



**Kenya Tea Development Agency Holdings Ltd & 2 others v Attorney General; East African Tea Trade Association (Interested Party) (Miscellaneous Criminal Application E133 of 2021) [2024] KEHC 1391 (KLR) (Crim) (16 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1391 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
MISCELLANEOUS CRIMINAL APPLICATION E133 OF 2021  
DR KAVEDZA, J  
FEBRUARY 16, 2024**

**BETWEEN**

**KENYA TEA DEVELOPMENT AGENCY HOLDINGS LTD ..... 1<sup>ST</sup> APPLICANT  
KTDA MANAGEMENT SERVICES LIMITED ..... 2<sup>ND</sup> APPLICANT  
CHAI TRADING COMPANY LIMITED ..... 3<sup>RD</sup> APPLICANT**

**AND**

**THE ATTORNEY GENERAL ..... RESPONDENT**

**AND**

**EAST AFRICAN TEA TRADE ASSOCIATION ..... INTERESTED PARTY**

**RULING**

**Brief History**

1. On 15<sup>th</sup> April 2021, the respondent sought and was granted an order to search and inspect the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> applicants' documentary and electronic data held within their systems. Aggrieved, the applicants filed a notice of motion dated 19<sup>th</sup> April 2021 before this Court seeking to set aside the *ex-parte* orders. On 26<sup>th</sup> April 2021, Hon. Lesiit J (as she then was) issued an order of stay of execution of the trial court search order pending the hearing and determination of the application.
2. On 20th September 2021, the Attorney General (the respondent) filed a petition seeking declaratory orders stopping the applicants from engaging in aspects of collusion in the direct sales and auction of tea leading to misleading tea prices. The interested parties on the other hand chose to contest the orders by filling an application for judicial review in Judicial Review Application No. E063 of



2021. On 20/01/2022 the respondents made another application seeking to consolidate this suit with another one in the High Court Judicial Review Application N0. E063 of 2021; *East African Tea Trade Association v The Hon. Attorney General*. On 27<sup>th</sup> July 2022, Hon. Githua J determined that the application for consolidation was premature and devoid of merit. In her ruling, the Hon Judge stated that there was no application for judicial review pending determination on Judicial Review Miscellaneous Application No. E063 of 2021 which is capable of being consolidated with the application for revision filed by the applicants. She proceeded to direct that the parties take directions on hearing of the applicant's revision application dated 19<sup>th</sup> April 2021.
3. On 31<sup>st</sup> July 2023, the applicant filed a notice of Motion under certificate of urgency, seeking orders that the judgment scheduled for 19<sup>th</sup> September before this court be set aside and the matter be marked as settled. It was further stated that the parties' matter had been settled vide a consent of the parties dated 15<sup>th</sup> February 2023 and a judgment to the contrary may upset the quest for an amicable settlement of the consent.
  4. For determination is the application dated 19<sup>th</sup> April 2021.
  5. In their notice of motion, the applicants sought revisionary orders to set aside the *ex parte* orders issued on 15<sup>th</sup> April 2021 at Milimani Chief Magistrate's Court Miscellaneous Criminal Application no. E1248 of 2021 and substitute with an order dismissing the application dated 15<sup>th</sup> April 2021. They also sought the release of any/all seized property pursuant to the *ex parte* orders issued by the court.
  6. The application is supported by an affidavit sworn by the applicants' advocate of even date. The grounds raised are that Inspector No. xxxx CI Martin Munene, who was illegally appointed, sought search warrants despite existing court orders from Justice J.A. Makau issued on September 7, 2020, barring any action regarding the Applicant's property until the hearing and determination of Constitutional Petition No. E254 of 2020. It is alleged that the application for these warrants was made with motives beyond the stated purpose and aimed at subverting court orders to interfere with the Applicant's legal status. Moreover, the Respondent and its illegally appointed Inspector failed to disclose or comply with the existing court orders in their application for search warrants.
  7. In response, the respondent contended that the magistrate court's orders were obtained with the DPP's approval and in compliance with sections 800 to 810 of the *Companies Act* hence legally sound. The applicants lack the necessary board resolution to contest actions by the Multi-Agency Inspection Team, as mandated by section 800. The Attorney General's appointment of the Multi-Agency Inspection Team aligns with section 800 of the *Companies Act* to address issues in the tea sector.
  8. The application was canvassed by way of written submissions which have been duly considered. The issue for determination is whether this court should exercise its powers and grant the revisionary orders sought. The applicants are asking this court to quash the orders pursuant to its supervisory jurisdiction under Article 165 (6) and (7) of *the Constitution* and its revision powers under Section 362 of the Criminal Procedure Code. Article 165 (6) and (7) of *the Constitution*. The enactment of section 362 as read with section 364 of the code is substantially part of the provisions of the statute to actualize the provisions of Article 165 (6) and (7) of *the Constitution*.
  9. The function of the court under section 362 of the *Criminal Procedure Code* as read with section 364 is to enable the court to scrutinize and examine the correctness of facts of a subordinate court or tribunal to make a finding on legality or propriety. Legality means lawfulness, strict adherence to law, correctness, and propriety ordinarily having the same meaning. The interference under section 362 by this court on revision can only be justified if the impugned decision is grossly erroneous, to justness appropriateness, and suitability to trial.



10. In order to succeed the Applicant must demonstrate that the decision of the trial court was incorrect, illegal, or irregular or that the court acted without or in excess of its jurisdiction. Having considered the application and the arguments advanced by the applicants, the issue for determination therefore is whether orders issued by the Chief Magistrate's Court Miscellaneous Criminal Application no. E1248 of 2021 were illegal, improper, grossly irregular, or whether they were made without jurisdiction or in excess of jurisdiction to warrant this court to interfere.
11. The applicants claimed that there was material non-disclosure by the respondent who failed to disclose the existence of a court order issued by Justice J.A. Makau (rtd) on 7<sup>th</sup> September 2020 barring any action regarding the Applicants' property pending the hearing of the constitutional petition E254 of 2020. In rebuttal, the respondent contended that the Attorney General lawfully sought and was granted the search orders against the applicants. The Inspection team is mandated to carry out an inspection and related investigations into allegations of offences therefore necessary to have access and obtain information to carry out the mandate of the team and later consider probable prosecution. It was argued that the requisite procedure was followed before the impugned orders were granted.
12. In the case of Republic v Chief Magistrate's Court (J.W. Murigi) & another ex parte Carron Creations Ltd and another (2016) eKLR, the court held:

“the first issue to be determined is whether the applicants are guilty of material non-disclosure. The law on this issue is clear that where a party, at the ex parte stage of an application fails to disclose relevant material to court and thus obtains an order for the court by disguise or camouflage the court will set aside the ex parte orders so obtained”.
13. From the record, indeed there was an order issued 7<sup>th</sup> September 2020 by Makau J (rtd) in constitutional petition no. E254 of 2020, restraining the respondent from commencing any form of investigation into the affairs of the applicants pending hearing and determination of the application. The applicants claimed that the matter is yet to be determined. This has not been disputed by the respondent. What is clear is that there existed another suit before the constitutional court between the same parties over the same subject matter.
14. The question at the heart of this case is whether there was a lack of full disclosure of material facts on the part of the respondents and the effect of such non-disclosure, if any. From the affidavit which was before the court, it is clear to me that the respondent failed to make adequate disclosure to the court of the existence of the case before the High Court and therefore the applicants' contention on the material non-disclosure is merited.
15. In the case of Republic v Kenya Medical Training College & another Ex-Parte Kenya Universities and Colleges Central Placement Service [20151 eKLR (Onguto J.) stated in paragraph 21 that:

“Before summarizing the relevant legal principles and safeguards relevant to the instant issues, I must state and emphasize the high duty of candour fixed upon any applicant to court, appearing ex parte. A party appearing before the court without notice to the other (ex parte) must exhibit a high quality and degree of sincerity and honesty. He must be guileless. He must be frank. He must be open. He must keep nothing that touches on the matter away from the court. He must act in utmost good faith. If he does not so act, he does so at his own risk.”
16. This emphasizes the need for parties to come to court with honesty and integrity. Parties should not take advantage of the absence of the other party because when they finally come, the truth will always



come out. When this happens then the offending party will have to shoulder the consequences of the dishonesty.

17. Further, the gravity of non-disclosure was expressed in the case of *Bahadurali Ebrahim Shamji v Al Noor Jamal & 2 Others* Civil Appeal No. 210 of 1997 where the Court of Appeal stated that;

“There is a compelling duty on the applicant ”to make a full and fair disclosure of all material facts.”

18. A party should not suppress the truth nor should such a party tell untruths with a view to persuading the court to grant *ex parte* orders. In this case, I find that the respondent is a culprit of the concept of non-disclosure of material facts and therefore not entitled to the search orders issued by the magistrate’s court.

19. The upshot of the above analysis is that the respondent put the magistrate court in a sad scenario of not only having parallel proceedings on the same issues involving the same parties but also a great risk of subordinate courts granting conflicting orders to those of a superior court. In the end, the *ex parte* orders issued by the magistrate’s court on 15<sup>th</sup> April 2021 are hereby set aside.

Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 16<sup>TH</sup> DAY OF FEBRUARY 2024**

**D. KAVEDZA**

.....

**JUDGE**

**In the presence of:**

Mr. Kivindyo for the Applicant

Wachira for the Respondent

Ms. Swaka h/b for Njenga for the Interested party

C/A: Joy/Omwoyo

