



**Kinyua & 9 others v IEBC & 6 others; Kamau & 23 others (Interested Parties)
(Constitutional Petition E009 of 2024) [2024] KEHC 9091 (KLR) (23 July 2024) (Directions)**

Neutral citation: [2024] KEHC 9091 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CONSTITUTIONAL PETITION E009 OF 2024**

RM MWONGO, J

JULY 23, 2024

BETWEEN

FREDRICK M KINYUA & 9 OTHERS PETITIONER

AND

IEBC & 6 OTHERS RESPONDENT

AND

ANTONY MWAI KAMA & 23 OTHERS INTERESTED PARTY

DIRECTIONS

Background

1. . On 15th July 2024, the Petitioners filed a Petition (“The First Application”) under certificate of urgency seeking to stop the scheduled Special General Meetings for Kimunye, Ndima, Thumaita and Mununga Tea Factory Companies (“The Tea Factories”). Special General Meeting notices had been issued by the Tea Factories on 1st July 2024 for meetings to be held on 17th July 2024 for the Tea Factories to appoint directors respectively for the Tea Companies.
2. The Petitioners impugn the adjourned elections carried out by the Tea Factories on 29th June 2024 in respect of which notices had been issued for 28th June 2024. The elections are impugned for the short notice issued by the KTDA postponing the said Tea factory elections from 28th June 2024 to 29th June 2024.
3. The Petitioners further impugn the issuance of the said short notice by KTDA who they allege was not part of the proposed independent election body entitled to postpone the said elections on 28th June 2024.
4. In addition, the Petitioners assert that the IEBC, is firstly, not presently constitutionally constituted to enable it to carry out its constitutional mandate; but secondly, that it is not mandated to carry out the



election function for Tea Factory elections, which is a function beyond the purview of Article 88(4) of the *Constitution* as read with Section 5 of the *IEBC Act*.

5. Upon the filing of the Petition, this Court on 16th July, 2024 granted interim conservatory orders to the Petitioners until 24th July 2024. The order stayed the respective Special General Meetings called by the Tea Factories vide their notices of 1st July, 2024. The conservatory interim orders were issued by the court ex parte, without any participation of the respondents and Interested Parties whatsoever.
6. It is clear that the golden thread running through the First Application is a complaint concerning the alleged impropriety or illegality with which the elections were conducted. The Petitioners nevertheless made no reference to the Court orders issued in Constitutional Petition No. E254 of 2020, Nairobi (consolidated).
7. On 18th July 2024, the counsel for the Respondents and all interested parties filed a certificate of urgency, (“The Second Application”) seeking the lifting of the ex parte interim orders issued on 16th July 2024. The basis of the application is that, inter alia, the Petitioners misrepresented and failed to disclose material facts to this Court.
8. In particular, the Respondents assert that the Petitioners failed to bring to the attention of the court that the elections of the Tea Factories as well as the Special General Meetings scheduled were done pursuant to a court order issued by a 3 Judge Bench in Nairobi in Consolidated Constitutional Petition No. E254 of 2020 *KTDA & Others v Cabinet Secretary Ministry of Agriculture & Others*.
9. The said court order emanated from a consent adopted by the Court in Constitutional Petition E254/2020 pursuant to a Mediation Settlement Agreement. The said Mediation Agreement was entered into on 2nd April 2024, and was adopted as a decree of the said Constitutional Court on 11th April 2024.
10. According to the Mediation Agreement; the Tea Factories were directed to hold elections by the end of June 2024 (Clause 4); KTDA directors elections were required to be held not more that one month after elections of directors of Tea Factories (Clause 5); Elections were required to be held pursuant to Tea Factories Memoranda and Articles of Association (Clause 6); that the Tea Board of Kenya would oversee Tea Factories’ elections and KTDA elections upon the Tea Board of Kenya nominating “an independent electoral management body to conduct the elections” (Clause 8).
11. Upon this Second Application being brought to Court, the Court certified it urgent and noted that the issues raised in it were “weighty issues”, that the applicants had preferred the position that the interim orders were obtained through misrepresentation and non-disclosure of material facts, in particular, the non-disclosure of Nairobi Constitutional Petition No. E254 of 2020; that the applicants position is that the interim orders are in conflict or in likely conflict with the orders made in Constitutional Petition No. E 254 of 2020.
12. In light of the Second Application, the Court reviewed the interim orders it issued on 16th July 2024 so that their effectiveness was reduced in scope or length from 24th July 2024, to 22nd July 2024. The Court placed the matter before me for directions on disposal of both applications. I extended the stay orders to today.
13. Without delving into the merits of the Applications or Substantive Petition, the Court observes as follows:
 - a) From the Mediation Agreement it is clear that there have been disputes of “public importance” (Clause 7 Mediation Agreement) in the Tea Sector since at least 2020 resulting in Constitutional Petition Nos E254/2020 and E016/2021.



- b) Appeal proceedings in the Court of Appeal followed thereafter in the following suits, Nai Nos E618/2023, NAI E007/2024, Nai E008/2024, Nai 015/2024 and Nai E612 of 2024.
- c) All these proceedings in the Court of Appeal were compromised and withdrawn following the Mediation Agreement of 2nd April 2024 that is signed by the counsel for and involving seventeen parties.
- d) Undoubtedly, the Mediation proceedings were invoked pursuant to Article 159 (2)(c) of the Constitution by which the Court is obligated to promote mediation in exercise of its judicial authority.
- e) There are conservatory orders that were extended for six (6) months by the High Court in Constitutional Petition No. E003 of 2021(Clauses 2 & 3) & Mediation Agreement) details of which are not in the knowledge of this Court. The said extension commenced on 2nd April 2024 and are therefore extant at present.

Directions

In the light of the background information highlighted herein and the observations made, I am of the view that the directions for the appropriate determination of the dispute herein are as follows:

1. The First Application and the Second Application shall be considered concurrently and treated as application and response thereto, respectively.
2. The parties shall file written submissions limited to five (5) pages in respect of the First and Second Applications as follows:
 - a) The Petitioners shall file and serve their submissions by close of business 24th July 2024.
 - b) The Respondents/Interested Parties shall file and serve their submissions by close of business on 25th July 2024.
3. The parties shall highlight their submissions on 26th July 2024 at 9.00 am
4. Interim orders are extended up to 26th July 2024.
5. In respect of the Petition, the directions are as follows:
 - a) The Respondents/Interested Parties shall file and serve their response no later than close of business on 30th July 2024.
 - b) The parties shall file submissions limited to ten (10) pages in respect of Petition as follows:
 - (i) The Petitioner shall file and serve their submissions by close of business on 2nd August 2024.
 - (ii) The Respondent/Interested Parties shall file and serve their submissions by close of business on 6th August 2024.
6. All filings to be availed to the Judge as and when filed.
7. Authorities, duly highlighted, shall be annexed to all submissions.



8. Parties shall appear in court on 7th August 2024 for compliance when the court may issue further directions and/or orders.
9. Orders accordingly.

DATED AT KERUGOYA THIS 23RD DAY OF JULY 2024

R. MWONGO

JUDGE

Delivered in the presence of:

Mr. Guandaru for 1st - 6th Respondents. Also, for Interested Parties

Holding brief for Muite who is leading him.

Ms. Wambui for 4th - 9th Petitioners

Mr. Omega holding brief for Njiru 1st - 3rd for Petitioners

Court Assistant, Murage

7.2024

Before: R. Mwongo - Judge

Court Assistant: Murage

Mr. Guandaru for 1st - 6th Respondents. Also, for Interested Parties

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Ms. Wambui for 4th - 9th Petitioners

Mr. Omega holding brief for Njiru 1st - 3rd for Petitioners

Additional Orders Issued:

Court:

The Respondents/Interested parties are granted leave to file a response to the First Application.

Similarly, the Petitioners are granted leave to file their response to the 2nd Application by 25th July 2024.

Mention on 26th July 2024 for highlights.

R. MWONGO

JUDGE

