**Republic ex parte Thuo and another v The Principal Magistrate’s Court at**

**Githunguri and another**

**Division:** High Court of Kenya at Nairobi

**Date of judgment:** 8 July 2005

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**Case Number:** 491/04

**Before:** Nyamu J

**Sourced by:** LawAfrica

*[1] Tea –The law governing tea in Kenya – Whether a permit is necessary to transport tea – Whether*

*there is any offence as transporting tea without a permit.*

**Editor’s Summary**

The applicants, who were tea growers in Githunguri, Kiambu District, were charged with the offences of transporting tea contrary to section 13A 1(*b*) of the Tea Act (Chapter 343) Laws of Kenya as read with section 16(*b*) of the Tea Amendment Act of 1999. The applicants commenced proceedings seeking orders of prohibition against the Attorney-General and the Kenyan police by prohibiting them from preferring any charge against or prosecuting the applicants in the matters before the lower court. They further sought to prohibit the magistrate at Githunguri from hearing, continuing to hear or determining the cases against the applicants. The applicants’ contention was that they were registered growers with Karirana Tea Factory and that the complaints levelled against them were made by a rival factory called Kambaa Tea Factory and, therefore, the police were being used to harass them so that they could instead register with Kambaa Tea Factory. The respondents, on the other hand, claimed that the applicants had been charged with offences known to law and that a permit was required in each of the applicant’s cases and the applicants had been arrested after failing to produce the permits.

**Held** – The Tea Act (Chapter 343) was amended in 1999 by the Tea (Amendment) Act number 6 of 1999. Following the deletion of section 13A b(ii) by the Tea (Amendment) Act 1999, the regulations that had been alluded to in subparagraph b(ii) of section 13A must have been impliedly repealed since regulations must have as their basis a provision in the parent act and cannot exist on their own. The requirement of a permit to transport tea were impliedly repealed by the Tea (Amendment) Act of 1999 and a breach of such requirement cannot constitute an offence not defined under the parent act. It is a cardinal principle of the rule of law that a person can only be charged with breaches of law in ordinary courts or with nothing else.

Application allowed.

**No cases referred to in judgment**