



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT SIAYA**

**BUNGOMA HIGH COURT CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**CONSTITUTIONAL PETITION NO. 5 OF 2020**

**KENYA NATIONAL FEDERATION OF SUGARCANE FARMERS.....PETITIONER**

**VERSUS**

**THE HON. ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT**

**THE CABINET SECRETARY**

**MINISTRY OF AGRICULTURE LIVESTOCK**

**FISHERIES & COOPERATIVES.....2<sup>ND</sup> RESPONDENT**

**THE AGRICULTURE & FOOD AUTHORITY.....3<sup>RD</sup> RESPONDENT**

**AND**

**THE COUNCIL OF GOVERNORS.....1<sup>ST</sup> INTERESTED PARTY**

**THE LAKE REGION ECONOMIC.....2<sup>ND</sup> INTERESTED PARTY**

**RULING**

1. The Petitioner herein subject of the interlocutory application for conservatory Orders was filed on 13.8.2020. The matter was placed before Hon. T.W. Cherere – J. Recess Duty Judge sitting at Kisumu on 14.8.2020.
2. The learned Judge did certify the application as urgent and fixed it for directions on 19.8.2020.
3. The file was then placed before the Recess Duty Judge at Kakamega, Hon W. M. Musyoka – J., who considered submissions by the Petitioner’s Advocates, the 1<sup>st</sup> and 2<sup>nd</sup> Respondent’s Counsel, Mr. Tarus and Mr. Sala Advocate, for the 2<sup>nd</sup> Interested Party who had all been served with the Petition and the application for Conservatory Orders.
4. Giving directions in the matter, Hon. Musyoka – J., directed that the Respondents and Interested Parties had 14 days of even date to file and serve their respective responses to the motion dated 13.8.2020 and to the Petition.
5. The Petitioner was also granted corresponding leave to file any rejoinder to any new issues raised in the replies to be filed by the Respondents and the Interested Parties.
6. Third, is that the matter be mentioned on 3.9.2020 before the Vacation/Recess Judge for further directions.
7. Fourth, that the 3<sup>rd</sup> Respondent or its agents not to hold any sensitization meetings over the **Crops (Sugar) (General) Regulations, 2020** between (then) and the mention date on 3.9.2020. When the matter was placed before me on 3.9.2020, the Court’s internet was down hence we could not connect to the Parties’ Advocates. And as it was not clear whether there was compliance with directions of Hon. Musyoka – J. made on 20.8.2020, this Court directed parties to appear virtually today for directions.

8. I have heard submissions from Mr. Bwire (leading Mr. S. Wasilwa) Advocates for the Petitioners, Mr. Tarus for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents and Ms. Kagoya Advocate for the 2<sup>nd</sup> Interested Party.
9. I Observe that albeit the 2<sup>nd</sup> Interested Party has filed a response to the Notice of Motion, no service of the said Response has been effected on the Petitioner or to any other Party. On the other hand, the 1<sup>st</sup> Interested Party has not filed any Response.
10. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents who are ably represented by Mr. Tarus and who took directions of the Court on 20.8.2020 have to date not complied with the said directions to file their responses to the Notice of Motion and the Petition dated 13.8.2020.
12. They seek for 14 more days to comply, citing delay occasioned by the Cabinet Secretary for Agriculture not being available (on leave) during the said period given by Hon. Musyoka – J.
13. As a result of non-compliance by the Respondents and interested Parties, the Petitioner has not filed any further affidavits which it is entitled to, as directed by Hon. Musyoka – J., on 20.8.2020.
14. Nonetheless, the Petitioner does not oppose the request for enlargement of time for the Respondents to comply as requested.
15. The only issue is whether as submitted by Mr. Bwire Advocate and supported by Ms. Kagoya Advocate, for the 2<sup>nd</sup> Interested Party, the Petitioner should be granted Conservatory Orders in terms of their Notice of Motion dated 13.8.2020 as the 3<sup>rd</sup> Respondent is said to have, subsequent to the filing and service of this Petition and application, written letters to the stake-holders to nominate persons, in a bid to implement the impugned **Regulations (Crops) (Sugar) General Regulations, 2020** which according to the Petitioner and the 2<sup>nd</sup> Interested Party, will render this Petition and application spent.
16. Mr. Tarus opposes grant of Interim Orders before his clients are heard.
17. I have considered the arguments by all Counsel on record, I am satisfied that in the interest of Justice and the right to be heard, and despite the delay in compliance with Court directions by the Respondents, they deserve an opportunity to be heard as the delay in filing their responses has been adequately explained and is acceptable to the Court and the opposing Parties being the Petitioner and the 2<sup>nd</sup> Interested Party.
18. I therefore grant the Respondents extension of time of 14 days of today to file and serve their responses upon the rest of the Parties and the Petitioner still reserves the leave granted by Musyoka – J., to file rejoinders.
19. On whether I should grant interim Orders pending Inter- Parties hearing of the Notice of Motion, I have considered the submissions by the advocates on record and I have perused the Petition and Notice of Motion dated 13.8.2020. The issue in contention is the implementation of the **Crops (Sugar) (General) Regulations 2020**.
20. That being the case, and as the Parties are now before Court challenging the said Regulations, it would be an academic exercise if the Court failed to preserve the subject Matter of the Petition by allowing or letting the Respondents implement or enforce the impugned Regulations.
21. Under **Rule 23 of the Constitution of Kenya (Protection of Rights and Fundamental Freedom) Practice and Procedure Rules, 2013**, this Court is empowered to hear and determine an application for **Conservatory or Interim Orders and in doing so, Under Rule 23 (2)** service of the application may be dispensed with leave of Court and such application may be in writing or by way of informal documents but later reduced in writing.
22. The Petitioner served all the affected Parties with the Petition and Notice of Motion for conservatory Orders hence they are fully aware of what they are facing before Court as they prepare to respond.
23. It is not demonstrated that the Respondents will suffer any prejudice if Conservatory/Interim Orders are granted at this stage pending interpartes hearing.
24. To the contrary, undoing an implemented Regulation will be an uphill task and will render the pending Petition and Notice of Motion nugatory and the Petitioner will be rendered a mere pious explorer in the pursuit of justice.
25. For the above reasons in addition to the Interim Orders granted by Hon. Musyoka – J on 20.8.2020, I hereby Order and suspend any form of implementation of the **Crops (Sugar) General) Regulations, 2020** pending the hearing and determination of the Notice of Motion dated 13.8.2020 interpartes.
26. The matter shall therefore be mentioned before Hon. S. Riech – J., Presiding Judge, Bungoma on 18<sup>th</sup> September, 2020, the Court where this Petition was originated, for further directions on the mode of disposal of the application dated 13.8.2020 and the Petition.
27. This file be transmitted to Bungoma High Court forthwith for conclusion.
28. The Proceedings and orders herein issued be typed forthwith for dispatch.

Orders accordingly.

**Dated, Signed and Delivered at Siaya this 4<sup>th</sup> day of September, 2020**

**R.E. ABURILI**

**RECESS DUTY JUDGE**