



REPUBLIC OF KENYA.

IN THE ENVIRONMENT & LAND COURT OF KENYA

AT BUNGOMA.

PETITION NO. 6 OF 2016.

IN THE MATTER OF: THE CONSTITUTION OF THE REPUBLIC OF KENYA

AND.

**IN THE MATTER OF: ARTICLES 2(1), 3(1), 10(1), (2), a, b, & c,
27 & 73 OF THE CONSTITUTION AND IN THE MATTER OF
ARTICLE 20(1), (2),(3) a & b, (4) a & b ARTICLE 21 91), 22(1),
(2), & 23(1) & (3)a, b, c, d & e OF THE CONSTITUTION.**

AND

**IN THE MATTER OF: ARTICLES 10, 20, 21, 22, 23, (Enforcement
of the Bill of Rights) OF THE CONSTITUTION OF KENYA.**

AND

**IN THE MATTER OF: ALLEGED CONTRAVENTION OF VIOLATION
OF FUNDAMENTAL RIGHTS AND FREEDOM OF INDIVIDUALS AS
ENSHRINED UNDER ARTICLE 27, 28, 32, 40, 42, 43 AND 47 OF
THE CONSTITUTION OF KENYA.**

AND

IN THE MATTER OF: THE CROPS ACT.

AND

IN THE MATTER OF: THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT, 1999.

AND

**IN THE MATTER OF: THE ENVIRONMENTAL (IMPACT ASSESSMENT AND AUDIT)
REGULATIONS, 2003.**

AND

IN THE MATTER OF: DOCTRINE OF REASONABLENESS AND PROPORTIONALITY

AND

IN THE MATTER OF: THE DOCTRINE LEGITIMATE EXPECTATION

AND

IN THE MATTER OF: THE CONSTITUTION OF KENYA (JURISDICTION,

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE

INDIVIDUAL) HIGH COURT PRACTICE RULES 2006 AS READ WITH

CLAUSE 19 OF THE CONSTITUTION OF THE REPUBLIC OF KENYA,

TRADITIONAL CLAUSED AND CONSEQUENTIAL PROVISIONS

OF THE SCHEDULE TO THE CONSTITUTION.

BETWEEN

WEST KENYA SUGAR COMPANY LIMITED.....PETITIONER

VERSUS.

BUSIA SUGAR INDUSTRIES LIMITED.....1ST RESPONDENT

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

NATIONAL ENVIRONMENTAL

MANAGEMENT AUTHORITY.....3RD RESPONDENT

RULING.

[1]. By a letter dated 16th March, 2018 M/s Ogejo, Olendo & Company Advocates wrote to the Deputy Registrar of this court and informed the court that on 13th March, 2018 they attended the Court of Appeal sitting in Kilsumu in Civil Appeal No. 35 of 2017 Busia Sugar Industries Ltd -Vs- West Kenya Sugar Co. Ltd & 2 Others. That the matter could not proceed because there was a dispute as to the two decrees extracted. That the court of Appeal referred them to this court on the issue under Order 21 rule 8 (4). That they had enclosed the two decrees they had extracted from the Judgment. They requested the Registrar that they appear before this court on 21/3/2018.

[2]. Likewise, M/s Hassan Madowo Saidi Advocates also wrote to the Deputy Registrar of this court on 14/3/2018 regarding a consent they had entered with M/s Ogejo Olendo & Co. Advocates, Lubulella & Co. Advocates and M/s Edward Wabwoto Advocates. They said that they have been instructed to withdraw the aforementioned consent and that the issue of the decree be settled by the honourable Judge as per the order of the appellate court dated 13th March 2017 which they attached therein.

[3]. The parties appeared in court on 21/3/2018 and explained to court what they thought the order of the court meant. The parties seemed to agree that the Court of appeal sent the matter to this court under order 21 rule 8(4) of the Civil Procedure Rules for the court to say which of their two decrees was the correct one. They all however, agreed that the matter was not before me for the interpretation of the Judgment.

[4]. I have perused the ruling of the Court of appeal that was attached to the letters referred to herein. I note the court of Appeal directed that,

1. Pursuant to order 21 rule 8(4) of the Civil Procedure Rules parties should take appropriate action to resolve the dispute regarding the Decree within 7 days from the date hereof.

2. Matter be disposed of within 21 days from the date hereof.

3. That the appeal be listed for hearing on the next court term.

Dated and delivered this 13th day of March, 2018 in Kisumu.

[5]. From the above direction of the Court of Appeal, the parties were merely told to comply with order 21 rule 8(4) of the Civil Procedure

Rules and nothing more. Order 21 rule 8(4) states as follows:-

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 requirement of order 21 rule 8(4) has not been complied with. The parties must file draft decrees marked as the Law requires and the Registrar shall list them before a Judge as required by order 21 rule 8(4).

[7]. For the avoidance of doubt, when the Petition was filed and heard, there were no agreed issues by the parties. The court framed what it saw as the issues arising from the Petition, (found in paragraph 37 of the Judgment) and proceeded going forward, to make findings on them. It is from these issues and findings therein that the decree should be extracted.

Having said that, I need not say anymore on the issue since the Law is clear on how a decree should be drawn and who should draw it and what happens in case of a disagreement. The law does not mandate me to do anything else after Judgment is delivered.

Ruling read in open Court in the presence of Mr. Ipapu and Mr. Anwar.

Dated at Bungoma this 28th day of March, 2018.

S. MUKUNYA

JUDGE

In the presence of:

Joy: Court Assistant

Mr. Anwar and Ipapu for the respondent

All other parties are absent - they were all aware of today's ruling.