

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
JUDICIAL REVIEW DIVISION
JUDICIAL REVIEW APPLICATION NO. E363 OF 2025
(ORIGINATING MOTION)

CUP OF JOE LIMITED.....APPLICANT

VERSUS

TEA BOARD OF KENYA1ST RESPONDENT

PRINCIPAL SECRETARY, STATE

DEPARTMENT OF AGRICULTURE2ND RESPONDENT

AND

EAST AFRICAN TEA TRADE ASSOCIATION...INTERESTED PARTY

RULING ON CONSERVATORY ORDERS

1. This ruling determines prayers for conservatory orders sought in the Originating Motion dated 18/11/2025 and which application was canvassed interpartes, orally, yesterday the 25th day of November, 2025.
2. In considering an application for conservatory orders, the Court is required to assess whether the applicant has established a *prima facie* case with a likelihood of success but a *prima facie* case is not necessarily one that must succeed. The Court is also expected to determine whether there is a real danger of suffering prejudice or irreparable harm if the conservatory orders sought are not granted; and whether the public interest favours the issuance of such orders. In addition, the Court must ensure that the conservatory orders sought are necessary to preserve the subject matter of the litigation

and uphold constitutional and statutory values, while resisting the temptation to pre-determine the merits of the substantive motion.

3. The above parameters are now the well-settled principles guiding the issuance of conservatory orders in constitutional and judicial review matters. The leading authorities on the question of whether or not to grant conservatory orders include **Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 Others (Supreme Court)**, **Centre for Rights Education and Awareness (CREAW), Board of Management of Uhuru Secondary School & others [2014]e KLR**; **Wilson Kaberia Ngunja v The Judges and Magistrates Vetting Board & others Nrb HC Const Pet. 154 of 2016 [2016]eKLR**; **David Ndi & others v AG & others [2021] eKLR**, among other decisions which have been highlighted by the applicant's counsel in the digest filed in court.
4. In **Judicial Service Commission vs. Speaker of the National Assembly & Another [2013] eKLR**, the Court expressed itself as follows on this subject of grant of conservatory orders:

“Conservatory orders in my view are not ordinary civil law remedies but are remedies provided for under the Constitution, the Supreme law of the land. They are not remedies between one individual as against another but are meant to keep the subject matter of the dispute in situ. Therefore, such remedies are remedies in rem as opposed to remedies in personam. In other words they are remedies in respect of a particular

state of affairs as opposed to injunctive orders which may only attach to a particular person.”

5. The Supreme Court in *Gitirau Peter Munya vs. Dickson Mwenda Kithinji and 2 Ors* [2014] eKLR held:

“Conservatory orders’ bear a more decided public law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as the “prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success’ in the applicant’s case for orders of stay. Conservatory orders consequently, should be granted on the inherent merit of the case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.”

6. From the above judicial pronouncements, a conservatory order is thus a temporary order preserving the status quo ante.
7. I will apply the above principles to the facts of this case. The Applicant filed an Originating Motion dated 18th November, 2025, under the provisions of the Fair Administrative Action Act and Fair Administrative Action (Procedure) Rules, 2024, seeking judicial review orders of declaration, prohibition, certiorari and mandamus, all challenging the decision of the 1st respondent, allegedly instigated by the 2nd respondent and communicated to the applicant via letters dated 18th July 2025 Ref MOALF/LCD/9/29/1 and 28th July 2025 Ref TBK/RLS/1 respectively, in which the 1st respondent

revoked the applicant's registration certificate as a tea buyer /export/importer.

8. The reasons for such revocation are contained in the letter dated 28th July 2025 and are that the applicant had failed to conduct its business honestly, fairly, with integrity and professional skills appropriate to the nature and scale of activity. Secondly, that the applicant failed to declare tea exports promptly and correctly with the 1st respondent as required under the terms and conditions of the applicant's registration certificate.
9. Simultaneously, in the body of the Originating Motion, the Applicant also sought in prayers b, c and d, Conservatory Orders to lift the revocation of the registration certificate which in effect prevents the Applicant from participating in any tea trade platforms, auctions and/or logistical systems which are administered by the 1st Respondent.
10. The evidence availed by the applicant and annexed to its supporting affidavit sworn by Joseph Kamau Kiminda shows that the decision to revoke the registration certificate was made in July 2025, but the letters communicating the revocation were only sent to the applicant via courier on 7th November, 2025 and actually received by the Applicant on 10th November 2025. The applicant asserts that this was the first time that it was made aware of the decision to revoke its certificate of registration. It is that delay in communicating the decision to the applicant that was apparently responsible for what appeared to this Court to be a delay on the part of the

applicant in approaching this Court and hence the refusal by the court on 18/11/2025 to certify the applicant's application as urgent.

11. Thus, when the matter was placed before this Court as a duty Court on 18/11/2025, the Court declined to certify the matter as urgent owing to the delay in approaching the court, considering the time when the revocation of the registration certificate was done, in August 2025. This Court has since appreciated the reasons for the filing of the application long after the impugned decision was made and therefore proceeds to set aside and vacate the order declining to certify the application as urgent on the ground stated in its directions dated 18th November, 2025 and accordingly, the applicant's application dated 19th November, 2025 is certified as urgent and spent.

12. I now proceed to assess whether the applicant is entitled to the conservatory orders sought. The applicant pleads and submits that it was exporting tea to and importing tea from Kenya to Iran before the revocation of its registration certificate by the 1st respondent Tea Board of Kenya. the role of the 1st respondent in the importation and export of tea is contained in section 5 of the Tea Act Cap 343 of Laws of Kenya which provides for the functions of the 1st respondent to include, material to these proceedings:

5(j) regulate the sale, import and exports of tea;

(k) develop, implement and coordinate a national tea marketing strategy;

(l) prescribe the maximum period and minimum amount for payment of green leaf;

- (m) promote and advise on strategies for value addition and product diversification;*
- (n) promote demand and consumption of tea locally and internationally;*
- (o) identify market needs and trends and advise the Cabinet Secretary on issues related to national and international tea trade;*
- (p) collaborate with national and international trade bodies on tea related matters;*
- (q) monitor, conduct surveillance and enforce compliance with tea standards, this Act and any regulations made under it.*

13. On registration of tea buyer, exporter or importer, section 30 of the Tea Act provides that:

30. Registration of a tea buyer, exporter or importer

- (1) A person who intends to carry on the business of tea buying, tea exporting or tea importing shall register with the Board.*
- (2) A person shall not carry on the business of buying tea, exporting or importing tea unless the person is registered in accordance with this Act.*
- (3) The Cabinet Secretary shall prescribe regulations providing for the procedure for registration of tea buyers, tea exporters and tea importers and the appeal process in case of refusal or denial of registration.*
- (4) A person who contravenes this section commits an offence and shall on conviction be liable to imprisonment for a term not exceeding three years or to a fine not exceeding five million shillings or to both.*

14. From the above provisions of the law, it is clear that the 1st respondent is the regulator of the tea industry and any importer or exporter must be registered by the 1st respondent before carrying out the trade.

15. That said, the evidence placed on record by both parties and in their oral submissions shows that the applicant did not have a registration certificate under the Tea Act authorising the export/import activity to take place during the financial year 2024/2025.
16. Although there is no evidence of prior cancellation of that registration certificate issued in the years prior to the 2024/2025 trading year, it is apparent that the certificate issued prior to 2024/2025 year expired and therefore, an expired certificate by effluxion of time cannot be in existence or be available or capable of being revoked and neither can such a non-existent certificate of registration or even a license which has lapsed be capable of being reinstated whether by the court or by the regulator.
17. The applicant's explanation is that, it could not obtain the registration certificate for the said year and that neither has it obtained one for the present year, because, the Tea Board of Kenya, the 1st respondent herein, allegedly prevented the applicant's access to the online registration platform even though the applicant made payment for renewal of the currently expired certificate. As a result of such lack of the certificate of registration, the applicant encountered significant obstacles in getting its shipment permit approvals.
18. That several meetings between the applicant and the 1st respondent did not resolve the impasse, to no avail. It was in that situation that the applicant claims that it was not afforded procedural fairness by the Tea Board of

Kenya, 1st respondent herein, when revoking the registration certificate contrary to Articles 47 and 50 of the Constitution and the Fair Administrative Action Act. Further, that its legitimate expectation to be heard and to be promptly informed of the decision revoking its registration certificate was violated.

19. It is submitted that the revocation has crippled the applicant's business and that no prejudice will be suffered by the respondents because the applicant complied with the law.

20. The applicant prays for grant of conservatory orders suspending the implementation of the impugned letters that communicated to it the revocation of registration certificate so as to preserve the status quo ante allowing the applicant to continue participating in the tea trade pending hearing and determination of the substantive Originating Motion.

21. The 1st Respondent opposes the prayers for grant of the conservatory orders. It contends that the application by the Applicant is not for conservatory orders but rather for the issuance of a registration certificate that allows the Applicant to trade in tea through regulated platforms, which only the 1st respondent Tea Board of Kenya, has statutory authority to grant.

22. The 1st Respondent maintains that the registration certificate claimed by the applicant is non-existent and that the applicant ought to have sought the certificate for last year first and that since the certificate period for 2024/2025 was not obtained, if this Court grants interim conservatory orders,

it will be an order in vail because the registration certificate does not operate retrospectively.

23.The 1st respondent further asserts that if this Court were to grant conservatory orders, it would be giving a licence to the Applicant to trade in tea, which would be *ultra vires*, since such acts of issuance of the registration certificate or licensing are specifically provided for under the Tea Act.

24.It was further submitted that the applicant had not applied for the 2025/2026 registration certificate which it ought to have applied before 30th June, 2025 hence an order by this court at this stage as sought in the application for conservatory orders will mean that the court is applying for the registration on behalf of the applicant.

25.Counsel for the 1st respondent submitted that this Court cannot issue an order for a registration certificate where no application for a registration certificate renewal had been made by the applicant, to the 1st respondent regulator. He maintained that the applicant cannot trade without a registration certificate issued by the 1st respondent.

Issues for Determination

26.Having considered the respective parties' positions as pleaded and as submitted orally, for and against the prayers for conservatory orders, the primary issue for determination at this stage is whether the applicant has

satisfied the threshold for the grant of conservatory orders in circumstances where it did not hold a valid registration certificate at the time the impugned decision was made.

27. Conservatory orders are intended to preserve the subject matter of litigation, uphold constitutional values, prevent irreversible harm, and ensure that justice is not rendered nugatory. The well-established criteria as set out in the above cited cases are: (a) establishment of a prima facie case, (b) demonstration of real risk of prejudice or irreparable harm, and (c) that the public interest tilts in favour of granting the orders.

28. It is not in dispute, from the material placed before this Court that the applicant had no valid registration certificate issued under the Tea Act at the time that the 1st respondent was purporting to cancel the registration.

29. Again, from the oral submissions of counsel for the respective parties, the reason for the lack of registration could have been either that the registration certificate had expired and there was no renewal for the 2024/2025 trading year or that the online platform was said to be not working for the applicant who was blocked by the 1st respondent from accessing it since the registration process can only be done online. This latter situation could also be the reason that the applicant has no current registration certificate.

30. Regardless of the reason, it is beyond argument that at that time, the applicant did not possess a valid certificate issued under the Tea Act to enable it trade.

31. This Court must therefore consider whether it has the power to grant conservatory orders, which would allow the applicant to continue operating in a regulated industry without having the proper statutory certificate.
32. In determining this issue, this Court is also alive to the fact that the applicant is asking the Court to maintain the "status quo," wherein the applicant continued trading in tea imports and exports prior to the receiving of the letter communicating the revocation of the nonexistent registration certificate, and which trading was at the discretion of the 1st respondent.
33. However, in the view of this Court, maintaining the "status quo" means that the applicant could continue to operate commercially without having a valid statutory registration certificate or a trading licence as the case may be. The status quo in this case was that the applicant's registration certificate for 2024/2025 had not been issued and the period of that certificate of registration has since lapsed on 30th June, 2025.
34. The applicant has not yet obtained the certificate of registration for the 2025/2026 trading year and it attributes this lack of the registration certificate to the 1st respondent blocking it from accessing the online registration portal.
35. In my most considered view, it would not be within the power of this Court to maintain such a "status quo." And legitimize a situation which had been rendered illegitimate by effluxion of time.

36. Conservatory orders as stated earlier, cannot be used to validate illegal acts and neither is it open to this Court to grant or extend to an applicant a statutory registration certificate or license or authorisation that the applicant does not possess, even if it is only for a short period of time.

37. In effect, granting the conservatory orders sought would be tantamount to this Court issuing a registration certificate by judicial fiat. This would be unlawful, as it would usurp the statutory power of the Tea Board of Kenya and would violate the regulatory framework established by the legislature. The situation would however be different had the applicant been in possession of the registration certificate which was revoked midway and where the Court was being asked to reinstate the registration status which was revoked.

38. I reiterate that in the instant case, it is undisputed that the applicant did not possess a valid registration certificate under the Tea Act at the material time of the alleged revocation. Whether this was due to expiry or the alleged inaccessibility of the online renewal platform, the incontrovertible fact remains that no valid registration certificate existed and therefore this Court cannot legitimately preserve a status that never existed.

39. Courts have consistently held that they cannot grant interim relief that effectively confers substantive benefits not currently enjoyed in law, nor can they exempt a party from statutory compliance. It is for that reason that principles like legitimate expectation or substantial compliance cannot be

relied upon to shield a person from complying with clear, substantive provisions of the law or the Constitution. It is not enough that an expectation should exist; it must in addition be legitimate, reasonable and not contrary to the express provisions of the law.

40. In addition, the applicant has in the Originating Motion prayed for an order of mandamus compelling the respondent to issue it with the registration certificate. Given that the applicant has a pending substantive application for a more direct form of relief (mandamus), this Court cannot issue a conservatory order that confers mandamus indirectly, especially when no such registration certificate existed originally before its alleged revocation and that the revocation in itself, in the view of this Court, revoked a nonexistent certificate. Granting the conservatory order would therefore amount to prematurely granting substantive relief (mandamus) to the applicant on an interlocutory basis.

41. Furthermore, the requested conservatory order has no practical effect, as the period within which the applicant requests to receive this certificate has now lapsed (the 2024/2025 financial year) and therefore this court cannot restore a registration which has lapsed.

42. The applicant may well have an arguable case regarding procedural fairness, delay in communication, or lack of administrative propriety and these matters shall be fully interrogated at the hearing of the substantive Originating Motion. However, at this interlocutory stage, this Court cannot

issue orders that override clear statutory requirements or that legitimise operations conducted without lawful authorisation.

43. Given the absence of a valid registration certificate capable of preservation or restoration, and considering the statutory context, this Court finds that the applicant has not established a case for grant of conservatory orders sought.

44. Finally, as these proceedings are time bound to be determined within ninety days of the date of filing, the Court will fast track the matter, with the parties already demonstrating compliance with the directions issued on 18th November, 2025.

45. In the end, and for the foregoing reasons, the application for conservatory orders is declined.

46. The substantive motion shall proceed to hearing on its merits on a priority basis, this being a time bound application.

47. Costs if any, shall be in the substantive Originating Motion.

48. Orders accordingly.

Dated, Signed and Delivered at Nairobi this 26th Day of November, 2025

**R.E. ABURILI
JUDGE**