

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAMIRA

CONSTITUTIONAL & HUMAN RIGHT DIVISION PETITION NO. 1 OF 2018

MOGENI TEA FACTORY LIMITED.....PETITIONER

=VERSUS=

NYAMIRA COUNTY GOVERNMENT.....RESPONDENT

RULING

By the Notice of Motion filed herein, the petitioner seeks orders that: -

- 1. This application be certified urgent and be heard exparte in the first instant.**
- 2. The honourable court be pleased to issue an interim mandatory injunction directing the Defendant/Respondent by itself, its agents, servants, workmen and/or employees to release and/or deliver to the Plaintiff/Applicant motor vehicle Registration Number KAR 254Y and the computer weighing machine pending the hearing and determination of this application inter parties.**
- 3. Pending the hearing and determination of this suit, the Defendant/Respondent by itself, its agents, servants, workmen and/or employees be restrained by way of temporary injunction from seizing and/or detaining the applicant's motor vehicles in the cause of there business and/or depriving and/or trespassing upon the goods of the Plaintiff/Applicant in whatsoever manner.**
- 4. A temporary injunction be issued restraining the respondent through its agents, employees and servants from demanding levies and charges not prescribed for in the Nyamira County Finance Act, 2016, pending the hearing and determination of the petition.**
- 5. Costs of this application be provided for.**

The application is supported by the affidavit of Kennedy Bosire Mogeni sworn on 31st January 2018 in which at paragraph 2 he has listed the registration numbers of several motor vehicles which he deposes were unlawfully impounded by the respondent on account of failure to pay cess which is not provided for in the Respondent's County Finance Act 2016. The Act is annexed to the application.

The application is not opposed as despite given time on 7th February 2018 to file its response Counsel for the respondent did not file the same. Neither did Counsel for the respondent attend the hearing despite being notified as evidenced by the affidavit of service filed on 5th July 2018 and which has a Nyamira County received stamp.

At the hearing Mr. Bosire for the petitioner pointed out that prayers 1 and 2 of the application were spent and that he was only urging prayers 3, 4 and 5. He submitted that the tea cess levied by the respondent is not provided for in the Nyamira County Finance Act 2016. He contended that even erecting road blocks on the highway to collect the cess is not provided for and is illegal. He contended that other than a manufacturing levy which the applicant has paid for the petitioner is not obligated to pay any other levy. He prayed for the orders.

The orders sought are conservatory in nature and as the application is not opposed, I shall allow it and grant prayers 3 and 4. The costs of the application shall however abide the petition.

It is so ordered.

Signed, dated and delivered in open court this 12th day of October 2018.

E. N. MAINA

JUDGE