



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISC APPLICATION NO. 387 OF 2000

LEWIS G. W. MUGOAPPLICANT

VERSUS

KENYA TEA DEVELOPMENT AUTHORITY.....RESPONDENT

RULING

Mr. Lewis G. Mugo applies for orders of:

1. Mandamus directed at Kenya Tea Development Authority (KTDA) to compel it to purchase, collect, transport and market applicants green leaf.
2. Prohibition to prohibit KTDA - its servants, employees or agents from rejecting or refusing to purchase applicants green leaf.

The application is supported by a statement dated 19.4.2000 and a verifying affidavit. The application is brought on the ground that the applicant who is a tea grower No. MU.360016 took green leaf for sale at Muchagori Tea Buying Center on 8.1.97 but Mr. J. M. Kuraria – the leaf Officer rejected the applicants green leaf on the allegation that the applicant had on 11.12.96 abused one Fred Muturi Kathunbu – the Chairman of Muchagori Tea Buying Center. Applicant avers in the statement that he was informed that the center will no longer accept his green leaf.

He denies abusing the Chairman or any other person. He complains that he was never afforded or given a chance to be heard in his defence before the decision to permanently reject his tea was reached.

Wahu Maina – the legal officer of the Respondent has filed a replying affidavit. He states in paras 5, 6, 7, 8, 9, 12, 13 that

- (i) Leaf collection centers are built, and managed, run and administered by tea growers of a given area and that the members usually appoint a committee to ensure the smooth running of the buying center
- (ii) The members of such centers formulate codes of rules and regulations which members must abide by
- (iii) Applicant is a member of Muchagori Tea Buying center through which tea growers from the area sell their green leaf to the respondent
- (iv) The only role respondent prays in the running of the centers is to provide the center with a clerk whose duty is to issue receipts to tea growers in acknowledgement of the purchase.

(v) That applicant flouted the code of rules and regulations that govern the running of Muchagori Tea Buying center and was suspended from selling his green tea leaves to respondent through the center by the committee.

(vi) That the suspension of the applicant was confirmed at the Tea Buying centers annual general meeting held on 7.3.97

(vii) The committee has severally summoned the applicant to appear before it and explain why he flouted the rules and regulations but applicant has failed

(viii) That applicant has snubbed all efforts to arbitrate the dispute.

Wahu Maina further deposes in paragraph 14 of the replying affidavit that the respondent is bound to abide with the decision of the committee of Muchagori Tea Buying Center as approved by the members at their Annual General meeting.

Wahu Maina annexed the minutes of Annual General meeting of Muchagori Tea Buying Center held on 7.3.97 and other documents related to this dispute. The applicant did not file a reply to the affidavit of Wahu Maina.

I have considered the statement, verifying affidavit and counsels submissions.

The relevant facts in the affidavit of Wahu Maina have not been denied. It is clear from the affidavit of Wahu Maina that Muchagori Tea Buying Center is built by the local tea growers and is managed and run by the tea growers.

It is not disputed that Muchagori Tea Buying Center has a Committee of tea growers which runs the center. The documents annexed to Mr. Wahu Maina's affidavit indeed show that there is such a committee. The minutes of Annual General Meeting of 7.3.97 exhibit "WMI" refers to the Rules and state that applicant flouted the Rules. The documents from the committee show that the committee deliberated on the applicants case and decided that applicant be suspended until he appears before the committee to answer the accusations. The documents show that applicant has been called to the meeting the committee but has failed to attend. The applicant letter dated 8/11/97 is annexed in which he stated that he would not attend the meeting of the committee unless some officials of respondent attended. It is true that Kenya Tea Development Authority has by virtue of Rule 19(I) (VI) of the Kenya Tea Development Authority Order has power to purchase, collect and transport green leaf from growers.

The affidavit of Wahu Maina shows that the body which stopped applicant from selling tea leave at Muchagori Tea Buying Centre is the committee of tea growers who run the Muchogori Tea Buying Center on behalf of the tea growers. In essence, it is the tea growers who constructed the Tea Buying Center from their own resources and who are in charge of the day to day management of the buying center who stopped applicant from selling his green tea leaves at the buying center. The documents annexed to the affidavit of Wahu Maina show that the Management Committee of the Muchagori Tea Buying Center has made their decision to expel applicant which decision has not been quashed and applicant has not asked this court to quash that decision. From the foregoing, it seems to me that the orders of mandamus and prohibition are being sought against a body which has not made any adverse decision against the applicant. To that extent the application is incompetent. Secondly, I although applicant complains that the decision was made without giving him a chance to be heard the documents from Muchagori Tea Buying Centre show that applicant declined to attend before the committee. His own letter dated 8.1.97 supports the findings of the Tea Buying Center that applicant ignored invitation to attend committee meetings to resolve the dispute. His complaint that he was never given an opportunity to be heard has no merit.

The orders sought are discretionary. The applicant is a tea grower and a member of Muchagori Tea Buying Center. If the application against KTDA is allowed the effect will be to by pass the Management Committee of Muchagori Tea buying Center. That may cause anarchy. Applicant should make peace with

the other local tea growers and abide by the Rules and Regulations which bind all the tea growers at Muchagori Tea Buying Center. For the foregoing reasons I dismiss the application with costs. The order of stay granted is discharged.

E. M. Githinji

JUDGE

18.12.2002

Mr. Gachuhi for applicant present

Miss Miriti holding brief for Githinji for Respondent present