



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

(Coram: A. C. Mrima, J.)

PETITION NO. E243 OF 2020

Consolidated with

PETITION NO. 334 OF 2020

BETWEEN

KENYA TEA DEVELOPMENT AGENCY

HOLDINGS LIMITED & 55 OTHERS.....PETITIONERS

AND

THE CABINET SECRETARY,

MINISTRY OF AGRICULTURE, LIVESTOCK,

FISHERIES & CO-OPERATIVES & 2 OTHERS.....RESPONDENTS

AND

KENYA SMALL TEA HOLDERS GROWERS

ASSOCIATION (KESTEGA).....INTERESTED PARTIES

RULING NO. 4

1. This Court rendered Ruling No. 3 on 28th April, 2021.

2. Orders (e) and (f) of the said ruling were as follows: -

(e) All pending Constitutional Petitions in the country challenging The Crops (Tea Industry) Regulations, 2020 contained in Gazette Notice No. 4469 dated 25th June 2020 issued by the Cabinet Secretary, Ministry of Agriculture, Livestock, Fisheries and Co-operatives and The Tea Act, No. 23 of 2020 or in any other manner challenging the reforms within the tea sector shall be transferred to the Constitutional and Human Rights Division of the High Court at Nairobi.

(f) The Deputy Registrar of this Division shall, within 10 days, extract and serve a copy of the relevant part of this Order upon all the Deputy Registrars in all the High Court stations in the country. Further, any party being aware of any pending Constitutional Petition challenging The Crops (Tea Industry) Regulations, 2020 and The Tea Act, No. 23 of 2020 or in any other manner challenging the reforms within the tea sector shall forthwith furnish the Deputy Registrar with the details of the matter.

3. As a result of the above orders, several matters which had been filed in various Courts in the country were transferred to the Constitutional and Human Rights Division of the High Court at Nairobi.

4. The matters came up before me on 30th June, 2021 for directions. The Court urged the Counsel appearing in those matters to give their

proposals on the way forward. The Counsel made elaborate proposals and applications.

5. Some of the issues raised include the following: -

- (i) *The representation of The Kenya Tea Development Agency Holdings Limited and its subsidiaries;*
- (ii) *Whether further conservatory orders be issued;*
- (iii) *Whether some parties are in disobedience of Court orders;*
- (iv) *Whether an expanded bench be constituted to hear all the matters.*

6. I patiently listened to Counsel for a better part of the day.

7. There is no doubt the ownership, management and operations of Kenya Tea Development Agency Holdings Limited and its subsidiaries is hotly contested. That is the basis of *Nairobi High Court Constitutional Petition No. E254 of 2020* and *Nairobi High Court Constitutional Petition No. 083 of 2021*.

8. The rest of the matters deal with the constitutionality of various Sections of the Tea Act, No. 23 of 2020 and the constitutionality of The Crops (Tea Industry) Regulations, 2020 contained in Gazette Notice No. 4469 dated 25th June 2020.

9. It can only be prudent that the two sets of matters be dealt with separately, and as follows: -

- (i) Petitions on the ownership, management and operations of Kenya Tea Development Agency Holdings Limited and its subsidiaries, and;
- (ii) Petitions on the constitutionality of various Sections of the Tea Act, No. 23 of 2020 and the constitutionality of The Crops (Tea Industry) Regulations, 2020.

10. Further, due to the commonalities in the two sets of matters above, and for reasons previously given by this Court, it is again prudent that the matters within a given set be consolidated. It will be further prudent that the two sets of the matters be heard by the same Court.

11. It is important to point out that on 17th December, 2020 this Court consolidated *Nairobi High Court Constitutional Petition No. E243 of 2020* with *Nairobi High Court Constitutional Petition No. 334 of 2020* (formerly Mombasa High Court Constitutional Petition No. 87 of 2020) since both Petitions are challenging the Regulations. However, given the subsequent developments on the ownership, management and operations of Kenya Tea Development Agency Holdings Limited and the twin categories above, I will reconsider the order on consolidation to the extent that *Nairobi High Court Constitutional Petition No. 334 of 2020* will be dealt with under the category of the Petitions challenging the Regulations and *Nairobi High Court Constitutional Petition No. E243 of 2020* be dealt with under the category of the Petitions on the ownership, management and operations of Kenya Tea Development Agency Holdings Limited and its subsidiaries.

12. The above differentiation of the two Petitions is necessitated by the fact that if *Nairobi High Court Constitutional Petition No. E243 of 2020* becomes part of the Petitions challenging the Regulations then all the Petitions in that category will be clogged in the ownership dispute hence, will have to, first, await the determination of the ownership of Kenya Tea Development Agency Holdings Limited. To me, that may take a while taking into account the fact that parties can exercise their right of appeal all the way to the Supreme Court.

13. Having said so, I must, also, point out that one of the matters within the category of the Petitions on the constitutionality of various Sections of the Tea Act, No. 23 of 2020 is *Nairobi High Court Constitutional Petition No. M008 of 2021*. This Petition was formerly *Nakuru Employment and Labour Relations Court Petition No. 2 of 2021 Lameck Migiro & 12 Others vs. The Hon. Attorney General*.

14. Counsel for the Petitioners submitted that since the matter had been filed in the Employment and Labour Relations Court then this Court lacks the jurisdiction to deal with it. Counsel for the Respondent was of the contrary position.

15. Without placing any meaningful premium on the issue, it is settled that the High Court cannot exercise jurisdiction over matters instituted in the Courts of equal status being the Employment and Labour Relations Court and the Land and Environment Court and *vice versa*. (See the Supreme Court in ***Republic v Karisa Chengo & 2 others [2017] eKLR***). As such, this Court declines jurisdiction over *Nairobi High Court Constitutional Petition No. M008 of 2021*.

16. This Court was further called upon to consider making an order for composition of an expanded bench.

17. The Court is aware of the principles set out by the Supreme Court of Kenya in ***Hermanus Phillipus Steyn v Giovanni Gnechi-Ruscione [2013] eKLR*** and the Court of Appeal in ***Okiya Omtatah Okoiti & another v Anne Waiguru - Cabinet Secretary, Devolution and Planning & 3 others [2017] eKLR*** relating to certification of a matter as raising substantial questions of law under Article 165(4) of the Constitution.

18. As I stated in Ruling No. 3, ‘... *the tea sector in Kenya is not only one of the main pillars of the economy, but also key in foreign exchange earnings since currently, Kenya is rated second to China in tea exports. The sector commands a considerable fraction of the Kenyan population. The sector includes many players among them farmers, factory owners, workers, agents, brokers, tea auctions, and many others. It is, therefore, on the foregoing basis that any intended reforms in the tea sector must be carefully undertaken...*’

19. The reforms have also elicited several suits in Kenya. This Court has taken note of the number of suits so far filed and the magnitude of the issues raised therein. The matters are of immense public interest and the issues raised are not only weighty, but also complex. Further, the issues raised in the matters fall within the terms of Article 165(3)(b) or (d) of the Constitution. The various Petitioners have also crafted several questions of law to be dealt with.

20. I am, hence, persuaded that the matters herein raise substantial points of law for purposes of certification under Article 165(4) of the Constitution.

21. Deriving from the foregoing, I take the position that all the other issues raised be dealt with by the expanded bench.

22. And, for clarity, this ruling shall apply to Nairobi High Court Constitutional Petition No. M008 of 2021 (*formerly Nakuru Employment and Labour Relations Court Petition No. 2 of 2021*), Nairobi High Court Constitutional Petition No. E254 of 2020, Nairobi High Court Constitutional Petition No. E083 of 2021, Nairobi High Court Constitutional Petition No. E243 of 2020, Nairobi High Court Constitutional Petition No. E016 of 2021, Nairobi High Court Constitutional Petition No. E022 of 2021, Nairobi High Court Constitutional Petition No. M011 of 2021 (*formerly Bomet High Court Constitutional Petition No. E001 of 2021*), Nairobi High Court Constitutional Petition No. M009 of 2021 (*formerly Embu High Court Constitutional Petition No. E003 of 2021*) and Nairobi High Court Constitutional Petition No. 334 of 2020 (*formerly Mombasa High Court Constitutional Petition No. 87 of 2020*).

23. In the end, the following orders do hereby issue: -

(a) The High Court is not seized of the jurisdiction to deal with Nairobi High Court Constitutional Petition No. M008 of 2021 (*formerly Nakuru Employment and Labour Relations Court Petition No. 2 of 2021 Lameck Migiro & 12 Others vs. The Hon. Attorney General*). The Petition shall be returned to the Employment and Labour Relations Court at Nakuru;

(b) It is hereby certified that the rest of the Petitions on the ownership, management and operations of Kenya Tea Development Agency Holdings Limited and its subsidiaries and those challenging the constitutionality of various Sections of the Tea Act, No. 23 of 2020 and the constitutionality of The Crops (Tea Industry) Regulations, 2020 raise substantial questions of law;

(c) The matters are hereby referred to the Honourable Chief Justice of the Republic of Kenya to assign an uneven number of Judges, in terms of Article 165(4) of the Constitution;

(d) The following Petitions on the ownership, management and operations of Kenya Tea Development Agency Holdings Limited and its subsidiaries are hereby consolidated: -

(i) Nairobi High Court Constitutional Petition No. E254 of 2020 Kenya Tea Development Agency Holdings Limited & Another v. The Director of Criminal Investigation and 2 Others.

(ii) Nairobi High Court Constitutional Petition No. E083 of 2021 Kenya Tea Development Agency Holdings Limited v. The Cabinet Secretary Ministry of Agriculture, Livestock, Fisheries and Co-operatives and 2 Others.

(iii) Nairobi High Court Constitutional Petition No. E243 of 2020 Kenya Tea Development Agency Holdings Limited & 55 Others v. The Cabinet Secretary Ministry of Agriculture, Livestock, Fisheries and Co-operatives and 2 Others.

(iv) Nairobi High Court Constitutional Petition No. E254 of 2020 shall be the lead file.

(v) The parties in the consolidated Petitions shall, henceforth, appear as follows: -

· **The 1st and 2nd Petitioners shall be the parties appearing as the 1st and 2nd Petitioners in Constitutional Petition No. E254 of 2020;**

· **The 3rd to 54th Petitioners shall be the parties appearing as the 3rd to 54th Petitioners in Constitutional Petition No. E243 of 2020;**

· **The Honourable Attorney General shall be the 1st Respondent;**

· **The Cabinet Secretary Ministry of Agriculture, Livestock, Fisheries and Co-operatives shall be the 2nd Respondent;**

· **The Cabinet Secretary Ministry of Interior & Co-ordination of National Government shall be the 3rd Respondent;**

· **The Director of Criminal Investigation shall be the 4th Respondent;**

· **The Inspector General of Police shall be the 5th Respondent;**

- The Agriculture and Food Authority shall be the 6th Respondent;
- Kenya Small Tea Holders Growers Association (Kestega) shall be the 1st Interested Party;
- The Council of Governors shall be the 2nd Interested Party;
- Irungu Nyakera shall be the 3rd Interested Party.

(e) The following Petitions challenging the constitutionality of various Sections of the Tea Act, No. 23 of 2020 and the constitutionality of The Crops (Tea Industry) Regulations, 2020 are hereby consolidated: -

(i) Nairobi High Court Constitutional Petition No. E016 of 2021 Kenya Tea Growers Association v. The Hon. Attorney General and 2 Others.

(ii) Nairobi High Court Constitutional Petition No. E022 of 2021 East African Tea Trade Association v. The Hon. Attorney General and 2 Others.

(iii) Nairobi High Court Constitutional Petition No. M011 of 2021 (*formerly Bomet High Court Constitutional Petition No. E001 of 2021*) County Government of Bomet v. The Hon. Attorney General and 2 Others.

(iv) Nairobi High Court Constitutional Petition No. M009 of 2021 (*formerly Embu High Court Constitutional Petition No. E003 of 2021*) Mungania Tea Factory Limited & 50 Others v. The Hon. Attorney General and 2 Others.

(v) Nairobi High Court Constitutional Petition No. 334 of 2020 (*formerly Mombasa High Court Constitutional Petition No. 87 of 2020*) East African Tea Trade Association v. The Hon. Attorney General and 2 Others.

(f) Nairobi High Court Constitutional Petition No. E016 of 2021 shall be the lead file.

(g) The parties in the consolidated Petitions shall, henceforth, appear as follows: -

- The 1st Petitioner shall be the Kenya Tea Growers Association;
- The 2nd Petitioner shall be the East African Tea Trade Association;
- The 3rd Petitioner shall be the County Government of Bomet;
- The 4th to 55th Petitioners shall be the parties appearing as the 1st to 51st Petitioners in Nairobi High Court Constitutional Petition No. M009 of 2021 (*formerly Embu High Court Constitutional Petition No. E003 of 2021*);
- The Honourable Attorney General shall be the 1st Respondent;
- The Cabinet Secretary Ministry of Agriculture, Livestock, Fisheries and Co-operatives shall be the 2nd Respondent;
- The Agriculture and Food Authority shall be the 3rd Respondent;
- The National Assembly shall be the 4th Respondent;
- The 1st to 21st Interested Parties shall be the 1st to 21st Interested Parties in Nairobi High Court Constitutional Petition No. 334 of 2020 (*formerly Mombasa High Court Constitutional Petition No. 87 of 2020*);

(h) The Honourable Chief Justice be pleased to appoint the same expanded bench to hear and determine both Nairobi High Court Constitutional Petition No. E254 of 2020 (as consolidated) and Nairobi High Court Constitutional Petition No. E016 of 2021 (as consolidated).

(i) The matters shall be fixed for Mention before the expanded bench on 22nd July, 2021 or earlier on notice to parties.

(j) All orders currently in force shall so remain until further orders of the expanded bench.

(k) In view of the nature of these directions, the Deputy Registrar shall avail copies of this ruling to all the parties within 5 days.

Orders accordingly.

DELIVERED, DATED and SIGNED at NAIROBI this 8th day of July, 2021

A. C. MRIMA

JUDGE