



MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES & COOPERATIVES

STATEMENT BY CABINET SECRETARY FOR AGRICULTURE, LIVESTOCK, FISHERIES & COOPERATIVES ON TEA REFORMS

KTDA (MS) Ltd has three goals: exploit small-holder tea farmers, remain opaque and be unaccountable

The Position Statement published by the Kenya Tea Development Agency (Management Services) Ltd in the East African Standard of Monday, March 22, 2021 is a mélange of misrepresentations and half-truths. The correct position is as follows:

- 1. There is no court order stopping individual factory companies from holding elections of directors:** It is KTDA (Management Services) Ltd and other persons acting on the company's instructions that are restrained from holding elections not factory companies. The court order in Constitutional Petition Number 87 of 2020 makes clear that it is the interested party, namely, the Kenya Tea Development Agency (Management Services) Ltd, their agents and nominees or "any other person" acting pursuant to the "shareholders notification issued by Kenya Tea Development Agency (Management Services) Ltd" who are restrained, in the words of the court, from "conducting any directors' nominations and elections". None of the 69 Factory companies - which are independent companies under the Companies Act - were parties to the collusive litigation between KTDA and the East Africa Tea Traders Association in which this order was made. Nor were the individual factories restrained by the court from initiating their own individual elections of directors without the supervision of KTDA (Management Services) Ltd.
- 2. The government's role in these elections is advisory and facilitative:** Government's protective and regulatory function - in other jurisdictions called the police power - covers all persons - artificial and natural. In that role, it can provide counsel, information and protection to all factory companies that want to hold elections. Once KTDA (Management Services) Ltd was restrained by the court from conducting the factory company elections, it became the duty of the shareholders of individual factory companies to ensure that elections are held. If they fail to hold elections, they risk extremely heavy penalties under the Companies Act. His Excellency the President, Mr. Uhuru Kenyatta and the Ministry of Agriculture have provided advice as well as support - through provision of security - for these factories to conduct elections to ensure that factory companies are compliant with the law.
- 3. It is KTDA (Management Services) Ltd that has persistently been in blatant breach of the Companies Act and that regularly defies the Courts:** KTDA (MS) Ltd routinely disobeys court orders; it has imposed its company secretary on all individual factory companies; it has signed private contracts with these companies that fly in the face of explicit provisions of the Companies Act and its officials are caught up in tangled webs of potentially corrupt, private conflicts of interest that permanently ensure that farmers welfare is never considered.
- 4. Due to breaches that have been partly caused by KTDA Management Services misconduct, only two out of six directors of every factory company in Kenya are in office validly:** As of now, only two directors out of six in every factory company is in office validly. Factory company directors serve on a rotational basis. Directors are nominated and then appointed in an annual general meeting. In the absence of AGMs last year, the four directors that were nominated and should have been appointed by the AGMs were in fact not appointed. It is not desirable nor acceptable that factory companies should continue to operate with directors who are not validly in office.
- 5. The Companies Act is subject to the stipulations and the basic rights guaranteed by the Constitution:** Contrary to the assertions of the KTDA (MS) Ltd, the supreme law governing all persons in Kenya - natural as well as artificial - is not the Companies Act. It is the Constitution. KTDA

(Management Services) shields behind the Companies Act to exploit and oppress the farmers; all the while treating their earnings as if they are income for KTDA and its subsidiary companies. The farmers are the owners of their tea under the Constitution; their economic rights are protected under the Constitution and the Constitution imposes a duty on the government to see to it that these rights are not violated by any person, natural or artificial.

- 6. The Government has called for no Factory Companies' Elections:** The Ministry of Agriculture has not called - and lacks the power to call - for elections for any Factory Companies. That is the duty and right of the shareholders. What the government has a duty to do is to (a) remind companies of their duty to comply with the requirements of the Companies Act as to elections; (b) provide security for the conduct of elections as the shareholders wish and (c) take regulatory action against any person, natural or artificial, that attempts to stop shareholders from exercising their constitutional as well as corporate rights. The schedule advertised by the Ministry - which is organized region by region - merely provides guidance about which days the government would most conveniently be able to provide full support - including security - to factory companies that wish to hold elections.
- 7. The time for holding elections and thus ensure compliance with the Companies Act is running out:** In December 2020, the Registrar of Companies, at the request of KTDA (MS) Ltd, extended by six months the time within which the already delayed factory companies' elections were to be held. Four months have since lapsed and at the end of the extended period, factories that have not held elections will be non-compliant and potentially subject to serious penalties under the law. Given the fact that KTDA (MS) Ltd is restrained from running these elections whatsoever, the government has a duty to advise factory companies of the urgent need to hold those elections before the penalties kick in.
- 8. The litigation KTDA (MS) Ltd refers to in the position statement is a good example of continuing mismanagement of the Tea Sector by the company:** There are multiple lawsuits filed in courts up and down the country by KTDA. All are against one or more aspects of reforms that were meant to put more money in farmers' pockets. All the lawsuits are being conducted by some of Kenya's most litigious and expensive lawyers and law firms. All these lawsuits are being funded from smallholder tea farmers' earnings during a period in which total Green leaf payment by KTDA Management Services to the tea growers has been on a downward spiral. The total payout to the growers declined from Kshs 58.76 per kg of Greenleaf in 2016/17 to Kshs 52.83 in 2017/18 to Kshs 41.27 in 2018/19 and Kshs 36.64 in 2019/20. Like the Wall Street fat cats who paid themselves generous bonuses when the 2008 financial crisis was impoverishing borrowers, KTDA MS Ltd has been on a binge to enrich lawyers even as farmers fall below the poverty line.

Given the above, it is clear that the goals of KTDA MS Ltd in its wasteful campaign against the government are clear: avoid scrutiny; frustrate accountability to farmers; keep its expensive lawyers happy; block reforms and all so as to keep its opaque operations from disclosure.

The government will not allow that to remain the case.

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