



**Mungania Tea Factory Co Ltd & 51 others v Attorney General & 6 others (Civil Application E143 of 2022) [2022] KECA 718 (KLR) (22 July 2022) (Ruling)**

Neutral citation: [2022] KECA 718 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E143 OF 2022  
MSA MAKHANDIA, K M'INOTI & S OLE KANTAI, JJA  
JULY 22, 2022**

**BETWEEN**

<b>MUNGANIA TEA FACTORY CO LTD .....</b>	<b>1<sup>ST</sup> APPLICANT</b>
<b>KAMBAA TEA FACTORY CO LTD .....</b>	<b>2<sup>ND</sup> APPLICANT</b>
<b>GATUNGURU TEA FACTORY CO LTD .....</b>	<b>3<sup>RD</sup> APPLICANT</b>
<b>KAPSET TEA FACTORY CO LTD .....</b>	<b>4<sup>TH</sup> APPLICANT</b>
<b>LITEIN TEA FACTORY CO LTD .....</b>	<b>5<sup>TH</sup> APPLICANT</b>
<b>CHINGA TEA FACTORY CO LTD .....</b>	<b>6<sup>TH</sup> APPLICANT</b>
<b>KIRU TEA FACTORY CO LTD .....</b>	<b>7<sup>TH</sup> APPLICANT</b>
<b>KAPKOROS TEA FACTORY CO LTD .....</b>	<b>8<sup>TH</sup> APPLICANT</b>
<b>KAPKATET TEA FACTORY CO LTD .....</b>	<b>9<sup>TH</sup> APPLICANT</b>
<b>KANYENYAINI TEA FACTORY CO LTD .....</b>	<b>10<sup>TH</sup> APPLICANT</b>
<b>NTYANSIONGO TEA FACTORY CO LTD .....</b>	<b>11<sup>TH</sup> APPLICANT</b>
<b>MOGOGOSIEK TEA FACTORY CO LTD .....</b>	<b>12<sup>TH</sup> APPLICANT</b>
<b>GATHUTHI TEA FACTORY CO LTD .....</b>	<b>13<sup>TH</sup> APPLICANT</b>
<b>IYANKOBA TEA FACTORY CO LTD .....</b>	<b>14<sup>TH</sup> APPLICANT</b>
<b>MAKOMBOKI TEA FACTORY CO LTD .....</b>	<b>15<sup>TH</sup> APPLICANT</b>
<b>TEGAT TEA FACTORY CO LTD .....</b>	<b>16<sup>TH</sup> APPLICANT</b>
<b>GITHAMBO TEA FACTORY CO LTD .....</b>	<b>17<sup>TH</sup> APPLICANT</b>
<b>RUKURIRI TEA FACTORY CO LTD .....</b>	<b>18<sup>TH</sup> APPLICANT</b>
<b>KAGWE TEA FACTORY CO LTD .....</b>	<b>19<sup>TH</sup> APPLICANT</b>



KINORO TEA FACTORY CO LTD .....	20 <sup>TH</sup> APPLICANT
THETA TEA FACTORY CO LTD .....	21 <sup>ST</sup> APPLICANT
IMENTI TEA FACTORY CO LTD .....	22 <sup>ND</sup> APPLICANT
MATAARATEA FACTORY CO LTD .....	23 <sup>RD</sup> APPLICANT
GITHONGO TEA FACTORY CO LTD .....	24 <sup>TH</sup> APPLICANT
NGERE TEA FACTORY CO LTD .....	25 <sup>TH</sup> APPLICANT
MICHIMIKURU TEA FACTORY CO LTD .....	26 <sup>TH</sup> APPLICANT
NJUNU TEA FACTORY CO LTD .....	27 <sup>TH</sup> APPLICANT
KIEGOI TEA FACTORY CO LTD .....	28 <sup>TH</sup> APPLICANT
GITUGI TEA FACTORY CO LTD .....	29 <sup>TH</sup> APPLICANT
SANGAIYI TEA FACTORY CO LTD .....	30 <sup>TH</sup> APPLICANT
IRIA-INI TEA FACTORY CO LTD .....	31 <sup>ST</sup> APPLICANT
TOMBE TEA FACTORY CO LTD .....	32 <sup>ND</sup> APPLICANT
RAGATI TEA FACTORY CO LTD .....	33 <sup>RD</sup> APPLICANT
KEBIRIGO TEA FACTORY CO LTD .....	34 <sup>TH</sup> APPLICANT
NDIMA TEA FACTORY CO LTD .....	35 <sup>TH</sup> APPLICANT
OGEMBOTE TEA FACTORY CO LTD .....	36 <sup>TH</sup> APPLICANT
MUNUNGA TEA FACTORY CO LTD .....	37 <sup>TH</sup> APPLICANT
NYAMACHE TEA FACTORY CO LTD .....	38 <sup>TH</sup> APPLICANT
KANGAITA TEA FACTORY CO LTD .....	39 <sup>TH</sup> APPLICANT
KIAMOKAMA TEA FACTORY CO LTD .....	40 <sup>TH</sup> APPLICANT
KIMUNYE TEA FACTORY CO LTD .....	41 <sup>ST</sup> APPLICANT
CHEBUT TEA FACTORY CO LTD .....	42 <sup>ND</sup> APPLICANT
THUMAITA TEA FACTORY CO LTD .....	43 <sup>RD</sup> APPLICANT
MUDETE TEA FACTORY CO LTD .....	44 <sup>TH</sup> APPLICANT
GIANCHORE TEA FACTORY CO LTD .....	45 <sup>TH</sup> APPLICANT
MOMUL TEA FACTORY CO LTD .....	46 <sup>TH</sup> APPLICANT
KIONYO TEA FACTORY CO LTD .....	47 <sup>TH</sup> APPLICANT
WERU TEA FACTORY CO LTD .....	48 <sup>TH</sup> APPLICANT
KATHANGARIRI TEA FACTORY CO LTD .....	49 <sup>TH</sup> APPLICANT
KAPSARA TEA FACTORY CO LTD .....	50 <sup>TH</sup> APPLICANT
GACHEGE TEA FACTORY CO LTD .....	51 <sup>ST</sup> APPLICANT



NDUTI TEA FACTORY CO LTD ..... 52<sup>ND</sup> APPLICANT

AND

ATTORNEY GENERAL ..... 1<sup>ST</sup> RESPONDENT

CABINET SECRETARY, MINISTRY OF LIVESTOCK, FISHERIES &  
COOPERATIVES ..... 2<sup>ND</sup> RESPONDENT

NATIONAL ASSEMBLY ..... 3<sup>RD</sup> RESPONDENT

AGRICULTURE & FOOD AUTHORITY ..... 4<sup>TH</sup> RESPONDENT

KENYA TEA GROWERS ASSOCIATION ..... 5<sup>TH</sup> RESPONDENT

EAST AFRICAN TEA TRADE ASSOCIATION ..... 6<sup>TH</sup> RESPONDENT

COUNTY GOVERNMENT OF BOMET ..... 7<sup>TH</sup> RESPONDENT

*(Application for stay of execution and further proceedings pending the hearing and determination of appeal against the Orders and Directions of the High Court of Kenya at Nairobi (Ong’undi, Mrima & Nyagah, JJ.) dated 21st October 2021 in HC. Pet No. E254 of 2020, consolidated with HC. Pet. Nos. E243 of 2020 and E083 of 2021)*

## RULING

### \*\*\*ARGUMENTS

1. The 52 applicants herein are duly registered tea factory companies in the Republic of Kenya. Following the enactment of the [Tea Act](#), 2020 and implementation of a raft of reforms in the tea industry in the country, three separate petitions were filed by the applicants and others challenging various aspects of the reforms. Due to the importance of the tea industry to the national economy and the need to hear and determine the dispute with due dispatch, the Hon. the Chief Justice constituted an expanded uneven bench of the High Court comprising Ong’undi, Mrima and Nyagah, JJ. to hear and determine the petitions.
2. In a bid to expedite the hearing and determination of the petitions, on 21<sup>st</sup> October 2021, the High Court bench issued several directions pertaining to the conduct of the proceedings, which aggrieved the applicants. Appreciating that they did not have an automatic right of appeal to this Court from directions of the High Court, on 18<sup>th</sup> February 2022 the applicants applied and obtained leave from the High Court to appeal against the said directions. They have duly filed and served a notice of appeal and we are satisfied that they are properly before us under rule 5(2) (b) of the Rules of this Court.
3. In their motion on notice dated 27<sup>th</sup> April 2022, the applicants seek an order of stay of execution and further proceedings in three consolidated petitions before the High Court of Kenya at Nairobi, pending the hearing and determination of their intended appeal from the orders and directions of the said court issued on 21<sup>st</sup> October 2021. The orders and directions in question provided as follows:

“(i) All interlocutory applications to be subsumed into the main petitions. The applications are mainly on:

Representation Contempt Conservatory orders



- ii. Those who have not filed responses to the applications and the petitions to do so within 14 days;
  - iii. Leave is granted to the petitioners to file any further questions affidavits within 7 days upon service of the responses;
  - iv. All petitioners and any other party in support of the petitions to file and serve their submissions on the petitions and applications within 21 days;
  - v. Respondents and any other parties opposed to the petitions to file their submissions to the petitions and applications as the case may be within 21 days;
  - vi. Mention on 20.12.21 at 11.00 am to confirm compliance and further directions;
  - vii. All orders in force remain extended till then; and
  - viii. Any party not satisfied with the directions is at liberty to apply.
- Further Order:-
- ix. These directions to apply to Petition No. E016 of 2021 as consolidated.”

4. The applicants complain that the above orders and directions were issued without affording the parties an opportunity to be heard. They add that there were pending applications which needed to be resolved in limine, among them an application for joinder of parties. Their biggest grouse however is that harmless and well-meaning as the orders and directions may appear at first glance, they have made it literally impossible for the petitions to be heard smoothly because one of the live and pending preliminary issues that the court did not address was legal representation of the parties. The applicants cannot perceive how the petitions can proceed to hearing without first resolving the question of legal representation.
5. It is the applicants’ contention that previously they were represented by Messrs. Millimo & Muthomi Advocates who filed the petitions in question. However, subsequently the applicants changed their advocates and instructed Messrs Gwandaru Thuita & Company Advocates who duly filed notices of appointment of advocates and notices of change of advocates. Upon appointment, the applicants instructed the new advocates to withdraw some pending applications and to enter consent orders in others. However, the former lawyers filed an application to strike out all the documents filed by the new advocates, resulting in a conundrum where the former firm of advocates wished to proceed with the petitions while the later ones had the applicants’ instructions to withdraw the same.
7. On the basis of the foregoing, the applicants contend that they have an arguable appeal because their right to be heard were violated when the court issued the orders and directions without hearing them. They also contend that it is an arguable point whether the applicants should be represented in the petitions by an advocate of their own choice and in that regard they rely on the decisions in *Tom Kusienya & Others v. Kenya Railways Corporation & Others* [2013] eKLR and *Delphis Bank Ltd v. Channan Singh Chatty & 6 Others* [2005] eKLR. They add that it is an arguable point whether the petitions pending before the High Court can be heard without first resolving the question of legal representation, and rely on the decisions in *Law Society of Kenya v. Attorney General & 3 Others* [2021] eKLR and *Republic v. Committee on Senior Counsel & Another ex parte Allen Wanyeki Gichubi* [2021] eKLR to the effect that contested legal representation should be determined first.



8. The applicants also contend that their intended appeal will be rendered nugatory if it succeeds after the petitions have already been heard pursuant to the unilateral and unsatisfactory directions issued by the court and further that they risked being saddled with unnecessary astronomical costs for two sets of advocates. These arguments were reiterated in the applicants' written submissions and oral highlights made by Prof Githu Muigai, SC, who lead Mr. Imende and Mr. Thuita, learned counsel Mr. Wachira, learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents, Ms Kinyenje, learned counsel for the 5<sup>th</sup> respondent, Ms Kiuluku, learned counsel for the 6<sup>th</sup> respondent and Ms Tusiime, learned counsel for the 7<sup>th</sup> respondent did not oppose the application. Indeed, the 5<sup>th</sup> respondent filed an affidavit in support of the application. The 3<sup>rd</sup> and 4<sup>th</sup> respondents did not appear, even though they were duly served with the hearing notice.
9. Having carefully considered the application, we are satisfied that it meets the twin principle under rule 5(2) (b), namely, that the intended appeal is arguable and that it stands to be rendered nugatory if proceedings in the High Court are not stayed. The grounds that we have set out above are clearly not frivolous and ought to be fully ventilated before this Court. If the petitions will have been heard before those issues are addressed, the intended appeal will be completely overtaken by events and the applicants risk ending up with nothing but a paper victory, should their appeal succeed.
10. All the parties are in agreement that the intended appeal touches on an important pillar of the national economy. It remains important that the dispute should be resolved as quickly as possible. In these circumstances, we can only issue a conditional stay of proceedings to ensure that this dispute does not drag on endlessly. If the applicants have not already done so, they must file and serve the record of appeal within 45 days from the date of this ruling and the appeal should be fast-tracked for hearing and determination. In default of filing and serving the record of appeal as directed, the orders of stay of execution and of proceedings shall stand discharged. Costs will abide the outcome of the intended appeal. It is so ordered.

**DATED AT NAIROBI THIS 22<sup>ND</sup> DAY OF JULY, 2022**

**ASIKE-MAKHANDIA**

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**JUDGE OF APPEAL**

**K. M'INOTI**

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**JUDGE OF APPEAL**

**S. ole KANTAI**

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**JUDGE OF APPEAL**

*I certify that this is a true copy of the original*

*Signed*

**DEPUTY REGISTRAR**

