



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT- SECOND SESSION

THE NATIONAL ASSEMBLY

COMMITTEE ON DELEGATED LEGISLATION

REPORT ON THE CONSIDERATION OF THE CROPS (COFFEE) (GENERAL)  
(AMENDMENT) REGULATIONS, 2022

FEBRUARY 2023

THE NATIONAL ASSEMBLY PAPERS Laid	
DATE: 21 FEB 2023	DAY: TUESDAY
TABLED BY:	CHAIR, DELEGATED LEGISLATION COMMITTEE HON. CHEPKONGA SAMUEL CBS, MP
CLERK-AT-THE-TABLE:	INZOFU MWALE

*The Directorate of Audit, Appropriations & other Select Committees*  
*The National Assembly,*  
*Parliament Buildings,*  
**NAIROBI.**

*Committee on Delegated Legislation-Report on the Crops (Coffee) (General) (Amendment)*  
*Regulations, 2022*



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## **ABBREVIATIONS**

<b>LN</b>	Legal Notice
<b>SO</b>	Standing Order
<b>RIA</b>	Regulatory Impact Assessment
<b>RMA</b>	Regulatory making Authority



## CHAIRPERSON'S FOREWORD

The Cabinet Secretary for Agriculture, Livestock, Fisheries and Cooperatives in exercise of the powers conferred by section 40 of the Crops Act (*No. 16 of 2013*), made the Crops (Coffee) (General)(Amendment) Regulations, 2022 (hereinafter referred to as “the Regulations”).

During the scrutiny, the Committee confirmed that the Regulations were published in the Kenya Gazette on the 9<sup>th</sup> June, 2022, submitted to the Clerk of the National Assembly on 9<sup>th</sup> of June, 2022 and laid in the House on 4<sup>th</sup> October, 2022 being within the statutory timelines set out in section 11(1) of the Statutory Instruments Act.

The purpose of the Regulations was to amend the provisions of the Crops (Coffee) (General) Regulations, 2019 (hereinafter referred to as “**principal regulation**”) and the **effect or implication of the amendment would transfer the authority of issuing milling licences from the Country Government to the Agriculture and Food Authority.**

The Committee noted, with concern, that contrary to the requirements for public participation set out in Articles 10 and 118 of the Constitution, sections 5, 5A, 13 (a), and the Schedule to the Statutory Instruments Act (*No.23 of 2013*) read with Standing Order 210 that requires the Regulation-Making Authority (RMA) to conduct public participation and sufficient consultation with the stakeholders and persons likely to be affected by the regulations, the public participation was not sufficiently conducted with those affected .

The Council of Governors *vide* a letter dated 12<sup>th</sup> May, 2022 addressed to the Cabinet Secretary, Ministry of Agriculture, Livestock, Fisheries and Co-operatives raised concerns that the Regulations as published, were contrary to the provisions of section 1 of Part II of the Fourth Schedule to the Constitution for failure by the Ministry to consult them. Further, in a letter from coffee- farmers registered organization addressed to the Clerk of the National Assembly and copied to the Chairman of the Committee on Delegated Legislation, the coffee farmers also expressed concerns on the failure of the Ministry in incorporating their proposals in the published Regulations.

Sections 7, 8 and 9 of the Statutory Instruments Act provide for the time a Regulatory Impact Assessment (RIA) is necessary. The Committee resolved upon scrutiny that the Regulations by their very nature, required a Regulatory Impact Assessment to be conducted as they have a significant economic implication to a part of the community being the coffee farmers and other players in the coffee value chain and industry.

The Committee further observed that there was no evidence that a Regulatory Impact Assessment was conducted on the Amended Regulations contrary to section 7 of the Statutory Instruments Act. The Ministry only provided a Certificate of Compliance to imply that the Regulatory Impact Assessment requirements had been complied with, without tangible evidence of having undertaken a Regulatory Impact Assessment.

Committee on Delegated Legislation-Report on the Crops (Coffee) (General) (Amendment) Regulations, 2022



Having examined the Crops (Coffee) (General) (Amendment) Regulations, 2022 published vide Kenya Gazette Notice, Special Issue Supplement No. 97 on 9<sup>th</sup> of June, 2022 in line with the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Statutory Instruments Act, 2013, the Crops Act (*No. 18 of 2013*), pursuant to which they are made, the Committee resolved to recommend to the House **to annul the Regulations in entirety** for non-compliance with the Constitution and the relevant statutes.

I wish to most sincerely thank the Speaker and the Office of the Clerk of the National Assembly for the invaluable support accorded to the Committee in the discharge of its mandate.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 210 (4) (b) it is my pleasure and duty to present to the House, the Committee's **Report on the Consideration of the Crops (Coffee) (General) (Amendment) Regulations, 2022.**

**HON. CHEPKONGA KIPRONO SAMUEL, CBS, MP.**

## 1.0 PREFACE

### 1.1 Establishment and Mandate of the Committee

1. The Select Committee on Delegated Legislation is established pursuant to ***Standing Order No. 210*** of the National Assembly Standing Orders, and is mandated to scrutinize statutory instruments submitted to the National Assembly.. The Committee is expected to consider in respect of any statutory instrument, conformity with the Constitution, the Act pursuant to which it is made or other relevant written laws and the Standing Orders.
2. The Committee, during scrutiny is guided by the principles of good governance, rule of law and in particular considers whether the statutory instrument-
  - a) is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws;
  - b) infringes on fundamental rights and freedoms of the public;
  - c) contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;
  - d) contains imposition of taxation;
  - e) directly or indirectly bars the jurisdiction of the court;
  - f) gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;
  - g) it involves expenditure from the consolidated fund or other public revenues;
  - h) is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
  - i) appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
  - j) appears to have had unjustifiable delay in its publication or laying before Parliament;
  - k) makes rights, liberties or obligations unduly dependent upon non-renewable decisions;
  - l) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
  - m) inappropriately delegates legislative powers;
  - n) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
  - o) appears for any reason to infringe on the rule of law;
  - p) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
  - q) accords to any other reason that the Committee considers fit to examine.

## 1.2 Committee Membership

3. The Committee membership comprises –

**The Hon. Chepkonga Kiprono Samuel, CBS, M.P. (Chairperson)**

Ainapko Constituency

**UDA**

**The Hon. Githinji Robert Gichimu, M.P. (Vice Chairperson)**

Gichugu Constituency

**UDA**

### COMMITTEE MEMBERS

The Hon. Mbui Robert, CBS, M.P.

Kathiani Constituency

**WDM - Kenya**

The Hon. Rai Samwel Gonzi, M.P.

Kinango Constituency

**PAA**

The Hon. Sunkuli Julius Lekakeny, M.P.

Kilgoris Constituency

**KANU**

The Hon. Mwirigi John Paul, M.P.

Igembe South Constituency

**UDA**

The Hon. Kamene Joyce, M.P.

Machakos County

**WDM -Kenya**

The Hon. Odoyo Jared Okello, M.P.

Nyando Constituency

**ODM**

The Hon. Mwale Nicholas S. Tindi, M.P.

Butere Constituency

**ODM**

The Hon. Linet Chepkorir, M.P.

Bomet County

**UDA**

The Hon. Munyoro Joseph Kamau, M.P.

Kigumo Constituency

**UDA**

The Hon. Kipkoech Gideon Kimaiyo, M.P.

Keiyo South Constituency

**UDA**

The Hon. Ruku Geoffrey Kiringa, M.P.

Mbeere North Constituency

**DP**

The Hon. Komingoi Kibet Kirui, M.P.

Bureti Constituency

**UDA**

The Hon. Chebor Paul, M.P.

Rongai Constituency

**UDA**

The Hon. Lenguris Pauline, M.P.

Samburu County

**UDA**

The Hon. Mamwancha Onchoke Charles,  
M.P.

Bonchari Constituency

**UPA**

Committee on Delegated Legislation-Report on the Crops (Coffee) (General) (Amendment)  
Regulations, 2022

The Hon. Yakub Adow Kuno, M.P.  
Bura Constituency  
**UPIA**

The Hon. Mnyazi Laura Amina, M.P.  
Malindi Constituency  
**ODM**

The Hon. Abdullahi Bashir Sheikh, M.P.  
Mandera North Constituency  
**UDM PARTY**

The Hon. Mugabe Innocent Maino, M.P.  
Lugari Constituency  
**ODM**



### 1.3 Committee Secretariat

4. The Secretariat facilitating the Committee comprises -

**Ms. Esther Nginyo**  
*Clerk Assistant I (Team Leader)*

Mr. Dima Dima  
*Principal Legal Counsel*

Ms. Wanjiru Githunguri  
*Legal Counsel II*

Mr. Jacknorine Buleemi  
*Clerk Assistant III*

Ms. Winny Otieno  
*Clerk Assistant III*

Mr. Brian Langwech  
*Clerk Assistant III*

Mrs. Sheila Cherobotim  
*Serjeant at Arms*

Mr. Charles Ayari  
*Audio Officer*

## **2.0 CONSIDERATION OF THE CROPS (COFFEE) (GENERAL) (AMENDMENT) REGULATIONS, 2022**

### **2.1 Introduction**

5. The Cabinet Secretary for Agriculture, Livestock, Fisheries and Cooperatives in exercise of the powers conferred by section 40 of the Crops Act (*No. 16 of 2013*), made the Crops (Coffee) (Amendment) Regulations, 2022. The Regulations were published in the Kenya Gazette Notice Special Issue Supplement No. 97 on 9<sup>th</sup> of June, 2022.

6. The Regulations were submitted to the Clerk, National Assembly on 9<sup>th</sup> of June, 2022 and laid in the House on 4<sup>th</sup> October, 2022.

### **2.2 Scrutiny of the Statutory Instrument**

8. The Committee considered the Crops (Coffee) (General) (Amendment) Regulations, 2022 to check its conformity with the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Crops Act (*No. 18 of 2013*), the Statutory Instruments Act, 2013 (*No. 23 of 2013*), and the Crops (Coffee) (General) Regulations, 2019 pursuant to which they are made, which regulates the making, scrutiny and publication of the Regulations.

### **2.3 Policy Background**

9. The Crops (Coffee) (General) (Amendment) Regulations, 2022 gives effect to section 40 of the Crops Act and provides for amendments to various provisions under the principal regulations, such as:

- (i) provide for licenses to be issued by the licensing authorities;
- (ii) provide for the obligations of license holders and service providers, and the protection and regulation of their interests along the value chain;
- (iii) recognize the coffee grower as the owner of the coffee until the coffee is sold and paid for;
- (iv) provide for the protection of growers' rights along the value chain;
- (v) provide for a transparent and timely clearing and settlement of coffee sales proceeds to the growers and service providers;
- (vi) provides for various forms to be used for applications in compliance with the requirement set out therein;
- (vii) provide for the collection and maintenance of data related to coffee;
- (viii) ensure improvement of coffee standards, increased production and support; and
- (ix) regulate the coffee industry in Kenya.
- (x)

## **3.0 COMMITTEE FINDINGS**

10. The Committee examined the Crops (Coffee) (General) (Amendment) Regulations, 2022, in line with the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Crops Act, and the Statutory Instruments Act (*No 23 of 2013*) and made the following observations.

### 3.1 Statutory Timelines

11. The Regulations were published in the Kenya Gazette Notice Special Issue Supplement No. 97 on 9<sup>th</sup> of June, 2022, submitted to the Clerk, National Assembly on 9<sup>th</sup> of June, 2022 and laid in the House on 4<sup>th</sup> October, 2022 being within the statutory timelines set out in section 11(1) of the Statutory Instruments Act.

### 3.2 Consultation / Public participation

12. According to the Explanatory Memorandum submitted to the Committee, the Ministry demonstrated that consultations were done while preparing the Regulations.
13. However, vide a letter dated 12<sup>th</sup> May, 2022, the Council of Governors wrote to the Cabinet Secretary, Ministry of Agriculture, Livestock, Fisheries and Co-operatives raising *inter alia* the following concerns ,:
  - (i) That the Amendmend Regulations are contrary to provisions of Part 2 section 1 of the Fourth Schedule of the Constitution,2010, since the implication of the Amennded Regulations is the transfer of authority of issuing milling and roasters' licenses from the county government to the Agriculture and Food Authority.
  - (ii) That contrary to Section 40 of the Crops Act (No. 16 of 2013), which requires that the Cabinet Secretary may make regulations for the better carrying into effect of the provisions of the Act, in consultation with the Authority and the county governments, there was no proof of such consultations. Lack of such consultations contravenes Article 259(11) of the Constitution and section 13(a) of the Statutory Instruments Act, 2013;
  - (iii) That, the Ministry of Agriculture, Livestock, Fisheries and Co-operatives failed to take into consideration the reservations they had on the Amendment Regulations and thus in contravention of section 13(a) of the Statutory Instruments Act.
14. In a further letter from farmers addressed to the Clerk of the National Assembly and copied to the Chairman of the Committee on Delegated Legislation, the coffee farmers expressed concerns that the application of the Amendment Regulations would adversely affect coffee farmers, and that their concerns were not taken into account. This being contrary to article 10 and 118 of the Constitution,2010, Section 5, 5A, 13 (a) and the Schedule to the Act, and Standing Order 210 that requires the regulation-making authority to conduct public participation and sufficient consultation with the stakeholders and persons likely to be affected by the regulations.

### 3.3 Regulatory Impact Assessment

15. Section 6 of the Statutory Instruments Act provides that Regulatory Impact Assessment should be done and a statement alongside the Regulations as they are likely to impose significant costs on the community or a part of the community in this case coffee licensees.
16. The Ministry only provided a Certificate of Compliance implying that the Regulatory Impact Assessment requirements had been complied with without providing tangible

evidence of having undertaken a Regulatory Impact Assessment. This was contrary to section 7 of the Statutory Instruments Act.

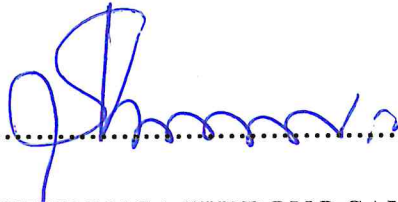
#### **Court Decision in respect to Public Participation**

17. Further in a Court Ruling on the case, *Murang'a County Coffee Dealers Company Ltd. And Kipkelion Brokerage Company Limited and 3 others Vs Cabinet Secretary Ministry of Agriculture, Livestock, Fisheries and Co-operatives and Nairobi Coffee Exchange* [HCJR/E148/2021], the courts ordered for a stop to the publication of the Regulations which Ruling, the Ministry did not consider hence barring the jurisdiction of the Courts contrary to section 13 of the Statutory Instruments Act, 2013.

#### **4.0 COMMITTEE RECOMMENDATION**

18. Having examined the **Crops (Coffee) (General) (Amendment) Regulations, 2022** published vide Kenya Gazette Notice, Special Issue Supplement No. 97 on 9<sup>th</sup> of June, 2022 in line with the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Statutory Instruments Act, 2013 (*No. 23 of 2013*), the Crops Act (*No. 16 of 2013*), pursuant to which they are made, **the Committee recommends that the House annuls in entirety the said statutory instrument** for noncompliance with the Constitution and the relevant Statutes.


Signed.....



Date.....



**HON. CHEPKONGA KIPRONO SAMUEL, CBS, MP.**  
**(CHAIRPERSON)**

 <b>THE NATIONAL ASSEMBLY</b> PADOCS I ATO	
<b>DATE: 21.FEB 2023</b>	
<b>DAY:</b>	
<b>TABLED BY:</b>	
<b>CLERK-AT THE TABLE:</b>	

## ANNEXURES

1. Adoption List
2. Committee Minutes
3. Kenya Gazette Notice, Special Issue Supplement No. 97 on 9<sup>th</sup> of June, 2022
4. Letter from the Council of Governors
5. Letter of Farmers, to the Clerk of the National Assembly
6. Letter to the Attorney General
7. Court Ruling on Case Number *Murang'a County Coffee Dealers Company Ltd. And Kipkelion Brokerage Company Limited and 3 others Vs Cabinet Secretary Ministry of Agriculture, Livestock, Fisheries and Co-operatives and Nairobi Coffee Exchange* [HCJR/E148/2021],




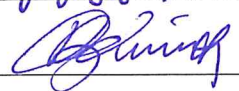

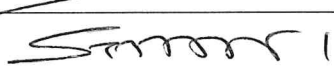
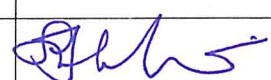

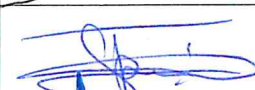
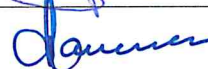

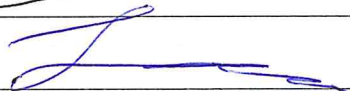



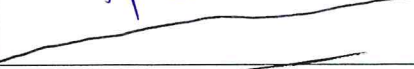

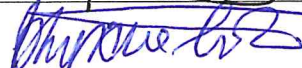
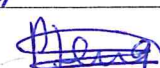
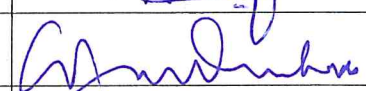




# COMMITTEE ON DELEGATED LEGISLATION REPORT ADOPTION LIST

DATE: 16/02/2023 VENUE: SMALL DINING STARTING TIME: 10:00 AM

ENDING TIME: 11:20 AM

AGENDA: THE CROP'S (COFFEE) (GENERAL) (AMENDMENT) REGULATIONS 2022

	NAME	SIGNATURE
1.	The Hon. Chepkonga Kiprono Samuel, CBS, M.P, Chairperson	
2.	The Hon. Githinji, Robert Gichumi, M.P. Vice-Chairperson	
3.	The Hon. Mbui, Robert, CBS, M.P.	
4.	The Hon. Rai, Samuel Gonzi, M.P.	
5.	The Hon. Sunkuli Julius Lekakeny, MP	
6.	The Hon. Abdullahi Bashir Sheikh, M.P.	
7.	The Hon. Mwirigi, John Paul, M.P.	
8.	The Hon. Kamene, Joyce, M.P.	
9.	The Hon. Mwale, Nicholas S. Tindi, M.P.	
10.	The Hon. Odoyo, Jared Okello, M.P.	
11.	The Hon. Chepkorir, Linet, M.P.	
12.	The Hon. Munyoro, Joseph Kamau, M.P.	
13.	The Hon, Kimaiyo, Gideon Kipkoech, M.P.	
14.	The Hon. Ruku, Geoffrey Kariuki Kiringa, M.P.	
15.	The. Hon. Komingoi, Kibet Kirui, M.P.	
16.	The Hon. Chebor, Paul, M.P.	
17.	The Hon. Lenguris, Pauline, M.P.	
18.	The Hon. Mamwacha Onchoke Charles, M.P.	
19.	The Hon. Yakub, Adow Kuno, M.P.	
20.	The Hon. Mnyazi, Amina Laura, M.P.	

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21.	The Hon. Mugabe, Innocent Maino, M.P.	
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**MINUTES OF THE 11<sup>th</sup> SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON THURSDAY, 15<sup>th</sup> DECEMBER, 2022, AT THE AQUARIUS CONFERENCE ROOM, GRAND ROYAL SWISS HOTEL, IN KISUMU COUNTY AT 9:00 AM.**

**PRESENT**

1. **The Hon Samuel Kiprono Chepkonga, CBS, M.P.   Chairperson**
2. **The Hon. Robert Gichimu Githinji, M.P.   Vice Chairperson**
3. The Hon. John Paul Mwirigi, M.P.
4. The Hon. Gideon Kipkoech Kimaiyo, M.P.
5. The Hon. Paul Chebor, M.P.
6. The Hon. Joyce Kamene, M.P.
7. The Hon. Linet Chepkorir M.P.
8. The Hon. Samuel Gonzi Rai, M.P.
9. The Hon. Sunkuli Julius Lekakeny, MP
10. The Hon. Charles Onchoke Mamwacha.M.P
11. The Hon. Innocent Maino Mugabe, M.P.
12. The Hon. Adow Kuno Yakub, M.P.
13. The Hon. Joseph Kamau Munyoro, M.P.
14. The Hon. Laura Amina Mnyazi, M.P.
15. The Hon. Kibet Kirui Kimingoi, M.P.

**APOLOGIES**

1. The Hon. Robert Mbui, CBS, M.P
2. The Hon. Jared Okello Odoyo M.P
3. The Hon. Nicholas S. Tindi Mwale, M.P.
4. The Hon. Pauline Lenguris, M.P.
5. The Hon. Ruku Geoffrey Kariuki Kiringa, M.P.
6. The Hon. Abdullahi Bashir Sheikh, M.P

**IN ATTENDANCE**

**THE NATIONAL ASSEMBLY.**

- |                          |   |                      |
|--------------------------|---|----------------------|
| 1. Ms. Esther Nginyo     | - | Clerk Assistant I    |
| 2. Ms Christine Adhiambo | - | Senior Legal Counsel |
| 3. Mr. Brian Langwech    | - | Clerk Assistant III  |
| 4. Ms. Winny Otieno      | - | Clerk Assistant III  |
| 5. Mr. Jacknorine Bulemi | - | Clerk Assistant III  |
| 6. Mr. Charles Ayari     | - | Audio Officer        |
| 7. Ms Fiona Wanjiru      | - | Legal Counsel        |
| 8. Mr. Manuel Leparachau | - | Serjeant-At-Arms     |

## **MINISTRY OF AGRICULTURE AGRICULTURE AND LIVESTOCK**

- |                          |   |  |
|--------------------------|---|--|
| 1. Mr. Felix Mutwiri     | - | Director AFA MPICD                       |
| 2. Mr. Andrew Ojudo      | - | Agriculture and Food Authority           |
| 3. Mr. George Kashindi   | - | Agriculture and Food Authority Advocate  |
| 4. Mr. Daniel Ouso       | - | Agriculture and Food Authority Finance   |
| 5. Ms. Josephine Okapesi | - | Agriculture and Food Authority CD        |
| 6. Mr. Bernard Gichovi   | - | Agriculture and Food Authority CD AFA CD |
| 7. Mr. David Kithale     | - | ADA, Ministry of Agriculture             |

### **AGENDA**

1. Prayers;
2. Preliminaries;
3. Adoption of the Agenda;
4. Confirmation of previous minutes;
5. Matters arising;
6. **Briefing by the Ministry of Agriculture and Livestock on**
  - i. The Crops (Miraa) Regulations, 2022 (Legal Notice No. 101 of 2022)
  - ii. Crops (Coffee) (General Amendment) Regulations, 2022 (Legal Notice No. 102 of 2022)
7. Any Other Business; and
8. Adjournment.

### **MIN. DAA&OSC/CDL/070/2022**

#### **PRELIMINARIES**

The Chairperson called the Meeting to order at 09:30 a.m. after which prayers were said. He then welcomed all present to the meeting followed by a round of introduction.

### **MIN. DAA&OSC/CDL/071/2022**

#### **ADOPTION OF THE AGENDA**

The Members adopted the agenda of the meeting as was proposed by Hon. John Paul Mwirigi, M.P. and seconded by Hon. Gideon Kipkoech Kimaiyo, M.P.

### **MIN. DAA&OSC/CDL/072/2022**

#### **CONFIRMATION OF THE MINUTES**

Confirmation of the previous Minutes was deferred to the next meeting.

### **MIN. DAA&OSC/CDL/073/2022**

#### **BRIEFING ON THE CROPS (MIRAA) REGULATIONS, 2022 (LEGAL NOTICE NO. 101 OF 2022)**

Mr. Felix Mutwiri, Director, AFA MPICD briefed the Committee on The Crops (Miraa) Regulations, 2022 (Legal Notice No. 101 of 2022) as follows, that;

1. The Crops (Miraa) Regulations, 2022 was presented by the Cabinet Secretary for Agriculture, Livestock Fisheries and Cooperatives, in exercise of his powers conferred to him under the provisions of Section 40 of The Crops Act, 2013 which is the enabling provision and as such the regulations were properly invoked.

2. The Regulations were published in the **Gazette Notice Special Issue Supplement No. 97** dated 9<sup>th</sup> June, 2022, received by the Clerk of the National Assembly on the 4<sup>th</sup> October, 2022 and tabled by the deputy speaker on the 4<sup>th</sup> of October 2022. The Regulation provides as follows:
3. **Part I** of the regulation provides for preliminary provisions which is the citation, interpretation of the various terminologies used in the text of the provision of regulation and the objects set to be achieved in the process of implementation of the regulations therein.
4. **Part II** of the regulations provides for registration and licensing of Miraa growers and dealers. It provides for the requirement for registration, process of registration, renewal and suspension or revocation of the said license.
5. **PART III** of the regulations provides for the production and quality assessment of the Miraa products. This part provides for the quality standards to be adhered to, the process of assessment to ensure that the standards are in accordance with the requirements of the regulations and the process and functions of the officer in charge of inspection.
6. **PART IV** of the regulations provides for general provisions in terms of pricing, units of measurement, levy, fees and general to those who contravene the provisions of the regulations.
7. **The First Schedule** of the regulations provides for various forms to be used for applications in compliance with the requirement set out within the regulations.
8. **The Second Schedule** of the regulations provides for fees payable under the regulations.
9. The Committee highlighted several observations which needed to be taken into account in the Regulations as follows, that;
  - i. There was need to include word “Mogoka” should be indicated as a separate Crop from Miraa in the Regulations
  - ii. There was need to carry out better research on how to improve Miraa production in the country
  - iii. Members took note of the exorbitant charges and levies that are imposed on Miraa during transportation and Export.
  - iv. There was need to clearly define ‘Miraa dealers’ and ‘Vendors’ in the Regulations.
  - v. On Qualifications of licensing inspectors, Members noted that Agricultural Officers should not be the ones involved as it this was under the jurisdiction of Food Handlers’ Inspectors.
  - vi. Proposal that provides for Regulations on penalties contravenes the Statutory Act
10. In view of the above observations by the Committee, the Ministry of Agriculture and Livestock agreed with the concerns of the Members and requested to withdraw the Regulations for purpose of making the relevant corrections and to harmonize the contradicting Regulations and report back to the committee within 7 days.

**MIN. DAA&OSC/CDL/074/2022**

**BRIEFING ON CROPS (COFFEE)  
(GENERAL AMENDMENT)  
REGULATIONS, 2022 (LEGAL NOTICE  
NO. 102 OF 2022**

Mr. David Kithale , Director, ADA, Ministry of Agriculture and livestock briefed the Committee on Crops (Coffee) (General Amendment) Regulations, 2022 (Legal Notice No. 102 of 2022) as follows, that;

11. The Crops (Coffee) (General Amendment) Regulations, 2022 which seeks to amend the provisions of The Crops (Coffee) (General Amendment) Regulations, 2019, was presented by the Cabinet Secretary for Agriculture, Livestock Fisheries and Cooperatives, in exercise of his powers conferred to him under the provisions of Section 40 of The Crops Act, 2013 which is the enabling provision and as such the regulations were properly invoked.
12. The Regulations were published in the **Gazette Notice Special Issue Supplement No. 97** dated 9th June 2022, received by the Clerk of the National Assembly on the 13<sup>th</sup> of June 2022 and tabled by the deputy speaker on the 4th of October 2022.
13. The Regulation provides for preliminary provisions which is the citation, interpretation of the various terminologies used in the text of the provision of regulation and proposes amendments to various terms provided for under The Crops (Coffee) (General) Regulations, 2019.
14. Further the Regulations propose amendment of the various provisions of the Principal Regulation to provide for licenses, obligations of the license holders and service providers, recognition and protection of coffee growers' rights, collection and maintenance of data related to coffee to ensure improvement of coffee standards, increased production and support.
15. The Regulations also provides for various forms to be used for applications in compliance with the requirement set out therein.
16. The Committee Members made observations after the briefing that The Crops (Coffee) (General Amendment) Regulations, 2022 was not properly drafted.
17. The Committee therefore directed the Ministry of Agriculture and livestock to merge the Regulations of 2019 and 2022 into a single Regulation and report back to the committee in two weeks failure to which the Regulations will be annulled.

**MIN. DAA&OSC/CDL/075/2022**

**ANY OTHER BUSINESS.**

There was no business under this agenda item.

**MIN. DAA&OSC/CDL/076/2022**

**ADJOURNMENT.**

There being no other business, the meeting was adjourned at Ten Minutes to One O'clock. The next meeting will be held on Thursday, 15<sup>th</sup> December, 2022 at 2 p.m.

SIGNED: .....

THE HON. SAMUEL CHEPKONGA, CBS. M.P.  
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION

DATE: .....14/02/2023





**MINUTES OF THE 5<sup>th</sup> SITTING OF THE COMMITTEE ON DELEGATED  
LEGISLATION HELD ON THURSDAY, 16<sup>th</sup> FEBRUARY, 2023, IN THE SMALL  
DINING ROOM, MAIN PARLIAMENT BUILDING AT 10:00 AM.**

**PRESENT**

1. The Hon Samuel Kiprono Chepkonga, CBS, M.P. Chairperson
2. The Hon. Robert Gichimu Githinji, M.P. Vice Chairperson
3. The Hon. Samuel Gonzi Rai, M.P.
4. The Hon. Sunkuli Julius Lekakeny, MP
5. The Hon. John Paul Mwirigi, M.P.
6. The Hon. Paul Chebor, M.P.
7. The Hon. Joyce Kamene, M.P.
8. The Hon. Kibet Kirui Kimingoi, M.P.
9. The Hon. Jared Okello Odoyo M.P
10. The Hon. Gideon Kimaiyo Kipkoech, M.P.
11. The Hon. Pauline Lenguris, M.P.
12. The Hon. Joseph Kamau Munyoro, M.P.
13. The Hon. Onchoke Charles Mamwacha. M.P

**APOLOGIES**

1. The Hon. Robert Mbui, CBS, M.P
2. The Hon. Nicholas S. Tindi Mwale, M.P.
3. The Hon. Ruku Geoffrey Kariuki Kiringa, M.P.
4. The Hon. Linet Chepkorir M.P.
5. The Hon. Innocent Maino Mugabe, M.P.
6. The Hon. Adow Kuno Yakub, M.P.
7. The Hon. Laura Amina Mnyazi, M.P.
8. The Hon. Abdullahi Bashir Sheikh

**IN ATTENDANCE**

**SECRETARIAT**

- |                            |   |                         |
|----------------------------|---|-------------------------|
| 1. Ms. Esther Nginyo       | - | Clerk Assistant I       |
| 2. Mr. Wilson Dima Dima    | - | Principal Legal Counsel |
| 3. Mr. Brian Langwech      | - | Clerk Assistant III     |
| 4. Ms. Winny Otieno        | - | Clerk Assistant III     |
| 5. Mr. Jacknorine Buleemi  | - | Clerk Assistant III     |
| 6. Ms. Fiona W. Githunguri | - | Legal Counsel II        |
| 7. Mr. Manuel Leparachao   | - | Serjeant-At-Arms.       |
| 8. Charles Ayari           | - | Audio Officer           |



## **AGENDA**

1. Prayers;
2. Preliminaries;
3. Adoption of the Agenda
4. Confirmation of previous minutes
5. Matters Arising
6. Adoption of the Report on Crops (Coffee) (General Amendment) Regulations, 2022
7. Consideration of the Regulations before the Committee
8. Any Other Business; and
9. Adjournment.

### **MIN. DAA&OSC/CDL/025/2023**

### **PRELIMINARIES**

The Chairperson called the Meeting to order at 10:20 a.m. after which prayers were said by Hon Mwirigi John Paul, M.P. He then welcomed all present to the meeting.

### **MIN. DAA&OSC/CDL/026/2023**

### **ADOPTION OF THE AGENDA**

The Members adopted the agenda of the meeting as was proposed by Hon. Mamwancha Onchoke Charles, M.P. and seconded by Hon. Sunkuli Julius Lekakeny Ole, M.P.

### **MIN. DAA&OSC/CDL/027/2023**

### **CONFIRMATION OF MINUTES**

Minutes of the 1<sup>st</sup> Sitting held on Wednesday, 25<sup>th</sup> January, 2023 were confirmed as true records of the deliberations as proposed by the Hon. Sunkuli Julius Lekakeny Ole, M.P. and seconded by the Hon. Joyce Kamene, M.P.

Minutes of the 2<sup>nd</sup> Sitting held on Thursday, 26<sup>th</sup> January, 2023 were confirmed as true records of the deliberations as proposed by the Hon. Kibet Kirui Komingoi, M.P. and seconded by Hon. Joseph Kamau Munyoro, M.P.

Minutes of the 3<sup>rd</sup> Sitting held on Thursday, 26<sup>th</sup> January, 2023 were confirmed as true records of the deliberations as proposed by the Hon. Joseph Kamau Munyoro, M.P. and seconded by Hon. Sunkuli Julius Lekakeny Ole, M.P.

Minutes of the 4<sup>th</sup> Sitting held on Tuesday, 14<sup>th</sup> February, 2023 were confirmed as true records of the deliberations as proposed by the Hon. Mamwamcha Charles Onchoke, M.P. and seconded by Hon. Robert Gichimu Githinji, M.P.

### **MIN. DAA&OSC/CDL/028/2023**

### **MATTERS ARISING**

Under MIN. DAA&OSC/CDL/003/2023 regarding the creation of a portal on the Parliamentary Website showing the Status of Regulations before the Committee, the Committee was informed that the ICT Department was still working on the Portal and that it would be ready for access as soon as possible.



MIN. DAA&OSC/CDL/029/2023

**ADOPTION OF THE REPORT ON CROPS  
(COFFEE) (GENERAL AMMENDMENT)  
REGULATIONS, 2022**

The Committee considered and adopted the Report on Crops (Coffee) (General Amendment) Regulations, 2022 as was proposed by Hon. Munyoro Joseph Kamau, M.P. and seconded by Hon. Kimaiyo Gideon Kipkoech, M.P.

MIN. DAA&OSC/CDL/030/2023

**CONSIDERATION OF THE REGULATIONS  
BEFORE THE COMMITTEE.**

Under this agenda item, the Committee noted that various Regulation Making Authorities were anticipated to submit their Regulations to Parliament for consideration. The Committee resolved that owing to the huge number of anticipated Regulations that will be forwarded for consideration, there was need to have a detailed work plan so as to ensure that these Regulations were considered and concluded within the statutory timelines.

MIN.DAA&OSC/CDL/031/2023

**ANY OTHER BUSINESS.**

The Committee took note of an invitation by the Transparency International to a validation meeting for an assessment report on Parliamentary Oversight which was scheduled for Friday, 24<sup>th</sup> February, 2023. However, due to exigencies of duty on the same date, the Committee would not be able to participate in the validation meeting.

The Committee also took note of a letter from the Protective Security Industry Association that was seeking an appointment with the Committee with regards to finding a way forward in regards to the Private Security (General) Regulations, 2019 that were annulled by the 12<sup>th</sup> Parliament. The Committee resolved that the Association should be advised to do a Petition to Parliament urging the Ministry of Interior to draft new Regulations as resolved by the House.

MIN. DAA&OSC/CDL/032/2023

**ADJOURNMENT.**

There being no other business, the meeting was adjourned at Twenty Minutes past Eleven O'clock. The next meeting will be held on Tuesday, 21<sup>st</sup> February, 2023 at Ten O'clock.

SIGNED: .....

THE HON. SAMUEL CHEPKONGA, CBS. M.P.  
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION

DATE: 16<sup>th</sup> February, 2023 .....



FORMMr28

r.17



## AGRICULTURE AND FOOD AUTHORITY

## MIRAA, PYRETHRUM AND OTHER INDUSTRIAL CROPS DIRECTORATE

Licence Number.....

## Exporter/Importer Quarterly Returns

Name of exporter/importer: .....

Postal

Address.....

Physical Location. ....

Telephone. .... E-mail.....

Year ..... Quarter ..... Reporting Date .....

## Export returns

Quarter	Quantity (kg)	Value (KSh)	Destination
1			
2			
3			
4			
Total			

## Import returns

Quarter	Quantity (kg)	Value (KSh)	Origin
1			
2			
3			
4			
Total			

Name: .....
Signature: ..... Date: .....
Official Stamp:

## SECOND SCHEDULE--FEES

NO.	CATEGORY	NEW APPLICATIONS (Kshs).	RENEWAL FEES (Kshs).
1.	Commercial Transporter	5,000-<500 kilograms 7,500-500-1000 kilograms 10,000->1000kilograms	5,000-<500 kilograms 7,500-500-1000 kilograms 10,000->1000kilograms
2.	Exporter licence	20,000	10,000
3.	Importers licence	50,000	30,000
4.	Export permit	4000	-
5.	Import permit	6000	-
6.	Export Levy	30 per Kilogram	-
7.	Import Levy	60 per Kilogram	-

Made on the 7th June, 2022.

PETER MUNYA,  
Cabinet Secretary for Agriculture,  
Livestock, Fisheries and Co-operatives.

LEGAL NOTICE NO. 102

## THE CROPS ACT

(No. 16 of 2013)

IN EXERCISE of the powers conferred by section 40 of the Crops Act, 2013, the Cabinet Secretary for Agriculture, Livestock, Fisheries and Co-operatives in consultation with the Authority and the County Governments, makes the following Regulations—

THE CROPS (COFFEE) (GENERAL) (AMENDMENT)  
REGULATIONS, 2022

1. These Regulations may be cited as the Crops (Coffee) (General) (Amendment) Regulations, 2022. Citation.
2. The Crops (Coffee) (General) Regulations, 2019, herein referred to as the principal Regulations are amended in regulation 2— L.N. 102/2019.
  - (a) by deleting the definition of “auction” and substituting therefor the following new definition—



“auction” means a physical place or electronic system where potential buyers competitively bid for coffee;

- (b) by deleting the definition of the term “agent”;
- (c) by deleting the definition of the term “broker”;
- (d) by deleting the definition of the term “exchange”;
- (e) by deleting the word “exchange” and substituting therefor the word “auction” in the definition of the term “buyer”;
- (f) by inserting the words “operating coffee house” immediately after the word “roasting” in the definition of the term “coffee business”;
- (g) by deleting the word “exchange” wherever it appears and substituting therefor the word “auction” in the definition of the term “sweepings”;
- (h) by deleting the word “exchange” and substituting therefor the word “auction” in the definition of the term “trading floor”;
- (i) by deleting the definition of the term “direct settlement” and substituting therefor the following new definition—

“direct settlement system” means a receipts and disbursements facility provided by a commercial bank regulated as such under the Central Bank Act for the receipt from buyers of all proceeds from the purchase of coffee and from which all claims on the coffee so purchased, including payments to growers, grower millers, grower marketers, miller-marketers, warehousemen, warehouses, Nairobi Coffee Auction and financial obligations will be directly settled;

- (j) by deleting the definition of the term “sales catalogue” and substituting therefor the following new definition—

“sales catalogue” means a standard document prepared by a miller-marketer or a grower marketer in consultation with the auction organizer for sale of clean coffee at the auction;

- (k) by inserting the following new definitions in proper alphabetical sequence—

“auction organizer” means a person, company or firm established for the purpose of organizing coffee auctions in Kenya and is licensed by the Authority;

“cherry” means “the ripe fruit of the coffee tree;

“buni” means dried coffee in the fruit but does not include hulled dried fruit;

“compliance certificate” mean a certificate issued by the Authority to ascertain compliance with quality standards;

“grower marketer” means a grower licensed by the Authority to market his or its own clean coffee;

“grower miller” means a grower who mills own parchment or buni or its members’ coffee and includes cooperative societies, association, estate or any other grower legal entity issued by the respective county government;

“importer” means a person licensed by the Authority to import value added coffee;

“management agent” means any person licensed by the Authority, and appointed through a specific agreement by a grower or a smallholder for the management of such coffee farm or pulping station;

“miller-marketer” means a person whose mill is approved by respective county governments and is licensed by the Authority and appointed by the grower to undertake the milling and marketing of the grower’s coffee”; and

“value added coffee” means coffee that is roasted and packaged and includes instant coffee.

3. Regulation 4 of the principal Regulations is amended in sub regulation (2) by—

- (a) inserting the words “auction organiser and miller marketer” immediately after the word “liquoreurs” in paragraph (a);
- (b) deleting paragraph (d) and substituting therefor the following new paragraph—
  - (d) develop, oversee and enforce as the case may be, the national regulations, coffee industry standards, industry code of practice and other quality standards in the coffee industry in collaboration with the national body for the time being responsible for standards;
- (c) by inserting the following paragraph immediately after paragraph (j)—
  - (ja) undertake inspection and surveillance of industry players;
- (d) deleting paragraph (k).

4. Regulation 5 of the principal Regulations is amended in sub regulation (2) by deleting the word “milling” appearing in paragraph (c) and substituting therefor the words “grower miller”.

5. Regulation 7 of the principal Regulations is amended by—

- (a) deleting sub regulation (5) and substituting therefor the following new sub regulation—
  - (5) The Authority shall register all coffee warehousemen, warehouses, coffee miller-marketer, grower marketer, grower miller, auction organizer, coffee buyers,

coffee bags suppliers, roasters, importers, and certification companies, maintain an up-to-date register and share the register with respective county governments.

- (b) inserting the following new sub regulations immediately after sub regulation (7)—

(8) The management committees of a coffee co-operative and grower associations shall serve for a period of five-year term renewal once.

(9) In electing management committee members under this section, a cooperative society or an association shall ensure that not more than two thirds of the members are of one gender.

(10) In electing management committee members under this section, nominees for the board shall meet the requirements of Chapter Six of the Constitution.

(11) Notwithstanding the provisions of any other law, every coffee factory may, by resolution of its members in an Annual General Meeting, apply for registration as a cooperative society under the Co-operative Societies' Act.

Provided single factories seeking registration as cooperative societies shall demonstrate an average coffee production of 500,000 kgs for the immediate preceding three years.

(12) The County Government, in consultation with the Authority, shall issue a distinguishing mark and a grower code.

(13) No estate, association, company or a co-operative society offering coffee for sale or export shall use any distinguishing mark and grower code to market and identify such coffee unless the mark is registered by the county government in consultation with the Authority.

6. Regulation 10 of the principal Regulation is amended —

- (a) in sub regulation (1) by deleting paragraph (d);
- (b) in sub regulation (2) by —
- (i) deleting paragraph (a);
- (ii) deleting the word “exchange” and substituting therefor the word “auction” in paragraph (c);
- (iii) by inserting the following new paragraphs immediately after paragraph (e)—
- (f) grower marketer licence in Form C3.2 set out in the First Schedule authorizing the grower to market own coffee;
- (g) auction organizer licence in Form G8 set out in

the First Schedule authorizing the conduct of coffee auctions;

(h) miller- marketer licence in Form C4 set out in the First Schedule authorizing the holder to conduct the business of milling and marketing coffee at a fee;

- (c) by inserting the following new sub regulation immediately after sub regulation (2)—

(2A) The Authority shall seek the approval of county governments before issuing miller-marketer licenses.

Provided such approval is accorded to miller applicants within thirty calendar days upon application.

7. Regulation 11 of the principal Regulations is amended by—

- (a) deleting sub regulation (1) and substituting therefor the following new sub regulation—

(1) A holder of a coffee buyer's licence or any other entity associated with such holder shall not be licensed as a miller-marketer, roaster or warehouseman.

- (b) deleting sub regulation (4) and substituting therefor the following new sub regulation—

(4) Licences issued by the licensing authority shall run from 1<sup>st</sup> October to 30th September of every year and application for renewal of a licence shall be made to the Authority not late than the 1st day of the month of September in which the current licence is to expire”.

8. Regulation 19 of the principal Regulations is amended—

- (a) in sub regulation (6) by deleting the word “exchange” and substituting therefor the word “auction”;
- (b) in sub regulation (7) by deleting the word “exchange” and substituting therefor the word “auction”.

9. Regulation 20 of the principal Regulations is amended by deleting sub regulation (1) and substituting therefor the following new sub regulation—

(1) The Kenya Agricultural and Livestock Organization may validate coffee research findings from other accredited research institutions.

10. Regulation 22 of the principal Regulations is amended—

- (a) by deleting sub regulation (1) and substituting the following new sub regulation—

(1) Every coffee society shall, by resolution of its management meeting, competitively procure services of a licensed miller-marketer for the milling parchment and buni coffee and the marketing of clean coffee, or as the case may be.

- (b) by inserting the following new sub regulations immediately after sub regulation (1)—

(1A) The management of every society shall, within two months of the end of the crop year, convene a meeting of its members to ratify the miller-marketer procured under sub regulation (1).

(1B) The County Executive Committee Member responsible for cooperatives shall attend or designate a representative to attend the meeting referred to in sub regulation (1A).

(1C) Every registered miller participating in the meeting under sub regulation (1A) shall disclose all charges and fees that may be incurred in the milling process to enable growers make an informed decision.

(1D) Every resolution made under this regulation with regards to the procurement of a miller-marketer, shall within fourteen days of the meeting, be filed with the Authority and copied to the respective County Government.

- (c) by deleting sub regulation (2) and substituting the following new sub regulation—

(2) A miller-marketers licensed under these Regulations shall charge up to one per centum (1%) of the value of the coffee sold as marketing commission.

- (d) by inserting the following new sub regulation immediately after sub regulation (2)—

(2A) The milling losses allowable under this clause may be capped at nineteen percent of parchment coffee milled.

(2B) The cost of coffee milling and related activities (handling, sorting, grading, packaging, warehousing charges) shall not exceed Ksh 4,000.00 per ton of coffee delivered.

- (e) in sub regulation (13) by deleting the word “exchange” and substituting therefor the word “auction organiser”.

11. Regulation 23 of the principal Regulations is amended—

- (a) in sub regulation (1) by deleting the word “exchange” and substituting therefor the word “auction”.

- (b) by inserting the following new sub regulations immediately after sub regulation (1) —

(1A) A coffee miller-marketer shall be prohibited from offering a grower financial support.

(1B) The Coffee Auction shall be managed by an auction organiser who shall be licensed by the Authority.

- (c) in sub regulation (2) by deleting the word “exchange” and substituting therefor the word “auction”.

- (d) by deleting sub regulation (3) and substituting therefor the following new sub regulation—

(3) A buyer, roaster, a miller-marketer, grower marketer licensed by the relevant licensing authority, may trade at the auction in accordance with these Regulations and any other laws that may govern the auction.

(e) by inserting the following new sub regulations immediately after sub regulation (4)—

(5) It shall be an offence for a holder of a miller-marketing licence to participate by himself or by his agent in the buying of coffee.

(6) Parallel directorships and cross ownership of shares in miller-marketers and coffee buying companies is prohibited.

(7) The auction organizer shall establish an auction system for the conduct of auctions for Kenya Coffee and such system may facilitate trading in coffees from the region”

(8) An auction organizer shall fulfil requirements under the Second Schedule under these Regulations.

12. Regulation 24 of the principal Regulations is amended by inserting the following new regulations immediately after sub regulation (2)—

(2A) Direct coffee sales shall be subject to price competition at an auction whereby the Direct sales price shall serve as a reserve price.

(2B) Where the coffee referred to in subsection (2) fetches a higher price at the Coffee auction than the direct sale price offered, the prospective direct sale buyer shall have the right of first refusal to buy the coffee at the auction price.

Provided that if the prospective direct sales buyer refuses to buy the coffee at the Coffee auction price, the coffee shall be sold to highest bidder above the reserve price at the auction.

13. The principal Regulation are amended by deleting regulation 25 and substituting therefor the following new regulation—

Management of the  
auction.

25. (1) The auction organizer shall manage the auction floor, central sample room, information registry and the direct settlement system, maintain records relating to coffee sales, coffee samples and sweepings, and avail sales catalogues to interested parties.

(2) The proceeds of the sale of coffee by the auction shall, be deposited in a direct settlement system established in accordance with the laws that govern the auction.

(3) The grower or the grower's authorized representatives, shall after the commencement of these Regulations, supply through the auction all the necessary particulars of the grower to the commercial

banks providing the direct settlement system to the grower, for purposes of initiating the settlement system

(4) The grower or the grower's authorized representatives shall through the auction organiser, lodge with the commercial banks providing the direct settlement system, any relevant contracts of service for which payment will be due from the grower, and any other document showing outstanding liabilities payable by the grower, for purposes of settlement through the system.

(5) The particulars supplied shall take the format prescribed by Form P set out in the First Schedule.

(6) The grower or the grower's authorized representatives and the auction organizer shall ensure that the information provided under sub-regulations (3) and (4) herein above is correct and relevant and they shall be liable for any loss or other consequences resulting from any incorrect information given to appointed commercial banks providing the settlement system.

(7) The Direct Settlement System provider shall remit coffee sales proceeds to the coffee growers and settle service provider's fees and other liabilities within five working days from the receipt of the proceeds of sale of coffee.

(8) All payments to growers for coffee sold and for services rendered for such coffee whether by miller-marketers, warehousemen, auction organizers, coffee societies and factories shall be paid into their individual accounts from the direct settlement system.

(9) The trading of coffee at the auction shall be in accordance with these Regulations and any other laws that may govern the exchange and shall comprise the following—

- (a) a miller shall deposit clean and graded coffee at a designated licensed warehouse, and where the clean coffee is a bulk, the miller shall provide details of the bulk and the proportions of the respective growers' coffee;
- (b) coffee shall meet the Kenya coffee quality standards for commodity trading at the exchange;
- (c) the warehouseman shall issue a coffee warrant in the form set out in the Eighth

Schedule or transferable warehouse receipts as the case may be, stating the quantity and quality of the coffee deposited and ensure traceability of the coffee;

- (d) for purposes of sale, the grower miller or appointed broker shall input the details of the coffee warrant or warehouse receipt as the case may be, into the central registry of the exchange;
- (e) the warehouseman shall guarantee delivery of the coffee described in the coffee warrant or warehouse receipt as the case may be, and in the event of loss or failure of delivery, the warehouseman shall be liable;
- (f) the warehouseman or an appointed collateral manager shall confirm that the warehouse receipt or coffee warrant as the case may be, is valid by inspecting and auditing coffee in the warehouse;
- (g) upon verification, details in the information registry shall be confirmed into the central order book ready for trading;
- (h) the auction organizer in consultation with grower marketers or appointed miller marketers shall set the volumes, lot sizes, dates and times for holding of coffee auctions and determine the order of the sales catalogues for every sale and ensure that reasonable access to the auction is given to all persons licensed to trade;
- (i) the grower shall, either directly or in consultation with the miller marketer, set the reserve price for the coffee for every sale taking into account the quality of the coffee, the prevailing auction prices and the international production and market trends;
- (j) where a bid for coffee at the auction has not been confirmed, the grower miller or miller marketer shall disclose the reserve price at the trading floor and where the disclosure of the reserve price does not attract any competitive offers, the coffee shall be withdrawn and re-offered for sale at a subsequent auction;



- (k) all trading in coffee at the auction shall be concluded at the trading floor of the auction;
- (l) once auction is complete, successful bidders shall be invoiced by the grower miller or miller marketer and payments of the proceeds shall be effected to the grower through direct settlement system net of contract and statutory charges;
- (m) upon confirmation of payment by the direct settlement system and endorsement by the auction organizer, title to coffee shall be transferred to the buyer or roaster by changing ownership details in the coffee warrant or warehouse receipt, as the case may be, at the central registry;
- (n) the new owners will thereafter be at liberty to take delivery of the coffee; and
- (o) a coffee warrant or warehouse receipt as the case may be, issued by the warehouseman to a depositor of coffee shall be transferable to a new holder who has purchased the coffee and is entitled to take its delivery upon presentation of the coffee warrant or warehouse receipt endorsed by the auction organizer to the warehouseman.

(10) Payments to factories or societies from the direct settlement system for operations and maintenance shall be five per centum of the value of coffee sold net of the milling, warehousing and marketing costs.

(11) The auction organizer shall disseminate market information for every auction and an analysis of performance on, weekly and monthly basis.

(12) The obligations of the auction and the direct settlement system provider shall be as set out in the coffee trading rules and these Regulations.

(13) A commercial bank which express an interest towards establishment of a direct settlement system shall fulfil requirements stipulated under the Second under these Regulations.

(14) The auction organizer shall enter into service agreements with commercial banks which qualify and are appointed to offer the services of direct settlement system services for the coffee subsector.

(15) A commercial bank appointed to offer direct settlement services shall submit returns to the auction organizer.

(16) A person who contravenes this regulation commits an offence.

14. Regulation 26 is amended by deleting sub regulation (1) and substituting therefor the following new sub regulation—

(1) A grower marketer or a miller-marketer in consultation with the auction organizer shall prepare a sales catalogue for all the coffee in a licensed warehouse in accordance to the coffee trading rules and these Regulations.

15. Regulation 32 of the principal Regulations is amended—

- (a) in sub regulation (2) by deleting the word “may” and substituting therefor the term “shall”;
- (b) in sub regulation (4) by inserting the word “independent” immediately after the word “offer”;
- (c) in sub regulation (8) by inserting the word “independent” immediately after the word “cupping”;
- (d) in sub regulation (9) by deleting the word “exchanges” and substituting therefor the word “auctions”.

16. Regulation 33 of the principal Regulation is amended—

- (a) in sub regulation (1) by inserting the words “miller-marketer”, “grower-miller” and “grower-marketer”;
- (b) in sub regulation (3) by inserting the words “food science and technology” after the word “engineering” appearing in paragraph (a).

17. Regulation 34 of the principal Regulations is amended by deleting the word “miller” and substituting therefor the words “miller-marketer”, “grower-miller” and “grower-marketer”.

18. Regulation 37 of the principal Regulations is amended by deleting the word “miller” and substituting therefor the words “miller-marketer”, “grower-miller” and “grower-marketer”.

19. The principal Regulations are amended by inserting the following new regulations immediately after regulation 38—

Society loans.

38A. The interest rate on borrowing against growers' assets held in trust by the growers' coffee co-operative societies such as assets, land, machinery, equipment, shall be capped at five per cent per annum.

No society shall contract any loans or advances under subsection (a) except with the support of a resolution passed by a majority of the members to that effect.

Any society that violates the provisions subsection (a) commits an offence and any loans borrowed in breach of this provision shall be statutorily converted.

Nothing in this section shall be interpreted as prohibiting coffee farmers from directly borrowing money from regulated financial institutions or any government established funds against their deliveries of cherry, parchment and clean coffee.

The trusteeship responsibility by the management committee of a coffee cooperative society is a Fiduciary duty of position of trust and directors shall have held liable for any directors. Waste and loss arising from negligence and breach of trust.

Coffee buyers  
Performance Bond

38B. The Authority shall demand a performance bond from a coffee buyer who demonstrates a level of risk in buyer's operations including; sample purchases, payments against coffee purchases and settlement of trade obligations"

Provided the value of such performance bond shall be commensurate to the level of risk demonstrated by a coffee buyer.

20. Regulation 46 of the principal Regulations is amended by inserting the following new paragraph immediately after paragraph (b)—

- (c) notwithstanding the provisions of regulation 46 (a) and (b) all marketing agent licenses existing as at 30<sup>th</sup> June 2021 shall remain valid until a direct settlement system is established for the processing of coffee sales proceeds and other ancillary services;
- (d) companies that may require internal reorganization to comply with the provisions of these regulations shall be given a transitional period not exceeding twelve months from the effective date of these regulations;
- (e) existing licenses shall, upon the commencement of these Regulations, remain in force until the term of expiry.

21. The First Schedule to principal Regulations is amended—

- (a) in Form A2 by deleting the words "Kenya Agriculture, Livestock Research Organization" appearing in paragraph 3 of the terms and conditions and substituting therefor the words "an accredited research organization".
- (b) in Form C2 by deleting the heading "The County Government of.. Application for a Commercial Coffee Milling Licence" and substituting therefor the following new title—

## THE AGRICULTURE AND FOOD AUTHORITY

## APPLICATION FOR MILLER MARKETER LICENCE

- (c) in Form C3 by deleting the heading "County Government of.." and substituting therefor the following new heading "The Agriculture and Food Authority".
- (d) by deleting Form C4 and substituting therefor the following new Form—

(r.10(2)(a))

## AGRICULTURE AND FOOD AUTHORITY

FORM C4

## MILLER MARKETER LICENCE

Name .....

License No. .... Authority's Code .....

Valid from.....to.....

Postal Address.....Postal Code.....

Email .....Mobile number.....

County.....Sub-county .....

Ward.....Village/Road.....

L.R.No./Plot.....

Is/are hereby authorized to operate a milling plant as a commercial miller at.....to mill coffee and prepare such coffee for sale.

Issued by:

CEC or Authorized Officer

Designation .....

Signature..... Date .....

For: County Government

Subject to Terms and Conditions:

1. A miller marketing licence holder shall submit their milling returns to the Authority and County government on a monthly basis.
2. The miller marketing licence holder shall comply with the Coffee Industry Code of Practice and Standards.
3. The miller marketing licence holder shall allow free access to the premises by the inspectors authorized by the Authority and county government.
4. The county government may vary, suspend or revoke the milling license issued if the holder fails to abide with the terms and conditions of the license.
5. The miller marketing licence holder shall provide to the Authority and county government the milling tariffs for the purpose of publication a month before the commencement of the coffee year.
6. The miller marketing licence shall not be transferable.

(e) by deleting Form C6 and substituting therefor the following new Form—

(r.22(10))

Miller's Name.....

Miller's Code.....License No.....

Postal Address:.....Postal Code.....

Email ..... Mobile number.....

County.....Sub-county .....

Ward.....Village/Road.....

L.R.No./Plot.....

Coffee year ..... Month.....

[illegible]

Monthly Sweepings in Kg.....

Milling Charges per Tonne (where applicable)

Transport charges (where applicable)

Sorting per Tonne (where applicable)

Other charges (Specify).....

Prepared by:

Name.....Designation:.....

Signature.....Date.....

Stamp

- (f) in Form D1 by deleting the word "exchange" and substituting therefor the word "auction".
- (g) deleting Form D2 and substituting therefor the following new Form—

## FORM D2

(r.10(2)(e))

## AGRICULTURE AND FOOD AUTHORITY

## COFFEE BUYER'S LICENCE

Name of Buyer.....

Licence No. .... Buyer's Code.....

Valid from.....to.....

Postal Address: .....Postal Code.....

Email .....Mobile number.....

County.....Sub County.....

Ward.....Street/road .....

L.R.No./Plot No.....

Is hereby authorized to buy clean coffee only at the auction for export or local sale or value addition or to import clean coffee for secondary processing in Kenya (tick as appropriate).

Issued by:

Signature.....

Date .....

Director of Coffee Directorate

Agriculture and Food Authority

Subject to Terms and Conditions:

1. A licensed buyer shall submit their trading returns to the Authority on a monthly basis.
2. The licensed buyer shall comply with the Coffee Industry Code of Practice and Standards.
3. The licensed buyer shall allow free access to the premises by the inspectors authorized by the Authority.
4. The Authority may vary, suspend or revoke the coffee buyer's licence issued if the holder fails to abide with the terms and conditions of the licence.

5. The coffee buyer's licence shall not include authority to engage in direct sale.
6. The coffee buyer's licence shall not be transferable.
  - (h) by deleting Form G7 and substituting therefor the following new Form—
  - (i) by deleting Form G8 and substituting therefor the following new Form—
  - (j) by deleting Form H1 and substituting therefor the following new Form—

**AGRICULTURE AND FOOD AUTHORITY**  
**APPLICATION FOR REGISTRATION OF DEALERS**

FORM H1:

1. Name of Dealer (company)-----
2. Principal Office -----  
 Postal Address.....Postal Code..... Building.....  
 Street.....Town/ City.....L.R. No.....  
 Email.....Mobile Number.....
3. Specify type of dealership/Service

Category	Tick as appropriate
Warehousemen	
Roaster	
Import Permit	
Buyer	
Independent Cupping services	
Miller marketer	
Grower Miller	
Grower Marketer	

4. Directors of dealership

NO	NAME	ID NO/PASSPORT NUMBER
1.		
2.		
3.		
4.		

5. Declare professional skills of persons engaged (attach profiles)  
 (warehouseman, liquorer, agronomist, engineer, if other professional specify)



6. Brief Company profile
7. Application for Registration by  
Name  
Signature  
Stamp

8. Director, Coffee Directorate

Name -----

Signature -----

Stamp-----

(k) by deleting Form H2 and substituting therefor the following new Form

FIRST SCHEDULE  
AGRICULTURE AND FOOD AUTHORITY

FORM H2:

DEALER REGISTRATION CERTIFICATE

Name of Dealer.....

Type of Dealership.....

Location of Dealership: City/Town..... L/R No-----

Street.....

The dealer is here registered for conducting the business of-----at  
(location)----- on -----  
(Date)

The registration is made under an application by -----  
-----being the Director of the company.

Signed

-----

Director, Coffee Directorate

Stamp

THIS IS NOT A LICENCE FOR CONDUCTING BUSINESS

Terms and conditions

1. The registration is not transferable
2. Annual returns shall be submitted to the Authority and the respective county government

3. Continuous updates of the directorship and other registration details shall be submitted
4. The Dealer shall comply with all national and international coffee standards and other regulatory requirements in the crops Act, the coffee regulations, the trading regulations and other statutory requirements such as NEMA.
5. Any other terms introduced by the Authority
  - (l) by deleting Form L;
  - (m) by inserting the following new forms in proper sequence—

## FORM C3.1

## AGRICULTURE AND FOOD AUTHORITY

## GROWER MARKETER LICENCE APPLICATION

1. Name of Farmer/Proprietor .....
2. Grower Code (PSL)..... Validity of Licence .....
3. Postal Address.....Postal Code.....  
Email .....Mobile number.....
4. Location :  
County.....Sub-county.....  
Ward.....Village/Road.....L.R.No./Plot.....
5. \* Coffee Acreage .....

VARIETY	Acreage	Number of Mature Trees	Number of Young Trees
Ruiru II			
Batian			
Traditional Variety			

6. Coffee production for Three Years

YEAR	PARCHMENT (kg)	BUNI(Kg)

7. The Information given is the to true to the best of my knowledge

Name of Applicant .....  
 ID/NO.....  
 Date of Application .....  
 Stamp.....

## FORM C3.2

## AGRICULTURE AND FOOD AUTHORITY

## GROWER MARKETER LICENCE

Name .....  
 License No. .... Authority's Code.....  
 Valid from.....to.....  
 Postal Address.....Postal Code.....  
 Email .....Mobile number.....  
 County.....Sub-county .....  
 Ward.....Village/Road.....L.R.No./Plot.....  
 Is/are hereby authorized to undertake the business of a grower marketer at .....  
 .....

Issued By:

Director, Coffee Directorate

Signature..... Date.....

Stamp:

Subject to Terms and Conditions:

1. A licence holder shall submit their marketing returns to the Authority and the respective county government on a monthly basis.
2. The licence holder shall comply with the Coffee Industry Code of Practice and Standards.
3. The licence holder shall allow free access to the premises by the inspectors authorized by the respective licensing authority.
4. The Authority may vary, suspend or revoke the license issued if the holder fails to abide with the terms and conditions of the licence.
5. The licence shall not be transferable.

## FORM G7

## AGRICULTURE AND FOOD AUTHORITY

## COFFEE DIRECTORATE

r(8)

APPLICATION FOR REGISTRATION/LICENCE RENEWAL OF AUCTION  
ORGANIZER

1. Name of applicant.....
2. Certificate of incorporation..... (Attach copy)
3. Copies of Memorandum and Articles of Association.....(Attach copy)
4. Names and Particulars of Directors and Form CR 12 (attach details).....
5. Tax Compliance Certificate (Attach copy).....
6. Address.....
7. Contact Information
  - a) Telephone number .....
  - b) E-mail address.....
8. Contact Person.....
9. L.R. No. /Nos. ....
10. Nature of business.....
11. Specify services to be provided.....

Date applied.....

Signature of applicant

## Terms and Conditions

1. An applicant shall furnish the Authority with the protocols governing the operations of the Auction in a form satisfactory to the Authority.
2. The protocols shall restrict the applicant to the business of operating a coffee auction and related services.
3. The protocols shall contain the applicable fees and charges for membership and

for services rendered by and between members

4. The protocols shall contain guidelines for disclosure of the daily trading report of the auction.
5. Satisfy the Authority on the applicant financial capacity, functional expertise and infrastructure to undertake coffee auctioning in the Republic of Kenya.
6. Have in its employments sufficient number of persons with adequate, professional and other relevant competencies and experience.
7. An applicant shall digitize and automate the coffee Auction system for efficient services delivery and information dissemination.

### FORM G8

## AGRICULTURE AND FOOD AUTHORITY

r10(2)(f)

### LICENCE OF AUCTION ORGANISER

Name.....

License No. ....

Authority's Code.....

Valid from.....to.....

Postal Address.....Postal  
Code.....

Email .....

Mobile number.....

County.....

City .....

Road.....

Name of Building .....

.L.R.No./Plot.....

Is/are hereby authorized to undertake the business of an auction organizer .....

Issued by:

Director, Coffee Directorate

Signature.....

Date.....

Stamp:

## Subject to Terms and Conditions:

1. An auction organizer shall submit their auctioning returns to the Authority on weekly and monthly basis.
2. An auction organizer shall comply with the Coffee Industry Code of Practice and Standards.
3. An auction organizer shall allow free access to the premises by the inspectors authorized by the Authority.
4. The Authority may vary, suspend or revoke the license issued if the holder fails to abide with the terms and conditions of the licence.
5. The licence shall not be transferable.

## FORM P

COUNTY GOVERNMENT OF .....

r25(5)

COFFEE GROWERS NOTIFICATION OF DETAILS TOWARDS FACILITATION  
OF REMISSION OF COFFEE SALES PROCEEDS THROUGH DIRECT  
SETTLEMENT SYSTEM

1. Name of the grower.....
2. Grower Code..... Address..... ZIP Code.....
3. Category of grower (Tick as appropriate)  
Cooperative [     ] Association [     ] Estate [     ] Other [     ]  
specify.....
4. Location of Grower: County.....
5. Sub-County..... Ward.....  
Village/Road..... E-mail.....  
Mobile Number: .....
6. The following are Officials/Signatories to the Grower account and shall transact for the grower
 

Name of Official/Owner/Agent	ID NO	Signature
a) .....	.....	.....
b) .....	.....	.....
c) .....	.....	.....
d) .....	.....	.....

(Attach copies of IDs, minutes electing the committee, introduction letter  
by the County Commissioner Cooperatives)

## 7. Details of Bank Account

Name of Bank/Financial Institutions .....

Branch.....

Account Number .....

Contact of Bank (if any) .....

## 8. Details of service contracts and loan obligations to which payments are due

a) Name of Service contract(s) .....

b) The following are the outstanding liabilities payable by the grower to service providers through the Direct Settlement System and the supporting documents:  
.....

(Attach additional documents)

c) Other (specify).....

Attach list if space is not adequate)

## 9. Prepared by –

a) Name of Authorized person: .....

b) Signature .....

c) Position at Grower institution/Estate .....

d) Mobile Number.....

e) National ID/No.....

(Attach Copy of ID)

f) Date .....

g) Stamp.....

22. The Second Schedule to principal Regulations is amended in Part F on requirements of a coffee buyers licence by—

(a) deleting paragraph 5;

(b) deleting paragraph 7 and substituting therefor the following new paragraph—

7. Access to an authorized cupping laboratory.

(c) deleting paragraph 8.

23. The Third Schedule to principal Regulations is amended—

(a) in Part C by deleting the words “the grower miller or appointed agent or broker” appearing in paragraph 1 and substituting therefor the following

words “the coffee miller-marketer, a grower miller, a grower marketer or appointed agent”.

(b) by deleting Part F.

24. The Fourth Schedule to the principal Regulations is amended by—

(a) deleting the heading and substituting therefor the following new heading—

Commercial Milling Agreement.

(b) deleting the word “miller” wherever it appears and substituting therefor the words “miller marketer”.

25. The Sixth Schedule to principal Regulations is amended by deleting Part A and substituting therefor the following new Part—

#### PART A

A grower marketer or grower miller who has secured an overseas buyer contract for the coffee, shall—

1. Store coffee for direct sales at designated warehouses.
2. Enter into a direct sales contract in the format prescribed under these guidelines and shall lodge the contract with the Authority for registration and approval.
3. Submit to the Authority a sample of 250gm of the said coffee for quality analysis and for arbitration purposes.
4. Have the coffee inspected by the Authority, in order to ascertain the quality, quantity and the value and for approval of the contract.
5. Be issued with an inspection certificate for every coffee consignment declared to the Authority for direct sales to ascertain the coffee quality. The inspection certificate shall be one of the requirements for clearance of direct sales exports.
6. The Authority liquorer shall conduct quality analysis and issue a certificate of conformity with coffee grading and quality standards.
7. Direct coffee sales shall be subject to price competition at the Nairobi Coffee Auctions whereby the Direct sales price shall serve as a reserve price.
8. Where coffee with a direct sales offer fetches a higher price at the Coffee auction than the direct sale price offered, the prospective direct sale buyer shall have the right of first refusal to buy the coffee at the auction price.
9. Provided that if the prospective direct sales buyer refuses to buy the coffee at the Coffee auction price, the coffee shall be sold to highest bidder above the reserve price at the auction
10. All Direct sales price offers shall be communicated to the auction organizer five days prior to an auction.
11. Growers and overseas buyers shall agree on the mode of payment for the coffee purchased which shall be part of the contract submitted to the Authority for approval.
12. Apply to the Authority for—



- (a) ICO certificate;
  - (b) KEPHIS certification;
  - (c) Movement permit(s)
  - (d) Quality certificate; and
  - (e) Any other necessary clearance
13. Appoint an agent for purposes of logistics and other processing requirements related to coffee exports where applicable.
14. Remit monthly returns to the Authority on Direct sales undertaken.
- Made on the 7th June, 2022.

PETER MUNYA,  
*Cabinet Secretary for Agriculture,  
Livestock, Fisheries and Co-operatives.*





## COUNCIL OF GOVERNORS

Westlands Delta House 2<sup>nd</sup> Floor, Waiyaki Way,  
P.O. BOX 40401-00100,  
Nairobi.

Tel: (020) 2403314, 2403313  
E-mail: [info@cog.go.ke](mailto:info@cog.go.ke)

This is the Exhibit marked MM-5  
referred to in the annexed Affidavit/declaration  
of MARY MWITI  
Sworn/Declared before me This 12<sup>th</sup> day of  
AUG 20 22 at NAIROBI  
Ngũm  
Commissioner for Oaths/Notary Public

Our Ref: COG/6/48 Vol. 51 (33)

12<sup>th</sup> July, 2022

Hon. Justin Muturi, EGH, MP  
Speaker of the National Assembly  
Parliament Building  
**NAIROBI**

Rt. Hon. Sen. Kenneth Lusaka, EGH, MP  
Speaker of the Senate  
Parliament Building  
**NAIROBI**

**REQUEST FOR SPECIAL SITTINGS OF THE PARLIAMENTARY COMMITTEES ON DELEGATED  
LEGISLATION AND AGRICULTURE TO DELIBERATE ON THE CROPS (COFFEE) (GENERAL)  
(AMENDMENT) REGULATIONS, 2022**

The above subject matter refers.

The attention of the Council of Governors has been drawn to the **Legal Notice No. 102 of 2022: the Crops (Coffee) (General) (Amendment) Regulations, 2022** published by the Cabinet Secretary for Agriculture on 7<sup>th</sup> June, 2022 amending the **Legal Notice No. 102 of 2019: the Crops (Coffee) (General) Regulations, 2019** (hereafter referred to as the "parent regulations").

In the said amendments, the Cabinet Secretary has limited the licensing authority of the County Governments by removing the milling license purview of the County Governments and giving the licensing power to Agriculture and Food Authority contrary to the sections 1 and 7(b) of the Part 2 of the Fourth Schedule to Constitution which has devolved agriculture and Trade development and regulation, including- issuance of trade licenses to the counties. The regulatory functions includes:

- i. Grower marketer licence authorizing the grower to market own coffee;
- ii. Miller- marketer licence authorizing the holder to conduct the business of milling and marketing coffee at a fee; (Attached is a copy of the regulation for ease of Reference).



It is important to note that the aforementioned **Crops (Coffee) (General) (Amendment) Regulations, 2022** were developed without consultations with the Council of Governors contrary to section 40 of the Crops Act, 2013. This is also despite the Council writing several letters to the Ministry calling for consultations before such amendments are published for implementation. **(Attached are copies of the letters for ease of Reference).**

We wish to also inform you that the Attorney General through a letter addressed to the Cabinet Secretary dated **8<sup>th</sup> June, 2022** advised the Ministry to consult the Council of Governors before publishing the said regulations to avoid an impasse. **(Attached is a copy of the letter for ease of Reference).** The Ministry deliberately decided not to address the concerns raised by the Council and Attorney General but rather proceeded to publish the impugned regulations.

In view of the above, the Council opines that the impugned regulations are not only unconstitutional but also claw back on the functions of the County Governments and as such should be annulled by Parliament.

The purpose of this letter is to kindly request your good office to urgently convene a joint special sittings of the Parliamentary Committees of Delegated Legislation and Agriculture to deliberate on the impugned regulations as per the provisions of the Statutory Instruments Act.

**H. E Hon. Martin Wambora, EGH**  
**Chairman, Council of Governors**

**Copy: All Excellency Governors**

**Hon. Silas Kipkoech Tiren, MP**  
Chairperson, National Assembly Departmental Committee on  
Agriculture and Livestock  
Parliament Building  
**NAIROBI**

**Hon. Sen. Ndwiga Peter Njeru, MP**  
Chairperson, Senate Standing Committee on Agriculture, Livestock and  
Fisheries  
Parliament Building  
**NAIROBI**

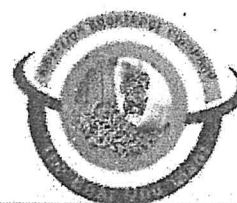
**Attorney General**  
Republic of Kenya  
Sheria House  
**NAIROBI**

Mr. Jeremiah M. Nyegenye, CBS  
The Clerk of the Senate  
Parliament Building  
NAIROBI

Mr. Michael Sialai, CBS  
The Clerk of the National Assembly  
Parliament Building  
NAIROBI

All County Executive Committee Members, Agriculture





**PETITION TO THE NATIONAL ASSEMBLY  
BY  
COFFEE CO-OPERATIVE SOCIETIES, UNIONS LICENSED AS COFFEE BROKERAGES  
TO TRADE THEIR COFFEE**

The Crops (Coffee) (General) (Amendment) Regulations 2022 were gazetted on June 10th, 2022, by the Cabinet Secretary, Ministry of Agriculture, Livestock, Fisheries, and Cooperatives Hon. Peter Munya vide Legal Notice No. 102. The amendments sought to reverse the gains made on account of implementation of the Crops (Coffee) (General) Regulations 2019 and the Capital Markets (Coffee Exchange) Regulations 2020. These regulations were developed following the recommendations of the 2016

Whereas;

- i. A National Task Force on Coffee Sub Sector Reforms was gazetted vide Gazette Notice No. 1332 of 4th March 2016 to conduct a rigorous value chain analysis on the coffee subsector.
- ii. Upon submission of the Taskforce Report, the Coffee Subsector Implementation Committee (CSIC) was gazetted vide Gazette Notice No. 7745 to implement the recommendations in the Taskforce Report.
- iii. The CSIC spearheaded the formulation and enactment of the new legal and regulatory framework embedded in the Crops (Coffee) (General) Regulations, 2019 (hereinafter referred to as the Coffee General Regulations) and Capital Markets (Coffee Exchange) Regulations, 2020 (hereinafter referred to as the Coffee Exchange Regulations) to govern the coffee subsector.
- iv. The new legal framework abolished the marketing agents licences and provided for coffee brokerage companies to carry out the coffee marketing function.
- v. Pursuant to regulation 11 of the Coffee Exchange Regulations, the Capital Markets Authority (CMA) granted coffee broker licences to several Coffee Cooperative Unions through their brokerage firms namely:
  - United Eastern Kenya Coffee Marketing Company
  - Meru County Coffee Marketing Agency Limited
  - Kipkelion Brokerage Company Limited
  - Mt Elgon Coffee Marketing Agency; and
  - Muranga County Coffee Dealers Limited

The CMA communicated the grant of the licenses to Nairobi Coffee Exchange and published a Public Notice to that effect.

- vi. The brokerage firms underwent rigorous and stringent application process including a no-objection clearance letter from Nairobi Coffee Exchange as provided for in regulation 8(2) (c) of Coffee Exchange Regulations.
- vii. The Cabinet Secretary for Agriculture, Livestock, Fisheries and Co-operatives Hon. Peter Munya without engaging coffee stakeholders, issued a Legal Notice No. 102 Of 2022 The Crops (Coffee) (General) (Amendment) Regulations, 2022 to amend the Coffee General Regulations to reinstate/extend marketing agents licences. However, a copy of the Legal Notice was not transmitted to the Clerk of the National Assembly within seven (7) days of publication for parliamentary scrutiny contrary to the provisions in the Statutory Instruments Act.
- viii. On 19<sup>th</sup> August 2021 the United Eastern Kenya Coffee Marketing Company owned by Machakos Coffee Co-operative Union, a licensed coffee broker, sought admission to Nairobi Coffee Exchange auction floor by requesting allocation of lots range and brokers code. The Nairobi Coffee Exchange rejected their request citing Legal Notice 104 and the need to seek advisory opinion from the Cabinet Secretary for Agriculture, Livestock, Fisheries and Cooperatives. Notably, this Legal Notice has been revoked by the CS, Agriculture, Livestock, Fisheries, and Cooperatives and cannot legally be used to deny licensed coffee growers access to the exchange to trade their coffee.

There no policy or law that supports the Nairobi Coffee Exchange's rejection to admit a duly licensed brokerage firm. Regulation's mandate Nairobi Coffee Exchange to give reasonable access to the auction for all persons licensed to trade and empower Capital Markets Authority to direct Nairobi Coffee Exchange to facilitate the participation at the auction. Third, the Legal Notice No. 104 is unlawful because it contravenes the Statutory Instruments Act 2013 and has since been revoked by the National Assembly.

The Nairobi Coffee Exchange should immediately as per the Capital Market Authority Regulation 41 (1) of Coffee Exchange Regulations select a provider of Direct Settlement System (DSS) to enable farmers enjoy the transparency of payment of their coffee proceeds.

The DSS is a banking facility provided by commercial banks regulated by the Central Bank of Kenya (CBK) for clearing and settlement of coffee sales proceeds in an auction. The aim of the DSS is to bring transparent and timely clearing and settlement of coffee sale proceeds to the growers and service providers. It is a digital platform based on automation, computerization, and integration across the coffee value-chain. It converts the current manual process to automated and computerized process; or paper documents into digital formats for efficient service delivery and information dissemination.

In view of the aforementioned, we thank the National Assembly and Senate for approving the Crops Act (Coffee) (General) Regulations 2019 and the Capital Markets (Coffee Exchange) Regulations 2020 and the Council of Governors for their support on the same. These regulations for the first time in the history of Kenya have minimized farmers' risk along the coffee value chain and empowered them to control their coffee and its proceeds, despite opposition by vested interests.

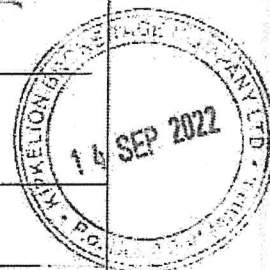


## RESOLUTIONS

1. Nairobi Coffee Exchange must admit the duly licensed brokerage firms to trade their coffee with immediate effect in compliance with the law.
2. Nairobi Coffee Exchange must appoint Direct Settlement System provider immediately to enable coffee farmers access their coffee payments in a timely manner.
3. That the Legal Notice No. 102 and any subsequent notice issued by the CS, Agriculture, Livestock, Fisheries, and Cooperatives Hon. Peter Munya and other agents, be declared unlawful since it was not subjected to public participation and not approved by the National Assembly and Senate.
4. Marketing licenses issued under the revoked, Coffee (General) Rules 2002 or any Legal Notice extending their operation be cancelled.

Signed by Reps of the Brokerage Company owned by the Co-operative Union

NAME OF REPRESENTATIVE	NAME OF CO-OPERATIVE UNION	DESIGNATION	SIGNATURE
Sammy MARIKANYI	Kipkelion Brokerage Company Ltd	Chairman	
	United Eastern Kenya Coffee Marketing Company Ltd	Chairman	
	Mt. Elgon Coffee Marketing Agency Ltd	Chairman	
	Murang'a County Coffee Dealers Company	Chairman	
	Meru County Coffee Marketing Agency Ltd	Chairman	







This is the Exhibit marked MM-2A  
referred to in the annexed Affidavit/declaration  
of MARY MWITI  
Sworn/Declared before me This 12<sup>TH</sup> day of  
AUGUST 20 22 at NAIROBI  
NAC  
Commissioner for Oaths / Notary Public

## COUNCIL OF GOVERNORS

Westlands Delta House 2<sup>nd</sup> Floor, Waiyaki Way.  
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Our Ref. COG/6/48 Vol. 48 (74)

12<sup>th</sup> January, 2022

Hon. Peter Munya, EGH  
Cabinet Secretary  
Ministry of Agriculture, Livestock, Fisheries & Cooperatives  
Kilimo House  
NAIROBI

Dear

*Waziri Peter Munya, EGH*

### PROPOSED AMENDMENTS TO THE CROPS COFFEE (GENERAL) REGULATIONS, 2019

The above subject matter refers.

The attention of the Council of Governors has been drawn to the proposed amendments to the Crops Coffee (General) Regulations, 2019 being spearheaded by the Agriculture and Food Authority (AFA) Coffee Directorate. We note with concern that the proposed amendments will not only claw back on the progressive reforms in the coffee subsector but also on devolution.

The Council is also concerned and opposed to the proposal to amend regulation 10 of the regulations by removing the milling license from the purview of the County Governments and returning the same to AFA as well as the new additional requirements prescribed before counties can issue warehouse or roaster licenses.

We further note that the Crops Coffee (General) Regulations 2019 were developed through extensive consultations with County Governments and coffee farmers across the country in which distinct roles were assigned between the two levels of Government in line with the Constitution.

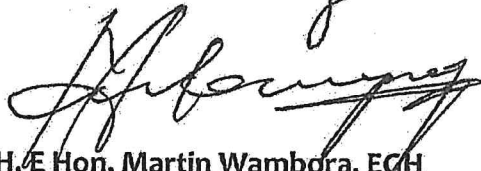
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In addition, Counties are currently implementing the regulations and therefore the Council opposes the proposed amendments as the same will negatively affect the efforts by Counties.

In view of the above, the Council calls upon the Ministry through AFA Coffee Directorate to refrain from making unilateral amendments to the regulations.

We further urge the Directorate to focus on collaborating and fostering synergies with County Governments and the key actors and support the full implementation of the regulations.

Yours *Sincerely*



**H.E Hon. Martin Wambora, EGH**  
**Chairman, Council of Governors**

**Copy: All Excellency Governors**

**Attorney General**  
**Republic of Kenya**  
**NAIROBI**

**All CECMs in charge of Agriculture**

**Director General**  
**Agriculture and Food Authority**  
**NAIROBI**  
**Att: Director, Coffee Directorate**



# **UNITED EASTERN KENYA**

## **COFFEE MARKETING COMPANY LTD**

**PETITION TO THE NATIONAL ASSEMBLY  
BY  
COFFEE CO-OPERATIVE SOCIETIES, UNIONS LICENSED AS COFFEE BROKERAGES  
TO TRADE THEIR COFFEE**

The Crops (Coffee) (General) (Amendment) Regulations 2022 were gazetted on June 10th, 2022, by the Cabinet Secretary, Ministry of Agriculture, Livestock, Fisheries, and Cooperatives Hon. Peter Munya vide Legal Notice No. 102. The amendments sought to reverse the gains made on account of implementation of the Crops (Coffee) (General) Regulations 2019 and the Capital Markets (Coffee Exchange) Regulations 2020. These regulations were developed following the recommendations of the 2016

**Whereas;**

- i. A National Task Force on Coffee Sub Sector Reforms was gazetted vide Gazette Notice No. 1332 of 4th March 2016 to conduct a rigorous value chain analysis on the coffee subsector.
- ii. Upon submission of the Taskforce Report, the Coffee Subsector Implementation Committee (CSIC) was gazetted vide Gazette Notice No. 7745 to implement the recommendations in the Taskforce Report.
- iii. The CSIC spearheaded the formulation and enactment of the new legal and regulatory framework embedded in the Crops (Coffee) (General) Regulations, 2019 (hereinafter referred to as the Coffee General Regulations) and Capital Markets (Coffee Exchange) Regulations, 2020 (hereinafter referred to as the Coffee Exchange Regulations) to govern the coffee subsector.
- iv. The new legal framework abolished the marketing agents licences and provided for coffee brokerage companies to carry out the coffee marketing function.
- v. Pursuant to regulation 11 of the Coffee Exchange Regulations, the Capital Markets Authority (CMA) granted coffee broker licences to several Coffee Cooperative Unions through their brokerage firms namely:
  - United Eastern Kenya Coffee Marketing Company
  - Meru County Coffee Marketing Agency Limited
  - Kipkelion Brokerage Company Limited

- Mt Elgon Coffee Marketing Agency; and
- Muranga County Coffee Dealers Limited

The CMA communicated the grant of the licenses to Nairobi Coffee Exchange and published a Public Notice to that effect.

- vi. The brokerage firms underwent rigorous and stringent application process including a no-objection clearance letter from Nairobi Coffee Exchange as provided for in regulation 8(2) (c) of Coffee Exchange Regulations.
- vii. The Cabinet Secretary for Agriculture, Livestock, Fisheries and Co-operatives Hon. Peter Munya without engaging coffee stakeholders, issued a Legal Notice No. 102 Of 2022 The Crops (Coffee) (General) (Amendment) Regulations, 2022 to amend the Coffee General Regulations to reinstate/extend marketing agents licences. However, a copy of the Legal Notice was not transmitted to the Clerk of the National Assembly within seven (7) days of publication for parliamentary scrutiny contrary to the provisions in the Statutory Instruments Act.
- viii. On 19<sup>th</sup> August 2021 the United Eastern Kenya Coffee Marketing Company owned by Machakos Coffee Co-operative Union, a licensed coffee broker, sought admission to Nairobi Coffee Exchange auction floor by requesting allocation of lots range and brokers code. The Nairobi Coffee Exchange rejected their request citing Legal Notice 104 and the need to seek advisory opinion from the Cabinet Secretary for Agriculture, Livestock, Fisheries and Cooperatives. Notably, this Legal Notice has been revoked by the CS, Agriculture, Livestock, Fisheries, and Cooperatives and cannot legally be used to deny licensed coffee growers access to the exchange to trade their coffee.

There no policy or law that supports the Nairobi Coffee Exchange's rejection to admit a duly licensed brokerage firm. Regulation's mandate Nairobi Coffee Exchange to give reasonable access to the auction for all persons licensed to trade and empower Capital Markets Authority to direct Nairobi Coffee Exchange to facilitate the participation at the auction. Third, the Legal Notice No. 104 is unlawful because it contravenes the Statutory Instruments Act 2013 and has since been revoked by the National Assembly.

The Nairobi Coffee Exchange should immediately as per the Capital Market Authority Regulation 41 (1) of Coffee Exchange Regulations select a provider of Direct Settlement

System (DSS) to enable farmers enjoy the transparency of payment of their coffee proceeds.


The DSS is a banking facility provided by commercial banks regulated by the Central Bank of Kenya (CBK) for clearing and settlement of coffee sales proceeds in an auction. The aim of the DSS is to bring transparent and timely clearing and settlement of coffee sale proceeds to the growers and service providers. It is a digital platform based on automation, computerization, and integration across the coffee value-chain. It converts the current manual process to automated and computerized process; or paper documents into digital formats for efficient service delivery and information dissemination.

In view of the aforementioned, we thank the National Assembly and Senate for approving the Crops Act (Coffee) (General) Regulations 2019 and the Capital Markets (Coffee Exchange) Regulations 2020 and the Council of Governors for their support on the same. These regulations for the first time in the history of Kenya have minimized farmers' risk along the coffee value chain and empowered them to control their coffee and its proceeds, despite opposition by vested interests.

#### **RESOLUTIONS**

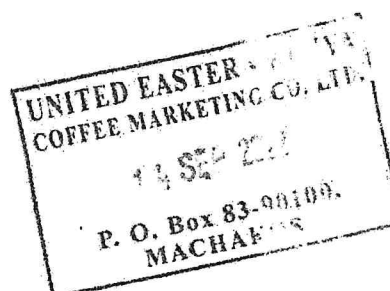
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2. Nairobi Coffee Exchange must appoint Direct Settlement System provider immediately to enable coffee farmers access their coffee payments in a timely manner.
3. That the Legal Notice No. 102 and any subsequent notice issued by the CS, Agriculture, Livestock, Fisheries, and Cooperatives Hon. Peter Munya and other agents, be declared unlawful since it was not subjected to public participation and not approved by the National Assembly and Senate.
4. Marketing licenses issued under the revoked, Coffee (General) Rules 2002 or any Legal Notice extending their operation be cancelled.

Signed by Reps of the Brokerage Company owned by the Machakos Co-operative Union

NAME REPRESENTATIVE	OF	NAME OF CO- OPERATIVE UNION	DESIGNATION	SIGNATURE
Jacinta Mutula		United Eastern Kenya Coffee Marketing Company Ltd	Chairman	

**CC**  
**Her Excellency**  
**Wavinya Ndeti**  
**Governor, Machakos County.**

**Chairman**  
**Machakos Co-operative Union.**







## **MERU COUNTY COFFEE MARKETING AGENCY**

**P.O. BOX 2307-60200 Tel: 0703 979665/0725 529959**

**Email:merucountycoffee@gmail.com**

### **PETITION TO THE NATIONAL ASSEMBLY**

**BY**

### **COFFEE CO-OPERATIVE SOCIETIES, UNIONS LICENSED AS COFFEE BROKERAGES TO TRADE THEIR COFFEE**

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There no policy or law that supports the Nairobi Coffee Exchange's rejection to admit a duly licensed brokerage firm. Regulation's mandate Nairobi Coffee Exchange to give reasonable access to the auction for all persons licensed to trade and empower Capital Markets Authority to direct Nairobi Coffee Exchange to facilitate the participation at the auction. Third, the Legal Notice No. 104 is unlawful because it contravenes the Statutory Instruments Act 2013 and has since been revoked by the National Assembly.

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In view of the aforementioned, we thank the National Assembly and Senate for approving the **Crops Act (Coffee) (General) Regulations 2019** and the **Capital Markets (Coffee Exchange) Regulations 2020** and the Council of Governors for their support on the same. These regulations for the first time in the history of Kenya have minimized farmers' risk along the coffee value chain and empowered them to control their coffee and its proceeds, despite opposition by vested interests.

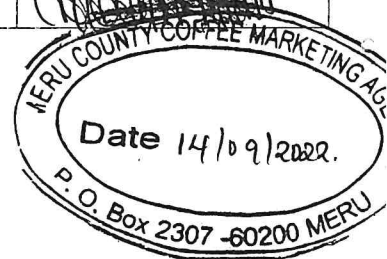
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Signed by Reps of the Brokerage Company owned by the Co-operative Union

NAME REPRESENTATIVE	OF	NAME OF CO- OPERATIVE UNION	DESIGNATION	SIGNATURE
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		United Eastern Kenya Coffee Marketing Company Ltd	Chairman	
		Mt. Elgon Coffee Marketing Agency Ltd	Chairman	
		Murang'a County Coffee Dealers Company	Chairman	
Zablon Mburaby		Meru County Coffee Marketing Agency Ltd	Chairman	

Cc:  
Her Excellency,  
Hon Bishop Kawira Mwangaza,  
Governor -Meru County.





# **MURANG'A FARMERS CO-OPERATIVE UNION LTD.**

**P. O. Box 14 – 10200 Muranga Tel: 0742770947**

**Email: info@murangafarmers.co.ke**

**Ref: .....**

**Date: 14<sup>th</sup> September 2022**

## **PETITION TO THE NATIONAL ASSEMBLY**

**BY**

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**Francis Ngone Gathiga**  
**Chairman – Muranga Farmers Co-operative Union Ltd**







REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY GENERAL  
&  
DEPARTMENT OF JUSTICE

This is the Exhibit marked MM-3  
referred to in the annexed Affidavit/declaration  
of MARY MWITI  
Sworn/Declared before me This 12<sup>TH</sup> day of  
AUG 20 22 at NAIROBI  
NELI  
Commissioner for Oaths / Notary Public

Our Ref: AG/LDD/442/1/46  
Your Ref: MOALF/CS/CROPS/8

**MOST  
URGENT**

8<sup>th</sup> June, 2022

Hon. Peter G. Munya, EGH  
Cabinet Secretary  
Ministry of Agriculture, Livestock, Fisheries and Cooperatives  
**NAIROBI**

**RE: THE CROPS (COFFEE) (GENERAL) (AMENDMENT) REGULATIONS, 2022**

Reference is made to your letters, both under Ref. No. MOALF/CS/CROP78, dated the 21<sup>st</sup> April, 2022 and the 2<sup>nd</sup> June, 2022, and to our letter dated the 2<sup>nd</sup> June, 2022 with respect to the subject matter. We also refer to our request to all the relevant stakeholders to attend a meeting at our offices on the 7<sup>th</sup> June, 2022.

Please note that the said meeting was held at our Office and the issues raised in our letter dated the 2<sup>nd</sup> June, 2022 were deliberated upon by the representatives from the Coffee Directorate, the National Treasury, the Council of Governors and the Capital Markets Authority. The meeting noted the following:

1. The Ministry of Agriculture, Livestock, Fisheries and Cooperatives was not represented. However, the position taken by the Ministry's Cabinet Secretary as per the letters referenced hereinabove was considered.
2. The Council of Governors reiterated the need to maintain the licensing provisions as contained in the Crops (Coffee) (General) Regulations, 2019 as they were developed through a comprehensive consultative process. The Council further stated that the proposed amendments will be a usurpation of the counties' constitutional mandate. The Ministry is advised to take note and ensure concurrence from the Council of Governors to avoid an impasse on the subject matter.
3. The proposed amendment to transfer the regulatory function over the Nairobi Coffee Exchange from the Capital Markets Authority to the Agriculture and Food Authority will require a significant policy shift, the amendment of the Capital Markets Act and the revocation of the Capital Markets (Coffee Exchange)

Regulations, 2020, in order to avoid inconsistencies in regulation of the exchange/proposed auction. It is important to note that the policy framework that anchors the reform efforts to establish structured commodities trading in Kenya is articulated in the Vision 2030 Development Strategy, the Northern Corridor Integration Projects (NCIP) Summit of Heads of States/Governments Presidential Directives (2014) and the 'Big 4' Agenda. Specifically, under the NCIP, the capital markets regulators (CMA Kenya, CMA Uganda and CMA Rwanda) were identified as commodity exchanges regulators in the region. Consequently, the framework was developed through a comprehensive stakeholder-driven process and includes the Capital Markets Master Plan (2014-2023), the Commodities Exchange Feasibility Study Report (2015), the Capital Markets Authority Policy Paper on the Development of Commodities Markets in Kenya (2016), the Presidential National Task Force Report on Coffee Sub-Sector Reforms (2016) as well as the Joint Cabinet Memorandum on the Establishment of Commodities Exchanges in Kenya (2016), submitted by the Cabinet Secretaries for National Treasury; the then Ministry of Industry, Investment and Trade; and the then Ministry of Agriculture, Livestock and Fisheries.

4. The aforementioned policy informed the amendment of the Capital Markets Act to include regulation of commodity markets and spot commodities. Section 12 (1) (ka) of the Capital Markets Act provides that the Cabinet Secretary of the National Treasury shall make regulations on spot commodity trading and commodity markets and defines a commodity as *"agricultural, livestock, fishery, forestry, mining or energy goods or any product that is manufactured or processed from any such goods"*. In this context, coffee falls within the definition of agricultural commodities sold at the Nairobi Coffee Exchange. In addition, we note that there are the Capital Markets Act (Coffee Exchange) Regulations, 2020, which currently regulate the operations of the said Exchange.
5. As the law has not been amended to exclude agricultural commodities from the scope of the said Capital Markets Act and the aforementioned Regulations, it is our considered opinion that there is need to ensure compliance with the existing legal and policy framework. It is our respectful recommendation that the Ministry of Agriculture, Livestock, Fisheries and Cooperatives should engage with the National Treasury and the Capital Markets Authority on whether there is need to change the current policy and to amend the Capital Markets Act and revoke the Capital Markets Act (Coffee Exchange) Regulations, 2020. In our humble view, this would facilitate consensus-building and avert the possibility of legal challenges in the implementation of the draft regulations.

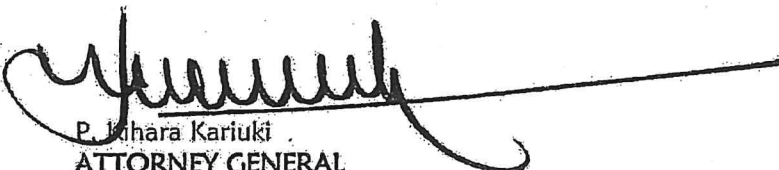
However, should the Ministry still hold the view expressed in its letter of the 2<sup>nd</sup> June, 2022 referenced hereinabove that the draft regulations should be published, despite our advice hereinabove, we will be obliged to submit the same to the Government Printer for immediate publication. The said regulations are enclosed herewith for your further action and instructions to us in this regard.

In the meantime, please note that Section 11 of the Statutory Instruments Act, 2013 requires the respective Cabinet Secretary to ensure that a copy of a statutory instrument is submitted to the Clerk of the National Assembly within seven (7) days of publication for Parliamentary scrutiny. We also wish to draw your attention to Section 5A of the said Act which requires that every statutory instrument shall be accompanied by an explanatory memorandum which shall contain the following:

- (a) a statement on the proof and demonstration that sufficient public consultation was conducted as required under Articles 10 and 118 of the Constitution;
- (b) a brief statement of all the consultations undertaken before the statutory instrument was made;
- (c) a brief statement of the way the consultation was carried out;
- (d) an outline of the results of the consultation; and
- (e) a brief explanation of any changes made to the legislation as a result of the consultation.

In view of the strict timelines between the date of publication and the date of submission to Parliament as indicated hereinabove, it is imperative that should the Ministry make the decision to have the regulations published, all the requisite documents as stipulated in the Statutory Instruments Act, 2013 should be ready in time for submission to Parliament.

We trust that what we have stated hereinabove may be of assistance and remain at hand to provide such assistance and or guidance that may be expedient.



P. Kihara Kariuki  
**ATTORNEY GENERAL**

Copy to: Dr. Joseph K. Kinyua, EGH  
Head of the Public Service  
Executive Office of the President  
Harambee House  
**NAIROBI**

Hon. (Amb.) Ukur Yatani, EGH  
Cabinet Secretary  
The National Treasury and Planning  
**NAIROBI**

Mr. Kennedy Ogeto CBS  
SOLICITOR GENERAL

Ms. Beatrice Nyamwamu  
Ag. Director General  
Agriculture and Food Authority  
NAIROBI

This is the Exhibit marked **MM-4**  
referred to in the annexed Affidavit/declaration  
of **MARY MWITI**

Sworn/Declared before me This **12TH** day of  
**AUGUST 22** at **NAIROBI**

**NATIONAL ASSEMBLY**  
C/O Mr. Joseph Mwangi, Notary Public  
Email: [naccu@gmail.com](mailto:naccu@gmail.com)

**NATIONAL COFFEE CO-OPERATIVE UNION LTD.**  
P.O. BOX 6-60200, MERRU-KENYA  
TEL: 0721 342269/0726 575406/0722 937900  
Email: [naccu@gmail.com](mailto:naccu@gmail.com)

Hon. Justice (Rtd) Paul Karuki Kihara, EGH  
Attorney General  
Office of the Attorney General  
Sheria House, Harambee Avenue  
Nairobi  
19th April, 2022

**19 APR 2022**  
**RECEIVED (3)**  
**NAIROBI - KENYA**

Dear Sir,

**RE: COFFEE FARMERS DENIED ACCESS TO A PUBLIC FORUM TO DISCUSS THE CROPS (COFFEE)(GENERAL)(AMENDMENT) REGULATIONS 2022 AT TEA HOUSE**

Pursuant to a Public Gazette Notice Dated 1<sup>st</sup> April, 2022 stating " There shall be a public forum on 19<sup>th</sup> April 2022 to discuss the Draft Crops (Coffee) (General) (Amendment) Regulations, 2022 and stakeholders' comment received to be held at Agriculture and Food Authority Offices (AFA), Tea House, Naivasha Road, off Ngong Road, Nairobi starting at 9.00 am", We coffee farmers and leaders of coffee Co-operative Societies travelled from all over the country to present our memorandum and to our surprise we were denied entry into the forum.

The AFA team stated that they had done special invite to a few chosen people and the rest of the public was locked out.

This is a violation of our constitutional right, and we request you to consider this public participation forum illegal and recommend that the outcome of today's forum be annulled for non-compliance with the constitution and relevant statutes.

Yours sincerely

*[Signature]*



Chairman,

National Coffee Co-operative Union  
Copy to:-

Mr. Michael Slalal  
The Clerk, National Assembly  
Parliament Buildings  
Nairobi  
Att: Mr. Ahmad Kadhi, Senior Clerk Assistant



(20)







# THE JUDICIARY



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI CITY

COURT NAME: MILIMANI LAW COURTS

CASE NUMBER: HCCHRPET/E405/2022

CITATION: COUNCIL OF GOVERNORS VS CABINET SECRETARY MINISTRY OF AGRICULTURE,  
LIVESTOCK AND FISHERIES AND AGRICULTURE AND FOOD AUTHORITY AND 5 OTHERS

## ORDERS(COURT DOCUMENT)

I have perused the pleadings and documents filed and I certify the matter as urgent. The following directions to issue.

1. Service of all pleadings on all parties to be effected within 7 days.
2. Responses to be filed and served within 10 days.
3. Leave granted to the Petitioner to file and serve a further affidavit within 5 days upon service of the responses.
4. Mention on 8th September 2022 before the duty judge for further directions.

SIGNED BY: HON. LADY JUSTICE HEDWIG I. ONG'UDI



THE JUDICIARY OF KENYA.  
MILIMANI HIGH COURT  
HIGH COURT CONSTITUTION AND HUMAN RIGHTS  
DATE: 2022-08-16 15:03:45+03









# THE JUDICIARY



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI CITY

COURT NAME: MILIMANI LAW COURTS

CASE NUMBER: HCJR/E148/2021

CITATION: MURANG'A COUNTY COFFEE DEALERS COMPANY LTD AND KIPKELION BROKERAGE COMPANY LIMITED AND 3 OTHERS VS CABINET SECRETARY MINISTRY OF AGRICULTURE, LIVESTOCK AND FISHERIES AND NAIROBI COFFEE EXCHANGE

## RULING

By way of a chamber summons dated 2nd November 2021 and brought under a certificate of urgency the Ex Parte applicants seek leave to apply for the prerogative writs of certiorari, prohibition and mandamus.

For reasons well articulated in the certificate of urgency, am satisfied the matter is urgent and is certified as such.

I have had occasion to consider the application and grounds in support thereof. At this stage the court's singular duty is to determine whether the applicants have established sufficient grounds to warrant the grant of leave sought.

On the material before court am satisfied that the applicants have demonstrated sufficient interest in the matter (locus standi) and that they are affected by the impugned decision. They have shown they have an arguable case and the issue at hand is a public law matter.

In those circumstances, the applicants have achieved the legal threshold for grant of the leave sought. I accordingly grant leave in terms of prayers 2,3,4,5,6 and 7 of the chamber summons and make directions as follows;

1. The substantive motion be taken out and served within 7 days hereof.
2. Responses be filed within 7 days of service.
3. Matter be mentioned on 30.11.21 for directions on disposal.

SIGNED BY: HON. JUSTICE ANTHONY KIMANI NDUNGU



THE JUDICIARY OF KENYA.  
MILIMANI HIGH COURT  
HIGH COURT JUDICIAL REVIEW  
DATE: 2021-11-10 08:44:37+03  
.....

