

REPUBLIC OF KENYA



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THE SENATE

ELEVENTH PARLIAMENT

THIRD SESSION, 2015

STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES

A REPORT ON THE PETITION MADE TO THE SENATE ON BEHALF OF SMALLHOLDER TEA GROWERS FROM MURANGA COUNTY

BY

HON. SEN. KEMBI-GITURA SENATOR, MURANG'A COUNTY

MARCH, 2015

Clerk's Chambers Parliament Buildings Nairobi

Paper laid by the Standing Ctee on Agriculture Livestock and Fisheries by Sen. Henry Adenira on 25/3/2015

[Signature]

Approved [Signature] 25/3/15

Hon Speaker You may approve for tabling. [Signature] 24/03/15

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# MEMO



**TO:** The Speaker Senate  
**THRO:** The Clerk Senate  
**FROM:** Director Committee Services Senate  
**DATE:** 24<sup>th</sup> March, 2015

## RE: TABLING OF REPORT

The above matter refers.

Attached is a report from the Standing Committee on Agriculture, Livestock and Fisheries for tabling.

A handwritten signature in black ink, appearing to be "Njenga Njuguna".

**Mr. Njenga Njuguna**

*Hon. Speaker*  
*You may approve*  
*for tabling.*  
*[Signature]*  
*24/03/15*

*Approved*  
*[Signature]*  
*25/3/15*

## ABBREVIATIONS

KTDA - Kenya Tea Development Authority

## 1) PREFACE

Mr. Speaker Sir,

The Standing Committee on Agriculture, Livestock and Fisheries was constituted on Thursday 13<sup>th</sup> March 2014 during the Second Session of the Eleventh (11<sup>th</sup>) Parliament pursuant to the provisions of Standing Order 208(3) and is mandated, *to consider all matters relating to agriculture, livestock, fisheries development, veterinary Services*

### Committee Composition

The Committee comprises the following Members:

- |                                   |                   |
|-----------------------------------|-------------------|
| 1. Sen. Kiraitu Murungi, MP       | -Chairperson      |
| 2. Sen. Henry Tiolo Ndiema, MP    | -Vice Chairperson |
| 3. Sen. Peter Mositet Korinko, MP |                   |
| 4. Sen. Madzayo Stewart, MP       |                   |
| 5. Sen. Stephen Olentutu, MP      |                   |
| 6. Sen. Emma Mbura, MP            |                   |
| 7. Sen. Mungai James Kiarie, MP   |                   |
| 8. Sen. John Munyes, MP           |                   |
| 9. Sen. Moses Kajwang, MP         |                   |

It is my honour and pleasure to present to the Senate of the Republic of Kenya, the report of the Senate Standing Committee on Agriculture Livestock and Fisheries on the petition by the Small Holder Tea Growers from Murang'a County.

## 2) ACKNOWLEDGEMENTS

Mr. Speaker Sir,

The Committee wishes to thank the Offices of the Speaker and The Clerk of the Senate for the support extended to it during the planning and organization of the petition including the allocation of the required finances.

The Committee thanks the small holder tea growers from Murang'a, and the Members of KTDA for presenting their prayers to the Committee in a professional manner knowing very well that Tea is a very emotive issue.

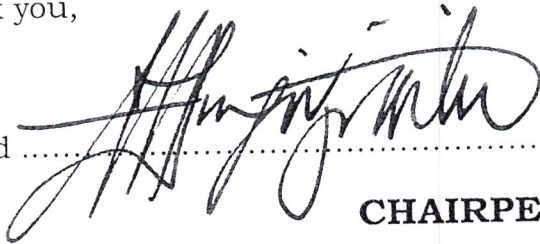
Finally, I wish to express my appreciation to the Members of the Committee, for creating time to attend and listen to the petition made by farmers.

**Mr. Speaker Sir,**

On behalf of the Committee, I now have the honour to present the report on the Petition and recommendations to the House for transmission to the Petitioners.

Thank you,

Signed .....



**CHAIRPERSON**

**SEN. KIRAITU MURUNGI, EGH, MP**

DATE.....

18/3/15

### **3) EXECUTIVE SUMMARY**

**Mr. Speaker Sir,**

On Wednesday 24th September, 2014, The Deputy Speaker and Senator of Murang'a County submitted a petition on behalf Small Holder Tea Growers from Murang'a County to The Senate. Pursuant to Standing Order 227 of the Senate Standing Orders, the Petition stood Committed to Standing Committee on Agriculture, Livestock and Fisheries.

The grievances submitted by the petitioners include the following;

- i.** THAT, the KTDA and the management boards of the companies managed by KTDA have, in violation of provisions of the Companies Act and the Articles of Association of the respective companies, introduced illegal and unlawful processes of nominating and electing directors to KTDA and the Boards of the factory companies managed by KTDA.
- ii.** THAT, the KTDA has been levying excessive and unjustified Management Fees on the companies it manages, beyond what is provided for in the management agreements entered into between KTDA and the respective factory companies.
- iii.** THAT, the directors of the factory companies in breach of tendering procedures and regulations, and with the collusion of KTDA, engage in unlawful business dealings with the factory companies they manage.
- iv.** THAT, the accounts of the factory companies managed by KTDA are not prepared in line with International Financial Reporting Standards (IFRS), and are presented in such a manner that the ordinary small scale farmer cannot understand, thus barring them from raising questions or to demand accountability from KTDA and the management boards of these factories.

- v. THAT, during the privatization of KTDA (the parastatal) in 1999/2000, the shares in the factory companies then managed by the parastatal were handed over to farmers with shares being issued to them under a formula provided by Sessional Paper No. 2 of 1999 on the Liberalization and Restructuring of the Tea Industry. Thereafter, any additional shares in these companies were to be issued in accordance with the respective factory companies' Articles of Association, more specifically Article 129.
- vi. THAT, the County Government of Muranga has proposed to introduce before the County Assembly of Muranga the Tea Development Bill, 2014 which will, among others, establish The Muranga Tea Development Board. This Board will have powers to act as a management agency for tea factories, and participate in the production, transport, processing and marketing of tea, as well as have borrowing and lending powers.
- vii. THAT, we are concerned that despite the tea sector in the country having been privatized over 14 years ago, the proposed Bill seeks to have the County Government of Muranga not only control the sector but also actively participate in the sector including in the production and marketing of tea.

**Mr. Speaker, Sir,**

The petitioners' prayer was that the Senate Standing Committee on Agriculture Livestock and Fisheries does the following;

- i. Intervenes and directs KTDA and all factory companies' management Boards to operate within the law, specifically the Companies Act and their respective Memorandum and Articles of Association.

- ii. Intervenes and directs KTDA and all factory companies' management Boards to operate within the law, specifically the Companies Act and their respective Memorandum and Articles of Association.
- iii. Directs the management boards to institute austerity measures to control and manage conflict of interest in business dealings with the directors of the factories they manage. Thereby directing the amendment of Article 96 forthwith.
- iv. Demands and directs to the Boards that they present to the farmers financial statements which meet the minimum threshold of a financial statement and in a manner and form that they can be easily understood by the farmers.
- v. Directs all the illegally issued shares to unknown people contrary to the provisions of the Companies Act and the respective management companies' Articles of Association, be cancelled and all dividends paid over time on the basis of such issuance be recovered from the said persons immediately as civil debt.
- vi. Direct the County Government of Murang'a to reconsider and abandon the proposed Tea Development Bill, 2014 as currently drafted which essentially proposes without justification to control an already decontrolled sub sector to the detriment of the small scale tea farmer.

Following the tabling of the petition and in line with Standing Order No 224, the Speaker directed the Standing Committee on Agriculture, Livestock and Fisheries to investigate the matter and table its report in the house within 60 days.

The Committee held a total of four (4) sittings to deliberate on the petition. The Committee received both oral and written submission from the following key stakeholders: Kenya Tea Development Holdings Limited (KTDA) and small holder tea farmers from Murang'a

**Summary Recommendations:**

The Committee recommends as follows:

- 1) With regards to prayers number six and seven that refer to the Tea Development Bill, 2014 in the County Assembly of Murang'a, the petitioners should address it with their County Assembly Members, to raise their opposition regarding the bill.
- 2) With matters that are currently in Court, once the issues have been concluded in court, then the petitioners can submit another petition that the Committee will be willing to look at.

#### **4) INTRODUCTION**

##### ***Introduction and Background***

- I. Kenya is the third largest producer of tea after India and China and is the largest exporter of tea in the world. Kenya has an advantage as tea grows all year round. Kenya's tea is of the highest quality in the world.
- II. As a County, Murang'a has ten (10) factories under KTDA management. These factories are; Gacharage, Ikumbi, Makomboki, Nduti, Ngere, njunu, Gatunguru, Githambo, Kanyenyaini and Kiru.
- III. All these factories combined have a total of sixty eight thousand, two hundred and fifty two farmers (68,252) growing tea in fourteen thousand seven hundred and thirty eight Hectares (14,738).
- IV. The total production of green leaf tea is two hundred and one million, nine hundred and seventy nine thousand, seven hundred and sixteen (201,979,716). The total numbers of tea bushes are one hundred and thirty million, seven hundred and fifty four thousand, three hundred and seventy eight (130,754,378).
- V. The major cost of tea manufacturing comes from labour costs, energy cost, leaf collection cost, packing expenses, administrative costs, financial coast and selling expenses.
- VI. In the financial year 2013/14, farmers in Murang'a were paid an average of Kenya Shillings thiry three and twenty nine cents (ksh 33.29)

#### **5) SUBMISSIONS FROM STAKEHOLDERS**

The Committee received submissions from KTDA and Small Holder Farmers. The Submissions are annexed in the report.

## 6) COMMITTEE FINDINGS Vs PRAYERS BY THE PETITIONERS

The Committee findings on the petitions prayers were as follows;

- i. THAT, the KTDA and the management boards of the companies managed by KTDA have, in violation of provisions of the Companies Act and the Articles of Association of the respective companies, introduced illegal and unlawful processes of nominating and electing directors to KTDA and the Boards of the factory companies managed by KTDA.

### **Findings**

This prayer is currently in court: **Petition Kericho No. 18 of 2014 ( The Governor Kericho County Vs. KTDA, Chai Trading Co. Ltd, KTDA management Services LTD, Majani Insurance Brokers Ltd, KETEPA LTD, Greenlands Fedha Ltd, KTDA Power Co. LTD and 21 others and 54 interested parties)**

Pursant to Senate Standing Order 92 that provides for matters *sub judice*, that if a matter is pending before a court of law, the Committee should not consider it. The Committee therefore did not consider this prayer.

- ii. THAT, the KTDA has been levying excessive and unjustified Management Fees on the companies it manages, beyond what is provided for in the management agreements entered into between KTDA and the respective factory companies.

### **Findings**

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- iii. THAT, the directors of the factory companies in breach of tendering procedures and regulations, and with the collusion of KTDA, engage in unlawful business dealings with the factory companies they manage.

**Findings**

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Pursant Senate Standing Order 92 that provides for matters *sub judice*, that if a matter is pending before a court of law, the Committee should not consider it. The Committee therefore did not consider this prayer.

Additionally the committee was informed that The issue of directors' contracts is covered exhaustively by the Companies Act Section 200 sub section 1-5 dealing with what a director is to do in case of conflict of interest.

- iv. THAT, the accounts of the factory companies managed by KTDA are not prepared in line with International Financial Reporting Standards (IFRS), and are presented in such a manner that the ordinary small scale farmer cannot understand, thus barring

them from raising questions or to demand accountability from KTDA and the management boards of these factories.

### **Findings**

This prayer is currently in court: HCCC Milimani Commercial Court Misc. Civil App. No. 937 of 2006 (**Hadson Moffat Kamau and others Vs. Makomboki Tea Factory LTD**)

Pursant Senate Standing Order 92 that provides for matters *sub judice*, that if a matter is pending before a court of law, the Committee should not consider it. The Committee therefore did not consider this prayer.

- v. THAT, during the privatization of KTDA (the parastatal) in 1999/2000, the shares in the factory companies then managed by the parastatal were handed over to farmers with shares being issued to them under a formula provided by Sessional Paper No. 2 of 1999 on the Liberalization and Restructuring of the Tea Industry. Thereafter, any additional shares in these companies were to be issued in accordance with the respective factory companies' Articles of Association, more specifically Article 129.

### **Findings**

This prayer is currently in court: **HCCC Milimani Commercial and Tax Division Misc. Case No 271 of 2008 (Mwangi Kirigwi Vs. KTDA, Ikumbi Tea Factory Co. LTD and John Kennedy Omanga)**

Pursant Senate Standing Order 92 that provides for matters *sub judice*, that if a matter is pending before a court of law, the Committee should not consider it. The Committee therefore did not consider this prayer.

- vi. THAT, the County Government of Murang'a has proposed to introduce before the County Assembly of Murang'a the Tea

Development Bill, 2014 which will, among others, establish The Muranga Tea Development Board. This Board will have powers to act as a management agency for tea factories, and participate in the production, transport, processing and marketing of tea, as well as have borrowing and lending powers.

### **Findings**

The Committee advised the petitioner that The Senate cannot direct a County Government to reconsider or withdraw a bill from the County Assembly floor.

Pursuant to Article 185 of the Constitution

- (1) The Legislative authority of a county is vested in, and exercised by, it's County Assembly.
- (2) A County assembly may make any laws that are necessary for, or incidental to, the effective performance of the functions and exercise of powers of the county government under the Fourth Schedule

- vii.** THAT, we are concerned that despite the tea sector in the country having been privatized over 14 years ago, the proposed Bill seeks to have the County Government of Murang'a not only control the sector but also actively participate in the sector including in the production and marketing of tea.

### **Findings**

The Committee advised the petitioner that The Senate cannot direct a County Government to reconsider or withdraw a bill from the County Assembly floor.

Pursuant to Article 185 of the Constitution:

- 1) The Legislative authority of a county is vested in, and exercised by, it's County Assembly.
- 2) A County assembly may make any laws that are necessary for, or incidental to, the effective performance of the functions and exercise of powers of the county government under the Fourth Schedule

## **7) SUMMARY OF RECOMMENDATIONS**

The Committee recommends as follows;

- 1) With regards to prayers number six and seven that refer to the Tea Development Bill, 2014 in the County Assembly of Muranga, the petitioners should address it with their County Assembly Members, to raise their opposition regarding the bill.
- 2) With matters that currently in Court, once the issues have been concluded in court, then the petitioners can submit another petition that the Committee will be willing to look at.

**MINUTES OF THE FIFTH SITTING OF THE STANDING COMMITTEE ON  
AGRICULTURE, LIVESTOCK AND FISHERIES HELD IN THE SHIMBA HILLS  
HALL, KICC BUILDING, ON THURSDAY, 12<sup>TH</sup> MARCH, 2015 AT 11.00 A.M.**

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**PRESENT**

1. Sen. Kiraitu Murungi, MP - **Chairperson**
2. Sen. Madzayo Stewart Mwachiru, MP
3. Sen. Emma Mbura, MP

**ABSENT WITH APOLOGY**

1. Sen. Henry Tiolo Ndiema, MP - **Vice Chairperson**
2. Sen. Moses Kajwang'
3. Sen. Stephen Ole Ntutu, MP
4. Sen. John Munyes, MP
5. Sen. Peter Mositet Korinko, MP
6. Sen. Mungai James Kiarie, MP

**IN ATTENDANCE**

See attached list of attendance

**IN ATTENDANCE**

1. Ms. Rose Mudibo
2. Mr. Crispus Njogu
3. Ms. Carol Kirorei
4. Mr. Wilson Bosmet
5. Mr. Elijah Ichwara

**THE KENYA SENATE**

- Clerk Assistant
- Clerk Assistant
- Clerk Assistant
- Serjeant-At-Arms
- Hansard Officer

**MIN. NO. 21/2015**

**PRELIMINARIES**

The Chairperson called the meeting to order at 11.30 a.m. followed by a prayer. The Chairperson welcomed the Petitioners, KTDA and farmers to the meeting. He then led in a self-introductory session. The Chairperson informed the meeting that the Petition was presented to the House by Sen. Kembi Gitura, Senator for Murang'a County on Wednesday 24<sup>th</sup> September, 2014.

**MIN. NO. 22/2015**

**ADOPTION OF THE AGENDA**

Members adopted the agenda of the sitting after it was proposed by Sen. Emma Mburu, MP and seconded by Sen. Kiraitu Murungi, MP.

**MIN. NO. 23/2015**

**MEETING WITH THE KTDA AND  
PETITIONERS**

Mr. Moffat Mbue thanked the Committee for providing an opportunity to air grievances on the challenges facing tea farmers in the tea sub-sector. He stated that the Petition contains a total of six allegations summarized as follows:

1. The farmer does not own the assets acquired by the factory which is acquired from the proceeds of tea.
2. Management fee charged by KTDA is much higher than what should be charged because the figure on which it is based does not take into consideration the cost of production.
3. Elections are contrary to the Memorandum of Association and Articles of Association of the various tea companies and therefore are illegal. The articles of Association prescribe that a minimum of 2 directors be nominated and elections are to be done at the AGM. However, this is not done.
4. Directors' business dealings are wanting as there are no tendering procedures. There is need for a transparent procuring system which does not have a conflict of interest.

5. There are accounting issues including fraudulent accounting by the KTDA
6. The Muranga County Tea Bill, 2014 which is in the process of enactment is *ultra vires* and they oppose its provisions.

The Committee informed the Petitioners that the issue of The Murang'a County Tea Bill, 2014 does not fall under the mandate of the Senate and therefore could not be considered. Members advised the Petitioners to address the issue at the county level i.e. the County Assembly.

### **KTDA Response**

Mr. Kennedy Omangi brought item 7 of the Petition to the attention of the Committee; which states that "none of these issues raised in the petition is pending before any court of law, constitutional or any other legal body". He informed the meeting that there were several pending matters before a court of law. He summarized the cases as follows:

1. HCCC Milimani Commercial Court Misc. Civil App. No. 937 of 2006  
*Hadson Moffat Kamau & Others VS. Makomboki Tea Factory Ltd.*

This case refers to the form of and presentation of accounts of Makomboki Tea Factory and Shares A and B of the Factory.

2. HCCC No. 176 of 2008 Milimani Commercial Court *KTDA & Makomboki Tea factory Co. Ltd. Vs. Moffat K. Mbue*

This case refers to a defamatory matter that makes reference to accounting issues, shareholding issues and election of directors.

3. HCCC Milimani Commercial & Tax Division Misc. Case No. 271 of 2008  
*Mwangi Kirigwi Vs. KTDA, Ikumbi Tea Factory Co. Ltd. & John Kennedy Omanga*

This case was concluded by the court but main suit still being prosecuted. It referred to issuance of shares under Article 8 of the Factory Company Articles of Association. The ruling conclusively dealt with the issue of issuance of Founder shares and the Petition was dismissed in favour of the respondents.

Mr. Omanga added that there were several other cases before the court touching on the issues raised in the Petition which he submitted to the Committee secretariat. He sought the direction from the Committee as the matter could prejudice KTDA's position in the matters before the court.

Mr. Moffat maintained that the cases were indeed before the courts but that there was nothing in the petition that covers the matters before the court. Issues raised in the petition occurred after 2008 when the cases were filed. He added that the defamation case had nothing to do with the matter before the Senate.

Sen. Madzayo informed the meeting that Senate Standing Order 92 provides for matters *sub judice*, that if a matter is pending before a court of law, the Committee should not consider it. The Committee directed that if any matter was not before the courts the Committee could consider it.

Mr. Omanga stated that matters highlighted in the Petition were before a court of law as follows:

1. Election of directors and the election system are pending before the courts therefore discussion of the matter would prejudice the case.
2. Founder shares and founder bonus shares matter was concluded in the HCCC Milimani Case No. 271 of 2008.
3. Management fee and overcharging was presently pending before a court in petition filed in Kericho.

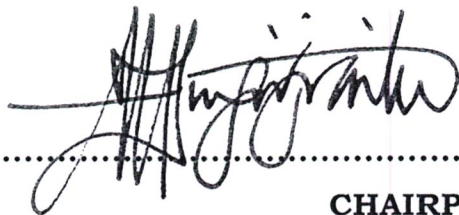
4. The issue of directors' contracts was not before court, however, it is covered exhaustively by the Companies Act Section 200 sub section 1-5 dealing with what a director is to do in case of conflict of interest.
5. Accounting standard is a subject matter in a case before the court
6. Issuance of shares matter is before the court. Further, the Articles of Association speak for themselves in respect to this matter.

The Chairperson informed the meeting that the Committee would prepare a report on this matter and table it in the House. He further informed the meeting that the Committee met the Cabinet Secretary, Ministry of Agriculture, livestock and Fisheries on Wednesday, 11<sup>th</sup> march 2015 to discuss among other things the status of Tea. He added that a been multi-stakeholder tea reforms task force was in the process of being constituted, as a follow up of the recommendations made during the Tea Conference held in October, 2014.

**MIN. NO. 24/2015**

**ADJOURNMENT**

There being no other business the Chairperson adjourned the meeting at 12.50 p.m.



**SIGNED:**.....

**CHAIRPERSON**

**DATE:**.....

18/3/15

**MINUTES OF THE THIRD SITTING OF THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES HELD IN THE GROUND FLOOR BOARDROOM, COUNTY HALL, ON WEDNESDAY, 4<sup>TH</sup> MARCH, 2015 AT 11.00 A.M.**

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**PRESENT**

1. Sen. Kiraitu Murungi, MP - **Chairperson**
2. Sen. Henry Tirole Ndiema, MP - **Vice Chairperson**
3. Sen. Stephen Ole Ntutu, MP
4. Sen. John Munyes, MP
5. Sen. Madzayo Stewart Mwachiru, MP

**ABSENT WITH APOLOGY**

1. Sen. Peter Mositet Korinko, MP
2. Sen. Mungai James Kiarie, MP
3. Sen. Emma Mbura, MP

**IN ATTENDANCE**

1. Margaret Ndawula - Kenya Law Reform Commission
2. Dr. Linda Musumba - African Women Studies Centre/KU
3. Caudesia Njeri - Africa Women Studies Centre

**IN ATTENDANCE**

**THE KENYA SENATE**

1. Mr. Crispus Njogu - Clerk Assistant
2. Ms. Carol Kirorei - Clerk Assistant
3. Ms. Elizabeth Muhia - Legal Counsel
4. Mr. Okech Owino - Research Officer
5. Mr. Charles Musera - Serjeant-At-Arms

**MIN. NO. 12/2015**

**PRELIMINARIES**

The Chairperson called the meeting to order at 11.55 a.m. followed by a prayer. He informed the meeting that the Cabinet Secretary was unable to attend the meeting, and had requested to appear before the Committee on Wednesday, 11<sup>th</sup> March, 2015. He then led in a self-introductory session.

**MIN. NO. 13/2015**

**ADOPTION OF THE AGENDA**

Members adopted the agenda of the sitting after it was proposed by Sen. Henry Ndiema, MP and seconded by Sen. Kiraitu Murungi, MP.

**MIN. NO. 14/2015**

**REVIEW OF THE FOOD SECURITY BILL, 2014**

The meeting was informed that the Food Security Bill, 2014 was due for Second Reading; however, a request had been made to hold the Bill. This is due to concerns raised by experts on the drafting of the Bill, who opined that the Bill was more of a policy rather than an implementable Bill with legal obligations.

The Chairperson informed those present that the purpose of the meeting was to constitute a team of experts to review the Bill and propose amendments for the Committee Stage.

The Secretariat was tasked to draft moving notes for Senator Beatrice Elachi and a speech for the Chairperson to second the Bill. The African Women Studies Centre was tasked to prepare an expert brief on the Bill for all Senators within a week. This would enable the Senators to be well informed and provoke debate in the House.

It was agreed that the proposed amendments to the Bill should ensure that concerns raised at the Committee Retreat in Naivasha as well as the recommendations in the Report on the Benchmarking Tour of China and India

are adequately captured. It was further agreed that the proposed amendments be ready within 2 weeks.

Dr. Musumba agreed that the Bill did lean more towards policy. She noted that the functions of the Food Security Authority did not include food distribution programme making the Bill weak and not implementable. Identify the gaps in the brief.

Ms. Ndaluwa from the KLRC stated that she had not scrutinized the Bill but would give her comments and contributions at a later stage.

**MIN. NO. 15/2015**

**ANY OTHER BUSINESS**

**1. Draft Agricultural Policy**

The Ministry would take the Committee through the Draft Agricultural Policy at the meeting scheduled for Wednesday, 11<sup>th</sup> March, 2015.

**2. Petition by small scale tea farmers from Murang'a County**

Members resolved to reschedule the meeting with the Petitioner to Wednesday, 18<sup>th</sup> March, 2015.

**3. Statements**

Members were informed of the following:

- a) Sen. Khaniri's Statement on the status of NCPB depots, maintenance of grain reserve stabilization of maize prices had been forwarded to Ministry and feedback is pending.
- b) Sen. Tiolo Statement on supply of DAP fertilizer to farmers had been responded to by the Ministry. Senator Ndiema requested that communication be made to the Ministry for further information.

**4. New agenda**

The Committee resolved to have a standing agenda at all its meetings to be called "Senate Business". This would assist Members to be fully informed on the status of Bills and other matters before the House.

**5. County Visits**

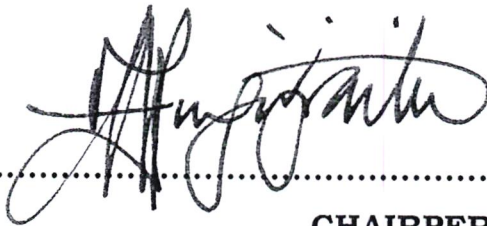
The Committee resolved to undertake county visits to Kilifi County between 1<sup>st</sup> and 4<sup>th</sup> April, 2015. During the visits the Committee will meet with cashew nut farmers and fishermen.

**MIN. NO. 16/2015**

**ADJOURNMENT**

There being no other business the Chairperson adjourned the meeting at 1.00 p.m.

SIGNED:.....



**CHAIRPERSON**

DATE:.....

18/3/15

**MINUTES OF THE SECOND SITTING OF THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES HELD IN THE BIG BOARDROOM, FOURTH FLOOR, KICC BUILDING, ON WEDNESDAY, 26<sup>TH</sup> FEBRUARY, 2015 AT 11.00 A.M.**

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**PRESENT**

1. Sen. Kiraitu Murungi, MP - **Chairperson**
2. Sen. Henry Tiole Ndiema, MP - **Vice Chairperson**
3. Sen. Stephen Ole Ntutu, MP

**ABSENT WITH APOLOGY**

1. Sen. Madzayo Stewart Mwachiru, MP
2. Sen. Peter Mositet Korinko, MP
3. Sen. Mungai James Kiarie, MP
4. Sen. Emma Mbura, MP
5. Sen. John Munyes, MP

**IN ATTENDANCE**

**THE KENYA SENATE**

- |                        |                    |
|------------------------|--------------------|
| 1. Ms. Rose Mudibo     | - Clerk Assistant  |
| 2. Mr. Crispus Njogu   | - Clerk Assistant  |
| 3. Ms. Carol Kirorei   | - Clerk Assistant  |
| 4. Ms. Elizabeth Muhia | - Legal Counsel    |
| 5. Mr. Okech Owino     | - Research Officer |
| 6. Mr. Charles Musera  | - Serjeant-At-Arms |

**MIN. NO. 06/2015**

**PRELIMINARIES**

The Chairperson called the meeting to order at 11.55 a.m. followed by a prayer.

**MIN. NO. 07/2015**

**ADOPTION OF THE AGENDA**

Members adopted the agenda of the sitting after it was proposed by Sen. Henry Ndiema, MP and seconded by Sen. Kiraitu Murungi, MP.

**MIN. NO. 08/2015**

**FOOD SECURITY BILL TASK FORCE  
COMMITTEE**

The meeting was informed that the experts had advised that the entire Food Security Bill, 2014 needs to be redrafted. This is because the Bill as drafted is not implementable as it is more of a policy document. The Chairperson informed the meeting that he had sought permission from the Rules and Business Committee to have the Food Security Bill, 2014 put on hold to allow for the redrafting.

Following this, a Taskforce was to be formed to redraft the Bill, composed of the Legal Counsel. The Taskforce was given 30 days to finalize. It was agreed that communication be made to the Kenya Law Reform Commission and the Ministry to nominate 1 person each to join the Taskforce. It was further agreed to request Dr. Nyoro from the Office of the Deputy President to also join the Taskforce.

The Committee resolved to invite the stakeholders of the Taskforce to a meeting on Wednesday, 4<sup>th</sup> March, 2015 at 9:30 a.m.

**MIN. NO. 09/2015**

**DRAFT AGRICULTURAL POLICY**

Members agreed to discuss the draft Agricultural Policy with the Cabinet Secretary at the meeting scheduled for Wednesday, 4<sup>th</sup> March, 2015. They proposed that a retreat be held jointly with the National Assembly Standing Committee on Agriculture.

Members requested for a brief and comments on the policy. The Secretariat was tasked to seek the assistance of agricultural NGOs and experts e.g. Dr. Nyoro in the analysis of the draft policy.

**1. Petition by small scale tea farmers from Murang'a County on the management and operations of KTDA**

The meeting was informed that the Tea Petition had not yet been concluded. The Committee resolved to invite the Petitioner to a meeting to be held on Wednesday, 11<sup>th</sup> March 2015.

**2. Statements**

The Committee was informed that there were 2 statements pending before the Committee as follows:

- a) Statement by Sen. Lonyangapuo on the closure of livestock markets in West Pokot.
- b) Statement by Sen. Ndiema on the supply of DAP fertilizer to farmers.

The Members were informed that correspondence was sent to the Ministry on the Statements and responses were pending.

**3. County Visits**

The Committee resolved to host a forum for counterpart agriculture committees from the county assemblies to interact and hear the challenges they face.

It was agreed that the Committee would visit Baringo and Nakuru counties on food security issues and hold a stakeholders meeting on cashew nuts.

**4. Conferences**

The Committee resolved to hold high level national stakeholders conferences on Maize, Livestock and Fisheries in the course of the year in the following destinations:

- Isiolo for the Livestock Conference

- Mombasa for the Fisheries Conference; and
- Eldoret for the Maize Conference.


The Secretariat was tasked to draft a programme for the said visits and conferences for review and adoption by the Committee.

**MIN. NO. 11/2015**

**ADJOURNMENT**

There being no other business the Chairperson adjourned the meeting at 12.40 p.m.

SIGNED:.....



**CHAIRPERSON**

DATE:.....

18/3/15

**FINAL SUBMISSION TO THE PUBLIC PETITION MADE TO THE SENATE ON BEHALF OF SMALLHOLDER TEA GROWERS FROM MURANGA COUNTY BY HON.SEN. KEMBI GITURA, SENATOR OF MURANGA COUNTY ON 24<sup>TH</sup> SEPTEMBER 2014 AND HEARD BY THE SENATE COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES ON 12 TH MARCH 2015.**

Mr. Chairman, the petitioners have quite ably demonstrated and proved to your committee:-

1. That the Boards managing smallholder tea factories in conjunction with KTDA the managing Agent of the factories, did introduce in the year 2008, in all factories managed by it, illegal rules for the nomination of candidates for the election of directors contrary to the enabling provisions of Cap 486 and the respective Articles of Association.
2. That there are no elections generally done or held during the Annual General Meetings as provided by the Articles of Association. At best only sham elections are held/done.
3. That there is not a single director in office today who can claim to have been elected as provided by the respective factory Articles of Association
4. That KTDA has been charging unreasonable management fees without any economic or financial basis and that it has been riding on the crest of the ignorance of the management Boards to charge exploitative fees without legitimacy.
5. That KTDA has not been honest in accounting and presentation of financial statements to the Board and shareholders in the manner expected of a prudent steward.
6. That some exposition in the accounts and financial statements boarders on fraudulent accounting by servant, the KTDA.
7. That some Boards have unilaterally issued Company shares to unknown persons without due regard to the laid down procedure and without approval of the AGM and which is tantamount to expropriation of the assets of the Company.
8. That the Muranga County Tea Bill 2014 is counter productive to the National Government's spelt out goal of "Free Enterprise Economy". There is no justification of putting tea under control of the County Government. Why tea and not Coffee, Cabbages, Mangoes and Nappier grass etc This is discriminatory.
9. That the Muranga County Tea Bill 2014, is *ultra vires* the provisions of Schedule IV of the Constitution. Under Schedule IV County

Governments can only legislate matters pertaining to Crop husbandry and plant disease controls.

10. That this Bill encroaches on the jurisdiction of Cap. 486 of the laws of Kenya. The smallholder estates and farms provide raw materials to the factories. They are inseparable from the Factories. They are catchments raw material providers of the factories. These factories and the tea farms are under the jurisdiction of the Companies Act. You can not legislate a law where another law exists.

### Prayers

Consequent upon the foregoing the petitioners pray the Senate:-

- a) To declare that, the so called elections of members of the Boards, are not elections as provided by the Articles of Associations. At best they are sham elections. Hence direct all factories to forthwith hold elections of Directors as provided by the respective Articles of Association and the same to be supervised by the Registrar of Companies
- b) Farmers should be protected to exercise their democratic right to choose freely, a person to manage their investments. Not by coercion, intimidation or arm-twisting
- c) To direct that KTDA refund all the unreasonable management fee charges it has taken from the factory dues forthwith
- d) That both the Managing Boards and the Management Agent, the KTDA have dishonestly been accounting to the shareholders for reasons better known to themselves. Hence order for forensic audit to determine the extent to which these omissions and commissions have been perpetrated.
- e) To direct all management boards to institute austerity measure by adapting procurement procedures with inbuilt controls for management of conflict of interest
- f) To declare KTDA as a dishonest management Agent who should not continue managing the smallholder tea factories and/or on expiry of the current term if not earlier, the same should not be renewed.
- g) To declare that these factories have come of Age. They should be managed by the Boards as was envisaged by Company law. There is no place for management agent. Directors do operate by delegated authority from the shareholders. They can not delegate what has been delegated to them to a management Agent. Shareholders did not approve KTDA to manage factories. This is the work of directors.

- h) To declare the illegally issued share a nullity and that they should be cancelled and dividends paid thereof be recovered as civil debt.
- i) To declare the Muranga County Tea Bill 2014, illegal, ill timed, discriminative to the smallholder tea farmers and counter productive the efforts of the National Government in encouraging free enterprise and promoting farming as agro-business enterprises.
- j) It proposes to regulate, register, control and at the same time, do the same job it is regulating. You can not be a judge of your own cause.
- k) To declare this Bill is *ultra vires* the constitution. It raises matters of policy and this is a preserve of the National Government i.e. whether farming shall be controlled and regulated or it shall be undertaken as a free enterprise. County Governments has no jurisdiction in this area of policy.

**For and on behalf of the Petitioners**

Hudson Moffat K Mbue.....

Samuel Njunu Mugwe.....

Joseph Mwangi Mbote.....

Peter Mwaniki Ngoyo.....

REPUBLIC OF KENYA

PARLIAMENT OF KENYA  
THE SENATE

PUBLIC PETITION ON SMALLHOLDER TEA GROWING  
MISMANAGEMENT IN MURANGA COUNTY

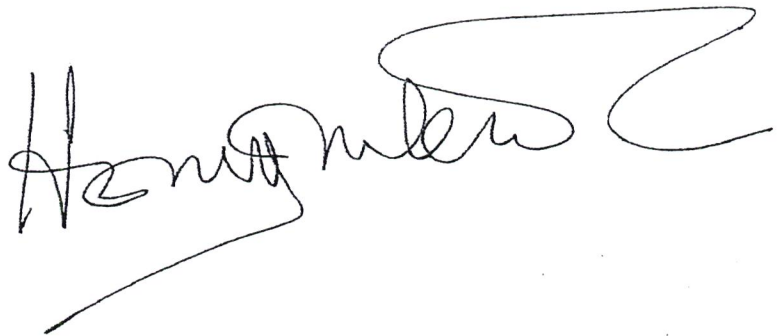
PETITIONERS **LIST OF DOCUMENTS** TO BE RELIED  
UPON IN THE PROSECUTION OF THE PETITION, READ  
AND PRESENTED TO THE SENATE BY SENATOR Hon.  
Amb. KEMBI GITURA MP, ON BEHALF OF PETITIONERS  
ON 24<sup>TH</sup> SEPTEMBER 2014 PURSUANT TO STANDING  
ORDER 219 OF THE SENATE STANDING ORDERS

COMPILED BY THE PETITIONER  
Po Box 260 KANGARI

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Poster (Annex I)

## ELECTIONS FOR DIRECTORS OF KTDA-MANAGED FACTORY COMPANIES

### ELECTING YOUR FACTORY DIRECTOR

This poster summarizes the process prescribed by the statutes and rules governing the election of directors for KTDA-managed factories.

The directors of your factory must be elected by the process prescribed in Articles of Factory Companies. The Articles of Factory Companies stipulate that the Founder Shareholders are the only class of shareholders that have been vested with the rights and privileges to vote.

### SHAREHOLDER

Every person whose name is entered in the Register of Members is a member of the Factory Company. The other name of a member is shareholder. The name shareholder applies when the member has been allotted shares and is holding them on their own right. A shareholder is the person who owns certain shares and who is shown as a shareholder.

According to the Company Articles, every member (Founder Shareholder) of a Company limited by shares shall have a right to vote. His voting right shall be in proportion to his shares. Founder shares shall participate in the voting.

### EFFECTIVE DATE OF VOTING BY SHARES

The above Company Law provisions shall be effective as from the 2008 election nominations.

### NOTICE FOR ELECTIONS

A grower who is interested in vying for directorship and has fulfilled the required qualifications as stipulated in the Articles of Association should submit his/her name to the Returning Officer for verification of the qualification when notified to do so.

Notice for Elections of nominees for directorship shall be issued within reasonable time.

### SHAREHOLDERS REGISTER

The founder shareholders register shall be available for inspection at the electoral areas that will be conducting elections:

(Annex II)

## Radio commercial script

### Election of Directors for KTDA-managed Factories

**Voice over:**

Starting this May, KTDA-managed factories will conduct their annual directors' elections. This is the period when you, the **FOUNDER Shareholder** gets a chance to elect your preferred candidate to manage the affairs of your factory. The election date for your zone will be announced by Notice at the Buying Centres.

Voting is easy — here's what you need to know before you head to the polls.

1. Remember to carry your shareholder certificates. These are:

Your Founder Share Certificate and your Founder Bonus Share Certificate. In case you do not have these certificates, you must bring along a recent payslip.

2. Also carry your **National Identity Card**.

3. Voting shall take place within the times stipulated in the Notice for elections.

The venue of the elections shall be at the Buying Centres or venues, as shall be communicated by your factory. The **Founder Shareholders Register** shall be available for inspection at the electoral areas that will be conducting elections.

Voting shall be by ballot.

You can appoint someone to participate in the election of Factory Company Directors on your behalf by granting him or her Power of Attorney. You can obtain more information on how to do this from your Factory Unit Manager.

**Remember,**

It is your right as a Founder Shareholder to decide who is best-qualified to run the affairs of your factory.

Visit your Factory or Buying Centre today for more details.

*This message is brought to you by KTDA.*

*KTDA supports the development of small-scale tea farmers.*

Ends

# GROWER EDUCATION

## SUMMARY

This year's elections for directors of Factory Companies will see Founder Shareholders Voting by Shares for the first time in zones that have adopted this method.

Corporate Affairs and the Office of the Company Secretary have prepared publicity material that is intended to educate growers on the procedure of Voting by Shares as prescribed by the statutes and rules governing the election of directors for KTDA-managed factories.

Three key avenues will be used in the grower education (See Annex I, II, III):

1. **Grower Education Posters:** These are scheduled to be sent out to all the electoral areas by Friday April 4. They will be spot colour, size A3 posters in English with Kiswahili translations and will be pasted at Buying Centres and Factories.
2. **Radio infomercial:** These are 30-45-second commercial spots on radio. It is planned that the first two be aired during the week beginning Monday April 7 on KBC Kiswahili Service, immediately after the 7pm News. The radio message is aimed at drawing attention of shareholders to the coming elections, with a pointer to the posters, which will have been delivered to the electoral areas.  
A second round of radio commercials is planned to run a week to the election - the week starting Monday April 28 - to remind shareholders of the voting requirements. (2 commercial spots on KBC Kiswahili Service and 2 spots on each of the following vernacular radio stations: Egesa FM, Inooro FM, Kass FM and Muuga FM, should suffice).
3. **Voting Guidelines Flyer:** This is a single-page A4 information sheet (double-sided) that shareholders can take away and use as a checklist for quick reference. Titled, "What you Need to Know on Election Day," it contains key points to remember and will be available to shareholders two weeks to the poll, starting Monday April 21.

Other key communication critical to the electoral process include Notice for Elections, Guidelines to Returning Officers on the conduct of the polls (from the Company Secretary), and occasional Election Updates (for monitoring and recording progress) from Corporate Affairs.

Flyer (Annex III)

# VOTING GUIDELINES

## What you need to know on Election Day

**ELIGIBLE VOTERS:** The Articles of the Factory Companies stipulate that only Founder Shareholders are eligible to vote.

**VOTING THROUGH ANOTHER:** A Founder Shareholder can appoint a representative to participate in the election of directors on his/her behalf by granting that person Power of Attorney. Information on how to do this can be obtained from the Factory Unit Managers.

**BALLOT:** Voting shall be by ballot

### REMEMBER TO CARRY WITH YOU:

- Your National Identity Card/Passport, or Police Abstract (if the ID or Passport are lost)
- Your Shareholder Certificates, the Factory Company's  
Founder Share/Founder Bonus Share certificates, or a recent payslip for Green Leaf deliveries. (Shareholders will be advised on the payslip to use).

**VOTING TIME:** Voting will take place within the times stipulated in the Notice for Elections

**RIGHT TO ASSISTANCE:** Should you require any assistance during voting, do not hesitate to ask for help from the election officials.

**Your vote counts!**

Information provided by Group Company Secretary and distributed by Corporate Affairs  
Kenya Tea Development Agency  
March 2008

VOTING TIME

**LIST OF CANDIDATES**

The Returning Officer will publish at the Registered Buying Centres the names of those who have qualified to vie for the position of director.

**VOTING DAY – WHAT YOU MUST HAVE**

As a Founder Shareholder, you must have the following documents to be able to vote:

- Your National Identity Card or Passport, or Police Abstract (if the ID or Passport are lost)
- Your Shareholder Certificates:  
Founder Share/Founder Bonus Share certificates, or a recent payslip for Green Leaf deliveries. (Shareholders will be advised on the payslip to present).

**VENUE FOR ELECTIONS**

The venue of the elections shall be at the Buying Centres or venues, as shall be communicated. The venue shall as far as possible make it convenient for the shareholders of the electoral areas, reducing the distance of travel for the shareholders.

**BALLOT**

Voting shall be by ballot. You must have the following documents to be able to

**ASSISTANCE IN VOTING**

Any individual who requires assistance to vote by reason of blindness, disability or inability to read or write may request for assistance in casting his/her vote. If a voter requests assistance, the voter and the assistant may both enter the polling booth for the purpose of casting the vote according to the voter's choice.

**VOTING THROUGH ANOTHER**

You may nominate someone to vote on your behalf by granting him/her the Power of Attorney. For more information about this, please consult your Factory Manager.

**POLLING TIMES**

Polling times shall be within the times stipulated in the Notice for Elections.

**Election of Buying Centre Committees**

The election of Buying Centre Committees shall be carried out as is at present. Buying Centre Committees do not fall within the ambit of Company Law requirements.

(6)

**K.T.D.A. LTD.  
RECEIVED**

18 APR 2008

GROUP COMPANY  
SECRETARY

**MOFFAT KAMAU MBUE**

PO BOX 8227, 00100

GPO, NAIROBI

Tel. L.line: 020-2727944

Mobile: 0722-753132.

E-mail: [moffat\\_mbue@yahoo.com](mailto:moffat_mbue@yahoo.com)

17<sup>th</sup> April 2008

The Company Secretary  
Makomboki Tea Factory Company Ltd.  
Po Box 30213 – 00100 GPO,  
Nairobi.  
Att. Mr John Kennedy Omanga

Dear Sir,

**Re: Voting by Shares Effective 2008- Election Nominations**

May I start by stating that I am a grower of tea in the above factory's catchment area delivering tea under grower numbers MK320133 and MK250301.

I also want to state that I am an Accountant by profession and a practicing Auditor.

May I also thank you most sincerely for the way you welcomed me in your office on 15<sup>th</sup> April. In spite of being in the thick of things you spared time to respond to my enquiry.

Having responded to your notice dated 1<sup>st</sup> April 2008 (*Notification On Submission of Candidacy For Directors Nomination*) and having gone through relevant materials for the exercise namely Annex I, II, III and the growers education summary I have the following to say.

That nomination of candidates for directorships in tea factories is done under the provisions of the Tea Act, Cap 343 of the laws of Kenya and to be precise pursuant to the provisions of The Tea (Elections) Regulations, 2000, Legal Notice No 43 of 12<sup>th</sup> May 2000. The above mentioned Annex I flier, has proposed that with effect from 2008 election nominations shall be by Founder Shares proportionality. I also learnt from you that the directors of our company have issued Bonus founder Shares to the growers in proportion to a predetermine green tea leaf delivery period for the exercise to function. If the foregoing is correct and I hope it is not, a number of issues come to the fore:

- a. That unless the Minister for Agriculture has repealed, revised or amended Section. 25 (2)(k) of Cap 343 and the regulations made there under, (and I am not privy to him having done that), the above proposed method of nominating candidates for directorship is illegal.
- b. The spirit of the above mentioned Election Regulations is every grower in exercising his right to vote shall have one vote. To be precise the spirit of Regulation 4(17) as it applies to leaf collection centers does so to


- directorship candidates. So the issue of bonus share proportionality is not acceptable, will not be acceptable before the law is changed.
- c. Whether within the purview of the provisions of the Tea Act, Cap.343 or Company law, Cap 486 the spirit is one grower one vote. Indeed our Article (75) of the company Articles of Association provides for this. So how does proportionality voting come in? Change the law first, if the shareholders approve that method then promulgate an Article for that purpose and I will have no quarrel.
  - d. Bonus shares are issued out of retentions or cumulative surpluses by whatever name called. From our financial statements for the year ended 2006, the only viable conjecture is Revenue reserves which stood at Ksh.81,654,673.00. While I agree there is a need to capitalize some of these excessive retentions because they give a distorted perspective in determining returns on capital employed, the board is guided by Article (14) and (129) on how to carry out the exercise subject to the provisions of Article (8). Article (8) provides that founder shares "shall not participate in the dividend and surpluses or the return of capital of the Company". Since bonus shares are issued out of surpluses as provided for by Article (129) and in our case the Revenue reserves, such can only be issued to commercial shareholders and not founder shareholders. The authority to do that is in the Resolution of the General Meeting. So where did the directors get authority to issue bonus shares to founder shareholders? Commercial shareholders of whom I am one have a legal right to prevent founder shareholders from participating in the distribution of the surpluses. As things stand, there can not be Bonus founder shares. If the directors issued these shares out of surpluses then they have done so ultra vires the provisions of Articles (8) and (129). Once again if the directors want things to move in that direction, then they should change the law first and I will have no problem.
  - e. With tremendous respect of your good office one thing comes out of the foregoing. First, that our Board has very little respect of an orderly way of doing things. Regulation 16 required amendment of the company Articles of Association to be in harmony with Cap 343. This has not been done. The only Article (88) that talks about the process of acquiring directors, talks of the qualities of directors and not the process. We have no article for electing committee members in the tea buying centers etc. The Task Force report did recommend the amendment of the entire body of the articles of association so as to carry the aspirations of the tea growers. This has not happened. What we see now is an illegal introduction of a method of electing directors which will not be accepted.
  - f. That the above intended methodology of nominating candidates for the company directorship will materially alter the voting rights of tea growers from one-grower-one vote to shares proportionality and this variation is what was envisaged by Section 74 of Cap 486. It will also disenfranchise the small tea growers' power in factory decision making process to the big growers of tea. At the end of the day these factories will be controlled and

- (8)
- therefore owned by a few rich tea farmers to the exclusion of all others in all aspects. This will not be allowed to happen.
- g. Founder shares have value of Ksh.5.00 per share but have no value under forfeiture, Article (8)(3) to an outgoing grower. What happened to the founder share value of the shareholders who transferred to Gacharage and Nduti factories and all the shareholders who have died since the factory was established? Which account holds this value if our financial statements give a true and fair view of the state of affairs of the company? Bonus shares arise from distribution of value out of retained surpluses. Why do our directors cheat growers that they are giving growers something of value yet has no value? What will happen to this value now that I understand you are about to transfer some growers to Nduti Tea factory and others for whatever reason?

Take notice therefore that unless the forth coming nominations for Kangari and Mairi electoral areas are conducted as provided for by the Tea Act and the existing Articles of Association be prepared to meet the full wrath of the tea growers. We shall resist in all ways the machination of a few rich growers in taking over what belongs to the majority poor growers.

By a copy of this letter, a big challenge is placed at the doorsteps of The Tea Board of Kenya. Does the Board have teeth or indeed does it exist. If the provisions of Cap.343 are intended to be violated so blatantly with impunity yet the Board is the Regulatory Authority then we may be excused to question its existence or its functionality. The issue at hand is about the nomination exercise in the electoral areas and which fall squarely in the domain of the Tea Board of Kenya in the implementation of the Tea Act.

Yours Faithfully,



Hudson E. Moffat Kamau Mbue. ICDL, CPAK, MBA(MOI)

**The Managing Director  
Tea Board of Kenya  
Po Box 20064- 00200  
NAIROBI**



**KENYA TEA DEVELOPMENT AGENCY LIMITED**

KTDA FARMERS BUILDING \ P.O. Box 30213, GPO 00100, Nairobi  
Tel: +254 020 3227000 - 2, \221441\2\3\4, Fax: +254 020 211240  
E-mail: info@kdateas.com \ Site: www.kdateas.com

9

**Our Ref:** GEN/1/GCS

**Date:** 21 April 2008

Moffat Kamau Mbue  
P.O. Box 8227  
**NAIROBI 00100**

Dear Sir,

**RE: ELECTION NOMINATIONS – VOTING BY SHARES**

We acknowledge receipt of your letter dated 17<sup>th</sup> April 2008 and note that the issues raised in your letter are more or less the same as the ones you have raised in Milimani Misc Appl. No. 937 of 2006 [Yourself Vs Makomboki Tea Factory Co. Ltd]. The issues therefore will be addressed with the case.

We further note the threat issued in your last paragraph "... be prepared to meet the full wrath of the tea growers. We shall resist in all ways ..." We treat this as a security threat to the programmed event. Such threat could have serious implications.

The matter of threat has been referred to the relevant authorities, as this is intended in our view, to cause a breach of peace.

Yours faithfully

**Kenya Tea Development Agency Ltd**

  
**J. K. Omanga**  
**Group Company Secretary**

c.c. Muri Mwaniki & Wamiti Adv.  
10<sup>th</sup> floor, Rehani House  
Koinange St..Kenyatta Av. - Please find attached letter dated 17<sup>th</sup> April 2008.

HLRA

*Directors: S. M'Imanyara (Chairman), P. Ng'etich (Vice-Chairman), S. L. Tiampati (Managing), S.M. Kiarie, J.D. Kimura, G.C. Kirundi, P.T. Kanyago, G.M. Mugo, N. F. Njiru, J. Koge, J. Nyagarama, B. Matonda, J. M. Mukavale, A. K.Rimberia (Operations), B. K. Ngari (Finance)*

10

# THE TEA BOARD OF KENYA

MOMBASA BRANCH:

**HEAD OFFICE:**

Tea Board House  
Naivasha Road - Off Ngong Road  
P.O. Box 20064 00200, NAIROBI - Kenya  
Telephone: 3872421 / 3872497 / 3874445 /6  
Telefax: 3862120 / 3876337  
E-mail: info@teaboard.or.ke



Tea Board House  
Ngonyo Road  
P.O. Box 90346 80100, MOMBASA  
Telephone: 2314668/2313059  
Telefax: 2315196  
Email: teaboardmsa@kenyaweb.com

Our ref: .....1/CONF/10C Vol.1 (34) Website: <http://www.teaboard.or.ke>

Your ref: ..... Please address all correspondence to the Managing Director

25<sup>th</sup> April 2008

Mr. Moffat Kamau Mbue  
P.O. Box 8227- 00100  
**NAIROBI**

Dear Sir

**RE: NOMINATION OF THE TEA FACTORY COMPANY DIRECTORS**

We acknowledge with appreciation receipt of your correspondence addressed to the Company Secretary Makomboki Tea Factory Company Limited and copied to us regarding the "Notification on submission of candidacy for Directors Nomination".

We note that in your correspondence you refer to the provisions of the Tea Act Cap 343 of the Laws of Kenya and specifically to the Tea (Elections) Regulations 2000, Legal Notice No. 43 of 12<sup>th</sup> May 2000.

We wish to advise that the Legal Notice No. 43 of 12<sup>th</sup> May 2008, being referred to was repealed by the Minister for Agriculture and replaced with the Tea (Elections) Regulations, 2005 vide Legal Notice No. 114 of 11<sup>th</sup> August 2005.

We also note that the issues you have raised can be resolved under the Articles and Memorandum of the Makomboki Tea Factory Company Ltd. or as provided for under the Cap 418 of the Laws.

By a copy of this letter we therefore request the Company Secretary to clarify on the issues you have raised and ensure harmony in the conduct of the affairs of the factory company.

Yours faithfully



Sicily K. Kariuki (Mrs.)  
**MANAGING DIRECTOR**  
**TEA BOARD OF KENYA**

c.c. Managing Director  
Kenya Tea Development Agency Ltd.  
P.O. Box 30213 - 00100  
**NAIROBI**

# FOUNDER SHARE CERTIFICATE

(12)

Member No. 4988

Certificate No. 90004903

Grower's No. MK0320133

## MAKOMBOKI TEA FACTORY COMPANY LIMITED

(Registered under the Companies Act, Cap 486 with ordinary shares of Kshs. 5.00 each)

Registered Office: LR No. 2097035 K.T.D.A. Farmers Building,  
Moi Avenue, P.O. Box 30213-00100, Nairobi

**This is to certify that:**

Name HUDSON M. KAMAU

I/D No. 280113

Address C/O MAKOMBOKI  
LEAF BASE

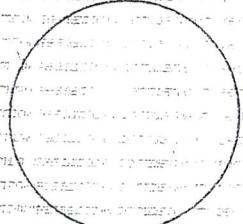
Is the Registered Holder of:

NUMBER OF SHARES IN WORDS:

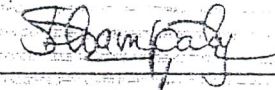
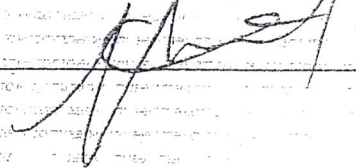
1,000,000	100,000	10,000	1,000	100	10	UNITS	DATE	TRANSFER OR ALLOTMENT NO.	NUMBER OF SHARES IN FIGURES
			ZERO	ZERO	ZERO	FIVE			5

Fully paid Founder Shares of K.Shs. 5/= (Kenya Shillings five) each in Makomboki Tea Factory Company Limited, subject to the Memorandum and Articles of Association of the said Company.

Given under the common seal of the Company on the date specified above.



31 JULY 2007

  
 \_\_\_\_\_  
 Director  
  
  
 \_\_\_\_\_  
 Secretary

\* These shares are not transferable.

\* Distinctive Nos. are omitted under the proviso in section 76 of the Companies Act Cap 436.

Member No. 4982  
Grower's no. MK0250301

Certificate No. BN001937

# MAKOMBOKI TEA FACTORY COMPANY LIMITED

(Registered under the Companies Act, Cap 486)

Registered Office: LR No. 209/7035 K.T.D.A. Farmers Building, Moi Avenue,  
P.O. Box 30213 - 00100, Nairobi

This is to certify that

Name HUDSON M KAMAU

I/D No. 950113

Address C/O MAKOMBOKI

LEAF BASE

Is the Registered Holder of:

NUMBER OF SHARES IN WORDS:

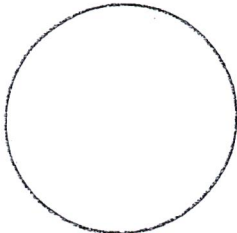
1,000,000	100,000	10,000	1,000	100	10	UNITS
		ZERO	ZERO	SIX	ZERO	

DATE	TRANSFER OR ALLOTMENT NO.	NUMBER OF SHARES IN FIGURES
	1/2008	60

Bonus Founder Shares in Makomboki Tea Factory Company Limited, subject to the Memorandum and Articles of Association of the said Company.

Given under the common seal of the Company on the date specified above.

21 APRIL 2008



Director

Secretary

*Shampay*  
*[Signature]*

\* These shares are not transferable.

\* Distinctive Nos. Are omitted under the provision of section 76 of the Companies Act Cap 486

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**MAKOMBOKI TEA FACTORY COMPANY LIMITED**  
**STATEMENT OF CHANGES IN EQUITY**  
**FOR THE YEAR ENDED 30 JUNE 2008**

	Share capital	Revaluation reserves	Revenue Reserves	Proposed Dividends	Total
Notes	Ksh.	Ksh.	Ksh.	Ksh.	Ksh.
<b>YEAR ENDED 30 JUNE 2006</b>					
As at 1 July 2006					
As previously stated	108,560,335	93,388,647	68,008,830	3,356,337	273,314,149
Prior year adjustment					
As at 1 July 2006 (As restated)	108,560,335	93,388,647	68,008,830	3,356,337	273,314,149
Excess depreciation on revaluation					
Profit for the year	-	-	4,701,485	-	4,701,485
Adjustment for tax	-	-	241,652	-	241,652
Deferred tax	-	-	-	-	-
Dividend proposed	-	-	(2,711,376)	2,711,376	-
Dividend paid	-	-	-	(2,946,890)	(2,946,890)
Prior year adjustment	-	-	(5,709,886)	-	(5,709,886)
<b>At 30 June 2007</b>	<b>108,560,335</b>	<b>93,388,647</b>	<b>64,530,705</b>	<b>3,120,823</b>	<b>269,600,510</b>
<b>YEAR ENDED 30 JUNE 2007</b>					
At 1 July 2007					
AS previously stated	108,560,335	93,388,647	64,530,705	3,120,823	269,600,510
Bonus shares	3,654,340	(3,654,340)	-	-	-
Profit after taxation	-	-	7,079,475	-	7,079,475
Adjustment for tax	-	-	743,529	-	743,529
Excess depreciation on revaluation	-	-	-	-	-
Dividend proposed	-	-	(2,711,376)	2,711,376	-
Dividend paid	-	-	-	(1,796,399)	(1,796,399)
Prior year adjustment	-	-	(5,175,698)	-	(5,175,698)
<b>At 30 June 2008</b>	<b>112,214,675</b>	<b>89,734,307</b>	<b>64,466,635</b>	<b>4,035,800</b>	<b>270,451,417</b>

The revaluation reserve represents the surplus on the revaluation of property, plant and equipment net of amortisation of depreciation on the revaluation surplus, the resultant deferred tax effect, plus the premium on the investments in KTDA shares.

*NB: Funding for issuance of shares - Bonus*

Makomboki Tea Factory Co. Ltd Management Fees for the  
Period 2008 -2013.

	2008	2009	2010	2011	2012	2013
	Ksh.	Ksh.	Ksh.	Ksh.	Ksh.	Ksh.
Sales	672,028,922	765,665,382	1,056,244,396	1,135,227,011	1,198,237,937	1,504,258,738
Cost of sales	595,299,733	691,445,640	987,946,464	1,081,829,752	1,133,134,014	1,407,509,141
Net Sales	76,729,189	74,219,742	68,297,932	53,397,259	65,103,923	96,749,597
Management fee as per financial statement	16,432,005	18,839,628	25,967,886	27,890,353	29,341,923	36,917,435
Management fee as per management agreement i.e (2.5%) of Net sales	1,918,229	1,855,493	1,707,448	1,334,931	1,627,598	2,418,739
Overcharge by KTDA	14,513,776	16,984,135	24,260,438	26,555,422	27,714,325	34,498,696

**NOTES TO THE FINANCIAL STATEMENTS  
FOR THE FINANCIAL YEAR ENDED 30<sup>TH</sup> JUNE 2013 (CONT'D)**

	2013 Kshs.	2012 Kshs.
<b>6. ADMINISTRATION AND ESTABLISHMENT</b>		
Management salaries and benefits	11,708,062	11,039,287
Depreciation/lease amortization	19,981,816	18,195,331
Auditors' remuneration	250,000	250,000
Office expenses, postage and printing	2,851,071	2,289,718
Directors' emoluments:		
As fees	968,568	968,568
As expenses-Training and educational tour	1,470,980	1,257,868
-Other	4,630,069	4,170,309
Legal and professional fees	589,219	1,299,893
Building maintenance, labour costs	7,300,020	8,186,587
Motor vehicles expenses	1,624,932	1,713,461
Insurance general	6,289,630	5,221,490
Managing agents fees	36,917,435	29,341,923
	<u>94,581,802</u>	<u>83,934,435</u>
<b>7. SELLING AND DISTRIBUTION</b>		
Mombasa handling and storage	17,902,245	16,311,697
Marine freight and other overseas charges	166,864	102,218
Auction charges plus brokerage	9,492,238	8,147,111
	<u>27,561,347</u>	<u>24,561,026</u>
<b>8. FINANCE COSTS</b>		
Bank charges	882,491	771,163
Bank loan interest	5,532,715	5,460,055
	<u>6,415,206</u>	<u>6,231,218</u>
<b>9. PROFIT BEFORE TAXATION</b>		
The profit before taxation is arrived at after charging:	19,981,816	18,195,331
Depreciation		
Directors emoluments:		
Fees	968,568	968,568
Expenses-Training and educational tour	1,470,980	1,257,868
-Other	4,630,069	4,170,309
Auditors' remuneration	250,000	250,000
Staff costs (note 11)	11,708,063	11,039,287
And after crediting :		
Interest receivable	34,035,850	45,179,256
Exchange gain/(Loss)	(924,064)	(4,225,161)
Profit/(Loss) on disposal of assets		2,457,822



*NB: Managing Agents fees*

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**NOTES TO THE FINANCIAL STATEMENTS  
FOR THE FINANCIAL YEAR ENDED 30<sup>TH</sup> JUNE 2013 (CONT'D)**

**12. PROPERTY, PLANT AND EQUIPMENT**

	Freehold land and site works	Buildings	Plant and machinery	Motor vehicles	Furniture fittings, tools and equipment	Computers	Work in progress	Total
	Kshs.	Kshs.	Kshs.	Kshs.	Kshs.	Kshs.	Kshs.	Kshs.
<b>Cost or Valuation</b>								
At 1 July 2011	9,850,000	315,212,582	176,224,339	55,164,248	9,491,581	7,798,488	19,704,332	593,445,570
Additions	86,940,800	3,076,220	5,905,124	-	1,032,300	1,270,540	18,170,178	116,395,162
Transfers	-	53,200	20,556,041	-	-	-	(20,609,242)	-
Disposals	-	-	-	(5,688,536)	(98,000)	-	-	(5,786,536)
At 30 June 2012	96,790,800	318,342,002	202,685,505	49,475,712	10,425,881	9,069,028	17,265,268	704,054,197
<b>Depreciation</b>								
At 1 July 2011	-	114,836,998	127,041,906	44,726,318	7,707,247	7,193,176	-	301,505,645
Charge for the Year	-	1,888,106	10,485,964	4,903,061	427,333	490,866	-	18,195,331
Disposals	-	-	-	(5,688,496)	(26,542)	-	-	(5,715,037)
At 30 June 2012	-	116,725,104	137,527,870	43,940,884	8,108,038	7,684,041	-	313,985,938
<b>Net Book Value At</b>								
30 June 2012	96,790,800	201,616,898	65,157,634	5,534,828	2,317,842	1,384,987	17,265,268	390,063,258
<b>Cost or Valuation</b>								
At 1 July 2012	96,790,800	318,342,062	202,685,505	49,475,712	10,425,881	9,069,028	17,265,268	704,054,196
Adjustment WIP	-	-	-	-	-	-	(131,008)	(131,008)
Additions	-	-	4,210,042	14,813,201	1,102,379	491,950	27,937,143	48,554,715
Transfers	-	1,433,903	9,859,651	-	-	-	(11,293,554)	-
Disposals	-	-	-	-	-	-	-	-
At 30 June 2013	96,790,800	319,775,905	216,755,198	64,288,913	11,528,260	9,560,978	33,777,849	752,477,903
<b>Depreciation</b>								
At 1 July 2012	-	116,725,104	137,527,870	43,940,884	8,108,038	7,684,041	-	313,985,938
Charge for the Year	-	1,954,439	12,521,226	4,369,939	469,665	666,546	-	19,981,815
Disposals	-	-	-	-	-	-	-	-
At 30 June 2013	-	118,679,543	150,049,096	48,310,823	8,577,703	8,350,587	-	333,967,753
<b>Net Book Value At 30 June 2013</b>	96,790,800	201,096,362	66,706,101	15,978,090	2,950,556	1,210,391	33,777,849	418,510,150

**13. FINANCIAL ASSETS**

Short term investments

a) Deposits at call with financial institutions

	2013 Kshs.	2012 Kshs.
a) Deposits at call with financial institutions	335,760,026	299,163,420

The financial assets are held in trust by KTDA to enable it invest in bulk so as to negotiate better interest as opposed to the company investing individually.

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NB. Work in progress.

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**MAKOMBOKI TEA FACTORY COMPANY LIMITED**  
**NOTES TO THE ACCOUNTS (Continued)**  
**FOR THE YEAR ENDED 30TH JUNE, 2004.**

**2. FIXED ASSETS**

	Leasehold Land and Buildings Kshs.	Plant and Machinery Kshs.	Motor Vehicles Kshs.	Canvas Bags Fittings and Equipment Kshs.	Work in Progress Kshs.	Total Kshs.
Cost or Valuation						
At 1st July, 2003	291,443,802	111,393,578	46,307,925	7,185,412	7,374,685	463,705,402
Additions	-	1,535,693	2,500,000	605,018	5,486,199	10,126,910
Disposals	-	-	(130,000)	-	-	(130,000)
At 30th June, 2004	291,443,802	112,929,271	48,677,925	7,790,430	12,860,884	473,702,312
<b>DEPRECIATION:</b>						
At 1st July, 2003	68,962,029	48,965,164	37,760,606	3,879,427	-	159,567,226
Charge for the Year	6,540,289	13,425,283	2,577,584	902,063	-	23,445,219
Disposals	-	-	(129,980)	-	-	(129,980)
At 30th June, 2004	75,502,318	62,390,447	40,208,210	4,781,490	-	182,882,465
<b>NET BOOK VALUE:</b>						
At 30th June, 2004	215,941,484	50,538,824	8,469,715	3,008,940	12,860,884	290,819,847
At 30th June, 2003	222,481,773	62,428,414	8,547,319	3,305,985	7,374,685	304,138,176

**\* 3. STOCKS**

	2004 Kshs.	2003 Kshs.
Stores at Cost	5,003,141	3,843,941
Stocks of Tea	65,185,911	42,732,315
	<u>70,189,052</u>	<u>46,576,256</u>

**4. DEBTORS**

Amounts falling due within one year:		
Trade Debtors	17,717,491	21,067,093
Sundry Debtors	32,921,602	41,474,845
	<u>50,639,093</u>	<u>62,541,938</u>

**DEFERRED TAX**

Balance Brought forward	65,843,759	75,403,736
Credit/Charge for the year	(2,664,796)	(9,559,977)
Balance Carried Forward	<u>63,178,963</u>	<u>65,843,759</u>

The provision for deferred tax comprise of excess of tax, wear and tear allowances over depreciation.

(2)

NB: Fixed assets at cost,

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**MAKOMBOKI TEA FACTORY COMPANY LIMITED**  
**NOTES TO THE ACCOUNTS**  
**FOR THE YEAR ENDED 30TH JUNE, 2004.**

**STATEMENT OF CHANGES IN EQUITY**

	Share Capital	Revaluation Reserve	Revenue Reserve	Totals
	kshs	kshs	kshs	kshs
<b>As at 1 July 2003</b>	<b>108,560,335</b>	<b>79,659,030</b>	<b>66,768,774</b>	<b>254,988,139</b>
<b>As Restated</b>	<b>108,560,335</b>	<b>79,659,030</b>	<b>66,768,774</b>	<b>254,988,139</b>
Profit for the year	-	-	8,342,587	8,342,587
Proposed Dividends	-	-	(5,422,752)	(5,422,752)
Prior year Adjustments	-	-	(1,877,846)	(1,877,846)
<b>As at 30 June 2004</b>	<b>108,560,335</b>	<b>79,659,030</b>	<b>67,810,763</b>	<b>256,030,128</b>

NB 1. Revaluation Reserve

(20)

**MAKOMBOKI TEA FACTORY COMPANY LIMITED**  
**NOTES TO THE FINANCIAL STATEMENTS (Continued)**  
**FOR THE YEAR ENDED 30 JUNE 2005.**

5 PROPERTY, PLANT AND EQUIPMENT	Freehold land and site works	Buildings	Plant and Machinery	Motor Vehicles	Canvas. Bags Fittings and Equipment	Work in Progress	TOTAL
	Kshs.	Kshs.	Kshs.	Kshs	Kshs	Kshs	Kshs
<b>COST OR VALUATION</b>							
At 1st July 2004	4,350,000	287,093,802	112,929,271	48,677,925	7,790,430	12,860,884	473,702,312
Additions	1,500,000	4,850,000	840,125	13,287,810	5,699,686	2,375,838	28,553,459
Transfers				(1,622,860)		(11,852,484)	(11,852,484)
Disposals				60,342,875	13,490,116	3,384,238	488,780,427
<b>At 30 June 2005</b>	<b>5,850,000</b>	<b>291,943,802</b>	<b>113,769,396</b>	<b>60,342,875</b>	<b>13,490,116</b>	<b>3,384,238</b>	<b>201,712,709</b>
Comprising:							
Cost	325,923	38,454,461	87,759,190	57,160,224	14,628,673	3,384,238	287,067,718
Valuation	5,524,077	253,489,341	26,010,206	3,182,651	(1,138,557)		488,780,427
	<b>5,850,000</b>	<b>291,943,802</b>	<b>113,769,396</b>	<b>60,342,875</b>	<b>13,490,116</b>	<b>3,384,238</b>	<b>488,780,427</b>
<b>DEPRECIATION:</b>							
At 1st July 2004		75,502,318	62,390,447	40,208,210	4,781,490		182,882,465
Charge for the Year		6,661,539	13,525,708	3,858,516	1,485,299		25,531,062
On disposal				(1,575,233)			(1,575,233)
At 30 June 2005		82,163,857	75,916,155	42,491,493	6,266,789		206,838,294
<b>NET BOOK VALUE:</b>							
At 30 June 2005	<b>5,850,000</b>	<b>209,779,945</b>	<b>37,853,241</b>	<b>17,851,382</b>	<b>7,223,327</b>	<b>3,384,238</b>	<b>281,942,133</b>
At 30 June 2004	<b>4,350,000</b>	<b>211,591,484</b>	<b>50,538,824</b>	<b>8,469,715</b>	<b>3,003,940</b>	<b>12,860,884</b>	<b>290,819,847</b>

Property, plant and equipment were last revalued in 1997 by Gatheru Irungu Mugo Company Limited, a firm of registered valuers. Valuations were made on the basis of the depreciated replacement cost. The book values were adjusted to the revaluations and the resultant surplus net of deferred tax was credited to the year ended 30 June 2000

**6. INVESTMENTS**

Long term investment  
 Treasury bonds  
 Short term investment  
 Fixed deposits  
 Treasury bills

	2005 Kshs	2004 Kshs
Long term investment	22,200,000	22,200,000
Treasury bonds	41,374,529	51,000,000
Short term investment	23,000,000	
Fixed deposits	64,374,529	51,000,000

Investments are registered in the name of Kenya Tea Development Agency Limited who are managing agents and also a related party.

(A)

- NB: Fixed assets at cost.  
 2. Fixed assets at valuation  
 3. Revaluation reserve created  
 4. Work in progress  
 5. Motor vehicle valuation

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# MAKOMBOKI TEA FACTORY COMPANY LIMITED NOTES TO THE FINANCIAL STATEMENTS(Continued) FOR THE YEAR ENDED 30 JUNE 2006.

## 5 PROPERTY, PLANT AND EQUIPMENT

	Freehold land and site works	Buildings	Plant and Machinery	Motor Vehicles	Canyas. Bags Fittings and Equipment	Work in Progress	TOTAL
	Kshs.	Kshs.	Kshs.	Kshs	Kshs	Kshs	Kshs
<b>COST OR VALUATION</b>							
At 1st July 2005	5,850,000	291,943,802	113,769,396	60,342,875	13,490,116	3,384,238	488,780,427
Additions	-	2,288,300	894,779	6,659,621	355,900	3,424,392	13,622,992
Transfers	-	-	-	-	-	(3,384,238)	(3,384,238)
Disposals	-	-	-	(2,480,000)	-	-	(2,480,000)
<b>At 30 June 2006</b>	<b>5,850,000</b>	<b>294,232,102</b>	<b>114,664,175</b>	<b>64,522,496</b>	<b>13,846,016</b>	<b>3,424,392</b>	<b>496,539,181</b>
Comprising:							
Cost	325,923	38,454,461	87,759,190	57,160,224	14,628,673	3,384,238	201,712,709
Valuation	5,524,077	253,489,341	26,010,206	3,182,651	(1,138,557)	-	287,067,748
	<u>5,850,000</u>	<u>291,943,802</u>	<u>113,769,396</u>	<u>60,342,875</u>	<u>13,490,116</u>	<u>3,384,238</u>	<u>488,780,427</u>
<b>DEPRECIATION:</b>							
At 1st July 2005	-	82,163,857	75,916,155	42,491,493	6,266,789	-	206,838,294
Charge for the Year	-	7,393,390	14,689,575	5,643,671	2,668,656	-	30,395,292
On disposal	-	-	-	(2,479,960)	-	-	(2,479,960)
<b>At 30 June 2006</b>	<b>-</b>	<b>89,557,247</b>	<b>90,605,730</b>	<b>45,655,204</b>	<b>8,935,445</b>	<b>-</b>	<b>234,753,626</b>
<b>NET BOOK VALUE:</b>							
<b>At 30 June 2006</b>	<b>5,850,000</b>	<b>204,674,855</b>	<b>24,058,445</b>	<b>18,867,292</b>	<b>4,910,571</b>	<b>3,424,392</b>	<b>261,785,555</b>
<b>At 30 June 2005</b>	<b>5,850,000</b>	<b>209,779,945</b>	<b>37,853,241</b>	<b>17,851,382</b>	<b>7,223,327</b>	<b>3,384,238</b>	<b>281,942,133</b>

Property, plant and equipment were last revalued in 1997 by Gatheru Irungu Mugo Company Limited, a firm of registered valuers. Valuations were made on the basis of the depreciated replacement cost. The book values were adjusted to the revaluations and the resultant surplus net of deferred tax was credited to the year ended 30 June 2000

## 6. INVESTMENTS

	2006 Kshs	2005 Kshs
Long term investment		
Treasury bonds	22,200,000	22,200,000
Short term investment		
Fixed deposits	43,924,915	41,374,529
Treasury bills	-	23,000,000
	<u>43,924,915</u>	<u>64,374,529</u>

Investments are registered in the name of Kenya Tea Development Agency Limited who are managing agents and also a related party.

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NB: Work in progress.

(22)

MAKOMBOKI TEA FACTORY COMPANY LIMITED  
STATEMENT OF CHANGES IN EQUITY  
FOR THE YEAR ENDED 30 JUNE 2005.

Notes	Share capital Ksh.	Revaluation reserves Ksh.	Revenue Reserves Ksh.	Proposed Dividends Ksh.	Total Ksh.
At 1st July 2003	108,560,335	79,659,030	66,768,774	7,545,141	262,533,280
Profit for the year	-	-	8,342,587	-	8,342,587
Dividend paid	-	-	-	(3,364,892)	(3,364,892)
Dividend proposed	-	-	(5,422,752)	(5,422,752)	-
Prior year Adjustment,	-	-	(1,877,846)	-	(1,877,846)
At 30 June 2004	108,560,335	79,659,030	67,810,763	9,603,001	265,633,129
At 1st July 2004	108,560,335	79,659,030	67,810,763	9,603,001	265,633,129
Profit for the year	-	-	3,242,491	-	3,242,491
Deferred tax	-	83,774	-	-	83,774
Dividend proposed	-	-	(2,711,376)	2,711,376	-
Dividend paid	-	-	-	(5,312,534)	(5,312,534)
Prior Year Adjustment	-	-	870,673	-	870,673
At 30 June 2005	108,560,335	79,742,804	69,212,551	7,001,843	264,517,533

(3)

NB 1. Revaluation Reserve.

**NOTES TO THE FINANCIAL STATEMENTS  
FOR THE FINANCIAL YEAR ENDED 30<sup>TH</sup> JUNE 2013 (CONT'D)**

	2013 Kshs.	2012 Kshs.
<b>14. FINANCIAL INVESTMENT</b>		
Equity shareholding In KTDA	210,360	210,360
Investment in Aberdare Power Company Limited	20,923,069	-
	<u>21,133,429</u>	<u>210,360</u>
<b>15. INVENTORIES</b>		
Tea at factory	26,747,100	10,617,978
Tea in transit	153,109,530	175,614,881
Stores	15,132,479	17,569,694
	<u>194,989,109</u>	<u>203,802,553</u>
<b>16. RECEIVABLES AND PREPAYMENTS</b>		
Trade receivables	118,187,419	97,519,672
Sundry receivables	76,855,150	98,408,143
Due from growers	513,272	335,563
	<u>195,555,841</u>	<u>196,263,378</u>
Average debtors collection period is 26 days.		
The directors are of the opinion that the total balance is recoverable and the financial statements have been prepared on this basis.		
<b>17. BANK AND CASH BALANCES</b>		
Net cash balances and deposits held in financial institutions	56,934,218	343,991
	<u>56,934,218</u>	<u>343,991</u>
<b>18. ORDINARY SHARE CAPITAL</b>		
Authorized : 80,000,000 ordinary share of Kshs. 5 each divided into:		
Class "A" 500,000 Founder shares	2,500,000	2,500,000
Class "B" 79,500,000 Commercial shares	397,500,000	397,500,000
	<u>400,000,000</u>	<u>400,000,000</u>
Issued and fully paid: of Kshs. 5 each		
Class "A" 226,360 Founder shares	1,131,800	1,131,800
Class "B" 22,250,818 Commercial shares	111,254,090	111,254,090
	<u>112,385,890</u>	<u>112,385,890</u>
<b>19. LOAN ACCOUNT</b>		
At start of the year	17,870,236	25,348,184
Proceeds of new loan	55,661,796	-
Loan repaid	(8,711,295)	(7,477,948)
Balance carried forward	<u>64,820,737</u>	<u>17,870,236</u>
a) Current portion (repayable within 12 months)	3,186,000	-
b) Long term portion	61,634,737	17,870,236
	<u>64,820,737</u>	<u>17,870,236</u>

MB: 1. Inventory - composition

**NOTES TO THE FINANCIAL STATEMENTS  
FOR THE FINANCIAL YEAR ENDED 30<sup>TH</sup> JUNE 2013 (CONT'D)**

(i) Credit risk

The company's credit risk arises primarily from trade receivables. The directors make provisions against balances whose likelihood of recoverability is in doubt. The directors are of the opinion that the company's exposure on the above balances is limited because the debt is held by a wide number of unrelated parties.

(ii) Foreign exchange risk

The company undertakes certain transactions denominated in foreign currencies. Exchange rate exposures are managed within approved policy parameters.

(iii) Interest rate risk

Interest rate risks arise from fluctuations in the bank borrowing rates. The interest rates vary from time to time depending on the prevailing economic circumstances. The Company closely monitors the interest rate trends to minimize the potential adverse impact of interest rate changes.

	2013 Kshs.	2012 Kshs.
<b>3. SALES</b>		
Growers sales	15,829,478	13,705,444
Pool sales – ketepa	8,355,461	5,481,469
Mombasa auction	1,191,789,761	1,038,152,337
Direct sales overseas	254,998,990	121,995,650
Direct sales local	33,285,048	18,903,037
	<u>1,504,258,738</u>	<u>1,198,237,937</u>
<b>4. COST OF SALES</b>		
Opening stocks	186,232,859	151,318,787
Leaf collection	26,048,527	24,550,005
Manufacturing Cost – Green leaf payment	1,169,803,950	973,111,672
– Other: labour and energy	134,988,627	108,406,078
Packing and forwarding	35,274,392	29,082,443
Semi variable costs	35,017,416	32,897,888
Less closing stocks	* (179,856,630)	(186,232,859)
	<u>1,407,509,141</u>	<u>1,133,134,014</u>
<b>5. OTHER INCOME</b>		
KTDA Ltd dividend	8,919,269	7,362,604
Profit on disposal of assets	-	2,457,822
Majani Insurance discount	325,057	300,992
Foreign exchange gain/(loss)	(924,064)	(4,225,161)
Interest income	34,035,850	45,179,256
Miscellaneous income	1,136,259	1,760,451
Nursery income/(loss)	308,463	(431,854)
	<u>43,800,834</u>	<u>52,404,110</u>

NB: 1. Closing stock,  
2. Cost of Sales,  
3. Sales

(7)

**STATEMENT OF COMPREHENSIVE INCOME  
FOR THE FINANCIAL YEAR ENDED 30<sup>TH</sup> JUNE 2013**

		2013	2012
	Note	Kshs.	Kshs.
TEA SALES	3	1,504,258,738	1,198,237,937
COST OF SALES	4	(1,407,509,141)	(1,133,134,014)
<b>GROSS PROFIT</b>		<b>96,749,597</b>	<b>65,103,923</b>
OTHER INCOME	5	43,800,834	52,404,110
		<u>140,550,431</u>	<u>117,508,033</u>
<b>EXPENSES</b>			
ADMINISTRATION AND ESTABLISHMENT	6	(94,581,802)	(83,934,435)
SELLING AND DISTRIBUTION	7	(27,561,347)	(24,561,026)
FINANCE COSTS	8	(6,415,206)	(6,231,218)
		<u>(128,558,355)</u>	<u>(114,726,679)</u>
<b>PROFIT BEFORE TAXATION</b>		<b>11,992,076</b>	<b>2,781,354</b>
TAXATION	10(a)	(8,094,031)	7,399,677
<b>PROFIT AFTER TAXATION</b>		<b><u>3,898,045</u></b>	<b><u>10,181,031</u></b>
<b>BASIC AND DILUTED EARNINGS PER SHARE</b>	27	<u><b>0.17</b></u>	<u><b>0.45</b></u>

*NB: Net sales / Gross Profit / Contribution*

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**STATEMENT OF CHANGES IN EQUITY  
FOR THE FINANCIAL YEAR ENDED 30<sup>TH</sup> JUNE 2013**

	Note	Share capital Kshs.	Revaluation reserves Kshs.	Revenue reserves Kshs.	Dividend proposed Kshs.	Total Kshs.
<b>YEAR ENDED 30 JUNE 2012</b>						
As 1 July 2011						
As previously stated		112,385,890	93,388,647	46,657,232	2,781,353	255,213,122
Prior year adjustment	26	-	-	(4,177,252)	-	(4,177,252)
As restated		112,385,890	93,388,647	42,479,980	2,781,353	251,035,870
Profit for the year		-	-	10,181,032	-	10,181,032
Proposed dividend		-	-	(2,781,559)	2,781,559	-
Dividend paid		-	-	-	(2,781,353)	(2,781,353)
At 30 June 2012		112,385,890	93,388,647	49,879,453	2,781,559	258,435,549
<b>YEAR ENDED 30 JUNE 2013</b>						
As 1 July 2012						
As previously stated		112,385,890	93,388,647	49,879,453	2,781,559	258,435,549
Prior year adjustment	26	-	-	(32,059,907)	-	(32,059,907)
As restated		112,385,890	93,388,647	17,819,546	2,781,559	226,375,642
Profit for the year		-	-	3,898,045	-	3,898,045
Deferred tax		-	-	931,784	-	931,784
Proposed dividend		-	-	(2,225,082)	2,225,082	-
Dividend paid		-	-	-	(2,781,559)	(2,781,559)
At 30 June 2013		112,385,890	93,388,647	20,424,293	2,225,082	228,423,912

*NB: 1. Prior year adjustment*

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**NOTES TO THE FINANCIAL STATEMENTS  
FOR THE FINANCIAL YEAR ENDED 30<sup>TH</sup> JUNE 2013 (CONT'D)**

	2013 Kshs.	2012 Kshs.
<b>25. RECONCILIATION OF PROFIT BEFORE TAX TO CASH GENERATED FROM OPERATIONS</b>		
Profit before taxation	11,992,076	2,781,354
<b>Adjustments for:</b>		
Depreciation	19,981,815	18,195,331
Adjustment of WIP	131,008	-
Gain on sale of fixed assets	-	(2,862,513)
Interest received	(34,035,850)	(45,179,256)
Dividend received from KTDA	(8,919,269)	(7,362,604)
Interest paid	5,532,715	5,460,055
<b>Loss before working capital changes</b>	<b>(5,317,505)</b>	<b>(28,967,633)</b>
<b>Changes in working capital:</b>		
(i) Decrease/(Increase) in inventories	8,813,443	(20,999,451)
(ii) Decrease/(Increase) in receivables	707,537	(53,241,591)
(iii) (Decrease)/Increase in payables and accruals	(13,352,991)	6,843,661
(iv) Increase/(Decrease) in balances due to related parties	8,201,304	(8,627,587)
(v) Increase/(Decrease) in green leaf payment account	119,275,788	(74,639,359)
	<b>123,645,081</b>	<b>(150,664,327)</b>
<b>Net cash generated from operations</b>	<b>118,327,576</b>	<b>(179,631,960)</b>
<b>26. PRIOR YEAR ADJUSTMENT</b>		
Gratuity under provision	-	(4,177,252)
VAT assessment-arrears	(2,164,305)	-
Severance pay	(8,262,659)	-
Pool Bank Accounts Reconciliation	(21,632,943)	-
	<b>(32,059,907)</b>	<b>(4,177,252)</b>
<b>27. EARNINGS PER SHARE</b>		
Net profit attributable to ordinary shareholders	3,898,045	10,181,031
Weighted average number of ordinary shares	22,477,178	22,477,178
<b>Basic and Diluted earnings per share</b>	<b>0.17</b>	<b>0.45</b>

- (a) Basic earnings per share is calculated on the profit after taxation and on the average number of ordinary shares in issue during the year per IAS 33.
- (b) Diluted earnings per share is calculated on the profit after taxation and on the average number of ordinary and bonus shares in issue.
- (c) The basic and diluted earnings per share are the same.

**28. CURRENCY RISK**

The Company operates wholly within Kenya and its assets and liabilities are reported in the local currency. It held no significant currency exposure as at 30<sup>th</sup> June 2013.

**29. INCORPORATION**

The Company is incorporated in Kenya under the Companies Act, Cap 486 of the laws of Kenya.

**30. CURRENCY**

These financial statements are presented in Kenya Shillings (Kshs).

*NB: 1. Prior year adjustment*

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STATEMENT OF CHANGES IN EQUITY FOR THE YEAR ENDED 30TH JUNE 2011

	Notes	Share capital	Revaluation reserves	Revenue Reserves	Dividends Paid - proposed	Total
		Kshs	Kshs	Kshs	Kshs	Kshs
<b>YEAR ENDED 30 JUNE 2010</b>						
<b>As 1 July 2009</b>						
As previously stated		112,214,655	89,734,307	89,393,631	2,711,376	294,053,989
Transfer adjustment		-	3,654,340	(3,654,340)	-	-
Prior year adjustment	26	-	-	(15,354,814)	-	(15,354,814)
<b>As restated</b>		<b>112,214,675</b>	<b>93,388,647</b>	<b>70,384,477</b>	<b>2,711,376</b>	<b>278,699,175</b>
Profit for the year		-	-	4,882,613	-	4,882,613
Deferred tax		-	-	(14,303,880)	-	(14,303,880)
Investment in KTDA		-	-	18,940	-	18,940
Reconciliation adjustment	18	62,590	-	(62,590)	-	-
Dividend proposed		-	-	(2,778,637)	2,778,637	-
Dividend paid		-	-	-	(2,711,376)	(2,711,376)
<b>At 30 June 2010</b>		<b>112,277,265</b>	<b>93,388,647</b>	<b>58,140,923</b>	<b>2,778,637</b>	<b>266,585,472</b>
<b>YEAR ENDED 30 JUNE 2011</b>						
<b>As 1 July 2010</b>						
As previously stated		112,277,265	93,388,647	58,140,923	2,778,637	266,585,472
Prior year adjustment	26	-	-	(1,477,004)	-	(1,477,004)
<b>As restated</b>		<b>112,277,265</b>	<b>93,388,647</b>	<b>56,663,919</b>	<b>2,778,637</b>	<b>265,108,468</b>
Profit for the year		-	-	5,721,446	-	5,721,446
Deferred tax	20	-	-	(12,838,156)	-	(12,838,156)
Reconciliation adjustment	18	-	-	(108,625)	-	-
Dividend proposed		108,625	-	(2,781,353)	2,781,353	-
Dividend paid		-	-	-	(2,778,637)	(2,778,637)
<b>At 30 June 2011</b>		<b>112,385,890</b>	<b>93,388,647</b>	<b>46,657,232</b>	<b>2,781,353</b>	<b>255,213,121</b>

NB. Reconciliation adjustment

MJ

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**MAKOMBOKI TEA FACTORY COMPANY LIMITED  
CHAIRMAN'S REPORT FOR THE YEAR ENDED 30 JUNE 2010**

It is my pleasure to present the company's Annual Report for the year ended 30th June, 2010. The overall performance of the company continued to improve. The asset base grew by 4.19%. The good performance is attributed to the increased leaf production, improved auction prices due to the microeconomics, favourable exchange rates, improved tea quality due to upgrading and modernization of the production process and measures implemented by the company to achieve cost efficiency.

**CROP:**

Crop production for the year was higher than last year's. 16,595,447 kilogrammes of Green Leaf were delivered for processing at the company's factory. Out of this throughput, 4,433,744 kilogrammes of tea was made. These throughput and output were higher than last year's levels of 12,758,889 kilogrammes and 3,484,219 kilogrammes by 3,836,558 kilogrammes and 949,525 kilogrammes respectively. This achievement was at a conversion factor of 26.72% which is equivalent to 3.74 per Kg of Green Leaf to make one kilogramme of Made Tea.

**TEA PRICES:**

There was an increase in tea prices during the year. The average price realised per kilogramme of made tea sold was Kshs. 248.95. This compares favourably with the price of Ksh. 203.20 in 2008. The prices therefore increased by Ksh 45.75 per kilogramme of sold tea. This year's price of one kilogramme of made tea sold is equivalent to Kshs.62.59 per kg of green Leaf.

**MANUFACTURING COST:**

The manufacturing costs increased during the year. The average manufacturing cost for the year was Ksh.67.95 for every kilogramme of made tea against the average manufacturing cost of Kshs. 58.86 per kg for last year. There was an increase in the manufacturing cost by Kshs.8.09 per every kilogramme. The manufacturing cost includes monthly green leaf payment at Kshs.43.13 per kg of made tea for the year which is higher than Kshs.38.45 per kg for last year. This year manufacturing cost was equivalent to Kshs.18.15 per kilogramme of green leaf. The increase in cost is attributed to increase in initial green leaf payment from Kshs.10.50 to Kshs.12.00 per kilogramme of green leaf, fuel, electricity cost due to prolonged drought during the first half of the financial year.

**LEAF QUALITY**

Our leaf quality average for the year averaged at 75%, which was below our target of 76%. Improvement of plucking standards and leaf handling is required to ensure maximum return to the shareholders. Production per bush was 1.5 Kgs which is lower than our target of 2 Kgs per bush. There is need to improve on crop husbandry.

**GREEN LEAF PAYMENT AND DIVIDEND**

This year the company was able to pay the farmers a total of Kshs.855,084,359 for the 16,595,447 Kgs of green leaf delivered to the factory. This year's payment is higher than last year's payment of Kshs.529,493,894 after the farmer had delivered 12,758,889 Kgs. This was due to increase in sales price by 22.52%. The increase in payment to the farmer was 81.49% which shows an improvement in factory operating efficiency. The company Board recommended that payment of an interim dividend of 2.5% be paid to all class "B" shareholders appearing in the company's share register as at 30th June 2010, which interprets to a total of Kshs.2,778,637.

**CAPITAL EXPENDITURES, MAJOR PROJECTS AND PROGRESS REPORT:**

Some of the major capital procurements during the year were the generator, boiler, double Cab (KKB 838D), Leaf carrier (KBL 383A) and weigh feeder. One of our priorities will be upgrading of our machinery and fleet efficiency. Currently, the company is planning to procure a second CFU and a Drier to improve on the manufacturing process and a lorry for ferrying firewood. Due to the change of method and mode of weighing leaf in the factories, the company is in the process of introducing the use of EWS system. On generation of hydro power project, we partnered with our sister factories and the Agency culminating into the formation of a company named Aberdare Power Company Limited.

NB: TEA DELIVERED TO FACTORY

MAKOMBUKI LEAF FACTORY CO. LTD  
**2009/2010 PROPOSED SECOND PAYMENT**  
**GREEN LEAF DELIVERIES BY MAKOMBUKI LEAF BASE**

PERIOD TO 30/06/2009

PERIOD TO 30/06/2010

WEIGHT Kgs	RATE Kshs	AMOUNT Kshs		WEIGHT Kgs	RATE Kshs	AMOUNT Kshs
12,758,889.00	31.01	395,653,147.89	GREEN LEAF DELIVERED TO : Main Factory (Distributable)	16,584,867.00	40.16	666,048,258.72
			Proposed Retention	16,595,447.00	(2.41)	(40,000,000.00)
			Proposed Dividends	16,584,867.00	(0.17)	(2,778,637.00)
			<b>FACTORY RATE</b>	<b>16,584,867.00</b>	<b>37.58</b>	<b>623,269,621.72</b>
108,954.00	20.87	2,273,869.98	DIVERSIONS TO:	211,953.00	40.34	8,550,184.02
			1) GACHARAGE	150,080.00	32.90	4,937,632.00
			2) NDUTI			
12,867,843.00		397,927,017.87	TOTAL DELIVERED WEIGHT ( By The Leaf Base)	16,946,900.00		636,757,437.74
12,842,094.00			TOTAL GROSS WEIGHT ( Delivered By Farmers)	16,916,925.00		
25,749.00			GAIN(LOSS) In Transit	29,975.00		
		397,927,017.87	Gross Amount Due For Second Payment			636,757,437.74
25,749.00	10.50	270,364.50	ADD Net Gain In Transit @ 10.50			
			ADD Net Gain In Transit @ 12.00	11,917.50	10.50	125,133.75
12,842,094.00	31.0072	398,197,382.37	AVAILABLE FOR SECOND PAYMENT	18,057.50	12.00	216,690.00
12,842,094.00	31.00	398,104,914.00	<b>RECOMMENDED FOR SECOND PAYMENT</b>	16,916,925.00	37.6605	637,099,261.49
		92,468.37	Rounding Off Difference Retained By The Factory	<b>16,916,925.00</b>	<b>37.66</b>	<b>637,091,395.50</b>
			Total Payment To Farmers (Initial & Second Payment)			7,865.99
12,842,094.00	41.50	455,027,178.50	Advance Payment( Based On December Green Leaf)	16,916,925.00	48.96	828,336,463.50
8,019,390.00	5.00	40,096,950.00	Balance After Advance Payment	7,076,633.00	6.00	42,459,798.00
		358,007,964.00				594,631,597.50

NB Gain in transit

37.66  
 2.00  
 37.66  
 [Signature]  
 [Signature]

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Makomboki Tea Factory Co Ltd. Green Leave Tea  
Payments for the Period 2008- 2013

<u>Period</u>	<u>Ksh.</u>
<u>2013</u>	<u>1,169,803,950.00</u>
<u>2012</u>	<u>973,111,672.00</u>
<u>2011</u>	<u>954,935,484.00</u>
<u>2010</u>	<u>626,138,929.00</u>
<u>2009</u>	<u>397,631,886.00</u>
<u>2008</u>	<u>273,704,402.00</u>

NB: 1. Bonuses - Control A/c.

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**MAKOMBOKI TEA FACTORY COMPANY LIMITED**  
**NOTES TO THE FINANCIAL STATEMENTS(Continued)**  
**FOR THE YEAR ENDED 30 JUNE 2008**

	2008 Kshs.	2007 Kshs.
<b>11. SHARE CAPITAL</b>		
Authorised : 80,000,000 ordinary share of Kshs 5 each divided into:		
Class "A" 500,000 Founder shares	2,500,000	2,500,000
Class "B" 79,500,000 Commercial shares	397,500,000	397,500,000
	<u>400,000,000</u>	<u>400,000,000</u>
Issued and fully paid: of Kshs 5 each		
Class "A" 21,060 Founder shares	1,131,800	105,300
Class "B" 21,691,007 Commercial shares	111,082,875	108,455,035
	<u>112,214,675</u>	<u>108,560,335</u>

**2. LOAN ACCOUNT**

The company did not have any loans aoutstanding as at 30 June 2008.

**3. DEFFERED TAXATION**

The movement on the deferred tax account is as follows :

At start of year	39,837,589	44,788,329
Credited for the year	(5,095,569)	(4,950,740)
At end of year	<u>34,742,020</u>	<u>39,837,589</u>

Deferred tax liabilities and deferred tax charge/(credit) are attributable to the following items:

	1 July 2007 Kshs	Charge/(credit) to the income Kshs	Credit to equity Kshs	30 June 2008 Kshs
Property, plant and equipment				
-On historical cost basis	(21,957,409)	(4,351,102)	-	(26,308,511)
-On revaluation surpluses	63,356,912			63,356,912
Current items	(1,561,914)	(744,467)		(2,306,381)
	<u>39,837,589</u>	<u>(5,095,569)</u>	<u>-</u>	<u>34,742,020</u>

*NB* 1. Issued share capital - Share "A"  
 2. Issued share capital - Share "B"  
 3. Share A - 205,300 increase to 226,360  
 4. Share B - 525,568 increase to 222,16,575

**MAKOMBOKI TEA FACTORY COMPANY LIMITED**  
**BALANCE SHEET AS AT 30 JUNE, 2002**

	<u>Notes</u>	<u>2002</u> <u>Kshs</u>	<u>2001</u> <u>Kshs.</u>
<b>NON-CURRENT ASSETS</b>	1(c) 2	316,937,284	327,794,406
K.T.D.A INVESTMENT		279,740	-
<b>CURRENT ASSETS</b>			
* Stocks	* 3	70,774,516	70,842,175
Debtors	4	54,675,411	55,436,997
Bank balances and cash		142,540,136	170,936,021
		<u>267,990,063</u>	<u>297,215,193</u>
<b>TOTAL ASSETS</b>		<u>585,207,087</u>	<u>625,009,599</u>
<b>EQUITY</b>			
Share capital	7	108,560,335	112,293,305
Reserves	8	134,315,230	119,551,293
		<u>242,875,565</u>	<u>231,844,598</u>
<b>NON-CURRENT LIABILITIES</b>			
Deferred Tax Account	5	75,403,736	80,679,739
		<u>75,403,736</u>	<u>80,679,739</u>
<b>CURRENT LIABILITIES</b>			
KTDA current accounts		10,826,291	279,343
Creditors and accruals	6	21,526,848	9,073,432
Amounts payable for Green leaf		224,150,228	295,268,774
Dividends		7,558,915	7,863,713
Taxation		2,865,504	-
		<u>266,927,786</u>	<u>312,485,262</u>
<b>TOTAL EQUITY &amp; LIABILITIES</b>		<u>585,207,087</u>	<u>625,009,599</u>

The Accounts were approved by the Board on 2nd October, 2002 and signed on its Behalf by:

.....  
 \* Director

.....  
 Director

NR: Stock - Inventory

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**MAKOMBOKI TEA FACTORY COMPANY LIMITED**  
**NOTES TO THE ACCOUNTS (Continued)**  
**FOR THE YEAR ENDED 30TH JUNE, 2002.**

**2. FIXED ASSETS**

	Leasehold Land and Buildings Kshs.	Plant and Machinery Kshs.	Motor Vehicles Kshs.	Canvas Bags, Fittings and Equipment Kshs.	Work in Progress Kshs.	Total Kshs.
Cost or Valuation						
At 1st July, 2001	288,443,540	100,393,852	43,709,948	7,070,962	635,967	440,254,269
Additions	2,570,307	9,012,961			2,372,669	13,955,937
Transfers					(635,967)	(635,967)
At 30th June, 2002	291,013,847	109,406,813	43,709,948	7,070,962	2,372,669	453,574,239
<b>DEPRECIATION:</b>						
At 1st July, 2001	55,319,401	25,708,260	29,697,512	1,734,690		112,459,863
Charge for the Year	7,102,339	10,071,471	5,998,686	1,004,596		24,177,092
Disposals						
At 30th June, 2002	62,421,740	35,779,731	35,696,198	2,739,286		136,636,955

**NET BOOK VALUE:**

At 30th June, 2002	228,592,107	73,627,082	8,013,750	4,331,676	2,372,669	316,937,284
At 30th June, 2001	233,124,139	74,685,592	14,012,436	5,336,272	635,967	327,794,406

**3. STOCKS**

	2002 Kshs.	2001 Kshs.
Stores at Cost	3,994,998	4,178,476
Stocks of Tea	66,779,518	66,663,699
	<u>70,774,516</u>	<u>70,842,175</u>

**4. DEBTORS**

Amounts falling due within one year:		
Trade Debtors	21,930,863	29,340,248
Sundry Debtors	32,744,548	26,096,749
	<u>54,675,411</u>	<u>55,436,997</u>

**5 DEFERRED TAX**

Balance Brought forward	80,679,739	86,069,983
Credit/Charge for the year	(5,276,003)	(5,390,244)
Balance Carried Forward	<u>75,403,736</u>	<u>80,679,739</u>

The provision for deferred tax comprise of excess of tax ,wear and tear allowances over depreciation.

NB: Stock Inventory

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**MAKOMBOKI TEA FACTORY COMPANY LIMITED**  
**NOTES TO THE ACCOUNTS (Continued)**  
**FOR THE YEAR ENDED 30TH JUNE, 2002.**

	<u>2002</u>	<u>2001</u>
	<u>Kshs</u>	<u>Kshs</u>
<b>10. COST OF SALES</b>	66,663,699	86,886,946
Opening stocks	32,969,851	25,051,351
Leaf Collection	454,141,888	572,982,422
Manufacturing	20,102,794	24,416,197
Packing and forwarding	18,914,649	14,398,957
Semi variable costs	(66,779,518)	(66,663,699)
Less: Closing stocks	<u>526,013,363</u>	<u>657,072,174</u>
<b>11. OTHER INCOME</b>	8,778,225	18,525,113
Gain on foreign exchange	2,463,462	3,289,320
Ketepa 2nd payment	7,355,351	12,705,050
Interest income	1,328,765	-
K.T.D.A Dividends	1,076,143	128,081
Miscellaneous income	<u>21,001,946</u>	<u>34,647,564</u>
<b>12. ADMINISTRATION AND ESTABLISHMENT EXPENSES</b>	4,350,730	2,755,688
Staff costs	24,177,092	25,051,446
Depreciation	165,000	150,000
Auditors remuneration	640,000	480,000
Directors remuneration	11,856,616	11,382,655
As directors	243,307	379,546
As executives	2,391,734	2,015,484
Legal and professional fees	811,211	716,181
Building maintenance-labour	436,780	463,307
Building maintenance-Other costs	312,507	302,707
Motor vehicles	2,927,168	1,406,998
Printing & stationery	17,756,536	20,759,719
Insurance general	240,941	114,664
Management fees	11,188	90,970
Postage & Telephone	738,256	599,619
Travel Expenses	<u>57,059,066</u>	<u>56,668,984</u>
Sundry Expenses		

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NB: Closing stock

Words signifying the singular number only shall include the plural number and vice versa.

Words signifying the masculine gender only shall include the feminine gender.

Words importing persons shall include corporations.

The expression "debenture" and "debenture holder" shall include debenture stock and stockholder.

The expression "the Secretary" shall include a temporary or assistant secretary and or any person appointed by the Board to perform any of the duties of the secretary.

The expression "dividend" shall include "bonus".



**Election Regulations:** Elections of nominees who offer themselves for election, as Directors shall be carried out in electoral areas specified by the company within thirty (30) days of the next annual General Meeting. Nominees will be eligible for election as Directors of the Company at the Annual General meeting and the Directors so elected shall be confirmed at the Annual General Meeting.

**Electoral Areas:** The Company shall create Electoral Areas in its catchments to ensure equitable distribution of Directorship.

**Returning Officer:** Returning Officers and Presiding Officers for purposes of the director's elections shall be appointed by the Company Secretary.

Reference to any provision of the Act shall be construed as a reference to such provision as modified by any act for the time being in force.

3. Subject to the last preceding Article, any words or expressions defined in the Act shall, if not inconsistent with the subject or context, bear the same meaning in these Articles.

PUBLIC COMPANY

4. The company is a public company but:-

(1) Any invitation to the public to subscribe for any shares or debentures of the company is prohibited except as hereinafter provided.

(2) The Company shall not have power to issue share warrants to bearer.

\* (3) The right to transfer shares is restricted in the manner hereinafter provided.

BUSINESS

5. Any branch or kind of business which the Company is either expressly or by implication authorised to undertake may be undertaken by the Board at such time or times as it

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shall think fit and further, may be permitted by it to be in abeyance, whether such branch or kind of business may have been actually commenced or not, so long as the Board may deem expedient not to commence or proceed with the same.

(6) The Office shall be at such place in Kenya as the Board shall from time to time appoint

(7) Not part of the funds of the Company shall be employed in the subscription or purchase of or in loans upon the security of the Company's shares or those of its holding company (if any) and the company shall not give, whether directly or in-directly and whether by means of a loan, guarantee, the provision of security or otherwise any financial assistance for the purpose of or in connection with any purchase or subscription by any person of shares in the Company or in its holding company (if any) or make or guarantee or provide any security in connection with a loan to any Director of the Company or its holding company (if any) provided that nothing in this Article shall prohibit transactions mentioned in the proviso to Section 56(1) of the Act.

### SHARE CAPITAL

(8) (1) The share capital of the Company is Four hundred million shillings (shs.400,000,000/-) divided into Five Hundred thousand (500,000) Class "A" shares (hereinafter called "Founder Shares") and Seventy nine million five hundred thousand (79,500,000) Class "B" shares hereinafter called "Commercial Shares") each of five shillings (shs.5/-)

\* \* (2) The Company shall allot Five (5) Founder Shares to persons, co-operative societies or bodies corporate who are bonafide tea growers in the geographical area served by the company. Such allottee shall pay for the shares allotted at a price equivalent to the value of the Commercial Shares in the capital of the company at the time of allotment. No grower shall be allowed to deliver green leaf to the Company or indirectly or in any way to have the same processed by the company unless payment for the shares allotted is completed. The Founder Shares shall have full voting rights but shall not participate in the dividend and surpluses or the return of capital of the Company

(3) without prejudice to other forfeiture clauses in this Articles, Founder Shares shall be forfeited to the Company if the holder:

- a) Dies
- b) Discontinues delivering green leaf to the Company
- c) ceases to be a grower of tea;
- d) starts delivering tea to another company; or
- e) fails or neglects to deliver tea to the company for a continuous period of one year.

(4) Commercial shares may and shall only be issued to persons, co-operative societies or bodies corporate:

- a) Who were shareholders and in the Company's share register on 30<sup>th</sup> June, 1996.

GA

\* (69) At any General Meeting, a Resolution put to the vote of the Meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman of the Meeting or by any Member or Members present in person or by proxy or represented in accordance with Article 77 and representing not less than one quarter of the total voting rights of all the Members having the right to vote at the Meeting. Unless a poll is so demanded, a declaration by the Chairman of the Meeting that a Resolution has, on a show of hands, been carried or carried unanimously or by the particular majority or lost and an entry to that effect in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such Resolution. The demand for a poll may be withdrawn.

\* (70) If a poll is duly demanded it shall be taken in such manner as the Chairman of the Meeting directs and the result of the poll shall be deemed to be the Resolution of the Meeting at which the poll was demanded.

\* (71) No poll shall be demanded on the election of a Chairman of the Meeting or on any question of adjournment.

\* (72) In the case of an equality of votes, either on a show of hands or on a poll, the Chairman of the meeting shall not be entitled to a second or casting vote and the Resolution upon which there is an equality of votes shall be deemed to have been withdrawn.

(73) The demand of a poll shall not prevent the continuance of a Meeting for the transaction of any business other than the question on which a poll has been demanded.

(74) subject to the provisions of the act, a Resolution in writing signed by all the Members for the time being entitled to receive notice of and to attend and vote at General Meetings ( or being corporations or government body by their duly appointed representatives) shall be as valid and effective as if the same had been passed at a General Meeting of the Company duly convened and held.

VOTES OF MEMBERS

\* (75) On a show of hand or on a poll, every member who is a holder of five (5) Founders shares and who being an individual is present in person or by proxy or being a body corporate is present by a representative duly authorised pursuant to these Articles shall have one vote.

(76) In the case of joint holders of a share, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the vote of the other joint holders and, for this purpose, seniority shall be determined by the order in which the names stand in the Register.

(77) A member of unsound mind in respect of whose estate a manager has been appointed under Section 38 of the Mental Treatment Act (Cap 248), may vote whether

(34)

(105) The Board shall cause proper minutes to be made, in books provided for the purpose of the proceedings at all Meetings of the Company and at all meetings of the Board and of Committees of Directors and of the attendance thereat and of business transacted thereat. The minutes of every such Meeting as aforesaid shall be read at the next Meeting of the Company, of the Board or of the Committee of Directors, as the case may be, and after being amended or corrected, if necessary, and approved by such Meeting, shall be signed by the Chairman thereof.



PENSIONS AND ALLOWANCES

(106) The Board may grant retiring pensions or annuities or other allowances, including allowances on death, to any person or to the widow or dependants of any person in respect of services rendered by him to the Company as Managing Director, Assistant Managing Director or in any other executive office or employment under the company or indirectly as an executive officer or employee of any subsidiary company of the Company or of its holding company (if any), notwithstanding that he may be or may have been a Director of the Company and may make payments towards insurances or trusts for such purposes in respect of such persons and may include rights in respect of such pensions, annuities and allowances in the terms of engagement of any such persons.

DISQUALIFICATION OF DIRECTORS.

(107) The office of the Director shall be vacated if the Director: -

- (a) Ceases to be qualified in accordance with Article 88 herein
- (b) ceases to be a Director by virtue of Section 186 of the Act;
- (c) Becomes bankrupt or makes any arrangement or composition with his Creditors generally;
- (d) Becomes prohibited from being a Director by reason of any order made under Section 189 of the Act;
- (e) Becomes of unsound mind;
- (f) Resigns his office by notice in writing to the Company; or
- (g) Shall, for more than six months; have been absent, without permission of the Board, from meeting of the Board held during that period.

PROCEEDINGS OF THE BOARD



(108) The Board may meet together for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit. Questions arising at any meeting shall be determined by a majority of votes. In case of an equality of votes, the Chairman shall not have a second or casting vote and the resolution upon which there is an equality of votes shall be deemed to have been withdrawn. A Director may and the Secretary on the requisition of a Director shall, at anytime, summon a Board Meeting. It shall not be necessary to give notice of a Board meeting to any Director for the time being absent from Kenya.

(109) The quorum necessary for the transaction of the business of the Board may be fixed by the Board and, unless and until so fixed at any other number, shall be four directors present either personally or by alternate, provided that one person, whether a Director or not, although



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shares of the Company whenever such position, in the opinion of the Board justifies that course.

(126) The Board may deduct from any dividend payable to any Member any sums of money presently payable by him to the Company on account of calls or otherwise.

(127) No dividend shall bear interest against the Company.

(128) Any dividend, interest or other sum payable in cash to the holder of shares may be paid by cheque or warrant sent through the post addressed to the holder at his registered address or, in the case of joint holders, addressed to the holder whose name stands first on the Register in respect of the shares. Every such cheque or warrant shall, unless the holder otherwise directs, be made payable to the order of the registered holder or, in the case of joint holders, to the order of the holder whose name stands first on the Register in respect to such shares and shall be sent at his or their own risk. Any one of two or more joint holders may give effectual receipts for any dividends or other moneys payable in respect of the shares held by such joint holders.

#### CAPITALISATION OF PROFITS

Share Requirements of Shares

(129) The Company in General meeting may, upon the recommendation of the Board resolve that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the Company's reserve accounts or of any share premium account or of the profit and loss account or otherwise available for distribution and accordingly that such sum be set free for distribution amongst the Members who would have been entitled thereto if distributed by way of dividend and in the same proportions on conditions that the same be not paid in cash but be applied either in or towards paying up any amounts for the time being unpaid on any shares held by such Members respectively or paying up in full un-issued shares, income notes or debentures of the Company to be allotted and distributed credited as fully paid up to and amongst such Members in the proportion aforesaid or partly in the one way and partly in the other and the Board shall give effect to such resolution: Provided that amounts standing to the credit of a share premium account or a capital redemption reserve fund may, for the purposes of this Article, only be applied in the paying up of un issued shares to be issued to Members of the Company as fully paid bonus shares.

(130) Whenever such a resolution as aforesaid shall have been passed, the Board shall make all such appropriations and applications of undivided profits, allotments and issues of fully paid shares, income notes or debentures as may be required thereby and shall do all acts and things to give effect thereto with full power to the Board to acquire fractions or to make such provision by the issue of fractional certificates or by payment in cash or otherwise as it thinks fit in the case of shares or debentures becoming distributable in fractions and also to authorise any person to enter, on behalf of all the Members entitled thereto, into an agreement with the Company providing for the allotment to them respectively, credited as fully paid up, of any shares, income notes or debentures to which they may be entitled upon such capitalisation or, as the case may require, for the payment up by the Company on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalised, of the amounts or any part of the



KENYA TEA DEVELOPMENT AGENCY HOLDINGS LIMITED  
KTDA FARMERS BUILDING | P.O. Box 30213 GPO 00100 Nairobi  
Tel: +254 20 221441/2/3/4, 322 7000/1 | Fax: 254 020 2211240  
E-mail: [info@ktdateas.com](mailto:info@ktdateas.com) | Site: [www.ktdateas.com](http://www.ktdateas.com)

**Ref: FIN/1/FSD**

**Date: 11<sup>th</sup> March 2015**

**Mr. J. M. Nyegenye, CBS  
Clerk Of The Senate  
Parliament Of Kenya  
PARLIAMENT BUILDINGS  
NAIROBI**

Dear Sir,

**REF: INVITATION TO MEETING WITH SENATE STANDING COMMITTEE ON  
AGRICULTURE, LIVESTOCK AND FISHERIES**

We acknowledge with thanks receipt of your letter dated 5<sup>th</sup> March 2015 and confirm that we will be in attendance on 12<sup>th</sup> March 2015 at 11:00 am. We make reference to item 7 of the petition 'That none of these issues raised in the petition is pending in any court of law, constitutional or any other legal body' and respond as follows;

**RESPONSE TO THE PETITION – CONCLUDED AND PENDING COURT CASES**

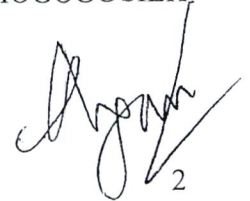
We draw the attention of your office and the Senate Committee to the following concluded and ongoing Court cases in respect to the issues in the petition:

1. HCCC Milimani Commercial Court Misc. Civil App. No. 937 of 2006 [ HADSON MOFFAT KAMAU & Others Vs. MAKOMBOKI TEA FACTORY LTD] – Ongoing (copy of pleadings attached as Annex1).
  - Refers to form of and presentation of Accounts of Makomboki Tea Factory (managed by KTDA),
  - Refers to International Accounting Standard No. 16 (IAS No. 16),
  - Refers to Shares A and B of Shares of Makomboki Tea Factory Co. Ltd
2. HCCC No. 176 of 2008 Milimani Commercial Court [KTDA & MAKOMBOKI TEA FACTORY CO. LTD Vs. MOFFAT K. MBUE] – On going (copy of pleadings attached as Annex 2).

**Directors:**

*P.T. Kanyago MBS EBS (Chairman), P. Ng'etich MBS OGW (Vice-Chairman), S. L. Tiampati MBS (Managing), J.M. Wakimani, E.K. Gakuya, Francis M. Mark, J. N. Karua, S. M. Ireri, P.M. Ringera HSC, S.C. Tonui, J.N. Achoki, B. Matonda, J. M. Mukavale, I. N. Gaha (Ms.)\*  
B. K. Ngari (Finance & Strategy) \*(Independent)*

- Refers to a defamatory matter that makes reference accounting issues, shareholding issues, elections of directors,
3. HCCC Milimani Commercial & Tax Division Misc. Case No. 271 of 2008 [MWANGI KIRIGWI Vs. KTDA, IKUMBI TEA FACTORY CO. LTD & JOHN KENNEDY OMANGA] – Interlocutory application concluded, main suit not prosecuted (copy of ruling attached as Annex 3).
    - Referred to issuance of Founder Shares and issuance of shares under the Article 8 of the Factory Company’ Articles of Association.
    - The application and ruling makes specific reference to the Article 8 in the prayer of the petitioners and the Company’s Act Chapter 486 Laws of Kenya, where issues of Company shares are found and addressed.
    - The ruling conclusively dealt with the issue of issuance of Founder Shares, where KTDA and a managed Tea factory Company were involved.
    - The Petition was dismissed in favour of the respondents.
  4. HCCC Nyeri No. 147 of 2010 [MAKOMBOKI TEA FACTORY CO. LTD. Vs. JOSEPH MWANGI MBOTE, HUDSON MOFFAT KAMAU MBUE, JOSEPH KINUTHIA GITONGA, JOSEPH MUTURI MARITE, BENSON & FRANCIS GICHUI KARANJA] – Notice of Motion determined (copy of ruling attached as Annex 4).
    - Referred to notice of motion by the respondents/defendants to stop the Plaintiff from Holding its Annual General Meeting of 13<sup>th</sup> January 2013,
    - The motion referred to financial issues and reports of the Plaintiff to its shareholders and election of directors issues of the Plaintiff,
    - The ruling made reference to the respondents/applicants attempt/claim to directorship of the Makomboki Tea Factory Ltd.
    - The motion was dismissed in favor of Makomboki Tea Factory Ltd.
  5. HCCC Nairobi Misc. App. No. 621 of 2000 [SAMUEL MUCHIRI W’NJUGUNA AND 6 OTHERS Vs. THE MINISTER FOR AGRICULTURE] – Judicial Review – Concluded (copy of ruling attached as Annex 5).
    - Prayer seeking an Order of Certiorari to remove into the Court and quash the Minister’s Regulations in Legal Notice No. 43 (Legislative Supplement No 19) “Tea (Election) Regulations, 2000 in exercise of powers conferred on the Minister by Section 3,4 and 25 of the Tea Act (Cap 343) [Now repealed] with specific reference to Regulation 2, the process “of selecting the candidate to represent registered tea growers or shareholders”.
    - The application for Judicial Review was allowed and prayers seeking the Order of Certiorari were granted and the Court quashed the Ministers’ “Tea (Regulations), 2000.
    - The respective Factory Companies’ respective Articles of Association were to prevail in respect the directors’ election matters.
  6. HCCC Kericho Civil Suit No. 102 of 2009 [ROBERT BETT & DAVID KIMUTAI BETT Vs. UNIT MANAGER MOGOGOSIEK TEA FACTORY, COMPANY SECRETARY KENYA TEA DEVELOPMENT AGENCY LTD & MOGOGOSIEK



TEA FACTORY COMPANY LTD] – Concluded (copy of ruling attached as Annex 6.)

- This matter dwelt with directors nomination election requirements for the KTDA managed tea factory,
- The Court recognized the existence of “Directors Election Manual Candidates Copy”, an election circular that contains the directors election requirements,
- Injunction application to stop the election process was dismissed in favour of the respondents.

7. HCCC Embu Civil Case No. 10 of 2012 [PATRICK MAINA KIGURU Vs. KTDA Ltd., MUNUNGA TEA FACTORY CO. LTD., & WILLIAM NJIRAINI NGURU (KIMANYI) – Concluded (copy of ruling attached as Annex 7).

- Applicant prayed to stop Mununga Tea Factory AGM and confirmation of a director at the Annual General Meeting of Mununga Tea Factory Ltd., following the election pre-qualification process under the Company’s Articles of Association,
- Applicant failed to meet the requirement of Good Standing in Society as per Article 88 (1) of Mununga Tea Factory’s Articles of Association and Election Manual requirements,
- The application was dismissed in favour of the respondents

8. HCCC Nairobi Civil Division No. 1 of 2014 [SAMUEL G. KABIRU Vs. KTDA LTD & KIMUNYE – Concluded (copy of ruling attached as Annex 8).

- Applicant sought to bar the respondents from proceeding with elections following the barring of the Plaintiff/applicant as a candidate for directorship, when he presented a false Power of Attorney for use during the election process,
- Applicant sought re-instatement in the ballot paper,
- The election guidelines were captured in the Election Manual for the elections, of which the Plaintiff breached,
- The interim orders granted earlier were vacated and application dismissed in favor of the respondents and respondents allowed to proceed with the elections for the electoral area.

9. PETITION Kericho No. 18 of 2014 [THE GOVERNOR KERICHO COUNTY Vs. KTDA, CHAI TRADING Co. LTD., KTDA MANAGEMENT SERVICES LTD., MAJANI INSURANCE BROKERS LTD., KETEPA LTD., GREENLAND FEDHA LTD., KTDA POWER CO. LTD., & 21 OTHERS & 54 INTERESTED PARTIES] – Ongoing (copy of pleadings attached as Annex 9).

- This petition dwells predominantly with Management fee of KTDA Managed Tea Factories,
- Tea Cess deduction,
- Financial accounting matters,
- Representation of the Tea Farmers in the directorship of KTDA,
- Election Process and
- Conflict of interest of tea factory directors.



### **Conclusion/Way forward/Direction of the Senate Committee**

It is apparent that the petitioners withheld crucial information on pending and concluded litigation in respect to the issues raised in the Petition. It is highly probable that a number of petitioners to this petition, are also parties in some of the cases mentioned above.

The prayers in the petition refer to KTDA and its managed Tea Factory Companies, and as shown in the cases above, the High Court has been or is seized with matters specifically and generally mentioned in the Petition and the prayers to the Senate.

In view of the legal cases determined and pending in the Courts, KTDA and the Tea Factory Companies would request direction from the Committee in respect to the Petition before the Senate as these matters are either Res judicata and or Sub – Judice. We further seek guidance from the Committee on how to proceed with the petition in a manner that would not prejudice our position.

Yours faithfully

**KENYA TEA DEVELOPMENT AGENCY HOLDINGS LTD**



**BENSON NGARI**  
**FOR/CHIEF EXECUTIVE OFFICER**

- CC.    -       Chairman – Senate Committee on Agriculture Livestock & Fisheries  
       -       KTDA Board of Directors  
       -       Factory Company Chairmen

# ANNEX 1

JOINDER OF PARTIES

Rebecca  
CS(F)  
16/4.

S.O  
Pse pence.  
16/4.

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

MISC. CIVIL CASE NO. 937 OF 2006

IN THE MATTER OF MAKOMBOKI TEA FACTORY LIMITED

AND

IN THE MATTE OF AN APPLICATION FOR AN ORDER OF AN  
EXTRA ORDINARY GENERAL MEETING OF MAKOMBOKI TEA  
FACTORY LIMITED UNDER SECTIONS 132 & 135 OF THE  
COMPANIES ACT (CAP 486 LAWS OF KENYA)

AND

IN THE MATTE OF AN APPLICATION FOR APPOINTMENT OF  
INSPECTORS TO INVESTIGATE THE AFFAIRS OF MAKOMBOKI  
TEA FACTORY LIMITED UNDER SECTION 165 OF  
THE COMPANIES ACT (CAP 486 LAWS OF KENYA)

BETWEEN

HADSON MOFFAT KAMAU .....APPLICANT

VERSUS

MAKOMBOKI TEA FACTORY LIMITED .....RESPONDENT

RULING

The application for my determination is expressed under Order 1  
Rule 10 of the Civil Procedure Rules. The application seeks that;

**"This Honourable court be pleased to grant leave to (1) Joseph N. Muchiri (2) Francis N. Njau, (3) Joseph Njenga Wagatu (4) Joseph Mwangi Mbote (5) Ephraim Mwaniki Kinuthia (6) John Muchiri Kimani (7) James Mwaura (8) Samuel Gikonyo Mwaniki (9) Christopher Nganga (hereinafter referred to as the intended applicants) to be joined as applicants in this matter".**

It is the contentions of the Applicants that they are tea farmers and members of the Respondent Company as shareholders. And they have greatly been prejudiced and affected by the oppressive manner in which the directors of the Respondent Company have conducted the Company's business. That in any case, they would be adversely affected and/or prejudiced by any order that may be issued by this Honourable court.

It is the case of the Applicants that for a long time, the Directors of the Respondent Company have through fraudulent and fictitious accounting misappropriated the Respondent's funds. And equally the Directors of the Respondent Company have conducted the Company's business in a manner oppressive to its members including the intended Applicants. It is further alleged by the Applicants that their concerted efforts to question the financial impropriety of the Respondent's Directors either at the Annual General Meeting or otherwise have always

been thwarted by the said directors who have always ensured that their personal whims prevail to the detriment of the Respondent members.

The reply of the Respondent is as follows:- That all the transactions being questioned has been fully accounted for and it is not possible for the Company to lose what is already in its books of accounts, hence the claim by the Applicants that the Respondent Company is set to lose is simply devoid of basis. It is also contended that **Kenya Tea Development Agency Limited (K.T.D.A.)** is the Managing Agent of the Respondent (among other tea factories countrywide). The arrangement under which **K.T.D.A.** invests on behalf of the Respondent and other factories had been in place since its inception and is of substantial benefit to the Respondent.

**Mr. Wamiti** Advocate for the Respondent submitted that there was no bona fide mistake made not to join the Applicants into this suit, as the Applicants are not proper parties for the determination of the suit. He also submitted that the Applicants are not necessary parties to this proceedings, who were omitted due to bona fide mistake.

It was further submitted by **Mr. Wamiti** Advocate that this proceedings is not a suit, as it is an application under the Company's Act seeking the convention of an Extra Ordinary Meeting of the Respondent Company under Section 135 of the Company's Act. The Company has

over 4,000 members and it is not necessary for the intended Applicants to be joined into this proceedings.

Order 1 Rule 10(1) provides that;

**"where a suit has been instituted in the names of the wrong persons as Plaintiff or where it is doubtful whether it has been instituted in the name of the right Plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any person to be substituted or added as Plaintiff upon such terms as the court thinks fit".**

Under Order 1 Rule 10, a party seeking to benefit from the discretion of the court must satisfy the condition set out, which are;

- (1) That the omission/addition has been made through a bona fide mistake.**
- (2) That the applicant is necessary party for the determination of the real matter in dispute.**
- (3) The applicant is a person who ought to have been joined at the first instance and that his presence before it may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit.**

It is clear that the only party who can be joined a plaintiff or Defendant is one who ought to have been joined or whose presence before the court may be necessary in order to enable the court