



**SBL Innovate Manufacturers Limited v Directorate of Criminal Investigations & 2 others  
(Constitutional Petition E001 of 2023) [2023] KEHC 21821 (KLR) (12 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21821 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CONSTITUTIONAL PETITION E001 OF 2023**

**GL NZIOKA, J**

**JULY 12, 2023**

**BETWEEN**

**SBL INNOVATE MANUFACTURERS LIMITED ..... PETITIONER**

**AND**

**DIRECTORATE OF CRIMINAL INVESTIGATIONS ..... 1<sup>ST</sup> RESPONDENT**

**THE HONOURABLE THE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**INSPECTOR GENERAL, NATIONAL POLICE SERVICE ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The petitioner filed the subject application herein dated, April 24, 2023, brought under the provisions of; Article 23 (2) (b) and Rule 23 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules*, 2013 seeking for the following orders: -
  - a. Spent
  - b. Spent.
  - c. That, pending the hearing and determination of the petition the Honourable Court be pleased to bar the 1<sup>st</sup> and 3<sup>rd</sup> respondents from interfering with the manufacturing, transporting, selling, visiting the petitioner's premises and stopping vehicles of the petitioner with the intention to obtain goods unlawfully and unreasonably harassing and intimidating the petitioner and her agents.
  - d. That, the Honourable Court do issue such further or other orders that in its discretion may deem fair and just in the circumstances.



- e. Costs be in the cause.
2. The application is supported by the grounds thereto and the affidavit of the even date sworn by the Josiah Kimani Kariuki, a director cum shareholder of the petitioner wherein he avers that, the petitioner is registered in accordance with the law and is tax payer.
  3. That, it is a leading manufacturer with the requisite approvals, compliances and permits to carry out business of production of organic fertilizer with the brand name of; SBL-GPC Original and that it was issued with a permit to use the standardization mark issued on January 28, 2023, expiring on January 28, 2025. Further, the petitioner has a scheme for supervision and control with the Kenya Bureau of Standards (KEBS) SCC Certificate Agreement.
  4. However, since April 1, 2023, the 1<sup>st</sup> respondent has been holding and stopping the petitioner's lorries from leaving its factory. Further, they have been detaining and searching the said lorries in order to obtain samples of its products therein on the grounds that they are governing and maintaining standards, which is a function they do not have authority over. That, section 3 of the Standards Act, establishes KEBS as the agency responsible for governing and maintaining standards and practices, and not the 1<sup>st</sup> respondent herein.
  5. He avers that on April 19, 2023, the 1<sup>st</sup> respondent visited the petitioner's premises without any written communication and harassed and intimidated its staff, which action was unlawful and unreasonable and in total disregard of Article 47 of the Constitution of Kenya, 2010.
  6. That, the petitioner seeks to examine the powers of the 1<sup>st</sup> respondent against the provisions of Article 47 of the Constitution which if left unchecked, the general public will continue to suffer for lack of fair administrative action and will lead to a loss of public confidence in public institution.
  7. However, the respondent opposed the application vide the replying affidavit dated; May 16, 2023, sworn by No 880XXXX Sargent Hesbon Otieno, an officer attached to Gilgil Sub-County Headquarters. He avers that there is a WhatsApp group by the name Gilgil Agendas and Updates formed by Gilgil Sub-County Community which has incorporated by the Sub-County Security Committee to discuss matters affecting *inter alia*; security and sharing intelligence information.
  8. That, on April 16, 2023, the DCI Gilgil received information through the WhatsApp group that a group of people at Diatomite Company dumping site at Kariandusi, Gilgil Sub-County were packaging waste products in bags labelled Government of Kenya (GOK) and disguised as true fertilizer and loading them onto lorries.
  9. That, the Deputy County Commissioner Gilgil, Rebecca Muturi, informed the SCCIO Gilgil to investigate the same. On April 19, 2023, officers from DCI Gilgil intercepted two lorries registration No(s). KCW 117H and KBY 721X from Diatomite Factory dumping site fully loaded with unknown substances packaged in 25kg bags labelled Original Plus Fertilizer The Formular Of Success.
  10. That the lorries were escorted to Gilgil Police Station yard and the bags inspected where it was revealed that they contained a greyish powder. Further, the bags had labels outlining the chemical analysis of the substances and that, the substances had been manufactured for SBL Manufacturers SI together with a QR scan and KEBS standardization mark but did not have a physical address for the company.
  11. That the two lorries were documented and one (1) bag from each lorry taken for purposes of further investigations and/or analysis. Further the lorries were later on the same day released to the drivers vide OB 43/20/4/2023. Subsequently, on April 25, 2023, an exhibit memo was prepared and together with



- samples were forwarded to the Government Chemist to establish the type of fertilizer and whether the chemical components were in order.
12. He avers that the assertion by the petitioner that the DCIO Gilgil has been stopping its motor vehicles from April 1, 2023 and visiting its premises to harass and intimidate the staff are false. That, the DCI does not know the location of the petitioner's premises or offices.
  13. That, on April 20, 2023, the SCCIO Gilgil had a telephone conversation with Andrew Okemwa, the petitioner's Advocate, who agreed to avail his client to shed light on the situation, but he never did so.
  14. Further, the allegations that the DCI has failed to release the two bags is untrue as the matter is still under investigation and that an inventory was taken and samples are pending analysis by the Government Chemist, Nairobi awaiting the Government Analyst report.
  15. He argues, that the DCI is not limited by any law from investigating any malpractice or offence against any written law including the *Anti-Counterfeit Act* No 13 of 2008. Furthermore, the powers of the DCI under the *National Police Service Act* to stop, search and detain are well stipulated in section 26 (1) (a), (b) (c), (2), and (3) of the *Criminal Procedure Code*. Further, the police officers were carrying out their constitutional mandate to protect the citizens in a manner that respects the rule of law and does not have any ill motive against the petitioner.
  16. That the petitioner has failed to show how the 1<sup>st</sup> and 3<sup>rd</sup> respondents obtained the goods unlawfully, and harassed and/or intimidated the petitioner and its agents. Therefore, the application does not meet the threshold to grant the orders sought or to warrant the court's intervention.
  17. Further, that if the petitioner is granted the interim orders sought, the 1<sup>st</sup> and 3<sup>rd</sup> respondent will not be able to ascertain the correct position on components of the samples and will consequently defeat justice. In the circumstances, it is in the interest of justice the interim orders are denied and the application dismissed with costs.
  18. However, the petitioner in response filed a further affidavit dated, May 24, 2023 sworn by the said Josiah Kimani Kariuki, and stated that the respondents had failed to comply with court orders issued on; May 5, 2023 by refusing to respond to the notice to show cause, despite being served with the same. That, they should be held in contempt of court and the orders in the application herein be granted.
  19. Further, the respondents have failed to produce evidence of the alleged packaging of products in bags marked GOK. That, the petitioner packs its products under the brand name GPC Original as permitted by KEBS. Furthermore, the petitioner has obtained a permit to use the standardization mark which is only issued after the product is tested and found to be up to the required standard.
  20. That, the complaint and/or intelligence received by the respondents was not against the petitioner but the African Diatomite Industries Limited, an incorporated company. Thus the respondents unfairly targeted the petitioner and are trying to justify their actions and omissions.
  21. He argues that, the respondents claim to be carrying out investigations but are yet to report or consult KEBS that has the mandate to govern and maintains standards. Furthermore, the respondents admit to continuing with investigations despite a court order barring them from interfering with the petitioner's business.
  22. That, the respondents have never carried out any investigations on the raw intelligence they received but only visited the petitioner's premises after which they intercepted and detained the petitioner's lorries without ascertaining the destination of the bags or the source of the goods.



23. Further, the power of the DCI is provided for under section 35 of the [National Police Service Act](#) and does not include power to stop, search and detain. Furthermore, the Advocate by name Andrew Okemwa referred to by the respondents does not exist as proved by a quick search of the Law Society of Kenya (LSK) Advocates search engine.
24. That, the respondents have abused their powers, assumed powers bestowed to other State Agencies and have failed to demonstrate any proper need for investigations but are being used by the petitioner's competitors to eliminate its business and ruin its good name.
25. At the conclusion of the arguments by the parties, I have considered the subject application in the light of the materials before the court mainly; the grounds thereto, and the supporting and replying affidavits. I note therefrom that, the averments by the respective parties are at variance as follows; whereas the respondents through the affidavit of No 80XXXX Sgt Hesbon Otieno deny visiting the petitioners' premises or even having knowledge of its location, the petitioner through a further affidavit dated; May 24, 2023, deposes that, the respondents visited its premises and toured the premises.
26. Further, whereas, the respondents deny the assertion that it has been stopping the petitioner's motor vehicle since April 1, 2023, the petitioner avers that, the respondents have done so and/or ignored a court order restraining them from harassing, intimidating and/or interfering with its operations
27. I further note that, the averments in the further affidavits go to the root of the petition. In that regard I find that, it is in the interest of justice and to preserve the substratum of the petition, and/or expeditious disposal of this matter to order as follows: -
  - a. That since the respondents allege that, they are investigating a suspected commission of crime, and the law allows them to carry out the investigation, I cannot stop them from carrying out their statutory obligations but they must do so in accordance with the law. No law allows an investigator to harass and/or intimidate a suspect.
  - b. I further note that, the exhibit memo submitting the "suspected" waste produce is dated; April 25, 2023, a day after the petitioner moved to court, yet the substance was seized on April 19, 2023, which clearly show that, the respondent merely forwarded the substance after it became aware of the matter herein, which clearly shows that, they are not acting in good faith.
  - c. Furthermore, there is no indication that, the results of the tests will be availed soon and based on the doctrine of presumption of innocence, the petitioner should be allowed to continue with its operations unless and until the investigations are over, and they are found culpable and/or dealt with or innocent and released from blame.
  - d. Pursuant to the aforesaid the respondents are restrained from interfering with the petitioner's operations in anyway until the petition is heard and determined and/or results of investigation are received and lawful action taken.
  - e. That the petition be set down for hearing and disposal forthwith. As such the petitioner to file and serve submission within fourteen (14) days of the date of this order. Thereafter respondent to file and serve submission within (14) days. Further mention for further orders on September 21, 2023 to confirm compliance.



28. It is so ordered.

**DATED, DELIVERED AND SIGNED THIS 12<sup>TH</sup> DAY OF JULY 2023.**

**GRACE L. NZIOKA**

**JUDGE**

