



REPUBLIC OF KENYA



**Bia Tosha Distributors Limited v Kenya Breweries Limited & 4 others (Petition 249 of 2016)  
[2025] KEHC 1112 (KLR) (Constitutional and Human Rights) (4 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 1112 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS**

**PETITION 249 OF 2016**

**LN MUGAMBI, J**

**MARCH 4, 2025**

**BETWEEN**

**BIA TOSHA DISTRIBUTORS LIMITED ..... PETITIONER**

**AND**

**KENYA BREWERIES LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**UDV (KENYA) LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**EAST AFRICAN BREWERIES LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**DIAGEO PLC ..... 4<sup>TH</sup> RESPONDENT**

**COGNO VENTURES LIMITED ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

1. The file was referred to this court from Hon. Justice Mwita Chacha.
2. On 24<sup>th</sup> February, 2025, Advocates for the parties appeared before me for the directions on the matter.
3. During the session, Mr. Oraro (SC) gave a brief background of the matter which was generally accepted by all Advocates us representing true historical perspective of the matter. However, the point of departure was in what the court was expected to deal with or give directions on.
4. Mr. Oraro (SC) for the 2<sup>nd</sup> Respondent, Kamau Karori (SC) for 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondent, Mr. Thuo holding brief Njoroge Regeru for alleged contemnors, M/s Ahom holding brief for Mr. Issar Mansur for 1<sup>st</sup> interested party were unanimous that in view of the ruling by Justice Ong'udi of 28<sup>th</sup> April, 2023; there was a need for this court to clarify the order of injunction issued on 29<sup>th</sup> June, 2016 hence the need to hear and determine the two notices of motion dated 23<sup>rd</sup> February, 2023 filed by the 2<sup>nd</sup>



respondent's and also notice of motion dated 23<sup>rd</sup> February, 2023 by 1<sup>st</sup> and 4<sup>th</sup> respondents to enable parties know what they ought to respond to.

5. Counsel for the petitioner opposed such an approach, Mr. Okoth Oriema who was in the matter holding brief for Dr. Kiplagat contended that the matter was remitted to this court by the Supreme Court with specific instructions hence there was no further need for any clarification but to proceed as directed by the Supreme Court.

6. I have read the decision of the Supreme Court dated 17<sup>th</sup> February, 2023 in which at paragraph 130; the Supreme Court stated as follows:

“The respondents can only appear at this stage before the High Court to purge the contempt before they can be allowed audience before the court now seized of the matter. This is not novel. It I the position we took in Hon. Gitobu Imanyara & 2 Others v Attorney General...”

7. At paragraph 131, the court emphasized that:

“131..... having found that there was contempt of court, the High Court should also proceed to assess the suitable punishment arising out of the contempt application dated 23<sup>rd</sup> August, 2016 by the appellant pending before it....”

8. The Court of Appeal order following the consent by the parties stated as follows:

“That the matter be taken back to the High court to proceed in terms of the Judgment of Supreme Court dated 17<sup>th</sup> February, 2023 and clarification ruling of the Supreme Court dated 26<sup>th</sup> February, 2023.”

9. This court can only act as directed by the Supreme Court, indeed, when the parties went before the Court of Appeal on 3<sup>rd</sup> February, 2025, they entered into a consent order to give effect to the decisions of the Supreme Court.

10. According to Supreme Court, its position is as captured in the findings highlighted in the foregoing, which is that the issue of contempt is now forgone conclusion. The Respondents have to proceed and purge the contempt before being granted audience before this court.

11. This court will be going against Supreme Court's decision if it were to entertain any debate or any other application by the respondents at this juncture.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 4TH DAY OF MARCH, 2025.**

.....  
**L N MUGAMBI**  
**JUDGE**

