



**IN THE HIGH COURT AT NAIROBI**

**MILIMANI LAW COURTS**

**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**PETITION NO. 374 OF 2013**

**BETWEEN**

**NYAMBENE MIRAA TRADERS ASSOCIATION (NYAMITA) suing through its chairman**

**LEANDRO NGALU BAARIU.....1<sup>ST</sup> PETITIONER**

**JAPHETH MURIIRA MUROKO.....2<sup>ND</sup> PETITIONER**

**KITHELA NKAIBUA MWEBO.....3<sup>RD</sup> RESPONDENT**

**AND**

**NATIONAL AGENCY FOR THE CAMPAIGN**

**AGAINST DRUG ABUSE (NACADA) ..... 1<sup>ST</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**WAJIR SOUTH CONSTITUENCY**

**PROFESSIONALS FORUM ..... APPLICANT**

**RULING**

1. The issue in this suit whether the respondents' action of purporting to declare and classify *miraa* as a narcotic drug without proper research support and involvement of the petitioners and other stakeholders is illegal and infringes on the constitutional rights of the petitioners.
2. The Wajir South Professional Forum is an unincorporated society registered under the ***Societies Act (Chapter 108 of the Laws of Kenya)***. Its objective is to bring together professionals from Wajir South Constituency in order to *inter alia*, share experiences and best practices, to promote cohesive, peaceful and enlighten community through advocacy and awareness creation, good governance and human rights and environmental awareness and other social values of common concern.
3. It has moved the court by the Notice of Motion dated 28<sup>th</sup> August 2013 to join these proceedings

as an interested party. The interested party wishes to participate in these proceedings on the ground that the subject matter of the case is of concern to their community. According to the supporting affidavit of Omar Ibrahim Hanshi, the Secretary General, *miraa* has been abused in the community and has led to under development of the North Eastern Region and that they would like to join these proceedings to bring these and other facts before the court.

4. The application is opposed by the petitioners through the affidavit of Leandro Ngalu Baariu, the Chairman of Nyambene Miraa Traders Association, sworn on 26<sup>th</sup> September 2013 and grounds of opposition. The thrust of their opposition is that the proposed interested party has not demonstrated any technical and/or professional experience, expertise and skill that would be of benefit to the court. They also oppose the application on the basis that the application lacks factual basis for a determination to be made.

5. The court is entitled to join parties as interested parties under **rule 7** of the ***Constitution of Kenya(Protection of Fundamental Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (Legal Notice 117 of 2013)*** (“***the Rules***”) which provides;

***7 (1) A person, with leave of the court, may make an oral or written application to be joined as an interested party.***

***(2) A court may on its own motion join any interested party to proceedings before it.***

6. Both parties agree that the court has discretion under the **rule 7** of ***the Rules*** to join an interested party. **Rule 2** of ***the Rules*** defines an interested party as, ‘*a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation.*’ In my view, all that an interested party has to show is that it has an identifiable and not trifling interest in the matter which is the subject of the litigation. Such interest must be over and above the normal interest any person may have in litigation which is of a public nature. Further, the court ought to consider the course of litigation and whether such joinder will lead to delay, impose additional costs or prejudice the parties. As the decision is discretionary, the exercise of discretion will ultimately depend on the facts of the case.

7. An interested party is to be differentiated from a friend of the court who is an independent party, without any interest in the outcome of the case and who appears in court to assist the court due to his expertise, technical or otherwise on a specific issue. **Rule 2** of the ***Rules*** defines a friend of the court as, “*an independent and impartial expert on an issue which is the subject matter of proceedings but is not party to the case and serves to benefit the court with their expertise.*” Therefore, the key consideration in granting leave for a friend of the court is independence and expertise. In the case of an interested party, the lack of expertise or otherwise is not necessarily decisive on the issue whether leave should be granted.

8. The issue in this case revolves around *miraa* and whether it should be classified as a narcotic substance. The applicants’ case is that *miraa* should not be so classified without research support and involvement of the petitioners and stakeholders. The proposed interested party takes an opposing view and supports the classification of *miraa* as a narcotic substance. It has pointed to an interest based on the effect of *miraa* on the community it serves. In my view, has an identifiable interest within **rule 2** of ***the Rules***. Furthermore, the proposed interested party is one such stakeholder who ought to be consulted as urged by the petitioner in the petitioner.

9. This is litigation lodged in the public interest. It is in the interests of justice that the proposed interested party be allowed to join these proceedings so that court benefits from another view on the subject matter.

10. In the circumstances, I grant the following orders:

- i. The Wajir South Professional Forum be and is hereby joined to these proceedings as the 1<sup>st</sup> interested Party.
- ii. Costs of the application shall be in the cause.

**DATED** and **DELIVERED** at **NAIROBI** this 30<sup>th</sup> day of September 2013.

**D.S. MAJANJA**

**JUDGE**

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

Mr Wanyaga instructed by Kinoti and Kibe Advocates for the applicant/proposed interested party.