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New biotech milestone as Kenyan court upholds lifting of GMOs ban

By Murimi Gitari

IN a landmark decision, in November last year, Kenya's High Court dismissed all the petitions that were challenging the lifting of a decade-long ban on genetically modified organisms (GMOs).

This judgment paves the way for the cultivation and importation of GMO crops, a move that has sparked both hope and controversy among key stakeholders.

Imposed in 2012 by the administration of then President Mwai Kibaki, the ban was upheld by his successor Uhuru Kenyatta. However, in October 2022, President William Ruto's administration lifted the 10-year ban through an executive order, citing the need to address food shortages and improve agricultural productivity.

The resolution by the Cabinet to vacate the ban was informed by the recommendations by a taskforce that had been formed to review matters relating to GMOs and food safety.

The Cabinet also considered expert and technical reports by several bodies on adoption of biotechnology, including the Kenya's National Biosafety Authority (NBA), World Health Organization (WHO), the Food and Agriculture Organization (FAO), United States of America's Food and Drug Administration (FDA), and the European Food Safety Authority (EFSA).

"In accordance with the recommendation of the Task Force to review matters relating to GMOs and Food Safety, and in fidelity with

the guidelines of the National Biosafety Authority (NBA) on all applicable international treaties including the Cartagena Protocol on Biosafety (CPB), Cabinet vacated its earlier decision of 8th November 2012 prohibiting the open cultivation of GMOs and the importation of food crops and animal feeds produced through biotechnology innovations; effectively lifting the ban on GMOs. By dint of the executive action open cultivation and importation of white (GMO) maize is now authorised," said a statement by State House.

The lifting of the ban, however, prompted several court cases challenging the executive order. A number of lawsuits were filed by the Law Society of Kenya (LSK), individuals and a consortium of activists in January 2023 who expressed fear that import or cultivation of GMOs in the



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country might be harmful for human health, animals, the environment and biodiversity.

The Law Society argued the decision to lift the ban was unconstitutional and violated consumer rights and the interests of small-scale farmers.

Other petitioners claimed that cultivation and import of GM foods, especially maize, would result in massive loss of indigenous seed varieties and the dominance of genetically modified seeds protected by patents, undermining small scale farmers.

The lawsuits were however dismissed by the High Court's ruling, delivered on November 7, 2024, affirming that the government had put in place robust biosafety regulatory frameworks to ensure the safety of GMOs for human, animal, and environmental health.

In October 2023 Justice Oscar Angote of the Environment and Land court ruled that the country had put in place robust biosafety regulatory framework, with inbuilt structures that must be met before the importation or cultivation of GMO crops.

"This court has not been shown any evidence that the respondents and the institutions named have breached the laws, regulations, and guidelines about GM foods, and in particular the approval of their release in the environment, cultivation, importation, and exportation of Bt maize," Justice Oscar Angote said during the 2023 ruling.

Justice Angote in the October 2023 judgment added that the Biosafety Act stipulates that the National Biosafety Authority should collaborate closely with the

Department of Public Health, which safeguards consumers' health through food safety and quality control.

The International Service for the Acquisition of Agri-biotech Applications (ISAAA) Africentre welcomed the lifting of the GMO ban in Kenya, describing it as a historic moment for the country's agricultural development. The organisation cited the potential benefits of GMOs in addressing food security, improving crop yields, and mitigating the effects of climate change.

Through the Open Forum on Agricultural Biotechnology in Africa (OFAB) Kenya, ISAAA took the lead in ramping up public education on the benefits of GMOs. The lifting of the ban had elicited polarised debate with some anti-GMO groups spreading misinformation about agricultural biotechnology.

As part of a wider strategy to build knowledge and understanding around biotech crops, AfriCenter organised nine media events and several engagements with farmers, animal feed manufacturers and the private sector. Through these activities, misinformation about the technology was dispelled with biotech and biosafety experts assuring the public that biotech crops are safe and provides an option in addressing acute food and feed insecurity in the country.

Following the High Court's ruling, the government of Kenya has now announced new regulations to govern the cultivation and importation of GMOs. The National Biosafety Authority (NBA) has outlined procedural guidelines that individuals and organizations must follow to obtain approval for dealing with GMO products. These regulations aim to ensure the safety of human and animal health and protect the environment.

The guidelines stipulates that applicants seeking approval for activities involving GMOs must submit their applications to the NBA that includes research,

import, export, and environmental release. A comprehensive risk assessment is then conducted to evaluate potential risks to human health and the environment, including containment requirements for facilities where GMOs are handled. For GMOs intended for environmental release, an additional ERA is required to assess and mitigate potential environmental impacts.

In addition, products containing GMOs must be clearly labeled to inform consumers that the product is genetically modified. This facilitates traceability and allows consumers to make informed choices. Once all requirements are met, the NBA reviews the application, and if approved, issues a certification allowing the proposed activities to proceed. These steps ensure that GMOs are safely integrated into Kenya's agriculture while protecting public health and the environment.

As Kenya embarks on this new chapter in agricultural development, the lifting of the GMO ban marks a significant milestone.



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