



REPUBLIC OF KENYA

IN THE HIGH COURT AT KERICHO

PETITION NO. 18 OF 2014

BETWEEN

THE GOVERNOR OF KERICHO COUNTY PETITIONER

AND

KENYA TEA DEVELOPMENT AGENCY 1ST RESPONDENT

CHAI TRADING COMPANY LIMITED 2ND RESPONDENT

KTDA MANAGEMENT SERVICES 3RD RESPONDENT

MAJANI INSURANCE BROKERS 4TH RESPONDENT

KENYA TEA PACKERS LIMITED 5TH RESPONDENT

GREENLAND FEDHA LIMITED 6TH RESPONDENT

KTDA POWER COMPANY LIMITED 7TH RESPONDENT

UNILEVER TEA (KENYA) LIMITED 8TH RESPONDENT

LIPTON LIMITED 9TH RESPONDENT

JAMES FINLAY (KENYA) LIMITED 10TH RESPONDENT

VAN REES KENYA LIMITED 11TH RESPONDENT

JUJA COFFEE EXPORTERS LIMITED 12TH RESPONDENT

STANSAND (AFRICA) LIMITED 13TH RESPONDENT

EASTERN PRODUCE KENYA LIMITED 14TH RESPONDENT

WILLIAMSON TEA KENYA LIMITED 15TH RESPONDENT

AFRICA TEA BROKERS LIMITED 16TH RESPONDENT

ANJELI LIMITED	17 TH RESPONDENT
ATLAS TEA BROKERS LIMITED	18 TH RESPONDENT
BICORN EXIM LIMITED	19 TH RESPONDENT
CENTERLINE TEA BROKERS LIMITED....	20 TH RESPONDENT
CHOICE TEA BROKERS LIMITED	21 ST RESPONDENT
COMBROK LIMITED	22 ND RESPONDENT
PRUDENTIAL TEA BROKERS (EA) LIMITED	23 RD RESPONDENT
TEA BROKERS EAST AFRICA LIMITED	24 TH RESPONDENT
UNION TEA BROKERS LIMITED	25 TH RESPONDENT
VENUS TEA BROKERS LIMITED	26 TH RESPONDENT
THE EAST AFRICAN TEA TRADE ASSOCIATION	27 TH RESPONDENT
AGRICULTURE FISHERIES & FOOD AUTHORITY	28 TH RESPONDENT

CONSOLIDATED WITH

JUDICIAL REVIEW NO. 3 OF 2015

BETWEEN

REPUBLIC

VERSUS

THE COMPETITION AUTHORITY 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

AND

THE SMALL SCALE TEA FARMERS INTERESTED PARTIES

EX-PARTE

KTDA MANAGEMENT SERVICES LIMITED

AND

38 INTERESTED PARTIES

RULING

Introduction

1. The Governor of Kericho County, acting on behalf of small scale farmers from the western region of Kenya, filed the petition herein on 4th December 2014 seeking several declaratory orders and remedies against the respondents for alleged infringement of the farmers' constitutional rights arising from operations in the tea industry in Kenya and more so in the western region. An amended petition was filed on 6th January 2015.
2. Although the respondents objected to the filing of the amended petition, we shall deem the amended petition as properly filed to enable us deal with the issues raised with finality as the parties referred to therein have been served and have responded to the allegations. The amended petition shall be referred to as the petition for ease of reference.
3. The petition is filed against several parties. The 1st respondent, Kenya Tea Development Agency (KTDA) is a limited liability company incorporated under the **Companies Act (Chapter 486 of the Laws of Kenya)**. It is the managing agent for small holder tea factories. The 2nd to 7th respondents are subsidiaries of KTDA.
4. The 8th respondent is a limited liability company involved in tea farming and trading in Kenya while the 9th, 10th, 11th, 12th and 13th respondents are companies involved in trading at the Mombasa Tea Auction. The 14th to 26th respondents are duly licenced tea brokers l by the Tea Board of Kenya which is a directorate under the Agriculture Food and Fisheries Authority ("AFFA") established under the **Agriculture Food and Fisheries Authority Act, 2012**. They facilitate the sale of tea on behalf of the producers. The 27th respondent is an organisation bringing together various companies including tea producers, buyers, exporters, packers and shippers. The 28th respondent, the AFFA, is a statutory body whose mandate, amongst others, is to oversee the smooth and orderly function of the tea industry through policy, guidance, registration and tea trade development.
5. The amended petition herein is rather prolix. The background to the allegations is set out in paragraphs 51 to 108 under the section titled, "**KTDA RELATED PROBLEMS.**" The thrust of the narration by the petitioner is that Kenya's tea contributes to 4% of the GDP and the small-scale farmers account for 60% of the tea production in Kenya and despite their contribution, small scale farmers have little to smile about as they lack representation in the institutions governing the tea sector and that the sector is patently rigged against their interests.
6. The petitioner contends that the small-scale farmers shoulder the lion share of liabilities incurred along the production chain which include repayment of loans by the factory building programmes, high management fees charged by KTDA, long and inefficient supply chain, heavy commission paid to the tea brokers and countless taxes imposed on the farmers. The petitioner accuses KTDA of being an unrepresentative organisation.
7. The petitioner complains that KTDA collects Agriculture Produce Cess and *Ad valorem* duty from tea farmers despite the repeal of the **Agriculture Act** and the **Tea Act** which authorised the levying of taxes. The petitioner contends that agriculture is a devolved function under the Constitution and it is the county governments who have legal authority to levy Cess. The petitioner contends that the levying of cess and *Ad valorem* duty lacks legal basis and is contrary to **Article 210 (1)** of the Constitution.
8. The petitioner complains that the Mombasa Tea Auction has been hijacked and monopolized by local cartels of the big estate owners and the brokers who collude on price fixing thereby denying small scale farmers their deserved earnings.
9. The petitioner avers that the respondents have refused to recognise Kenya United Small Scale Tea Owners Association (KUSSTO) a union registered to safeguard and lobby for the rights and interests of small scale farmers across the country, hence denying its members the farmers' constitutional right of association and collective bargaining guaranteed under **Article 41** of the Constitution.
10. Because of these allegations, the petitioner claims that various provisions of the Constitution have

been violated and seeks a total of 26 reliefs in the amended petition. Prayers (a) to (h) deal with the accounting and refund of Agricultural Produce Cess collected from 27th March 2014 when the County Government started operations and consequential reliefs. Prayers (i) to (k) deal with the *Ad Volarem* tea duty and seeks a direction that the AFFA accounts for the duty collected and an order directing the Authority to refund the farmers and other consequential reliefs. Prayers (l) and (m) deal with recognising KUSSTO as the legitimate union representing the interests of small scale farmers in Kenya and consequential relief. Prayer (v), (ee), (ff) and (ii) seeks relief against the 8th-26th respondents for price fixing at the Mombasa Tea Auction and consequential relief against the 28th respondent to investigate price fixing and manipulation at the Mombasa Tea Auction from the year 2001 - 2015.

Litigation Background

11. On 2nd March 2015, the court joined 53 interested parties to the matter and directed parties to file and serve any intended applications which, if any, would be dealt with on 23rd March, 2015. By 23rd March, 2015 it was only the petitioner who had complied with the Court's directions and had filed two applications seeking to join the Council of Governors as interested parties and 1,000 small scale farmers as petitioners. The other parties sought more time to put their houses to file their applications. Consequently, Ong'udi J., extended the time within which to comply with the directions and ordered that the applications would be heard simultaneously.

12. Before the filed applications could be heard, parties applied for certification of the petition under **Article 165(4)** of the Constitution. Following the reference, on 22nd September 2015, the Chief Justice directed that the consolidated petition and judicial review be heard by the presently constituted bench.

13. The application before us concern the petition and are of two kinds; the respondents seek to strike out the petition while the petitioner and interested parties seek to be joined to the petition. We directed the parties to make their submissions on all applications and now make the following decision in respect thereof.

General Principles

14. In dealing with these applications we are guided by various principles: First, we are alive to the general instruction by **Article 159(2)** of the Constitution which requires, inter alia, that justice shall not be delayed, that justice shall be administered without undue regard to procedural technicalities and that the purposes and principles of the Constitution shall be protected and promoted.

15. We are also guided by the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013* ("the Rules") particularly the scope and objectives in **rule 3** which obliges this court to facilitate the just, expeditious, proportionate and affordable resolution of all cases. We shall first consider the applications to strike out the petition.

Applications to Strike Out

16. The respondents filed separate applications all seeking to strike out the petition or aspects of the petition as follows: The 11th respondent filed the application dated 8th June 2015. The 1st and 7th respondents filed a notice of preliminary objection dated 16th November 2015 and an application dated 18th March 2015. The 13th respondent filed an application dated 8th May 2015. The 8th respondent filed an application dated 28th May 2015. The 14th respondent filed an application dated 6th March 2015. The 15th respondent filed an application dated 11th November 2015. The 12th respondent filed a notice of motion dated 17th May 2015 while the 16th to 26th respondents filed an application dated 2nd April 2015.

17. The common ground for the applications is that the first petition is an abuse of the court process as it has been filed by a non-juristic person. The respondents contend that under **Article 179** of the Constitution, the Governor is a title conferred with executive authority but lacks the capacity to sue or be

sued. The respondent contended that if the Governor wanted to sue, he ought to have sued in his own name and his personal capacity hence the suit is not cognizable and is a nullity.

18. Secondly, the respondents argued that the petition alleges infringement of several provisions of the Constitution but does not particularize the specific acts of infringement or threatened infringement and the manner of the alleged infringement by each of the respondent as required under **Rule 10(2)** of the **Rules**. The respondents submit that the petitioner has failed to illustrate the nexus between the alleged violations and the constitutional provisions *vis a vis* the respondents contrary to the principles established in the case of **Anarita Karimi Njeru v Republic [1976-1980] KLR 1272**.

19. The respondents argue that the allegations of price-fixing are premature. They submit that disputes arising from such allegation must be dealt with as provided under the **Competition Act** and not by filing this petition. They referred to the case of **Speaker of National Assembly v Njenga Karume [2008] 1 KLR 425** and urged that where the State provides a framework for resolution of disputes by way of legislation then the procedure provided by the legislation should be invoked.

20. The petitioner opposed the applications to strike out the petition asserting that the petition is genuine and not frivolous as is filed bona fide in public interest litigation pursuant to **Articles 22** and **258** of the Constitution. Counsel for the petitioner submitted that that the petitioner has *locus standi* under **Article 22** of the Constitution to intervene in any matter where the Constitutional violations of fundamental rights to a person, or a group of persons and in this case, the tea farmers. The petitioner argued that the term “*every person*” means that any person, corporate or non-incorporated can move to Court contesting any contravention of the Bill of Rights or the Constitution. Further that the **County Governments Act** (No 17 of 2012) gives office of the Governor legal powers.

21. On the issue of price fixing, the petitioner argued that the petition was well within the walls of the Constitution as consumer rights had been breached. The petitioner should thus be allowed a chance to prove its case.

Whether the petition should be struck out

22. The Constitution vests the executive authority of a county in its county executive committee consisting of the county governor, his deputy and members of his cabinet (CEC members). The Governor is directly elected representative elected by registered voters of a county. Under **Article 179(4)**, a Governor is the chief executive of a county. The Governor performs various duties and functions as set out under the Constitution and the law. This includes representing the county in national and international fora and events. In performing these duties, a county governor is tasked to among other things, ‘provide leadership in the county’s governance and development’, to ‘promote democracy, good governance, unity and cohesion within the county; and to ‘promote the competitiveness of the county’ (See **section 30(3)** of the **County Governments Act**).

23. The respondents have urged this court that the Governor of Kericho, being non-juristic person is stripped of the capacity to sue on behalf of his residents, the tea farmers. That the title ‘Governor’ confers upon the petitioner executive authority thus, he ought to have sued in his own name.

24. The State and every State organ bear a fundamental duty to observe, respect, fulfil, protect and promote the rights and fundamental freedoms in the Bill of Rights under **Article 21(1)**. Indeed, defence of the Constitution is an obligation for each and every one of us as stipulated under **Article 3(1)** of the Constitution. As the chief executive officer of a county, a governor must surely be able to do just that. It is then for the Court to determine the merits of the case brought before it.

25. Moreover, **Article 22** lifted the veil on the hitherto locus standi doctrine that for a long time blocked many a people from accessing justice. Under this provision, “*Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened*”. Further under **Article 258(1)**, “*Every person has the right to institute court proceedings, claiming that this Constitution has been contravened, or is threatened with*

contravention". In both cases, a person can institute proceedings in their own interest, they may institute in the interest of a group or class of persons.

26. Access to justice is a fundamental right guaranteed to 'all persons' and if public interest litigation, as in this case would ensure access to justice for the majority of tea farmers, then this Court should not shut its door to those who seek its reprieve. We do not find any provision in the Constitution or legislation limiting a county governor or other person exercising executive or other authority from instituting such suit. The definition of the term 'person' under **Article 260** only further expounds on this definition. If only for argument sake, what would change in the substance of the suit before us to substitute the word 'Governor' with Paul Chepkwony the current governor of Kericho or to even add a hyphen and the Governor's name?

27. In adopting an interpretation that supports national values enshrined under **Article 10**, that supports the principles of exercise of judicial authority espoused under **Article 159** and in conformity with **Article 259** on how we must construe the Constitution of the land, we have reached a finding that the Governor is a proper party to sue. Access to justice is a fundamental right guaranteed to all persons and if public interest litigation, as in this case would ensure access to justice for the tea farmers, then this Court should not shut its door to those who knock it. We do not find the suit to be frivolous.

28. Having found that the County Governor of Kericho is a proper party to agitate this petition, we now turn to the issue whether some of the respondents ought to be struck out because the petition does not raise any cause of action against them in line with the principle stated in *Anarita's Case*. In our view, this issue turns on whether the respondents or any of them are necessary parties for the effectual resolution of the dispute.

29. In *Amon v Raphael Tuck & Sons Ltd [1956] 1 All ER 273, 286*, Devlin J discussed a necessary party as follows;

What makes a person a necessary party? It is not of course, merely he has relevant evidence to give on some of the questions involved; that would only make a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance and is afraid that the existing parties may not advance them adequately....the court might often think it convenient or desirable that some of such persons should be heard so that the court could be sure that it had found the complete answer, but no one would suggest that it would be necessary to make a person a party to an action so that he should be bound by the result of the action, and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party.

30. At the heart of this issue is whether the pleadings disclose allegations of constitutional violations against each respondent. Whether each respondent is a necessary party is to be determined by looking at the petition, the facts alleged, the Constitutional provisions cited and the reliefs sought against each respondent.

31. The petitioner's first complaint is set out in paragraphs 109 to 126 of the petition. It is an allegation about the illegal collection of agricultural produce cess collected by KTDA despite the repeal of the *Agriculture Act* by *Agriculture Fisheries and Food Authority Act*. The petitioner avers that the cess was deducted from farmers' proceeds by KTDA and remitted to the Local Authorities which were subsequently replaced by County Governments. The petitioner therefore seeks relief and consequential orders to resolve this issue. In our view, KTDA and AFFA are necessary parties for the determination of this issue.

32. The next complaint, at paragraphs 127 to 135 of the petition, concerns the alleged illegal collection of Ad valorem duty. The petitioner complains that the Tea Board and its successor, the AFFA continue to collect ad valorem duty of 1% tea produce at the point of export despite repeal of the *Tea Act* by the *Crops Act, 2013*. The petitioner contends that the collection of the tax is illegal and contravenes **Article 210** of the Constitution. The determination of this issue concerns the AFFA which is alleged to collect the

tax.

33. The price fixing allegations are at paragraphs 136 to 162 of the petition. The petitioner alleges that the Mombasa Auction, which is run by the 27th respondent, in which KTDA is a shareholder, has been hijacked and monopolized by local cartels of big estate owners and brokers. The petitioner set various complaints about how the organisation is run to the detriment of small scale farmers. The petitioner seeks declarations of violation of **Articles 10** and **46** of the Constitution, general damages from 1st to 27th respondents and principally an order directing the Competition Authority of Kenya and the AFFA to investigate the price fixing and manipulation at the Mombasa Tea Auction.

34. We agree with the respondent that the allegations raised about price fixing and manipulation falls within the province of investigation by the Competition Authority established under the **Competition Act (Chapter 504 of the Laws of Kenya)**. Under **section 4** of the **Act**, the Authority is empowered to receive complaints from legal or natural persons or consumer bodies and has the power to investigate restrictive trade practices which include price fixing manipulation.

35. We are of the view that the **Competition Act** provides an efficacious remedy for resolution of matters concerning price-fixing and manipulation. This is not to say that the High Court does not have jurisdiction to deal with allegations of breach of fundamental rights and freedoms in such case. It only means that the High Court recognises that there are other legal bodies that exist to resolve certain disputes. This principle is recognised by **Article 159(2)(d)** of the Constitution that obliges the court to promote alternative dispute resolution. Further because of **Articles 10** and **21** of the Constitution, these bodies are obliged to give effect to the National values and principles of governance and provisions of the Bill of Rights.

36. We agree with and adopt the well-established principle established in **Speaker of National Assembly v Njenga Karume (Supra)** where the Court of Appeal that;

In our view there is considerable merit..... that where there is clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed.

37. We also adopt what the Court of Appeal stated in **Mutanga Tea and Coffee Company Ltd v Shikara Ltd and Another Malindi Civil Appeal No. 54 of 2014 [2015]eKLR**;

*Secondly, such alternative dispute resolution mechanisms normally have the advantage of ensuring that the issues in dispute are heard and determined by experts in the area; and that the dispute is resolved much more expeditiously and in a more cost effective manner. In **Rich Productions Ltd v Kenya Pipeline Company & Another Petition No. 173 of 2014**, the High Court explained why it must be slow to undermine prescribed alternative dispute resolution mechanisms thus:*

The reason why the Constitution and the law establish different institutions and mechanism for dispute resolution in different sectors is to ensure that such disputes as may arise are resolved by those with the technical competence and the jurisdiction to deal with them. While the Court retains the inherent and wide jurisdiction under Article 165 to supervise bodies such as the 2nd respondent, such supervision is limited in various respects, which I need, not go into here. Suffice to say that it (the court) cannot exercise such jurisdiction in circumstances where parties before it seek to avoid mechanisms and processes provided by law, and convert the issues in dispute into constitutional issues when it is not.

38. We think that the allegations of price fixing and manipulation at the Mombasa Tea auction are better dealt with by the petitioner or any other person laying an appropriate complaint before the Competition Authority. It has the expertise to deal with this kind of complaint which may affect other parties who may not be parties to these proceedings.

39. Unless it is shown that the body has failed or is unable to resolve the issue, which is not the case here,

this Court must exercise restraint. In the circumstances, we are constrained to strike out paragraphs 103 to 124 of the petition. Consequently, the 8th to 27th respondents are struck out from these proceedings.

Applications for joinder

40. There are 4 applications filed by different parties seeking joinder of parties and they include: The application dated 30th March 2015 seeking to join 1,000 small scale farmers as petitioners. The applications dated 29th June 2015 seeking to join the County Government of Meru, the application dated 10th June 2015 seeking to join County Government of Murang'a as an interested party and the application dated 23rd May 2015 seeking to join the Council of Governors as an interested party.

41. The 1000 farmers rely on the Constitution as a basis for seeking relief. Their counsel submitted that they have a legitimate interest in the matter as tea farmers and the relief sought touches on their interests and that no prejudice will be suffered if they are joined to the proceedings as they had a right to be heard.

42. The County Government of Meru contends that collection of agricultural cess is a county government function and as such it is affected. Together with the County Government of Muranga, the matters in issue implicate their interests. The Council of Governors apply to be joined because the Council is established under the ***Intergovernmental Relations Act (No. 2 of 2012)*** and its members are affected because agriculture is a devolved function under the Constitution.

43. The respondents objected to the respective applications for joinders. They contended that there was no need to join 1000 individual farmers because their interests had already been taken care of by the tea factories which were already joined as interested parties. They submitted that the joinder of these parties would necessarily increase costs and burden the court with parties who would not have any additional value to the proceedings. It was submitted under the ***Inter-Governmental Relations Act***, the Council of Governors is an incorporated body and cannot be sued as it is not a juristic person.

44. Under **rule 5(d) of the Rules**, this court is empowered to order that the name of any party improperly joined, be struck out or to order joinder of parties, either on its own motion or upon the application of a party.

45. The 1000 tea farmers apply to join the matter as petitioners. While it is true that that they are directly interested in the matter and would benefit directly from the reliefs sought, we think that their interests are like that of any other tea farmer in Kenya. Their interests are well represented by the petitioner but also by the other interested parties who will present the issue in dispute. Further, we hold that this court has powers under **Article 23** of the Constitution to design a remedy that considers the interests and circumstances of each individual farmer. We therefore reject the application.

46. In deciding whether to join the interested parties, we are guided by principles we have outlined in paragraph 14 and 15 above. The **Rules** define an interested party as, “*a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation*”. In ***Trusted Society of Human Rights Alliance v Mumo Matemo & 5 Others [2014]eKLR*** the Supreme Court held that;

Consequently, an interested party is one who has a stake in the proceedings, though he or she was not a party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause...

47. The Supreme Court in ***Communications Commission of Kenya & 4 Others vs Royal Media Services Ltd. & 7 Others (2014) eKLR*** further dealt with the issue of joinder in the following words;

An Interested Party is one who has a stake in the proceedings, though he or she was not a party to the cause ab initio. He or she is the one who will be affected by the decision of the Court when it is

made either way. Such a person feels that his or her interests will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause. A party could be enjoined in a matter for the reason that;

i. Joinder of a person because his presence will result in the complete settlement of all the questions involved in the proceedings;

ii. Joinder to provide protection of the rights of a party who would otherwise be adversely affected in law;

iii. Joinder to prevent a likely course of proliferated litigation.

48. Although, the Council of Governors is an incorporated body established under the **Intergovernmental Relations Act**, we think that the fact that it is unincorporated does not necessarily deny it capacity to litigate claims of this nature under the Constitution. Under **Article 260** of the Constitution, a person includes a company, association or other body of persons whether incorporated or unincorporated. This petition raises issues of whether cess on agricultural produced levied complies with the Constitution. Under the **4th Schedule** to the Constitution, matters of agriculture fall within the province of the County Government. A decision on this matter may well have an effect beyond tea hence the Council of Governors would be an interested party.

49. The interests of the County Government of Muranga and County Government of Meru are hinged on the allegation that the 1st to the 7th respondents have unjustifiably been offering better prices for tea to farmers in the Eastern region to the disadvantage of farmers in the Western region hence violating the provision of **Article 27** of the Constitution. In our view, the County Government of Muranga and Meru have a sufficient interest in assisting the court determine this issue and are consequently allowed as interested parties.

Suo moto orders

50. In addition to what we have stated, we think it is the duty of the court to ensure that the matter is dealt with efficiently and effectively considering the issues we have outlined. In our view, the principal party to this petition is KTDA. The 2nd to 7th respondents are its subsidiaries and a reading of the plaint does not disclose any cause of action against these companies. We also think that any allegations against them can be competently dealt with by KTDA. We therefore strike out the 2nd to 7th respondents.

51. Paragraphs 167 to 178 of the petition deals with the recognition of KUSSTO, a registered trade union and its right to collectively bargain for small scale farmers. The petitioner avers that **Article 41(5)**, which protects the right of every union to engage in collective bargaining, has been violated. Without deciding whether the petitioner can litigate on behalf of a registered trade union, we find that the matter falls within the jurisdiction of the Employment and Labour Relations Court by dint of **Article 162(2)** of the Constitution as read with **section 12(a)** of the **Employment and Labour Relations Court Act**. This court therefore lacks jurisdiction to adjudicate on matters of labour relations hence paragraphs 167 to 178 of the petition are struck out.

52. We are also of the view that the issue raised particularly in so far as they implicate the imposition of taxes are matters of national government interest. In these circumstances, we think that the Attorney General as the principal legal advisor to the national Government is a necessary party.

Disposition

53. In summary, we find that the Governor Kericho is a proper party to these proceedings. We strike out the following respondents; 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22nd, 23rd, 24th, 25th, 26th and 27th. We join the Attorney General as an additional respondent. We also reject the application to join the 1000 farmers as interested parties but join the

Council of Governors, the County Government of Meru and the County Government of Murang'a as interested parties.

54. Consequently, the petitioner is granted leave to further amend the amended petition filed on 6th January 2016 with the Kenya Tea Development Agency as the 1st respondent, the Agriculture and Fisheries and Food Authority as the 2nd respondent and the Attorney General as the 3rd respondent. The amended petition shall be filed and served within 14 days and the parties served shall be at liberty to file their respective responses with 14 days of service.

55. We have anxiously considered the issue of costs. Costs are in the discretion of the court. The issue raised by the petitioner are not frivolous and the case has been brought in public interest. We are therefore reluctant to impose costs on the petitioner.

56. We thank the parties for their submissions and apologise if we did not quote each authority cited to us.

DATED and DELIVERED at KERICHO this 8th day of November, 2016

D.S MAJANJA

JUDGE

H.I ONGUDI

JUDGE

H. CHEMITEI

JUDGE