

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
PETITION NO. 06 OF 2016

WEST KENYA SUGAR CO. LTD-----PETITIONER

VERSUS

BUSIA SUGAR INDUSTRIES LIMITED-----1ST
RESPONDENT

AGRICULTURAL FOOD AND FISHERIES
BOARD-----2ND
RESPONDENT

NATIONAL ENVIRONMENT MANAGEMENT
AUTHORITY-----3RD
RESPONDENT

RULING

BACKGROUND

1. Vide a letter dated 2nd December 2021, the Petitioner through her Advocates on record M/S OLENDU, ORARE & SAMBA ADVOCATES wrote to the Deputy Registrar of this Honourable court requesting that the issues of the decree in respect of the Judgment of this Court be sorted out first before the Bill of costs is taxed. The Petitioner further noted that pursuant to order 21 Rule 8(2) CPR, they forwarded a draft decree to the parties herein on 2nd November 2021 but the Advocates for the 2nd and 3rd Respondents only approved the draft decree save for the 1st Respondent who declined despite having been duly served via e-mail of 11th

November, 2021 on grounds that the same ought to be determined by court.

2. Pursuant to the said letter, the Deputy Registrar has referred this matter to this Honourable court for directions under Order 24 (4) CPR.
3. I have perused the Judgment of this Honourable Court delivered on 10th March 2017 by my predecessor Hon. Mr. Justice S. Mukunya. I have also looked at the draft decree by the Firm of M/S OLENDU, ORARE & SAMBA ADVOCATES LLP. The Petitioner had sought for the following orders;
 - a) A declaration be issued to declare that within the meaning of Articles 27, 47 and 69 of the Constitution read with section 14 and 15 of the Sugar Act, 2001 the registration of the 1st Respondent as a Sugar Miller is illegal.
 - b) THAT the registration of the 1st Respondent as a Sugar Miller before the Kenya Sugar Board ascertained, cane availability within Busia County constitutes a violation of the Petitioners right under Article 40 of the Constitution to secure raw materials and benefit from its investment in a sugar mill in Busia County.
 - c) THAT a declaration be issued to declare that under Article 27 and 47 of the Constitution the Petitioner had legitimate expectation that the Kenya Sugar Board would not register another company to establish a sugar factory in Busia County in disregard of the provisions of the Sugar Act, 2001 and Regulations thereunder.

- d) THAT an order of Mandatory injunction be issued to compel the 1st Respondent to dismantle its Sugar Factory under construction in Busia County and relocate it to any other suitable cane growing zone.
- e) A declaration that the commencement of operations by the 1st Respondent in respect of the project in constructing a sugar factory complex in Busibwabo Location Matayos Sub-County in Busia County based on misrepresentation of material facts in regard to availability of sufficient sugar cane is unconstitutional, illegal and contravenes the provisions of sections 14 and 15 of the sugar Act 2001 and sections 16 of the Crops Act read with Articles 27, 40 and 67 of the Constitution.
- f) A DECLARATION that the 2nd Respondent and 3rd Respondent's approval of the 1st Respondent to construct a sugar factory within Busia County is illegal, unconstitutional; and contravenes provisions of section 16 of the crops Act, section 58 of EMCA Act and Article 69 of the Constitution.
- g) A Declaration that the right of the Petitioner, its workers and sugar cane suppliers to a clean and healthy environment as guaranteed by Article 42 and 43 of the Constitution of Kenya has been violated by the Action of the 1st Respondent in irregularly issuing an EIA license to the 3rd Respondent.
- h) AN ORDER of certiorari be issued to bring into this honourable court and quash the EIA License NO. 0020469 issued by the 2nd Respondent.

- i) AN ORDER of certiorari be issued to bring into this Honourable court and quash the Kenya Sugar Board registration certificate NO. KSB-MREG0016 issued by the 3rd Respondent.
 - j) AN ORDER of permanent injunction restraining the 3rd Respondent from construction a sugar factory on land parcel number Bukhayo Ebusibwabo/927 and or in any other area within Busia County.
 - k) General Damages.
 - l) Costs of the Petition.
4. After hearing the petition and upon considering the evidence adduced by the parties, this court issued the following eleven (11) orders;
- 1. THAT a Declaration be and is hereby issued to declare that within the meaning of Articles 27, 47 and 69 of the Constitution read with section 14 and 15 of the Sugar Act, 2001 the registration of the 1st Respondent as a sugar miller is illegal.
 - 2. THAT the registration of the 1st Respondent as a sugar miller before the Kenya Sugar Board ascertained cane availability within Busia County constitutes a violation of the Petitioners right under Article 40 of the Constitution to secure raw materials and benefit from its investment in a sugar mill in Busia County.
 - 3. THAT a Declaration be and is hereby issued to declare that under Articles 27 and 47 of the Constitution, the Petitioner

had a legitimate expectation that the Kenya Sugar Board would not register another Company to establish a sugar factory in Busia County in disregard of the provisions of the Sugar Act, 2001 and the Regulations thereunder.

4. A DECLARATION be and is hereby issued that the commencement of operations by the 1st Respondent in respect of the project in constructing a sugar factory complex in Busibwabo Location, Matayos Sub-County in Busia County based on misrepresentation of material facts in regard to availability of sufficient sugar cane is unconstitutional, illegal and contravenes the provisions of Sections 14 and 15 of the Sugar Act, 2001 and Sections 16 of the Crops Act read with Articles 27, 40 and 67 of the Constitution.
5. AN ORDER of Certiorari be and is hereby issued to bring into this Honourable Court and quash the EIA License NO. 0020469 issued by the 2nd Respondent.
6. AN ORDER of Certiorari be and is hereby issued to bring into this Honourable Court and quash the Kenya Sugar Board registration Certificate NO. KSB-MREG-0016 issued by the 3rd Respondent.
7. AN ORDER of permanent injunction restraining the 1st Respondent from constructing a sugar factory on land parcel Number BUKHAYO/EBUSIBWAO /927 and or any other area within Busia County.

8. THAT the 2nd and 3rd Respondents shall deal with the issue of licensing raised herein by the Petitioner under the Environmental Management Coordination Act, 1999 and the Crops Act, 2013.
9. No damages were proved by the Petitioner and as such there is no award for damages.
10. The Petition against the 2nd and 3rd Respondents is dismissed with no orders as to costs.
11. The Costs of the Petition shall be to the Petitioner paid by the 1st Respondent.
5. Order 21 Rule 8(2)(3) & (4) of the CPR which is the applicable law provides as follows;

“(2) Any party in a suit in the High Court or Courts of equal status may prepare a draft decree and submit it for the approval of the other parties to the suit, who shall approve it with or without amendment, or reject it, without undue delay; and if the draft is approved by the parties, it shall be submitted to the Registrar who, if satisfied that it is drawn up in accordance with the judgment, shall sign and seal the decree accordingly.”

“(3) If no approval of or disagreement with the draft decree is received within seven days after delivery thereof to the parties, the registrar, on receipt of notice in writing to that effect, if satisfied that the draft decree is drawn up in accordance with the judgment, shall sign and seal the decree accordingly.”

“(4) On any disagreement with the draft decree any party may file the draft decree marked as “for settlement” and the Registrar shall thereupon list the same in chambers before the judge who heard the case or if he is not available, before any other judge, and shall give notice thereof to the parties.”

6. The Petitioner in his letter to the Deputy Registrar dated 2nd December 2021 indicated that he forwarded a draft decree to the parties on 2nd November 2021 but only the 2nd and 3rd Respondents through their advocates on record approved the same but the 1st Respondent did not. These averments have not been denied by the 1st Respondent. I find that after the 1st Respondent received the draft decree and failed to approve or make comments disagreeing with the same, the Deputy Registrar upon receipt of a Notice to that effect should have exercised his/her discretion by signing and sealing the same accordingly within seven (7) days upon satisfying herself that the draft decree is drawn up in accordance with the judgment under Order 21 Rule 8 (3) CPR.
7. As I write this ruling, the 1st Respondent has not raised any objection or disagreement to the draft decree drawn by the Petitioner. In my view, the draft decree drawn by the Petitioner has been drawn up in accordance with the judgment of this Honourable court.

8. Consequently, I hereby direct the Deputy Registrar of this Honourable Court to draw, sign and seal the decree in terms of the draft decree presented by the Petitioner and approved by the 2nd and 3rd Respondents. The delay in approving the decree from 10th March 2017 is highly regretted.

READ, DELIVERED and **SIGNED** at Bungoma this 27th November, 2025

HON. E.C CHERONO

ELC JUDGE

In the presence of;

1. Mr. Wendoh Lubulellah for the 2nd Respondent
2. Mario H/B for Olendo for the Petitioner.
3. 1st Respondent/Advocate-absent.
4. Bett C/A.