



Muhammed & 5 others v Cabinet Secretary for Lands, Public Works, Housing and Urban Development & 2 others (Petition E002 of 2023) [2024] KEHC 5321 (KLR) (17 May 2024) (Judgment)

Neutral citation: [2024] KEHC 5321 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
PETITION E002 OF 2023**

DK KEMEL, J

MAY 17, 2024

BETWEEN

**WABUKOYI ABDALLA MUHAMMED 1ST PETITIONER
RUBEN MANYONGE MABONGA 2ND PETITIONER
BEN BUTALI NAANYA 3RD PETITIONER
PAULO WALUMBE CHENGE 4TH PETITIONER
FLORENCE NALIKA 5TH PETITIONER
CLEMETINA NANJALA LUSWETI 6TH PETITIONER**

AND

**THE CABINET SECRETARY FOR LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT 1ST RESPONDENT
THE HONOURABLE ATTORNEY GENERAL 2ND RESPONDENT
THE GOVERNOR, BUNGOMA COUNTY 3RD RESPONDENT**

JUDGMENT

1. Vide a Petition dated June 8, 2023, and filed on 9th June 2023, the Petitioners herein sought the following prayers:
 - a. A declaration be issued that the 1st Respondent violated the right to access of information by failing to publish and publicise the schedules mentioned in the Gazette Notice No. 6795.
 - b. A declaration be issued that the 1st Respondent acted ultra vires his powers in publishing the Gazette Notice No. 6795.



- c. A declaration be issue that the 1st and 3rd Respondents violated *the Constitution* by failing to conduct public participation particularly in their purported delineation of Webuye and Chwele urban areas.
 - d. An order be and is hereby issued quashing the Gazette Notice No. 6795.
 - e. That costs of the Petition be provided for.
2. The Petition is premised under Articles 1, 2, 3, 10, 22, 23, 35(3),47, 153(4) (a), 165, 174, 184 & 258 of *the Constitution* of Kenya, 2010 and Sections 9, 10, 4A, 2 of the *Urban Areas and Cities Act*, 2011
 3. The Petition was supported by the grounds on the face of it and the supporting affidavit sworn by the 2nd Petitioner herein.
 4. The crux of the application is that, on 21st July 2020, my learned colleague Justice S. N. Riechi delivered his judgement in Constitutional Petition No. 10 of 2019 -Wabukoyi Abdalla Muhammed and Others vs County Government of Bungoma & Another, wherein he held that:

“After considering the Petition and Submissions, I find that the Petitioners have established that no public participation was held as required by law. I, therefore, issue conservatory orders to restrain the Respondent from enacting the law establishing Chwele Township until proper and effective Public Participation has been conducted according to law.”
 5. The Court further issued the parameters that ought to be observed to ensure proper public participation and a timeline of 90 days to the Respondents to conduct the same.
 6. According to the Petitioners, despite the clear orders of the Court, no public participation was conducted in regard to the establishment of Chwele Municipality and that as per the Gazette Notice No. 6795 dated 19th April 2023, the delineation of the boundaries was said to be as per schedule 1, 2, 3 and 4 of the notice but that the notice did not have any schedule to it as the same was not published as per Article 35(3) of *the Constitution* of Kenya, 2010. The Petitioners insist that the shared notice failed in its purposes as it did not convey the information on the boundaries created and that the delineation of Webuye and Chwele as urban areas instead of municipalities, townships or market centres was contrary to the statute, *Urban Areas and Cities Act*, that provides for specific categories under which an area can be delineated thus the 1st Respondent violated Article 184 of *the Constitution* of Kenya.
 7. The Petitioners argued that the actions of the 1st Respondent were ultra vires and that the same exceeded their powers which is limited to initiating the delineation process, by declaring the delineation of Bungoma and Kimilili Municipalities as well as Webuye and Chwele Urban areas. They argued that that 1st Respondent conferred upon themselves the powers of the 3rd Respondent which is to confer status to Bungoma and Kimilili municipalities as well as Webuye and Chwele urban areas contrary to Article 10 and 174 of *the Constitution*.
 8. The Petitioners argued that the 1st and 3rd Respondents failed to conduct any or effective public participation before the 1st Respondent declared the delineation of Bungoma and Kimilili municipalities as well as Webuye and Chwele urban areas thus contravening Article 1 and 10 of *the Constitution* of Kenya.
 9. The Petitioners urged this Court to grant the orders sought as the Respondents and members of the public will not suffer any prejudice.
 10. Opposing the application, the 3rd Respondent vide Monicah Salano Fedha, the Acting County Secretary and Head of Public Service swore a replying affidavit on 10th December 2023, wherein she



averred inter alia; that on 26th March 2019 through the former Governor of Bungoma, the County Government wrote to the Cabinet Secretary of the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works requesting for the appointment of an Ad-hoc Committee, for the delineation of Urban Boundaries in Bungoma County (annexed and marked as CGB1); that the same Cabinet Secretary responded to the said letter on 6th May 2019,(CGB2) and proceeded to appoint the Ad-hoc Committee pursuant to provisions of section 4A of the Urban Cities (Amendment) Act No. 3 of 2019; that via Gazette Notice No. 6879 of 26th July 2019,(CGB3) the said ad-hoc committee was appointed and duly gazetted; that pursuant to the ad-hoc committee, the County department of Lands, Urban Planning and Housing put notice in the Daily Nation(CGB4) to delineate the boundaries of Bungoma, Kimilili, Webuye and Chwele urban areas which called upon the members of the public, residents of the four urban areas and neighbouring areas as well as stakeholders to be notified and invited to give inputs and views, representations or objections in writing to the Chief Officer of the said department and the same were to be received before 7th November 2019; that the ad-hoc committee proceeded to publish in the Daily Nation requesting public participation on delineation of the boundaries of Bungoma and Kimilili municipalities as well as Webuye and Chwele Townships (CGB5); that all the requirements as per the law with regard to delineation of the boundaries of the urban areas were duly observed under Article 184 of *the Constitution* and Section 4A of the Urban Cities (Amendment) Act No. 3 of 2019; that public participation was duly conducted(CGB6) as per the dictates of *the Constitution* and availed a copy of the participation list of the various areas; that a report to that effect was compiled and forwarded to the County Assembly for deliberation and approval as per the copy of the County Assembly approval CGB8) and that upon approval the report was forwarded to the Cabinet Secretary (CGB9);that the Cabinet Secretary duly gazetted the boundaries of the said urban areas on 19th April 2023 vide Gazette Notice No. 6795 (CGB11).

11. In response to the replying affidavit, the 2nd Petitioner swore a supplementary affidavit on 6th November 2023, wherein he averred that the annexures marked CGB7, CGB8, CGB9, CGB10 and CGB11 as alluded to by the 3rd Respondent are not part of the court record or their record. According to him, no effective public participation was conducted to include Nawela Ward as part of Chwele Ward and thus they were discriminated against by the Respondents. He averred that Justice S.N. Riechi in Petition No. 4 of 2019 had further held that no public participation in respect to Chwele Township was conducted which was a violation of Article 10 of *the Constitution* of Kenya and that he barred the 1st and 3rd Respondents from enacting law establishing Chwele Township until a proper and effective public participation has been conducted.
12. He averred that the availed and marked annexures CGB4, CGB5 and CGB6 by the 1st Respondent did not stipulate adherence by the 1st and 3rd Respondents to the Court's Judgement delivered on 21st July 2020 as there was no evidence of such a Gazette Notice for intended Public Participation, no publications of the same in the widely circulated newspapers and media outlets and no disclosure of information with regard to the exercise after the court's judgement delivered on 21st July 2020.
13. He averred that the availed lists of public participation as fronted by the 3rd Respondent does not stipulate the precise venues of the alleged meetings and some lack relation to the subject matter at hand.
14. The application was canvassed by way of written submissions. The Petitioners and 3rd Respondent duly filed and exchanged their written submissions.
15. Having analysed the Petition and the Petitioners and 3rd Respondent's submissions, it is imperative to note that the issue for determination is whether the 1st and 3rd Respondents conducted any public participation particularly in their purported delineation of Webuye and Chwele as urban areas.



16. One of the key pillars of the Constitution of Kenya 2010 is the concept of devolution or decentralization of government services from the capital of Kenya. This is clearly spelt out under Article 174 (a) of the Constitution of Kenya 2010. The objects of the devolution of government are listed inter alia as “to facilitate the decentralization of State organs, their functions and services, from the capital of Kenya....”
17. An indepth reading of the Sixth Schedule of the Constitution of Kenya 2010 under Part 4 section 17 stipulates as follows: -

“ Within five years after the effective date, the national government shall restructure the system of administration commonly known as the provincial administration to accord with and respect the system of devolved government established under this Constitution.”
18. The Constitution of Kenya 2010 was promulgated on 27th August 2010 and that is the effective date. That means that from the said date any action taken by anyone be it administrative, political, policy etc. whether by public, State Officers or private persons must accord with the new Constitution. It is in that light that decentralization of services or devolution must be viewed.
19. This court has carefully considered this Petition and the response made in respect to this crucial issue of public participation. The Petitioners have attacked the delineation of Webuye and Chwele Urban Areas by the 1st Respondent on grounds that the essential information such as if the areas were conferred with municipality, township or market centre status was not availed to the citizens in those areas, the 1st Respondent acted beyond its scope of authority by initiating delineation as that was the role of the 3rd Respondent thus undermining devolution and that the 1st and 3rd Respondents failed to comply with the court’s judgement delivered in Constitutional Petition No. 10 of 2019 that clearly set out the parameters to be observed while conducting public participation.
20. It was the Petitioners argument that the actions by the 1st and 3rd Respondent was an infringement to their guaranteed rights under the Constitution of Kenya, to be precise Article 35 (3), and contrary to Articles 1, 10 and 174 of the Constitution of Kenya. The 3rd Respondent on the other hand has insisted that there was public participation.
21. There is no contest therefore, that public participation forms part of the core values and principles of the Constitution of Kenya 2010. Article 10 of the Constitution of Kenya provides that one of the National values and principles of governance in Kenya is Public participation. Article 10(2) provides that; “The National values and principles of governance include: -(a) Patriotism, national unity sharing and devolution of power, the rule of law democracy and participation of the people.....’ . The above values and principles bind all state organs, state officers and all other persons in applying or interpreting the constitution, enacting or applying any law or implementing policy decisions. The importance of public participation in all spheres of life is now a must and a reality in Kenya.
22. It is important to note that public participation as a principle though important has not been coded comprehensively through legislation. The Constitution is silent on what constitutes public participation. There is also no national legislation as yet that provides a comprehensive definition and parameters on what constitutes public participation. Be that as it may the essential features of public participation has been developed overtime through case law.
23. I will begin with the significance or the importance of public participation before i look at the threshold required with a view to disposing the third issue for determination in this matter.
24. As duly observed above, public participation is a core value and one of the cornerstone of the Constitution of Kenya 2010 principally, engagement with the public is an essential feature that enable



people to participate and own not only the final product but the process. Public participation keeps the public informed and know what is expected. It allows a community of people or stakeholders to express their concerns, fears and demands to cater for their interests. It is an important tool in any democratic state. In a South African decision in the case of *Matatiele Municipality v President of the Republic of South Africa (2)* (CCT 73/05A) the South African Constitutional Court expressed the significance of public participation when it observed as follows in part;

“A commitment to a right to public participation in government decision making is derived not only from the belief that we improve the accuracy of decisions when we allow people to present their side of their story but also from our sense that participation is necessary to preserve human dignity and self-respect”

The above observations show that giving people the right to participate in decision making on matters affecting them not only inspires confidence but makes them feel that they are respected and this is clearly stipulated under Article 28 of *the Constitution* of Kenya 2010 where it states that every person has a right to dignity and the right to have that dignity respected and protected.

25. In the case of *Richard Owuor & 2 others (Suing on behalf of Busia Sugarcane Importers Association versus Cabinet Secretary, Ministry of Agriculture Livestock, Fisheries and Cooperatives & 8 others* [2020] eKLR, Justice Mrima made the following observations: -

“Consultations or stakeholder’s engagement tends to give more latitude to key stakeholders in a given field to take part in the process towards making laws or formulations of administrative decisions which to a large extent impacts on them. That is because such key stakeholders are mostly affected by the law, policy or decisions in a profound way. Therefore, in appropriate instance a Government agency or a Public Officer undertaking public participation may have to consider incorporating the aspect of consultation or stakeholder’s engagement.....”

26. Having categorically laid out the significance of public participation, the next question to address is the threshold. What are the parameters or what practical steps must be undertaken to ensure that this Constitutional principle is attained? As I have observed, there was need for legislative intervention to give guidelines on how public participation should be conducted to meet the demands and aspirations of the people of Kenya as stipulated in *the Constitution* 2010. Parliament made attempts to codify this principle vide enactment of County Government Act (Section 3 and 87) where the law provides that the principles of citizens participation in counties include, timely access to information, data, documents and other information relevant or related to policy formulation.

27. Also, courts in Kenya have delved on this question in a number of decisions. In the case of *Doctors for Life International v Speaker of the National Assembly & others* [2015] eKLR they held as follows:-

“The phrase “facilitate public involvement” is a broad concept, which relates to the duty to ensure public participation in the law-making process. The key words in this are “facilitate” and “involvement”. To “facilitate” means to “make easy or easier” “promote” or “help forward”. The phrase “public involvement” is commonly used to describe the process of allowing the public to participate in the decision-making process. The dictionary definition of “involve” includes to “bring a person into a matter” while participation is defined as (a) taking part with others (in an action or matter);the active involvement of members of a community or organization in decisions which affect them.”



According to their plain and ordinary meaning, the words public involvement or public participation refer to the process by which the public participates in something...it is clear and I must state so, that it is impossible to define the forms of facilitating appropriate degree of public participation. To my mind, so long as members of the public are accorded a reasonable opportunity to know about the issues at hand and make known their contribution and say on such issues, then it is possible to say that there was public participation.”

28. It is apparent, going by the particular decision in *Khelef Khalifa & 2 others versus Independent Electoral and Boundaries Commission* and another [2017] eKLR, that to attain the principle of public participation in a decision-making process, the following parameters are required;
- a. There must be evidence of inclusivity that is to say that all stakeholders or those affected by an administrative policy, or law must be given an opportunity to express or ventilate their view well aware of what is at stake.
 - b. The affected people must be given sufficient notice of the nature of the decision to be made and when the consultations will be held. The information must be disseminated through public barazas, churches, mosques, print and electronic media and other avenues to ensure that the information reaches the targeted audience.
 - c. The government agency or a public officer in charge of the programme of public participation must of essence take into account the participation of the governed in quantitative as well as qualitative way. In other words, the engagement must be meaningful and done in good faith rather than a mere formality.
 - d. Public participation calls for innovation and some level of malleability depending on the nature of subject matter for example culture, geographical issues, logistical constraints etc. The test to be applied is effectiveness and efficiency. The question to be asked is, is the mechanism effective in achieving sufficient public participation.
 - e. Public participation does not mean that everyone must give their views on the issue at hand as to attain such a standard at times can be impractical. A public participation exercise must however show intentional inclusivity and diversity. A programme of public participation cannot disregard bona fide major stakeholders otherwise the program would be ineffective and illegal. Those mostly affected by the policy must have a bigger say in that policy, legislation or action and their views must be sought, taken into account. In other words, the view of the major stakeholders must be captured through minutes or any other proof that shows that their views were captured and had a bearing in the final decision.
 - f. Public participation is not a public relations exercise. It must be meaningful and done in good faith.
29. Having set out the law on public participation, i will now address the grievance raised by the Petitioners and the evidence in rebuttal laid before me by the 3rd Respondent. As I have observed above, the main dispute in this matter revolves around whether or not there was public participation in the creation and delineation of Webuye and Chwele Urban Areas and whether or not the said areas will be conferred with municipality, township or market centre status.
30. In response to the Petitioners’ grievance that there was lack of public participation, the 3rd Respondent argued that the gazetted Ad-hoc Committee and the County Department of Lands, Urban Planning and Housing put Notice in the Daily Nation of the Notice of Intention to delineate the boundaries of



Bungoma, Kimilili, Webuye and Chwele Urban Areas. The Notice further called upon members of the public, residents of the four urban areas and the neighbouring areas as well as stakeholders to be notified and put forth their inputs and views, representations or objections in writing to the Chief Officer of the County Department of Lands, Urban Planning and Housing. Further, the Notice indicated a deadline of 7th November 2019. The gazetted Ad-hoc to publish in the Daily Nation requesting for the Public Participation on delineation of the boundaries of Bungoma and Kimilili municipalities as well as Webuye and Chwele Townships. The gazetted Ad-hoc Committee proceeded to collect the views of the people after which a report was compiled and forwarded to the County Assembly for deliberation and approval.

31. This Court has perused through the bundle of documents exhibited by the 3rd Respondent via the said Acting County Secretary and Head of Public Service at the County Government of Bungoma. It is instructive that this court vide the judgement of Riechi J in Bungoma Constitutional Petition Number 10 of 2019 ha outlined the steps to be taken to ensure proper public participation as follows:
- a. Publication of the intended action in the Kenya Gazette.
 - b. Publication in other newspapers and media outlets which may include posters, churches, local radio stations.
 - c. Information disclosure about the activity, the objectives, who to participate, the effect of the activity on the targeted citizens.
 - d. Invitation of key stakeholders, elected, opinion leaders, interest groups.
 - e. Invitation of the general public to present memoranda to specific address or social media outlets e.g email, post office box or drop off at specific points.
 - f. Adequate time within which to make memoranda or presentation.
 - g. If a public meeting is to be held, the location and time. If it was held there must be evidence of the same by attendance list of participants with full particulars e.g identification card, telephone number, area of origin.
 - h. There must be evidence of receipt of memoranda and participants participation. This can be demonstrated by contribution, video or electronic evidence and resolutions arrived at in the meeting.
 - i. Evidence of consideration of the views obtained by public participation before consideration or making of the decision.

32. The above therefore was a clear roadmap provided by the court and which ought to have guided the 1st and 3rd Respondents in carrying out the exercise. However, a closer look at the list of the attendees of the meeting does not reveal how they were picked to attend the said meeting and whether the said attendees were representatives of all the residents of the subject areas. It is imperative to note that public participation was to be conducted with regard to delineation of the boundaries of Bungoma and Kimilili municipalities as well as Webuye and Chwele Townships. The lists ought to have been specific enough on which delineation areas they were and not the generalization as stated on the list, delineation of boundaries. The list shows that MCAs, Administrators, County staffs, “opinion” leaders attended but how they were picked is not clear. Furthermore, those who attended did not all give their particulars like identification card or signed against their names to show that they actually attended the meeting. It is also not indicated whether the attendees were representatives picked from every part of the subject areas and whether they were well informed beforehand that such a meeting



would be held and the subject of discussion would be the delineation of the boundaries of Bungoma and Kimilili municipalities as well as Webuye and Chwele Townships. The Petitioners claim that the failure to publish importance of information like if both Webuye and Chwele areas were to be conferred with either municipality, township or mark centres status was contrary to the rights of the residents of this area as guaranteed under Article 35 (3) of *the Constitution* of Kenya 2010.

33. Apart from the above, the meetings held where the 3rd Respondent claims that public participation was conducted on the creation of the delineation of the boundaries of Bungoma and Kimilili municipalities as well as Webuye and Chwele Townships, some show no specific agenda of the said meeting and no minutes were availed on the respective attendance lists. This gives the court an impression that people were simply availed to sign the lists.
34. There is no way the 3rd Respondent can claim that there was adequate public participation on the delineation of the boundaries of Bungoma and Kimilili municipalities as well as Webuye and Chwele Townships when the minutes purporting to prove that there was public participation were never availed and the availed attendance lists trying to demonstrate to this Court that public participation occurred failed even to capture the agenda of the consultation in the first place. To reach the required threshold of public participation, those questions must be answered in the affirmative. It is not enough to rely on a list of attendees. In the case of *Okiya Omtata v Kenya Revenue Authority* [2018] eKLR, Mativo J (as he then was) held in part as follows:-

“It is not enough to rely on attendees’ sheets for two meetings attended by a few persons with no supporting document to help the court to appreciate the nature of the decisions. More fundamentally the fact that the alleged meeting took place in Nairobi, yet the impugned legislation affects the citizens of Kenya. In crafting a meaningful Public Participation, the decision maker should deliberately as much as possible design a programme to reach a reasonable wide population in the country.”

35. In this instance, as I have observed above, this Court cannot ascertain if any public participation was conducted as the 3rd Respondent simply availed signed attendees lists with some bearing no dates or even agenda and to top it off no minutes with regard to this specific meeting was brought forth. In my considered view, based on the evidence placed before me, public participation was not done. There is no evidence that the meeting was inclusive enough to justify the intended delineation of the areas so targeted. It is clear that the guidelines given by the court were not adhered to the letter.
36. This court finds that the level of participation of the majority stakeholders alluded to by the 3rd Respondent did not reach the requisite threshold exemplified in the cited decisions of *Khelef Khalifa & 2 others* (supra), *Robert N Gakuru & others* (supra) or *Okiya Omtata Okoiti versus County Government of Kiambu* [2018] eKLR.
37. Finally, on 1st Respondent acting ultra vires his powers in publishing the Gazette Notice No. 6795 and whether the same Gazette Notice No. 6795 ought to be quashed, section 4A of the *Urban Areas and Cities Act* states as follows:-

4A. Boundaries of urban areas and cities

- (1) Delineation of the boundaries of urban areas or cities may be initiated by the Cabinet Secretary or by the relevant county government making a written request to the Cabinet Secretary to appoint the ad hoc committee in the manner provided under subsection (2).



- (2) The Cabinet Secretary shall, on receipt of a request under subsection (1) or on considering it necessary, appoint by notice in the Kenya Gazette an ad hoc committee to delineate the boundaries of an urban area or a city.
- (3) The ad hoc committee appointed by the Cabinet Secretary under subsection (2) shall comprise—
 - (a) a representative of the Independent Electoral and Boundaries Commission, who shall be the Chairperson;
 - (b) three representatives from the national government drawn from—
 - i. the Ministry for the time being responsible for urban development;
 - ii. the Ministry for the time being responsible for environment;
 - iii. the Ministry for the time being responsible for agriculture;
 - (c) three representatives from the county government drawn from—
 - i. the Department for the time being responsible for urban development;
 - ii. the Department for the time being responsible for environment;
 - iii. the Department for the time being responsible for agriculture; and
 - (d) two representatives from the following professional associations—
 - i. Institute of Surveyors of Kenya; and
 - ii. Kenya Institute of Planners.
- (4) Where an ad hoc committee is to be appointed under sub section (2)—
 - (a) the governor shall nominate the three representatives referred to under subsection (3)(c) for appointment by the Cabinet Secretary; and
 - (b) each of the relevant professional associations shall nominate its representative referred to under subsection (3)(d) for appointment by the Cabinet Secretary.
- (5) The representative from the national government drawn from the Ministry for the time being responsible for urban development appointed under subsection (3)(b)(i) shall serve as the secretary to the ad hoc committee.
- (6) Where the boundaries of an urban area extend to more than one county, membership of the ad hoc committee shall include representatives of the relevant counties and the proposal for delineation of the boundaries shall be handled by the Council of Governors.

It is clear that the gazettelement by the 1st Respondent of Notice No. 6795 was within the dictates of the law, to be precise section 4A (1) of the *Urban Areas and Cities Act* but since the process leading to the gazettelement was not strictly followed then the same was unlawful and ultra vires and thus this court should proceed to quash the same. It is necessary for the Respondents to ensure compliance and it matters not how many times they do it unless they get it right since the obligation must be discharged in accordance with the dictates of *the constitution*.



38. The petitioners, some of whom had been parties in the previous petition number 10 of 2019 had hoped that the Respondents would stick to the guidelines given by the court but that has not been complied to the letter. The court had granted conservatory orders and further gave the Respondents a period of 90 days within which to wrap up the exercise. The petitioners had the option of going back to the court vide the same petition and seek further directions but have opted to file a fresh petition. I do not see any prejudice suffered by the Respondents over the same as the Respondents have fully participated in the matter. The petitioners' constitutional rights are sacrosanct and that the court must see to it that they are jealously guarded. The Respondents having been forewarned ought to have conducted the exercise meticulously so as to actualize the objective of public participation. As the Respondents have bungled the process, then they must now be compelled to start it afresh.
39. The long and short of this is that this court finds merit in this Petition. The same is hereby allowed in the following terms: -
- A. A declaration is hereby issued that the 1st Respondent violated the rights of the petitioners to access of information by failing to publish and publicise the schedules mentioned in the Gazette Notice No. 6795.
- B. A declaration be and is hereby issued that the 1st Respondent acted ultra vires his powers in publishing the Gazette Notice No. 6795.
- SUBPARA - C. A declaration is issued that the 1st and 3rd Respondents violated *the Constitution* by failing to conduct public participation particularly in their purported delineation of *Webuye* and *Chwele* urban areas.
- D. An order be and is hereby issued quashing the Gazette Notice No. 6795.
- SUBPARA E. That each party to bear their own costs.
- Orders accordingly.

DATED AND DELIVERED AT BUNGOMA THIS 17TH DAY OF MAY 2024

D KEMEI

JUDGE

In the Presence of:

Bachumi for Ongoya for Petitioners

No appearance for 1st Respondent

No appearance for 2nd Respondent

Wekesa for Makokha for 3rd Respondent

Kizito Court Assistants

