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COMMITTEE	Agriculture
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Hon. Speaker

Recommended for approval for tabling.

07/08/19

THE SENATE

TWELFTH PARLIAMENT

THIRD SESSION

Approved
08/2019

THE STANDING COMMITTEE

ON

AGRICULTURE, LIVESTOCK & FISHERIES

REPORT ON THE

PETITION CONCERNING CHALLENGES FACING SMALL SCALE TEA GROWERS

IN THE KENYA TEA DEVELOPMENT AGENCY

Clerk's Chambers,
Parliament Buildings,
P.O. Box 41842-00100,
NAIROBI

AUGUST, 2019

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PREFACE

Mr. Speaker Sir,

Establishment of the Committee

The Senate Standing Committee on Agriculture, Livestock and Fisheries was constituted on Thursday, 14th December, 2017 during the First Session of the Twelfth (12th) Parliament pursuant to the provisions of standing order 218 (1) of the Senate Standing Orders which states:

There shall be Select Committees to be designated Standing Committees which shall be nominated by the Senate Business Committee in consultation with parliamentary parties at the commencement of every Parliament.

Mandate of the Committee

The Standing Committee on Agriculture, Livestock and Fisheries is mandated under the Second Schedule of the Standing Orders to *consider all matters relating to agriculture, irrigation, livestock, fisheries development and veterinary services.*

Standing order 218 (4) provides that Standing Committees may, in dealing with the matters assigned to them under the Second Schedule, scrutinize the resolutions of the Senate (including adopted Committee Reports), petitions and formal undertakings given by the National Executive and examine-

- a) *whether or not such resolutions and undertakings have been implemented and where implemented, the extent to which they have been implemented; and whether such implementation has taken place within a reasonable time;*
- b) *whether or not legislation or subsidiary legislation passed by the Senate has been operationalized and, where operationalized, the extent to which such operationalization has taken place;*

Oversight

In executing its mandate, the Committee oversees the following Government Departments and agencies -

- i. The State Department of Agriculture;

- ii. The State Department of Livestock;
- iii. The State Department for Fisheries; and
- iv. The State Department of Irrigation.

Membership of the Committee

The Committee is comprised of the following members-

1. Sen. Peter Njeru Ndwiga, EGH, MP - **Chairperson**
2. Sen. (Dr.) Lelegwe Ltumbesi, MP - **Vice - Chairperson**
3. Sen. (Dr.) Ochilo Ayacko, EGH, MP
4. Sen. Justice (Rtd.) Madzayo Stewart, MP
5. Sen. Moses Otieno Kajwang' MP
6. Sen. Naomi Jillo Waqo, MP
7. Sen. (Dr.) Michael Malinga Mbiti, MP
8. Sen. Wario Golich Juma, MP
9. Sen. Naomi Shiyonga, MP

Secretariat of the Committee

The Committee secretariat is comprised of –

1. Ms. Carol Kirorei - Clerk Assistant
2. Ms. Sombe Toona - Legal Counsel
3. Mr. David Ng'eno - Research Officer
4. Mr. Washington Otiato - Media Relations Officer
5. Mr. Philemon Okinda - Serjeant-At-Arms

Acknowledgement

The Committee wishes to thank the Office of the Speaker of the Senate and the Office of the Clerk of the Senate for the support extended to it in the consideration of the Petition.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to standing order 232 (2), to present the Report of the Standing Committee on Agriculture, Livestock and Fisheries on Petition concerning challenges faced by small scale tea growers in the Kenya Tea Development Agency(KTDA).

Signed.......... Date.....1.8.19.....

SEN. PETER NJERU NDWIGA, EGH, M.P.

CHAIRPERSON

CHAPTER ONE

INTRODUCTION

1.0 Background

The Petition dated 23rd May, 2019 by Isaack Mwangi Mugo was reported in the Senate and referred to the Committee on Agriculture, Livestock and Fisheries on 18th June, 2019. Pursuant to standing order 232(2) the Committee was required to respond to the Petitioner by way of a report addressed to the petitioner or petitioners and laid on the Table of the Senate not more than sixty calendar days from the time of reading the prayer.

The Petitioner stated that small scale tea growers in Kenya are calling for the review of election laws for directorship and committee members for the KTDA in all the factories in the country as well as a more gender balanced approach. The Petitioner also stated that KTDA laws provide that voting in election is based on shareholding rather than one man one vote thus disadvantaging the peasant farmers yet the issues deliberated on affect farmers. In addition, KTDA directors have ensured that power remains with the few large scale farmers completely sidelining small scale farmers. He further stated that the cost of fertilizer is high yet the quality is low, lowering the tea produce per bush and that the tea payment is too low due to bad management from the directors.

In light of the above, the Petitioner prays that the Senate comes up with legislation on how the KTDA should conduct its affairs and protect the tea farmer from poor payments. The Petitioner further prays that the Senate directs the Ministry of Agriculture to review the prices and quality of fertilizer and directs the Office of the Auditor General to conduct a lifestyle audit exercise on the present directors.

CHAPTER TWO

SUBMISSIONS ON THE PETITION

2.0 Introduction

The Petition dated 23rd May, 2019 by Isaack Mwangi Mugo was reported in the Senate and referred to the Committee on Agriculture, Livestock and Fisheries on 18th June, 2019. Pursuant to standing order 232(2) the Committee was required to respond to the petitioner by way of a report addressed to the petitioner or petitioners and laid on the Table of the Senate not more than sixty calendar days from the time of reading the prayer.

2.1 Petition by Isaack Mwangi Mugo

The Petitioner Isaack Mwangi Mugo claims that –

- (a) voting of directors and committee members in KTDA laws is based on shareholding rather than one man one vote disadvantaging the peasant farmer yet the issues deliberated on affect all farmers;
- (b) the current voting systems deny small scale farmers the opportunity to serve in the management of the factories;
- (c) there should be equal voting rights in the election of the director and committee members;
- (d) KTDA directors have ensured that power remains with the few large-scale farmers completely the small scale farmers;
- (e) decisions are made to benefit the large scale farmers only, such as introducing plucking machines which will disenfranchise the casual workers;
- (f) the cost of fertilizer is high yet the quality is low, lowering the tea produce per stem; and
- (g) payment is low due to bad management from the directors.

2.2 Prayers to the Senate

The Petitioner prays that the Senate-

- (a) enacts legislation to—
 - (i) provide a framework for how KTDA should conduct its affairs;
 - (ii) protect the tea farmer from poor payments;

- (iii) cap the term of office for directors at the factory companies to a maximum of two terms in one tea factory;
- (iv) ensure that any person vying for the position of director at least has a form four certificate;
- (b) direct the Ministry of Agriculture to review the prices of fertilizers and consider the quality of fertilizers;
- (c) direct the Auditor General to conduct a lifestyle audit of the present directors; and
- (d) carry out any other measure the Senate deems fit to streamline and improve the tea industry.

2.3 Submissions from the Kenya Tea Development Agency (KTDA)

- (1) Through a letter dated 18th July, 2019, the Kenya Tea Development Agency Holdings Limited informed the committee that the issues raised in the petition as tabulated were pending in Kericho High Court Petition No. 18 of 2014, *The Governor, Kericho County Vs KTDA, CTCL, KTDA MS, MIB, KETEPA, GLF, KTC, AFFA and Office of the Attorney General and others*.
- (2) In the letter, KTDA alleges that the Petitioner in the above-mentioned High Court petition made the following allegations which are similar to those before the Committee—
 - (a) KTDA's procurement system is not transparent, particularly on fertilizer sourcing with farmers buying the same from KTDA factories at exorbitant prices compared to prevailing market rates. In addition, the amount of fertilizer supplied to each farmer is usually not commensurate with his agronomic needs with most receiving excess supplies and the cost is forcefully deducted from their annual payments.
 - (b) in 2008 a new voting system for election of directors of KTDA managed factories was introduced thereby giving large scale farmers with more shares more say in control and management of tea factories in their areas. The move cripples efforts by small scale tea farmers who wanted to retain the traditional one man one vote pattern that saw directors elected on the strength of individual votes than the number of shares held.

(c) as a result of the KTDA takeover, small scale farmers have lost control over the very institutions that they own, the tea factories. The local directors, having been co-opted with unbelievably large salaries have become mere rubber stamps in the fleecing of poor farmers.

(3) KTDA further claims in the letter that the following prayers in the above-mentioned petition to the High Court are similar to those presented to the Committee—

(a) a declaration that acts of price fixing and manipulation of prices perpetrated by the 1st -27th respondents at Mombasa Tea Auction to the detriment of smallholder farmers violates the provisions of Article 10 and 46 of the Constitution.

(b) an order directing the Competition Authority of Kenya and the 28th Respondent to investigate the price fixing and manipulation at the Mombasa Tea Auction from year 2001-2015 and avail a report to this Honourable Court.

2.3 Meeting with the Petitioner and KTDA

At its 53rd Sitting, held on Tuesday, 23rd July, 2019 the Committee met with the Petitioner and the KTDA to discuss issues raised in the Petition. As outlined in its letter, the KTDA stated that the matters raised by the Petitioner were *sub judice*. KTDA further provided a letter from their advocates Millimo, Muthomi & Co. showing that the matter was active in court and was scheduled for hearing of the main petition on 21st of May, 2019. However, following one judge of the bench hearing the matter being taken for disciplinary proceedings, the matter could not proceed. The Chief Justice is to empanel another bench, and the matter shall be mentioned on 29th July, 2019..

CHAPTER THREE

LEGAL PROVISIONS TOUCHING ON THE PETITION

3.1 Right to Petition Parliament

The right to petition Parliament is provided for under Article 119 of the Constitution, which provides as follows-

“Every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation. Parliament shall make provision for the procedure for the exercise of this right.”

The Petition therefore falls under the Committee’s mandate under Senate Standing Order 218. In addition, standing orders 232 of the Senate Standing Orders outlines the procedure for committal of a Petition to a Committee and transmission of its decision to the Petitioner. Further, the Petition to Parliament (Procedure) Act, 2012 and the Standing Orders of the Senate provide for the procedure to be followed in the submission, processing and consideration of a Petition.

Articles 94 as read together with Article 96 of the Constitution further provides for the role and by extension the authority of Parliament in general and the Senate in particular. Generally, the Houses of Parliament exercise the legislative mandate of the people, deliberate on matters of national interest and oversight the exercise of power by other arms of government.

3.2 The Senate Standing Orders

Standing order 98 of the Senate Standing Orders provides—

- (1) Subject to paragraph (5), no Senator shall refer to any particular matter which is sub judice or which, by the operation of any written law, is secret.*
- (2) A matter shall be considered to be sub judice when it refers to active criminal or civil proceedings and the discussion of such matter is likely to prejudice its fair determination.*
- (3) In determining whether a criminal or civil proceeding is active, the following shall apply—*

(c) *civil proceedings shall be deemed to be active when arrangements for hearing, such as setting down a case for trial, have been made, until the proceedings are ended by judgment or discontinuance;*

(4) *A Senator alleging that a matter is sub judice shall provide evidence to show that paragraphs (2) and (3) are applicable.*

(5) *Notwithstanding this Standing Order, the Speaker may allow reference to any matter before the Senate or a Committee.*

3.3 The Speaker's Ruling on sub judice

On 10th September, 2009 Speaker Marende while making a decision on whether to allow debate on the report of the National Assembly Committee on Delegated Legislation on the Re-appointment of the Director of KACC by the President, observed—

“The sub judice rule is one imposed voluntarily by Parliament on itself and is exercised, subject to the discretion of the Chair, with the object of forestalling prejudice of proceedings in the courts”

In regard to whether the matter is **active** in court, Speaker Lusaka in his ruling on the Report of the Select Committee on the Solai Dam Tragedy on 2nd August, 2018 states—

“...it is not the business of the Speaker or the House for that matter to shop around for the business that is in court. It is the obligation of the Senator who alleges to provide the evidence...This duty may be discharged for instance by transmitting to the Speaker the charge sheet, information, or the summons issues by the trial court.”

With regard to **prejudice**, Speaker Marende in his ruling on 10th September, 2009 states that—

“...Standing order No. 80 (4) imposes a duty on a member claiming that a matter is sub judice to provide the requisite evidence...”

Allegations of prejudice must be scrutinized carefully. The specific allegations of likelihood of prejudice should be detailed with sufficient particularity to allow the Chair to make an informed decision on the merits of the allegation...

In my considered view, in a properly functioning democracy with a sound and professional Judiciary, the burden of evidence required to show that there is likelihood of prejudice to the fair determination of any matter by the courts should be set very high indeed ...”

While agreeing with the sentiments of Speaker Marende, Speaker Lusaka in his ruling on 2nd August, 2018 states—

“Honourable Senators, I am guided by the rulings made by former Speakers of this August House on this matter. In particular, in a ruling delivered on 10th September, 2009 on whether debate on a report of the National Assembly Committee on Delegated Legislation on the Re-appointment of the Director of KACC by the President, the Honourable Former Speaker of the National Assembly, Kenneth Marende aptly observed as follows—

“On the question of the likelihood of prejudice to the fair determination of court proceedings, it is useful to note that the legal term “prejudice” finds expression in many areas of the law and may be described in a myriad of ways. The concept is supposed to operate to prevent procedural and substantive injustices, not to create them. Allegations of prejudice must be scrutinized carefully. The specific allegations of likelihood of prejudice should be detailed with sufficient particularity to allow the Chair to make an informed decision on the merits of the allegation”

Therefore, in determining whether discussion of a matter will prejudice its fair determination, the Speaker must satisfy himself or herself that the discussions will result in procedural and substantive injustices. Further the likelihood of prejudice must be detailed with sufficient particularity to enable the Chair make the appropriate decision...

Let’s remember that a criminal trial is adjudicated upon by duly appointed judicial officers who are under a duty to ensure that accused persons are accorded a fair trial in accordance with the Constitution and well established principles of criminal procedure and evidence law and must further satisfy themselves that the

guilt of the accused has been proved beyond reasonable doubt. In this respect, I enjoin myself to the observations of Speaker Marende in the matter of the Report on the Re-appointment of the Director of KACC by the President where he observed—

“ ...court proceedings are presided upon by judicial officers properly trained in law and who have taken an oath to discharge the functions of their office without fear or favour and without extraneous influences being brought to bear on their work. In the ordinary course of affairs, judicial officers of any repute are very unlikely to be swayed by what is said in Parliament. It does not inspire confidence in the able and learned men and women who serve in our Judiciary if we allow the propagation of a view that the Judiciary are always looking over their shoulders at what parliament has said or at the view that Parliament may take on a matter before making their determination. ”

With regard to the Speaker’s **discretion to still allow for debate**, despite evidence of an active civil proceeding, Speaker Marende in his ruling delivered on 10th September, 2009 states—

“I am clear in my mind that in a matter of immense public interest, where there is a doubt, unless sound grounds are advanced, a presumption should exist in favour of allowing debate in the House as opposed to the application of sub judice rule to suppress debate...”

In his ruling on 2nd August, 2018, Speaker Lusaka while agreeing with Speaker Marende’s observations, stated—

“Honourable Senators, going forward I wish to observe that people should not rely on the sub judice rule to defeat the law, the Constitution or even to gag Parliament from debating matters of national importance and public interest. ”

CHAPTER FOUR

OBSERVATIONS AND RECOMMENDATIONS

3.0 General Observations

- 1) The Committee observed that pursuant to the provisions of the Senate Standing Orders, the matters contained in the Petition were *sub judice* as a number of issues raised are currently pending in Kericho High Court Petition No. 18 of 2014, *The Governor, Kericho County Vs. KTDA and others*. The Committee would therefore be unable proceed to consider the matters therein. In this regard, the Committee advised the Petitioner that if the issues raised in his Petition are not addressed by the Court's decision in the Kericho Petition, he may Petition the Senate again and the Committee would be willing to consider the matters.
- 2) That, from the letter received from KTDA, we observe that the case the matter was scheduled for hearing of the main petition on 21st May, 2019. However, as one of the judges of the bench was facing disciplinary proceedings, the matter did not proceed. The file was forwarded to the Chief Justice to empanel another bench and the matter was set for mention on 29th July, 2019. As such, the Committee observed that the matter still active within the meaning of standing order 98 (2) and (3).

3.1 Committee Recommendation

The Committee recommends that the issues raised in the Petition are *sub judice* and therefore the Senate may not consider the matters raised therein.

APPENDICES

1. The Petition

2. Response from the KTDA

a) Letter from KTDA dated 18th July, 2019;

b) Copy of the Kericho Petition No. 18 of 2014; *The Governor, Kericho County Vs. KTDA and others*;

c) Copy of a letter from KTDA's advocates showing that the matter is active in court.

3. Minutes of the Committee

PETITION TO THE SENATE BY ISAACK MWANGI MUGO CONCERNING CHALLENGES FACED BY SMALL SCALE TEA GROWERS IN KENYA TEA DEVELOPMENT AGENCY (KTDA).

1. Pursuant to Standing Orders 226(1)(a), and 230(2)(b), I hereby report to the Senate that a petition has been submitted, through the Clerk, by Isaack Mwangi Mugo, a small-scale tea farmer in Kangaita Tea Factory, Kirinyaga County.
2. As you are aware, under Article 119(1) of the Constitution, and I quote:-
"Every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation."
3. The salient issues raised in the said Petition are as follows: -
 - a) Small-scale tea growers in Kenya are calling for the review of election laws for directorship and committee members for Kenya Tea Development Agency (KTDA) in all the factories in the Country:
 - THAT, KTDA laws provide that voting in election is based on shareholding rather than one man one vote disadvantaging the peasant farmers yet the issues deliberated on affect all farmers;
 - THAT, the current voting systems deny small-scale farmers the opportunity to serve in the management of the factories; and
 - THAT, there should be equal voting rights in the election of the director and committee members;
 - b) Small-scale tea growers have been pushing for changes in the election laws including proposing a more gender balanced approach:
 - THAT, KTDA directors have ensured that power remains with the few large-scale farmers completely sidelining the small-scale farmers;
 - THAT, decisions are made to benefit the large-scale farmers only, such as introducing plucking machines which will disenfranchise the casual workers; and
 - THAT, the cost of fertilizer is high yet the quality is low, lowering the tea produce per stem. Further, the tea payment is too low due to bad management from the directors.

PETITION TO THE SENATE BY ISAACK MWANGI MUGO CONCERNING CHALLENGES FACED BY SMALL SCALE TEA GROWERS IN KENYA TEA DEVELOPMENT AGENCY (KTDA).

c) Legislation should be enacted to protect the tea industry and the farmers:

- THAT, the term of the director should not exceed two terms in one tea factory; and
- THAT, any candidate vying for the position of director should have at least a Form Four certificate.

Consequently, the Petitioner prays that the Senate:-

- Hears and considers the petition;
 - Comes up with legislation on how KTDA should conduct its affairs and protect the tea farmer from poor payments;
 - Directs the Ministry of Agriculture to review the prices of fertilizer and the quality;
 - Directs the Auditor General to conduct a lifestyle audit exercise on the present directors; and
 - Any other measure the Senate deems fit to streamline and improve the tea industry.
4. Honourable Senators, pursuant to standing order 231, I shall now allow comments, observations or clarifications in relation to the Petition for not more than thirty minutes.

[after comments by Senators]

5. Honourable Senators, pursuant to standing order 232(1), the Petition stands committed to the Standing Committee on Agriculture, Livestock and Fisheries.
6. In terms of standing order 232(2), the Committee is required, in not more than sixty calendar days from the time of reading the Prayer, to respond to the Petitioner by way of a Report addressed to the Petitioner, and laid on the Table of the Senate.
7. I thank you.

THE SENATE
RECEIVED
23 MAY 2019
DEPUTY

The Clerk of Senate parliament,
Parliament building,
P.O BOX 41842-00100,
Nairobi-Kenya.

THE SENATE
RECEIVED
23 MAY 2019
CLERK'S OFFICE

3 Mr. Chany
please process
within time
24
27-5-19

Email;csenate@parliament.go.ke

RE: PETITION TO THE SENATE PARIAMENT CONCERNING SMALL SCALE TEA GROWERS IN KENYA,
ELECTION LAWS REVIEW OVER THE DIRECTORSHIP, TEA PLUCKING MACHINES, FERTILIZER COST, AND
TEA PAYMENT BY KENYA TEA DEVELOPMENT AGENCY(KTDA).

I/We, the undersigned,

Citizens of the Republic of Kenya, and residents of Kiambu, Juja, Theta ward and a small scale Tea farmer
in KANGAITA TEA FACTORY - KIRINYAGA COUNTY

DRAW the attention of the Senate parliament to the following:

1.0). The small scale Tea growers in Kenya, have complains for review of election laws for directorship
and committee members in 69 factories in the Country.

1.1) THAT, the election of director and committee members should be reviewed for KTDA (KENYA TEA
DEVELOPMENT AGENCY) to change and give equal voting rights in election of directors and committee
members.

1.2) THAT, current voting systems deny small scale farmers the opportunity to serve in the Management
of the Factories.

1.3) THAT, KTDA laws provide that voting in election is based on shareholding rather than ONE MAN
ONE VOTE (one grower number per buying Centre one vote). The peasant farmers should have the same
rights as large scale Farmers because we are deliberating on issues affecting all of us.

In addition to remove the policy which support nominated slot of a directorship for gender balance.

2.0) Small scale tea growers allied to the agency have been pushing for changes in election laws but the
KTDA has declined to review the rules.

4 Mr. Otieno
Please
facilitate
correspondence
23/5/19

5 Mr. Oropik
Kindly pro
this
C.O. 31/

ODLPS
Please deal
24/5/19

2 Mr. Magye (ODLPS)
pls process accordingly.
24/5/19

PETITION TO THE SENATE. PARIAMENT CONCERNING SMALL SCALE TEA GROWERS IN KENYA,
ELECTION LAWS REVIEW OVER THE DIRECTORSHIP,TEA PLUCKING MACHINES,FERTILIZER COST AND
TEA PAYMENT BY KENYA TEA DEVELOPMENT AGENCY(KTDA).

2.1)THAT, The KTDA directors have ensured that power remains with a few individual who own large tea plantations, by side lining the small scale farmers. Yet they wish to introduce a plucking machine which will finish casual workers working in these farms.

2.2)THAT, the KTDA Directors and the seats of Chairperson and committee members in the buying center leadership should be ONE MAN ONE (One grower number per buying center one vote)as every farmer with one tea selling number to have one vote for that he/she has a tea bush of 500 stems or over.

2.3) THAT, the seat and voting style should not be based on tea bushes but tea grower's ownership or one tea grower number.

3.0).The cost fertilizer I too high with low quality bring down the production per stem and the TEA payout is too low.

3.1)THAT, the cost of fertilizer is too high and the quality is questionable since it is substandard lowering the tea produce per stem, so the Ministry of Agriculture should intervene the source of the fertilize and ensure the best quality is given to the farmers with a fair price.

3.2).THAT, the tea payment is too low due to bad management from reluctant directors who are used and not interested to make changes, mostly the negotiation of price after the exportation of dry tea and also the selling price In the port compared with domestic price in KENYA affecting the payout I the monthly basis and bonus payout.

3.3) THAT, the auditor general to do a lifestyle audit to the current directors and also the a serious audit to the dry tea price negation done In the port and the exportation price in general.

4.0) the issues affection the Tea sector should be addressed though a legislation by the parliament to ensure the farmers are protected.

4.1)THAT, the parliament should come up with a legislation to cover the tea farmers and ensure that directorship should have a term limit of two terms and not more than two I n any tea factory.



PETITION TO THE SENATE PARIAMENT CONCERNING SMALL SCALE TEA GROWERS IN KENYA,
ELECTION LAWS REVIEW OVER THE DIRECTORSHIP, TEA PLUCKING MACHINES, FERTILIZER COST AND
TEA PAYMENT BY KENYA TEA DEVELOPMENT AGENCY(KTDA).

4.2) THAT, the law should provide the candidate to be a post form four (4) EITHER a certificate and above to enable him or her perform better during the tea price negotiation internationally.

4.3) THAT, there should be do a lifestyle audit among the current directors since there is a lot of greed among the directors ,this is because they don't serve farmers interest, tea farming is no longer sustainable as farmers cannot afford basic needs as well as medication.


5.0) THAT, we have made our best effort to have these matters addressed by the relevant authority (KTDA) for the farmers of which failed to give any satisfactory response.

6.0) THAT, none of this issue in this petition is pending in any court of law, constitutional or any other legal body.

WHEREFORE, your *humble petitioners* prays that the SENATE PARIAMENT-

1. To come up with a registration so as to safeguard the interest of small scale tea farmers over Election of directors and the committee members in the buying centers who form the management, utilization of money in management issue and control of the wage bill by the agency for better payment of the TEA farmers.
2. To protect the farmers over the fertilizer issue on price and quality.
3. To ensure the price of the dry tea is well negotiated and include government officials rather than parastatal and directors and keep away the brokers and middlemen in tea pricing issue so as the small-scale famer can benefit.
4. To stop introduction of tea plucking machine in Kenya so as job creation to causal laborers remains.

Dated this 23rd day of May 2019.

NO.	MAMES	ADDRESS	ID.NO.	SIGNATURE
	DAKTARI ISAACK MWANGI MUGO	1398-00232 RUIRU(mimsnet@yahoo.com 0722218147,0763879126	13473596	





KENYA TEA DEVELOPMENT AGENCY HOLDINGS 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@ktdateas.com/ Site:www.ktdateas

Date: 18th July, 2019

Our Ref: GEN/1/GCS
Your Ref: SEN/SCALF/CORR/2019/22 (1)

The Clerk of the Senate
The Senate Clerk's Chambers,
Parliament Buildings,
P.O. Box 41842 -00200,
NAIROBI

Attn: Carol Kirorei

Dear Sir,

RE: PETITION CONCERNING CHALLENGES FACED BY SMALL SCALE TEA GROWERS IN KENYA TEA DEVELOPMENT AGENCY (KTDA)

We acknowledge receipt and invitation to appear before the Senate Standing Committee on Agriculture and Livestock and Fisheries on Tuesday 23rd July 2019 to respond to the petition by Mr. Isaac Mwangi Mugo.

We would like to draw your attention to the fact that a number of issues raised in the petition as tabulated in your letter and attached petition, are currently pending in Kericho High Court Petition No. 18 of 2014 [The Governor, Kericho County – Vs- KTDA, CTCL, KTDA MS, MIB, KETEPA, GLF, KTPC, AFFA and Office of the Attorney General and others. We tabulate the similar issues as follows:

We have attached the latest filings and direction in respect to the above petition.

A. Prayers in the Kericho High Court Petition:

1. **Para 88** – KTDA's procurement system is not transparent, particularly on fertilizer sourcing with farmers buying the same from KTDA factories at exorbitant prices compared to prevailing market rates. In addition the amount of fertilizer supplied to each farmer is usually not commensurate with his agronomic needs with most receiving excess supplies and the cost is forcefully deducted from their annual payments.

Petition and Prayers to the Senate through the Committee: No. 3.0 & 3.1

1. The cost of fertilizer is too high with low quality bring down the production per stem and Tea payout is too low.

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, F. M. Mark, P. M. Migwi, S. M. Ireri, P.M. Ringera HSC, S.C. Tonui,
J.N. Achoki, B. Matonda, S. K. Mbatia, I. N. Gaha (Ms.)* B. K. Ngari (Finance & Strategy) *(Independent)

2. THAT, the cost of fertilizer is too high and the quality is questionable since it is substandard lowering the tea produce per stem, so Ministry of Agriculture should intervene the source of the fertilize and ensure the best quality is given to the farmers at fair price.
3. To protect the farmers over the fertilizer issue on price and quality (prayer 2)

Comment

- The prayer in the petition to the Senate touches directly and indirectly on matters within the High Court and any response to the petition would prejudice KTDA.
- The matters in issue in the petition are matters in issue in the Kericho High Court.

B. Prayers in the Kericho High Court Petition:

1. **Para 65** – KTDA Ltd has a Board of Directors comprising 15 members: 12 elected grower representatives from each catchment area, operationally referred to as zones and 3 executive directors (a managing director, operations director and finance director). The smallholder tea sector ownership structure follows a unique model, empowering the farmer from grassroots. As a private company, KTDA is owned by 62 corporate shareholders (factory companies) directly owned by farmers as individual shareholders of their respective factory company. The factory companies are owned by farmers and governed through a Board comprising six farmer representatives. The factory companies own leaf collection centers that are managed by five elected farmer representatives.
2. **Para 102** – In 2008, a new voting system for election of directors of KTDA-managed factories was introduced thereby giving large scale farmers with more shares more say in control and management of tea factories in their areas. The move crippled efforts by small-scale tea farmers who wanted to retain the traditional one-man one-vote pattern that saw directors elected on the strength of individual votes than the number of shares held.

Prayers to the Senate through the Committee: Petition No. 1.0, 1.1, 1.2, 1.3, 2.0, 2.2, 2.3 & 4.1 and Prayer No. 1

1. The small scale Tea growers in Kenya, have complains for review of election laws for directorship and committee members in 69 factories in the country.
2. THAT, the election of director and committee members should be reviewed for KTDA (KENYA TEA DEVELOPMENT AGENCY) to change and give equal voting rights in election of directors and committee members.
3. THAT, current voting systems deny small scale farmers the opportunity to serve in the Mngement of the Factories.
4. THAT, KTDA laws provide that voting in election is based on shareholding rather than ONE MAN ONE VOTE (one grower number per buying Centre one vote). The peasant farmers should have the same rights as large scale Farmers because we are deliberating on issues affecting all of us.

In addition to remove the policy which support nominated slot of a directorship for gender balance.

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, F. M. Mark, P. M. Migwi, S. M. Ileri, P.M. Ringera HSC, S.C. Tonui, J.N. Achoki, B. Matonda, S. K. Mbatia, I. N. Gaha (Ms.)* B. K. Ngari (Finance & Strategy) *(Independent)

5. Small scale tea growers allied to the agency have been pushing for changes in election laws but the KTDA has declined to review the rules.
6. THAT, the KTDA Directors and seats of Chairperson and Committee members of the buying center leadership should be ONE MAN ONE (One grower number per buying center one vote) as every farmer with one tea selling number to have one vote for that he/she has a tea bush of 500 stems or over.
7. THAT, the seat of voting style should not be based on tea bushes but tea grower's ownership or one tea grower number.
8. THAT, The parliament should come up with a legislation to cover the te farmers and ensure that directorship should have a term limit of two terms and not more than two in any factory.
9. To come up with a registration so as to safeguard the interest of small scale tea farmers over Election of directors and the committee members in the buying centers who form the management, utilization of money in management issue and control of the wage bill by the agency for better payment of the Tea farmers.

Comment

- The prayer in the petition to the Senate touches directly and indirectly on matters within the High Court and any response to the petition would prejudice KTDA.
- The matters in issue in the petition are matters in the Kericho High Court.

C. Prayers in the Kericho High Court Petition:

1. **Para 89** – As a result of the KTDA takeover, small scale farmers have lost control over the very institutions that they own, the tea factories. The local directors, having been co-opted with unbelievably large salaries have become mere rubber stamps in the fleecing of poor farmers.

Prayers to the Senate through the Committee: No. 2.1

1. THAT, The KTDA directors have ensured that power remains with few individual who own large tea plantations, by sidelining the small scale farmers...

Comment

- The prayer in the petition to the Senate touches directly and indirectly on matters within the High Court and any response to the petition would prejudice KTDA.
- The matters in issue in the petition are matters in issue in the High Court.

D. Prayers in the Kericho High Court Petition:

1. **Prayer ee** – A declaration that acts of price-fixing and manipulation of prices perpetrated by the 1st – 27th Respondents at the Mombasa Tea Auction to the detriment of smallholder farmers violates the provisions of Article 10 and 46 of the Constitution.

2. **Prayer jj** – An Order directing the Competition Authority of Kenya and the 28th Respondent To investigate the price-fixing and manipulation at the Mombasa Tea Auction from year 2001-2015 and avail a report to This Honourable Court.

Prayers to the Senate through the Committee: Petition 3.3 and Prayer 3

1. THAT, the auditor general to do a lifestyle audit to the current directors and also a serious audit to the dry tea price negotiation done in the port and the exportation price in general.
2. To ensure the price of the dry tea is well negotiated and include government officials rather than parastatal and directors and keep away the brokers and middlemen in tea pricing issue so as the small scale farmer can benefit.

Comment

- The prayer in the petition to the Senate touches directly and indirectly on matters within the High Court and any response to the petition would prejudice KTDA.
- The matters in issue in the petition are matters in issue in the Kericho High Court.

In view of the above, we seek guidance and direction from the Committee in respect to the Senate Standing Orders and how to proceed with the petition, whose prayers are substantially the same in a Court of Law and which matters are subjudice.

KENYA TEA DEVELOPMENT AGENCY HOLDINGS LTD



Dr. JOHN KENNEDY OMANGA
GROUP COMPANY SECRETARY

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
PETITION NO 18 OF 2014

IN THE MATTER OF: ARTICLES 1(1), 1(3), 2(1), 2(2), 2(4), 3(1), 10, 19(1) 19(3) 20(1), 20(2), 20(3), 20(4), 21 (1), 22(2), 23(1) 23(1), 23(2) 24(1) 27(1) 27(2) 36(1), 36(3) 41(5), 47(1) 47(2), 50(1), 73(1), 129(1), 159(2), 163(3) (B), 258(1), 258(2), AND 259(1) OF THE CONSTITUTION OF KENYA

BETWEEN


THE GOVERNOR, KERICHO COUNTY

KENYA COURT REGISTRY
RECEIVED
04 APR 2019
P.O. Box 69 - 20200, KERICHO.
Tel: 052-20065

PETITIONER

-VERSUS-

- | | |
|---|-----------------------------|
| KENYA TEA DEVELOPMENT AGENCY..... | 1 ST RESPONDENT |
| CHAI COMPANY LIMITED..... | 2 ND RESPONDENT |
| KTDA MANAGEMENT SERVICES..... | 3 RD RESPONDENT |
| MAJANI INSURANCE BROKERS..... | 4 TH RESPONDENT |
| KENYA TEA PACKERS LIMITED..... | 5 TH RESPONDENT |
| GREENLAND FEDHA LIMITED..... | 6 TH RESPONDENT |
| KTDA POWER COMPANY LIMITED..... | 7 TH RESPONDENT |
| UNILIVER TEA (KENYA) LIMITED..... | 8 TH RESPONDENT |
| LIPTON LIMITED..... | 9 TH RESPONDENT |
| JAMES FINLAY (KENYA) LIMITED..... | 10 TH RESPONDENT |
| VANS REES KENYA LIMITED..... | 11 TH RESPONDENT |
| JUJA COFFEE EXPORTERS LIMITED..... | 12 TH RESPONDENT |
| STANSAND (AFRICA) LIMITED..... | 13 TH RESPONDENT |
| EASTERN PRODUCE KENYA LIMITED..... | 14 TH RESPONDENT |
| WILLIAMSON TEA KENYA BROKERS LIMITED..... | 15 TH RESPONDENT |
| AFRICA TEA BROKERS LIMITED..... | 16 TH RESPONDENT |
| ANJELI LIMITED..... | 17 TH RESPONDENT |
| ATLAS TEA BROKERS LIMITED..... | 18 TH RESPONDENT |
| BICORN EXIM LIMITED..... | 19 TH RESPONDENT |
| CENTRALINE TEA BROKERS LIMITED..... | 20 TH RESPONDENT |
| CHOICE TEA BROKERS LIMITED..... | 21 ST RESPONDENT |
| COMBROCK LIMITED..... | 22 ND RESPONDENT |
| PRUDENTIAL TEA BROKERS (E.A) LIMITED..... | 23 RD RESPONDENT |
| TEA BROKERS EAST AFRICA LIMITED..... | 24 TH RESPONDENT |
| UNION TEA BROKERS LIMITED..... | 25 TH RESPONDENT |


 AHMEDNASIR, ABDIKADIR
 & CO. ADVOCATES
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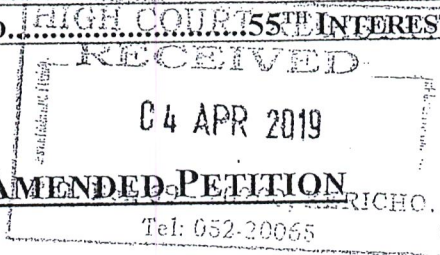
VENUS TEA BROKERS LIMITED.....26TH RESPONDENT
THE EAST AFRICAN TEA TRADE ASSOCIATION.....27TH RESPONDENT

AGRICULTURE FISHERIES & FOOD AUTHORITY.....28TH 3RD RESPONDENT
THE ATTORNEY GENERAL.....29TH 3RD RESPONDENT

AND

COUNCIL OF COUNTY GOVERNORS.....1ST INTERESTED PARTY
COUNTY GOVERNMENT OF MERU.....2ND INTERESTED PARTY
COUNTY GOVERNMENT MURANGA.....3RD INTERESTED PARTY
LITEIN TEA FACTORY COMPANY LIMITED.....4TH INTERESTED PARTY
TEGAT TEA FACTORY COMPANY LIMITED.....5TH INTERESTED PARTY
KAKATET TEA FACTORY COMPANY LIMITED.....6TH INTERESTED PARTY
MOMUL TEA FACTORY COMPANY LIMITED.....7TH INTERESTED PARTY
KAPKOROS TEA FACTORY COMPANY LIMITED.....8TH INTERESTED PARTY
MOGOGOSIEK TEA FACTORY COMPANY LIMITED.....9TH INTERESTED PARTY
KAPSET TEA FACTORY COMPANY LIMITED.....10TH INTERESTED PARTY
NYANSIONGO TEA FACTORY COMPANY LIMITED.....11TH INTERESTED PARTY
KEBIRIGO TEA FACTORY COMPANY LIMITED.....12TH INTERESTED PARTY
SANGANYI TEA FACTORY COMPANY LIMITED.....13TH INTERESTED PARTY
TOMBE TEA FACTORY COMPANY LIMITED.....14TH INTERESTED PARTY
NYANKOBA TEA FACTORY COMPANY LIMITED.....15TH INTERESTED PARTY
GIACHORE TEA FACTORY COMPANY LIMITED.....16TH INTERESTED PARTY
KIAMOKAMA TEA FACTORY COMPANY LIMITED.....17TH INTERESTED PARTY
NYAMACHE TEA FACTORY COMPANY LIMITED.....18TH INTERESTED PARTY
OGEMBO TEA FACTORY COMPANY LIMITED.....19TH INTERESTED PARTY
CHEBUT TEA FACTORY COMPANY LIMITED.....20TH INTERESTED PARTY
MUDETE TEA FACTORY COMPANY LIMITED.....21ST INTERESTED PARTY
KAPSARA TEA FACTORY COMPANY LIMITED.....22ND INTERESTED PARTY
KAPTUMO TEA FACTORY COMPANY LIMITED.....23RD INTERESTED PARTY
KAMBAA TEA FACTORY COMPANY LIMITED.....24TH INTERESTED PARTY
MATAARA TEA FACTORY COMPANY LIMITED.....25TH INTERESTED PARTY
KAGWE TEA FACTORY COMPANY LIMITED.....26TH INTERESTED PARTY
THETA TEA FACTORY COMPANY LIMITED.....27TH INTERESTED PARTY
NGERE TEA FACTORY COMPANY LIMITED.....28TH INTERESTED PARTY
IKUMBI TEA FACTORY COMPANY LIMITED.....29TH INTERESTED PARTY
NDARUGU TEA FACTORY COMPANY LIMITED.....30TH INTERESTED PARTY
GACHEGE TEA FACTORY COMPANY LIMITED.....31ST INTERESTED PARTY
NJUNU TEA FACTORY COMPANY LIMITED.....32ND INTERESTED PARTY
NDUTI TEA FACTORY COMPANY LIMITED.....33RD INTERESTED PARTY
MAKOMBOKI TEA FACTORY COMPANY LIMITED.....34TH INTERESTED PARTY
GACHARAGE TEA FACTORY COMPANY LIMITED.....35TH INTERESTED PARTY
OLENGURUONE TEA FACTORY COMPANY LIMITED.....36TH INTERESTED PARTY

<u>GITHAMBO TEA FACTORY COMPANY LIMITED.....</u>	<u>37TH INTERESTED PARTY</u>
<u>KANYENYAINI TEA FACTORY COMPANY LIMITED.....</u>	<u>38TH INTERESTED PARTY</u>
<u>KIRU TEA FACTORY COMPANY LIMITED.....</u>	<u>39TH INTERESTED PARTY</u>
<u>WERU TEA FACTORY COMPANY LIMITED.....</u>	<u>40TH INTERESTED PARTY</u>
<u>KINORO TEA FACTORY COMPANY LIMITED.....</u>	<u>41ST INTERESTED PARTY</u>
<u>KIONYO TEA FACTORY COMPANY LIMITED.....</u>	<u>42ND INTERESTED PARTY</u>
<u>IMENTI TEA FACTORY COMPANY LIMITED.....</u>	<u>43RD INTERESTED PARTY</u>
<u>GITHONGO TEA FACTORY COMPANY LIMITED.....</u>	<u>44TH INTERESTED PARTY</u>
<u>IGEMBE TEA FACTORY COMPANY LIMITED.....</u>	<u>45TH INTERESTED PARTY</u>
<u>MICHIMIKURU TEA FACTORY COMPANY LIMITED.....</u>	<u>46TH INTERESTED PARTY</u>
<u>KIEGOI TEA FACTORY COMPANY LIMITED.....</u>	<u>47TH INTERESTED PARTY</u>
<u>TOROR TEA FACTORY COMPANY LIMITED.....</u>	<u>48TH INTERESTED PARTY</u>
<u>CHELAL TEA FACTORY COMPANY LIMITED.....</u>	<u>49TH INTERESTED PARTY</u>
<u>KOBEL TEA FACTORY COMPANY LIMITED.....</u>	<u>50TH INTERESTED PARTY</u>
<u>ROROK TEA FACTORY COMPANY LIMITED.....</u>	<u>51ST INTERESTED PARTY</u>
<u>TIRGAGA TEA FACTORY COMPANY LIMITED.....</u>	<u>52ND INTERESTED PARTY</u>
<u>RIANYAMWAMU TEA FACTORY COMPANY LIMITED.....</u>	<u>53RD INTERESTED PARTY</u>
<u>ITUMBE TEA FACTORY COMPANY LIMITED.....</u>	<u>54TH INTERESTED PARTY</u>
<u>EBEREGE TEA FACTORY COMPANY LIMITED.....</u>	<u>55TH INTERESTED PARTY</u>



FURTHER FURTHER AMENDED PETITION

TO: The High Court of Kenya,
Kericho

THE HUMBLE PETITION of the Governor, Kericho County, the petitioner, whose address of services for the purposes of this petition is care of MANYONGE WANYAMA & ASSOCIATES ADVOCATES, MARSABIT PLAZA 1ST FLOOR ROOM 107, P.O. BOX 100493-00101 NAIROBI is as follows:

DESCRIPTION OF PARTIES

1. The Petitioner is the governor of the County Government of Kericho.

2. The 1st Respondent an agency that manages the small holder tea processing factories throughout all of Kenya.
3. ~~The 2nd to 7th Respondents are subsidiaries of the Kenya Tea Development Agency incorporated under the companies Act (CAP 486)~~
4. ~~The 8th Respondent is Limited Liability Company that is engaging in tea farming and trading in Kenya.~~
5. ~~The 9th Respondent is a subsidiary of the Unilever Plc. And trades dominantly on Western Tea at the Mombasa Tea Action.~~
6. ~~The 10th Respondent is limited liability Company that is engaging in tea trading in Kenya. It trades at the Mombasa Tea Action.~~
7. ~~The 11th Respondent is limited liability Company that is engaging in tea trading in Kenya. It trades at the Mombasa Tea Action.~~
8. ~~The 12th Respondent is limited liability Company that is engaging in tea trading in Kenya. It trades at the Mombasa Tea Action.~~
9. ~~The 13th Respondent is limited liability Company that is engaging in tea trading in Kenya. It trades at the Mombasa Tea Action.~~
10. ~~The 14th–26th Respondent are tea brokers licenced by the Tea Board of Kenya and which facilitates the sale of tea on behalf of producers.~~

11. ~~The 27th Respondent is an organization bringing together tea producers, buyers/exporters, brokers, tea parkers and shipping/warehousing thus facilitating the tea trade development.~~
12. The 28th-2nd Respondent is a statutory body whose mandate is to oversee the smooth and orderly functioning of the tea industry through policy guidance registration and tea development.
13. The 3rd Respondent, the office of the Attorney General, draws its mandate from Article 156 of the constitution of Kenya 2010, which vests on the Attorney General the responsibility of being the principal Legal Adviser to the Government, to ensure that the rule of law is promoted, protected and upheld and defended the public interest. Further the office of the attorney General Act No. 49 of 2012 clearly spells out the functions of the office that include:
- a. Advising Government Ministries, Department, Constitutional Commissions and state Corporation on legislative and other legal matters;
 - b. Negotiating, drafting, vetting and interpreting local and international documents agreements and treaties for and on behalf of the Government and its agencies; and
 - c. Performing any functions as may be necessary for the effective discharge of the duties and the exercise of the powers of the Attorney-General
14. The 1st Interested Party is a statutory body established under Section 19 of the Inter-governmental Relations Act No. 2 of 2012 whose mandate is: -
- a) Facilitation of consultation amongst county governments;
 - b) Sharing of information on the performance of the counties in the execution of their functions with the objective of learning and promotion of the best practice and where necessary, initiating preventative or corrective action;

- c) Consideration of matters of common interest to counties;
- d) Dispute resolution between counties;
- e) Facilitation of capacity building for governors
- f) Receiving reports and monitoring the implementation of inter-county agreements on inter county projects;
- g) Consideration of reports from inter-governmental forms on matters affecting national and county interests or relating to performance of counties.

15. The 2nd Interested Party is the County Government of Meru established pursuant to Article 176 of the constitution.

16. The 3rd Interested Party is the county Government of Murang'a established pursuant to Article 176 of the Constitution.

17. The 4th to 57th Interested Parties KTDA are tea processing factories which are subsidiary companies run by the Kenya Tea Development Agency through management agreements with the respective factory Companies. And these subsidiary companies are investments on behalf of the shareholders (Tea Farmers) where dividends declared from profits made by these subsidiaries are eventually paid to farmers through their respective Factory Companies.

LEGAL FOUNDATIONS OF THE PETITION

18. Under the Constitution, Kenya is now founded on ethical conduct, integrity, transparency and accountability, which principles bind the respondents.

19. Article 1(1) of the constitution provides that all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with the Constitution.

20. Article 1(3) of the constitution provides that all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with the constitution;
21. Article 2(1) of the constitution of Kenya pronounces the supremacy of the constitution and asserts that the Constitution binds all persons and state organs;
22. Article 2(2) of the constitution provides that any act or omission in contravention of the constitution is invalid.
23. Article 2(4) of the constitution provides that any act or omission in contravention of the constitution is invalid.
24. Article 3(1) of the constitution enjoins the Respondents (and indeed all other persons) to uphold and defend the constitution to insist that all organs and bodies of the Government of Kenya equally respect, uphold and defend the constitution;
25. Article 10 of the constitution of Kenya sets out the national values and principles of governance, particularly enjoining the Respondents to observe good governance, integrity, rule of law, non-discrimination, protection of the marginalized, transparency, accountability and sustainable development;
26. Article 19(2) of the constitution provides that the Bill of Rights is an integral part of Kenya's democratic state and is the framework for social, economic and cultural policies; purpose of recognizing and protecting human rights and fundamental freedoms
27. Article 19(2) of the constitution provides that the purpose of recognizing and protecting human and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings.
28. Article 19 (3) of the constitution provides that the rights and fundamental freedoms in the Bill of Rights belong to each individual and are not granted by the state and are subject only to the limitations contemplated in the Constitution.
29. Article 201(1) of the constitution provides that the Bill of Rights applies to all law and binds all state and all persons;

30. Article 20(2) of the constitution provides that every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom;
31. Article 20(3) of the constitution provides that in applying a provision of the Bill of Rights, a court shall adopt the interpretation that most favors the enforcement of a right or fundamental freedom.
32. Article 20(4) of the constitution provides that in interpreting the Bill of Rights, a court, tribunal or other
 1. Article 21(1) of the Constitution provides that it is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights;
 2. Article 22(1) of the Constitution provides that every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened;
 3. Article 22(2) of the Constitution provides that in addition to a person acting in their own interest, court proceedings may be instituted by a person acting as a member of, or in the interest of, a group or class of persons; or in the public interest;
 4. Article 23(1) of the Constitution provides that the High Court has jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights;
 5. Article 23(2) of the Constitution provides that in any proceedings brought under Article 22, a court may grant appropriate relief, including a declaration of rights; an injunction; a conservatory order; or an order for compensation;

6. Article 24(1) of the Constitution provides that a right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, considering all relevant factors;
7. Article 24(3) of the Constitution provides that the State or a person seeking to justify a limitation shall demonstrate to the court, tribunal or other authority that the requirements of this Article have been satisfied.
8. Article 27(1) of the Constitution provides that every person is equal before the law and has the right to equal protection and equal benefit of the law.
9. Article 27(2) of the Constitution provides that equality includes the full and equal enjoyment of all rights and fundamental freedoms.
10. Article 28 of the Constitution provides that every Kenyan has a right to have their human dignity respected and protected.
11. Article 43 of the Constitution provides that every Kenyan is entitled to the economic and social rights enumerated thereunder.
12. Article 46 of the Constitution guarantees every Kenyan, as a consumer, to receive quality services from any service provider they engage.
13. Article 47(1) of the Constitution provides that every person has the right to administrative action that is lawful, reasonable and procedurally fair.

14. Article 47(2) of the Constitution provides that if a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action;
15. Article 50(1) of the Constitution entitles every person the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body;
16. Article 73(1) of the Constitution of Kenya enjoins all State Officers to exercise public authority as a public trust in a manner that;
- (i) is consistent with the purposes and objects of the Constitution;
 - (ii) demonstrates respect for the people;
 - (iii) brings honor to the nation and dignity to the office; and
 - (iv) promotes public confidence in the integrity of the office;
17. Article 73(2) of the Constitution of Kenya provides that the guiding principles of leadership and integrity include ensuring that decisions are not influenced by improper motives but instead are guided by selfless service based solely on the public interest;
18. Article 129(1) of the Constitution of Kenya provides that executive authority derives from the people of Kenya and shall be exercised in accordance with the Constitution;
19. Article 159(2) of the Constitution provides that justice shall be done to all, irrespective of status; justice shall not be delayed; and the purpose and principles of the Constitution shall be protected and promoted;

20. Article 165(3)(b) of the Constitution provides that the High Court has jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;
21. Article 201(d) of the Constitution sets out the principles of public finance to include;
 1. Openness and accountability, including public participation in financial matters.
 2. public money be used in a prudent and responsible way.
 3. Financial management be responsible and fiscal reporting be clear.
22. Article 210(1) of the Constitution provides that no tax or licensing fee may be imposed, waived or varied except as provided by legislation.
23. Article 232 provides the values and principles of public which include;
 4. Efficient, effective and economic use of resources
 5. Accountability for administrative acts.
 6. Transparency and provision to the public of timely and accurate information.
24. Article 258(1) of the Constitution provides that every person has the right to institute court proceedings, claiming that the Constitution has been contravened, or is threatened with contravention;

25. Article 258(2) of the Constitution provides that in addition to a person acting in their own interest, court proceedings above may be instituted by a person acting in the public interest;

26. Article 259(1) of the Constitution provides that the Constitution shall be interpreted in a manner that—

- (a) promotes its purposes, values and principles;
- (b) advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights;
- (c) permits the development of the law; and
- (d) contributes to good governance;

FACTS RELIED UPON

KTDA RELATED PROBLEMS

51. Small scale tea farmers across the country have approached the Petitioner numerous times with a litany of complaints on status of tea sector which is patently rigged against their interests.
52. Specifically, farmers held meetings at Sosirot on 5th May 2014 and at Kapkabet on 16th July, 2014 where the challenges affecting small scale tea farmers, especially those from the Western factories, were discussed in detail.
53. Kenya's tea contributes 4% to the Gross Domestic Product. The industry contributed total earnings of Kshs.103 billion of which Kshs. 97 billion came from exports and Kshs. 6 billion was earned from the local market. The tea industry is also a source of employment to over 5 million Kenyans, including over 600,000 smallholder tea growers.
54. Principally, the Kenyan tea sector is divided into two regions- the Eastern region and the Western region. This Petition deals with the concerns of farmers from the Western region.
55. Small holders account for most of the land under tea and for up to 60% of total tea production while large scale growers account for only 40%.
56. Despite the role of smallholder farmers in tea production, they have little representation in the institutions governing the tea sector in Kenya.
57. Ironically, the returns to the small scale farmers have historically remained lower than that for plantations and other big producers. This is attributed to the high management fees charged by KTDA, the many taxes imposed on small-scale farmers, the high cost of production, the long and inefficient supply chain and general mismanagement.

58. The situation is made worse by the fact that that the small holders have remained at the bottom of the hierarchy in terms of participation, influencing and contribution to decision making in the sector.
59. Although both KTDA and estate tea fetch similar prices on the world markets, the participation of many players who must get a share and management problems along the KTDA supply chain reduce the final payments to small holders. For instance, the factory building Programme involved a great deal of capital investment that KTDA carried out on behalf of farmers. Though this was necessary, the farmers were totally kept out of the process. This led to expensive loans being borrowed whose burden of payment was passed on to the farmers.
60. A second example is the commission paid out to Tea Brokers by KTDA whereby the rates are decided solely between KTDA and the brokers with the farmers completely out of the picture, yet these charges are deducted from tea payments to the farmers.
61. KTDA was privatized in 2000 in the hope that it would become more efficient and transparent based purely on business principles. Instead, it has become more corrupt and less efficient. KTDA is now controlled by a small club of powerful elite businessmen who enjoy political patronage.
62. The inefficiency in KTDA has fostered corrupt and non-transparent practices culminating in a bill being tabled in Parliament seeking to revert KTDA back to statutory control.
63. Before the year 2000, the interests of smallholder farmers were catered through Kenya Tea Development Authority, a state corporation established under the Agriculture Act and the Kenya Tea Development Authority Order in 1964. The manner in which, Kenya Tea Development Authority, (a state corporation) was converted/privatized into Kenya Tea Development Agency

Limited (a private company) is extremely suspect. The privatization was riddled with corruption and control by a few individuals.

64. KTDA was incorporated under the Companies Act in 2000 as an independent and private enterprise, owned by all of Kenya's small-scale tea farmers through their respective factory companies, which are in turn independent legal entities. Currently KTDA Ltd. manages 62 tea factories in the smallholder subsector serving over 500,000 growers. KTDA manages the tea factories on behalf of farmers, charging a management fee currently fixed at 2.5 percent of the proceeds of total sales. KTDA Ltd. is owned by the smallholder tea growers through the tea factory companies, who elect one director per zone to represent them on the KTDA Ltd Board.
65. KTDA Ltd has a Board of Directors comprising 15 members: 12 elected grower representatives from each catchment area, operationally referred to as zones, and 3 executive directors (a managing director, operations director and finance director). The smallholder tea sector ownership structure follows a unique model, empowering the farmer from the grassroots. As a private company, KTDA is owned by 62 corporate shareholders (factory companies) directly owned by farmers as individual shareholders of their respective factory company. The factory companies are owned by farmers and governed through a Board comprising six farmer representatives. The factory companies own leaf collection centers that are managed by five elected farmer representatives.
66. Moreover, the relationship between KTDA Ltd. and the factory companies is two-fold. The first relationship is that of KTDA as an investor in the tea factory companies, where KTDA owns shares while the second level is with KTDA Ltd as a managing agent via a management agreement. Similarly, the relationship between the growers and tea factories is also two-fold: the growers both supplier of green leaf to the factory and are (in most cases) factory shareholders. This relationship has developed into a conflict of interest

causing increasing discontent both between the growers and the factory directors on the one hand, and the factory directors and KTDA on the other.

67. Having factory directors also serving at the national level on the KTDA Board raises the issue of conflict of interest making farmers feel that their issues are not addressed well due to lack of clarity of roles between the two levels of directorship. Directors serving in both roles have over the years neglected their factories in favour of building a long term relationship with KTDA and its other cronies.
68. In addition, for many years small holder's tea has been illegally blended and later resold at even higher in the process damaging the reputation of Kenya's tea internationally which reputation took many years to establish.
69. KTDA Board members and top management have acquired shares in some of the marketing companies that are involved in the importation of cheap tea used in the illegal blending.
70. Even though the plantations have better management, organization, and processing quality standards, the tea they produce is usually of lower quality than the one produced by the smallholders. This is mainly because a big part of tea quality depends on the collection process (plucking technique) and the plantations, as they pay per weight, find difficulties to control the technique used by the temporal workers in the extensive fields.
71. On the other side, international struggle for market shares by the multinational have focused on the supply of relatively low-quality bulk tea. This gives the packing companies flexibility by deliberately reducing difference in qualities by blending different kind of teas. A typical "English tea" could be the product of the blending of teas from six different countries.
72. Having acquired tea at below market value through price-manipulation , the brokers proceed to mix the high quality tea produced by Kenyan small scale

farmers with cheap and low quality tea imported from Asian and other countries.

73. The illegal blending by tea brokers allows them to increase the volume of their product for sale while passing it off as the world renowned Kenyan tea.
74. The legislative and policy framework governing the tea sector does not sanction the blending of Kenyan tea with lower quality one from elsewhere in a bid to protect the quality and international reputation of our tea.
75. The imported low quality tea used for blending is a constant source of pesticide contamination on pesticide free Kenyan tea which has caused Kenyan tea to fail Maximum Residue Levels (MRL) tests in the international market.
76. The damage to the brand of Kenyan tea internationally has and continues to diminish the prices and orders for Kenyan tea thereby seriously jeopardizing the livelihoods of many small scale farmers.
77. This blended tea that is later exported amounts to 4% of total KTDA sales, a huge amount, with the biggest beneficiaries being some KTDA directors and other powerful individuals who have formed brokerage firms to fleece small-scale farmers.
78. KTDA subsidiaries, especially Chai Trading Company Limited, are major participants in the importation of substandard foreign tea and its subsequent blending with quality tea from small scale farmers.
79. There is a conflict of interest arising above since KTDA is involved in the production, manufacture and selling of farmers' tea and at the same time its subsidiaries are importing foreign tea to compete with that of its supplying farmers.

80. KTDA, through management agreements signed between it and the tea factories has taken over control of most of the functions that were devolved to farmers through their tea factories.
81. The above takeover is contrary to Sessional Paper No. 2 of 1999 which laid out the framework for the privatization of KTDA and liberalization of the then moribund tea sector. The Sessional Paper enumerated the following reform measures: Direct participation by elected directors in management decisions regarding procurement of goods and services by each factory company; Transfer of green tea leaf collection and payment to farmers from the KTDA to the individual factory companies; Sale of KTDA equity in factory companies to the tea farmers and Direct participation by elected directors in management decisions, governance and policy making in their respective factories.
82. As a result of the management agreements, all factories are centrally managed by KTDA with the local directors, who are supposed to be the voice of the small farmer, willing bystanders in the process.
83. The locally elected directors have no role, even of an oversight nature, over the management of the funds of the factories as KTDA has assumed total control over the same. Thereby farmers have no role in the management of finances of the very companies they have shares in.
84. Under the Sessional Policy Paper No. 2 of 1999 individual factory companies had the option of contracting any other management agent to manage their operations/ activities. KTDA has instead insisted on managing every single factory in Kenya contrary to the wishes of the local farmers who own it.
85. KTDA charges a management fee which it determines itself without consulting farmers leading to a large portion of earning being used at the KTDA level instead of directly benefiting farmers.

86. The legal ownership of "KTDA" factories and other properties is not clear. On paper, the factories are owned by the farmers yet no dividends are paid to the farmers for every successful year of trading. Other KTDA properties do not benefit the farmers as well.
87. The law stipulates that KTDA is to act as an agent for the small scale tea farmers. Unfortunately, it has abrogated ownership and total control in all the factories. KTDA also controls the processing of tea, tea trading and acts as an insurer and a Bank for all the money due to small scale farmers.
88. KTDA's procurement system is also not transparent, particularly on fertilizer sourcing with farmers buying the same from KTDA factories at exorbitant prices compared to prevailing market rates. In addition the amount of fertilizer supplied to each farmer is usually not commensurate with his agronomic needs with most receiving excess supplies and the cost is forcefully deducted from their annual payments.
89. As a result of the KTDA takeover, small scale farmers have lost all control over the very institutions that they own, the tea factories. The local directors, having been co-opted with unbelievably large salaries have become mere rubber stamps in the fleecing of poor farmers.
90. Farmers supplying satellite factories, 10 out of 11 being in the Western region, are not allowed to participate in the election of KTDA national directors.
91. The denial of voting rights to satellite factories is unjustified considering that there are no significant differences in operations and capacity with the fully flagged factories.
92. Since the introduction of tea in both the Eastern and Western regions, the latter has been posting lower payments per kilogram due to its underrepresentation in the KTDA Board and top management.

93. KTDA has failed to explain this disparity in light of the fact that there is no difference in quality of the tea produced by farmers from the Eastern and Western regions.

94. KTDA also deducts 4% of the annual gross tea sales from farmers as "operating expenses" over and above the 2.5% management fee charged on gross sales without accounting for the expenditure of these sums.

95. KTDA managed factories earned a total of Kshs. 69 Billion in the 2012/2013 financial year. The 2.5 % management fee amounts to 1.725 Billion.

$$\frac{2.5}{100} \times 69 = 1.725 \text{ Billion}$$

96. The extra charge of 40% amounts to Kshs. 27.6 Billion with the share of the 400,000 farmers from western region being Kshs. 19.7 Billion.

$$\frac{400,000 \times 40}{560,000 \times 100} \times 69 = 19.7 \text{ Billion}$$

97. Over the course of 15 years that KTDA has been in operation, farmers have lost more than Kshs. 87 Billion due to this double deduction.

98. This extra charge is illegal, unconscionable and basically a clear case of theft by KTDA officials and their cronies at the local factories.

99. The double payment for management of services does not end here as Chai Trading Company Ltd charge farmers a further 0.75% of total tea sold as brokerage fees yet KTDA has a full-fledged marketing department.

100. The above further charge amounts to Kshs. 517.5 million in 2014.

$0.75 \times 69 = \text{Kshs. } 517.5 \text{ million.}$

100

101. Considering that Chai Trading Company has been in operation since 2003, farmers have lost over Kshs. 5 Billion to such double charging for the same function.
102. In 2008, a new voting system for election of directors of KTDA-managed factories was introduced thereby giving large scale farmers with more shares more say in the control and management of tea factories in their areas. The move crippled efforts by small-scale tea farmers who wanted to retain the traditional one-man one-vote pattern that saw directors elected on the strength of individual votes than the number of shares held.
103. Farmers have also suffered a loss of product due to miss weighting or abuse in the tea collection centers by the KTDA' clerks through faulty weighting scales, a mandatory 2 kg deduction for every tea bag weighted, and the weighted tea is recorded as round downwards figures. The justification of the 2 kg deduction is the alleged weight of the carrying bag, which happens to weigh less than a half of that.
104. In demonstration of KTDA's sense of impunity, tea farmers west of Rift Valley have not been paid their mini-bonus for this year despite repeated demands and even the President's orders to that effect.
105. KTDA has been grossly inefficient in the collection of green tea leaf from tea buying centers. It has made farmers susceptible to illnesses such as pneumonia, arthritis and related illnesses by making them spend cold nights at the collection centres waiting for KTDA lorries to come pick their tea.
106. At times, KTDA agents fail to collect plucked tea in good time from the collection centers resulting in loss of weight and quality of plucked tea, thus

a drop in tea earnings and yet the Agency does not accept liabilities for the losses incurred by farmers.

107. KTDA in a major departure from its core mandate has formed 7 subsidiary companies without involving small scale tea farmers yet in the shareholding structure KTDA is owned by tea factories which in turn are fully owned by the small holders.

108. KTDA has over the years refused to publicize details about the operations, earnings and dividends paid out by these subsidiaries. Farmers, despite technically owning all these subsidiaries have not earned a single cent in dividends indicating that only KTDA officials are benefiting. As the true owners, smallholders are entitled to all the dividends realized by these subsidiaries.

ILLEGAL COLLECTION OF CESS BY KTDA

109. KTDA has also been collecting Agriculture Produce Cess from tea farmers despite the repeal of the law under which it was authorized, the Agriculture Act (Chapter 318 of the Laws of Kenya). The rate charged is 1% of the gross value of green tea leaf.

110. This Cess is deducted from farmers' pay slips by KTDA with the proceeds being forwarded to the various factories for road maintenance.

111. The rate at which and how Agricultural Produce Cess is administered is arbitrary and changes from time to time without consideration of its impact on farmers.

112. Agricultural Produce Cess, being difficult to enforce, has been and continues to be a financial and compliance burden on producers.

113. Levying of Agricultural Produce Cess increases the cost of moving farm produce from one part of the country to another.
114. Agricultural Produce Cess has the effect of increasing the cost of doing business due to inappropriate taxation and the disruption of transportation of produce.
115. The Proceeds of Agricultural Produce Cess collected could be justified if the amounts collected were correctly reinvested in supporting infrastructure.
116. However, the infrastructure (rural roads) is completely dilapidated. This has occasioned great difficulty to farmers.
117. Poor road infrastructure leading to delays in green leaf collection and transportation thus causing green leaf spillage, long chemical withering durations, leaf over handling, development of high leaf temperature while it is on transit. These lead to quality deterioration. Tea roads need to be in good state to reduce the leaf spillage and quality deterioration.
118. Section 201 of the Local Government Act (Chapter 265 of the Laws of Kenya) as read with Section 192A of the Agriculture Act (Chapter 18 of the Laws of Kenya) empowered local authorities to pass by laws imposing the payment of Agricultural Produce Cess.
119. KTDA entered into an agreement with the now defunct local authorities allowing it to collect the Cess and distribute the same to factories for maintenance of local roads.
120. The Local Government Act (Chapter 265 of the Laws of Kenya) was wholly repealed by the County Government Act, 2012.

121. The County Government Act 2012 does not save the taxation regime contained in the repealed Local Government Act, Chapter 265 of the Laws of Kenya.
122. Moreover, in view of the devolved governance system that we have implemented wherein agriculture is fully devolved to Counties, KTDA cannot continue to collect levies that were supported under the Local Government Act, Chapter 256 of the Laws of Kenya.
123. Section 41 of the Agriculture, Fisheries and Food Authority Act repealed the Agriculture Act without preserving the powers to impose Agricultural Produce Cess.
124. Therefore, KTDA cannot purport to continue collecting Cess pursuant to the agreements it had with local authorities that have since been disbanded.
125. In the current constitutional dispensation, agriculture is fully devolved to the Counties. In essence, it is only the County Government that has constitutional and legal authority to levy agricultural produce Cess.
126. The Petitioner contents that KTDA's act in levying agricultural produce Cess has no legal basis and also violates the express provisions of the Constitution of the Republic of Kenya.

ILLEGAL COLLECTION OF THE AD VALOREM LEVY

127. The Tea Board of Kenya and its successor, the Agriculture Fisheries & Food Authority, continue to collect *ad valorem* duty of 1% on tea produce at the point of export despite the repeal of the Tea Act.
128. Section 18(1) of the repealed Tea Act provided that the Minister could, from time to time, on the recommendation of the Board, by notice in the Gazette, impose an *ad valorem* levy on all made tea at the point of import or export.

129. The current levy of 1% of the customs value for made tea exports is based on the above repealed provision.

130. The ad valorem duty has the effect of over-pricing Kenya tea in comparison to the rest of East Africa and in the process scaring away foreign buyers.

131. The Tea Act was repealed by the Crops Act, 2013 which further provided at Section 42(2) (e) that any subsidiary legislation made under the former would only continue applying up to 30th June, 2013.

132. Therefore, the collection of ad valorem duty by AFFA (the Tea Directorate) since 30th June, 2013 has no legal justification at all.

133. Article 210(1) of the Constitution provides that no tax or licensing fee may be imposed, waived or varied except as provided by legislation. Therefore, the continued levying of the said ad valorem duty by AFFA (the Tea Directorate) is illegal and unconstitutional.

134. Furthermore, KTDA deducts 40% of the annual gross tea sales from farmers as "operating expenses" over and above the 2.5% management fee charged on gross sales without accounting for the same.

135. These taxes have become a heavy burden on producers, and in some cases amount to duplicate taxation. Most of these charges are borne by the overburdened smallholder farmers who contribute about 62 percent of the tea Cess revenues. The KTDA management fee, at 2.5 percent of net sales, is borne by the smallholder growers over and above all the other levies that producers bear, yet the smallholder farmers own the factories that KTDA manages.

PRICE-FIXING AT THE TEA AUCTION

136. Small scale farmers in the Western region have also been the victims of price fixing by the main buyers of their tea at auctions.
137. The Mombasa tea auction is held every Monday and Tuesday, with teas from up to nine East African countries available to buyers from around the world. It is the second largest of eleven worldwide tea auctions, after Sri Lanka.
138. The Mombasa auction has been hijacked and monopolized by local cartels of big estate owners and brokers. According to KTDA briefs, the Mombasa auction dominates the tea buying scene in Kenya to the tune of 75% yet small holders play no role in its trading.
139. The auction is run by the East African Tea Trade Association (EATTA), a limited liability company in which KTDA, as the representative of small scale farmers, has only one vote despite representing over half a million farmers.
140. Players at the Mombasa Tea Auction collude to fix prices and deny small-scale farmers their deserved earnings.
141. In Mombasa, only six multinational companies account for two-thirds of the tea traded through the auction. It is clear that the buying behavior of the big companies could have a major impact on the price paid at the auction.
142. The large tea companies have a considerable influence on the supply and demand of tea, and thus on the price-fixing process. Their market power is a major determinant at tea auctions. With their buying policy, these corporations strongly influence both price movements and the demand for certain qualities of tea. Their ownership of both plantations and processing factories -horizontal integration- is essential.

143. Vertical integration - companies having a strong influence on transport companies and shipping agencies and so on - adds to the powerful position of the large tea companies. This concentration of power, with corporations sometimes controlling the entire production process from tea shrub to tea bag, offers ample scope for manipulation.

144. The Tea Industry Status Report May 2014, prepared by the industry regulator, Tea Board of Kenya, mentions various players, chief among them the Kenya Tea Development Agency (KTDA), of manipulating the price of the highest tea grade, PF1, which is mainly produced by small-scale farmers. The grade has consistently sold at low prices or at the same price with inferior grades at the weekly auction.

145. The report also blames direct sales outside auction venues to some big marketers which create a huge price difference while giving the impression that there is excess tea in the market.

146. Principally, the current low prices at the auction are precipitated by some unorthodox practices by KTDA, which controls over 65 per cent of the volumes dealt in at the auction. This is done in collusion with major brokers, warehouses and traders. The perpetrators continually divert attention from the real issues by citing the ad-valorem levy. The ad-valorem levy is a tax charged and collected by the Tea Board, at one per cent of the export cost, to facilitate research, marketing and infrastructure.

147. Price manipulation is rampant during the months of March and April. Smallholder farmers are normally paid the hammer price, with zero benefits from this venture. Prices have continued to decline, not because of poor quality but owing to poor trade practices.

148. Tea auctioned on March 1, 2014 and exported on March 31 lost \$0.63 (Sh54) since it was offered at \$2.72 (Sh233) against an auction price of \$2.09 (Sh180). This is equivalent to Sh54.18 per kilo of made tea (four kilos of green

leaf), which translates to Sh14 per kilo of green leaf. The loss suffered by the farmer in the process is enough to pay a first payment, popularly known as a "mini bonus".

149. There is evidence that KTDA, at times, sells tea to Chai Trading at a lower price than the offered price. For example, where the offered price is \$2.61 (Sh224), the auction price is much lower at \$2.05 (Sh176) per kilo, yet destination of the market is not indicated.

150. Trends indicate evidence of manipulation. For instance, tea that was auctioned on September 12, 2013 is exported five months later on February 7, 2014. Where it would have attracted Sh224 per kilo, it gets auctioned at Sh176.

151. Selling tea outside auction venues to some big marketers is also a common practice by the KTDA's Chai Trading subsidiary. Known as the post-auction/private sale of withdrawn teas, some organized private arrangements are made to buy high quality teas at below auction prices. Chai also buys teas directly from factories at lower prices than the auction prices, and imports cheap, low quality teas from Asia which it blends with the Kenyan teas to re-export as Kenyan brands. This, in itself, reduces the overall commodity price, creates a huge price difference and implies that there is excess tea in the market.

152. This has seen traders/brokers refrain from quoting during auctions on Tuesdays, but make private arrangements to buy high quality teas afterwards at below auction prices.

153. PF1 grades are also deliberately disadvantaged by the buying behaviour of the multinationals, who are the major buyers, at the auction. These include Unilever, James Finlay, Van Rees, Stansand, Juja Coffee, Cofftea and Eastern Produce of Kenya. Most buyers of Kenyan teas are multinationals who have

interests in value addition in both traditional and emerging market destinations.

154. Unilever, James Finlay, Gold Crown, on behalf of Global Tea, Imperial Tea Exporters and Gokal Beverages are the key players. Frequent tea brokers in the post-auction sale volumes include Venus Tea Brokers, Combok, Bicorn Exim and Tea Brokers East Africa. These Multinationals been buying their own teas (PF1) at higher prices than quoted prices despite the fact that international teas are of lower quality than local tea. Consequently, Kenyan teas are losing traditional markets such as the UK and Egypt.
155. Over the past year, when tea prices have been at their lowest, the amounts of unsold teas were kept at an average of 11 per cent of the volume offered for sale. But the situation has worsened this year with each successive auction having 16 to 20 per cent of unsold teas of the volume that is offered. This has resulted in a price convergence of all the four grades -- PF1, PD, D1 and BP1 -- an indication that the auction does not respond to free and fair market forces.
156. Since January 2014, PF1 has performed worse than all the other grades, meaning farmers did not get value for their product. The situation has worsened since January to the extent that KTDA has resorted to buying its own teas in the auction, and at much lower prices. These teas are then shipped to traditional markets like Afghanistan, Egypt, Pakistan, UK and, lately, the United Arab Emirates, which buy through agents.
157. Some of the teas Unilever and James Finlay post to the auction are of very low quality, attracting very low prices, which knock KTDA out of competition for traditional markets. This acts as a basis to transfer prices to aid exportation of their high quality tea at disguised market prices. It also helps the same buyers to access KTDA teas at a lower price, especially in post-auction sales.
158. Further, the operational management of Mombasa Tea Auction("MTA") is not clearly known to farmers with them not receiving any trade information

from MTA thereby rendering all transactions at the auction unknown to them. Whereas the buyers, brokers, KTDA and estate producers have access to this information, the small holder is poorly informed on the same. MTA effectively operates as a closed members club where visiting farmers and researchers are treated with a lot suspicion and non-cooperation.

159. The Commission rates for tea brokers at the auction are pre-determined and negotiated with KTDA with no farmer representation. The process for determining these rates needs to be all inclusive and transparent considering that producers and buyers are currently not represented yet the costs are passed to them. These rates should also reflect prevailing market trends.

160. The difference between the price paid to farmers and the one obtained at the auction is unjustifiably large, often up to 800%.

161. KTDA has abdicated its role as a pioneer agency to champion for the welfare of farmers and instead changed into a tool of self-enrichment by the Directors at the expense of the farmers who reel in abject poverty.

162. As result of the foregoing practices smallholder farmers have lost over Kenya Shillings Eighty Seven Billion (Kshs. 87,000,000,000,000/-) since the year 2001 , which sum the Petitioner claims from the respondents on behalf of over 400,000 farmers.

HEAVY TAXATION OF THE TEA SECTOR

163. The tea sector is reeling from heavy taxation which has a disproportionate impact on small scale farmers but which taxes can be easily paid by the large scale growers.

164. Tea farmers are paying more than 26 types of taxes, levies and charges which have unsurprisingly led to dwindling returns for farmers and bogged down a once bright spot in the export economy. Such taxes include;

7. The Agricultural Produce Cess-1% of value of Green leaf gross value
8. Value Added Tax-16% of sale value
9. Ad Valorem Levy-1% of customs value of made tea exports or imports
10. Tea Producer License-Kshs. 10,000 per year.
11. Auction Organiser License-Kshs. 10,000 per year.
12. Tea Buyer License- Kshs. 10,000 per year.
13. Tea Broker License- Kshs. 10,000 per year.
14. Tea Packer License- Kshs. 2,000 per year.
15. Tea Warehousing License- Kshs. 10,000 per year.
16. Corporate tax-30% of net profit.
17. Directorate of Industrial Training Levy-Kshs. 300 per employee
18. Standards Levy(KEBS)-0.2% of value of made tea
19. Environmental Impact Assessment Levy(NEMA)-0.1% of investment costs.
20. Inspection Fee(KEPHIS)-Kshs. 5,000 per shipping document.
21. Import duty on packaging material(Government)-25% of CIF value
22. Import declaration form(Government)-2.25% of CIF value
23. Furnace oil taxes(Government)-excise duty of Kshs. 0.6/litre & 16% VAT
24. Brokerage fee(Tea Broker)-0.75% of made tea value
25. Management Agency Fee (KTDA)-2.5% of net sales.
26. Land rates and rents(Counties)- 0.3 – 0.75% of undeveloped value
27. Waste water regulation license(NEMA)-Kshs. 100,000
28. Wood Fuel Movement Permit(County)- Kshs. 300
29. Mombasa Port Health- Kshs. 1,000 per shipping document.
30. Chamber of Commerce(COO)-0.025% invoice value per shipment.
31. Department of Occupational health license-Kshs. 2,060 annually
32. Municipal Council license (now Counties)- depends on enterprise size.

165. Due to heavy taxation and high production cost, Kenya's tea is the most expensive at the Mombasa auction compared to tea from other East African

countries. This extra expense reduces the volume of Kenyan tea sold on the internationally thereby reducing the eventual income trickling down to the small scale farmer.

166. The imposition of a heavy and unconscionable tax burden that is crippling the tea sector is contrary to Article 10 of the Constitution which requires that public policy, including tax, to be enforced in manner that adheres to principle of sustainable development.

REFUSAL TO RECOGNIZE DULY REGISTERED UNION OF SMALL SCALE FARMERS

167. Small scale tea farmers in Kenya currently have no organization that is duly recognized by the Government to represent and protect their interests. The Kenya United Small Scale Tea Owners Association (KUSSTO) was registered under the Trade Unions Act in July, 2005 and transitioned under Section 1 of the Fifth Schedule of the Labour Relations Act, 2007.

168. KUSSTO's main objective is to safeguard and lobby for the rights and interests of small scale tea owners across the country, most of whom are its active members.

169. The Kenya Small Scale Tea Growers Association (KSSTGA) which was formed by Kenya Tea Development Agency (KTDA) to counter the rising influence of KUSSTO is defunct and even in its existence it lacked legitimacy as the average farmer out there did not know of its existence let alone belong to it. To ensure it monitors the organization, KTDA located KSSTGA headquarters within its own headquarters building.

170. KTDA has collected Kshs. 500,000 from each factory and Kshs. 10 from each farmer annually since 2000 to finance this puppet organization and despite demand has failed to account for the disbursement of these funds which have most definitely been used to enrich the coffers of KTDA and

KSSTGA officials. Most farmers are not aware of these deductions as KTDA has ensured that the same is not reflected in their receipts.

171. Since its inception, the Union's main objective has been to organize the farmers in order to increase their bargaining power and become included in the KTDA decision making. Furthermore KUSSTO has sought to improve the conditions of the farmers by uniting their voices against corruption and exploitation within the KTDA supply chain.
172. The Kenya Tea Growers Association (KTGA), a body representing large scale tea farmers, is recognized by the KTDA and the Government. However, KUSSTO has tellingly not been granted similar recognition.
173. Engaging with KUSSTO would "legitimize" KUSSTO and its demands as the farmers would increase their bargaining power and put pressure on KTDA's monopoly.
174. KSSTGA, due to its total control by KTDA, lacks the accountability and transparency necessary to effectively represent small scale tea farmers in Kenya.
175. Article 36(1) of the Constitution guarantees the right of small scale tea farmers to form a union to represent them and that the Government cannot infringe this right arbitrarily as is the current case.
176. Article 41(5) of the Constitution guarantees small scale farmers' right to collective bargaining through a union of their choice.
177. Article 47(2) of the Constitution guarantees farmers' right to be provided with written reasons for the decision to not recognize KUSSTO.
178. Small scale tea farmers, as employers, are entitled to form an employer's organization under Section 6 of the Labour Relations Act, 2007

VIOLATIONS OF THE CONSTITUTION

179. To the extent that the 1st and 28th 2nd Respondent continue to levy/collect from tea farmers agricultural produce Cess without a supporting legal framework, the provisions of Article 210 (1) of the Constitution have been violated.
180. To the extent 28th 2nd Respondent continues to levy and collect *ad valorem* duty of 1% on tea produce at the point of export despite the repeal of the Tea Act, the provisions of Article 210 (1) of the Constitution have been violated.
181. To the extent that the 1st – 7th Respondent have has continued to sustain an institutional framework that sustains the fleecing of smallholder tea farmers of their entitled earnings, imposed conditions that have stunted the sustainable development of the tea sector and misappropriated the tax revenue collected from workers, they are in violation of the provisions of **Article 10 of the Constitution of Kenya which sets out the national values and principles of governance, particularly enjoining the Respondents to observe good governance, integrity, rule of law, non-discrimination, protection of the marginalized, transparency, accountability and sustainable development ;**
182. To the extent that the 1st – 7th Respondents have has unjustifiably been offering better prices for tea from the Eastern region to the disadvantage of farmers from the Western region and by denying farmers supplying satellite factories a chance to participate in elections to the Board of the 1st Respondent, the said Respondent is in violation of **Article 27(1) of the Constitution which provides that every person is equal before the law and has the right to equal protection and equal benefit of the law and Article 27(2) of the Constitution which provides that equality includes the full and equal enjoyment of all rights and fundamental freedoms.**

183. To the extent that the Respondents have sustained a tea trading system that denies farmers a fair price for their product to enable them maintain a respectable quality of living, the Respondents have infringed the farmers' right to human dignity enshrined at **Article 28 of the Constitution which provides that every person has inherent dignity and the right to have that dignity respected and protected.**
184. To the extent that the 1st to 27th Respondents are engaged in forms of anti-competitive behavior such as price-fixing at the Mombasa Tea Auction to the detriment of smallholder farmers, the provisions of Article 10 and Article 46 of the Constitution have been violated.
185. To the extent that the 1st Respondent refuses to recognize and engage with KUSSTO as the legitimate union representing small scale farmers, the farmers' right to association under Article 36(1) of the Constitution has been violated.
186. To the extent that the 1st Respondent refuses to recognize and engage with their union, small scale farmers' right to collective bargaining under Article 41(5) of the Constitution has been violated
187. To the extent that the 1st Respondent delays in paying smallholder farmers their tea earnings the farmers' right to enjoy the **economic and social rights enumerated by Article 43 of the Constitution have been violated.**
188. To the extent that the 1st-7th Respondents have has provided substandard services to farmers through inefficient collection of tea, management inefficiencies at the tea factories, delays in remitting payment to farmers, loading and passing colossal management and agent fees to farmers without involving them in decision-making, the tea **farmers' rights as consumers under Article 46 (1) of the Constitution have been violated.**

189. To the extent that the 1st Respondent has refused to listen and handle farmer's grievances in the tea sector, the provisions of **Article 47(1) of the Constitution have been violated.**

190. To the extent that the 1st Respondent has declined/failed/refused to provide written reason/s for its refusal to pay farmers' mini-bonus and recognize KUSSTO the provisions of **Article 47(2) of the Constitution have been violated.**

REASONS WHEREFORE YOUR PETITIONER PRAYS FOR ORDERS:-

- a. A declaration that resonating the intuition of Article 10 of the Constitution and considering the intendment of Article 46 (1) of the Constitution, the Respondents are bound to manage tea production , collection and sale in an open and transparent manner .
- b. A declaration that levying of agricultural produce Cess by the 1st Respondent without a supporting legal framework as required by Article 210 (1) of the Constitution, is unconstitutional.
- c. A declaration that levying of Agricultural Produce Cess by the 1st Respondent without a constitutional and legal authority is unconstitutional.
- d. A declaration that only a County Government has constitutional authority to levy **Agricultural Produce Cess.**
- e. An order directing the 1st Respondent to stop levying Agricultural Produce Cess.
- f. An order directing the 1st Respondent to account for Agricultural Produce Cess collected from 27th March 2014, when County Governments started operations.

- g. An order directing the 1st Respondent to refund farmers the Agricultural Produce Cess collected from 27th March 2014 when County Governments started operations.
- h. An order directing the 1st Respondent to fully account for the proceeds of Agricultural Produce Cess in the sum of Kshs. 6 Billion; being the monies deducted from farmers since 2001 for maintenance of road infrastructure, which has never been done.

In the Alternative

An order directing the 1st Respondent to fully refund farmers the proceeds of Agricultural Produce Cess in the sum of Kshs. 6 Billion, being the monies deducted from farmers since 2001 for maintenance of road infrastructure, which has never been done.

- i. A declaration that levying of *ad valorem* duty of 1% on tea produce at the point of export by the 28th 2nd Respondent without a supporting legal framework as required by Article 210 (1) of the Constitution, is unconstitutional.
- j. An order directing the 28th 2nd Respondent to stop the collection of *ad valorem* duty of 1% on tea produce at the point of export until such time as a supportive legal framework is enacted.
- k. An order directing the 28th 2nd Respondent, through the Tea Directorate, to fully account for the monies collected as *ad valorem* levy since the repeal of the Tea Act and the coming into force of the Agriculture Fisheries and Food Authority Act 2012 on 17th February 2014.

In the Alternative

An order directing the 28th 2nd Respondent, through the Tea Directorate, to fully refund farmers the proceeds of *ad valorem* levy charged to farmers since the repeal of the Tea Act and the coming into force of the Agriculture Fisheries and Food Authority Act 2012 on 17th February 2014.

- l. A declaration that within the intendment of Articles 36(1) and 41(5) of the Constitution, small scale farmers have a right to form and have recognized a union to represent their interests.
- m. An order directing the 1st Respondent to recognize KUSSTO as the legitimate union representing the interests of small scale farmers in Kenya.
- n. A declaration that within the intendment of Article 28 of the Constitution, the Respondents are bound to respect and uphold the human dignity of the farmers they serve.
- o. A declaration that within the intendment of Article 43 of the Constitution the prompt payment of farmers' dues is necessary for the enjoyment of farmers' economic and social rights.
- p. An order directing the 1st Respondent to pay tea farmers from Western Kenya their mini-bonus for the year 2014.
- q. A declaration that within the intendment of Article 46(1) of the Constitution, farmers' rights as consumers require the provision of quality services by the 1st Respondent in the collection of tea, management of tea factories and payment processing .
- r. A declaration that the actions of the 28th 2nd Respondent in imposing an unreasonable and excessive tax burden which is killing the tea sector expressly violate the provisions of Article 10 of the Constitution which provides that the implementation of public policy must be in line with the principle of sustainable development.
- s. A declaration that in view of the provisions of Articles 6(2) and 189 of the Constitution and in view of the Fourth Schedule of the Constitution wherein agriculture is fully devolved to the Counties, the 28th 2nd Respondent cannot

impose taxes/charges in the agricultural sector without consulting county governments.

- t. A declaration that the actions of the 1st Respondent in offering the farmers from the western region a lower price per kilogram than their eastern ones expressly violates the non-discrimination principle under Article 27 of the Constitution.
- u. A declaration that the actions of the 1st Respondent in denying farmers supplying satellite factories a right to vote in KTDA elections expressly violates Article 27 of the Constitution.
- v. A declaration that the actions of the 8th-26th Respondents in colluding to deny farmers a fair price for their product at the Mombasa Tea Action to enable them maintain a respectable quality of living expressly violate the farmers' right to human dignity enshrined at Article 28 of the Constitution.
- w. A declaration that the actions of the Respondents in colluding to fleece farmers of their rightful earnings and unreasonably delaying the payment of the resulting meager amounts expressly violate the provisions of Article 43 of the Constitution which guarantees the farmers' right to enjoy the economic and social rights enumerated therein.
- x. A declaration that the actions of the 1st Respondent in providing substandard services to farmers through inefficient collection of tea at buying centers and by endangering their health through unreasonable delays expressly violates the provisions of Article 46 (1) of the Constitution which guarantees the rights of tea farmers as consumers.
- y. A declaration that the actions of the 1st Respondent in refusing to render administrative action on issues concerning farmers in a manner that is expeditious, efficient, lawful, reasonable and procedurally fair expressly violates Article 47(1) of the Constitution.

- z. A declaration that the actions of the 1st Respondent in failing to provide written reason/s for its refusal/delay/neglect to pay farmers from the Western region their mini-bonus expressly violates Article 47(2) of the Constitution which requires written reasons for such actions.
- aa. An order directing the 1st Respondent to stop charging farmers twice for management services through the 4% deduction on annual gross tea sales from farmers as "operating expenses" over and above the 2.5% management fee charged on gross sales.
- bb. An order directing the 1st Respondent to compensate the 400,000 farmers from the Western region a total sum of Kshs. 87 Billion for the double deductions made under (aa) above.
- cc. An order directing the 1st – 7th Respondents to avail to the Petitioner statements of published financial reports capturing all their operations since they were formed.
- dd. An order directing the 1st and 28th 2nd Respondent to prepare and publish detailed reports on the expenditures of the various taxes and levies collected from tea farmers since 2001.
- ee. A declaration that acts of price-fixing and manipulation of prices perpetrated by the 1st – 27th Respondents at the Mombasa Tea Auction to the detriment of the smallholder farmers violates the provisions of Article 10 and 46 of the Constitution.
- ff. General damages from the 1st- 27th Respondents for price-fixing and manipulation of tea prices at the Mombasa Tea Auction to the detriment of small-holder farmers.

gg. Orders directing the 1st Respondents to undertake administrative measures to ensure profits from 2nd – 7th Respondent Companies, which are its subsidiaries, are channeled to the smallholder farmers.

hh. An order directing the 1st Respondents to undertake administrative measures to ensure profits from 2nd – 7th Respondent Companies, which are its subsidiaries, are channeled to the smallholder farmers.

ii. An Order directing the Competition Authority of Kenya and the 28th Respondent To investigate the price-fixing and manipulation at the Mombasa Tea Auction from the year 2001-2015 and avail a report to this Honourable Court.

jj. A declaration that 1st Respondent is bound by the provisions of Article 227 of the Constitution and must conduct its procurement in a transparent, cost-effective, fair and equitable manner.

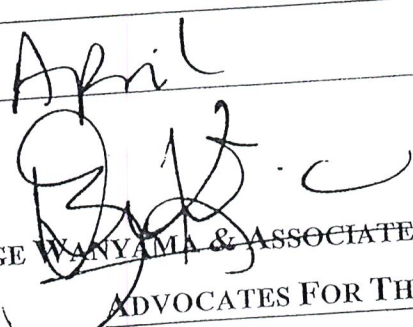
kk. An order to be issued to the Respondents to adopt administrative and policy measures that can sustain a transparent and efficient tea-trading system in Kenya.

ll. An order directing the Privatization Commission to investigate and avail to the Petitioner a report on the entire privatization transaction that led to the conversion of Kenya Tea Development Authority, (a state corporation) into Kenya Tea Development Agency Limited (a private company) and avail a report to this Honourable Court.

mm. There be no order as to costs.

Dated at Nairobi this _____ day of _____ 2016

Dated at Nairobi this 2nd day of April 2019


MANYONGE WANYAMA & ASSOCIATES ADVOCATES
ADVOCATES FOR THE PETITIONER

DRAWN & FILED BY: -

MANYONGE WANYAMA & ASSOCIATES ADVOCATES,
PETER WANYAMA MANYONGE,
ADMISSION NUMBER: P.105/6652/07,
PRACTISING NUMBER: LSK/2018/00047,
MARSABIT PLAZA, ROOM 107-108,
NGONG ROAD, OPPOSITE LIGI NDOGO,
P.O. BOX 100493- 00101,
NAIROBI
pmo@manyongewanyama.com or manyonge@gmail.com

TO BE SERVED UPON

1. MOHAMMED & KINYAJUI ADVOCATES
SUITE B 5 & B 6, 1ST FLOOR, BEMUDA PLAZA, NEXT NAIROBI BAPTIST
CHURCH, NGONG RD, NAIROBI
2. AHMEDNASIR ABDIKADIR ADVOCATES
CBA BUILDING, 2ND FLOOR, STANDARD STREET
NAIROBI
3. ATTORNEY GENERAL
STATE LAW OFFICE
NAIROBI
4. PROF. TOM OJIENDA & ADVOCATES
SILVESPOOL SUITES
NAIROBI.
5. OKONGO OMOGENI & CO. ADVOCATES
WOODLAND BUSINESS PARK, 1ST FLR., FLAT NO.5, KIAMBERE ROAD
NAIROBI
6. MBUGUA NGANGA & ADVOCATES
UPPER HILL RALPH BUNCHE ROAD AT MAY FAIR CENTRE
6TH FLOOR WING B, NEAR UPPER HILL MEDICAL CENTER
NAIROBI

7. JONES NYACHIRO NYAGAKA & COMPANY ADVOCATES

SAKONG HOUSE, 4TH FLOOR, KENYATTA AVENUE

P.O. BOX 138-30100

ELDORET

8. BETT & COMPANY ADVOCATES

P.O. BOX 1434-20200

KERICHO

Millimo W. Benson
LLB(Hons) Moi; Dip. Law (KSL)
Muthomi S. Mwaniki
LLB(Hons) Moi; Dip. Law (KSL)
S. J. Saenyi
LLB (Hons) Moi; Dip. Law (KSL), (CS)
Bett C. Isabella
LLB (Hons) Moi; Dip. Law (KSL)
Wafula M. Albert
LLB(Hons) Moi; Dip. Law (KSL)
Edmond S. Shivaka
LLM (UDSOL) WU, law (Bayreuth) LL.B (Hons) Moi; Dip (ksl)
Teddy Enos Ochieng
LLB (Hons) UON; Dip. Law (KSL)

MILLIMO, MUTHOMI & CO.

ADVOCATES, COMMISSIONERS FOR OATHS, NOTARIES PUBLIC & CERTIFIED PUBLIC SECRETARIES

Our Ref; MM/KTDA 091/2017
Your Ref; LEG/M2019/HLRA
m1320

21st May, 2019

The Head,
Legal and Regulatory Affairs,
Kenya Tea Development Agency Holding Ltd,
KTDA Farmers Building,
P.O. Box 30213-00100
NAIROBI.



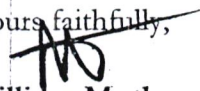
Dear Madam,

Re: KERICHO HIGH COURT PETITION NO. 18 OF 2014
THE GOVERNOR, KERICHO COUNTY VERSUS KENYA TEA
DEVELOPMENT AGENCY & OTHERS.

The above refers,

Reference is had to our previous correspondences over this matter. Kindly note that we attended court on the 21st May, 2019 when this matter was scheduled for hearing of the main petition. Kindly note that following one judge of the bench hearing the matter being take for disciplinary, the matter could not proceeded. The judge taking directions on the matter directed that the file shall be forwarded to the Chief Justice to empanel another bench as the above referred judge shall not be in a position to sit and hear the matter. In the circumstance, we prayed and were granted the matter to be given a far mention date for purpose of confirming whether a new bench had been empaneled to hear the petition. The matter shall now be mentioned on the 29th July, 2019. We have diarized to attend and update you of the outcome.

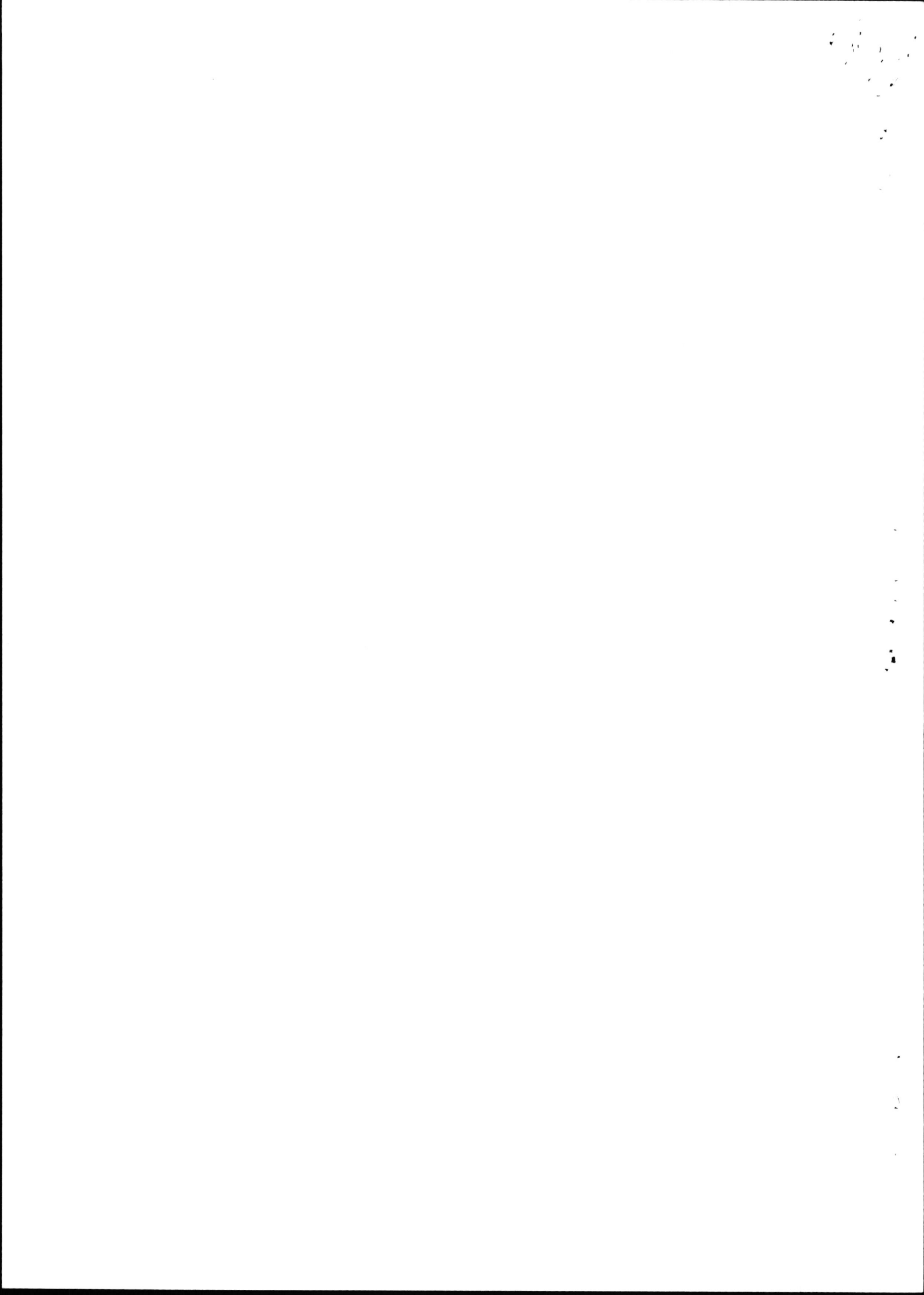
Yours faithfully,


Millimo Muthomi & Co. Advocates
T.E.O

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4th Floor, Towers, Upper Mall
P.O. Box 540020, Nairobi
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4th Floor, Towers, 2nd Floor, Suite 202
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thikaoffice@millimomuthomi.co.ke
When replying please quote our reference
PIN/VAT: E051351431E



REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
PETITION NUMBER 18 OF 2014

IN THE MATTER OF ARTICLES 1(1) (3), 2(1) (2) (3), 3(1), 10, 19(1) (2) (3), 20(1) (2)
(3) (4), 21(1), 22(1) (2), 23(1) (2), 24(1) (3), 27(1) (2), 36(1) (3), 41 (5), 47(1) (2),
50(1), 73(1) (2), 129(1), 159(2), 163(3B), 258(1) (2) AND 259(1) OF THE
CONSTITUTION

THE GOVERNOR KERICHO COUNTY..... PETITIONER

VERSUS

KENYA TEA DEVELOPMENT AGENCY1ST RESPONDENT

AGRICULTURE FISHERIES & FOOD

AUTHORITY.....2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

AND

57 INTERESTED PARTIES

ORDER

(In Court on the 26th day of February, 2019 before Hon. Justices M. Ngugi, M. Muya and T.W. Cherere)

UPON HEARING the submissions of Mrs. Bett, Mr. Nyachiro and Mr. Ochieng Teddy regarding the exclusion of the 54 interested parties and the response by counsel for the Petitioner and noting the brief submission of Mr. Oduol in support of the position taken by the 54 interested parties through their respective counsels:-

IT IS HEREBY ORDERED:

1. **THAT** the Petitioner does further amend and serve his petition to include the 54 interested parties within 21 days from this date.
2. **THAT** the Respondents do file and serve their responses to the further amended petition within 21 days of service.
3. **THAT** the Petitioner does file his submissions and serve within 14 days of service with the response.
4. **THAT** the Respondents and Interested Parties do file their submissions within 14 days of service.
5. **THAT** this application be heard on the 21st and 22nd days of May, 2019.

6. **THAT** this application be mentioned before the Deputy Registrar on the 7th day of May, 2019.

GIVEN under my hand and the **SEAL** of the Honourable Court this 26th day of February 2019.

ISSUED at **KERICHO** this..... 11th day of..... May..... 2019

JL

**DEPUTY REGISTRAR
KERICHO LAW COURTS**

HIGH COURT OF KENYA
DEPUTY REGISTRAR
KERICHO LAW COURTS

MINUTES OF THE FIFTY SECOND SITTING OF THE STANDING COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES HELD ON TUESDAY, 16TH JULY, 2019 IN THE FIRST FLOOR BOARDROOM, RED CROSS BUILDING AT 12.00 NOON.

PRESENT

1. Sen. (Dr.) Lelegwe Ltumbesi, MP - Vice Chairperson
2. Sen. Golich Juma Wario, MP
3. Sen. (Dr.) Ochilo Ayacko, MP
4. Sen. Naomi Jillo Waqo, MP

ABSENT WITH APOLOGY

1. Sen. Peter Njeru Ndwiga, MP - Chairperson
2. Sen. Justice (Rtd.) Stewart Madzayo, MP
3. Sen. Naomi Shiyonga, MP
4. Sen. Moses Kajwang', MP
5. Sen. (Dr.) Michael Malinga Mbiti, MP

IN ATTENDANCE

1. Ms. Carol Kirorei
2. Mr. Allan Kinawa

SENATE

- Clerk Assistant
- Intern, Research Services

MIN. NO. 135/2019

PRELIMINARIES

The Chairperson called the meeting to order at 12.20 p.m. followed by a word of prayer.

MIN. NO. 136/2019

ADOPTION OF THE AGENDA

Members adopted the agenda of the meeting as presented after being proposed by Sen. (Dr.) Ochilo Ayacko, MP and seconded by Sen. Wario Golich, MP.

MIN.NO. 137/2019

CONFIRMATION OF PREVIOUS MINUTES

1. The Minutes of the 43rd Sitting held on 15th May, 2019 were confirmed as a true record of the proceedings and signed by the Chairperson after

- being proposed by Sen. (Dr.) Ochilo Ayacko, MP and seconded by Sen. Naomi Waqo, MP;
2. The Minutes of the 44th Sitting held on 21st May, 2019 were confirmed as a true record of the proceedings and signed by the Chairperson after being proposed by Sen. (Dr.) Ochilo Ayacko, MP and seconded by Sen. Naomi Waqo, MP;
 3. The Minutes of the 45th Sitting held on 4th June, 2019 were confirmed as a true record of the proceedings and signed by the Chairperson after being proposed by Sen. Naomi Waqo, MP and seconded by Sen. (Dr.) Ochilo Ayacko, MP;
 4. The Minutes of the 46th Sitting held on 6th June, 2019 were confirmed as a true record of the proceedings and signed by the Chairperson after being proposed by Sen. Naomi Waqo, MP and seconded by Sen. (Dr.) Ochilo Ayacko, MP;
 5. The Minutes of the 47th Sitting held on 12th June, 2019 were confirmed as a true record of the proceedings and signed by the Chairperson after being proposed by Sen. (Dr.) Lelegwe Ltumbesi, MP and seconded by Sen. (Dr.) Ochilo Ayacko, MP;
 6. The Minutes of the 48th Sitting held on 13th June, 2019 were confirmed as a true record of the proceedings and signed by the Chairperson after being proposed by Sen. (Dr.) Ochilo Ayacko, MP and seconded by Sen. Naomi Waqo , MP;
 7. The Minutes of the 49th Sitting held on 13th June, 2019 were confirmed as a true record of the proceedings and signed by the Chairperson after being proposed by Sen. Wario Golich, MP and seconded by Sen. (Dr.) Ochilo Ayacko, MP;
 8. The Minutes of the 50th Sitting held on 9th July, 2019 were confirmed as a true record of the proceedings and signed by the Chairperson after

being proposed by Sen. Naomi Waqo, MP and seconded by Sen. (Dr.) Ochilo Ayacko, MP;

9. The Minutes of the 51st Sitting held on 11th July, 2019 were confirmed as a true record of the proceedings and signed by the Chairperson after being proposed by Sen. (Dr.) Ochilo Ayacko, MP and seconded by Sen. Naomi Waqo, MP;

MIN.NO. 138/2019

MATTERS ARISING FROM PREVIOUS
MINUTES

1. Ex. Min. 94/2019 – Meeting with stakeholders of the Galana Kulalu Irrigation Scheme Project

The Committee was informed that the Office of the Auditor General was due to submit the special audit of the Project within the week. With regard to the resolution of the Committee that the contract be provided to the Committee and the standoff between the NIB and the contractor be resolved within 30 days, no communication has been received from the Ministry.

The Committee resolved that a request be made to the Ministry to submit a status update on the stalemate as well as the contract within 2 weeks' time.

2. Ex Min. 99/2019 -- Meeting with the Cabinet Secretary

The Committee was informed that the Poka Group Ranch has submitted its memorandum to the Committee on 9th July, 2019. ***The Committee resolved that a letter be sent to the Ministry raising the supplementary questions raised on the Statements by Sen. Mary Seneta, MP for a response within 2 weeks' time.***

The secretariat was directed to confirm whether the Dairy Industry Act, which is passed by the National Assembly without concurrence of the Senate, was among of the list of laws in the lawsuit by the Senate.

The Committee resolved that the retreat with the Ministry on devolved agricultural functions be arranged for late August during the recess period.

3. Ex. Min. 104/2019 – Meeting with SONY Sugar

The Members were informed that SONY Sugar had submitted evidence of complaints lodged with the Agriculture and Food Authority as well as attempts by the Company to source for funds for the annual plant maintenance. A follow up meeting with the Cabinet Secretaries, Ministry of Agriculture and the National Treasury, SONY Sugar and the Privatization Commission is scheduled for **Thursday, 18th July, 2019**. The secretariat was tasked to prepare well for the meeting to ensure it is a success.

4. Ex. Min. 110/2019 – KEVEVAPI

The Committee to seek a formal response from KEVEVAPI on reports on the outbreak of foot and mouth disease within its precincts and in Kisii after vaccines were received from the institution.

5. Ex. Min. 115/2019 – Meeting with the Cabinet Secretary

The secretariat was tasked to follow up with the Ministry on the plan to prevent future locust invasions in Turkana County and seek a follow up meeting on the same.

6. Ex. Min. 125/2019 – Meeting with BIBA Kenya

Members were informed that pursuant to standing order 216(1) a request had been made to the Speaker of the Senate for a joint meeting with the Standing Committee on Health. The joint meeting with the Ministry of Agriculture, Livestock, Fisheries and Irrigation and the Ministry of Health and the Council of Governors Technical Committees on Health and Agriculture is tentatively scheduled for **Wednesday, 31st July, 2019**.

7. Ex. Min. 130/2019 – Consideration and adoption of the Control of Stray Dogs Bill, 2019

The Committee resolved to seek an update on the status of the Draft Animal Health Bill, 2019 from Ministry.

8. Ex. Min. 132/2019 – Petition concerning challenges faced by small scale tea farmers in KTDA

The meeting was informed that communication had been sent to the Petitioner and KTDA inviting them to a meeting of the Committee on **Tuesday, 23rd July, 2019 at 11.00 a.m.**

MIN.NO. 139/2019

HOUSEKEEPING

Foreign Travel

The Committee resolved to undertake a foreign visit to a country having a legal framework and regulation dealing with poisonous substances, cotton, and aquaculture. The secretariat was tasked to research on countries that have more than one of the listed interests of the Committee.

MIN. NO. 140/2019

DATE OF NEXT MEETING

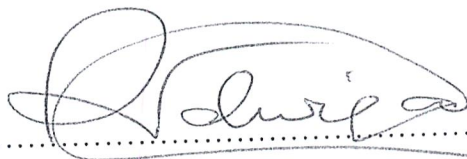
The next meeting will be held on Thursday, 18th July, 2019 at 12.00 p.m.

MIN. NO. 141/2019

ADJOURNMENT

The Sitting was adjourned at 12.45 p.m.

SIGNED:.....



(CHAIRPERSON)

DATE:.....

17-8-19



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**MINUTES OF THE FIFTY SIXTH SITTING OF THE STANDING COMMITTEE
ON AGRICULTURE, LIVESTOCK AND FISHERIES HELD ON THURSDAY,
31ST JULY, 2019 IN THE GROUND FLOOR BOARDROOM, RED CROSS
BUILDING AT 11.00 A.M.**

PRESENT

- | | | |
|---|---|------------------|
| 1. Sen. Peter Njeru Ndwiga, MP | - | Chairperson |
| 2. Sen. (Dr.) Lelegwe Ltumbesi, MP | - | Vice Chairperson |
| 3. Sen. Golich Juma Wario, MP | | |
| 4. Sen. (Dr.) Ochilo Ayacko, MP | | |
| 5. Sen. (Dr.) Michael Malinga Mbito, MP | | |

ABSENT WITH APOLOGY

1. Sen. Justice (Rtd.) Stewart Madzayo, MP
2. Sen. Naomi Jillo Waqo, MP
3. Sen. Naomi Shiyonga, MP
4. Sen. Moses Kajwang', MP

IN ATTENDANCE

1. Ms. Carol Kirorei
2. Mr. Allan Kinawa
3. Ms. Maureen Kweyu

SENATE

- | | |
|---|---------------------------|
| - | Clerk Assistant |
| - | Intern, Research Services |
| - | Intern, Audio Services |

MIN. NO. 158/2019

PRELIMINARIES

The Chairperson called the meeting to order at 11.15 p.m. followed by a word of prayer.

MIN. NO. 159/2019

ADOPTION OF THE AGENDA

Members adopted the agenda of the meeting as presented after being proposed by Sen. Lelegwe, MP and seconded by Sen. Mbito, MP.

MIN.NO. 160/2019

CONFIRMATION OF PREVIOUS MINUTES

1. The Minutes of the 52nd Sitting held on Tuesday, 16th July, 2019 were confirmed as a true record of the proceedings and signed by the

Chairperson after being proposed by Sen. (Dr.) Ochilo Ayacko, MP and seconded by Sen. Wario Juma, MP;

2. The Minutes of the 53rd Sitting held on Tuesday, 23rd July, 2019 were confirmed as a true record of the proceedings and signed by the Chairperson after being proposed by Sen. (Dr.) Lelegwe Ltumbesi, MP and seconded by Sen. (Dr.) Michael Mbito, MP;
3. The Minutes of the 54th Sitting held on Wednesday, 24th July, 2019 were confirmed as a true record of the proceedings and signed by the Chairperson after being proposed by Sen. (Dr.) Michael Mbito, MP and seconded by Sen. (Dr.) Lelegwe Ltumbesi, MP;
4. The Minutes of the 55th Sitting held on Tuesday, 30th July, 2019 were confirmed as a true record of the proceedings and signed by the Chairperson after being proposed by Sen. (Dr.) Lelegwe Ltumbesi, MP and seconded by Sen. (Dr.) Ochilo Ayacko, MP;

MIN.NO. 161/2019

**MATTERS ARISING FROM PREVIOUS
MINUTES**

1. Ex. Min. 110/2019 – KEVEVAPI

The Committee considered the response received from KEVEVAPI on the outbreak of foot and mouth disease within its precincts and in Kisii County. The Committee being unsatisfied with the response resolved to invite KEVEVAPI to a meeting of the Committee.

MIN.NO. 162/2019

**CONSIDERATION AND ADOPTION OF THE
REPORT ON THE PETITION CONCERNING
CHALLENGES FACED BY SMALL SCALE TEA
GROWERS IN KTDA**

Members considered the Report on the Petition concerning challenges facing small scale tea growers in the Kenya Tea Development Agency (KTDA).

Members adopted the Report after being proposed by Sen. (Dr.) Michael Mbito, MP and seconded by Sen. (Dr.) Lelegwe Ltumbesi MP.

MIN. NO. 163/2019

AOB

1. Senate Sitting in Kitui, 16th to 19th September, 2019

The Committee resolved to have the following meetings in Kitui:

- i) Meeting with the County Executive regarding the Ndengu Revolution initiative and other agricultural activities within the county;
- ii) Meeting with the Counterpart Committee of the County Assembly of Kitui;
- iii) Site visit to the Kitui Cotton ginnery and silk worm farms.

2. Joint meeting with the Standing Committee on Tourism, Trade and Industrialization

The Committee resolved to hold a joint meeting with the Cabinet Secretaries, Ministry of Agriculture, Livestock, Fisheries and Irrigation and the Ministry of Trade and Industry to discuss coffee reforms Friday, 9th August 2019.

MIN. NO. 164/2019

DATE OF NEXT MEETING

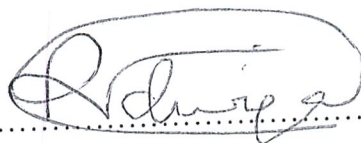
The next meeting will be held on Tuesday, 6th August, 2019 at 11.00 a.m.

MIN. NO. 165/2019

ADJOURNMENT

The Sitting was adjourned at 11.55 p.m.

SIGNED:.....



(CHAIRPERSON)

DATE:.....

1.8.19

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