



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAHURURU

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NUMBER 4 OF 2020

**IN THE MATTER OF : THE CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS AS
ENSHRINED UNDER ARTICLES 10,189,201,232, AND 47 AND 159 OF THE CONSTITUTION OF KENYA, 2010**

AND

IN THE MATTER OF: THE FAIR ADMINISTRATIVE ACT, 2015

AND

IN THE MATTER OF: THE NATIONAL GOVERNMENT CO-ORDINATION ACT, 2013

AND

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

AND

IN THE MATTER OF: THE STATUTORY INSTRUMENTS ACT NO. 23 OF 2013

AND

IN THE MATTER OF GAZETTE NOTICE NO. 4571 ISSUED ON 3RD JULY, 2020

AND

IN THE MATTER OF: ENFORCEMENT OF INTERPRETATION OF THE CONSTITUTION

BETWEEN

JOSEPH MWANGI GATHUA.....1ST PETITIONER

CHARLES GITAU KIBITO.....2ND PETITIONER

JESSE MBUGUA NJOGU.....3RD PETITIONER

PAUL MUNYAKA MWANGI.....4TH PETITIONER

ERASTUS MWENDA MURIITHI.....5TH PETITIONER

AND

CABINET SECRETARY FOR INTERIOR AND

CO-ORDINATION OF NATIONAL GOVERNMENT.....1ST RESPONDENT

THE GOVERNOR, NYANDARUA COUNTY.....2ND RESPONDENT

COUNTY COMMISSIONER, NYANDARUA COUNTY.....3RD RESPONDENT

MEMBER OF NATIONAL ASSEMBLY,

NDARAGWA CONSTITUENCY.....4TH RESPONDENT

THE HONOURABLE. THE ATTORNEY GENERAL.....5TH RESPONDENT

RULING

1. The petitioner/applicants lodged petition dated 14th September, 2020 seeking reliefs that;
2. An order of certiorari to remove to the court and quash 1st Respondents directive under Gazette Notice number 4571 of 1st July 2020 published on 3rd July 2020 in Kenya Gazette no CXXII – No.128.
3. A declaration that actions of the 1, 2, 3, & 4th Respondents in the said Gazette is null and void and unconstitutional for want of public participation as mandated by the constitution of Kenya 2010.
4. Along with a petition they lodged motion dated 14.09.2020 brought under certificate of urgency seeking conservatory orders as set out in the motion. The applicants set grounds in support of the motion and also filed a supporting affidavit setting out their case as summarized below.
5. Vide Gazette Notice No. 4571 of 1st July, 2020 published in Nairobi on 3rd July, 2020 in the Kenya Gazette Vol.CXXII-No.128, the Cabinet Secretary for interior and Co-ordination of National Government effectively established new sub-counties in Nyandarua County and new administrative units as service delivery co-ordinating units the two sub-counties being:
 - Ø *Gathanji Headquarters – Ngano*
 - Ø *Aberdare Headquarters – Shamata*
6. That in establishing Aberdare Sub-county, the 1st Respondent, in collaboration with 2nd, 3rd and 4th Respondents merged Kiriita Ward and Shamata Ward, two totally different administrative units which are geographically distant and unrelated from each other.
7. That the headquarters of Aberdare Sub-County were transferred to Shamata Town a town that is upwards of 50 kilometres from Kiriita Ward, condemning the people of Kiriita Ward travel the whole length of Ndaragwa Constituency to get critical government services including healthcare, education and security.
8. That the said administrative units have condemned the people of Kiriita to having critical government services being taken further away from them, which not only alienates them but also takes critical services away from them which further discriminates against the most vulnerable members of Kiriita Ward including women, children, the elderly and persons living with disability.
9. The said Gazette Notice only established the County headquarters but did not at any point demarcate any boundaries.
10. On 1st September, 2020, the Governor, Nyandarua County welcomed Deputy County Commissioners for Gathanji and Aberdare Headquarters to commence their duties.
11. The 1st and 2nd Respondents in implementing the Notice are acting prematurely without the necessary legal and regulatory framework; the purported creation of the new sub-counties without subjecting the process to public participation as mandatorily required by law.
12. The actions by the 1st Respondent did not follow the due process and are in sheer disregard of the provisions of Articles 10, 189, 201(d), 232 47, 159 of the constitution of Kenya 2010 which are the guiding principles in section 4 of the National Government Co-ordination Act.
13. That the people of Nyandarua and particularly in Kiriita Ward will be condemned to hardships and will unnecessarily be be laboured in them trying to access vital government services relating to health, education and security that they would have otherwise accessed easily without the creating of the new sub-counties by the 1st Respondent.

1ST RESPONDENTS CASE;

14. THAT the creation of the two sub-counties namely; Gathanji Headquarters-Shamata was as a result of Presidential directive issued on 7th October, 2014.
15. THAT pursuant to the presidential directive on creation of the new sub-counties, a consultative forum comprising of Nyandarua North Deputy County Commissioners, ACCs and chiefs was convened on 17th October, 2017 to deliberate on the issue of the new sub-counties and

there was a unanimous agreement on how the process would proceed.

16. THAT to ensure that everyone was well informed and aware of the presidential directive on the intended creation of the new sub-counties and so as to get the views of the public, a third consultative meeting of the Nyandarua County Stakeholders was held on 20th November, 2017 at the Catholic Church Hall in Ol Kalou.

17. THAT subsequent to the public sensitization and participation of the intended new administrative units Nyandarua County, the units were established by the Cabinet Secretary for Interior and Co-ordination of National Government vide a Gazette notice no. 4571 dated 3rd July, 2020.

18. THAT the Ministry of Interior by gazetting the new sub-counties in the aforementioned gazette notice was not required by any provision in law to include the demarcation of the established administrative units in that same gazette notice that establishes them.

19. THAT after gazetting of the new sub-counties, the national Government deployed two deputy commissioners to preside over the new units and formal introduction of the new deputy county commissioners was done to the community through public *barazas* and there was no resistance at all.

20. THAT the sub-counties established were meant to enhance devolution and bring services closer to the people of Nyandarua County.

21. THAT the 1st and 3rd Respondent have never acted in excess of their powers but rather have been duly executing their functions as prescribed in law and have been continued acting in good faith even to the extent of always engaging the residents of Kiriita sub-county and the rest of the sub-counties.

22. THAT there is no violation of the Constitutional right to fair administrative action towards the people of Kiriita sub-county as alleged in the 1st Petitioner's Affidavit as there is no relation between administrative units (in this case sub counties) and fair administrative actions.

23. THAT the reasons advanced herein before and especially paragraph 5,6 and 7 coupled with others to be advanced during the hearing of this application are the considerations and deliberations considered when the notices were issued.

24. Thus, this was a decision of the people of Nyandarua County though the resolutions they passed in the various consultative meetings and therefore it is a misplaced notion to allege that there was no public participation and that the people of Kiriita sub-county have been prejudiced by the creation of the new sub counties.

2nd Respondent's case

25. THAT the County Government is keen and working hard to improve the services delivery as both National and County level engage.

26. THAT the County Government is fully aware of the need for the Administrative offices in vast areas, infrastructure Challenges are being addressed by both County and National Government.

27. THAT the County Government has enjoyed instrumental support from National Government and Economy is being gradually opened through administrative offices across the County.

28. THAT there is assurance from the National Government that there are four (4) more administrative district in the line.

29. Parties agreed to canvass application via submissions and the applicants, and respondents no1,3and5 filed the same and exchanged.

APPLICANT/PETITIONERS SUBMISSIONS;

30. It is submitted that the 1st Respondent acting in collaboration with the 2nd, 3rd and 4th Respondents did not act in consultation with the public as required by the law when they created administrative areas in issue.

31. The two wards that were merged together, being Shamata and Kiriita Wards to form Aberdare Sub- County are not even related geographically. Secondly, the Gazette Notice does not demarcate any boundary but only states the County Headquarters.

32. Third, the people in Kiriita ward are being condemned to travel the length of the entire Ndaragwa Constituency to get essential services in health, education and security belaboring the most vulnerable of citizens of Kiriita ward including women, children, the elderly as well as persons living with disability who have to travel upwards of 50 kilometers to get to Shamata Town.

33. It is their submission that if public consultation and participation was conducted by the Respondents, then it is clear as daylight that these issues may have come up and averted this crisis they have created.

34. It is the applicant's/petitioner's submission that this court is vested with the power to interpret the Constitution and to safeguard, protect and promote its provisions as provided for under Article 165(3) of the Constitution, has the duty and obligation to intervene in actions of other arms of Government and State Organs where it is alleged or demonstrated that the Constitution has either been violated threatened with violation.

35. Further, this court can grant the orders sought in the petition, where appropriate, or appropriate orders in accordance with Article 23(3). Proceedings under Article 22 of the Constitution deal with the enforcement of the Bill of Rights. Therefore a strict interpretation of Article 23(3)(c) shows that the reliefs specified thereunder are only available where a party is alleging that a right or fundamental freedom in the Bill of Rights or those of other persons have been denied, violated or infringed, or is threatened. They cite the case of

36. Judicial Service Commission V. Speaker of the National Assembly & Another(2013) Eklr and Gitirau Peter Munya Vs Dickson Menda Kithinji and 2 others and also Petition No. 16 of 2011, Nairobi – Centre for Rights Education and Awareness(CREAW) & 7 Others.

37. They submit that, a party seeking Conservatory order only requires to demonstrate that he has a prima facie case with a likelihood of success and that unless the court grants the Conservatory Order, there is real danger that he will suffer prejudice as a result of the violation or threatened violation of the Constitution.

38. In this particular instance, it is clear from the facts that if the conservatory orders herein are not granted, the most vulnerable of members of the community stand to suffer irreparable harm and loss should they be forced to seek key services from Shamata a town that is upwards of 50 kilometers from them.

39. The Respondents have not submitted any memorandum or report to show that the public or the Independent Electoral and Boundaries Commission which is charged with the responsibility of delimitation of county and ward boundaries were consulted.

40. It is therefore in bad faith that the 1st Respondent would create a new sub-county without public participation and consultation. It is also important to note that the purported intention of the participation and consultation.

41. It is also important to note that the purported intention of the Respondents of creating Aberdare Sub County was to bring services closer to the public only for them to alienate them further with the headquarters being taken to Shamata Town. They cite the case of **Martin Nyaga Wambora vs Speaker of The County Assembly of Embu & 3 others(2014)Eklr.**

42. They submit that, in the present circumstance it is clear that there is imminent, evident danger that the people of Kiriita Ward risk facing.

43. Therefore, to answer the question “Does this Honourable Court have the Jurisdiction to give the reliefs sought in the nature of conservatory orders:” can be answered in the affirmative as well.

RESPONDENTS NO. 1, 3, AND 5 SUBMISSIONS:

44. They submit that, this Court has on several occasions been called upon to determine the issue on issuance of Conservatory orders as provided for Under Article 23 of the Constitution.

45. And this Court has been consistent in its determination on the issue, and has set down precedence on the conditions necessary to be met by an Applicant when moving this Court for issuance of Conservatory Orders.

46. They rely on the case of Supreme Court on the tenor, import ant scope of conservatory order being case of **Gitirau Peter Munya V Dickson Mwenda Kithinji & 2 others(2014)eKLR** where it held as follows:

“(86).....Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.”(Emphasis ours)

47. To that effect, the law is that, in considering an application for conservatory orders, the court is not called upon and is indeed not required to make any definitive finding either of fact or law as that is the province of the court that will ultimately hear the petition.

48. They submit that, jurisdiction of the court at this point is limited to examining and evaluating the material placed before it, to determine whether the applicant has made out a prima facie case to warrant grant of conservatory orders. The court is also required to evaluate the pleadings and determination whether denial of conservatory orders will prejudice the applicant. And cite the **Petition 83 of 2019, Platinum Distillers Limited v Kenya Revenue Authority(2019)eKLR**

49. They also rely on the case of **Centre of Rights Education and Awareness(CREAW)& 7 Others v Attorney General, Nairobi High Court Petition NO. 16 of 2011;(2011)eKLR** where court stated that:

“..... At this stage, a party seeking a conservatory order only requires to demonstrate that he has a prima facie case with a likelihood of success and that unless the court grants the conservatory order there is real danger that he will suffer prejudice as a result of the violation or threatened violation of the Constitution.”

50. They argue that, the formation of the new administrative units by the 1st Respondent’s Gazette Notice was done in keeping with the Law and the Constitution, and that the 1st, 3rd and 5th Respondents’ did not act in excess of their authorities.

51. They contend that in any public policy touching on the interest of the public, public participation is mandatory (and this has been the holding of this Court in many of its decisions when called upon to make a determination), but however submit that the allegations by the Applicants that this mandatory process was not undertaken is not only false, but intended to mislead this Court.

52. They cite the case of *Matatiele Municipality and Others vs. President of the Republic of South Africa and Others*(2) (CCT73/05A(2006)ZACC 12; 2007(1) BCLR 47(CC) cited with approval in *Petition 628, 630 of 2014 & 12 of 2015(Consolidated) Coalition for Reform and Democracy (CORD) & 2 others v Republic of Kenya &10; others*(2015 eKLR, where the Court discussed what public participation may entail and expressed itself as follows:

“The nature and the degree of public participation that is reasonable in a given case will depend on a number of factors. These include the nature and the importance of the legislation and the intensity of its impact on the public. The more discrete and identifiable the potentially affected section of the population, and the more intense the possible effect on their interests, the more reasonable it would be to expect the legislature to be astute to ensure that the potentially affected section of the population is given a reasonable opportunity to have a say.”

53. They also rely on the case of *Abdi Ahmed Abdi vs Cabinet Secretary for Interior and Co-ordination of National Government & 7 others*(2017 eKLR, where court opined that, public participation is a concept that calls for innovation and malleability, and is dependent on the nature of the subject matter, culture, logistical constraints and many other aspects.

54. They submit that, there is no litmus test that is used to determine if public participation has been achieved or not, and the only tests the Courts use in determination of such issue, is that of **Effectiveness**.

55. They submit that the threshold of public participation was met by the Respondents. They invite the Court to have a look at the 1st, 3rd and 5th Respondents exhibits marked as **NCC-1 to 7** and extensively interrogate the same.

56. They submit that, evidence exhibited by the 1st, at least 4 show consultative meetings were held where stakeholders were invited to give their views and opinions in the intended act of creating new administrative units within Nyandarua County. The meetings were held as follows:

Ø **On 17th October, 2017 at DCC’s Boardroom**

Ø **On 6th November, 2017 at DCC’s Boardroom**

Ø **On 20th November, 2017 at Catholic Church Hall**

57. In all those meetings, area chiefs and representatives from wards were all in attendance, including those from the alleged affected area of Kiriita as per the Applicants. The attendance list and minutes of all those meetings are attached and produced to the 3rd Respondent’s Replying Affidavit.

58. Thus they submit that, the Public was well sensitized on the intended action of devolving government functions to the grassroots as per the exhibits so provided before court, and it followed the said sensitization that then the 1st Respondent Gazetted the Notice to give effect to the Presidential Directive.

59. Having then shown that the Public was well sensitized of the acts to decentralize further the functions of the national government to the residents of Nyandarua County, they submit that on the first element of establishing a prima facie case, the Applicants have failed to demonstrate that the lack of the same exists, and thus fails on this issue.

60. On the second limb, which is whether the Applicants have demonstrated the prejudice they are likely to suffer were the Gazette Notice to remain in force.

61. They cite the case of *Petition No. 83 of 2019, Platinum Distillers LTD vs. Kenya Revenue Authority*(2019)eKLR, which citing with approval the case of *Centre for Rights Education and Awareness(CREAW) & 7 others*, supra held that, a party seeking a conservatory order, must demonstrate that there is real danger that he will suffer prejudice as a result of the violation or threatened violation of the Constitution. However, this must be weighed against the public interest.

62. They submit that, when the gazettment was done, the 1st Respondent was not required by any provision of the law to include demarcation of the established administrative units in the said gazette notice. The law only requires the 1st Respondent to publish gazette notices of the new administrative units, and to deploy personnel for formal introduction and to oversee the administrative units.

63. They urge that it is important to note that 2 Deputy Commissioners were publicly introduced through a public baraza 1st September, 2020 as per exhibit **NCC – 6**.

64. It is also important to point out that, at the introduction of the said DCCs, there was no resistance whatsoever from the residents, symbolizing that the residents were contented with the decisions made so far.

65. And in a show of good faith, after the gazettment of the new Aberdares Sub-County a meeting was held on **28th September, 2020** at Ndaragwa Primary School Hall.

66. Residents of Kiriita, (the location forming the basis of this petition and Application) were represented in the said meeting, and their views were given and recorded in the day’s minutes as produced before this Court.

67. Minutes also show that, a representative from the IEBC was present, which body is mandated constitutionally to ascertain boundaries

forming administrative units in Kenya.

68. It is contended that, following that Consultative meeting, there was no resistance to the gazette notice. And thus public interest of ensuring that government services and co-ordination of programs put in place cannot be overridden it enhances bringing services closer to the People of Nyandarua County.

69. Thus issuance of conservatory orders as sought would be akin to denying the residence of Nyandarua County their rights to access to government services and programs, and the granting of such orders would only be a classic definition of degradation of Public Interest in favour of the interest of a few individuals.

ISSUES, ANALYSIS AND DETERMINATION

70. After going through the pleadings and the submissions on record, I find the issues are ;**whether prima face case has been made to warrant grant of the conservatory orders sought? Whether prejudice has been established to be suffered if orders sought are not granted? And what is the orders as to costs?**

71. **On first issue, the** Supreme Court has had an opportunity to highlight the tenor, import ant scope of conservatory order in **Gatirau Peter Munya V Dickson Mwenda Kithinji & 2 others(2014)eKLR** where it held as follows:

“(86)” Conservatory orders” bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as “the prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the supplicant’s case for orders of stay. Conservatory orders, consequently, should be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.”(Emphasis ours)

72. To that effect, the law is that, in considering an application for conservatory orders, the court is not called upon and is indeed not required to make any definitive finding either of fact or law as that is the province of the court that will ultimately hear the petition.

73. The jurisdiction of the court at this point is limited to examining and evaluating the material placed before it, to determine whether the applicant has made out a prima facie case to warrant grant of conservatory orders. The court is also required to evaluate the pleadings and determination whether denial of conservatory orders will prejudice the applicant. (see the **Petition 83 of 2019, Platinum Distillers Limited v Kenya Revenue Authority(2019)eKLR**)

74. Then the task of this Court is to carefully consider the Applicants’ Application and ask whether the Applicants have at this stage, established a prima facie case with a likelihood of success and the prejudice to be suffered if orders are not granted. See the case of the **Centre of Rights Education and Awareness(CREAW)& 7 Others v Attorney General, Nairobi High Court Petition NO. 16 of 2011; (2011)eKLR** where court stated that:

“..... At this stage, a party seeking a conservatory order only requires to demonstrate that he has a prima facie case with a likelihood of success and that unless the court grants the conservatory order there is real danger that he will suffer prejudice as a result of the violation or threatened violation of the Constitution.”

75. The court at this stage is to establish whether the Applicants have demonstrated existence of a prima facie case with a likelihood of success, and whether any real danger and/or prejudice is likely to be suffered if the Orders being sought are denied by this Court.

76. The respondent 1,3, and 5 contend that the formation of the new administrative units by the 1st Respondent’s Gazette Notice was done in keeping in line with the Law and the Constitution, and that the 1st, 3rd and 5th Respondents’ did not act in excess of their authorities.

77. In any public policy touching on the interest of the public, public participation is mandatory. Public Participation is one of the national values and principles of governance enshrined in the **Constitution of Kenya, 2010 (the Constitution)**.

78. **Article 10(2)(a) of the Constitution** specifically states that 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**. The participation of the people is popularly referred to as Public Participation.

79. Article 10(1) of the Constitution states that national values and principles of governance bind all state organs, state officers, public officers and all person whenever any of them:

Ø applies or interprets the Constitution;

Ø enacts, applies or interprets any law; or

Ø makes or implements public policy decisions.

80. Increasingly, from the court corridors, we have seen some legislation and policies invalidated due to inadequate Public Participation. For instance, in November 2018, the Contempt of Court Act, 2016 was declared to be invalid by the Constitutional Court for lack of Public Participation in the case of **Kenya Human Rights Commission v Attorney General & another [2018] Eklr**.

81. We have also come across instances of County Government legislation and policies being invalidated for the same reasons.

82. The Constitution in Article 10 which binds all state organs, state officers, public officers and all persons in the discharge of public functions, highlights public participation as one of the ideas and aspirations of our democratic nation. It follows that individuals have a right to challenge any administrative action, legislation or public policy decision on the grounds of inadequate public participation.

83. What is the standard or extent of Public Participation required?

84. In numerous cases, the courts have held that the standard to be applied in Public Participation is one of reasonableness. This means that it depends on the peculiar circumstances and facts at issue in each case.

85. The Applicants aver that this mandatory process was not undertaken as required by the cited provisions of the constitution.

86. In **Matatiele Municipality and Others vs. President of the Republic of South Africa and Others (2) (CCT73/05A(2006)ZACC 12; 2007(1) BCLR 47(CC)** cited with approval in **Petition 628, 630 of 2014 & 12 of 2015(Consolidated) Coalition for Reform and Democracy (CORD) & 2 others v Republic of Kenya &10; others(2015 eKLR**, the Court discussed what public participation may entail and expressed itself as follows:

“The nature and the degree of public participation that is reasonable in a given case will depend on a number of factors. These include the nature and the importance of the legislation and the intensity of its impact on the public. The more discrete and identifiable the potentially affected section of the population, and the more intense the possible effect on their interests, the more reasonable it would be to expect the legislature to be astute to ensure that the potentially affected section of the population is given a reasonable opportunity to have a say.”

87. From the above case law, and going by the case law relied on by the Applicants being **Abdi Ahmed Abdi vs Cabinet Secretary for Interior and Co-ordination of National Government & 7 others(2017 eKLR**, the court’s view is that , Public participation is a concept that calls for innovation and malleability, and is dependent on the nature of the subject matter, culture, logistical constraints and many other aspects.

88. There is no litmus test that is used to determine if public participation has been achieved or not, and the only tests the Courts use in determination of such issue, is that of Effectiveness.

89. Respondent 1,3, and 5 submit that the test was passed by the them in this case.

90. The Court has looked at the 1st, 3rd and 5th Respondents exhibits marked as NCC-1 to 7 and interrogated the same.

91. It is noted that, at least 4 consultative meetings were held where stakeholders were invited to give their views and opinions in the intended act of creating new administrative units within Nyandarua County. The meetings were held as follows:

(a) On 17th October, 2017 at DCC’s Boardroom

(b) On 6th November, 2017 at DCC’s Boardroom

(c) On 20th November, 2017 at Catholic Church Hall

92. **In all those** meetings, area chiefs and representatives from wards were all in attendance, including those from the alleged affected area of Kiriita as per the Applicants. The attendance list and minutes of all those meetings are attached and produced to the 3rd Respondent’s Replying Affidavit.

93. It appears on prima facie basis then that the Public was sensitized on the intended action of devolving government functions on the grassroots as per the exhibits so provided before court, and it followed the said sensitization that then the 1st Respondent Gazetted the Notice to give effect to the Presidential Directive.

94. Thus on the first element of establishing a prima facie case, the Applicants have failed to demonstrate that the lack of the same exists, and thus fails on this issue.

95. On the second limb, which is whether the Applicants have demonstrated the prejudice they are likely to suffer were the Gazette Notice to remain in force.

96. As per **Weldon J. in Petition No. 83 of 2019, Platinum Distillers LTD vs. Kenya Revenue Authority(2019)eKLR**, and citing with approval he case of **Centre for Rights Education and Awareness(CREAW) & 7 others**, a party seeking a conservatory order has to demonstrate that, there is real danger that he will suffer prejudice as a result of the violation or threatened violation of the Constitution. However, this must be weighed against the public interest.

97. The Applicants in their submissions have argued that the danger facing the residents of Kiriita Ward is that they have been forced to travel a distance of 50 Kms to get to the headquarters now situated at Shamata Town.

98. It is contended by the respondents 1,3, and 5th and it is not refuted that, the gazettment was done, the 1st Respondent was not required by any provision of the law to include demarcation of the established administrative units in the said gazette notice.

99. The law only requires the 1st Respondent to publish gazette notices of the new administrative units, and to deploy personnel for formal introduction and to oversee the administrative units.

100. The court noted that 2 Deputy county Commissioners were publicly introduced through a public baraza 1st September, 2020 as per exhibit NCC – 6. This has not been denied.

101. It has not been alleged that at the introduction of the said DCCs, there was any resistance whatsoever from the residents of the area in issue, symbolizing that the residents may have been contented with the decisions made so far.

102. It is noted that 1st ,3rd , and 5th respondents, as a show of good faith, after the gazettment of the new Aberdares Sub-County to realign the boundaries of the administrative units for effective delivery and co-ordination of National Government Programme, convened a meeting on 28th September, 2020 at Ndaragwa Primary School Hall. This has not been rebutted.

103. Residents of Kiriita, (the location forming the basis of this petition and Application) were represented in the said meeting, and their views were given and recorded in the day's minutes as produced before this Court.

104. Further the minutes exhibited shows that a representative from the IEBC was present, which body is mandated constitutionally to ascertain boundaries forming administrative units in Kenya.

105. In the end, and following that Consultative meeting, there were no resistance to the gazette notice as now alleged by the Applicants.

106. Thus issuance of conservatory orders as sought suspending the gazette notice as well as issuing orders of temporary injunctions against the 1st, 3rd and 5th Respondents and/or their agents from executing their functions under the gazette notice is not merited.

107. Thus the court makes the following orders;

(i) The Applicants' Application herein is unmerited, and the same is dismissed with no orders as to Costs.

Dated, Signed and Delivered at NYAHURURU this 24th day of November 2020.

CHARLES KARIUKI

JUDGE

PRESENT:

Henry: Court Assistant

Mr Leting for 1st, 3rd and 5th Respondents

And holding brief for Ms Githinji for 2nd Respondent

And holding brief for Njogu for the 4th Respondent

Wambugu for all petitioners