



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
PETITION NO. 1 OF 2014

IN THE MATTER OF: ENFORCEMENT OF THE CONSTITUTION OF KENYA BILL OF RIGHTS UNDER ARTICLE 22 (4)

IN THE MATTER OF: ALLEGED CONTRAVENTION OF THE BILL OF RIGHTS AND CONSTITUTION UNDER ARTICLE 27, 40 AND 47 OF THE CONSTITUTION OF KENYA

BETWEEN

ABDULAHI ROKA GODANA.....PETITIONER

VERSUS

THE KENYA SUGAR BOARD.....RESPONDENT

RULING

THE APPLICATION

1. By way of a Notice of Motion dated 10th January 2014, the applicant herein, ABDULAHI ROKA sought the following orders that;

(a) A conservatory Order of injunction be issued restraining the Respondent by themselves or their servants and/or agents from destroying, alienating disposing of or in any manner depriving the Petitioner of 1016 bags of sugar pending the hearing and determination of this Application and Petition.

(b) This court issues an order of mandatory injunction directing the Respondent to return to the Petitioner's sugar.

2. The application is based on the grounds set out in the application that:

(i) The Petitioner is the *bona fide* owner of 1016 bags of sugar.

(ii) The Petitioner will suffer irreparable loss if the Respondent disposes and/or destroys the 1016 bags of sugar.

3. The applicant filed a Supporting Affidavit sworn by ABDULAHI ROKA GODANA dated 10th January 2014 in which he averred that:

(i) On Monday the 6th of January 2014, **the Respondent's servants in company of police officers**

came to his property and demanded that it be opened.

(ii) He agreed to open and they forcefully took his bags of sugar totaling to 1016 bags.

(iii) They also took his documents with regard to the same.

(iv) The sugar was bought from an auction through a broker.

4. In response, the Respondent filed a Replying Affidavit sworn on the 7th of February 2014 by the Surveillance Officer of the Respondent Board SAMUEL KIPTUM KEMBOI stating that -

(i) Section 4(1) of the Sugar Act, Act No. 10 of 2001, Laws of Kenya gives the Respondent Board the powers to:

i. Regulate, develop and promote the sugar industry;

ii. Co-ordinate the activities of individuals and organizations within the industry;

iii .Facilitate equitable access to the benefits and resources of the industry by all interested parties.

(ii) That he and other officials from the Respondent Board were carrying out a routine surveillance in Mombasa and went to the Petitioner's store, within Bondeni Area, where upon inquiries the Applicant confirmed to us that they stock sugar for retail. That they requested to carry out an inspection of the sugar in the Petitioner's possession after admitting that they sold sugar but the Petitioner declined.

(iii) The Petitioner voluntarily opened the godown at 5.00p.m in the evening after police intervention since they had refused to allow them in and inspect the sugar when they impounded 1010 bags of sugar and NOT 1016 as alleged by the Petitioner.

(iv) Upon inspection of the Petitioner's store they found 1010, 50 kg bags of sugar branded as "GULA PASIR TEBU KUNING" whose origin was United Arab Emirates and whose date of manufacture is indicated as November 2013.

(v) They requested for importation documents from the Petitioner since this was sugar that had originated from United Arab Emirates but none was produced by the Petitioner.

(vi) The Petitioner only furnished us with copies of documents, at the last minute, allegedly in support of the sugar import, which documents do not tally with the information produced. Further, according to the documents produced by the Petitioner, the sale of goods by Public auction took place on **3rd September 2013** and Tel-Aviv Investments Limited purchased 550 bags of sugar, Lot number 0157/13.

(vii) The Petitioner alleges to have purchased the sugar from an auction through a broker, Y.H Wholesalers Limited, Rwambo E.A Limited and Tel- Aviv Investments Limited. When the Respondent wrote to these companies to confirm this, Y.H Wholesalers Limited and Rwambo E.A Limited confirmed that they had not participated in any sugar auction the material time period. Tel-Aviv Investments Limited were involved in the public auction of **3rd September 2013** but they only purchased 550 bags of sugar.

(viii) The Petitioner does not have any permit and is not a registered sugar importer, the "Brokers" and/or alleged sugar importers (apart from Tel-Aviv who have been silent on the issue) have both denied involvement. Further Rwambo E.A Limited was not registered as a sugar importer as from 5th July 2013.

(ix) That he believed that the said goods are uncustomed goods that have been smuggled into the country and therefore subject to forfeiture under Section 213 of the East African Community Customs Management Act, 2004, pursuant to section 210 (c) of the Act empowers the forfeiture of any uncustomed goods.

(x) On or about 7th January 2014 after impounding the goods the matter was reported to the Urban Police Station, Mombasa. The Petitioner was thereafter arrested on 17th January 2014.

(xi) The actions of the Respondent are well within the law in discharge of its regulatory mandate in preventing illegal importation of sugar into the country after the Petitioner failed to produce any evidence of compliance under the Sugar Act.

(xii) The Petitioner had failed to demonstrate how his fundamental right under Article 27 of the Constitution had been infringed.

5. The Petitioner filed a Further Affidavit on 5th March 2014 in which he clarified that the number of bags of sugar were 1010 bags and not 1016 as earlier stated in his affidavit of 10th January 2014. He annexed copies of documents with regards to the sale of sugar in issue. He reiterated that had the sugar been brought into the country illegally, he would have been charged by the Police.

SUBMISSIONS

The Petitioner's case

6. The Petitioner filed his written submissions dated the 8th of April 2014 in which he stressed that he had come before this court on a complaint of interference and abuse of his property rights. The Petitioner submitted that Article 40 of the Constitution specifically provides and intends to protect right to property. It was argued that when the Respondents took away sugar from the Petitioner's store without any justification, and that the Respondent was capriciously trampling on his rights. The Respondent was under a duty to be fair, reasonable and to afford the Petitioner a hearing.

7. It was further submitted that the Respondent acted under the assumption that the sugar in question is uncustomed. It was the Petitioner's argument that whether the goods are uncustomed or not, the proper authority to give clear information on the same would have been the Kenya Revenue Authority (KRA).

8. Further it was submitted that the Respondent seems to be of the view that the Petitioner must show that he imported the sugar. It was urged that the Petitioner bought the sugar locally from an entity that carried out a lawful auction and that the issue of the bags in which the sugar was contained was irrelevant as there is no restriction with regard to storage by a retail buyer. The Petitioner further argued that the Respondent had not shown any section of the Sugar Act that authorizes impounding of property.

The respondent's case

9. The Respondent filed their submissions dated the 14th of February 2014 and contended that the Conservatory Order issued by the Court should continue to subsist and therefore the mandatory injunction sought for release of the goods should not be granted. The Respondent Board acted within the confine of the law in seizing the 1010 bags of Sugar found in the Petitioner's possession, because apart from being governed by the general mandate under section 4(1) and 4(2) of the Sugar Act, it was further empowered by Section 27 of the Act to provide safeguarding measures relating to importation of Sugar into the Country.

10. It was their submission that Section 200 of the East African Community Customs Management Act, 2004 (EACCMA) makes provision for offences relating to prohibited, restricted and uncustomed goods. The restricted and/or uncustomed goods are liable to forfeiture under Section 213 of the same Act that gives the Police, the Respondent's officials or any authorized public officer the powers to seize such

goods and deliver the same to a place of security as the officer may consider appropriate.

11. It was further submitted that the Petitioner produced some documents allegedly to demonstrate ownership of the seized sugar. The documents that were produced by the Petitioner stated that Telviv Investments Company Limited were involved in a public auction and purchased 550 bags of sugar on 3rd September 2013 but it was their submission that the sugar purchased by Telviv Investments Limited is not the sugar forming the contention in this case. A report by Kenya Bureau of Standards dated 29th January 2014 shows that the sugar in question was produced in November 2013 while the auction in question purportedly took place earlier on 3rd September 2013.

12. The Respondent submitted that for any person to be able to import sugar into the country he must be in possession of an import permit that is issued by the Board as per under Regulation 2 of the Sugar (Imports, Exports and By-Products) Regulations 2008. Finally, it was contended that for any person to be able to participate in auctions the Respondent Board has to issue permits for the same under Regulation 6(2) of the said Regulations. Before the permit is issued the Importer must submit the Bill of Lading for importation, Commercial Invoice, supply of Contract and the Certificate of Origin.

ISSUES FOR DETERMINATION

13. The question before the court in the Notice of Motion the subject of this ruling is whether a conservatory order to restrain disposal of the sugar and a mandatory injunction for the release of the detained goods may be made pending the hearing and determination of the Petition, as sought by the prayer for mandatory injunction for the release of goods.

DETERMINATION

Principles for the grant of conservatory orders

14. There is a lot of learning on the principles for the grant of conservatory orders, which now appear to be well known. In Nairobi Constitutional Petition No. 206 of 2016 **Satinderjit Singh Matharu v. Armajit Singh Gahir & 5 Others**, this Court observed as follows:

“6. Despite varied nomenclatural expressions, the principles upon which the High Court considers application for conservatory orders in constitutional litigation are now settled by several decisions on the point, and may be condensed as follows:-

*1. The applicant must demonstrate **prima facie** case, or an **arguable** case, for the grant of the relief sought.*

*2. The applicant must stand to suffer an **irreparable harm**, injury or loss not remediable by any other relief; and*

*3. As a remedy in constitutional litigation, the conservatory order calls for consideration of the **public interest in the matter**, and the balance of convenience between the petitioner’s and the respondent’s case must favour the grant of the conservatory order.*

*See generally, authorities cited by the petitioner, **AG v. Sumair Bansraj** [1985] 38 WIR 286; **Tunoi & Anor v. Judicial Service Commission and Anor**, (2014) eKLR; **Judicial Service Commission v. Speaker of the National Assembly & Anor**. (2013) eKLR; **Gatirau Peter Munya v. Dickson Mwenda Kithinji & 2 Ors.** (2014) eKLR; **Centre for Rights Education and Awareness (CREAW) & 7 Ors. v. AG** (2011) eKLR; and **Centre for Human Rights and Democracy & Ors. v. The Judges and Magistrates Vetting Board** (2012) eKLR.*

*7. This Court has also previously expressed itself on the matter. See **Muslims for Human Rights (MUHURI) & 4 Ors. v. Inspector General of Police & 2 Ors.**, Mombasa PETITION NO. 62 OF*

2014 of 22nd December 2014, where the Court held as follows:

“The emerging principles for the grant of injunction or conservatory orders under the constitutional litigation, as I understand them, are **firstly, that the applicant must demonstrate an arguable case - sometimes called prima facie arguable case - the reference to arguable case distinguishing it from the prima facie test of the Giella v. Casman Brown (1973) EA 385 traditionally applied in regular civil cases; secondly, that the applicant must show that the petition would be rendered nugatory or that the damage that would be suffered in the absence of the conservatory order would be irreversible; and, thirdly, that in constitutional cases, the public interest in the matter would be considered and generally upheld.** See *Kenya Transport Association Limited v. Cabinet Secretary for Transport and Infrastructure and Ors., Mombasa HC Petition No. 16 of 2014* where I considered some of the decisions on the matter as follows:

‘The tests for the grant of conservatory orders has been variously expressed by different courts. See *Mombasa High Court petition No. 7 of 2011, Muslim for Human Rights and 2 Ors v. the Attorney General*, per Ibrahim J. (as he then was), *Mombasa High Court Petition No. 47 of 2011 Harun Barky Yator v. Judicial Service Commission (JSC)*, per Okwengu J, (as she then was), *Nairobi High Court Petition No. 557 of 2013*, per Majanja J, and *Mecha Magaga v Jackson Obiero Magaga (2014) eKLR*, per Okong’o, J. All the courts require for the grant of conservatory orders a prima facie case or a prima facie arguable case as in Yator’s case; irretrievability or irreparability if conservatory order is not granted and the subject matter is irretrievably lost (akin to the irreparability by damages test) and a balancing of the interests of the applicant and the respondents. There arises confusion as to whether the test of standard of the applicant’s case is on the prima facie or arguable case. Once accept that the court cannot determine the disputed merits of the case at the interlocutory stage, the correct standard must be the standard of arguable case. See *Mbuthia v. Jimba Credit Corporation (1988) KLR 1*. I also consider that Under Article 23 (3) of the Constitution, the court may make a broad spectrum of orders as conservatory orders to Preserve the status quo where circumstances warrant and that may include fashioning a remedy to fit the particular circumstances of the application before the court.’”

Principles for the grant of interlocutory mandatory injunction

15. It is also well settled that courts will only grant mandatory injunctions at the interlocutory stage in exceptional and clear cases where on the evidence before it, the court, in the words of Megarry, J. in *Shepherd Homes v Sandham*, [1970] 3 WLR 348, feels “high degree of assurance that at the trial it will appear that the injunction was rightly granted.” . See also *Kamau Mucuha v Ripples Ltd* [1993] eKLR; *Locabail International Finance Ltd v Agroexport* [1986] 1 All ER 901; and *M/S Gusii Mwalimu Investment Co. Ltd & 2 Others v. M/S Mwalimu Hotel Kisii Ltd* [1996] eKLR.

The applicable substantive law

16. Article 40 of the Constitution protects the right to property as follows:

“40. (1) Subject to Article 65, every person has the right, either individually or in association with others, to acquire and own property—

(a) of any description; and

(b) in any part of Kenya.

(2) Parliament shall not enact a law that permits the State or any person—

(a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description; or

(b) to limit, or in any way restrict the enjoyment of any right under this Article on the basis

of any of the grounds specified or contemplated in Article 27 (4).

(3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—

(a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or

(b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that—

(i) requires prompt payment in full, of just compensation to the person; and

(ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.

(4) Provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land.

(5) The State shall support, promote and protect the intellectual property rights of the people of Kenya.

(6) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.”

17. Sections 4 and 27 of the Sugar Act No. 10 of 2011 are in the following terms:

“4. Objects and functions of the Board

(1) The object and purpose for which the Board is established is to—

(a) regulate, develop and promote the sugar industry;

(b) co-ordinate the activities of individuals and organizations within the industry;

(c) facilitate equitable access to the benefits and resources of the industry by all interested parties.

(2) Without prejudice to the generality of subsection (1), the Board shall—

(a) participate in the formulation and implementation of overall policies, plans and programs of work for the development of the industry;

(b) act as an intermediary between the industry and the Government;

(c) facilitate the flow of research findings to interested parties through the provision of effective extension services;

(d) monitor the domestic market with a view to identifying and advising the Government and interested parties on any distortions in the sugar market;

(e) facilitate the arbitration of disputes among interested parties;

(f) facilitate the export of local sugar;

(g) promote and encourage the use of environmentally friendly technologies in the industry;

(h) provide advisory services to growers, out-grower institutions and millers;

(i) facilitate an equitable mechanism for the pricing of sugar-cane and appropriation of proceeds from the disposal of the by-products of sugar production between millers and growers as stipulated in the

guidelines;

(j) represent the industry in such organizations as are relevant for the promotion of the industry;

(k) oversee the formulation of standard provisions governing the mutual rights and obligations of growers, millers and other interested parties;

(l) collect, collate and analyze industry statistics and maintain a data base for the industry;

(m) licence sugar mills;

(n) promote the efficiency and development of the industry through the establishment of appropriate institutional linkages; and

(o) perform such other functions as may, from time to time, be assigned by the interested parties.

27. Safeguard measures

(1) Subject to such regional and international trade agreements to which Kenya is a party, **all sugar imports into the country shall be subject to the prevailing import duties, taxes and other tariffs and such imports shall be controlled by the Board.**

(2) The Government shall introduce other safeguard measures as may be necessary to protect the industry from unfair trade practices.”

18. The relevant sections 210 and 213 of the East African Community Customs Management Act, 2004 provides as follows:

“210. In addition to any other circumstances in which goods are liable to forfeiture under this Act, the following goods shall be liable to forfeiture-

(b) any restricted goods which are dealt with contrary to any condition regulating their importation, exportation or carriage coastwise;

(c) any uncustomed goods;

213.-(1) An officer or a police officer or an authorised public officer may seize and detain any aircraft, vessel, vehicle, goods, animal or other thing liable to forfeiture under this Act or which he or she has **reasonable ground to believe is liable to forfeiture; and that aircraft, vessel, vehicle, goods animals or other thing **may be seized and detained regardless of the fact that any prosecution for an offence under this Act which renders that thing liable to forfeiture has been, or is about to be instituted.****

(2) Where an aircraft, vessel, vehicle, goods, animal or other thing is seized and detained under this Act by a person other than a proper officer, the aircraft, vessel, vehicle, goods, animal or other thing seized and detained under this Act shall be delivered with full written particulars to the nearest Customs office or to such other place of security as the proper officer may consider appropriate;

(3) Where delivery of an aircraft, vessel, vehicle, goods, animal or other thing is not practical under subsection (2), notice in writing shall be given to the Commissioner at the nearest Customs office, of the seizure and detention, with full particulars of the aircraft, vessel, vehicle, goods, animal or thing seized and detained.

(4) Where a person seizing and detaining a thing liable to forfeiture under this Act is a police officer and that thing is or may be required for use in connection with any court proceedings to be brought otherwise than under this Act, the police officer may, subject to sub-section (5) keep that thing in the custody of the police until those proceedings are completed or until it is decided that no proceedings shall be instituted.

(5) Where a thing seized is retained in the custody of the police under subsection (4) the following provisions shall apply-

(a) the police officer shall give notice in writing of the seizure and detention, and the intention to retain the thing in the custody of the police, together with full particulars of the thing, to the nearest Customs office;

(b) an officer shall be permitted to examine that thing and take account at any time while it remains in the custody of the police;

(c) where the court orders the release of that thing the Commissioner shall assess and collect any duty payable on that thing prior to restoration of the thing to the owner.

(6) Where a person, not being a proper officer, seizes and detains or has custody of the thing seized and detained, fails to comply with the requirements of this section or with any direction of the Commissioner, he or she commits an offence and shall be liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding two thousand dollars or to both.

(7) The Commissioner may, at **any time prior to the commencement of any proceedings relating to any aircraft, vessel, vehicle, goods, animal or other thing which had been seized under this Act, if he or she is satisfied that it was not liable to seizure, release and return it to the person from whom it was seized.**

On the merits of the Application

19. The respondent has statutory mandate under section 4 of the Sugar Act to regulate the sugar industry and under section 27 thereof to enforce the provision that “all sugar imports into the country shall be subject to the prevailing import duties, taxes and other tariffs and such imports shall be controlled by the Board.”

20. The goods were seized pending investigations into the question whether they were restricted or uncustomed goods when the petitioner could not produce documents on ownership. The investigations were recorded under Occurrence Book (OB) No. 2/8/01/14 at Urban Police station, Mombasa. The respondent collaborated with the police in the exercise and the police are empowered under section 213 (4) of the EACCMA to seize and detain goods in the custody of police, as at a Police station as in this case, pending investigations, as follows:

“(4) Where a person seizing and detaining a thing liable to forfeiture under this Act is a police officer and that thing is or may be required for use in connection with any court proceedings to be brought otherwise than under this Act, the police officer may, subject to sub-section (5) keep that thing in the custody of the police until those proceedings are completed or until it is decided that no proceedings shall be instituted.

21. It would appear that officers of the Respondent’s Board would also independently qualify as “an officer” or “authorized public officer” for purposes of section 2013 of EACCMA in view of its mandate

to undertake safeguarding measures under section 27 of the Sugar Act.

22. On the facts of the case, it is significant that the three importers/suppliers from whom the petitioner claimed to have bought the sugar did not have valid permits for importation of sugar during the material time and they have denied taking part in sugar auction or importation, and they rejected the documents presented by the petitioner in proof of the alleged purchases.

23. Without expressing a concluded view at this stage of the proceedings, the Court does not find a *prima facie* case has been established on the grounds of breach of the constitutional rights to equality, property or fair administrative action. The petitioner has not shown discrimination by treatment differently from other persons similarly situated in terms of Article 27(4) of the Constitution.

24. An owner of property who seeks protection under the right to property provisions of Article 40 of the Constitution must demonstrate ownership of the subject property. It is the duty of the petitioner, under section 107, 108 and 109 of the Evidence Act, to prove the fact of ownership of the property the subject of the suit on which the claim is based and therefore discharge the burden of “that person who would fail if no evidence at all were given on either side”.

25. Sections 107, 108 and 109 of the Evidence Act provide as follows:

“107. Burden of proof

(1) *Whoever desires any court to give judgment as to **any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.***

(2) *When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.*

108. Incidence of burden

*The **burden of proof in a suit** or proceeding lies on that person who would fail if no evidence at all were given on either side.*

109. Proof of particular fact

*The **burden of proof as to any particular fact** lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”*

26. Such ownership is not proved where, as here, the persons from whom the petitioner claims to have bought the goods, have denied such transaction. Ownership of property not being proved, there is no basis for finding a right to property capable of protection from violation in terms of Article 40 (1) of the Constitution.

27. In opposition to the declaratory provision of Article 40 (6) that “*The rights under this Article do not extend to any property that has been found to have been unlawfully acquired*”, the petitioner’s counsel urged that it had not been found by any Court that the property had been unlawfully acquired. The argument, with respect, reverses the duty of proof in the matter. It is the petitioner who wishes to obtain judgment on his legal right of ownership which depends on the particular fact or series of facts demonstrating valid transactions towards acquisition of the property. The burden of proof lies with the petitioner to prove his ownership of the property for which he seeks protection; not with the respondent to disprove the Petitioner’s ownership or to prove that the property was illegally acquired.

28. On the question of fair administrative action, it has not been shown that the procedure used by the respondents during seizure and detention of the sugar contravened the provisions of section 213 of the East African Community Customs Management Act, 2004, and as pointed out by counsel for the

respondent, the matter was at investigations stage and should an offence be established, the Director of Public Prosecution would prefer charges for trial in accordance with the fair trial rights under the Constitution.

29. Moreover, under section 213 (7) of EACCMA, should the investigations reveal no wrong-doing, then -

“The Commissioner may, at any time prior to the commencement of any proceedings relating to any aircraft, vessel, vehicle, goods, animal or other thing which had been seized under this Act, if he or she is satisfied that it was not liable to seizure, release and return it to the person from whom it was seized.”

30. In the exercise of its mandate to regulate the sugar industry, the respondent in collaboration with other agencies is empowered to take ‘safeguarding measures’ within the meaning of section 27 of the Sugar Act to ensure that the sugar industry operates in accordance with the law. Such law is the EACCMA which authorizes the seizure and detention of goods reasonably suspected to be liable to forfeiture for breach of the various provisions of the Act.

31. Moreover, it is reasonable that while the matter is pending investigations into the status of the goods as restricted or uncustomed goods, the same should not be released to the market because of the adverse effect on the industry, which cannot be undone and may not be remediable by any subsequent payment of tax or other levies.

32. Ultimately, it is a compelling issue of the effect of illegal sugar on the local sugar industry that must concern the Sugar Industry Regulator, and the public interest in this regard must be taken to trump the private interest of the Petitioner in the profits upon sale of the sugar into the market. Additionally, goods subject to forfeiture cannot be released pending investigations as that may put the goods out of reach of the authorities should it eventually be determined that they are liable to be forfeited to the State.

CONCLUSION

33. At this stage of the proceedings, and on the basis of evidence before the court, it is not possible to hold that the goods seized and detained by the Respondent together with the police is the **lawful** property of the petitioner, and the protection of Article 40 of the Constitution is, consequently, unavailable to the petitioner. The respondent as the sugar industry regulator has a statutory mandate by itself and in collaboration with other authorized agencies to take safeguarding measures to ensure the protection of economic health the local sugar industry and recovery of due taxes. Such measures include the statutorily underpinned power under section 213 of the EACCMA for the seizure and detention pending investigations in cases of goods subject and liable to forfeiture. There was no evidence of discrimination or unfair administrative action in the exercise which is authorized by the relevant statute.

ORDERS

34. The Notice of Motion dated 10/1/2014 herein for the release of the sugar the subject of the Petition is **declined**.

35. For avoidance of doubt, in the interest of justice the **interim order** restraining the disposal of the sugar pending determination of the petition will remain in force.

36. **Costs** in the Cause.

EDWARD M. MURIITHI

JUDGE

DATED AND DELIVERED THIS 8TH DAY OF MARCH 2017.

E. OGOLA

JUDGE

Appearances:

M/S J.O. Magolo & Co., Advocates for the Petitioner

M/S Mugoye & Associates, Advocates for the Respondent