



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**  
**JUDICIAL REVIEW APPLICATION NO. 4 OF 2014**  
**REPUBLIC.....APPLICANT**  
**VERSUS**  
**COFFEE BOARD OF KENYA.....1<sup>ST</sup> RESPONDENT**  
**COUNTY GOVERNMENT OF NYERI....2<sup>ND</sup> RESPONDENT**  
*ex parte*  
**MUTHEKA FARMERS CO-OPERATIVE SOCIETY LIMITED**  
**JUDGMENT**

This is a judgment on a notice of motion dated 10<sup>th</sup> February, 2014 in which the applicant has sought judicial review orders for first, mandamus, directing the 1<sup>st</sup> respondent to issue coffee movement permits to the *ex parte* applicant, second, an order of prohibition prohibiting the County Government of Nyeri from compelling the *ex parte* applicant to mill or market its coffee through Sagana Coffee Mills or any other miller or marketer and third, an order of certiorari to remove and bring into this court for purposes of quashing circular No.1 of 2013 issued by the 2<sup>nd</sup> respondent.

The motion is brought to court under **Order 53 Rules 1(1), (2), (3) and (4)** of the **Civil Procedure Rules** and is supported by the verifying affidavit of Harrison Hunyu Githae who has described himself as the chairman of Mutheka Farmers Co-operative Society, the *ex parte* applicant.

At the heart of the dispute between the applicant and the 2<sup>nd</sup> respondent is a circular by the latter dated 30<sup>th</sup> October, 2013 and which is described on its face as “**Circular No. 1/2013**”. The circular was addressed to the County Commissioner, the County Director of Agriculture, the County Commissioner of Co-operatives, the County Manager of the Coffee Board of Kenya, Coffee Co-operative Societies and the Coffee pulping stations or factories. In the circular, the County Government of Nyeri, through its County Executive Office for Agriculture, Livestock Development and Fisheries brought to the attention of its addressees the recommendations by a task force apparently initiated by the County Government of Nyeri to “*analyse and articulate the challenges in the coffee sector and advice (sic) the County Government on the way forward.*”

Amongst a raft of recommendations by the task force was the recommendation that in future coffee produced in the county of Nyeri shall be milled at Sagana Coffee Mills. The task force also recommended that, going forward, all coffee movement licences would be issued by the regulator through the County

Government of Nyeri. The County Government directed all the offices to which this circular had been addressed to co-operate and ensure that these recommendations were complied with forthwith.

The applicant is aggrieved by this circular mainly because, in its view, the circular purports to restrict its member's freedom of contract and association as enshrined in the constitution to extent that it tends to restrict the applicant's members to sell their produce to a particular buyer.

As I understand the applicant, the recommendations sought to be implemented by the County Government have, apart from limiting the applicant's members' contractual and constitutional rights, disregarded the pre-existing contractual and other financial obligations the applicants owe third parties.

It is the applicant's argument that the 1<sup>st</sup> respondent's circular is not only dictatorial, oppressive, capricious and unreasonable but it also contravenes **article 47** of the **Constitution** that enjoins every person, including the County Government of Nyeri, to have regard to the constitutional right to fair administrative action in all its dealings.

The 1<sup>st</sup> respondent appears to agree with the applicant and supports the quashing of the impugned circular. In a replying affidavit sworn by Frank Welikhe who is the 1<sup>st</sup> respondent's legal officer, the 1<sup>st</sup> respondent contended that the 2<sup>nd</sup> respondent has, so far, not legislated or developed any regulations under **part 2** of the **4<sup>th</sup> Schedule** to the Constitution that would otherwise have displaced the **Coffee Act (2001)** and therefore this particular Act is still in force.

According to the 1<sup>st</sup> respondent, **section 17(b)** of the **Coffee Act** as read with **rule 14** of the **Coffee (General Amendment) Rules 2006** mandates it to issue coffee movement permits. Apart from issue of coffee movement permits, the Act and the rules made thereunder allow the coffee growers such as the applicants' members and coffee millers to enter into tripartite contracts to which they are legally bound and whose breach will obviously attract legal sanctions.

The 1<sup>st</sup> respondent's case is that the circular in question infringes **section 21** of the **Competition Act No. 12 of 2010**.

The 1<sup>st</sup> respondent has also deposed that there are two types of coffee marketing agents in Kenya; the first type comprises commercial marketing agents who offer their services purely for commercial purposes. The second type constitutes the coffee growers or producers who market their own produce themselves. According to the 1<sup>st</sup> respondent the second respondent does not fall into any of the two categories and therefore has no role whatsoever in the marketing of the coffee.

If anything, so the 1<sup>st</sup> respondent has deposed, marketing of coffee in Kenya has been liberalised and through **Sessional Paper No. 2 of 11<sup>th</sup> November, 2001** and the amendments to the **Coffee Act**, the government's participation in business activities such as marketing of coffee has been restricted. It is the 1<sup>st</sup> respondent's position that the 2<sup>nd</sup> respondent's circular is contrary to the spirit of the sessional paper and the **Coffee Act**.

On its part the 2<sup>nd</sup> respondent through its County Secretary swore a replying affidavit opposing the applicant's motion for judicial review orders. In the affidavit which was filed in court on 4<sup>th</sup> March, 2015 the 2<sup>nd</sup> respondent denied the existence of any resolution by the applicants' members under **section 27(1)** and **section 28(3) (b)** of the **Co-operative Societies Act, (Cap. 490)**; further, this respondent has contested Harrison Githae Hunyu's representation of the applicant since there is also no resolution authorising him to institute the proceedings herein.

According to the 2<sup>nd</sup> respondent, the application is contrary to **article 186 (1)** of the Constitution and **section 1(a)** of **part 2** to the **4<sup>th</sup> Schedule** to Constitution which confer the County Government with the functions of agriculture including crop husbandry.

The 2<sup>nd</sup> respondent also deposed that Harrison Githae Hunyu who has sworn the applicant's verifying affidavit in support of the motion in issue was a member of the task force that came up with the resolution which the County Government of Nyeri is now implementing through **Circular No. 1 of 2013**. The said Harrison Githae Hunyu was co-opted into membership of this task force as a representative of the applicant, so the respondent has deposed.

According to the 2<sup>nd</sup> respondent's if the applicant's members are allowed to deliver their coffee to any other miller other than to Sagana Coffee Mills, the 2<sup>nd</sup> respondent would be "*prejudiced and that this will cause disharmony to the arrangements already in place with Co-operative Bank of Kenya*".

The 2<sup>nd</sup> respondent also swore that under **Legal Notice No. 181** of 9<sup>th</sup> August, 2013 all the functions relating to agriculture and co-operative societies were transferred to the County Government of Nyeri with effect from 9<sup>th</sup> August, 2013 and that under **section 3(3)** of the **Agriculture, Fisheries and Food Authority Act No. 13 of 2013** as read with legal notice no. 4 of 17<sup>th</sup> January, 2014 the 1<sup>st</sup> respondent does not exist; the latter, according to the 2<sup>nd</sup> respondent, was succeeded by the Agriculture, Fisheries and Food Authority.

The 2<sup>nd</sup> respondent exhibited to his affidavit a copy of a press statement in the print media in which coffee societies are said to have agreed to have their coffee milled at Sagana Coffee Mills and their outstanding loans through the Ministry of Agriculture. It is the 2<sup>nd</sup> respondent's position that any agreement which the applicant or its members may have entered into prior to the issuance of the circular in issue cannot stop the 2<sup>nd</sup> respondent from discharging its constitutional mandate and in any event all the loans advanced by marketers and millers were paid on 29<sup>th</sup> September, 2014 following an agreement made on 24<sup>th</sup> March, 2014.

The 2<sup>nd</sup> respondent also attached to its affidavit a copy of a press statement issued on 24<sup>th</sup> March, 2013 in which coffee millers in Nyeri County are said to have conceded that coffee producers are free to sell their produce to any miller.

Parties agreed to have the motion disposed of by way of written submissions; however, only the applicant and the 1<sup>st</sup> respondent filed theirs. None was filed for the 2<sup>nd</sup> respondent and its representative was not in court on 12<sup>th</sup> May, 2015 when the matter was scheduled for highlighting of the submissions if at all it was necessary.

In their respective submissions, both the applicant and the 1<sup>st</sup> respondent reiterated their contentions in their respective pleadings and affidavits filed in support of their positions in respect to the motion herein.

On its part the *ex parte* applicant emphasised that its management had appointed Central Coffee Mills and Coffee Management Services as marketers and millers for its members in particular, Chorong'i, Kaiguri, Kamuyu, Kiandu, Kigwandi and Kihuyo Coffee factories. N.K.G and Tropical Farm Management were appointed as millers and marketers for Muthuaini Factory which, apparently, is also a member of the applicant society. The arrangement between the coffee producers, millers and marketers were formalised through valid agreements executed between the contracting parties.

The applicant submitted that Kenya is a liberal economy and the freedom to contract underpins not only the applicable law of contract but the freedom to associate which would include the freedom to contract is also a constitutional right expressly provided for under **article 36(1) and (2)** of the **Constitution**. To this end the County Government's action to restrict coffee producers to mill or market their produce through a particular miller or marketer that is not of the farmer's choice is an infringement on this right, their economic rights and their right to property.

It is the applicant's case that under Part 3 and section 8 of the Agriculture, Fisheries and Food Authority Act, 2013, the issuance of the Coffee movement permits remains the 1<sup>st</sup> respondent's reserve. The

applicant has urged that the only responsibility for the 2<sup>nd</sup> respondent under section 6 of the Act is limited to the issuance of coffee nursery certificates and pulping station licences only and to the extent that the 2<sup>nd</sup> respondent has purported to control issuance of coffee movement permits, the 2<sup>nd</sup> respondent's action is dictatorial, oppressive, capricious and unreasonable and is therefore subject to judicial review under **article 47** of the **Constitution**.

The applicant also submitted that under **section 8** of the **Agriculture, Fisheries and Food Authority Act, 2013**, an applicant for a coffee movement permit can only be denied that permit if the applicant is not "a licensed person". It is its case that it is a registered cooperative society with licenced coffee pulping stations; it has a grower's code issued by the 1<sup>st</sup> respondent and that it has always been issued with coffee movement permits.

The written submissions filed on behalf of the 1<sup>st</sup> respondent on 12<sup>th</sup> May, 2015, refer to the applicant's application seeking leave to file the substantive motion for judicial review orders and they are not in respect of the substantive motion itself. I have observed, however, that the submissions go to the merits of the orders sought in the substantive motion and for this reason I will refer to them to the extent that they are relevant to the resolution of the motion at hand.

On whether the 1<sup>st</sup> respondent still retains the mandate to issue coffee movement permits, it was submitted on its behalf that under **section 17 of the Coffee Act, 2001**, it is only the 1<sup>st</sup> respondent that can issue a coffee movement permit; however, counsel for the 1<sup>st</sup> respondent urged that under **section 3(3)** of the **Agriculture Fisheries and Food Authority Act, 2013**, the 1<sup>st</sup> respondent is now "a defunct body" and pursuant to **Legal Notice No. 4 of 17<sup>th</sup> January, 2014**, the 1<sup>st</sup> respondent was replaced with the Agriculture, Fisheries and Food Authority. According to this legislation, so it was submitted, the 1<sup>st</sup> respondent is only a directorate under the Authority.

It was also submitted on behalf of the 1<sup>st</sup> respondent that under the Coffee Rules, producers enter, and have in fact entered into tripartite agreements to which they are bound and from which they cannot unilaterally walk away without exposing themselves to the danger of damages for breach of contract. The agreements are made, so it was submitted, in the spirit of **article 36(1)** of the **Constitution** and that the coffee producers have a right to choose who to deal with in the disposal of their produce depending on their particular interests. The 1<sup>st</sup> respondent argued that in any event, Sagana Coffee Mills to which the coffee farmers in Nyeri County have been forced to deliver their coffee is in Kirinyaga County and there is no reason why they cannot be allowed to continue delivering their coffee to millers within Nyeri County as they have hitherto done.

The major question for determination in the applicant's motion is the validity or lack thereof of the circular issued by the 2<sup>nd</sup> respondent restricting the *ex parte* applicants' members' dealings with their own produce. In answering this question, I have observed that besides the Constitution, there are two other pieces of legislation that are at the core of the dispute between the parties and whose provisions would, in my view, shed some light on whether the circular in dispute is legally sustainable; these laws are the **Coffee Act, 2001** and the **Agriculture, Fisheries and Food Authority Act, 2013**. It is apt at this point to consider the various provisions in these laws that are germane to the question at hand.

The **Coffee Act, No. 9 of 2001** established the 1<sup>st</sup> respondent as a body corporate with perpetual succession under **section 3(1)** and **(2)** thereof. Amongst the functions for which the 1<sup>st</sup> respondent was established was to regulate the coffee industry in the public interest and in particular to, *inter alia* "carry out registration of and regulate the operations of growers, pulping stations, millers, marketing agents, management agents, buyers, roasters, packers, warehousemen, coffee nurseries and auctioneers;" and, "license pulping stations, millers, exporters, coffee nursery owners, marketing agents, dealers, buyers, roasters and packers, warehousemen and auctioneers." (See **section 7 (1) (b) and (c) of the Act**).

Under **section 17 (1) (b)** of the **Coffee Act** no person can buy, sell, mill, warehouse, export or otherwise deal in or transact any business in coffee unless he holds a licence issued by the Board for that purpose.

Neither can any person transport or have in his possession any coffee unless he is so licensed by the Board which in this case is the 1<sup>st</sup> respondent.

It would appear that according to the provisions of the **Coffee Act, 2001** the regulation of almost all the operations involving coffee production, transport, milling and sale is the function of the 1<sup>st</sup> Respondent. But that was the position until the 17<sup>th</sup> January, 2014 when the **Agriculture, Fisheries and Food Authority Act, 2013** came into force. Under this later Act the functions of the 1<sup>st</sup> respondent were taken over by the **Agriculture, Fisheries and Food Authority**.

Just like the 1<sup>st</sup> respondent before it, the Agriculture, Fisheries and Food Authority is a body corporate with perpetual succession and established as such under **section 3 (1) and (2)** of the **Agriculture, Fisheries and Food Authority Act, 2013**. Amongst the functions for which the Authority is established are to;

*“promote best practices in, and regulate, the production, processing, marketing, grading, storage, collection, transportation and warehousing of agricultural and aquatic products excluding livestock products as may be provided for under the Crops Act, and the Fisheries Act.” (See section 4 (b) of the Act).*

With the emergence of the **Agriculture, Fisheries and Food Authority** the 1<sup>st</sup> respondent became moribund or as its counsel submitted it became “a defunct body”. Indeed under clause 1 of the First Schedule to the Agriculture, Fisheries and Food Authority Act, 2013, the 1<sup>st</sup> respondent is described as a “former institution” which is defined under that clause to mean:-

*“any institution established by a repealed Act, or a revoked legal notice, existing immediately before the appointed day and includes—*

*(i) the Coconut Development Authority;*

*(ii) the Kenya Sugar Board;*

*(iii) the Tea Board of Kenya;*

*(iv) the Coffee Board of Kenya;*

*(v) the Horticultural Crops Development Authority;*

*(vi) the Pyrethrum Board of Kenya;*

*(vii) the Cotton Development Authority;*

*(viii) the Sisal Board of Kenya;*

*(ix) the Pests Control Products Board;*

*(x) the Kenya Plant Health Inspectorate Service”*

The repealed Acts are expressed in **section 45** of the Act to be the **Agriculture Act (Cap. 318)**, the **Suppression of Noxious Weeds Act (Cap. 325)** and the **Grass Fires Act (Cap. 327)**. It is obvious that though the Coffee Act, 2001 under which the 1<sup>st</sup> respondent was established is not amongst the repealed Acts the 1<sup>st</sup> respondent is listed as amongst those institutions said to have been established either by “**a repealed Act, or a revoked legal notice, existing immediately before the appointed day**”. The appointed day here does not refer to anything else other than to the 17<sup>th</sup> January, 2014 when the Agriculture, Fisheries and Food Authority Act, 2013 came into force.

It is not clear whether the inclusion of the 1<sup>st</sup> respondent amongst the institutions established by a repealed Act or a revoked legal notice was an error on the part of the draftsman since it has not been stated either expressly or impliedly that the Coffee Act which established the 1<sup>st</sup> respondent is among the repealed Acts. For purposes of determination of this motion, I will assume that the 1<sup>st</sup> respondent is a “former institution” and does not exist in its original form as it did before the emergence of the **Agriculture, Fisheries and Food Authority Act, 2013**.

This then takes us to **clause 5 (a)** in the **First Schedule** to the Act which appears to suggest that if the Coffee Act, 2001 is still in force, and based on the material before me, there is no evidence to suggest the contrary, then any reference in that Act or any other written law to the 1<sup>st</sup> respondent is deemed to be reference to the Agriculture, Fisheries and Food Authority if at all the reference relates to the regulatory functions of the 1<sup>st</sup> respondent. For clarity, it is necessary to reproduce the clause here; it says:-

#### **5. Reference to former institution**

*Any reference in any written law or in any document or instrument to a former institution shall, on and after the appointed day, be construed to be a reference to—*

*(a) the Authority, if the reference relates to the regulatory functions of the former institution;*

*(b) ...*

Going by this provision, it is logical to conclude that the functions that were initially bestowed upon the 1<sup>st</sup> respondent under section 3(1) and (2) and section 17(1) (b) and (c) of the Coffee Act, 2001 which functions include the regulation of the operations of the coffee growers, the transportation, milling and marketing of coffee have now been assumed by the Agriculture, Fisheries and Food Authority and were so assumed at all times material to this motion.

The question that then follows is this, is there any role for the 2<sup>nd</sup> respondent in this scheme of things? And if such a role exists, what form does it take? Would the issue of circulars such as the circular in contention restricting coffee producers to deal with their produce in a particular manner be deemed to be one of the functions of the County Government?

The **Agriculture, Fisheries and Food Authority Act, 2013** itself provides some hint to these questions; under **Part VI** of the Act and section 29 thereof the responsibility of the County Governments in agricultural matters is spelt out; it says:-

#### **PART VI – RESPONSIBILITY OF COUNTY GOVERNMENTS**

##### **29. Respective roles of national and county governments**

*(1) Each county government shall within its area of jurisdiction be responsible, for agricultural matters in accordance with Part 2 of Fourth Schedule to the Constitution.*

*(2) The national government shall, in accordance with Part 1 of section 29 of the Fourth Schedule to the Constitution, be responsible for agricultural policy and for assisting the county governments on agricultural matters.*

*(3) Each county government shall, for purposes of ensuring uniformity and national standards in the agricultural sector, through its legislation and administrative action, implement and act in accordance with the national policy guidelines issued by the Cabinet Secretary on the advice of the authority under this Act.*

*(4) Any action required under this Act to be done by the county government shall be deemed to have been done if done by an officer of the county government authorised by that government*

*in that behalf.*

The salient features of this provision with respect to the County Government's role in the agricultural sector within its jurisdiction are, *inter alia*; that it is generally responsible for agricultural matters in its county as spelt out in Part 2 of the 4<sup>th</sup> Schedule to the Constitution and that in executing its responsibilities, the County Government shall "**implement and act in accordance with the national policy guidelines issued by the Cabinet Secretary on the advice of the authority**" through legislation and administrative action.

It is appropriate at this point to consider the 4<sup>th</sup> Schedule to the Constitution and its import on the distribution of functions between the National Government and the County Government.

The distribution of functions between the National Government and the County Government is provided for under **article 186 (1)** of the **Constitution** which provides the legal basis for the 4<sup>th</sup> Schedule; that constitutional provision states:-

### **PART 3 – FUNCTIONS AND POWERS OF COUNTY GOVERNMENTS**

#### **186. Respective functions and powers of national and county governments**

**(1) Except as otherwise provided by this Constitution, the functions and powers of the national government and the county governments, respectively, are as set out in the Fourth Schedule.**

**Part 2** of the **Fourth Schedule** to the Constitution referred to in **article 186(1)** specifies the functions and powers of the County Governments; it says, *inter alia*:-

### **PART 2 – COUNTY GOVERNMENTS**

*The functions and powers of the county are—*

#### **1. Agriculture, including—**

- (a) crop and animal husbandry;**
- (b) livestock sale yards;**
- (c) county abattoirs;**
- (d) plant and animal disease control; and**
- (e) fisheries.**

**Article 187 (2) (b)** of the **Constitution** is clear that it is the constitutional responsibility of either level of government to execute the functions with which it has been assigned under **Part 2** of the **Fourth Schedule** and under **article 187(2) (a)** the government which has been assigned any task is assured of facilities or resources necessary in the execution of that particular task or function. The article provides that:-

#### **187. Transfer of functions and powers between levels of government**

**(1) ...**

**(a) ...**

(b) ...

**(2) If a function or power is transferred from a government at one level to a government at the other level—**

**(a) arrangements shall be put in place to ensure that the resources necessary for the performance of the function or exercise of the power are transferred; and**

**(b) constitutional responsibility for the performance of the function or exercise of the power shall remain with the government to which it is assigned by the Fourth Schedule.**

To help a County Government execute its functions and exercise powers conferred upon it under the Fourth Schedule is the County Assembly which is constitutionally vested with the requisite legislative authority to enact the necessary instruments in which the execution of the County Government's functions and exercise of its powers would be anchored. That the County Government's legislative authority is given to its County Assembly, is clear from **article 185** of the Constitution which states:-

### **185. Legislative authority of county assemblies**

**(1) The legislative authority of a county is vested in, and exercised by, its county assembly.**

**(2) A county assembly may make any laws that are necessary for, or incidental to, the effective performance of the functions and exercise of the powers of the county government under the Fourth Schedule.**

It is clear from this provision that a legislative instrument is necessary for effective performance of the functions bestowed upon a county Government and also for the exercise of powers conferred upon it under the **Fourth Schedule** to the **Constitution**.

Having considered the pertinent statutory and constitutional provisions we come back to the core question: where does the 2<sup>nd</sup> respondent's **Circular No. 1 of 2013** lie in the midst of this legal framework?

First there is no doubt that agriculture which, under **section 1 (a) of Part 2** of the **Fourth Schedule** has been defined to include crop and animal husbandry is a function delegated to the County Government. As a crop, coffee would ordinarily be amongst the crops whose husbandry will be regulated by the County Government. It is not so express from **Part 2** of the **Fourth Schedule** that the sale of or trade in agricultural produce would fall under the control of the County Government but the fact that the function of "agriculture" has been described to include crop husbandry merely as one of the functions assigned to the County Government does not exclude that possibility.

Since the Constitution limits itself to the legal framework leaving the finer details to the legislative authorities, it is legitimate to expect that the County Assembly which is the legislative arm of the County Government would legislate or enact the relevant law that would spell out the extent and the manner of the County Government's intervention in executing its function in crop and animal husbandry. I understand this to be the rationale behind **article 185 (2)** of the **Constitution** which mandates the County Assembly to, among other things, enact any laws that are necessary for or incidental to, the effective County Government's performance of its agricultural functions.

The need for such a legislative instrument cannot be overemphasised particularly in such a case as this where the rights of those who are affected by execution of the particular functions or exercise of the appurtenant powers thereto are impacted, one way or the other. It is an instrument that in the words of **article 185(2)** of the Constitution "**is necessary for, or incidental to, the effective performance of the functions and exercise of the powers of the county government**" and in this particular instance, the performance of functions and exercise of powers with regard to regulating of agricultural activities within the Nyeri County.

In my humble view, recommendations by a task force appointed by a County Government cannot be a substitute for a legislative instrument contemplated under article **185(2)**; they are nothing more than the County Government's wishful thinking which, in law, is inconsequential.

Without appearing to educate the County Government on the constitutional functions of its County Assembly, the so called recommendations which it is seeking to enforce, should in the least, have been subjected to the wider public scrutiny through public participation which is one of the acknowledged national values and principles of governance under **article 10 (a)** of the **Constitution** and subsequently to the legislative assembly for debate and ultimate enactment into law.

The reason why this process was necessary is easy to see; the vast majority of the people affected by the impugned circular are coffee producers whose rights and obligations towards third parties are directly affected if the circular has to be implemented. It has been sworn on behalf of the applicant and it is not denied that prior to the issue of the circular in question, coffee producers had entered into legally binding agreements of colossal sums with other coffee millers and marketers. With such pre-existing rights and obligations, they are entitled to a hearing and it must be demonstrated that they have been accorded the opportunity to air their opinion on any action or course of direction that the County Government intends to take and which is likely to affect not only their prior rights and obligations but also the rights and obligations of those third parties they have contracted with. I cannot see any better process through which the County Government of Nyeri would effectively perform its functions and exercise its powers in this regard than through a legislative process expressly provided for under **article 185(2)** of the Constitution; neither can I think of any other means through which concerns raised by the applicant's members or any other interested party would have been addressed otherwise through the contemplated legislative process.

I would conclude that it was out of order for the County Government of Nyeri to overlook **article 185(2)** of the **Constitution** and effectively substitute its legislative arm with a task force whose recommendations are, for all intents and purposes, deficient in law. It follows that the County Government's **Circular No.1 of 2013** which seeks to enforce these recommendations stands on the wrong side of the law, in my humble view.

In the ultimate I am satisfied that the applicant's application for judicial review orders of certiorari and prohibition is merited. I hereby bring into this court and quash **Circular No. 1/2013** dated 30<sup>th</sup> October, 2013 and issued by the County Government of Nyeri through the office of its County Executive for Agriculture, Livestock Development and Fisheries. I also issue an order of prohibition prohibiting the 2<sup>nd</sup> respondent from compelling the applicant to mill or market its coffee through Sagana Coffee Mills or any other miller or marketer that is not of the applicant's choice or in any other way unlawfully interfering with the milling and marketing of coffee by the applicant.

The application for grant of mandatory injunction against the 1<sup>st</sup> respondent is rejected for the simple reason coffee movement permits are issued or renewed every year upon application by any party. The permit in issue was for the year 2014 which is now past. An order compelling the 1<sup>st</sup> respondent to issue the coffee movement permit or licence would be in vain. In any event, with the enactment of the **Agriculture, Fisheries and Food Authority Act, 2013** the 1<sup>st</sup> respondent is now categorised as a "former institution" whose regulatory functions have been assigned to the **Agriculture, Fisheries and Food Authority**.

The costs of the suit will go to the applicant; they will be borne by the 2<sup>nd</sup> respondent only.

It is so ordered.

**Signed, dated and delivered in open court this 23<sup>rd</sup> October, 2015**

Ngaah Jairus

**JUDGE**