



REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
PETITION NO.13 OF 2019

– BETWEEN –

STEPHEN MAINA GITHIGA.....1ST APPELLANT
ESTON GAKUNGU GIKOREH.....2ND APPELLANT
PETER KINYUA.....3RD APPELLANT
FRANCIS MACHARIA MARK.....4TH APPELLANT
LERIONKA TIAMPATI.....5TH APPELLANT
JOHN F. KENNEDY OMANGA.....6TH APPELLANT

– AND –

KIRU TEA FACTORY COMPANY LTD.....RESPONDENT

(CORAM: ISAAC LENAOLA, SCJ)

ORDER

(In Chambers)

Settlement of the Terms of the Decree pursuant to the Judgment of the Court delivered on 16th June, 2023.

NOTING that parties have been unable to agree on the terms of the decree and orders of this Court pursuant to the Judgment delivered on 16th June, 2023; and

FURTHER NOTING that, before me are three draft decrees viz;

- (i) Two drafted by M/s. Kithinji Marete & Co Advocates for the Appellants, one being a draft order striking out the names of the 3rd, 4th, 5th and 6th Appellants from the Petition herein.
- (ii) One drafted by M/s. Milimo Muthomi & Co. Advocates for the Respondent; and

PURSUANT to powers conferred on me by Rule 29(6) of the Supreme Court Rules, I now **OPINE AS FOLLOWS:**

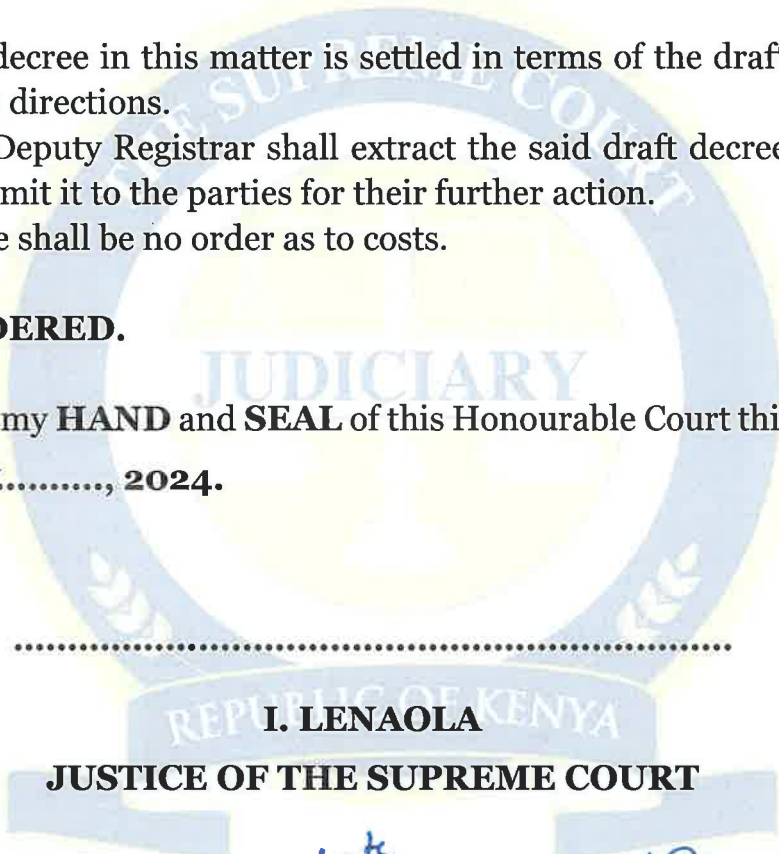
A. The Advocate for the Appellants has drafted a separate order striking out the names of the 3rd – 6th Appellants as if that Order is distinct from the decree arising from the Judgment of the Court. It is not.

B. The draft decrees by Counsel for the Appellants and Respondents are almost similar in content save for the issue of allowing the appeal and striking out of the names of the 3rd – 6th Appellants; and **BEARING** the above facts in mind, I now **DIRECT AS FOLLOWS:**

- (i) The decree in this matter is settled in terms of the draft attached to these directions.
- (ii) The Deputy Registrar shall extract the said draft decree, seal it and transmit it to the parties for their further action.
- (iii) There shall be no order as to costs.

IT IS SO ORDERED.

GIVEN under my **HAND** and **SEAL** of this Honourable Court this 15th day of March, **2024.**



.....
I. LENAOLA
JUSTICE OF THE SUPREME COURT

ISSUED at **NAIROBI** this 19th day of March **2024.**

I certify that this is a true copy of the original

.....
true Copy of the Original
.....
Deputy Registrar Supreme Court
Done.....
19th March 2024

HON. REGISTRAR
SUPREME COURT OF KENYA



**REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA
PETITION NO.13 OF 2019**

-BETWEEN-

**STEPHEN MAINA GITHIGA.....1ST APPELLANT
ESTON GAKUNGU GIKOREH.....2ND APPELLANT**

-AND-

KIRU TEA FACTORY COMPANY LIMITED.....RESPONDENT

(Being an Appeal from the Ruling of the Court of Appeal Dated 28th March, 2019 on the Applications by Stephen Maina Githiga and Eston Gakungu Gikorech respectively for review and rescission of the Ruling of the Court of Appeal at Nyeri (Ouko (P), Sichale & Otieno-Odek JJA) in Civil Application No.137 of 2017 delivered on 28th March, 2019)

DECREE

CLAIM FOR:

- a) A declaration that the Appellants' constitutional rights were breached by the Court of Appeal in the impugned proceedings in Nyeri Court of Appeal (sitting in Nairobi) Civil Application No.137 of 2017 so as to render the proceedings and findings therein null and void.

- b) The Court of Appeal Ruling as delivered on 28th March, 2019 in Nyeri Court of Appeal (sitting in Nairobi) Civil Application No.137 of 2017 be and is hereby set aside.

- c) The Court of Appeal Ruling on contempt in Nyeri Court of Appeal (sitting in Nairobi) Civil application No.137 of 2017 as delivered on 22nd February, 2019 be and is hereby reviewed, rescinded and set aside.
- d) This Court does grant such other reliefs as it shall deem fit and just in the circumstances.
- e) Costs of this Petition of Appeal be provided for.

The Petition dated 3rd April, 2019 coming up for hearing on 19th October, 2022 and upon considering the Parties' submissions and upon hearing counsel for the parties, the Petition is allowed in the following Terms:

1. The appeal is hereby allowed as prayed.
2. We hereby strike out the names of the 3rd, 4th, 5th and 6th Appellants from the Appeal/Proceedings.
3. A declaration is hereby issued that the 1st and 2nd Appellants' right to fair hearing was breached by the Court of Appeal in Nyeri Court of Appeal Civil Application No.137 of 2017.
4. The Ruling of the Court of Appeal delivered on 28th March, 2019 dismissing the Applications by the 1st and 2nd Appellants for the Review and Rescission of the Ruling of 22nd February, 2019 in **Civil Application No.137 of 2017** is hereby set aside.
5. The Ruling of the Court of Appeal delivered on 22nd February, 2019 in **Civil Application No.137 of 2017** in regard to the 1st and 2nd Appellants is hereby set aside.

6. Any monies paid by the 1st and 2nd Appellants as punishment for contempt of court shall be refunded to them forthwith by the Registrar of the Court of Appeal.
7. Costs of this Appeal shall be paid to the 1st and 2nd Appellants by the Respondent.
8. We hereby direct that the sum of Kshs.6,000/- deposited as security for costs upon lodging this appeal be refunded to the 1st and 2nd Appellants

GIVEN under my **HAND** and **SEAL** of this Honourable Court this 15th day of March, 2024.

.....
I. LENAOLA
JUSTICE OF THE SUPREME COURT

ISSUED at **NAIROBI** this 19th day of March, 2024.

I certify that this a true copy of the original

I Certify that this is a true Copy of the Original
.....
Deputy Registrar Supreme Court
Date 19th March 2024

HON. REGISTRAR
SUPREME COURT OF KENYA