



**Abdi & another v Cabinet Secretary for Interior and National Administration & another (Petition E020 of 2024) [2025] KEHC 2597 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2597 (KLR)

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

**PETITION E020 OF 2024**

**JN ONYIEGO, J**

**MARCH 13, 2025**

**IN THE MATTER OF ARTICLES 22(1) AND 258 OF THE CONSTITUTION OF KENYA**

**AND**

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

**IN THE MATTER OF A VIOLATION AND ABROGATION OF:**

**THE CONSTITUTION OF KENYA, 2010: ARTICLES 1, 2,  
6 (3), 10, 11(1), 19, 20, 21, 23, 24, 27, 47, 73(1), 153, AND 154**

**THE NATIONAL GOVERNMENT CO-ORDINATION ACT: SECTION 14**

**BETWEEN**

**HUSSEIN DAUD ABDI ..... 1<sup>ST</sup> APPLICANT**

**HASSAN ISSA MOHAMED ..... 2<sup>ND</sup> APPLICANT**

**AND**

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

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

**RULING**

1. Vide a Notice of Motion dated 6<sup>th</sup> December, 2024, the applicants/petitioners sought orders as follows;
  - i. That this application be certified urgent and service of the same be dispensed with in the first instance.



- ii. That pending the hearing and determination of this application, a conservatory order do issue suspending Gazette Notice No. 15341 of 22<sup>nd</sup> November, 2024 published in Nairobi in Kenya Gazette Vol. CXXVI- No. 203 in so far as the same relates to the creation of the proposed Luqe location and Luqe Sub-location in Buna Sub-County.
  - iii. That pending the hearing and determination of this application, a temporary order of injunction do issue prohibiting the respondents and their agents and any persons howsoever acting under their authority from giving effect to Gazette Notice No. 15341 of 22<sup>nd</sup> November, 2024 published in Nairobi in Kenya Gazette Vol. CXXVI- No. 203 so as the same relates to the creation of the proposed Luqe Location and Luqe Sub-location in Buna Sub-County.
  - iv. That pending the hearing and determination of this petition, a conservatory order do issue suspending Gazette Notice No. 15341 of 22<sup>nd</sup> November, 2024 published in Nairobi in Kenya Gazette Vol. CXXVI- No. 203 in so far as the same relates to the creation of the proposed Luqe Location and Luqe Sub-location within Buna Sub-County.
  - v. That pending the hearing and determination of this petition, a temporary order of injunction do issue prohibiting the respondents and their agents and any persons howsoever acting under their authority from giving effect to Gazette Notice No. 15341 of 22<sup>nd</sup> November, 2024 published in Nairobi in Kenya Gazette Vol. CXXVI- No. 203 in so far as the same relates to the creation of the proposed Luqe Location and Luqe Sub-location within Buna Sub-county
  - vi. That costs of this application be provided for.
2. The application is based on the grounds set out on the face of it and further amplified by the affidavit of one Hussein Daud Abdi sworn on 6<sup>th</sup> December, 2024 in which he averred that the creation of Luqe location and Luqe Sub-location as part of the administrative units in Buna Sub-county was without consultation of the residents. That the notice seeking to re-organize and re-create the existing boundaries by moving Luqe location and Sub-location to Buna Sub-county while geographically it is within Tarbaj Sub-county was without consultation contrary to Section 14 (2) and (4) of the [National Government Co-ordination Act](#).
  3. He averred that Luqe being a grazing land located more than 20 kilometres away from Buna Sub-county is historically and geographically part of Sarman Ward in Tarbaj Sub-county.
  4. That the impugned gazette is likely to cause unnecessary attention and conflict among members of the communities residing in both Tarbaj and Buna Sub-county. It was further deposed that taking away Luqe from Tarbaj to Buna would amount to economic sabotage to the community that depends on livestock grazing which is their source of livelihood.
  5. That unless the court grants the interim orders sought, the applicants are likely to suffer gross irreparable prejudice.
  6. Despite service of the application the respondents did not file any response and the matter proceeded to hearing unopposed. During the hearing, Counsel for the applicant reiterated the content contained in the affidavit in support and urged the court to allow the application.
  7. I have considered the application herein which is not opposed. It is trite law that the fact that an application is not opposed does not mean that it must automatically succeed. The court is duty bound to determine the same on merit. See *Julius Lekakeny ole Sunkuli v Gideon Sitelu Konchellah & 2 others* [2018] KECA 419 (KLR).



8. The applicants are residents of Serman ward who are aggrieved that the 1<sup>st</sup> resident has unilaterally gazetted the creation of Luqe location and Luqe sub-location located within Tarbaj Sub-county and transferred the same to Buna-Sub-county without consulting them. Ultimately, the applicants are relying on Article 10 of *the constitution* that provides for public participation of the citizens where state decisions or policies made are likely to affect them directly or indirectly.
9. The importance of public participation is a major component of the national values and principles of good governance. In the case of 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) (26 November 2019) (Judgment) the Supreme Court of Kenya overemphasized the importance of public participation as follows;

“Since the promulgation of *the Constitution* 2010, the question of the rationale, scope and application of public participation as a principle of governance has been subject of numerous decisions by the courts. The High Court in this matter appraised itself of the various decisions on the same, which appraisal the Court of Appeal readily endorsed. In the Matter of the National Land Commission, the Supreme Court placed the principle of public participation at the core of the concept of checks and balances in governance in the execution of their functions by the various arms of government, when we stated:

“

(308) The conditioning medium within which these functions have to be conducted, is constituted by the national values and principles outlined in article 10 of *the Constitution*: in particular, the rule of law; participation of the people; equity; inclusiveness; human rights; non-discrimination; good governance; integrity; transparency and accountability. It is to be noted that, the very essence of checks-and-balances touches on the principles of public participation, inclusiveness, integrity, accountability and transparency; and the performance of the constitutional and statutory functions is to be in line with values of integrity, transparency, good governance and accountability...”

10. There is no doubt that the respondents did not challenge this crucial aspect of our constitutional imperative. The key question is whether the applicants have met the threshold for grant of a conservatory order. It is now settled by several superior courts that for a conservatory order to issue, the applicant must prove salient elements interalia; there is a prima facie case established; failure to grant the order would result to irreparable damage or prejudice on the part of the applicant; that the petition may be rendered nugatory if the order is not granted and; that the order sought is a matter of public interest. See *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others* (2014) e KLR.
11. In view of the allegations made that there was no public participation which is not challenged, a prima facie case is established. Similarly, this is a matter that revolves around public interest and if the order sought is not granted, the petition will be rendered nugatory. To that extent, it is my finding that the application is merited and the same is allowed. The interim orders granted are hereby extended pending hearing and determination of the petition.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 13<sup>TH</sup> DAY OF MARCH 2025.**

**J. N. ONYIEGO**

**JUDGE**

