th day of September 2008, the Respondent investigated took evidence and decided a commercial dispute involving a contract of Sale of tea by the applicant to the Crown company of Egypt. By a decision state on the letter dated 10th September 2009, the Respondent arrived at a decision to the effect that the applicant was in breach of the contract for the sale of goods and that the applicant should compensate the buyer (the buyer) either by supplying a fresh consignment or by refunding the purchase price. It is the contention of the applicant that the Respondent has no powers to decide a Commercial dispute. It is also alleged that the Respondent breached the rules of natural justice when it denied the applicant any meaningful right of hearing as required under rule 10 (2) of the Tea Licensing Registration and Trade Regulations 2008. The Respondent was also accused of being openly biased against the applicant in favour of the buyer.

I have carefully considered material placed before me. Unfortunately

I have with me only one side of the story. I have no reason to doubt the veracity of the arguments and averments made before this court. I have perused the Tea Act chapter 343 Laws of Kenya. It is apparent from the aforementioned Act that the Tea Board of Kenya is a creature of the Statute established under S.3. From the correspondences attached to the verifying affidavit, it is apparent that the complaint received related to quality of the tea supplied by the applicant to the buyer.

In the last two paragraphs of letter signed by Mrs. Sicily K. Kariuki, the Managing Director of the Respondent it is stated as follows:

“Be advised that if an amicable settlement is not reached, Crown company will be at liberty to seek legal redress on this matter. Further failure to settle the matter will compromise your future approval of being registered to deal with tea trading activities: We therefore expect you to respond on your course of action, in writing to the undersigned in 14 days from the date of this letter.

We have also taken note of the letter received from yourselves dated 8/8/2008 on the suspension of your operations.”

By a letter dated 19th November 2008, the applicant asked for more time to respond to the allegations contained in the letter dated 10th September 2008. It would appear there was a lull until 30th January 2009 when the Respondent through its Managing Director wrote to the Applicant informing it of its decision to suspend the applicant's registration as a buyer under S.4 (1) and (2) of the Tea Act Chapter 343 Laws of Kenya. It would appear

the aforesaid decision provoked the applicant to take up these proceedings. I have perused the provisions of Section 4(12) of the Tea Act. It is clear that the aforesaid subsection placed a duty on the Respondent to act in such a manner as appears to it to promote the tea industry in Kenya. Under subsection 2 the Respondent is given inter alia, the power to control the export of tea. Under Section 25(2)(i), there is a provision giving the Minister Power in consultation with the Respondent to make regulations over registration or deregistration of buyers, brokers, Packers Management agents and any other persons dealing in tea. In fact under S.26 of the Tea Act, the law gave any person aggrieved by the Respondent's decision to suspend any license a right to appeal the Agricultural Appeals Tribunal. It is obvious from the aforementioned provisions of the law that the Respondent acted within the powers donated by the Statute and the Regulations therein.

The other complaint which was raised is to the effect that the applicant was not given a right of hearing. A careful examination of the correspondences exchanged by the parties and annexed to the

verifying affidavit will reveal that the applicant was not given a right of hearing. A careful examination of the correspondences exchanged by the parties and annexed to the verifying affidavit will reveal that the applicant was invited to make its defence over the allegations raised which related to the quality of the tea it supplied to the buyer. The applicant admits its staff misplaced the letter. In fact it asked for time to respond to the complaint but failed to do so until its license was suspended on 30th January 2009. I am convinced the applicant was given a right of hearing by the Respondent.

In the end and for the above reasons I find no merit in the motion. It is dismissed with no order as to costs.

Dated and delivered at Mombasa this 23rd day of July 2009.

J. K. SERGON

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