



**Shuri & another v Cabinet Secretary for Interior & National Administration & 4 others  
(Petition E008 of 2024) [2024] KEHC 16631 (KLR) (20 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 16631 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA**

**PETITION E008 OF 2024**

**JN ONYIEGO, J**

**DECEMBER 20, 2024**

**IN THE MATTER OF ARTICLES 258 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF VIOLATION AND THREATENED VIOLATION OF RIGHTS AND  
FUNDAMENTAL FREEDOMS UNDER ARTICLES 1,2,6(2),10,11(1),19,20,21,22(1),47,73(1),  
153,174,232,258(1) AND 259(1) (B) OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF NATIONAL GOVERNMENT CO-ORDINATION ACT**

**AND**

**IN THE MATTER OF COUNTY GOVERNMENTS ACT, NO. 17 OF 2012**

**AND**

**IN THE FAIR OF ADMINISTRATIVE ACT**

**BETWEEN**

**ABDIKAMIL ABBEY SHURI ..... 1<sup>ST</sup> PETITIONER**

**ZAKARIA ABDI DAUD ..... 2<sup>ND</sup> PETITIONER**

**AND**

**CABINET SECRETARY FOR INTERIOR & NATIONAL  
ADMINISTRATION ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY COMMISSIONER, GARISSA ..... 2<sup>ND</sup> RESPONDENT**

**DEPUTY COUNTY COMMISSIONER, DAADAB ..... 3<sup>RD</sup> RESPONDENT**

**DEPUTY COUNTY COMMISSIONER, FAFI ..... 4<sup>TH</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**



## **Reorganization of sub locations is a public venture and ought to involve the residents of the affected areas**

*The petition challenged the Cabinet Secretary for the Ministry of Interior and National Co-ordination's gazette notice establishing new administrative units as service delivery co-ordination units country wide for failure to conduct public participation. The court held that the alteration or establishment of administrative boundaries by the Cabinet Secretary was not an internal operational decision; it was an executive decision in exercise of executive powers. Further, the relocation of the sub location was a public venture and the same ought to involve the residents of the affected areas.*

Reported by Kakai Toili

**Constitutional Law** – national values and principles of governance – public participation – nature of public participation – where the Cabinet Secretary for the Ministry of Interior and National Co-ordination altered or established of new administrative boundaries without public participation - whether alteration or establishment of administrative boundaries by the Cabinet Secretary was an internal operational decision and thus not subject to public participation – Constitution of Kenya, articles 10, 47, 131(1)(b), 132(3)(b), 189, 201(d) and 232; National Government Coordination Act (cap 127), sections 4 and 14.

**Constitutional Law** – doctrine of separation of powers – Judiciary vis a vis the Executive - whether requiring the Cabinet Secretary for the Ministry of Interior and National Co-ordination to conduct a sensitization exercise on the relocation of sub locations amounted to judicial interference with the doctrine of separation of powers.

### **Brief facts**

The petitioners' case was based on the fact that on or about February 14, 2024, the 1<sup>st</sup> respondent, the Cabinet Secretary for the Ministry of Interior and National Co-ordination (the Cabinet Secretary) while exercising his mandate published Gazette Notice No. 1766 Vol. CXXVI – No. 17 (the impugned gazette notice) establishing new administrative units as service delivery co-ordination units country wide. The petitioners contended that the manner in which the same was done was not constitutional.

The petitioners urged that the impugned gazette notice purported to reorganize and recreate the existing boundary between Fafi and Daadab Sub Counties. The petitioners averred that the same as a result, risked creating distress, unnecessary tension and conflict among the members of Hargabul area who were predominantly from the Awliyahan Clan and the Fafi Sub County which was inhabited by the Abudwak Clan. The petitioners contended that the Cabinet Secretary's decision did not allow for meaningful participation and neither did it give reasons for the relocation. The petitioners thus sought for among other orders; a declaration that the directive issued by the Cabinet Secretary vide the impugned gazette notice was unconstitutional for relocating Hagarbul Sub Location from Daadab Sub County to Fafi Sub County.

### **Issues**

- i. Whether alteration or establishment of administrative boundaries by the Cabinet Secretary for the Ministry of Interior and National Co-ordination was an internal operational decision and thus not subject to public participation.
- ii. Whether requiring the Cabinet Secretary for the Ministry of Interior and National Co-ordination to conduct a sensitization exercise on the relocation of sub locations amounted to judicial interference with the doctrine of separation of powers.
- iii. What was the nature of public participation?

### **Held**

1. The impugned gazette notice did not only deal with the creation and/ or relocation of Hagarbul Sub Location to Fafi Sub County but also affected various other administrative units across Kenya.
2. The court was endowed with the jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights had been denied, violated, infringed or threatened.



3. Public participation was a crucial pillar of the Constitution of Kenya. It was the process of engagement in governance, in which people participated together for deliberation and collective action within an array of interests, institutions and networks, developing civic identity, and involving people in governance processes.
4. A review of articles 10 and 47 of the Constitution recognized that legality of actions in exercise of public power did not depend on a State officer or institution of authority having taken and conveyed an executive decision, but on whether the values and principles laid down in the Constitution for the taking of such actions had been complied with.
5. The impugned decision was contained in the impugned gazette notice by the Cabinet Secretary pursuant to powers conferred upon him by section 14(1) and (3) of the National Government Coordination Act. The Act was passed to establish an administrative and institutional framework for the coordination of National Government functions at the national and county levels of governance and; to give effect to articles 131(1)(b) and 132(3)(b) of the Constitution.
6. The procedure for the creation of administrative units was provided for under section 14 of the National Government Coordination Act. Section 14 expressly authorized the Cabinet Secretary with the approval of the President, and through a notice in the Kenya Gazette to establish National Government Service Delivery Coordination Units. Section 14(4) specifically provided that locations and sub locations in existence before the commencement of the National Government Coordination Act shall continue to exist as National Government Service Delivery Units.
7. Section 4 of the National Government Coordination Act (guiding principles) provided that in fulfilling its mandate, the National Government shall act in accordance with the national values and principles of the Constitution in particular, those set out in articles 10, 189, 201(d) and 232. Therefore, the alteration or establishment of administrative boundaries by the Cabinet Secretary was not an internal operational decision; it was an executive decision in exercise of executive powers which was regulated by law and the Constitution.
8. The relocation of the sub location was a public venture and the same ought to involve the residents of the affected areas, in the instant case, the Hagarbul Sub Location. The decision, therefore, affected the public and more particularly those residing in the affected sub locations. The decision made by the Cabinet Secretary was, therefore, bound to ensure it was made with public participation or stakeholders' engagement at the very least.
9. The respondents did not show that indeed there was a public participation exercise conducted before the relocation. The impugned decision fell short of the constitutional stipulation(s). The decision did not conform to the requirements of article 47 of the Constitution as well as public participation in article 10 of the Constitution.
10. In demanding that the Cabinet Secretary conduct a sensitization exercise involving the affected clan about the relocation from their subcounty to another subcounty outside their clan was not a small matter. It required community participation. That did not in any way take away the Cabinet Secretary's power to create new administrative units nor did it amount to judicial interference with the doctrine of separation of powers.

*Petition allowed.*

### **Orders**

- i. *A declaration was issued declaring that the decision by the 1<sup>st</sup> respondent vide the impugned gazette notice relocating Hargabul Sub Location from Dadaab Sub-County to Fafi Sub County without first engaging in public participation was unconstitutional and in violation of articles 1, 2, 6(2) 10, 19, 20, 21, 22(1), 47, 73(1), 174, 232, 258 and 259 of the Constitution.*
- ii. *For avoidance of doubt, the instant proceedings the declaration therein above related only to the area stated, and not the entire gazette notice which affected other parts of the country.*
- iii. *Any order sought which had not been specifically granted was deemed to have been declined.*



- iv. *The Cabinet Secretary shall conduct a public participation exercise involving the affected counties and clans before creating the new administrative units.*
- v. *Each party shall bear own costs.*

## **Citations**

### **Cases**

1. British American Tobacco Kenya PLC v Cabinet Secretary for the Ministry of Health & 2 others; Kenya Tobacco Control Alliance & another (Interested Parties); Mastermind Tabacco Kenya Limited (Affected Party) (Petition 5 of 2017; [2019] KESC 15 (KLR)) — Explained
2. Cabinet Secretary for the National Treasury and Planning & 4 others v Okoiti & 52 others (Petition E031, E032 & E033 of 2024 (Consolidated); [2024] KESC 47 (KLR)) — Explained
3. Joanes Bokeye Muruguta, Manase Nyaisiri Mogendi & Mwita M Nsato v Attorney General & Cabinet Secretary for Interior and Co-Ordination of National Government (Petition 4 of 2020; [2021] KEHC 1479 (KLR)) — Mentioned
4. Kenya Human Rights Commission v Attorney General & Law Society of Kenya (Constitutional Petition 87 of 2017; [2018] KEHC 9656 (KLR)) — Explained
5. Kiambu County Government, Governor Kiambu County, Deputy Governor Kiambu County & Executive Committee Kiambu County v Robert N. Gakuru & Others (Civil Appeal 200 of 2014; [2017] KECA 459 (KLR)) — Mentioned
6. Member of Parliament Balambala Constituency v Abdi & 7 others (Petition 21 (E023) of 2020; [2023] KESC 35 (KLR)) — Explained
7. Susan Wariara Kariuki v Diakonie Katastrophenhilfe (Cause 432 of 2014; [2016] KEELRC 1536 (KLR)) — Mentioned
8. William Odhiambo Ramogi, Asha Mashaka Omar, Gerald Lewa Kiti & Kenya Transporters Association Limited v Attorney General, Cabinet Secretary, Ministry of Transport and Infrastructure, Kenya Ports Authority, Kenya Railways Corporation & Competition Authority of Kenya; Muslims for Human Rights, Maina Kiai & County Government of Mombasa (Interested Parties) (Constitutional Petition 159 of 2018; [2020] KEHC 10266 (KLR)) — Explained
9. Mogale and Others v Speaker of the National Assembly and Others ((CCT 73/22) [2023] ZACC 14; 2023 (9) BCLR 1099 (CC); 2023 (6) SA 58 (CC) (30 May 2023)) — Explained
10. Poverty Alleviation Network & others v President of the Republic of South Africa & 19 others ((CCT86/08) [2010] ZACC 5; 2010 (6) BCLR 520 (CC) (24 February 2010)) — Explained

### **Statutes**

1. Constitution of Kenya — article 1; 2; 6(2); 10; 19; 20; 21; 22(1); 47; 73(1); 131(1)(b); 132(3)(b); 165; 174; 189; 201(d); 232; 258; 259 — Interpreted
2. County Governments Act (cap 265) — section 48(1)(e) — Interpreted
3. National Government Co-Ordination Act (cap 127) — section 4; 14; 14(1); 14(3); 14(4) — Interpreted

### **International Instruments**

1. Gazette Notice No. 1766 Vol. CXXXVI – No. 17

### **Advocates**

None mentioned

## **JUDGMENT**

1. The petitioners herein moved this court via a petition dated 01.03.2024 seeking the prayers as listed below:



- i. A declaration that the directive issued by the cabinet secretary interior vide [Gazette Notice No. 1766](#) of the 14.02.2024 is unlawful and unconstitutional and in violation of articles 10,47 and 174 of the [Constitution](#) for relocating Hagarbul sub Location from Daadab Sub County to Fafi Sub County.
  - ii. The 1<sup>st</sup> respondent be permanently restrained from implementing the decision to relocate Hagarbul Sub Location to Fafi Sub County vide gazette notice no. 1766 of 14.02.2024 and any directive in furtherance of such decision.
  - iii. Any other relief.
  - iv. Cost be provided for.
2. The petitioners' case is based on the fact that on or about 14.02.2024, the 1<sup>st</sup> respondent while exercising his mandate as the cabinet secretary for the Ministry of Interior and National Co-ordination published [Gazette Notice No. 1766 Vol. CXXVI – No. 17](#) establishing new administrative units as service delivery co-ordination units country wide.
3. It is their case that in as much as they were aware that through these administrative units, the government allocates and distributes resources and citizens access government services, the manner in which the same was done was not constitutional. That among the units created is the Hargabul sub location which has been listed as a sub location within Fafi Sub County despite the same being a sub location in Alango Arba location in Daadab Sub County.
4. It was urged that the impugned [Gazette Notice No. 1766 Vol. CXXVI – No. 17](#) purported to reorganize and recreate the existing boundary between Fafi and Daadab sub county. He averred that the same as a result, risked creating distress, unnecessary tension and conflict among the members of Hargabul area who are predominantly from the Awliyahan clan and the Fafi sub county which is inhabited by the Abudwak clan.
5. The petitioners contended that the 1<sup>st</sup> respondent's decision did not allow for meaningful participation and neither did it give reasons for the relocation of Hagarbul sub location and therefore, the same was contra the provisions stipulated in the [Constitution](#). That the purported relocation will affect various development programs which were implemented in the sub location as part of the larger Alango Arba location. It was contended that the petitioners are apprehensive that the 1<sup>st</sup> respondent's directive if not stayed and set aside, will result in conflict and disruption of the already existing administration units. As a consequence of the foregoing, the petitioners urged that it was meted that the orders sought herein be granted.
6. In opposing the petition, Ms. Kiramana, Counsel for the respondents filed grounds of opposition dated 29.05.2024 urging that by dint of section 14(1) of the [National Government Coordination Act 2013](#), the 1<sup>st</sup> respondent is empowered with the approval of the president and by a notice in the gazette to establish National Government Service Delivery Coordinating Units. That pursuant to the provisions of section 14(3) of the [National Government Service Delivery Coordination Act 2013](#), where a county government has not decentralized its units pursuant to the provisions of section 48(1) (e) of the [County Government Act 2012](#), the national government may where necessary establish its own service delivery coordinating units for purposes of coordinating the functions of the national government.
7. Ms. Kiramana contended that the actions of the 1<sup>st</sup> respondent complied with section 4 of the National Government Service Delivery Coordination Act 2013 in establishing the impugned National Government Service Delivery coordinating units as provided for under section 14(1) and (3) of the



said Act. That the impugned gazette notice does not create electoral units as the petitioners erroneously seems to allege but service delivery coordination units only.

8. It was urged that the petitioners did not prove with reasonable precision how the actions of the respondents violated the Constitution. In any event, the petition offends the doctrine of separation of powers thus if the court allows this suit, the same would result to judicial overreach. It was argued that the petitioners did not demonstrate with sufficient reasons how they were not involved in the process of establishing the improved National Government Service Delivery Coordination Units. That the purpose, object and in effect of the National Government Service Delivery Coordination Act 2013 would be defeated if this suit is allowed.
9. Counsel averred that the impugned gazette notice has established more than one hundred service delivery units across the country. That it would be against public interest for the gazette notice to be suspended in its entirety, simply because the petitioners have taken issue with just one part. As such, this court was urged to dismiss the suit.
10. The court directed that the petition be canvassed by way of written submissions and vide the written submissions dated 12.07.2024, the petitioners set out one issue for consideration as follows:

Whether the 1<sup>st</sup> respondent's decision to relocate Hagarbul sub Location from Daadab sub County to Fafi Sub county through gazette notice no. 1766 of the 14.02.2024 violated the provisions of the Constitution.

11. Counsel urged that the Constitution is the supreme law thus binding all persons and state organs. Counsel further contended that the national values and principles of governance bind all state officers including the 1<sup>st</sup> respondent whenever any of them makes or implements public policy decisions. It was urged that the 1<sup>st</sup> respondent in exercise of his mandate as the cabinet secretary, published the impugned gazette notice establishing new administrative units as a service delivery without any meaningful public participation. To that end, the petitioners relied on the case of Joanes Bokeye Muruguta & 2 Others v Attorney General & Another (2010) eKLR where it was emphasized that in fulfilling its mandate, the government must act in accordance with the national values and principles of the Constitution.
12. That the decision to restructure the boundaries of the two sub counties, Daadab and Fafi was ultra vires and the same offends the statutory provisions of the National Coordination Act and the petitioners' rights to fair administrative action and legitimate expectation. That the impugned gazette created distress, unnecessary tension and conflict among the members of Hagarbul area who are predominantly from the Awliyahan clan and the members of the larger Fafi sub county which is mainly inhabited by the Abduwak clan. Learned counsel opined that unilateral and arbitrary translocation of Hagarbuul sub Location has exposed the residents of the area to insecurity and ethnic violence which has been witnessed previously in areas with disputed boundaries.
13. That the issue of public participation remains so pertinent to the extent that the Court of Appeal in the case of Kiambu County government & 3 others v Robert N. Gakuru & Others [2017] eKLR emphasized that the same is immense considering the primacy it has been given in the supreme law of the country. It was reiterated that the need for public participation not only binds all state organs but also state officers, public officers and all persons in the discharge of public functions. In the end, this court was urged to allow the prayers as sought.
14. The respondents on the other hand filed submissions erroneously titled grounds of opposition to the petition dated 22.07.2024. It was urged that the relocation of the subject units was done in line with the provisions of section 14(1) of the National Government Service Delivery Coordination Act 2013 which empowers the 1<sup>st</sup> respondent to act as such. It was reiterated that the purpose of establishing



- and reorganizing the service delivery units is to optimize the service delivery to the people of Kenya. That the same does not have any impact on the electoral and or devolution processes. The respondents urged that no evidence was presented before this court to show that the residents of Hargabul location will have either reduced or limited services.
15. On the question of access to services, counsel averred that the petitioners seem to have completely misunderstood the essence or re-organization of administrative units as the same does not affect in anyway the physical location of amenities. That it was not demonstrated by way of affidavit statement of any resident of Hargabul sub location to confirm that they have been denied services following the relocation. As such, the petition is merely based on apprehension.
  16. That the letter allegedly written by chiefs lacked authenticity as the same was not done on an official letterhead as would be required for official communication between government entities and further, the petitioners did not adduce a statement from the said chief to support the letter. In the same breadth, the petitioners did not disclose how they learnt of the alleged letters since they were neither the authors nor the same letter addressed to them. To that end, reliance was placed on the case of *Susan Wariara Kariuki v Diakonie Katastrophenhilfe* [2016] eKLR where the court emphasized that a court of law will not rely on documents that are improperly obtained. In that regard, this court was urged that without confirmation on access, the content of the letters cannot be admitted.
  17. Regarding the contention that the petition was brought on behalf of the people of Hagarbul, counsel opined that no document was filed to show that the same was the actual position of people of the said location. That the national government has the constitutional duty and mandate to provide services to her people. In an effort to ensure that this is achieved, the 1<sup>st</sup> respondent while relying on his statutory mandate was right to create the service deliveries. That in the event that this petition is allowed, the same would be an affront to the principle of separation of powers.
  18. On costs, it was argued that this being a petition on a public interest, no party is entitled to costs as it is now settled position that no single individual is supposed to benefit from a public interest litigation. That the same is merely meant to enhance constitutionalism and vulnerable persons' rights. As such, it was urged that this petition be dismissed as the same was in want of merit.
  19. I have considered the petition together with the response and the submissions by both parties. Issues that can be discerned for determination are;
    - i. Whether there was any public participation in regards to the directive issued by the cabinet secretary vide *gazette notice no. 1766* of the 14.02.2024 affecting Hagarbul sub-location's relocation from Dadaab Sub-County to Fafi Sub-County.
    - ii. Whether the petitioners' rights were breached by the directive vide *gazette notice no. 1766* of 14.02.2024.
    - iii. Costs.
  20. Before delving into the merits of this suit, it is important to note that the *gazette notice no. 1766* of 14.02.2024 does not only deal with the creation and/ or relocation of Hagarbul Sub Location to Fafi Sub County but also affects various other administrative units across the country.
  21. This court notes that the petitioners' main contention is that there was no public participation as contemplated under article 10 of the *Constitution* despite the same being so sacrosanct that no state agency, organ or government official can escape from it. On the other hand, the respondent's main contention is that in line with the provisions of section 14(1) of the *National Government Service Delivery Coordination Act* 2013, the 1<sup>st</sup> respondent is empowered to act in the manner he



did. Additionally, that this court by allowing the orders sought herein would offend the doctrine of separation of powers and the same would result to judicial overreach.

22. As a reminder, it is important to note that this court is endowed with the jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened. [See article 165 of the [Constitution](#)].

### **What is public participation?**

23. It has been emphasized by various determinations from our courts that public participation remains a crucial pillar of the 2010 [Constitution](#). It is the process of engagement in governance, in which ‘people participate together for deliberation and collective action within an array of interests, institutions and networks, developing civic identity, and involving people in governance processes.’ [ See [Petition No. 21 \(E023\) of 2020](#) by the Supreme Court].
24. A review of articles 10 and 47 of the [Constitution](#) does recognize that legality of actions in exercise of public power does not depend on a state officer or institution of authority having taken and conveyed an executive decision, but on whether the values and principles laid down in the [Constitution](#) for the taking of such actions have been complied with. This is in line with the decision in the case of [Kenya Human Rights Commission v Attorney General & Another](#) [2018] eKLR where the court noted that public participation is an essential national value and principle that must be observed by all persons; state organs and public officers in the exercise of their responsibilities. In this regard, the Court stated that:

“ Article 10 (1) of the [Constitution](#) states that the national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them applies or interprets the [Constitution](#); (b) enacts, applies or interprets any law; or makes or implements public policy decisions. And according to Article 10 (2), the national values and principles of governance include patriotism, national unity, sharing and devolution of power, the rule of law, democracy and “participation of the people.”

Also see Mombasa High Court Constitutional Petition No 159 of 2018 consolidated with Constitutional Petition No 201 of 2019 [William Odhiambo Ramogi & 3 others v Attorney General & others](#) (2020) eKLR].

25. Borrowing from our brothers in the South African Constitutional Court in the case of [Poverty Alleviation Network & others v President of the Republic of South Africa & 19 others](#), CCT 86/08 [2010] ZACC 5 it was held that: -

“ ... engagement with the public is essential. Public participation informs the public of what is to be expected. It allows for the community to express concerns, fears and even to make demands. In any democratic state, participation is integral to its legitimacy. When a decision is made without consulting the public the result can never be an informed decision”.

26. In the case of [British American Tobacco Kenya, PLC v Cabinet secretary for the Ministry of Health and 2 Others](#), Petition No. 5 of 2017, the Supreme Court established the standard that duty bearers must meet, and the threshold courts should use to determine whether duty bearers have fulfilled their



obligation with respect to public participation. This threshold is set at a reasonableness standard. In its guiding principles on public participation, the court defined the threshold as follows:

“Public participation must be accompanied by reasonable notice and reasonable opportunity. Reasonableness will be determined on a case-to-case basis.” This court also proceeded to guide as follows: “Allegation of lack of public participation does not automatically vitiate the process. The allegations must be considered within the peculiar circumstances of each case: the mode, degree, scope and extent of public participation is to be determined on a case-to-case basis.”

27. In the same breadth, [\*Petition No. E031 of 2024 as consolidated with Petition No. E032 & E033 of 2024\*](#) of the Supreme Court of Kenya, the court with approval relied on a decision by the Constitutional Court of South Africa in [\*Mogale and Others v Speaker of the National Assembly and Others\*](#) (CCT 73/22) [2023] ZACC 14 where at paragraph 37 the court stated that there are three factors that ought to be considered in determining whether the process adopted by a duty bearer in facilitating public participation was reasonable. The court held thus:

“In determining whether conduct has been reasonable in the context of public participation the following factors are of particular importance:

- a) What Parliament itself has determined is reasonable, and how it has decided it will facilitate public involvement;
- b) The importance of the legislation and its impact on the public; and
- c) Time constraints on the passage of a particular bill, and the potential expense.” [Emphasis added]

[ Also see [\*Petition No. E031 of 2024 as consolidated with Petition No. E032 & E033 of 2024\*](#) of the Supreme Court of Kenya].

28. Having the above in mind, the question that this court seeks to address is whether the people of Hargabul sub location were consulted in reference to the decision to alter administrative boundaries herein relocating them from their current sub-county to Fafi sub-county largely inhabited by a different sub-tribe.
29. The impugned decision is contained in the [\*Gazette Notice No. 1766\*](#) of 14.02.2024 by the Cabinet Secretary for Interior and Co-ordination of National Government pursuant to powers conferred upon him by section 14(1) and (3) of the [\*National Government Coordination Act\*](#).
30. The [\*National Government Coordination Act\*](#) 2013 was passed to establish an administrative and institutional framework for the coordination of national government functions at the national and county levels of governance and; to give effect to articles 131(1)(b) and 132 (3) (b) of the [\*Constitution\*](#). The procedure for the creation of administrative units is provided for under section 14 of the [\*National Government Coordination Act\*](#) which provides as follows:

“Service delivery co-ordination units.

- (1) The Cabinet Secretary may, with the approval of the President and by a notice in the Gazette, establish national government service delivery co-ordination units.



- (2) In establishing the national government service delivery coordination units, the Cabinet Secretary shall accord and respect the county government decentralized units established under section 48 of the *County Government Act*.
- (3) Where a county government has not decentralised its units pursuant to section 48(1)(e) of the *County Government Act*, the national government may, where necessary, establish its own service delivery coordination units for purposes of coordination of national government functions.
- (4) For purposes of this section, the locations and sub locations in existence immediately before the commencement of this Act shall continue to exist as national government service delivery units.
- (5) The national government service delivery coordination units established under this section shall be headed by national government administrative officers appointed under section 15.”

31. Section 14 of the [National Government Coordination Act](#) therefore expressly authorizes the 1<sup>st</sup> respondent with the approval of the President, and through a notice in the Kenya Gazette to establish national government service delivery coordination units. Section 14(4) specifically provides that locations and sub locations in existence before the commencement of the [National Government Coordination Act](#) shall continue to exist as national government service delivery units.
32. In the same breadth, section 4 of the said [Act](#) (Guiding Principles) provides that in fulfilling its mandate, the national government shall act in accordance with the national values and principles of the [Constitution](#) in particular, those set out in articles 10, 189, 201(d) and 232.
33. It therefore follows that the alteration or establishment of administrative boundaries by the 1<sup>st</sup> respondent is not an internal operational decision; it is an executive decision in exercise of executive powers which is regulated by law and the [Constitution](#).
34. As already noted, the petitioner’s main contention is that in as much as through these administrative units, the government allocates and distributes resources and citizens access government services, the manner in which the same was done was not constitutional. From the foregoing and in relation to the legal basis already laid by this court, it is this court’s view that the relocation of the sub location is a public venture and the same ought to involve the residents of the affected areas, in this case, the Hagarbul sub location. The decision, therefore, affects the public and more particularly those residing in the affected sub locations.
35. It is against the above backdrop that I find that the decision made by the 1<sup>st</sup> respondent was, therefore, bound to ensure it is made with public participation or stakeholders’ engagement at the very least.
36. From the facts herein, the respondents did not show that indeed there was a public participation exercise conducted before the said relocation. Going by the provisions of the law, the impugned decision fell short of the constitutional stipulation(s). The decision did not conform to the requirements of article 47 of the [Constitution](#) as well as public participation in article 10 of the [Constitution](#). In demanding that the cabinet secretary do conduct a sensitization exercise involving the affected clan about the relocation from their subcounty to another subcounty outside their clan is not a small matter. It requires community participation. That does not in any way take away the cabinet secretary’s power to create new administrative units nor does it amount to judicial interference with the doctrine of separation of powers.



37. In view of the above findings, it is my holding that the petition is merited and the same is allowed with orders as follows.
- i. That a declaration do and is hereby issued declaring that the decision by the 1<sup>st</sup> respondent vide [Kenya gazette Notice No. 1766](#) of the 14.02.2024 relocating Hargabul sub location from Dadaab Sub-County to Fafi Sub County without first engaging in public participation was unconstitutional and in violation of articles 1, 2, 6(2) 10, 19, 20, 21, 22(1), 47, 73(1), 174, 232, 258 and 259 of the [Constitution](#).
  - ii. That for avoidance of doubt, these proceedings the declaration herein above relate only to the area I have stated, and not the entire gazette notice which affects other parts of the country.
  - iii. That any order sought which has not been specifically granted is deemed to have been declined.
  - iv. That the cabinet secretary shall conduct a public participation exercise involving the affected counties and clans before creating the new administrative units.
  - v. That this being a public interest litigation, each party shall bear own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 20<sup>TH</sup> DAY OF DECEMBER 2024**

**J. N. ONYIEGO**

**JUDGE**

