



Republic v Cabinet Secretary, Agriculture & 2 others; Mithika & 4 others (Interested Parties); Miraa Growers and Traders Cooperative Union (Ex parte Applicant) (Miscellaneous Civil Application E003 of 2024) [2026] KEHC 473 (KLR) (27 January 2026) (Judgment)

Neutral citation: [2026] KEHC 473 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
MISCELLANEOUS CIVIL APPLICATION E003 OF 2024**

SM GITHINJI, J

JANUARY 27, 2026

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY
FOR ORDERS OF CERTIORARI, PROHIBITION AND MANDAMUS**

AND

IN THE MATTER OF THE MIRAA PRICING FORMULA COMMITTEE

AND

**IN THE MATTER OF THE CROPS ACT, CAP 318, THE CROPS (MIRAA)
REGULATIONS, 2023, FAIR ADMINISTRATIVE ACTIONS ACT, THE LAW**

**REFORM ACT, CAP 26, ORDER 53 OF THE CIVIL PROCEDURE
RULES, 2010, THE CONSTITUTION OF KENYA, 2010 AND ALL
OTHER ENABLING PROVISIONS AND PROCEDURES OF THE LAW**

BETWEEN

REPUBLIC APPLICANT

AND

CABINET SECRETARY, AGRICULTURE 1ST RESPONDENT

AGRICULTURAL AND FOOD AUTHORITY 2ND RESPONDENT

THE ATTORNEY GENERAL 3RD RESPONDENT

AND

DR. JAMES MITHIKA INTERESTED PARTY

KAMENCU MWENDA MUJURI INTERESTED PARTY

MUSA KIUNGA M'THIRIA INTERESTED PARTY

DAVID KARIUKI NGARI INTERESTED PARTY



JERVASIUS NYOMBYEKO INTERESTED PARTY

AND

**MIRAA GROWERS AND TRADERS COOPERATIVE UNION EX PARTE
APPLICANT**

JUDGMENT

1. For determination is the chamber summons dated 17/10/2024 pursuant to Sections 1A, 1B and 3A of the Civil Procedure Act, Order 53 Rule 1(1) (2) (3) and (4) of the Civil Procedure Rules and Sections 8 and 9 of the Law Reform Act, seeking that;
 1. Order Of Declaration That the 1st Respondent's decision of failing to invite the Applicant's three (3) nominees for vetting and subsequent appointment of the interested parties as members of the Miraa Pricing Formula Committee without adherence to Regulation 29 of the Crop (Miraa) Regulations, 2023 is irrational, unreasonable, procedurally and substantially unfair, flawed, ultra vires the law and illegal.
 2. Orders Of Certiorari to call, remove, deliver up to this Honourable Court and quash; -
 - a. The appointment of the Interested Parties, Dr. James Mithika, Kamencu Mwenda Mujuri, Musa Kiunga M'ithiria, David Kariuki Ngari And Jervasius NyombyekothE as members of the Miraa Pricing Formula Committee which is established under Regulation 29 of the Crop (Miraa) Regulations, 2023.
 - b. The election of Dr. James Mithika as the Chairperson of the Miraa Pricing Formula Committee which is established under Regulation 29 of the Crop (Miraa) Regulations, 2023 and any resolutions or decisions made in the meeting held on 26th August 2024.
 3. Orders Of Mandamus to compel the 1st Respondent to reappoint the members of the Miraa Pricing Formula Committee, established under Regulation 29 of the Crop (Miraa) Regulations, 2023, such that the appointment complies with the law and through a process that meets the national values of good governance and threshold of a lawful, fair, reasonable and procedurally fair administrative action.
 4. Orders Of Mandamus to compel the 1st Respondent to recognize the Applicant's as the apex body of miraa growers' associations as per Regulation 29 (1) (e) of the Crop (Miraa) Regulations, 2023.
 5. Orders Of Prohibition prohibiting the Miraa Pricing Formula Committee, established under Regulation 29 of the Crop (Miraa) Regulations, 2023 from exercising any of its powers and functions under the said Regulations until the Cabinet Secretary, Agriculture reconstitutes the Miraa Pricing Formula Committee as required by law.
 6. Order Of Prohibition prohibiting the 1st Respondent from appointing the representative contemplated under Regulation 29 (1) (e) of the Crop (Miraa) Regulations, 2023, from any other body other than the Applicant.
 7. This Honourable Court do grant any other or further reliefs that it may deem fit to so grant.



8. The costs of this application be provided for.
2. The application is premised on the grounds on the face of it and supported by a verifying affidavit sworn by Gitonga Bernard Mathews, the Applicant's secretary on even date. He averred that by the 2nd Respondent sent the Applicant a letter dated 26/4/2024 informing it of the nomination exercise on appointment of the Miraa Pricing Formula Committee members (the Committee) established under Regulation 29 of the Crop (Miraa) Regulations, 2023. The 2nd Respondent resolved that the Applicant nominates one member who had knowledge of Miraa developments, who would be vetted to represent it in the committee. In compliance with that request, the Applicant on 2/5/2024 forwarded to the 2nd Respondent via email the names of its 3 nominees, namely Gitonga Bernard Mathews, Samson Kimathi Linguya and Moses Lichoro Zakaria, which elicited no response in terms of the selection and/or vetting process and the subsequent appointment of members of the Committee. When the Applicant learnt with shock and dismay of the appointments of the interested parties without consideration of any of its nominees, it wrote a letter on 26/8/2024, protesting against the said appointments, which letter was never responded to. In his view, the 1st Respondent's decision in appointing the Interested Parties herein as members of the Committee was irrational, unreasonable, malicious, marred with procedural impropriety, unlawful, illegal, ultra vires, a breach of the Applicant's nominees' legitimate expectation and a contravention of Regulation 29 (1) of the Crop (Miraa) Regulations, 2023, the Fair Administrative Actions Act and *the Constitution*. Further, the 1st Respondent's failure to publicize and/or gazette the appointments in order to promote the right to information, transparency, accountability, good governance and rule of law contravened Articles 10, 35 and 232 (1) (e) and (f) of *the Constitution*, and as a result of the said irregularities in those appointments, the Meru County Miraa Farmers are unrepresented in the Committee as presently constituted. The 1st Respondent's outright bias and illegality in exercise of the statutory power is a violation of the Applicant's fundamental rights and freedom to equality before the law, equal protection and benefit of the law as well as equal enjoyment of fundamental rights and freedoms under Article 27 (1) and (2) of *the Constitution*. The Application has been timeously filed, and unless the orders sought are granted, the Interested Parties will continue acting as the duly appointed members of the Committee despite manifest unfairness, irrationality, unreasonableness, illegality and unlawfulness aforesaid.
3. The 1st and 2nd Respondents opposed the application vide a replying affidavit sworn by Dr. Bruno Linyiru, the 2nd Respondent's Director General on 24/10/2024. He averred that, in compliance with the national values and principles of governance as enshrined under Article 10 of *the Constitution*, and more specifically on good governance, integrity, transparency and accountability, the 2nd Respondent wrote letters to the Chairpersons of the recognized apex bodies representing the Miraa/Muguka growers and the dealer's associations calling for nomination of qualified persons to serve in the Committee. Upon successful vetting, the names of the successful nominees were forwarded to the 1st Respondent for appointment, in strict adherence to the provisions of Regulation 29 of the Crops (Miraa) Regulations, 2023 and section 40 of the *Crops Act*. While the Applicant is part of the recognized miraa growers body, it is not the apex body, as alleged, and the 2nd Respondent's decision to appoint the Interested Parties herein was done in strict compliance with the provisions of *the Constitution* and the law. The alleged failure to vet and appoint members of the Applicant to the Committee was informed by the fact that they were not qualified in the roles they were nominated on, and the decision to lock them out was therefore rational and valid in law. Consequently, the order prohibiting the Committee from exercising any of its powers and functions under the Regulations until its reconstitution amounts to effectively curtailing its critical functions, thus exposing the miraa/Muguka growers and dealers to serious economic uncertainties.



Submissions

4. The Ex-Parte Applicant, through the firm of MMD Advocates LLP, filed submissions dated 15/9/2025. Counsel contended that the 1st Respondent's decision to appoint the Interested Parties without following the prescribed procedure under Regulation 29 (1) rendered the process ultra vires, illegal and void, and cited *Republic v Kenya Medical Practitioners & Dentists Board ex parte Dr. Nyong'o* [2010] eKLR, *Kenya Revenue Authority & 2 others v Darasa Investments Limited* [2018] eKLR, *Kenya Association of Air Operators v Kenya Civil Aviation Authority* [2013] eKLR, *Republic v Kenya Forest Service Ex-parte Clement Kariuki & 2 others* [2013] eKLR, *Council of Legal Education v Lempaa Suyianka & 5 others* [2014] eKLR, *Republic v National Police Service Commission Exparte Daniel Chacha Chacha* [2016] KEHC 7755 (KLR), *Satrose Ayuma & 11 others v Registered Trustees of the Kenya Railways Staff Retirement Benefits Scheme & 3 others* [2010] eKLR, *Kenya Medical Research Institute v Samson Gwer & 8 others* [2019] KECA 988 (KLR), *Sollo Nzuki v Salaries and Remuneration Commission & 2 others* [2019] KEHC 1511 (KLR), *Kenya Human Rights Commission & 3 others v Attorney General & 4 others (Constitutional Petition E412 of 2023)* [2024] KEHC 16369 (KLR), *Mwangi v Public Service Commission & 2 others (Judicial Review 1 of 2023)* [2024] KEELRC 790 (KLR), *Republic v Attorney General & 3 Others Ex-Parte Tom Odoyo Oloo* [2015] eKLR, *Republic v University of Nairobi Council ex parte Njuguna* [2004] eKLR, *Republic v Cabinet Secretary Ministry of Education & 3 Others ex parte Kenya National Union of Teachers* [2015] eKLR, *Kenya Association of Manufacturers v Cabinet Secretary Ministry of Industrialization & 2 Others (Judicial Review 143 of 2019)* [2020] eKLR and *Trusted Society of Human Rights Alliance v Attorney General & 3 Others (Constitutional Petition 229 of 2012)* [2013] eKLR. Counsel asserted that the 1st Respondent's failure to gazette the appointments as required by law, contravened the principles of transparency, accountability and good governance under Articles 10, 35 and 232 (1) (e) and (f) of *the Constitution*, and cited *Centre for Rights Education and Awareness & 7 others v Cabinet Secretary Ministry of Education & 5 others* [2014] eKLR, *Republic v Independent Electoral and Boundaries Commission & 2 others ex parte Coalition for Reforms and Democracy (CORD)* [2017] eKLR. Counsel cited the locus classicus case of *Republic v Commissioner of Lands ex parte Hotel Kunste* (1997) eKLR, *Republic v Director, Kenya School of Law & 2 others; Kitsao (Exparte Applicant)* [2024] KEHC 2975 (KLR) and *Mbalu Mutava & Another* [2015] eKLR, on the sui generis nature of judicial review proceedings.
5. The 1st and 3rd Respondents filed submissions through the Attorney General dated 15/9/2025. Counsel maintained that the appointment of the Interested Parties followed the requisite procedure and was in conformity with Article 10 of *the Constitution*, and cited *Anne Wambui Ndiritu v Joseph Kiprono Ropkoi & Another* [2005] 1 EA 334, *Evans Nyakwana v Cleophas Bwana Ongaro* [2015] eKLR and *Pastoli v Kabale District Local Government Council and Others* [2008] 2 EA 300. Counsel contended that this court was divested of jurisdiction to compel the Respondents to recognize the Applicant, as the Apex body for the Miraa/Muguka growers, and cited *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] eKLR and *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others SC Application No. 2 of 2011* [2012] eKLR. Counsel cited *Municipal Council of Mombasa v Republic & Umoja Consultants Ltd* [2002] eKLR and *Republic v Kenya National Examinations Council exparte Gathenji and 9 Others* [1997] eKLR, on the purpose and scope of judicial review.
6. The 2nd Respondent, through the firm of Prof. Tom Ojienda & Associates filed submissions dated 28/8/2025. Counsel contended that the appointment of members to the Miraa Pricing Formula Committee was carried out in full compliance with the law, and cited *Community Advocacy and Awareness Trust & others v Attorney General & 6 others* [2012] *Republic v Principle Secretary,*



Ministry of Transport, Housing and Urban Development Ex parte Soweto Residents Forum CBO (Miscellaneous Civil Application 461 of 2016) [2019] eKLR and Republic v Public Procurement Administrative Review Board & 3 Others [2017] eKLR. Counsel submitted that a legitimate expectation rests on the presumption that a public authority will follow a certain procedure in advance of a decision being taken, and cited Republic v Principal Secretary, Ministry of Transport, Housing and Urban Development Ex parte Soweto Residents Forum CBO (Miscellaneous Civil Application No. 461 of 2016) [2019] eKLR, KECA 799 (KLR), R. v DPP ex parte Kebilene [1999] 3 WLR 972 (HL), Tunoi & another v Judicial Service Commission 16. & another (Civil Appeal No. 6 of 2016) [2016] eKLR, Republic v Nairobi City County & Another ex parte Wainaina Kigathi Mungai; [2014] eKLR, Republic v Kenya Revenue Authority ex parte Aberdare Freight Services Limited [2004] eKLR and Ojwang' v African Nazarene University; Council of Legal Education & another (Interested Parties) (Petition E200 of 2022) [2024] KEELRC 13441 (KLR) (16 December 2024) (Judgment), Revision No. 926 of 2011, [2012] eKLR.

Analysis and Determination

7. After critical consideration of the application, the responses thereto and the submissions on record together with the cited authorities, the sole issue for determination is whether the Applicant has established sufficient cause to warrant the grant of the orders sought.
8. The 2nd Respondent vide its letters dated 26/4/2024, duly invited all eligible associations to submit their nominees for purposes of vetting and subsequent appointment to the Committee. Those associations included the Applicant, Kiengu Miraa Framers and Traders Group, Muguka Drivers Savings and Credit Cooperative Society Limited, Nyamita, Kiritiri, Memifatra and Imifatra. Upon completion of the vetting exercise, the Interested Parties, who were drawn from Memifatra, Nyamita, Kiengu Miraa Farmers and Traders Group, Muguka Drivers Savings and Credit Cooperative Society Limited and Mbeerembu Miraa Farmers Association Cooperative Union, respectively, were lawfully appointed, after it was established that the Applicant's nominees did not satisfy the requisite criteria for nomination.
9. Regulation 29 (1) of the Crop (Miraa) Regulations, 2023, provides that; "There shall be a Miraa Pricing Formula Committee to determine the formula of miraa and miraa products comprising of the following members appointed by the Cabinet Secretary -
 - (a) one representative from the ministry responsible for matters relating to agriculture;
 - (b) one representative from the ministry responsible for matters relating to trade;
 - (c) one representative from the Authority;
 - (d) one County Executive Committee Member for agriculture nominated by the Council of Governors;
 - (e) one representative of miraa growers nominated by the apex body of growers' associations;
 - (f) one representative of muguka growers nominated by the apex body of growers' associations; and
 - (g) three representatives of dealers nominated by the apex body of dealers' associations."
10. It must be borne in mind that the Respondents are the statutory appointing authorities, and this court cannot usurp that mandate. Moreover, the scope of judicial review proceedings, as aptly put by the parties herein, is confined to the interrogation of the decision making process, rather than the merits of the decision itself.



11. I find that the Respondents fully complied with the provisions of Regulation 29 (1) of the Crop (Mira) Regulations, 2023, the Fair Administrative Actions Act and the Constitution in appointing the Interested Parties herein.
12. Accordingly, for the reasons set out above, the Applicant's application dated 17/10/2024 is in want of merit and it is hereby dismissed.
13. Parties to bear own costs of the application.

DATED AND DELIVERED AT MERU THIS 27TH DAY OF JANUARY, 2026.

S.M. GITHINJI

JUDGE

Appearances:

Mr. Ochiengo holding brief for Mr. Ijienda (SC) for the 2nd Respondent

Mr. Muhuyu for the Applicant (absent)

Ali for the 1st and 3rd Respondent (absent).

