Approved for tabling.
SNA
9/3/16

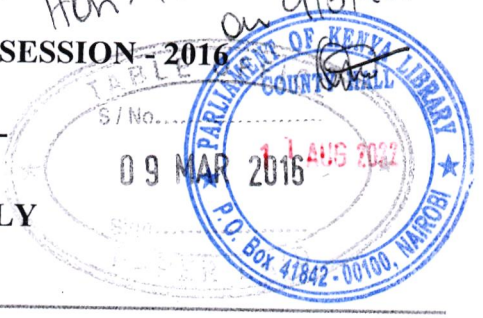
4

Paper laid by the Vice-Chair Agriculture, Livestock & Cooperatives Hon. Kareke Mbiuki, MP on 9/3/2016 (PM)

REPUBLIC OF KENYA

ELEVENTH PARLIAMENT - FOURTH SESSION - 2016

THE NATIONAL ASSEMBLY



DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK AND COOPERATIVES

REPORT ON THE PETITION OF THE ALLEGED CHANGE OF THE MANAGEMENT MODEL OF KENYA TEA DEVELOPMENT AUTHORITY TO KENYA TEA DEVELOPMENT AGENCY (A PRIVATE ENTITY)

DIRECTORATE OF COMMITTEE SERVICES,
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS,
NAIROBI

MARCH, 2016

CONTENTS

1.0 PREFACE

On behalf of the Departmental Committee on Agriculture, Livestock and Cooperatives and pursuant to provisions of Standing Order 227, it is my pleasant privilege and honour to present to this House the Report of the Committee on the Public Petition on the alleged change of the management model of Kenya Tea Development Authority to Kenya Tea Development Agency (a Private entity). The petition was tabled before the House pursuant to Standing Order No. 225 (2)(a) by the Hon. Bernard Bett Kipkirui, M.P, on behalf of the farmers of Bomet County on 4th August, 2015.

1.1 MANDATE OF THE COMMITTEE

The Committee is established in accordance with the provisions of Standing Order No. 216, with the following terms of reference: -

a) to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
b) to study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
c) to study and review all legislation referred to it;
d) to study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
e) to investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House or a Minister;
f) to vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments); and
g) to make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

The Committee under Standing Order 227 is mandated to respond to the petitioner by way of a report addressed to the petitioner or petitioners and laid on the floor of the House.

1.2 COMMITTEE MEMBERSHIP

The Committee comprises the following Members:-

1. The Hon. Adan M. Nooru, MBS, M.P - **Chairperson**
2. The Hon. Kareke Mbiuki, M.P - **Vice Chairperson**
3. The Hon. Daniel Maanzo, M.P
4. The Hon. Silas Tiren, M.P
5. The Hon. Maison Leshoomo, M.P
6. The Hon. Mary Wambui, M.P
7. The Hon. (Dr.) Victor Munyaka, M.P
8. The Hon. Korei Ole Lemein, M.P
9. The Hon. John B. Serut, M.P
10. The Hon. Peter N. Gitau, M.P
11. The Hon. Florence Mutua, M.P
12. The Hon. John Kobado, M.P
13. The Hon. Benjamin Washiali, M.P
14. The Hon. Patrick Wangamati, M.P
15. The Hon. Phillip Rotino, M.P
16. The Hon. Raphael Letimalo, M.P
17. The Hon. Ayub Savula Angatia, M.P.
18. The Hon. WaitituMunyua, M.P
19. The Hon. Kimani Ichung'wah, M.P
20. The Hon. Ferdinand Wanyonyi, M.P
21. The Hon. Kabando Wa Kabando, M.P
22. The Hon. Justice Kemei, M.P
23. The Hon. James Opiyo Wandayi, M.P
24. The Hon. Millie Odhiambo - Mabona, M.P
25. The Hon. Hezron Awiti Bollo, M.P
26. The Hon. Fredrick Outa, M.P
27. The Hon. Zuleikha Hassan Juma, M.P
28. The Hon. Alfred Kiptoo Keter, M.P
29. The Hon. Paul Simba Arati, M.P

1.3 COMMITTAL AND CONSIDERATION OF THE PETITION

The petition was referred to the Departmental Committee on Agriculture, Livestock and Cooperatives in accordance with Standing Order 227 (1) for consideration and preparation of a report within 60 days. The Committee considered the petition in accordance with the provisions of Standing Order 227 (1) and (2).

In considering the petition, the Committee invited and held meetings with the petitioners (Mr. Samuel Langat, Mr. Stephen Cheruiyot, Mr. Richard Kipyegon among others) and the Management of KTDA.

1.4 THE PRAYERS IN THE PETITION

The petitioners had **prayed that the National Assembly through the Departmental Committee on Agriculture, Livestock and Cooperatives:-**

I. Recommends an audit of Kenya Tea Development Agency (KTDA) and subsidiary companies
II. Establishes how the Kenya Tea Development Agency (a private agency) acquired the rights to tea factories owned by small scale farmers.
III. Establishes the method used in registration and incorporation of farmers' factories; and
IV. Reviews/repeals any legislation in regard to the tea sector

1.5 COMMITTEE OBSERVATIONS

The Committee observed the following from the meetings held and the submissions presented;

a) The Committee had earlier visited Tea factories in Bomet County, and most matters in the petition had been addressed in another petition.

b) The issues raised in the petition by Small Scale Tea farmers of Bomet County were substantially similar to the pleadings before the High Court of Kericho that was presented by the Governor of Kericho on 15th December,2014 (Petition number 18 of 2014).

c) The Petitioners did not make full disclosures in accordance with the provisions of Standing Order 223 (g) that require Petitioner(s) to indicate in the Petition whether the issues in

respect of which the petition is made are pending before any court of law or other Constitutional or Legal body.

1.6 RESPONSE TO THE PRAYERS IN THE PETITION

The Committee resolved not to consider the petition further as it cannot deliberate on the issues raised in the petition without substantially commenting on the matters the Court has to determine in accordance with the provisions of Standing Order 89 on matters sub judice. However when the Petition in the High Court is finalized and petitioners are of the view that critical matters regarding their petition to the National Assembly are not addressed, the Petitioners have a right to Petition the National Assembly afresh.

2.0 ADOPTION OF THE REPORT

We, the members of the Departmental Committee on Agriculture, Livestock and Cooperatives, have pursuant to Standing Order 199, adopted this Report of Petition on the alleged change of the management model of Kenya Tea Development Authority to Kenya Tea Development Agency (a Private entity).and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity.

1. Hon. Adan M. Nooru, MBS, M.P -**Chairperson** .....
2. Hon. Kareke Mbiuki, M.P -**Vice Chairperson**.....
3. Hon. Daniel Maanzo, M.P -.....
4. The Hon. Silas Tiren, M.P -.....
5. The Hon. Maison Leshoomo, M.P -.....
6. The Hon. Mary Wambui, M.P -.....
7. The Hon. (Dr.) Victor Munyaka, M.P -.....
8. The Hon. Korei Ole Lemein, M.P -.....
9. The Hon. John B. Serut, M.P -.....
10. The Hon. Peter N. Gitau, M.P -.....
11. The Hon. Florence Mutua, M.P -.....
12. The Hon. John Kobado, M.P -.....
13. The Hon. Benjamin Washiali, M.P -.....
14. The Hon. Patrick Wangamati, M.P -.....
15. The Hon. Phillip Rotino, M.P -.....
16. The Hon. Raphael Letimalo, M.P -.....
17. The Hon. Ayub Savula Angatia, M.P. -.....
18. The Hon. Waititu Munyua, M.P -.....
19. The Hon. Kimani Ichung'wah, M.P -.....
20. The Hon. Ferdinand Wanyonyi, M.P -.....
21. The Hon. Kabando Wa Kabando, M.P -.....
22. The Hon. Justice Kemei, M.P -.....
23. The Hon. James Opiyo Wandayi, M.P -.....
24. The Hon. Millie Odhiambo, M.P -.....
25. The Hon. Hezron Awiti Bollo, M.P -.....

26. The Hon. Fredrick Outa, M.P -.....
27. The Hon. Zuleikha Hassan Juma, M.P -.....
28. The Hon. Alfred Kiptoo Keter, M.P -.....
29. The Hon. Paul Simba Arati, M.P -.....

2.1 ACKNOWLEDGMENT

The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate.

I take this opportunity to thank all the Members of the Committee for their patience, sacrifice, endurance and hard work during the long sitting hours under tight schedules which enabled us to complete the tasks within the stipulated period.

The Committee wishes to record its appreciation for the services rendered by the staff of the National Assembly attached to the Committee. Their efforts made the work of the Committee and the production of this Report possible.

Finally, it is my pleasant duty on behalf of the Departmental Committee on Agriculture, Livestock and Cooperatives, to present this report to the House in accordance with the provisions of Standing Order 227 (2).

SIGNED: ..... **DATE:** 9/03/2016.

THE HON. ADAN M. NOORU, MBS, M.P.
CHAIRPERSON DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK AND COOPERATIVES

2.0 BACKGROUND

The petitioners of Small Scale Tea Farmers from Bomet County exercised their rights under Article 37 of the Constitution of Kenya 2010, which grants all persons the right to petition public authorities.The Petition was presented to the House by the Hon. Bernard Bett Kipkirui, M.P, on 4th August ,2015 in accordance with Standing Order No. 225 (2)(a).

The petitioners wished to draw the attention of the House to the following, that:-

I. In year 1999 the Government introduced a Policy Paper on tea liberalization geared towards tea industry reforms to ensure efficiency and better returns to the tea farmers and this has led to the amendment of Tea Act (Cap 433)

II. The year 2000 the Government privatized the Kenya Tea Development Authority giving rise to Kenya Tea Development Agency

III. The Kenya Tea Development Agency (KTDA) is responsible for management of the small holder tea sub-sector and in particular the production processing and marketing of high quality tea and management of tea farming

IV. The Tea (Amendment) Act ,2011 does not provide for ownershipand administrative aspects of Tea Factories and/or agencies

V. The Kenya Tea Development Agency appears to be micromanaging the affairs of the agency and thus failed in its mandate.

VI. A few individuals have conspired to withhold information in regard to shareholding , equity and rights from these small scale farmers and have fraudulently edged out some farmers/shareholders by registering their factories without consulting the stakeholders

VII. The Kenya Tea Development Agency is allegedly mismanaging the tea factories and tea subsidiary companies leading to low tea prices.

VIII. The tea farmers no longer enjoy their rights and this has led to decline in tea returns

IX. In year 2007 the Government constituted a taskforce to reform the tea sector and boost the small scale farmers returns. The Taskforce recommendedestablishment of subsidiary companies with the main membership being farmers. These companies comprises; Green Land Fedha Ltd ,Majani Insurance Ltd , KTDA Power generating Company Ltd ,Chai Trading Company Ltd ,KTDA Management Services Ltd and

Kenya Tea Packaging Ltd.

X. Implementation of these recommendations has led to confusion and uncertainty in the tea sector, which needs to be resolved.

3.0 SUBMISSIONS AND EVIDENCE

The Committee invited the petitioners and the Management of the Kenya Tea Development Agency for meetings on diverse dates.

During the meetings, written and oral evidence was adduced as recorded hereunder:-

3.1 Submissions by the Hon. Benard Bett Kipkirui, M.P and Representatives of Small Scale farmers from Bomet County

The representatives of the petitioners appeared before he Committee on 22nd October 2015 and one Mr. Samuel Langat made the following submissions. That;

a) During the change of management structure of KTDA, Farmers were given forms to fill in which it was cater to the needs of the farmer, it restricted the farmer to only supplying of Tea and buy shares from one factory, this arrangement was unfair and denied farmers their economic rights.

b) The right of membership of the farmer to KTDA shall be terminated if they leased their land without authority from the factory manager.

c) The Agency is mismanaging Tea factories and Tea subsidiary factories thus leading to low pricing.

d) The new arrangement has obligated the farmer to deliver Tea to only one factory hence denying the farmer the rights of enjoying benefits of market pricing.

e) Some individuals have conspired to withhold information in regard to shareholding of the farmer.

f) Farmers pooled up their resources to build factories thus they should be informed clearly on percentage of their share ownership. KTDA became a monopoly institution, instead of becoming an agency as recommended by the 1999 Act.

g) The 10th Parliament recommended that KTDA should diversify its products, but instead, money was collected from the Subsidiary factories. Subsidiary companies which according to the petitioners are independent and autonomous entities.

h) The subsidiary factories have now been reduced to private companies and owned by the Managing Directors of KTDA.

i) The new KTDA structure meant that farmers were to buy shares from KTDA. However the farmers issues would only be handled at the factory level, all factories are under KTDA hence this has made impossible for the farmer to access KTDA and company that they own.

j) The Taxation regime of tea is prejudicial since they are being taxed twice.

k) The prayers in the petition are not pending before any Court of Law.

3.2 Submission by the Mr. Lerionka Tiampati , Group Chief Executive Officer, Kenya Tea Development Agency (KTDA)

The Group Chief Executive Officer of Kenya Tea Development Agency (KTDA), Mr. Lerionka Tiampati appeared before the Committee on 11thFebruary, 2016 and made the following submission:

That the prayers in the Petition by Small Scale Tea farmers from Bomet County are similar with the pleadings of a petition that was presented by the Governor of Kericho County on 15th December, 2014 (Petition number 18 of 2014) before the High Court of Kericho.

4.0 COMMITTEE OBSERVATIONS

The Committee observed the following from the meetings held and the submissions presented. That:-

a) The Committee had earlier visited Tea factories in Bomet County, and most matters in the petition had been addressed in another petition.

b) The issues raised in the petition by Small Scale Tea farmers of BometCounty were substantially similar to the pleadings before the High Court of Kericho that was presented by the Governor of Kericho on 15th December, 2014 (Petition number 18 of 2014).

c) The Petitioners did not make full disclosures in accordance with the provisions of Standing Order 223 (g) that require Petitioner(s) to indicate in the Petition whether the issues in respect of which the petition is made are pending before any court of law or other Constitutional or Legal body.

d) The Committee while considering the petition in the High Court Kericho against the Petition by Small Scale Tea farmers particularly from Bomet County noted the following similarities ; -

	PUBLIC PETITION TO PARLIAMENT	**PETITION NO. 18 OF 2014.**
1.	Paragraph I of the Petition presented to Parliament provides for the 1999 government policy paper on tea liberalization geared towards ensuring efficiency in the industry.	Paragraph 81 of the petition lists the reform policy measures that are contained in the sessional paper No.2 of 1999. Paragraph 84 of the petition lists another policy measure that affected factory companies on management under the sessional paper.
2.	Paragraph II of the petition provides for the privatization of the Kenya Tea Development Authority to Kenya Tea Development Agency.	Paragraph 61 of the petition refers to the privatization of KTDA in the year 2000. Paragraph 63 of the petition questions the manner in which KTDA was privatized. Paragraph 64 of the petition makes specific reference on how the authority became privatized to become the Agency. Paragraph 81 of the Petition makes specific reference to the take over and the specific reform measures that were to be implemented.
3.	Paragraph III provides for the mandate of Kenya tea development agency in the management of small holder sub sector.	Paragraphs 57, 58, 59, 60, 62, 64, 65, 68, 72, 81, 82, 83, 85, 85, 89 and139 of the Petition provides facts on how the agency has managed the small holder subsector.

		Paragraph 66 elaborates on the relationship of the Agency and the factory companies. Paragraph 70 differentiates the manner in which tea plantations are managed as compared to the small scale sub sector.
4.	Paragraph IV provides for the Tea (amendment) Act 2011 which does not provide for the ownership and administrative aspects of tea factories or agencies.	Paragraphs 56, 58, 65, 66, 84, 86 and 89 refers to the legal ownership structure of tea factory companies which according to the Petitioner is not clear and the fact that small scale farmers have lost control over their tea factories.
5.	Paragraph V of the petition shows that the Agency was micromanaging.	Paragraphs 80 and 82 of the Petition elaborates on how the agency through management agreements took control over the functions devolved to farmers through their tea factories. Paragraphs 83 and 85 outlines on how farmers lost their role in the management of finances of the very companies they own shares in. Paragraph 87 outlines on how the agency should act i.e. as an agent but in this case the agency has gone further to take total control in all the factories in processing and trading of tea and further acts as an insurer and bank for all money due to small scale tea farmers.
6.	Paragraph VI explains on how few individuals were withholding information on shareholding.	Paragraph 107 outlines how the Agency has formed seven other subsidiaries without involving the shareholders the small scale farmers.
7.	Paragraph VII outlines how the agency is mismanaging the tea factories.	Paragraphs 62, 103, 105, and 106 and the prayers sought refer to the issue of mismanagement of the tea factories.

8.	Paragraph VIII deals with the farmers enjoyment of rights and declined tea returns	Paragraphs 51, 57, 58, 59, 60, 68, 72, 76, 77, 104, 106, 117, 146, 147, 165, 182, 183, 184, 187, 188 and the prayers sought refer to the issue of tea farmers' rights and declined tea returns.
9.	Paragraph IX and X deals with the Tea task Force and Subsidiary companies of the Agency.	Several paragraphs of the Petition deals with the subsidiary companies and how they were constituted and managed. These paragraphs include 78, 101, 108 and 151.
10.		Issues in this case are currently pending in Hig Court Petition No.18 of 2014.
11. The petitioners' prayers go hand in hand with the prayers sought in the petition before the High Court. In the Petition to Parliament, the Petitioner prays for an audit of the Agency while Petition no. 18 of 2014, the prayers sought from (cc) to (ll) invoke the power of the court to request an investigation and look into the business of the Agency since its privatization.		

5.0 COMMITTEE RECOMMENDATIONS

In view of the above similarities between this Public Petition and Petition No 18 of 2014 at the High Court of Kenya, **the Committee recommends that**;

Due to the Sub Judice rule in accordance with Standing Orders 89, the Committeecannot deliberate further on the issues raised in the Petition without substantially commenting on the matters the Court has to determine. However when the Petition in the High Court is finalized and petitioners are of the view that critical matters regarding their petition to National Assembly are not addressed, the Petitioners have a right to Petition the National Assembly afresh.

Approved
4/8/15

THE NATIONAL ASSEMBLY
ELEVENTH PARLIAMENT
(THIRD SESSION)

PUBLIC PETITION
ON ALLEGED CHANGE OF THE MANAGEMENT MODEL OF KENYA TEA DEVELOPMENT AUTHORITY TO KENYA TEA DEVELOPMENT AGENCY (A PRIVATE ENTITY)

I, the **UNDERSIGNED**, on behalf of Citizens of Kenya and in particular small scale tea farmers in Bomet County,

DRAW the attention of the House to the following:-

i. **THAT**, in the year 1999 the Government introduced a Policy Paper on tea liberalization geared towards tea industry reforms to ensure efficiency and better returns to the tea farmers and this led to the amendment of the Tea Act (Cap 433).

ii. **THAT**, in the year 2000 the Government privatized the Kenya Tea Development Authority giving rise to the Kenya Tea Development Agency;

iii. **THAT**, the Kenya Tea Development Agency (KTDA) is responsible for the management of the smallholder tea sub-sector and in particular the production, processing and marketing of high quality tea and management of tea farming;

iv. **THAT**, the Tea (Amendment) Act, 2011 does not provide for the ownership and administrative aspects of the Tea Factories and/or agencies;

v. **THAT**, the Kenya Tea Development Agency appears to be micromanaging the affairs of the agency and has thus failed in its mandate;

vi. **THAT**, a few individuals have conspired to withhold information in regard to shareholding, equity and rights from these small scale farmers and have fraudulently edged out some farmers/shareholders by registering their factories without consulting the stakeholders;

vii. **THAT**, the Kenya Tea Development Agency is allegedly mismanaging the tea factories and tea subsidiary companies leading to low tea prices;

PUBLIC PETITION
ON
ALLEGED CHANGE OF THE MANAGEMENT MODEL OF KENYA TEA DEVELOPMENT AUTHORITY TO KENYA TEA DEVELOPMENT AGENCY (A PRIVATE ENTITY)

viii. THAT, the tea farmers no longer enjoy their rights and this has led to declined tea returns;

ix. THAT, in the year 2007 the Government constituted a taskforce to reform the tea sector and boost the small scale farmers returns. The taskforce recommended establishment of subsidiary companies with the main membership being farmers. These companies comprise: Green Land Fedha Limited, Majani Insurance Limited, KTDA Power Generating Company Limited, Chai Trading Company Limited, KTDA Management Services Limited, Kenya Tea Packaging Limited, Tea Research Institute;

x. THAT, implementation of these recommendations has led to confusion and uncertainty in the tea sector, which needs to be resolved:

xi. NOTING, that the issues in respect of which this Petition is made are not pending before any court of law or any constitutional or legal body.

THEREFORE, your humble petitioner (s) prays that Parliament through the Departmental Committees Agriculture, Livestock and Cooperatives: -

i. Recommends an audit of the Kenya Tea Development Agency and the subsidiary companies;
ii. Establishes how the Kenya Tea Development Agency (a private agency) acquired the rights to tea factories owned by small scale farmers;
iii. Establishes the method used in registration and incorporation of farmers' factories; and
iv. Review/repeals any legislations in regard to the tea sector.

And your Petitioner (s) will ever pray.

PRESENTED BY

HON. BERNARD BETT KIPKIRUI, MP
MEMBER FOR BOMET EAST CONSTITUENCY
Date ..4.1.8.2015.....

Kutmony to Kenya Tea Development Agency (A private entity)

	NAME	GROWER NO KP	ID NO	SIGN
1	Richard Sigilai	~~04~~0448	11627959	[signature]
2	Simion Koyonen	43	0867091	[signature]
3	Philip Wetokoi	78	2406632	[signature]
4	Kipngetich Richard	365	2065[illegible]964	[signature]
5	Stanley c Sigilai	454	21070262	[signature]
6	Barnabas K. Towett	383	9727663	[signature]
7	Jona K. Kerich	762	23149185	[signature]
8	Philip K. Posuse	321	8020166	[signature]
9	Zakayo Kirech	52	2353913	[signature]
10	Stanley Langat	578	20555883	[signature]
11	Joseph K Koboso	433	12553269	[signature]
12	Joseph Sigilai	610	26526972	[signature]
13	Benard Kipngetich Langat	652	26536980	[signature]
14	Geoffrey Koriri	593	25301096	[signature]
15	Stanley Tonyoi	358	20556697	[signature]
16	Gilbert Langat	0722	11638328	[signature]
17	Joseph Rotich	281	12439237	[signature]
18	A. K. Mosonik	074	0324112	[signature]
19	Elijah Tepbatai	0674	8020022	[signature]
20	Isack Sigilai	0422	13546629	[signature]
21	Lazaro Borusoi	0686	13556698	[signature]
22	Christopher Soit	640 ~~20673184~~	20673184	[signature]
23	Paul Mabwa	457	9640073	[signature]
24	John Towett	222 ~~[illegible]~~	0412661	[signature]
25	Johana Sitoe	32	6161806	[signature]
26	Joseph Chelogoi	257	1789726	[signature]
27	Richard C Bosienoi	040285	11637873	[signature]
28	David Towett	580	24538225	[signature]
29	Moses K Langat	0409	23149144	[signature]
30	Zephania Kiveto	KP04-0007	2491652	[signature]
31	Chepkwony Chesimet	KP 040223	7145675	[signature]
32	David Ruigut	KP 04 884	11636824	[signature]

Meeting on change of Management model of KTDA (Authority) to KTDA (Agency)

	NAME	GROWER	ID NO	SIGN
88	John M. Towett	ASO 092	2410842	
89	Japheto Mosiil	146	6213892	
90	Ruth Chebusit	189	6213892	
91	Alice Kirui	~~229~~ 273	8020177	
92	Sarah Langat	276	12554260	
93	Joseph Yegon	329	10014714	
94	Captany Towett	176		
95	Margret Kongoria	676	12555299	
96	Simion Kones	244	20916435	
97	Monica Chepkirui	698	27798504	
98	Betty C Musoi	613	26336018	
99	Ronica Chirono	025	28305845	
100	~~Isaac~~ KENNETH KIPLANGAT KIPRONO	521	21295891	
101	Zeddy C Tuter	677	23172673	
102	BERNARD RONO	749	26170067	
103	RICHARD MABWAI	039	24042S5	
104	ELIS C TUIYA	706	24070S	
105	Ruth C Bett	637	23392163	
106	Mercy Chelangat Rugui	729	25237274	
107	Paul K. Maritim	0092	3822705	
108	Wilson K. Towett	017	24040916	
109	Joseph Chemingat	380	24211167	
110	KIBET LAWRENCE	765	28128148	
111	Daniel Yabaa	264	9660429	
112	Richard Leo	244	20837165	
113	Nelson Kebubei	KP 050-109	24106135	
114	Edward Cheruiyot	KP 050-158	25870245	
115	Wilson Langat	KP 04-635	28480935	
116	Thomas Kuboit	KP 04-26	24047317	
117	Daniel Kirui	KP 94-66	9640428	
118	ESPHAT K. KIRUI	KP 94-218	30503746	
119	DANIEL RONO	KP 94-218	B5245040	
120	ALICE BITECH	KP 744	9413936	

Development Authority to Kenya Tea Development Agency

	NAME	GROWER NO	ID/NO	SIGN
57	Kipketo wetoke	91		
58	Richard K. Byamuda	5785	26047 90	
59	Lucy c JOHANA	182	2410825	
60	Paul Towett	465	2406141	
61	FESTUS KORIR	718	27272275	
62	Ambrose langat	407	20526235	
63	Bernard Rono	84-600	26073846	
64	Barnabas Chumo	282	24065630	
65	Bernard Rotto	351	23162913	
66	PAUL RONOH	KAP 044-1241-26527841		
67	Sammy Ki yaban	759	0722538752	
68	Bernard langat	619	24078100	
69	David K. Boruse	612		
70	Simion K Kosgei	64	26528257	
71	Isaac Kipkorir	657	26505987	
72	G. Rono	425	23823069	
73	Kirop simion	04	20561382	
74	Wesley langat	04	22498544	
75	Zakhem Sigilai	KAP 11132	24470458	
76	STANLEY TOREI	KAP 40758	22310764	
77	Paul Korir	04/M0611	20586332	
78	Nancy chelangat	04-654		
79	Daniel Siele	080-315	30475774	
80	Janet Koech	094/132	20659963	
81	Stella ngeno	04-307	26548578	
82	Emily Changtoek	04-279	12555516	
83	marsela Boruse	04-629	21331619	
84	Beatrice kirui	04-687	52330711	
85	Elizabeth kiringet	64-185		
86	Irene cheruto chesengony	04-542	2404782	
87	Cynthia mutai	0705	26511389	

(Agency) (A private entity)

	NAME	GROWER NO	ID NO	SIGN
33	ANNA LANGAT	704	21022369	
34	Stanley Leleito	669	24047846	
35	Ruben Kiplangat	702		
36	Cres Maiyek	89		
37	Sarah Komes	04-128		
38	Zachania Rono	753	32436475	
39	Nicolas Ngeiywa	503	25203388	
40	Joseph Siele	251	11432908	
41	Philip Kipkirui Kalya	303	24047073	
42	Winny Sigilai	335	21075056	
43	Simeon Kosgei		24053153	
44	Emily Kitigo		24048559	
45	JOSEPH LANGAT	147		
46	MARY TOWETT	318		
47	Joseph Komes	171	30041035	
48	Daniel Langat	472	24345711	
49	JOHNNY MUTAI	603		
50	WILLIAM KILELE	4	24063741	
51	Daniel Cheruiyot	KP04057	8466813	
52	RICHARD KILEL	KP04246	10991004	
53	Daniel Martin	597	12420390	
54	Stanley Kilel	KP04520		
55	Margret Kilel	KP040766	31554034	
56	NAOMY TABAN	KP0402599	30242354	
57	Kenetn Kiprotich Ngetich		24816084	

c/o Tel No. 0705 435 620

MINUTES OF THE 7th SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK AND COOPERATIVES (Adoption of KPCU, KTDA & Galana Reports) HELD ON THURSDAY 18th FEBRUARY 2016, AT 2nd FLOOR, PROTECTION HOUSE PARLIAMENT BUILDINGS AT 10.30 A.M.

Present

1. Hon. Adan M. Nooru, MBS, M.P - **Chairperson**
2. Hon. Kareke Mbiuki, M.P
3. Hon. Daniel Maanzo, M.P
4. Hon. Mary Wambui, M.P
5. Hon. Patrick Wangamati, M.P
6. Hon. John B. Serut, M.P
7. Hon. Benjamin Washiali, M.P
8. Hon. Silas Tiren, M.P
9. Hon. Peter N. Gitau, M.P
10. Hon. Maison Leshoomo, M.P
11. Hon. Phillip Rotino, M.P
12. Hon. Raphael Letimalo, M.P
13. Hon. Ferdinand Wanyonyi, M.P
14. Hon. Florence Mutua, M.P
15. Hon. (Dr.) Victor Munyaka, M.P
16. Hon. James Opiyo Wandayi, M.P
17. Hon. Zuleikha Hassan Juma, M.P
18. Hon. John Kobado, M.P

Apologies

1. Hon. Alfred K. Keter, M.P
2. Hon. Waititu Munyua, M.P
3. Hon. Millie Odhiambo - Mabona, M.P
4. Hon. Korei Ole Lemein, M.P
5. Hon. Fredrick Outa, M.P
6. Hon. Justice Kemei, M.P
7. Hon. Paul Simba Arati, M.P
8. Hon. Kabando Wa Kabando, M.P
9. Hon. Ayub Savula Angatia, M.P.

10. Hon. Kimani Ichung'wah, M.P
11. Hon. Hezron Awiti Bollo, M.P

In Attendance:

Kenya National Assembly Secretariat

1.	Mr. Benjamin Magut	- First Clerk Assistant
2.	Mr. Ahmad Adan Guliye	- Third Clerk Assistant
3.	Mr. David Ngeno	- Research Officer

Min. 029/2016: Preliminaries

I. The meeting was called to order at 10.49 a.m. and prayers were said by Hon. Kareke Mbiuki, M.P

II. The agenda of the day's meeting was adopted as stipulated in the notice of meeting.

Min. 030/2016: Confirmation of Minutes

The minutes of the 5th siting was confirmed as true record of the Committee's deliberation after it was proposed and seconded by Hon. Mary Wambui, M.P and Hon. Philip Rotino, M.P

Min. 031/2016: Matters Arising

Under min. 025/2016-III

The Committee resolved to visit Kenya Meat Commission (KMC) on Tuesday, 23rd February 2016 at 11.30 a.m. after the consideration of Budget Policy Statement (BPS).

Min. 032/2016: Adoption of Reports

a) **Adoption of the report of the petition by the Stakeholders of Kenya Planters Cooperative Union (KPCU) Ltd on the removal of the Commissioner for Cooperative Development**

The Committee adopted the report of the petition by the Stakeholders of Kenya Planters Cooperative Union (KPCU) Ltd on the removal of the Commissioner for Cooperative Development with the following recommendation;

Due to *Sub-Judice* rule, the Committee cannot deliberate further on the issues raised in the Petition without substantially commenting on the matters the Court has to determine. However if and when the Judicial Review in the Court of Appeal is finalized and petitioners are of the view that critical matters regarding their prayers to National

Assembly are not addressed, the Petitioners have a right to Petition the National Assembly afresh.

b) Adoption of the report on The Petition on the Alleged Change of the Management Model of Kenya Tea Development Authority to Kenya Tea Development Agency (A Private Entity)

The Committee adopted the report on the petition on the Alleged Change of The Management Model of Kenya Tea Development Authority to Kenya Tea Development Agency (A Private Entity) with the following recommendation;

Due to the Sub Judice rule, the Committee cannot deliberate further, on the issues raised in the Petition without substantially commenting on the matters the Court has to determine. However if when the Petition in the High Court is finalized and petitioners are of the view that critical matters regarding their prayers to National Assembly are not addressed the Petitioners have a right to Petition Parliament afresh.

c) Adoption of the Report of the Galana/Kulalu Food Security Project (GKFSP)

The Committee has deliberated on the Galana/Kulalu Food Security Project report and resolved that all the necessary documents such as copies of the signed loan agreement, the lease agreement between National Irrigation Board (NIB) and Agricultural Development Corporation (ADC) be availed to the Committee before it reaches conclusive recommendations.

Min. 033/2016: Adjournment

There being no other business to discuss, the meeting was adjourned at 11.58 a.m.

Signature .....

HON ADAN MOHAMED NOORU, MBS, M.P.

(Chairperson)

Date.....

MINUTES OF THE 4thSITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK AND COOPERATIVES (Meeting with PS Cooperative Development and Managing Director KTDA on KPCU & KTDA Petitions respectively) HELD ON THURSDAY 11th FEBRUARY 2016, AT COMMITTEE ROOM 7 MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

Present

1. Hon. Adan M. Nooru, MBS, M.P - **Chairperson**
2. Hon. Kareke Mbiuki, M.P
3. Hon. Daniel Maanzo, M.P
4. Hon. Mary Wambui, M.P
5. Hon. Patrick Wangamati, M.P
6. Hon. John B. Serut, M.P
7. Hon. Benjamin Washiali, M.P
8. Hon. Silas Tiren, M.P
9. Hon. Maison Leshoomo, M.P
10. Hon. Waititu Munyua, M.P
11. Hon. Phillip Rotino, M.P
12. Hon. Ferdinand Wanyonyi, M.P
13. Hon. Florence Mutua, M.P
14. Hon. Justice Kemei, M.P
15. Hon. Zuleikha Hassan Juma, M.P
16. Hon. Millie Odhiambo - Mabona, M.P
17. Hon. (Dr.) Victor Munyaka, M.P
18. Hon. James OpiyoWandayi, M.P
19. Hon. Korei Ole Lemein, M.P
20. Hon. Fredrick Outa, M.P

Apologies

1. Hon. Alfred K. Keter, M.P
2. Hon. Paul Simba Arati, M.P
3. Hon. Raphael Letimalo, M.P
4. Hon. KabandoWaKabando, M.P
5. Hon. Peter N. Gitau, M.P
6. Hon. AyubSavulaAngatia, M.P.
7. Hon. Kimani Ichung'wah, M.P
8. Hon. John Kobado, M.P
9. Hon. HezronAwitiBollo, M.P

In Attendance:

Kenya National Assembly Secretariat

1. Mr. Benjamin Magut - First Clerk Assistant
2. Mr. Ahmad Adan Guliye- Third Clerk Assistant
3. Ms. Brigita Mati - Legal Counsel
4. Mr. Stephen Nyakuti- Audio Office

State Department of Cooperative Officials

1. Mr. Ali Noor Ismail,CBS - Principal Secretary, State Department of Cooperatives Development
2. Mr. Philip N Gichuki - Ag. Commissioner for Cooperative Development
3. Mr. David K Obonyo - Assistant Commissioner for Cooperative Development
4. Mr. Symon Mburia - Chief Cooperative Officer

KTDA Management

1. Mr. LerionkaTiampati - Managing Director, Kenya Tea Development Agency
2. Mr. John Kennedy Omanga - Company Secretary, Kenya Tea Development Agency

Min. 014/2016: Preliminaries

1. The meeting was called to order at 10.30 a.m. and prayers were said by Hon. Korei Lemein, M.P.
2. The Chairperson welcomed the members and the witnesses to the meeting.
3. The agenda was adopted as stipulated in the notice of meeting.

Min. 015/2016: Presentation by the Principal Secretary, State Department of Cooperatives

The Principal Secretary informed the Committee of the following in response to the prayers raised in the petition;

i) Under the Cooperatives Societies Act, the Commissioner for Cooperative Development has not contravened any legal provisions to warrant sanctioning, censoring him and removing him from his position.

ii) The issue of Commissioner being Board member of Kenya Cooperative Coffee Exporters (KCCE) Ltd, Cooperative Insurance Company (CIC) Ltd or any other

Cooperative organization should not cause any conflict of interest with KPCU mandate. The Commissioner's responsibility under the Cooperative law and to provide advisory role on the cooperatives growth and development.

iii) The interim Board went to the High Court challenging the elections of KPCU Ltd that was held on 31st July, 2014. The matter was heard and determined by Justice Weldon Korir whereby the Court called for fresh elections within 90 days. The complainants filed an appeal and the matter is still pending in court.

iv) The Ministry has and will continue to support the revival of KPCU Ltd in order to provide the required services to its shareholders.

v) The Ministry recommends that coffee farmers be allowed to elect a substantive board as per Bylaws, Memorandum and Articles of Association of KPCU Ltd.

vi) Coffee cooperative societies are shareholders of Cooperative Bank and the Ministry is not aware of any meddling by Cooperative Bank of Kenya on KPCU matters.

Committee Observation

i) The Ministry was asked to liaise with the office of the Attorney General and fast track the pending matter before the court to its logical conclusion as farmers have been suffering for a long time.

ii) The Ministry was asked to submit to the Committee copies of the appeal filed by the complainant by Tuesday, the following week.

Min. 016/2016: Presentation by KTDA Management

The Managing Director informed the Committee of the following raised in the petition;

i) The Committee was informed that a petition of the same substance and nature as that of the petition before the Committee is pending before the High Court. The petition was filed the Governor of Kericho County on 15th December 2014 and is referenced as petition no. 18 of 2014.

ii) The pleadings pleaded in the High Court Petition are similar to the prayers in the petition before the Committee.

Committee Observation

The Committee directed the legal counsel to analyze the petition before the High Court and determine whether the pleadings are similar to the prayers in the petition before the Commiittee.

Min. 017/2016: Adjournment

Since there is no other business to transact, the meeting was adjourned at 1.20 p.m.

Signature .....

HON ADAN MOHAMEDNOORU, MBS, M.P.

(Chairperson)

Date.....14th Feb 2016.....

MINUTES OF THE 61ST SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK AND COOPERATIVES (CONSIDERATION OF SEEDS AND PLANT VARIETIES AMENDMENT BILL 2015 AND MEETING WITH PETITIONERS ON A PETITION REGARDING ALLEGED CHANGE OF THE MANAGEMENT MODEL OF KENYA TEA DEVELOPMENT AUTHORITY TO KENYA TEA DEVELOPMENT AGENCY) HELD ON THURSDAY 22ND OCTOBER ,9TH FLOOR HARAMBEE PLAZA PARLIAMENT BUILDINGS AT 10:30AM.

Present

1. Hon. Waititu Munyua, M.P – Chairperson of Session
2. Hon. (Dr.) Victor Munyaka, M.P
3. Hon. John B. Serut, M.P
4. Hon. Florence Mutua, M.P
5. Hon. Patrick Wangamati M.P
6. Hon. James Opiyo Wandayi, M.P
7. Hon. Silas Tiren, M.P
8. Hon. Millie Odhiambo -Mabona, M.P
9. Hon. AyubSavulaAngatia, M.P
10. Hon. Kimani Ichung'wah, M.P
11. Hon. Daniel Maanzo, M.P
12. Hon. Benjamin Washiali, M.P
13. Hon. Phillip Rotino, M.P.

Apologies

1. Hon. Adan M. Nooru, MBS, M.P - Chairman
2. Hon. Kareke Mbiuki, M.P - Vice Chairperson
3. Hon. Mary Wambui, M.P
4. Hon. Kabando Wa Kabando, M.P
5. Hon. Hezron Awiti Bollo, M.P
6. Hon. Maison Leshoomo, M.P
7. Hon. Peter N. Gitau, M.P
8. Hon. Paul Simba Arati, M.P
9. Hon. Korei Ole Lemein, M.P
10. Hon.Maanzo Daniel Kitonga,M.P
11. Hon. Fredrick Outa, M.P
12. Hon. Zuleikha Hassan Juma, M.P
13. Hon. John Kobado, M.P
14. Hon. Raphael Letimalo, M.P
15. Hon. Ferdinand Wanyonyi, M.P
16. Hon. Alfred K. Keter, M.P

In Attendance:

Honorable Members of National Assembly

1. Hon. Bernard Bett Kipkirui, M.P -Bomet East
2. Hon. Ronald Tonui, M.P -Bomet Central

Kenya National Assembly Secretariat

1. Mr. Benjamin Magut - First Clerk assistant
2. Ms. Angeline Naserian - Third Clerk Assistant
3. Ms. Clara Kimeli - Legal Council

Officials from KEPHIS

1. Dr. Esther Kimani -Ag. CEO
2. Mr. Simon M. Maina -KEPHIS

Petitioners from Bomet County.

1. Mr. Samuel Langat
2. Mr. Stephen Cheruiyot
3. Mr. Richard Kipyegon
4. Mr. Charles Bett
5. Mr. Jonah Kipkorir

Min. 265/2015: Preliminaries

I. The meeting was called to order at 10.50am and prayer was said by Hon.Florence Mutua, M.P.
II. The Committee nominated Hon. Waititu Munyua, M.P as the Chairperson, it was proposed by Hon John Serut,M.P and Seconded by Hon Ayub Savula,M.P
III. The Chairman informed the Committee of the day's agenda and it was adopted as stipulated in the notice of meeting.

MIN.266/2015 Meeting with Officials from KEPHIS on the Seeds and Plant Variety (Amendment) Bill 2015.

The following are suggestions from KEPHIS:

Section 2(a) should be considered by deleting the word National plant generic resource centre and substituting therefore with Plant Resources research centre.

The Committee disagreed with the proposal as its stated in the constitution research is a national function. Therefore the center should remain as National Plant Resources centre.

The Committee requested for a comprehensive brief for further discussion.

It was agreed that the Committee shall only consider amendments that are in the bill.

MIN. 267/2015: Meeting with Petitioners on a petition regarding alleged change of the management model of Kenya Tea Development Authority to Kenya Tea Development Agency (private entity)

The Committee was briefed by the petitioners that;

- Farmers were given forms to fill and it was not favorable to their need, it restricted the farmer to supply tea and buy shares from one factory.It's unfair and denies farmers enjoyment of their economic rights.
- Membership of the farmer shall be terminated if they leased their land without authority from the factory manager.
- The Agency is mismanaging Tea factories and Tea subsidiary factories thus leading to low pricing.
- Restriction to supply tea to only one factory denies the farmer rights to enjoy privilege of market pricing.
- Some individuals have conspired to withhold information in regard to shareholding of the farmer.
- Farmers pulled their resources together to build factories therefore KTDA should be transparent in terms of shareholding.
- KTDA became a monopoly institution, instead of becoming an agency as recommended by the 1999 Act.
- Parliamentary recommendation that KTDA should diversify its products, but instead, money was collected from the Subsidiary factories. Subsidiary factories according to the petitioners are independent and autonomous it's only dependent to KTDA on administrative issues.
- Subsidiary factories have now been reduced to private companies and owned by the Managing Directors of KTDA.
- KTDA had designed a structure which made farmers to buy shares from it, but farmers are only answerable to factories and factories are under KTDA.This made impossible for the farmer to access KTDA.
- Taxation of tea are prejudicial since they are being taxes twice and hefty.
- The matter in the petition is not pending before court.

Observation from Committee members;

- The petitioners were informed that Honorable Members from the Committee visited factories in Bomet County, and addressed the same issues that are in the petition.
- Petitioners were told that recommendations had been prepared from the said visit, and it's upon the Committee to implement and act on the proposed recommendations.
- The Committee requested for a legal notice number to confirm that the matter is not pending in court.
- The Committee told petitioners that field visit to the factories in Bomet will be decided by the Committee and they will be appraised later.
- The Committee requested secretariat to invite the Cabinet Secretary Ministry of Agriculture, Livestock and Cooperatives for a meeting, to further explain the management model of KTDA.
- The Committee resolved to invite KTDA management to explain the prayers in the petition, so that solution is met.

Min. 268/2015: Adjournment

There being no other business to transact, the meeting was adjourned at 1:42pm.

Signature .....

HON ADAN MOHAMEDNOORU, MBS, M.P.

(Chairman)

Date..... 29/10/2015

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

PETITION NUMBER 18 OF 2014

IN THE MATTER OF: ARTICLES 1(1), 1(3), 2(1), 2(2), 2(4), 3(1), 10, 19(1), 19(2), 19(3), 20(1), 20(2), 20(3), 20(4), 21(1), 22(1), 22(2), 23(1), 23(2), 24(1), 24(3), 27(1), 27(2), 36(1), 36(3), 41(5), 47(1), 47(2), 50(1), 73(1), 73(2), 129(1), 159(2), 163(3)(B), 258(1), 258(2), AND 259(1) OF THE CONSTITUTION OF KENYA, 2010.

-BETWEEN-

THE GOVERNOR, KERICHO COUNTY.....PETITIONER

-VERSUS-

KENYA TEA DEVELOPMENT AGENCY.....1ST RESPONDENT

CHAI TRADING COMPANY LIMITED .....2ND RESPONDENT

KTDA MANAGEMENT SERVICES .....3RD RESPONDENT

MAJANI INSURANCE BROKERS .....4TH RESPONDENT

KENYA TEA PACKERS LIMITED .....5TH RESPONDENT

GREENLAND FEDHA LIMITED.....6TH RESPONDENT

KTDA POWER COMPANY LIMITED.....7TH RESPONDENT

UNILEVER TEA(KENYA) LIMITED .....8TH RESPONDENT

LIPTON LIMITED.....9TH RESPONDENT

JAMES FINLAY (KENYA) LIMITED.....10TH RESPONDENT

VAN REES KENYA LIMITED .....11TH RESPONDENT

JUJA COFFEE EXPORTERS LIMITED.....12TH RESPONDENT

STANSAND (AFRICA LIMITED) .....13TH RESPONDENT

EASTERN PRODUCE KENYA LIMITED.....14TH RESPONDENT

WILLIAMSON TEA KENYA LIMITED.....15TH RESPONDENT

AFRICA TEA BROKERS LIMITED.....16TH RESPONDENT

ANJELI LIMITED.....17TH RESPONDENT

ATLAS TEA BROKERS LIMITED.....18TH RESPONDENT

BICORN EXIM LIMITED.....19TH RESPONDENT

26. 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 favours the enforcement of a right or fundamental freedom;

27. Article 20(4) of the Constitution provides that in interpreting the Bill of Rights, a court, tribunal or other authority shall promote the values that underlie an open and democratic society based on human dignity, equality, equity and freedom; and the spirit, purport and objects of the Bill of Rights freedom and the spirit, purport and objects of the Bill of Rights;

28. 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;

29. 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;

30. 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;

31. 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:

32. 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;

33. 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, taking into account all relevant factors;

34. Article 24(3) of the Constitution provides that the State or a person seeking to justify a particular limitation shall demonstrate to the court, tribunal or other authority that the requirements of this Article have been satisfied.

35. 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.

36. Article 27(2) of the Constitution provides that equality includes the full and equal enjoyment of all rights and fundamental freedoms.

37. Article 28 of the Constitution provides that every Kenyan has a right to have their human dignity respected and protected.

38. Article 43 of the Constitution provides that every Kenyan is entitled to the economic and social rights enumerated thereunder.

39. Article 46 of the Constitution guarantees every Kenyan, as a consumer, to receive quality services from any service provider they engage.

40. Article 47(1) of the Constitution provides that every person has the right to administrative action that is lawful, reasonable and procedurally fair.

41. 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;

42. 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;

43. 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 honour to the nation and dignity to the office; and
(iv) promotes public confidence in the integrity of the office;

44. 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;

45. 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:

46. 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;

47. 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;

48. Article 201(d) of the Constitution sets out the principles of public finance to include;

a. Openness and accountability, including public participation in financial matters.

b. public money be used in a prudent and responsible way.

c. Financial management be responsible and fiscal reporting be clear.

49. Article 210(1) of the Constitution provides that no tax or licensing fee may be imposed, waived or varied except as provided by legislation.

50. Article 232 provides the values and principles of public which include;

(a) Efficient, effective and economic use of resources

(b) Accountability for administrative acts.

(c) Transparency and provision to the public of timely and accurate information.

(d) 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;

(e) 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;

(f) 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 Sosiot 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 a majority 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 have to 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 holders 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 4% amounts to Kshs. 27.6 Billion with the share of the 400,000 farmers from western region being Kshs. 19. 7 Billion.

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

97. Over the course of 15 years that KTDA has been in existence, 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.

$$\frac{0.75}{100} \times 69 = \text{Kshs. } 517.5 \text{ million.}$$

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 the Counties, KTDA cannot continue to collect levies that was supported under the Local Government Act, Chapter 265 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. Not KTDA.

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 then 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 par when bought 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, Combrok, 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 1 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 5.5 Billion for the losses they have incurred as result of monopoly and price-manipulation at the Mombasa Tea Auction.

HEAVY TAXATION OF THE TEA SECTOR

163. The tea sector is reeling from heavy taxation which has a disproportionate impact on small scale farmers that 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;

1. The Agricultural Produce Cess-1% of value of Green leaf gross value
2. Value Added Tax-16% of sale value
3. Ad Valorem Levy-1% of customs value of made tea exports or imports
4. Tea Producer License-Kshs. 10,000 per year.
5. Auction Organiser License-Kshs. 10,000 per year.
6. Tea Buyer License- Kshs. 10,000 per year.
7. Tea Broker License- Kshs. 10,000 per year.
8. Tea Packer License- Kshs. 2,000 per year.
9. Tea Warehousing License- Kshs. 10,000 per year.
10. Corporate tax-30% of net profit.
11. Directorate of Industrial Training Levy-Kshs. 300 per employee
12. Standards Levy(KEBS)-0.2% of value of made tea
13. Environmental Impact Asessment Levy(NEMA)-0.1% of investment costs.
14. Inspection Fee(KEPHIS)-Kshs. 5,000 per shipping document.
15. Import duty on packaging material(Government)-25% of CIF value
16. Import declaration form(Government)-2.25% of CIF value

17. Furnace oil taxes(Government)-excise duty of Kshs. 0.6/litre & 16% VAT
18. Brokerage fee(Tea Broker)-0.75% of made tea value
19. Management Agency Fee (KTDA)-2.5% of net sales.
20. Land rates and rents(Counties)- 0.3 – 0.75% of undeveloped value
21. Waste water regulation license(NEMA)-Kshs. 100,000
22. Wood Fuel Movement Permit(County)- Kshs. 300
23. Mombasa Port Health- Kshs. 1,000 per shipping document.
24. Chamber of Commerce(COO)-0.025% invoice value per shipment.
25. Department of Occupational health license-Kshs. 2,060 annually
26. 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 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 Respondents continue 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 continued to sustain a 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 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 Respondents are 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 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 -27th Respondents are engaged in forms of anti-competitive behavior such as price fixing at the Mombasa Tea Action 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 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 KUSTO 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 to 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 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 Respondent without a supporting legal framework as required by Article 210 (1) of the Constitution, is unconstitutional.

j. An order directing the 28th 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 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 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 28 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 provide 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 62, 186 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 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 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 Articles 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 Respondent to undertake administrative measures to ensure profits from 2nd-7th Respondent Companies, which are its subsidiaries, are channeled to 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 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 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

MANYONGE WANYAMA & ASSOCIATES ADVOCATES
ADVOCATES FOR THE PETITIONER

DRAWN & FILED BY:-
MANYONGE WANYAMA & ASSOCIATES ADVOCATES
COMMODORE OFFICE 2ND FLOOR 2H,
KINDARUMA ROAD/WOOD AVENUE JUNCTION
OPPOSITE NAKUMATT PRESTIGE
P.O BOX 100245, 00101
NAIROBI
Office line:-+254 20 201 31 99
Cell:- 0706 29153, 0721884689,0713801782
Email: manyonge@gmail.com & pmo@manyongewanyama.com

TO BE SERVED UPON

1. KENYA TEA DEVELOPMENT AGENCY
   KTDA FARMERS BUILDING, MOI AVENUE.
   NAIROBI

2. CHAI TRADING COMPANY LIMITED
   KTDA MIRITINI COMPLEX.
   ALONG MOMBASA NAIROBI ROAD
   MOMBASA

4. THE EAST AFRICAN TEA TRADE ASSOCIATION
   TEA TRADE CENTRE, NYERERE AVENUE
   MOMBASA

5. KTDA MANAGEMENT SERVICES
   KTDA FARMERS BUILDING, MOI AVENUE.
   NAIROBI

6. MAJANI INSURANCE BROKERS
   3RD FLOOR, CHAI HOUSE.
   NAIROBI

7. KENYA TEA PACKERS LIMITED
   HEAD OFFICE.
   KERICHO

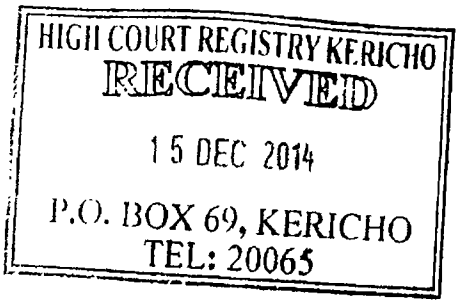
8. GREENLAND FEDHA LIMITED
   KTDA FARMERS BUILDING, MOI AVENUE.
   NAIROBI

9. KTDA POWER COMPANY LIMITED
   KTDA FARMERS BUILDING, MOI AVENUE.
   NAIROBI

10. UNILEVER TEA (KENYA) LIMITED
    COMMERCIAL STREET, INDUSTRIAL AREA
    NAIROBI

11. [illegible]

TEA TRADE CENTRE, NYERERE AVENUE
MOMBASA



12. JAMES FINLAY (KENYA) LIMITED
P O BOX 223
CHEPKEMBE
KERICHO 20200
KENYA

13. VAN REES KENYA LIMITED
LINKS ROAD, NYALI
LINKS PLAZA, 6TH FLOOR
Mombasa
KENYA

14. JUJA COFFEE EXPORTERS LIMITED
DAR-ES-SALAAM ROAD - SHIMANZI MOMBASA
P.O. BOX 85039 - 80100
KENYA

15. STANSAND (AFRICA) LIMITED
[illegible] INSURANCE BUILDING [illegible] FLOOR
MOI AVENUE
MOMBASA

16. AGRICULTURE FISHERIES AND FOOD AUTHORITY
[illegible] HOUSE, NAIVASHA ROAD [illegible] NGONG ROAD
NAIROBI

[illegible] EASTERN PRODUCE KENYA LIMITED
2ND FLOOR, NEW RETHEMA HOUSE
[illegible] RD, NAIROBI, KENYA

18. WILLIAMSON TEA KENYA LIMITED
WILLIAMSON HOUSE, 4TH NGONG AVE
NAIROBI, KENYA

9 AFRICA TEA BROKERS LIMITED
NAIROBI OFFICE WAKULIMA HOUSE
NAIROBI, KENYA

20. ANJLI LIMITED
ORIENTAL BUILDING FIRST FLOOR, NKURUMAH RD.
MOMBASA

21 ATLAS TEA BROKERS LIMITED

22 BLOOMSBURY LIMITED
CONSOLIDATED BANK BLDG 2ND FLR, NKURUMAH RD
KILINDINI, MOMBASA

23. CENTRELINE TEA BROKERS LIMITED
TEA TRADE CENTER NYERERE AVENUE
MOMBASA

24 CHOICE TEA BROKERS LIMITED
HARBOUR HOUSE, 4TH FLOOR, MOI AVENUE
MOMBASA, KENYA

25 COMBROK LIMITED
NYERERE AVE, MOMBASA, KENYA

26 PRUDENTIAL TEA BROKERS (EA) LIMITED
OSWAL HSE, 1ST FLR, MOI AVE
MOMBASA

27 TEA BROKERS EAST AFRICA LIMITED
TEA TRADE CENTRE, NYERERE AVE
MOMBASA

28 UNION TEA BROKERS LIMITED
3, ASHARA BANK BUILDING NYERERE AVENUE
MOMBASA

29 VENUS TEA BROKERS LIMITED
MBUYUNI ROAD OFF KAUNDA AVE
MOMBASA.

Jonathan	Bett	447	~~(27235558)~~ 24176129 ~~JZ75~~
SARAH C. NJABAN	Kp	04	~~2064~~ 206472864
William K Mugbi		04	2405876