

Voluntary Report – Voluntary - Public Distribution

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Report Name: Court Ruling and Legislative Proposals Unsettle Kenya Seed Sector

Country: Kenya

Post: Nairobi

Report Category: Agricultural Situation, Agriculture in the News, Planting Seeds, Agricultural Trade Office Activities

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Report Highlights:

A recent court ruling, and a proposal to amend Kenya's seeds and varieties law, have caused regulatory uncertainty in Kenya's seed sector. In November 2025, Kenya's High Court declared key provisions of the Seeds and Plant Varieties Act, 2012 unconstitutional, opening a window for sharing and selling of indigenous seeds. In addition, Kenya's parliament is due to consider a private member's bill that seeks to create a parallel standards-based plant varieties' testing and registration process. Kenya's seed sector regulator and industry have raised their concerns.

Court Ruling: Seed and Varieties Act (Cap 326)

In a November 2025 ruling, Kenya's High Court declared some key provisions of the Seeds and Plant Varieties Act, 2012, unconstitutional. Kenya's Seeds and Plant Varieties Act, originally enacted in 1972, regulates seeds and protects plant breeders rights. Amendments of the act in 2012 drew concerns from civil society groups for criminalizing traditional farmer-to-farmer seed saving/sharing arrangements. The concerns culminated in litigation and a court ruling in November 2025, invalidating four key provisions of the act.

Key provisions

- **Regulation and Certification:** Mandated Kenya Plant Health Inspectorate Service to test and certify seeds and plant varieties.
- **Penalties:** Imposed fines and jail time for sharing or selling uncertified seeds.
- **Plant Breeders' Rights:** The law granted proprietary rights to plant breeders, prioritizing corporate interests.
- **Target:** Although primarily focused on formal commercial seed and varieties production, some of the clauses were also binding on the informal sector.

Key implications of the ruling

The ruling, delivered by Justice Rhoda Rutto on November 27, 2025, in Machakos, struck down sections of the act, and opened a window for farmer-farmer sharing and sale of seeds produced in the informal/traditional systems.

- **Decriminalization:** The ruling removed the threat of fines up to one million Kenyan shillings (approximately \$7,700) and up to two years in prison for distributing uncertified seeds.
- **Constitutional Rights:** The court ruled that the law's punitive measures violated farmers' constitutional rights to livelihood, culture, and economic autonomy.
- **Farmer-Managed Seed Systems:** The ruling legally validated farmer-managed seed systems, which supply a substantial proportion of seeds currently used in Kenya
- **Powers of Inspectors:** The court ruling struck out sections of the law that granted government inspectors sweeping powers to raid community seed banks and seize seeds.

Feedback and Key Concerns

Farmers and advocacy groups celebrated the ruling, as a major step towards protecting food sovereignty and an end to corporate commercial seed supply dominance. Seed sector regulators and the formal seed industry have, however, raised concerns and challenged the ruling. On December 2, 2025, Kenya Plant Health Inspection Service (KEPHIS) gave a notice of appeal and requested the court to stay the implementation of the ruling.

According to KEPHIS, enforcement against fake seed factories and illegal trading will become more difficult. The removal of criminal offences and penalties weakens the deterrent effect that previously supported regulatory action. In addition, the absence of a clear legal definition of “indigenous seed” may

allow the proliferation of uncertified seeds, being presented as traditional varieties. The ruling also invalidated the National Plant Varieties List, as a legal reference, further creating regulatory uncertainty. The risk of infringement of plant breeders' rights is likely to increase, given the absence of effective safeguards to distinguish protected commercial varieties from farmer-saved or indigenous seed. The ruling also disrupts seed testing and quality assurance and weakens confidence in the integrity of certified seed.

The Amendment Bill

In May 2025, Senator Ledama Ole Kina (Narok County) introduced a bill in Kenya's Senate, to amend the Seeds and Plant Varieties Act. The bill proposes significant changes to the current varieties' testing and registration processes. The bill is currently with the Senate Committee on Agriculture, Livestock, and Fisheries, for their review and public engagement. Kenya's seed sector regulator, KEPHIS and key players in the commercial seed sector are opposed to the amendments.

Key Provisions of the Bill

- **Standards-based registration:** The bill introduces a parallel varieties registration system to be overseen by the Kenya Bureau of Standards (KEBS), as an alternative to the existing certification process by the KEPHIS.
- **Accelerated Approval:** The bill proposes the removal of the currently mandatory national performance trials, to reduce the average seed approval time from four years to a more flexible timeframe.
- **Eligible Crops:** The bill lists 19 specific crop types for parallel registration, including barley, canola, chickpeas, millets, oats, sorghum, and wheat.

Key Concerns

KEPHIS and commercial seed actors argue that transferring oversight to KEBS would create confusion, weaken quality assurance, and potentially allow counterfeit and substandard seeds in the market. They are also concerned that the proposal to by-pass the mandatory national performance trials, and allowing registration based on laboratory analysis alone, may result in varieties that are not suitable for Kenya.

Attachments:

No Attachments.