



REPUBLIC OF KENYA

COUNTY ASSEMBLY OF BOMET

REPORT OF THE COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES ON  
PETITION NO. 5 OF 2018 BY BOMET COUNTY RESIDENT TEA FARMERS WHO  
SUPPLY TEA TO TIRGAGA AND MOTIGO TEA FACTORIES



MAY, 2019

*Trans on 12/6/2019  
at 9:00 AM  
G. M. M.*

## **PREFACE**

### **1.0 Executive Summary**

The committee on Agriculture, Livestock and Fisheries is one of the sectoral committees established under the Standing Orders 193(1) and the Second Schedule to the Standing Orders.

### **1.1 Committee Membership**

The Committee on Agriculture, Livestock and Fisheries as currently constituted comprises of the following Honourable Members:-

- |                              |                    |
|------------------------------|--------------------|
| 1. Hon. Ambrose Koech        | - Chairperson      |
| 2. Hon. Hon. Augustine Koske | - Vice Chairperson |
| 3. Hon. Wesley Bett          | - Member           |
| 4. Hon. Joseph Kellong       | - Member           |
| 5. Hon. Ridha Chepkirui      | - Member           |
| 6. Hon. Samwel Keter         | - Member           |
| 7. Hon. Robert Rono          | - Member           |

### **1.2 Mandate of the Committee**

The Sectoral Committee on Agriculture, Livestock and Fisheries derives its mandate from provisions of Standing order 193(5) which defines functions of the Committee as being:

- 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 program and policy objectives of ministries and departments and the effectiveness of their implementation;
- c) To study and review all legislation referred to it;
- d) To study, assess and analyze the relative success of the ministries and departments 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 may be deemed necessary, and as may be referred to it by the House or a minister;
- f) To vet and report on all appointments where the Constitution or any law requires the County Assembly to approve, except those under Standing Order 187 (Committee on appointments); and
- g) To make reports and recommendations to the County Assembly as often as possible, including recommendations of proposed legislation.

### **1.3 Petition No.5 of 2018 by Bomet County resident tea farmers who supply tea to Tirgaga and Motigo tea factories**

Pursuant to the Standing Orders 193(3) and (4) and the Second Schedule to the Standing Orders all matters relating to agriculture, including crop and animal husbandry, livestock sale yards, county abattoirs, plant and animal disease control and fisheries, animal control and welfare, including licensing of dogs and facilities for the

accommodation, care and burial of animals and veterinary services


(excluding regulation of the profession) fall within the mandate of the committee on Agriculture, Livestock and Fisheries.

The Committee on Agriculture, Livestock and Fisheries formally received the petition No 5 from Mr. Michael Rono on behalf of ten (10) resident tea farmers of Bomet County who supply tea to Tirgaga and Motigo tea factories on 11<sup>th</sup> December 2018.

In dealing with the matter, the committee held 5 sittings (minutes attached). The committee was able to engage the Petitioners, the management and the directors of both Tirgaga and Motigo tea factories.

Upon deliberating in the said sittings and interrogating the documents submitted to it, the committee came up with a report in response to the petition as provided for under the Standing Order 205 (2) of the County Assembly Standing Orders.

It is therefore my pleasant duty and privilege, on behalf of the Committee on Agriculture, Livestock and Fisheries to table this report on the Petition No 5 of 2018.

SIGNED .....  .....

Date .....  .....

**Hon. Ambrose Koech**

**Chairperson, Committee on Agriculture, Livestock and Fisheries**

#### 1.4 OWNERSHIP OF THE REPORT

We, Honourable members of Committee on Agriculture, Livestock and Fisheries do hereby append our signatures to this report to affirm our approval and confirm its accuracy, validity and authenticity:-

No.	Name	Designation	Signature
1.	Hon. Ambrose Koech	Chair	
2.	Hon. Augustine Koske	V/Chair	
3.	Hon. Wesley Bett	Member	
4.	Hon. Joseph Kellong	Member	<del></del>
5.	Hon. Ridha Chepkirui	Member	
6.	Hon. Samwel Keter	Member	
7.	Hon. Robert Rono	Member	

## 2.0 Introduction

### Background

The Committee formally received the petition from Mr. Michael Rono ID N0.25443322 on behalf of ten (10) Bomet County resident tea farmers who supply tea to Tirgaga and Motigo tea factories on 11<sup>th</sup> December 2018. The Petitioners sought to draw the attention of the County Assembly on the following;

- (i) **THAT**, on diverse dates between 10<sup>th</sup> of October 2018 and 20<sup>th</sup> October 2018, Tirgaga and Motigo tea companies wrote letters to each one of them requiring them to appear before the respective Management Committees on 24<sup>th</sup> October 2018 to explain on alleged inconsistencies between their deliveries of green leaf and productivity for the 2017/2018 financial year.
  
- (ii) **THAT**, the factories threatened to withhold their bonuses payment which was due if they failed to appear before the respective Management Committees.
  
- (iii) **THAT**, they did appear before the Management Committees and explained the reasons for the disparity.

- (iv) **THAT**, the reasons for the disparity was that in addition to their personal tea bushes, they lease tea bushes from other farmers who are willing to lease out.
- (v) **THAT**, when they appeared before the said Management Committees, they were forced to give out their fingerprints and sign empty papers.
- (vi) **THAT**, apart from leasing green tea from other farmers, they also get green tea from farmers who sell to them in their farms because of their urgent needs.
- (vii) **THAT**, they also produced lease agreements to prove that they indeed lease tea bushes from other farmers.
- (viii) **THAT**, the factories indicated that they don't recognize their lease agreements and that they only recognize the lease agreements which they issue but which had not made available or known to them before.
- (ix) **THAT**, from 1<sup>st</sup> July 2017 to 30<sup>th</sup> September 2018, the factories have been paying them their monthly payments only for them to withhold their bonuses when they became due.

- (x) **THAT**, even after explaining and proving their position, the said Management Committees did not make a decision.
- (xi) **THAT**, the said factories continued to illegally and un-procedurally continued to withhold their payments to their detriment.
- (xii) **THAT**, up to date their loans in various lending institutions including banks and Savings and Credit Co-operative societies(SACCOs) remain unpaid because of the withheld payments.
- (xiii) **THAT**, the said factories have even continued to withhold their monthly payments since October 2018 without any reason.
- (xiv) **THAT**, despite withholding their bonuses and monthly payments since October 2018, the said factories have continued to collect their green tea and issue them with receipts.
- (xv) **THAT**, their respective membership numbers are still active despite the fact that the factories have blatantly refused to pay them.



- (xvi) **THAT**, if they were at fault then their membership to the said factories would have been terminated and their green tea would not have been accepted.
- (xvii) **THAT**, the factories having failed to make any decision as to the fate of their payments advised them to appear before their tea buying centers committees to make a decision on the same since they know their position better.
- (xviii) **THAT**, they indeed appeared before their respective tea buying centres committees and explained and proved their position.
- (xix) **THAT**, their respective tea buying centers committees recommended that they be paid their withheld payments since they know how they get their green tea.
- (xx) **THAT**, the decisions of their respective tea buying centres committees were communicated to the respective factories.
- (xxi) **THAT**, even after the tea buying centres committees have given them a clean bill of health, the factories did not release their payments.

- (xxii) **THAT**, the factories have told each one of them to write a letter requesting for release of payments.
- (xxiii) **THAT**, the said directive requiring them to write letters was ill intentioned as it will portray them as being at fault.
- (xxiv) **THAT**, other farmers who have been dealing in tea business have been paid their bonuses and monthly dues and that they had been discriminated against.
- (xxv) **THAT**, their names were not mentioned in any audit report and the annual audit which was done did not reveal any disparities between the green tea supplied and that which was sold.
- (xxvi) **THAT**, there was no rationale for withholding their payments but the same was done arbitrarily by the said factories.
- (xxvii) **THAT**, they have continued to suffer as a result of the withheld payments as they can hardly meet their basic needs.
- (xxviii) **THAT**, their loans in various lending institutions continue to accrue penalties and they risk losing their properties.

**(xxix) THAT**, the factories have also terminated the services of some farmers who were employees of the aforementioned factories.

**(xxx) THAT**, they have no other source of livelihood apart from farming.

**(xxxi) THAT**, efforts to have these matters addressed by the relevant authorities have been futile; and;

**(xxxii) THAT**, none of the issues raised in the petition is pending in any Court of law, constitutional or legal body.

### **1. 2.1 Specific Prayers of the Petitioners**

The specific prayers of the Petitioners to the County Assembly were to implore/request the County Assembly;

1. Cause the Management and board of directors of Tirgaga and Motigo tea factories to immediately release all the bonuses and monthly payments due to the petitioners;
2. Cause the Management and board of directors of Tirgaga and Motigo tea factories to pay any penalties that have accrued to the said farmers as a result of non-payment of their loans in various lending institutions as a result of withholding of their payments;

3. Cause the Management and board of directors of Tirgaga and Motigo tea factories to cease from discriminating against them in future dealings with the said factories;
4. Cause the Management and board of directors of Tirgaga and Motigo tea factories not to victimize them for presenting this petition;
5. Make any other direction it deems fit in the circumstance of this matter.

To address the issues raised by the Petitioners, the Committee sat on 11<sup>th</sup> March 2019 and resolved to request the Clerk of the County Assembly to invite the ten petitioners and other respondents to shed more light on the issues raised and assist the committee prepare a comprehensive report;

- i.) The ten Petitioners namely:
  - (a) Gladys Chepngetich ID N0 25507442
  - (b) Michael Rono ID N0 25443322
  - (c) Emma Chepkoech ID N0 30855616
  - (d) Leonard K.Koech ID N0 27622861
  - (e) Emmy Chepkemoi ID N0 23858442
  - (f) Sharon Chepkoech Rono ID N0 26411988
  - (g) Kirui Victor Kipkoech ID N0 29431177
  - (h) Simion Ngetich ID N0 22081244
  - (i) Wesley Korir ID N0 21261405
  - (j) Benard Ronoh ID N0 27701345
- ii.) The Management of Tirgaga and Motigo tea factories

## 2.2 The Legal Framework

### Petitions

The right of citizens to petition public authorities is enshrined in the Constitution, 2010. **Article 37** provides that; ***‘every person has a right, peaceably and unarmed, to assemble, to demonstrate, to picket and to present petitions to public authorities’***

Section 15(1) of the County Governments Act, 2012 makes a provision for citizens' right to petition the County assembly. The said section provides that; ***“A person has a right to petition a county assembly to consider any matter within its authority, including enacting, amending or repealing any of its legislation.”***

The Standing Order 205(1) of the County Assembly Standing Orders provides that every Petition presented or reported pursuant to this Part, shall stand committed to the relevant Sectoral Committee.

**Standing Order 205(2)** further provides that whenever a Petition is committed to a Sectoral Committee, the Committee shall, in not more than sixty calendar days from the time of reading the prayer, respond to the petitioner by way of a report addressed to the petitioner or petitioners and laid on the Table of the County Assembly and no debate on or in relation to the report shall be allowed, but the Speaker May, in exceptional circumstances, allow comments or observations in relation to the Petitions for not more than twenty Minutes.

## 3.0 Submissions

The Petitioners appeared before the Committee on 11<sup>th</sup> March 2019.  
They stated as follows;

- (i) **THAT**, they are farmers who supply green leaf to Tirgaga and Motigo tea factories.
- (ii) **THAT**, they are victims of delayed monthly payments and bonuses by the management of said factories.
- (iii) **THAT**, their accounts were suspended despite daily continued supply of green leaf against the petitioner's tea numbers.
- (iv) **THAT**, they only receive incomplete slips but monies are not credited on their accounts. **(See attached Appendix 1)**
- (v) **THAT**, when they asked the factory management of reasons behind their suspension of accounts, the management alleged that the petitioners were colluding with drivers and factory clerks to fake their kilograms as their acreage could not support the kilograms they recorded.
- (vi) **THAT**, they dispute the management's argument as there were many other farmers who operated the same business as the petitioners but had been paid yet they also had less acreage.

- (vii) THAT**, they do genuine business that involve buying of green leaf from farmers and leasing of tea bushes. They promised to supply the committee; which they did, with genuine copies of lease agreements from which they obtain their green leaf. **(See attached Appendix 2)**
- (viii) THAT**, they were forced to give out fingerprints by the factory management in a locked room within the factory on 24<sup>th</sup> October 2018.They said that this was done to threaten them and silence them.
- (ix) THAT**, they wrote to the management of the respective factories asking to be paid. **(See attached appendix 3)**
- (x) THAT**, they also said that they wrote to the management of the respective factories who asked them to submit minutes of committees of their respective tea buying centers authorizing their payments and the valid sources of their green leaf. **(See attached appendix 4)**
- (xi) THAT**, despite the positive remarks by their respective tea buying centers committees, the payments were yet to be received. They said that they had waited enough for their payments and have decided to resort to seeking assistance from the County Assembly through a petition.

**(xii) THAT**, they have taken loans that they have been unable to service due to delayed payments. They also indicated that as a result of delayed remittance of deductions, most of them have been listed in the Credit Reference Bureau.

**(xiii) THAT**, meeting their daily needs and paying of school fees have been a challenge.

### **SUBMISSIONS/RESPONSE FROM THE MANAGEMENT OF TIRGAGA AND MOTIGO TEA FACTORIES**

The Committee invited the management of Tirgaga and Motigo tea factories to appear before it on 1<sup>st</sup> April 2019. The management on 1<sup>st</sup> April 2019 submitted a letter dated 30<sup>th</sup> March 2019 to the Clerk of the County Assembly. Vide the letter, the management brought to the attention of the County Assembly and by extension the committee on Agriculture, Livestock and Fisheries, the existence of the following court matters;-

- (1) BOMET PMCC CASE NO.7 OF 2019-MICHAEL RONOH VS TIRGAGA TEA FACTORY;
- (2) KERICHO ELRC CASE NO.6 OF 2018-JOHN BII & OTHERS V KAPKOROS TEA FACTORY;
- (3) KERICHO ELRC CASE NO.5 OF 2018-SAMUEL BARNO & OTHERS VS. OLENGURUONE TEA FACTORY;
- (4) KERICHO ELRC CASE NO.8 OF 2018- KORIR KIPLAGAT & 3 OTHERS VS. MOTIGO TEA FACTORY & 3 OTHERS;



(5) KERICHO ELRC CASE NO.1 OF 2019- GILBERT KIPLANGAT KORIR  
VS.MOTIGO TEA FACTORY & KTDA

The management indicated that the above cases are active and are yet to be determined. They went ahead and quoted the provisions of Standing Order 90 of the County Assembly Standing Orders which deals with the *sub judice* rule. Standing order 90 provides, **“Subject to paragraph (5), no Member shall refer to any particular matter which is *sub judice* or which, by the operation of any written law, is secret.**

**(2) A matter shall be considered to be *sub judice* when it refers to active criminal or civil proceedings and the discussion of such matter is likely to prejudice its fair determination.**

**(3) In determining whether a criminal or civil proceeding is active, the following shall apply-**

- (a) Criminal proceedings shall be deemed to be active when a charge has been made or a summons to appear has been issued;**
- (b) Criminal proceedings shall be deemed to have ceased to be active when they are concluded by verdict and sentence or discontinuance;**
- (c) Civil proceedings shall be deemed to be active when arrangements for hearing, such as setting down a case for trial, have been made, until the proceedings are ended by judgment or discontinuance;**
- (d) appellate proceedings whether criminal or civil shall be deemed to be active from the time when they are**

**commenced by application for leave to appeal or by notice of appeal until the proceedings are ended by judgment or discontinuance.**

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

Therefore, according to them, the issues raised in the petition should be stood over indefinitely so as to avert any prejudice being occasioned.

## **5.0 Recommendations**

Having considered all the submissions from the Petitioners and the Management of both Tirgaga and Motigo tea factories, the Committee made the following recommendations;

- (a) THAT,** prayer 1, 2 and 3 of the petition can't be granted since the prayers requested are currently being addressed in BOMET PMCC CASE NO.7 OF 2019- MICHAEL RONOH VS TIRGAGA TEA FACTORY. Granting the prayers would therefore be sub judicial as stated in Standing order 90 of the County Assembly Standing orders. The prayers so requested will be adequately addressed in the quoted court matters.
- (b) THAT,** the Management and board of directors of Tirgaga and Motigo tea factories should not to victimize the petitioners for presenting this petition because this is their right under Article 37 of the Constitution of Kenya

which provides, "**Every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities.**"

**(c) THAT**, this Committee can't grant any other prayer.