



Republic v Factory Unit Manager, Gianchore Tea Factory & 2 others; Ongaga & 15 others (Ex parte) (Judicial Review Cause E003 of 2024) [2025] KEHC 10286 (KLR) (10 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10286 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
JUDICIAL REVIEW CAUSE E003 OF 2024**

**WA OKWANY, J
JULY 10, 2025**

BETWEEN

REPUBLIC APPLICANT

AND

**FACTORY UNIT MANAGER, GIANCHORE TEA FACTORY 1ST
RESPONDENT**

BOARD OF DIRECTORS, GIANCHORE TEA FACTORY 2ND RESPONDENT

GIANCHORE TEA FACTORY 3RD RESPONDENT

AND

NELSON MONG'ARE ONGAGA EX PARTE

ELIZABETH SARANGE MONG'ARE EX PARTE

JOHN SAGWE MBANE EX PARTE

PETER OGOTI MOGOL EX PARTE

JOHN NYAMBANE EX PARTE

RENALD MONG'ARE ONYANCHA EX PARTE

MARIKO NYAKWEBA NYACHIRO EX PARTE

ANTONY NYAMATO ORANGO EX PARTE

JOSEPH BUNDI ONCHARL EX PARTE

JOYCE NYAKERARIO MORARA EX PARTE

SAMUEL BUNDI SAGWE EX PARTE

ERICK CHACHE SAGWE EX PARTE

PHILIS MOKEIRA NYANG'AU EX PARTE



TOM MAKORI KEMUMA EX PARTE
GEORGE NYARIBO MOTURL EX PARTE
EVANS NDUBI NDUBI EX PARTE

RULING

1. This ruling is in respect to two applications, namely;
 - a. The Application dated 28th October 2024 (hereinafter “the 1st Application”) wherein the exparte Applicants seek, inter alia, orders for judicial review to compel the 1st and 2nd Respondents to immediately activate the listed growers' numbers belonging to the Applicants that were allegedly suspended or deactivated by the Respondents.
 - b. The Application dated 24th January 2025 (hereinafter “the 2nd Application”) wherein the 1st and 2nd Respondents seek orders to strike out their names from the case on the basis of misjoinder.
2. I will consider the Application dated 24th January 2025 first as its determination will determine the outcome of the 1st Application in as far as the participation of the 1st and 2nd Respondents' to the proceedings is concerned.

The 2nd Application

3. Through a Notice of Motion dated 24th January 2025, the 1st and 2nd Respondents seek orders to strike out their names from the proceedings.
4. The application is supported by an affidavit sworn by the Factory Manager, Mr. Benjamin Nyakoe, and is premised on the claim that including the 1st and 2nd Respondents to the suit contravenes Section 70 of the *Tea Act*.
5. The exparte Applicants opposed the Application through the replying affidavit of Mr. Nelson Mong'are Ongaga who avers that the application is malicious, an abuse of court process, and a deliberate attempt to delay the proceedings. He urges the Court to dismiss it with costs.
6. He asserts that judicial review is meant to check the lawfulness and fairness of actions by public bodies and officials and adds that Section 70 of the *Tea Act* does not grant immunity to public officers who act outside lawful procedures.
7. He clarifies that the 1st and 2nd Respondents are not sued in their personal capacities, but because they hold offices and are responsible for the unlawful actions and impugned decisions that precipitated the filing of this suit.
8. He emphasizes that the 1st and 2nd Respondents are responsible for the overall operations and policy direction of the 3rd Respondent and can be held accountable for any resultant damage or losses.
9. The deponent maintains that the 1st and 2nd Respondents cannot shield themselves from liability for unlawful decisions made under their leadership. He further states that the application to strike out the 1st and 2nd Respondents is unjustified, and that the interests of justice demand that it be dismissed entirely.
10. The Application was canvassed by way of written submissions which I have considered.



The Ex Parte Applicants' Submissions

11. Ex-parte Applicants argued that the application is, in substance, a preliminary objection disguised as a Notice of Motion, which is procedurally flawed since it raises issues of fact and not pure points of law. Reference was made to the decision in Republic v NEMA; WASPA (Interested Party) Ex parte NCWSC & Another [2021] eKLR, wherein the court emphasized that misjoinder and non-joinder are not fatal to a suit and that any such irregularities are curable by amendment, not grounds for striking out parties.
12. The Ex-parte Applicants also relied on the decision by the Court of Appeal in Republic Ex parte Minister for Finance & Another v Charles Lutta Kasamani wherein it was held that misjoinder/non-joinder does not go to the substance of a matter and is not a valid reason to defeat proceedings.
13. The exparte Applicants further referred to Order 1 Rules 9 and 10 of the Civil Procedure Rules which empower the Court to add or remove parties at any stage without affecting the suit's validity, as long as the core issues are preserved.
14. It was asserted that the 1st and 2nd Respondents are properly sued in their official capacities, having acted or omitted to act in ways that led to the grievances now before the Court. The exparte Applicants maintained that the Tea Act does not shield such individuals from legal accountability for unlawful or irregular conduct and that Section 70 of the Tea Act does not bar actions against officers who breach their statutory duties or act ultra vires. Reference was made to the case of William Kiprono Towett & 1597 Others v Farmland Aviation Ltd & 2 Others [2016] eKLR for the position that that misjoinder or non-joinder of parties cannot defeat a suit under Order 1 Rule 9.
15. Article 159(2)(d) of the Constitution was also invoked to support the argument that justice must be administered without undue regard to procedural technicalities, a principle affirmed in cases such as Republic v District Land Registrar, Uasin Gishu & Another [2014] eKLR.
16. The Ex-parte Applicants argued that terminating the proceedings over procedural defects would contradict the principle of substantive justice that is supported by the landmark case of DT Dobie & Co (Kenya) Ltd v Muchina [1980] eKLR.
17. They urged the Court to consider the overarching goal of resolving real disputes, and not to defeat the application on procedural grounds that can be rectified or addressed without prejudice. They further urged the court to find that the application dated 24th January 2025 is unmerited, and proceed to dismiss it with costs in the interest of justice and constitutional values.
18. The Application was canvassed by way of written submissions, which I have considered.

Analysis and Determination

19. I have carefully considered the Application dated 24th January 2025, the affidavits on record, the written submissions and the applicable law. The central issue for determination is whether the 1st and 2nd Respondents ought to be struck out from these proceedings on the basis of the provisions of Section 70 of the Tea Act and alleged misjoinder. The said section stipulates as follows: -

“Liability shall not attach to the Board or to any of its members, officers, agents or staff for loss or damage incurred by a person as a result of an act or omission done or made in good faith and without negligence in the performance or exercise or the intended performance or exercise of any duty or power imposed by or conferred under this Act.”



20. The 1st and 2nd Respondents asserted that they have been improperly joined in contravention of Section 70 of the *Tea Act*. I however note that they did not cite or explain, with specificity, how the said section confers immunity to them in the context of judicial review proceedings. My understanding of Section 70 of the *Tea Act* is that it provides limited protection to officers acting in good faith and within the scope of their statutory duties. The said section does not offer blanket immunity, particularly where it is alleged, as was the position in the instant case, that the officers acted unlawfully, unprocedurally, or outside the scope of their statutory mandates.
21. It is trite that judicial review proceedings are distinct in nature as they are not about personal liability, but rather, about the legality, propriety, and fairness of administrative actions and decisions by public bodies and officials. A perusal of the pleadings reveals that the 1st and 2nd Respondents have not been sued in their personal capacities, but in their official roles as persons responsible for the decisions and actions that gave rise to the present claim. This position is consistent with the guiding principles of judicial review, as well as precedent cited by the ex parte Applicants.
22. In *Republic v NEMA; WASPA (Interested Party) Ex parte NCWSC & Another* (supra) the court clarified that that misjoinder or non-joinder of parties does not defeat a suit. Order 1 Rule 9 of the Civil Procedure Rules supports the position that no suit shall be defeated by reason of misjoinder or non-joinder, and Rule 10 empowers the court to add or strike out parties where necessary. The overriding consideration is whether the presence or absence of a party affects the determination of the issues before the Court.
23. It is not lost on the Court that this application may have the effect, if allowed, of shielding public officers from scrutiny in respect of decisions made under their leadership, even where such decisions are alleged to be ultra vires or in breach of the law. Such a result would run counter to the purpose of judicial review and the constitutional principles of accountability and transparency.
24. Furthermore, Article 159(2)(d) of *the Constitution* enjoins this Court to administer justice without undue regard to procedural technicalities. Even assuming, for argument's sake, that there was a procedural misstep in joining the 1st and 2nd Respondents, I find that it would not warrant the drastic remedy of striking out the name of a party, especially where no prejudice has been demonstrated.
25. In the landmark case of *DT Dobie & Co (Kenya) Ltd v Muchina* [1980] eKLR, the Court emphasized that suits should not be struck out summarily unless it is plain and obvious that they disclose no reasonable cause of action. That is not the position in the present case.
26. In conclusion and having regard to the findings that I have made in this ruling, I find that the application dated 24th January 2025 lacks merit. It is hereby dismissed in its entirety. The names of the 1st and 2nd Respondents shall remain in the proceedings in their official capacities. The costs of this application shall abide the outcome of the substantive motion.

The 1st Application

27. The Ex-parte Applicants filed the 1st Application seeking, inter alia, orders to compel the 1st and 2nd Respondents to immediately activate the listed growers' numbers belonging to the Applicants. These numbers were allegedly suspended or deactivated, by the Respondents, and are critical for the Applicants' ability to deliver and sell green tea to the 3rd Respondent.
28. They ex parte applicants further seek orders to compel the Respondents to resume collection of green tea leaves from the Applicants at the buying centres at Tente, Nami, Bomondo, Mageri, and Nyaigwa unconditionally, as the suspension has interfered with their economic livelihood.



29. The Applicants also seek an order of certiorari to quash the decision, made by the Respondents, to suspend both the collection of tea and the growers' numbers. They argue that the said decision is illegal, unreasonable, and procedurally unfair.
30. Additionally, the Applicants seek a declaration that the said suspensions were null and void, having been undertaken without valid legal justification or adherence to due process.
31. The Applicants also request for a prohibition order to restrain the Respondents from further restricting, interfering with, or limiting their access to deliver tea at the said buying centres in any manner whatsoever.
32. Apart from the reinstatement, the Applicants seek a mandatory order compelling the Respondents to publicly disclose full details regarding the purchase and use of land at Transmara in Narok County that was allegedly bought using deductions from farmers. This includes leases, title deeds, sale proceeds from trees on the land, and the current whereabouts of the funds.
33. They further ask the Court to order the Respondents to compensate them for the green tea lost during the period of suspension, calculated according to their usual monthly earnings and payslips.
34. The Applicants further seek a mandatory order directing the Respondents to provide a written explanation to the farmers regarding the status of the Rianyakwana Electrical Power Project, particularly the amounts deducted from farmers and how the funds were utilized.
35. The Applicants also raised concern that elected representatives have been improperly replaced by non-elected officials thereby undermining democratic governance within the 3rd Respondent.
36. The Applicants explained that the genesis of this dispute was their visit to the 1st Respondent's office on 3rd September 2024, where they demanded accountability on several issues, including leadership representation, misuse of funds, suspension of staff, sale of trees at Transmara, and progress of key development projects.
37. The Applicants claim that the suspension of their growers' numbers was a retaliatory act by the Respondents following these demands. They state that despite issuing demands for reinstatement, the Respondents have allegedly failed to act thereby necessitating the decision to seek this judicial intervention.
38. The application is supported by an affidavit sworn by the 1st ex parte Applicant Mr. Nelson Mong'are Ongaga and a Statement of Facts, wherein the Applicants assert that their livelihoods will continue to suffer irreparable harm unless the Honourable Court urgently intervenes in the matter.

The Respondents' Case

39. Benjamin Nyakoe, the current Factory Unit Manager of Gianchore Tea Factory Ltd, (the 3rd Respondent) swore a replying affidavit in opposition to the 1st Application in which he averred that even though the 1st and the 2nd Respondents have been sued in their official capacities, they have been wrongly enjoined in the suit as Gianchore Tea Factory is a limited liability company governed by the [Companies Act](#) and the [Tea Act](#). According to the deponent, the said company can sue and be sued in its corporate name, and that its staff and Board members are, under Section 70 of the [Tea Act](#), protected from liability for actions taken in the course of their duties.
40. The deponent states that the Factory Unit Manager and Board of Directors do not exist independently of the 3rd Respondent and that suing them separately is therefore improper and amounts to misjoinder.



41. The deponent noted that while the Ex parte Chamber Summons dated 26th September 2024 was filed by 8 individuals only the Notice of Motion dated 28th October 2024 includes 16 names, which means that 8 additional parties were added irregularly, without leave of the Court. He avers that the additional 9th to 16th Applicants did not obtain leave to bring judicial review proceedings and should therefore be struck out of the proceedings, with costs.
42. He averred that Gianchore Tea Factory manages tea buying centres in accordance with KTDA-managed Tea Factory By-laws and that in September 2024, disciplinary action was taken against certain growers, including Nelson Mong'are Ongaga and others under the said by-laws, which resulted in suspension of their growers' numbers. He added that the said suspensions were however lifted on 24th September 2024 and 24th October 2024 as shown in the annexures marked BN2.
43. He further stated that only 9 growers were subjected to disciplinary proceedings, out of which 2 are not parties to this suit and that the remaining Applicants therefore lack the locus standi to initiate this suit.
44. He averred that as at 16th December 2024, when the Court issued ex parte orders, all growers' numbers had already been reactivated a fact which the exparte applicants did not disclose this to the Court thereby making the orders spent and based on misrepresentation.
45. He states that the Rianyakwana Electrical Power Project is managed by Nyakwana Power Co. Ltd, a separate legal entity composed of 10 tea factories which is the appropriate entity to provide the information sought regarding that project and not the 3rd Respondent.
46. The deponent explains the governance structure of Gianchore Tea Factory which has over 11,000 shareholders, 5 electoral zones, and each zone elects a director to the Board. Buying centres elect 5 committee members who participate in decisions at the joint buying centre meetings.
47. He further explained that the issues concerning property and investment are handled in accordance with the [Companies Act](#) and discussed during Annual General Meetings. He added that all agendas are generated at the buying centre level, deliberated upon, and escalated to the Board for final action.
48. He averred that at the 2024 AGM, shareholders, including the Ex parte Applicants, approved the Chairman's Report, which addressed issues including the Nyakwana Power Project and disposal of trees at Kimtet. The report and meeting minutes were annexed to the replying affidavit as BN4A and BN4B.
49. The deponent asserts that the Ex parte Applicants' demands for information already disclosed and approved are made in bad faith, are scandalous, and intended to embarrass the Respondents.
50. The Application was canvassed by way of written submissions which I have considered.

Respondents' Submissions

51. The Respondents submitted that Judicial Review proceedings are governed by Order 53 of the Civil Procedure Rules and Section 8 and 9 of the [Law Reform Act](#) and that the role of the in such matters is to review the process leading to the decision, not its merits. It was submitted that the 1st and 2nd Respondent, in their capacities as the Factory Unit Manager and Board of Directors of Gianchore Tea Factor, are not public bodies and have therefore been wrongly enjoined in the proceedings.
52. It was submitted that while prayers 1 to 8 in the Notice of Motion relate to judicial review remedies, the Ex-parte Applicants had not demonstrated, by evidence, that there was a decision to suspend or deactivate their growers' numbers.



53. The Respondents produced documentary evidence showing that only 8 growers' numbers were temporarily suspended on 13th September 2024 and reinstated on 25th October 2024 after due process under the applicable By-laws.
54. It was submitted that there is no evidence to show that the 9th to 16th Ex-parte Applicants were affected by the suspension or were part of the original Chamber Summons Application and that they therefore lack the no locus in the matter and should be struck off with costs.
55. It was the Respondents' case that since the 8 Ex-parte Applicants' growers' numbers had already been reinstated as of 25th October 2024, the Notice of Motion filed on 28th October 2024 did not disclose this material fact which means that the suit is moot with respect to prayers 1 to 8 and should be dismissed for non-disclosure.
56. It was submitted that Prayer 10, seeking compensation, is unsustainable as the Ex-parte Applicants have not provided any evidence of loss or damage suffered. Reference was made to Section 107(1) of the *Evidence Act* which places the burden of proof on the Applicants,.
57. The Respondents argued that prayers 9 and 11 were not part of the original Chamber Summons and are therefore irregular since Judicial review proceedings cannot be expanded beyond the leave granted. They submitted that the prayers also fail for want of evidence and legal foundation.
58. It was submitted that the so-called "Farmers' Memorandum Demand" is unauthenticated thus lacking signatories and proof of delivery. The Respondents noted that there is no evidence of a decision made on the said Memorandum thus making it an insufficient basis for judicial intervention.
59. The Respondents noted that 3rd Respondent had already given a legal and factual explanation regarding the issues raised, through the Chairman's Report and AGM resolutions, as shown in annexures BN-4A and BN-4B and argued that no further disclosure is warranted.
60. They maintained that the Applicants, as shareholders of the 3rd Respondent, are already aware of the matters they now seek to litigate and that the Court should therefore not be called upon to compel an explanation on matters already addressed.

Analysis and Determination

61. I have carefully considered the application dated 24th October 2024, the response filed by the Respondents and the parties' rival submissions. I find that the main issue for determination is whether the ex parte Applicants have made out a case for the granting of the orders sought in the said application.
62. The Ex-parte Applicants seek several judicial review remedies, including certiorari, mandamus, prohibition, and declaratory reliefs arising from the alleged suspension of their growers' numbers and cessation of tea collection at specified buying centres. They also seek broader orders relating to financial disclosures, project accountability, and compensation for alleged economic losses.
63. The core grievance is centred on the alleged suspension of growers' numbers following a demand for accountability during a visit to the 1st Respondent's office on 3rd September 2024. The Applicants allege that the suspension was retaliatory and was executed without regard to the due process.
64. The Respondents, on the other hand, argue that only 8 growers' numbers were suspended under applicable By-laws, following disciplinary action, but were reinstated on 24th September and 24th October 2024, respectively. They further contend that the reinstatement occurred before the ex parte orders were granted on 16th December 2024, a fact the Applicants did not disclose to the court.



65. It was not disputed that growers' numbers were reinstated before the hearing of the application. I therefore find that the prayers seeking orders to compel reinstatement and resumption of tea collection (prayers 1–5) have been overtaken by events and are now moot. It is trite that courts do not issue orders in vain, and I therefore find that it would not serve any practical or useful purpose to grant reliefs against actions that have already been remedied.
66. On the issue of material non-disclosure, it is incumbent upon parties seeking judicial relief to act in utmost good faith and to make full disclosure of material facts. The fact that the suspensions had already been lifted by the time the substantive application was filed on 28th October 2024 ought to have been disclosed. The failure to do so undermines the credibility of the Applicants and renders the application liable to dismissal on grounds of non-disclosure.
67. On the issue of inclusion of the 9th to 16th Applicants to the application without leave of the Court, it cannot be gainsaid that judicial review proceedings are special proceedings governed by Order 53 of the Civil Procedure Rules, which requires leave before filing. The record shows that leave was granted for only 8 Applicants. It is my finding that the joinder of the additional 8 persons, without a corresponding application for leave, renders their participation irregular and their names are accordingly struck out from these proceedings.
68. On the prayers for compensation and disclosure of financial information (prayers 6–11), this Court must emphasize that judicial review is not the proper forum for determining contested factual questions, assessment of damages, or demand for broad disclosures in the absence of a clear public duty to do so. These matters may be better suited for civil proceedings or shareholder dispute resolution mechanisms under the *Companies Act*.
69. The request for compensation (prayer 10) also fails for want of proof. No documentary evidence was placed before the Court to demonstrate actual loss of green tea or quantifiable income that was lost during the suspension period. My take is that the mere assertion of loss, unsupported by payslips, delivery records, or bank statements, cannot suffice in judicial proceedings, particularly where the Respondents maintain the suspension lasted no more than a few weeks and was properly reversed.
70. With respect to the Rianyakwa Electrical Power Project, the Court is persuaded that Nyakwa Power Co. Ltd, a separate legal entity, is the proper party to address concerns raised by the Applicants. The 3rd Respondent cannot be compelled to disclose information in the custody of another entity with its own governance structure.
71. This Court also finds that many of the grievances raised by the Applicants, such as alleged mismanagement, misuse of funds, and democratic governance within the 3rd Respondent, are matters falling under shareholder oversight, to be addressed during an Annual General Meeting or through mechanisms provided under the *Companies Act*. The evidence provided by the Respondents (including the Chairman's Report and AGM minutes) demonstrates that many of these issues were in fact discussed and adopted with the participation of shareholders, including the Applicants.
72. It is to be noted that judicial review is not an avenue to ventilate shareholder disputes disguised as public law challenges. It is trite that the role of the Court, in judicial review matters, is limited to reviewing the legality, rationality, and procedural fairness of administrative decisions, not resolving corporate governance grievances.

Conclusion

73. In light of the foregoing, I find that the Ex-parte Applicants have not made out a sufficient case to warrant the grant of the orders sought in the Notice of Motion dated 28th October 2024. It was not



disputed that the suspension of the growers' numbers was lifted prior to the hearing thus rendering much of the application moot. There was material non-disclosure, irregular joinder of parties without leave, and insufficient evidence to support the claims for compensation or mandatory disclosure.

74. Consequently, I make the following final orders: -

- a. The Notice of Motion dated 28th October 2024 is hereby dismissed.
- b. The 9th to 16th Ex-parte Applicants are struck out from these proceedings for lack of leave to file Judicial Review proceedings.
- c. Each party shall bear its own costs, given the public interest aspects raised and the partial reinstatement of the Applicants' growers' numbers prior to litigation.

75. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS
10TH DAY OF JULY 2025.**

W. A. OKWANY

JUDGE

