



IN THE HIGH COURT AT NAIROBI

MILIMANI LAW COURTS

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 374 OF 2013

BETWEEN

NYAMBENE MIRAA TRADERS ASSOCIATION (NYAMITA)

Suing through its Chairman namely

LEANDRO NGALU BAARIU1ST PETITIONER

JAPHETH MURIIRA MUROKO 2ND PETITIONER

KITHELA NKAIBUA MWEBO 3RD PETITIONER

AND

NATIONAL AGENCY FOR THE CAMPAIGN

AGAINST DRUG ABUSE (NACADA) 1ST RESPONDENT

ATTORNEY GENERAL2ND RESPONDENT

AND

WAJIR SOUTH PROFESSIONAL FORUM

(SUING THROUGH THEIR SECRETARY GENERAL

IBRAHIM HANSHI 1ST INTERESTED PARTY

JUDGMENT

1. The petitioners are suing on behalf of an association of *miraa* traders and farmers from the Nyambene region of Meru County. They have brought the petition dated 17th July 2013 seeking the following reliefs;

- a. A declaration be and is hereby issued declaring the respondents' action of purporting to declare and classifying *Miraa* as a narcotic drug without proper research support and involvement of the petitioners and other stakeholders as illegal and infringe(sic) the constitutional rights of the petitioners hereof.
 - b. An injunction be and is hereby issued to prevent the respondents' from implementing their decision declaring and classifying *Miraa* as a narcotic drugs without proper research support and involvement of the petitioners and other stakeholders hereof.
 - c. General damages.
 - d. Any other or further remedy that the Honourable Court shall deem fit to grant.
 - e. An order that the respondents do pay the costs of this petition.
2. *Miraa* is a herb and the basis of the petitioners' claim is that it has a unique cultural value in the community and is an integral part of their lifestyle. The petitioners contend that it has medicinal effects and its consumption reduces risk of contracting certain ailments. They further contend that the *miraa* crop has economically empowered the growers and supports a large agricultural and commercial sector within the Meru County region with the result that the State is able to collect revenue through taxes and licences.
 3. According to the supporting affidavit of Japhet Muriira Muroko, sworn on 17th July 2013, the petitioners aver that the 1st respondent illegally, unlawfully and without reasonable excuse purported to classify *Miraa* as a narcotic drug. They submit that the action violates the petitioners' fundamental rights and freedoms under **Article 43** and **46** of the Constitution, that is, economic and social rights and consumer rights respectively.
 4. The 1st respondent, the National Authority for the Campaign against Alcohol and Drug Abuse ("NACADA"), is established under the ***National Authority for the Campaign Against Alcohol and Drug Abuse Act, No. 4 of 1994***. Its key mandate is to assist and support the government in developing and implementing policies, laws and plans of action in control of drug abuse.
 5. In the replying affidavit of its Director, Dr Okedi, sworn on 29th July 2013, NACADA denies the petitioners' contention that it has classified *miraa* as a narcotic drug as alleged. It maintains that it has only commissioned research into the *miraa* phenomenon in order to document key data on production, sale and consumption trends, health and socio economic implications in Kenya. Dr Okedi states that the sole purpose of the research is to have empirical and scientific facts to inform the public about *miraa*.
 6. The respondents submit that the petitioners have not placed any material before the court to demonstrate that *miraa* has been classified as a narcotic drug. In the circumstances, they deny that there has been a violation of the petitioners' fundamental rights as alleged or at all.
 7. I have considered the claim and I must find and hold that the petitioners' claim lacks any substratum. The petitioners' case, as evidenced by the reliefs I have quoted above, is predicated on the fact that the respondents have classified *miraa* as a narcotic drug. The respondents have categorically denied that *miraa* has been classified as such. The petitioner has not placed before the court any material to show that *miraa* has been so classified or that there is a threat to classify it as a narcotic drug to enable the court proceed to the second level of inquiry whether there has been a violation or threat of fundamental rights.
 8. There is also no evidence that the respondents are likely to classify *miraa* as a narcotic drug without following the law hence an injunction cannot be issued.
 9. As the petition lacks substratum, it is dismissed but with no order as to costs as the matter was brought in the public interest.

DATED and DELIVERED at NAIROBI this 25th February 2014

D.S. MAJANJA

JUDGE

Dr Khaminwa instructed by Khaminwa and Khaminwa Advocates for the petitioners.

Mr Gichamba instructed by Rachier and Amollo Advocates for the 1st respondent.

Mr Wamotsa, Litigation Counsel, instructed by the State Law Office for the 2nd respondent.

Mr Esuchi instructed by Musyoka and Muigai Advocates for the interested party.