

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
CONSTITUTIONAL PETITION NO. E006 OF 2024

IN THE MATTER OF PETITION UNDER ARTICLES 1, 3(a), 10, 19, 20, 21, 22, 23, 26, 27(4), 28, 29 (c), 43 (1) (a), 73, 88(4), 165 (3), 258, OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF SECTION 22 OF THE TEA ACT, NO. 23 OF 2020 LAWS OF KENYA

AND

IN THE MATTER OF REGULATION 3 AND 11(C), (E) OF THE TEA (TEA FACTORY LIMITED COMPANY ELECTIONS) REGULATIONS, 2021

AND

IN THE MATTER OF SECTION 21, THE PUBLIC OFFICER ETHICS ACT, CAP 183 LAWS OF KENYA

AND

IN THE MATTER OF ELECTION OF MR. JOHN CHEBOCHOQ ON 28TH JUNE 2024 AS THE DIRECTOR OF TEGAT/TOROR TEA FACTORY, AINAMOI ZONE

BETWEEN

USIKIMYE CBO1ST PETITIONER

**WANGU KANJA FOUNDATION(K) REGISTERED.....2ND
PETITIONER**

**OXFAM.....3RD
PETITIONER**

**THE AFRICAN GENDER AND MEDIA INITIATIVE TRUST (GEM)
REGISTERED TRUSTEES.....4TH
PETITIONER FLONE
INITIATIVE.....5TH PETITIONER**

AND

**MR. JOHN CHEBOCHOK.....1ST
RESPONDENT**

**TEGAT TEA FACTORY LIMITED.....2ND
RESPONDENT**

**KENYA TEA DEVELOPMENT AGENCY.....3RD
RESPONDENT**

**TEA BOARD OF KENYA4TH
RESPONDENT**

**INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION.....5TH
RESPONDENT**

AND

**LAW SOCIETY OF KENYA.....1ST INTERESTED
PARTY**

UTU WETU TRUST.....2ND INTERESTED PARTY

ASSOCIATION OF GRASSROOT JOURNALISTS KENYA.....3RD INTERESTED PARTY

ADVOCATES FOR SOCIAL CHANGE-KENYA.....4TH INTERESTED PARTY

INDEPENDENT MEDICO-LEGAL UNIT.....5TH INTERESTED PARTY

KATIBA INSTITUTE.....6TH INTERESTED PARTY NATIONAL GENDER AND EQUALITY COMMISSION.....7TH INTERESTED PARTY KENYA

NATIONAL COMMISSION ON HUMAN RIGHTS.....8TH INTERESTED PARTY

CENTRE FOR RIGHTS EDUCATION AND AWARENESS (CREAW)9TH INTERESTED PARTY

KENYA LEGAL AND ETHICAL ISSUES NETWORK ON HIV/AIDS10TH INTERESTED PARTY

JUDGMENT

1. The subject matter of this Judgment is the petition dated 5th July, 2024 whereof the Petitioners sought for the following reliefs;

a) A DECLARATION THAT the 1st Respondent violated Articles 10 (2), 26, 28 and 73 of the Constitution and is therefore unfit to hold any public office in the Republic of Kenya.

b) A DECLARATION THAT the 1st Respondent is consequently ineligible to contest for any public office and is consequently barred from holding any public office.

c) A DECLARATION THAT the decision by the 2nd, 3rd 4th and 5th Respondents to clear the 1st Respondent to contest for the position of Director of Tegat/Toror Tea Factory, Ainamoi Zone and the election of the 1st Respondent to the said position did not adhere to the standards,

values and principles set out in Articles 10(2), 26, 28, and 73 of the Constitution and is therefore unconstitutional, illegal and therefore a nullity.

d) AN ORDER of injunction and/ or conservatory order do issue restraining the swearing into office the 1st Respondent as the Director of Tegat/Toror Tea Factory, Ainamoi Zone.

e) AN ORDER directing the 2nd, 3rd, 4th and 5th Respondents to conduct fresh elections for the Directorship of Tegat/Toror Tea Factory, Ainamoi Zone, and ensuring that all candidates meet the requirements under Chapter 6 of the Constitution.

f) AN ORDER directing the Kenya National Human Rights and Equality Commission to investigate the systematic issues of sexual exploitation in the Tea Industry as per their mandate under Article 59 of the Constitution of Kenya.

g) Costs of the Petition be made in favour of the Petitioners.

h) Any other or further order that this honourable court may deem it fit to grant.

Petitioners' Case

2. A brief factual background of the petition is that the Petitioners are Non - Governmental Organizations under the Coalition of Organizations Working on Sexual Violence in Kenya and crusaders of human rights and of public interest and that the instant petition was brought under articles 22 and 258 of the Constitution of Kenya.
3. The petition is against the election of one Mr. John Chebochok hereinafter referred to as (the 1st Respondent), as a Director of Tegat/Toror Tea Factory, Ainamoi Zone on the 28th June, 2024, following a documentary aired on 20th February 2023 by BBC News Africa titled "***Sex for Work: The True Cost of Our Tea - BBC Africa Eye,***" which exposed Mr, John Chebochok for abusing his power and office.

4. The documentary revealed that he sexually exploited and molested women who worked and those who sought employment at Finlays Company. It is the petitioner's case that Finlays Company acknowledged the above allegations against the 1st Respondent and immediately terminated his contract and barred him from all Finlays' sites.
5. It is also the petitioners case that in spite of these allegations the 2nd - 5th Respondents cleared and authorized Mr. John Chebochok to contest for the position of Director of Tegat/Toror Tea Factory, Ainamoi Zone and that elections were done on the 28th day of June, 2024 and the 1st Respondent was elected as Director of Tegat/Toror Tea Factory, Ainamoi Zone.
6. The crux of the petition is that the 1st respondent's actions of sexually abusing and molesting women as per the BBC expose violates article 10, 19, 20, 26, 27 (4), 28, 29 (c), 43 (1) (a) and 73 of the Constitution of Kenya and further that the clearance and election as a Director of Tegat/Toror Tea Factory, Ainamoi Zone violates the national values and

principles of governance provided for under articles 10 and 73 of the Constitution of Kenya.

7. The instant petition therefore seeks to question the constitutionality of the clearance of the 1st respondent to contest for Directorship of Tegat/Toror Tea Factory, Ainamoi Zone and the subsequent election to the said position. The petitioners maintain that for the election of the 1st respondent to be constitutionally valid; the procedural and substantive tests must be met.
8. The petition is supported by a supporting affidavit sworn by **Njeri Migwi, a co-founder of Usikimye CBO**, the 1st Petitioner and on behalf of the co-petitioners. In the said affidavit, the petitioners reiterated the factual and legal background that necessitated the filing of the instant petition.
9. The petitioners maintain that they have locus to bring the suit as provided for in article 258 of the Constitution and further that article 165 (3) of the Constitution clothes this

Court with the jurisdiction to hear any question with respect to interpretation of the Constitution.

Respondents' Case

10. ***John Chebochok, the 1st respondent*** herein filed a replying affidavit in response to the petition.
11. He deposes that he resigned vide a letter dated 12th January, 2017 and vide a letter dated the 17th January, 2017 and that the resignation was acknowledged by the then managing Director, Simeon Hutchinson. He stated that he terminated the contract he had with Finlays Company to pursue other personal interests and therefore it is misleading to indicate to this court that Finlays Company terminated his contract.
12. He deposes that he was cleared to vie as a Director because his innocence was rightly presumed, despite the damaging documentary and that IEBC followed due process and was satisfied with regards to his qualifications.

13. He also stated that the Tea Board of Kenya had an elections manual that it handed over to the IEBC and the said manual was followed by the IEBC to the letter.
14. He further deposes that he has neither been charged nor convicted before any competent authority with regard to the false, outrageous and damning allegations in the impugned documentary.
15. It is therefore his disposition that the law pertaining to his election was followed to the latter, both substantively and procedurally and further that he met all the requirements that occasioned him to be validly and democratically elected by the farmers as the Director of Tegat/Toror Tea Factory, Ainamoi Zone and urged this court to dismiss and disallow the entire petition dated 5th July, 2024 with costs, as the same is baseless premature, biased and non-factual.
16. The **2nd respondent** filed a replying affidavit in response to the petition dated 5th July, 2024. The replying

affidavit was sworn by **Dickson Kirui** the Company Secretary of Tegat Tea Factory Limited.

17. He avers that the election exercise was conducted on 28th June, 2024 and that the exercise was conducted by the IEBC pursuant to a directive issued by the industry regulator, the Tea Board of Kenya and that Tegat Tea Factory Limited the 2nd Respondent herein played no role whatsoever in the vetting and nomination of the 1st Respondent.

18. He avers that the 2nd Respondent is a limited liability company whose affairs including but not limited to, election and appointment of its Directors; are governed by its Articles and Memorandum of Association. Therefore the election of the 1st Respondent is construed as a nomination to serve in the Respondent's Board of Directors representing Ainamoi Zone and that pursuant to the 2nd Respondent's Articles and Memorandum of Association as well as Section 132 of the Companies Act, the 1st Respondent would only be deemed as duly elected and

appointed to serve as Director subject to the shareholders' approval and/or endorsement pursuant to a vote to be taken during a Special General Meeting.

19. He avers that the 2nd Respondent had scheduled a Special General Meeting on the 18th July, 2024 which meeting would have granted the 2nd Respondent's shareholders a chance to deliberate on the 1st Respondent's fitness to hold office as their Director and that the said Special General Meeting did not take place as scheduled owing to injunctive orders issued by this Honourable Court and therefore the 2nd Respondent's shareholders are yet to exercise their rights to debate and vote on the eligibility and fitness of the 1st Respondent.

20. The **4th respondent** filed a replying affidavit in response to the petition dated 5th July, 2024. The replying affidavit was sworn by **Willy K.Mutai** the Chief Executive Officer of Tea Board of Kenya.

21. He attests that they received numerous complaints about the suitability and moral fitness of the 1st respondent

from various tea industry stakeholders and subsequently he wrote a letter to IEBC, the 5th respondent requesting it to postpone the elections of the Ainamoi Electoral Zone within Tegat Tea Factory Company to a later date to allow the relevant government agencies to investigate the allegations levelled against the 1st respondent.

22. It is his attestation that they followed the procedural aspects of the elections to the extent of appointing an independent electoral body, generally overseeing the elections and registering reservations such as the ones relating to the candidature of the 1st respondent and that the substantive aspect of the elections, which includes clearing of candidates and issuing them with clearance certificates was squarely a mandate and/or function of IEBC, the 5th Respondent herein.

23. The 3rd and 5th respondents did not file their responses to the instant petition.

Interested Parties' Case

24. ***The 1st Interested Party*** filed a replying affidavit in support of the petition which was sworn by ***Florence Muturi***, the Chief Executive Officer of the Law Society of Kenya
25. She maintains that Kenya is a signatory to the key international women's human rights agreements including but not limited to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and has made great strides in developing and implementing SGBV legal, policy and institutional framework.
26. She maintains that the Constitution of Kenya being the supreme law of the land promotes equality and freedom from discrimination and therefore the coercion by the 1st Respondent seeking forceful sexual favours by such persons as vulnerable women seeking employment, as a condition to employment, amounts to discrimination and flies against the face of Article 27 of the Constitution of Kenya.
27. She is adamant that on account of Kenya belonging to the body of nations, the State owes a higher duty towards

implementing and complying with international law and conventions which our Constitution provides as a source of law. She further argued that this Court ought to be keen to interpret the law as outlined herein and elsewhere in the pleadings before it to give full effect to the spirit and letter of the laws in Kenya and betterment of all her people.

28. **The *2nd Interested Party*** filed a replying affidavit in support of the petition which was sworn by ***Yvonne Anyango Oyieke*** the Executive Director at ***Utu Wetu Trust***.

29. She contends that there are robust international and regional human rights instruments to which Kenya is a state party and therefore obligated to prevent sexual gender based violence, afford protection to victims and promptly investigate and prosecute these cases as and when they occur.

30. She contends that 1st Respondent's gross misconduct as a perpetrator of sexual and gender-based violence and subsequent election offends the spirit of article 10 (2), of

the Constitution of Kenya 2010 which sets the national values to include human dignity, human rights and protection of the marginalized, good governance, integrity, transparency and accountability, article 27 which provides that women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres, article 28 which provides that every person has inherent dignity and the right to have that dignity respected and protected, article 29 which provides for every person has the right to freedom and security of the person, which includes the right not to be subjected to any form of violence from either public or private sources; and article 73 which highlights personal integrity, competence, and suitability as crucial to an individual holding public office including the 1st Respondent implicated herein.

31. She aptly pointed out that a reading of the Second Schedule of the Tea Act, 2020, and section 11 (e) of the Tea (Tea Factory Limited Company Elections) Regulations

2021 outlines the criteria for assessing the professional and moral suitability of persons proposed to be Directors inter alia.

32. **The 5th Interested Party** filed a replying affidavit in support of the petition which was sworn by **Grace Wangechi Kahuria** the Executive Director of the **Independent Medico-Legal Unit (IMLU)**.

33. She asserts that they are in support of the instant petition which seeks to bar the confirmation of the 1st Respondent as the Director of Tegat Tea Factory for failing to meet the national values and integrity standards set in the Constitution. The chief ground of his unsuitability is based on the BBC News Africa documentary that aired on 20th February, 2023 titled "Sex for Work: The True Cost of our Tea" which adversely implicates the 1st Respondent for sexually exploiting women who worked and sought for employment at James Finlays Company.

34. The documentary makes damning revelations of the 1st Respondent who was leading over 400 employees while

serving at Finlays Company and that as a result of the acts of the 1st Respondent stated in the preceding paragraphs, the survivors suffered psychological trauma and mental anguish.

35. ***The 6th Interested Party*** filed a replying affidavit in support of the petition which was sworn by ***Emily Kinama*** the Litigation Manager at Katiba Institute.

36. She maintains that the 1st Respondent's actions of demanding sex from women who worked at the tea farm in exchange for work and those who sought employment at the tea farm as well as having sex with some of the women, amounted to sexual violence against women and were discriminatory, contrary to Article 27(4) of the Constitution of Kenya and violated their right to human dignity as provided under Article 28 of the Constitution.

37. She maintains that the constitutionality of Mr. Chebochok's clearance to contest for the directorship of the Tea Factory in light of Article 73(2) of the Constitution which provides for the guiding principles on leadership and

integrity, including selection based on suitability, which the 1st Respondent falls short of owing to engaging in sexual violence against women and Section 11 (e) of the Tea (Tea Factory Limited Company Elections) Regulations, 2021 which invites Chapter 6 of the Constitution to guide the qualification of candidates for the Tea Factory directorship, by stipulating that the person eligible to vie for elections shall meet the requirements of Chapter 6 of the Constitution on leadership and integrity.

38. She maintains that the actions of the 2nd to 5th Respondent violated the national values and principles such as upholding human dignity, equity, social justice, human rights, and non-discrimination as provided for under Article 10 of the Constitution by clearing and authorizing the 1st Respondent to contest for the position of Director of Tegat/Toror tea factory Ainamoi Zone.

39. ***The 10th Interested Party*** filed a replying affidavit in support of the petition which was sworn by ***Allan***

Maleche Executive Director of the Kenya Legal and Ethical Issues Network on HIV and AIDS (KELIN).

40. He contends that the sexual exploitation of women by the 1st Respondent violated the victims' right to human dignity enshrined in Article 28 of the Constitution and therefore that in view of the allegations made against the 1st Respondent, it was imperative that he not be cleared to vie for any position of leadership or power, and he therefore ought not to have been cleared as a candidate for election, or even elected to the position of Director of Tegat Tea Factory Limited.

41. **The 11th Interested Party** filed a replying affidavit in support of the petition which was sworn by **Anne W. Ileri** the current Executive Director of the Federation of Women Lawyers in Kenya (**FIDA - KENYA**).

42. She maintains that they are in support of the instant petition which seeks to bar the confirmation of the 1st Respondent as a Director of Tegat Tea Factory for failing to meet the national values and integrity standards set in the

Constitution. The chief ground of his unsuitability is based on the BBC News Africa documentary that aired on 20th February, 2023 titled "Sex for Work: The True Cost of our Tea" which adversely implicates the 1st Respondent for sexually exploiting women who worked and sought for employment at James Finlays Company.

43. She maintains that despite these allegations of sexual violence including sexual harassment, and his ensuing dismissal from James Finlays Company, the 5th Respondent cleared him for an election position as a Director of the Kenya Tea Development Authority (**KTDA**) for the Tegat/Toror Tea factory.

44. The elections were held on 28th June, 2024 where the 1st Respondent was successfully declared a Director of Tegat/Toror Tea factory in Ainamoi zone.

45. She is adamant that in the circumstances to allow the 1st Respondent to occupy the position of Director of Tegat/Toror Tea factory in Ainamoi zone, would be

unconstitutional, illegal and a gross violation of Kenya's obligation to protect, prevent and investigate sexual offences but also a drawback to the rights of vulnerable women in Kenya.

46. The court directed that this matter proceed via viva voce evidence. **Pw. 1**, the Executive Director of **Usikimye** an Organization that seeks to end sexual gender based violence, testified that on February, 2023, BBC News, Africa aired a documentary title “**Sex For Work**” and after watching the documentary, they came to the ground to confirm the veracity of the allegations that the 1st Respondent was using his position to sexually harass women.

47. PW.1 testified that they offered psycho-social support to the victims and while this was happening, they saw election posters for Toror Tea Factory Directors and the 1st Respondent was one of the contestants cleared to vie for elections.

48. She testified that she wrote to K.T.D.A. and the Tea Board requesting them to postpone the elections and that they wrote back stating that the election was under the management of I.E.B.C.

49. PW.1 said that they wrote to I.E.B.C requesting them to postpone the elections. The I.E.B.C. wrote back saying they had a Court Order with timelines to hold the elections. The elections went ahead and the 1st Respondent won, which necessitated the instant petition citing the grievous nature of the allegations levelled against the 1st Respondent barred him from holding a Public Office and faulting the 2nd to 5th respondents for failing to carry out due diligence, thereby allowing the 1st Respondent to contest. She testified that at the time the documentary was aired, the 1st Respondent worked for Finlays, however, his employment was terminated.

50. On ***cross examination, Pw. 1*** confirmed that at the time of filing the instant petition there was no conviction, decision or finding that the 1st Respondent had violated the

provisions of Chapter Six of the Constitution or any other law.

51.PW. 1 confirmed that the IEBC which was appointed by the Tea Board to conduct elections could not be faulted for not postponing the said elections on account of a Court Order issued vide Nairobi H.C. Constitutional & Human Rights Division prescribing strict timelines within which to hold the elections.

52.She confirmed that she was not aware that the nomination of the 1st Respondent was subject to confirmation of appointment at the Special General Meeting to be held by Togat Tea Factory.

53. Several victims testified against the 1st Respondent as follows; **Pw. 2** a witness under the Witness Protection Act identified as K.L.S testified that the 1st Respondent lured and forced her to have sex with him for a work opportunity as a sorter and thereby unlawfully infecting her with HIV/AIDS.

54. **Pw. 3** also a witness under the Witness Protection Act identified as T.U.W testified that the 1st Respondent demanded to have sex with her as a condition for employment. He had unprotected sex with her and that the incident psychologically affected her and therefore wanted him barred from holding any public or elective office to avoid him abusing others.

55. On **cross examination**, she confirmed she did not report the incident fearing that her reputation would be tarnished.

56. **Pw. 4** a witness also under the Witness Protection Act identified as K.A.G. testified that the 1st Respondent lured and raped her in the course of a work engagement and threatened to harm her in the event she attempted to disclose what had happened to her. On **cross examination**, she confirmed that she was aware that there was a sexual harassment policy, however, she did not report fearing for her life.

57. **Pw. 5** another witness under the Witness Protection Act identified as I.K. testified that the 1st Respondent raped her on three other occasions and on the fourth occasion, she pushed him and overpowered him and escaped. On **cross examination**, she confirmed that on the fourth occasion when she overpowered the perpetrator herein, she sustained a fracture on her leg and that an X-ray was done, however, she did not bring to Court medical documents showing the said injuries. She confirmed that soon after the incident she was tested and found to be H.I.V. Negative.

58. **Pw. 6** a witness also under the Witness Protection Act identified as C.G.E testified that the 1st Respondent had told her that it was a policy for one to have sex prior to getting employment and that he sexually violated her. On **cross examination**, she confirmed that when she reported this incident with the Union, she was told that the Union had received numerous complaints against Chebochok.

59. **Pw. 7** a witness under the Witness Protection Act identified as U.I.M testified that the 1st Respondent raped

her once and she did not report to the Police because **Mr. Chebochok** threatened her with dire consequences.

60. **Pw. 8 a** counselling psychologist testified that she was called upon by **Wangu Kanja Foundation** to visit Kericho to carry out psycho-social support to the victims in the BBC expose and that she prepared a report dated 26th September, 2024 and produced the report as an expert witness report as **P.Exh.9**. On **cross examination**, she confirmed that **she** offered individual and group therapeutic sessions to the victims of the BBC expose.

61. **Pw. 9** the C.E.O. of **E.A. Data Handlers** testified stating that he is involved in computer related work, cybercrime and computer forensics and therefore processed clips for presentation to the Court. PW.9 testified that on 12/7/2024, he was given instructions to download a BBC documentary from youtube titled "Sex for Work". He said he downloaded and transferred it to a flash drive and prepared a certificate and produced the flash drive and the certificate as **P. Exh.10 and P. Exh.11 respectively**.

62. **Pw. 10** a freelance journalist testified that he was the one who prepared the BBC documentary titled **“Sex for Work”**. He testified that he personally visited Kericho in December, 2021 and embarked on investigations on sexual abuse. From that research, more than 17 women came forward alleging sexual abuse and harassment in various tea farms or estates. He testified that the Editor commissioned a second reconnaissance in February, 2022 and he spoke to more than 20 women, most of them claimed to have been abused by their managers but there were no convictions by a court of law. PW.10, testified that many women did not report to law enforcement officers. He testified that they verified these claims from the Union representatives and learnt that these victims had nowhere for recourse. He testified that he compiled a report and some names recurred namely: **John Chebochok**, Asava. They were the notorious predators.

63. On **cross examination**, PW.10 confirmed that he does not have the technical knowhow on editing the

documentary and that BBC sent out right of reply to those adversely mentioned in the report and that there have been circumstances where a right of reply introduced a different perspective prompting them to halt broadcast.

64. At the close of the petitioners' case the 1st Respondent testified and availed several witnesses in support of his case.

65. **Dw. 1 the 1st Respondent herein** stated that he worked in **James Finlays Company** until 2017 when he left on his own volition. He testified that he was requested by James Finlays to pick tea using machines as a Contractor and therefore used his Company Sislo Holdings Limited to do Mechanical Tea Harvesting and Civil Works.

66. DW.1 stated that he saw the documentary and noticed that the same was heavily manipulated to achieve certain objectives and that he and his advocate wrote a demand letter to BBC on 26/1/2024. He testified that the documentary subjected him to a business loss. He stated that those involved in the recruitment are Personnel Officers

in the Company. He stated that the Tea Factory Elections were conducted and he emerged as their candidate of choice having mounted a serious campaign to be elected as a Tea Factory Director of Toror/Tegat having met the qualifications required in the election.

67. On ***cross examination***, he confirmed that he worked for James Finlays until January, 2017 and worked in various Tea Estates under James Finlays. He confirmed that BBC wrote to him informing him on the documentary that would be aired and that the said documentary put him in bad light and damaged his reputation to the general public.

68. DW.1 confirmed that following the BBC broadcast, the police were given instructions to investigate him with regard to the documentary. He said he was invited by the police for interrogation but was not prosecuted. He confirmed that he terminated his contract with Finlays upon the expose and upon Finlays suspending his operations.

69. He maintained that he met all the requirements set out in the manual and was issued with a certificate of clearance

to contest as a director with Toror/Tegat Tea Factory. He confirmed that he had not filed any case against the BBC challenging the expose.

70. **Dw. 2** testified that the 1st Respondent was a director in Sislo Holdings Limited where he worked as a field officer. On **cross examination**, he confirmed that there was a grievance handling policy, recruitment policy and sexual harassment policy and that he was a member of the grievance handling committee. He stated that he never received any complaint regarding sexual harassment.

71. **Dw. 3 a** personnel and office administrator at Sislo Holdings Limited testified that he was involved in the recruitment of employees and payroll management, having undertaken several interviews to recruit various cadre of employees including tea-pickers and machine operators. On **cross examination**, he reiterated that he would provide oversight during the recruitment of employees, advertisements were placed at the noticeboard and in the field, people would apply for employment and an interview

panel would be set up in each field. He confirmed that the director was never involved in the recruitment of employees.

72. This Court directed the parties to file their written submissions. This court has considered the various submissions filed by various parties in arriving at a fair and just determination.

Petitioners Submissions

73. It was submitted on behalf of the petitioners that the instant petition does not merely challenge a flawed election, the petition was to urge this Court to safeguard the very constitutional ethos of Kenya's democracy and affirm that public office is not a shelter for the powerful, but a sacred duty held in trust for the people.

74. The petitioners contended that the 1st Respondent was credibly implicated in grave and systemic sexual exploitation of economically vulnerable women, spanning years and involving coercion, silence, and abuse of power. These allegations are not abstract; they are detailed,

consistent, corroborated and publicly documented. The petitioners found fault with the 1st respondent for inaction in the face of these accusations and his failure to exonerate himself for having violated the constitutional standards of accountability, transparency and moral probity.

75. It is the contention of the petitioners that whereas the 1st Respondent informed this Court that he has never been prosecuted in any court of law, that no criminal charges have been preferred against him and that no formal conviction exists on record and therefore argued that this Court should absolve him of any wrongdoing and/or refrain to bar him from holding public office.

76. The petitioners cited *the case of **International Centre for Policy and Conflict & 5 Others v Attorney General & 4 Others [2013] eKLR***, in which the Court held inter alia that: "***It is not the role of the Court to determine the criminal liability of a person under Chapter Six. The Court's duty is to enforce the constitutional provisions that require persons***

seeking public office to observe integrity, honesty, and ethical conduct as set out in Article 73."

77. It is further the contention of the petitioners that they were challenging the approval and clearance of the 1st Respondent by the 2nd to 5th Respondents to run and vie as a director to the 2nd Respondent despite public outcry and media expose.

78. It is also the petitioner's contention that Article 2(1) establishes that the Constitution of Kenya binds "***all persons***" whereas Article 260 defines a "person" to include any company or body of persons whether incorporated or unincorporated.

79. The petitioner's cited the case of ***Rose Wangui Mambo & 2 Others v Limuru Country Club & 17 Others [2014] KEHC 7683 (KLR)*** where it was observed as follows; "***The constitutional protections apply both vertically and horizontally. As to what extent they apply horizontally depends on the context and unique circumstances of individual cases including***

availability of alternative remedies." As such, their failure to disqualify the 1st Respondent despite credible red flags constituted a dereliction of public duty under the Constitution.

80. It is further the petitioners' contention that it is trite law that parties bear the burden of supporting their pleadings with evidence yet in this case, the 2nd to 5th Respondents did not call any witness to explain their internal processes, vetting mechanisms, or reasons for clearing the 1st Respondent to contest despite having filed replying affidavits. The petitioners were therefore adamant that the election of the 1st Respondent as the Toror/Tegat Tea Factory is constitutionally infirm and must be declared null and void ab initio and that he ought to be barred from running for any public office until he clears his name.

Respondents Submissions

81. The ***1st Respondent*** filed submissions and contested that no court of competent jurisdiction has tried and found him guilty of a criminal offence. It is his contention that

Article 50 (2) (a) of the Constitution guaranteed his right to be presumed innocent until proven guilty and cited the case of **John Harun Mwau & 3 Others v Attorney General ad 2 Other [2012] eKLR** where it was held that the Courts should interpret the constitution in a manner that remains relevant to its spirit and discouraged the re-writing to the Constitution to suit popular opinion.

82. The 1st respondent is therefore adamant that the instant petition has not met the evidential threshold for grant of the orders sought and should therefore be dismissed as the same is an attempt to disenfranchise the farmers who elected him.

83. The **2nd, 3rd and 5th Respondents** filed joint submissions in which they opposed the petition solely to the extent that it alleges that they played a role in clearing or approving the 1st Respondent to contest for the position of Director of the Tegat/Toror Tea Factory. They vehemently deny having any responsibility for assessing the moral,

ethical or integrity suitability of the 1st Respondent under Chapter Six of the Constitution.

84. The 2nd, 3rd and 5th Respondents asserted that their respective roles in the electoral process were limited and purely administrative or procedural. It is the 2nd, 3rd, and 5th Respondents assertion that they neither possessed nor exercised any statutory, regulatory or legal authority to vet, clear and/or approve the 1st Respondent's candidature for the position of Director of the Tegat/Toror Tea Factory.

85. They argued that their roles were purely administrative and procedural, strictly limited to confirming compliance with objective eligibility criteria such as membership status and production thresholds or facilitating the logistical conduct of the elections. It is therefore the assertion of the 2nd, 3rd, and 5th Respondents that the petition as framed discloses no cause of action against the 2nd, 3rd, and 5th Respondents and therefore no relief ought to issue against them in that regard.

86. The **4th Respondent** filed submissions and maintained that its mandate as outlined in the Tea Act 2020, is to regulate, develop, and promote the tea industry. It argued that Tea Board is not directly involved in the details such as elections of tea factory directors even though it has a mandate to delegate such roles to the relevant bodies.

87. The 4th Respondent maintained that the election of the 1st respondent was a culmination of several clearances both at the factory level and at the IEBC. Besides, at the point of election candidature, there was no document produced to show that he had been arrested and/or charged before court of law following the BBC expose.

Determination

88. Upon consideration of the pleadings, oral evidence and submissions filed in respect of the instant petition, this court finds that the sole issue for this Court's determination is whether the petitioners have met the threshold for grant of the reliefs sought.

89. The High Court has power to hear any questions touching on the interpretation of the Constitution, including the determination of the question whether anything said to be done under any authority of the Constitution or any law, is inconsistent with or in contravention of the Constitution.

90. The questions raised in the petition surround the interpretation of **article 10** and **article 73 (2)** of the Constitution of Kenya as against the professional and moral suitability of the election of the 1st respondent as a director of Tegat/Toror Tea Factory following allegations that he was involved in molesting and sexually exploiting women working in tea farms.

91. This court had the benefit to hear the testamentary accounts of survivors who testified including **KLS, KAG, TUW, IK, CGE and UIM** who recounted their encounters with the 1st Respondent when he was working at James Finlays Company. It is the petitioner's case that the 1st Respondent's employment contract was terminated and he

was barred from accessing James Finlay sites as a result of the allegation of molestation and sexual assault.

92. The 1st respondent contended that his employment contract was never terminated, rather, he resigned on his own volition to pursue other personal interests.

93. However, it is the finding of this court that the testamentary evidence by the 1st Respondent gave credence to the allegations made by the survivors that he indeed worked for James Finlays in various estates during the period when the alleged violations occurred.

94. It is further the finding of this court that these witness accounts confirmed that women were routinely sexually exploited in exchange for work at the James Finlays Company by the 1st Respondent. This conduct is contrary to the international, regional and national standards for the protection of women against violence.

95. As regards to the BBC News Africa documentary titled "**Sex for Work: The True Cost of Our Tea**", it is evident that the victims of sexual assault by the 1st Respondent suffered psychological trauma and mental anguish. **Pw. 8 a** counselling psychologist testified that she was called upon by **Wangu Kanja Foundation** to visit Kericho to carry out psycho-social support to the victims in the BBC expose.
96. **Pw. 10** a freelance journalist testified that prior to the publication of the expose, the 1st respondent was informed of his right of reply, but the 1st respondent did not exercise the right to reply and that the said expose was aired resulting in public outcry.
97. After the expose was aired, save for a demand letter the 1st respondent has not taken any other steps to challenge the documentary or have it pulled down, although he denied the contents of the documentary.
98. During cross examination, the 1st Respondent confirmed to this court that he had no evidence that the

same was doctored. He did not also show that the said documentary was subjected to any forensic processes to support his allegations that the documentary was doctored.

99. It is therefore this court's finding that in the absence of cogent evidence to rebut the incessant assertions of sexual assault and sexual harassment against women in the witness accounts and the 1st respondent's actions to *wit* demanding sex from women who worked at the tea farms in exchange for work and from those who sought employment at the tea farms as well as having sex with some of the women as captured in the media expose amounted to sexual violence against women and were discriminatory, contrary to Article 27(4) of the Constitution of Kenya and violated their right to human dignity as provided for under Article 28 of the Constitution.

100. The witness accounts and the media expose are a testament to the moral unsuitability of the 1st Respondent to run for a public office as his conduct goes against the

principles of leadership and integrity as envisaged in Article 73(2) of the Constitution and the Tea Act, 2020 and the subsequent regulations which outlined the criteria for assessing the professional and moral suitability of persons proposed to be Directors inter alia to be compliant with chapter 6 of the Constitution of Kenya, 2010.

101. This court finds that whereas the 1st respondent is adamant that the law pertaining to his election was followed to the latter, both substantively and procedurally and further that he met all the requirements that occasioned him to be validly and democratically elected as a Director, this court is convinced that the Petitioners have demonstrated that the 1st Respondent is morally unfit to hold public office and therefore his election as a Director cannot be allowed to stand.

102. It is further the finding of this court, that 3rd, 4th and 5th Respondents failed in their mandate by clearing the 1st Respondent to run for office and by declaring him as a

Director of the Kenya Tea Development Authority (**KTDA**), Toror Tea Zone without conducting due diligence on his suitability for the position, despite the damning BBC expose that cast serious aspersions on the integrity and suitability of the 1st Respondent to occupy a public office.

103. The failure of the 3rd, 4th and 5th Respondents to give due attention to all the information that was made available on the integrity or suitability of the 1st Respondent as against serious claims of impropriety constitute a ground to invalidate his election as a Director.

104. The upshot is that the petition dated 5th July, 2024 is found to be meritorious. This Court proceeds to allow the Petition giving rise to issuance of the following Orders and declarations:-

(i) A declaration is made that the 1st Respondent violated Articles 10 (2), 26, 28 and 73 of the Constitution and is therefore unfit to hold any public office in the Republic of Kenya.

(ii) A declaration is made that the decision by the 2nd, 3rd 4th and 5th Respondents to clear the 1st Respondent to contest for the Director of Tegat/Toror Tea Factory, Ainamoi Zone and the election of the 1st Respondent to the said position did not adhere to the standards, values and principles set out in Articles 10(2), 26, 28, and 73 of the Constitution and is therefore unconstitutional, illegal and therefore a nullity.

(iii) A conservatory order is issued restraining the swearing into office of the 1st Respondent as the Director of Tegat/Toror Tea Factory, Ainamoi Zone.

(iv) The instant petition was instituted as public interest litigation therefore each party should bear their own costs

***Dated, Signed and Delivered at Kericho this 19th day
of February, 2026***

.....
J.K. SERGON
JUDGE

In the Presence of:-

C/Assistant – Rutoh

Miss Koech, Arusei, Kiget, Cherono for the Petitioners

Nekesa holding brief for Mr. Amadi for 1st Respondent

Caleb Koech for 2nd, 3rd & 5th Respondent

Lang'at for 4th Respondent

Miss Cherono holding brief for Waweru for 1st & 2nd Interested Party

Miss Kiprop holding brief for Osinde for 6th Interested Party

Miss Milimo for 10th Interested Party

Mr. Koech for 5th Interested Party

