

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT VOI

PETITION NO. E008 OF 2024

**IN THE MATTER OF: ARTICLES 1, 2, 3, 10, 22(1), 23, 48,
50(1), 159, 165(3)(d), & 258(1) & (2)(c) &
259 (1) OF THE CONSTITUTION OF KENYA**

&

**IN THE MATTER OF: ALLEGED THREATS POSED BY THE
TENDER NO.
MOALD/SDA/BLQS/IT/01/2024/2025 TO
ARTICLES 1, 2, 3(1), 10, 19, 20, 21, 24,
27, 40, 47(1), 129, 153(4)(a), 176, 186,
187, 19, 258 & 259 OF THE
CONSTITUTION**

&

**IN THE MATTER OF: ALLEGED FAILURES OF THE CABINET
SECRETARY, MINISTRY OF AGRICULTURE
& LIVESTOCK DEVELOPMENT, THE
PERMANENT SECRETARY STATE**

**DEPARTMENT FOR LIVESTOCK
DEVELOPMENT AND THE CABINET
SECRETARY, MINISTRY OF LANDS, PUBLIC
WORKS, HOUSING & URBAN
DEVELOPMENT TO UPHOLD THE
CONSTITUTION**

&

**IN THE MATTER OF: ARTICLE 47 OF THE CONSTITUTION
ON FAIR ADMINISTRATIVE ACTIONS**

&

**IN THE MATTER OF: ARTICLES 186 & 187 OF THE
CONSTITUTION ON THE FUNCTIONS OF
THE DEVOLVED TO THE COUNTY
GOVERNMENT**

&

**IN THE MATTER OF: IN THE MATTER OF THE DOCTRINE OF
CONSTITUTIONALISM & THE PRINCIPLE
OF SUBSIDIARITY**

BETWEEN

COUNTY GOVERNMENT OF TAITA
TAVETA.....PETITIONER

-VERSUS-

THE CABINET SECRETARY, MINISTRY OF AGRICULTURE AND
LIVESTOCK DEVELOPMENT.....1ST

RESPONDENT

PRINCIPAL SECRETARY,

THE MINISTRY OF AGRICULTURE AND
LIVESTOCK DEVELOPMENT.....2ND

RESPONDENT

THE NATIONAL LAND COMMISSION.....3RD

RESPONDENT

THE CABINET SECRETARY,

THE MINISTRY OF LANDS, PUBLIC WORKS,
HOUSING AND URBAN PLANNING.....4TH

RESPONDENT

THE HON. ATTORNEY GENERAL.....5TH

RESPONDENT

AND

THE COUNCIL OF GOVERNORS.....INTERESTED PARTY

JUDGMENT

1. This Petition was instituted vide a Petition dated 11th September 2024 wherein the Petitioner sought the following reliefs:-

i. A declaration that:-

(a) The invitation by the Ministry of Agriculture and Livestock Development for TENDER NO. MOALD/SDA/BLQS/IT/01/2024/2025 inviting Bids for the LEASE OF BACHUMA LIVESTOCK QUARANTINE STATION IN MANAGEMENT, DEVELOPMENT AND MAINTANANCE OF LIVESTOCK QUARANTINE FACILITY FOR SCREENING AND SHIPMENT OF LIVESTOCK contravenes Articles 60, 62, 186, 187 and the Fourth Schedule of the Constitution and therefore null and void;

(b) By publishing and/or countenancing undertaking of TENDER NO. MOALD/SDA/BLQS/IT/01/2024/2025 which contravene the Constitution, the Respondents failed in their duty to uphold the Constitution as required at Article 153(2)(a) of the Constitution.

(c) The invitation by the Ministry of Agriculture and Livestock Development for TENDER NO. MOALD/SDA/BLQS/IT/01/2024/2025 inviting Bids for the LEASE OF BACHUMA LIVESTOCK QUARANTINE STATION IN MANAGEMENT, DEVELOPMENT AND MAINTAINANCE OF LIVESTOCK QUARANTINE FACILITY FOR SCREENING AND SHIPMENT OF LIVESTOCK contravenes the principle of Public Participation under Article 10 of the Constitution and Section 87 of the County Governments Act (2012);

ii. An Order:

(a) An ORDER OF INHIBITION restraining the Ministry of Agriculture and Livestock

Development from implementing, awarding and/or actualizing TENDER NO. MOALD/SDA/BLQS/IT/01/2024/2025 inviting Bids for the LEASE OF BACHUMA LIVESTOCK QUARANTINE STATION IN MANAGEMENT, DEVELOPMENT AND MAINTAINANCE OF LIVESTOCK QUARANTINE FACILITY FOR SCREENING AND SHIPMENT OF LIVESTOCK;

(b) An ORDER OF CERTIORARI quashing TENDER NO. MOALD/SDA/BLQS/IT/01/2024/2025 inviting Bids for the LEASE OF BACHUMA LIVESTOCK QUARANTINE STATION IN MANAGEMENT, DEVELOPMENT AND MAINTAINANCE OF LIVESTOCK QUARANTINE FACILITY FOR SCREENING AND SHIPMENT OF LIVESTOCK;

(c) An ORDER OF MANDAMUS directing the Respondents to facilitate the unconditional transfer of BAMUCHA LMD FARM to the Petitioner pursuant to Article 187 and the Fourth Schedule of the Constitution.

(d) Costs be awarded to the Petitioner.

iii. Costs be awarded to the Petitioner.

2. The Petition was supported with Affidavits sworn by **Friday Mwafuga** on 11th September and 20th August 2025.
3. The Petition was opposed by the 1st, 2nd, 4th and 5th Respondents vide a Replying Affidavit sworn by **Hon. Jonathan Mueke**, P.S State Department for Livestock Development.

The Petitioner's case and submissions

4. It was the Petitioner's case that the Executive Arm of the National Government is in the process of unprocedurally and unlawfully alienating 15,000 Acres of the County's land, **BACHUMA LMD FARM**, situate in Maungu Area within the Taita Taveta by leasing it out for **30 YEARS** to private entities for purposes of undertaking Animal Husbandry and allied functions which undertaking is a devolved function under Article 186 and the **FOURTH SCHEDULE** of the Constitution of Kenya (2010).

5. The Ministry of Agriculture and Livestock Development advertised a Tender, **TENDER NO. MOALD/SDA/BLQS/IT/01/2024/2025** for **LEASE OF BACHUMA LIVESTOCK QUARANTINE STATION IN MANAGEMENT, DEVELOPMENT AND MAINTENANCE OF LIVESTOCK QUARANTINE FACILITY FOR SCREENING AND SHIPMENT OF LIVESTOCK**) (hereinafter “the notice”), which was published in the dailies on **23rd July 2024**, and which inter alia, seek to lease out to private entities **15,000 Acres** for the overall control and management of the **BACHUMA LMD FARM**.
6. The Petitioner through numerous correspondences invited the **State Department of Livestock** to actualize the provisions of **Article 186** of the **Constitution** by transferring **BACHUMA LMD FARM** in order to enable the County Government to promote Livestock development and consequently stimulate economic growth of the County. However, the 1st and 2nd Respondents have been dithering on the request.

7. The Petitioner is aggrieved that the actions of the **Ministry of Agriculture and Livestock Development** state pose threats to **Rule of Law** and **Constitutionalism**, to wit:

(a) **Section 1.1** of the tender notice, states that the objectives of the assignment is to lease out **15,000 acres** of land located in the Taita Taveta County for the **Bachuma Livestock Quarantine Station**. Notably, the facilitation and perfection of the leasing process shall be performed by the state department for livestock development. The same will potentially interfere with the power conferred upon the County Government of Taita Taveta and affect the intergovernmental relations between the two levels of government.

(b) The said Tender shall deprive off the residents of Taita Taveta County a strategic asset currently under use as a multiplication center for superior beef and meat goat breeds which has been developed on county residents funds and employed several county residents, thereby reducing worker's purchasing power as it cuts off their livelihood and offending the subsidiarity principle which

demands the county government which is closest to the people to use such strategic assets for the benefit of the people.

(c) The County Government as a stakeholder to be consulted in the process despite the subject property belonging to the county government of Taita Taveta and the same having already established project. It is not clear, for example, if the county government shall draw any benefit from the said project and the extent and level of control.

(d) The proposal will arbitrarily deny the people of Taita Taveta County their property for 30 years as the period stated under which the strategic asset shall be under the management of a private investor. There is no public purpose or public interest that has been demonstrated by the state department for livestock development by the management and development of **Bachuma Livestock Quarantine**.

(e) Despite the magnitude and the socio-economic implications of the proposed project, the County

Government of Taita Taveta was not involved as a stakeholder and neither were residents of Taita Taveta County engaged through a public participation or local referenda as contemplated in law.

8. The County Government is currently using the parcel of land for reproduction of high quality beef cattle. The same has employed many residents of Taita Taveta county. The state department for livestock development seeks to take over the same piece of land together with the structures. This mean loss of livelihood and employment of the people. It has been seen from the tender notice that market viability shall be done after the tender is warded. The petitioner posits that it offends the human dignity to deny the resident of Taita Taveta county employment on the basis of a project whose market feasibility study has not even been carried out.
9. The Tender threatens to contravene the national value of rule of law to the extent that, if allowed to proceed, it violates the constitution that confers the mandate of leasing, such property and livestock control under the province of the county government.

10. The impugned Tender Notice has estranged the County Government of Taita Taveta County from the process of alienating **BACHUMA LMD FARM** thereby flouting the Constitutional and legislative safeguards in respect to dealings in public land and the role of County Governments over.
11. The impugned Tender threatens derogation of **Articles 129, 131(2)(a) and 153(4)(a)** of the Constitution, which provide for the responsible use of executive power. Further and in particular.
12. While it is necessary for all citizens to get full economic benefit from public property and government assets, the constitutionality, lawfulness, fairness and equity of the system must be upheld.
13. It was averred that there is a grave threat to the Constitution because if the tender is allowed to crystalize, the difficulty in reversing the decision is huge.
14. It was also averred that the proposal to lease Bachuma LMD Farm for 30 years constitute a cascading threat to

Articles 1, 2, 3(1), 60, 62, 186, 187, 129, 131(2)A, 153(4)(A) and 259 of the Constitution.

15. It was contended that due process has not been followed, there was no public participation as outlined under Article 10 of the Constitution and Section 87 of the County Government Act.

16. It was further contended that Article 186 and the Fourth Schedule of the Constitution have delineated and unbundled the devolved functions and Agriculture is primarily ascribed to Counties whereof the conduct of the executive in pursuing leasing out of 15,000 Acres of the Bachuma LMD Farm constitute negative of the doctrine of constitutionalism and the subsidiary principles as espoused under Articles 174 of the Constitution.

17. In support of the Petition the Petitioner filed written submissions dated 9th September 2025 and also **Learned Counsel Mr. Maingi** made oral highlights on its behalf.

18. It was submitted that the crux of the Petitioner's suit is the **Constitutionality** of the conduct of the State Department for Livestock Development in floating a Tender

No. **MOALD/SDA/BLQS/IT/01/2023/2025** in respect of the **LEASING OF THE BACHUMA LMD FARM FOR THE MANAGEMENT, DEVELOPMENT AND MAINTAINANCE OF LIVESTOCK QUARANTINE FACILITY FOR SCREENING AND SHIPMENT OF LIVESTOCK** for a period of **30** years.

19. The Petition is predicated on a tender advertised in the dailies by the Ministry of Agriculture and Livestock development on **23rd July 2024**. *(See Annexure "TTC-2" in the supporting affidavit dated 11th September 2024).*

The same was in respect to **TENDER NO. MOALD/SDA/BLQS/IT/01/2024/2025** for **LEASE OF BACHUMA LIVESTOCK QUARANTINE STATION IN MANAGEMENT, DEVELOPMENT AND MAINTAINANCE OF LIVESTOCK QUARANTINE FACILITY FOR SCREENING AND SHIPMENT** for **30 YEARS**. The disputed land measures 15,000 Acres and is officially known as **Bachuma LMD Farm** situated in **Taita Taveta** County.

20. Before the impugned Tender Notice was published, the **County Government of Taita Taveta** has been utilizing the land for advancement of Livestock production through

multiplication and breeding of quality livestock. The County Government also requested the State Department of Livestock to transfer the Bachuma Land.

21. Vide a letter dated **3rd September 2024** the **County Government of Taita Taveta protested the alienation of the Bachuma Farm** by the National Government. The **Intergovernmental Relations Technical Committee (IGRTC)** under the **Intergovernmental Relations Act** caused publication of a Gazette Notice **No. 16478** on the **16th December 2024** whereof County Government Functions and National Government Functions were unbundled and delineated. Relevant to the dispute herein is the functions which deal with Animal Husbandry and Livestock Standards, breeding, surveillance, disease control among others.
22. It was submitted that the disputants in this matter approached the **IGRTC** for **dispute resolution of the matter**. This was pursuant to the orders issued on 1st September 2024. The Parties appeared before the IGRTC on numerous occasions and made their respective presentations. Whereas the State Department of Livestock Development

insisted that the undertakings over Livestock Management and Animal husbandry at the **Bachuma Farm** were National Government Functions, the Petitioner maintained that such endeavors were County Government functions. In view of the hand stance taken by both parties, the dispute remained unsolved pursuant to the **Inter-Governmental Relations Act**. The Parties have had over **6 months** to settle the dispute but nothing has been forthcoming and hence ripe for determination by this court pursuant to **Section 35** of the **Intergovernmental Relations Act** provides that:

“Where all efforts of resolving a dispute under this Act fail, a party may submit the matter for arbitration or institute Judicial proceedings”.

23. In aligning to the aforementioned provision, reliance was made to the case of **International Legal Consultancy Group & Another -Vs- Ministry of Health & 9 Others (2016) eKLR** where it was held that:

“Before a dispute arising between these parties can be placed before the courts, the Constitution and legislation require that a reasonable attempt

at amicably resolving the matter be made. Ideal, if there was any doubt about this Section 35 of the Act clears its way with specific words.The legislative intention was therefore that judicial proceedings would only be resorted to once efforts at resolving dispute between the two levels of government failed”.

24. It was further submitted that the people of Kenya expressed their aspirations through the 2010 Constitution. They preferred devolution as a system of governance and delivery of services. Article 2 of the Constitution provides for the supremacy of the constitution and its binding nature to all persons and state organs at both levels of the government. Article 1(2) of the Constitution further provides for the national values and principles of Governance which inter alia include Rule of Law and Democracy.

25. Reliance was also placed to the case of **Senate & 2 Others =Vs= Council of County Governors & 8 Others (2022) eKLR** the Supreme Court observed that: _

“Purely, by the design and architecture of the Constitution and by the Clear language of Article 1(3) and (4) of the Constitution, the people of Kenya intended that their sovereign power be exercised at two levels of government; the National and County levels. The Constitution also declares that the two levels are distinct but inter-dependent. They are expected in deed, bound to conduct their mutual relations on the basis of consultation and cooperation. However, to avoid gridlock in their operations, even as they consult and cooperate, the two levels of government must perform their functions and exercise their powers in a manner that respects the functional and institutional integrity of each other.”

26. It was further submitted that Article 174 of the Constitution sets out the objectives of devolution. The said provision is an espousal of the Doctrine of Subsidiarity. Reliance was placed to the case of **Institute For Social**

Accountability & Another =Vs= Senate & 5 Others

(2022) eKLR. It was held that:

“The approach in the fourth Schedule to the Constitution resonated with the principle of subsidiarity, which underpinned the division of powers under devolved systems of government. Subsidiarity was the broad presumption that sub-national governments ought to be assigned those functions and powers which vitally affected the life of the inhabitants and allowed the development of Kenya in accordance with local conditions of sub-national units, while matters of national importance concerning Kenya as a whole and overarching policy formulation were assigned to the National Government.”

27. It was submitted that under Article 186(1) of the Constitution it is provided that, “the functions and powers of the National government and the County Governments, respectively are as set out in the Fourth Schedule.” Part 2 of the Fourth Schedule has delineated the functions and

Agriculture, along with its allied functions like livestock breeding and management or crop husbandry etc, is a reserve of the County Government. The National Government only bears a 'policy' function which for all intents and purposes is implemented by the County Government.

28. It was argued that the said position in respect to Agriculture is amplified in the Gazette Notice No. 16478 published by the Intergovernmental Relations Technical Committee.

29. It was submitted that in the unlikely event that the court find that there is an overlap in the functions on Agriculture, the Court should pursue an interpretation that promotes the distinctiveness and avoids the potentially overlapping or concurrent competencies set out in Fourth Schedule, Part 2 in respect to Agriculture. In the South African case of **City of Johannesburg Metropolitan Municipality =Vs= Gautent Development Tribunal (2010) ZACC 11** where it was observed that:

“The purpose of these schedules is to itemize the powers and functions allocated to each sphere of

government. As stated earlier, our constitution contemplates some degree of autonomy for each sphere. This autonomy cannot be achieved if the functional areas itemized in the schedules are construed in a manner that fails to give effect to the constitutional vision of distinct spheres of government.”

30. It was further submitted that the Fourth Schedule of the Constitution regarding the functions and powers of the County in respect to Agriculture include, “Crop and animal husbandry, livestock sale yards; County abattoirs; plant and animal disease control and fisheries.” The said provision assigns to the National government the role of policy in respect to Agriculture. So that, the vision in respect to livestock development in Kenya is a policy issue under the National Government level and executable or implementable through the devolved government.

31. It was contended that apart from the usurpation of or encroachment of the County functions by the National Government, the 1st, 2nd and 4th Respondents bypassed the

constitutional requirements for consultation and mutuality in undertaking the functions contemplated under the Fourth Schedule of the Constitution. Article 6(2) and 189(1) of the Constitution provide for consultation and co-operation in the mutual relations between the National and the County Government and the Respondents are in breach of these provisions of the Constitution.

32. Further to the foregoing and in support of the Petitioner's contention on breach of Article 6(2) and 189(1) of the Constitution, the court was urged to look at the Tender Notice marked as annexure "TTC-2" in the Supporting Affidavit dated 11th September 2024 where at the bottom of the said notice, at point 4.0 bearing the sub-heading stakeholders, the County Government of Taita Taveta on whose territory the land is situate is not listed. This lends credence that the County was not consulted or involved in the planning or policy formulation or decision to invite a private entity to run the farm for 30 Years.

33. Citing the case of **Council of County Governors =Vs= Kenya Tissue and Transplant Authority & 2 Others**

(2023) eKLR it was submitted that the Court held, “Cooperation between the two levels of Government is emphasized especially in matters that cut across between the two levels of Government. Articles 189 of the Constitution calls for the cooperation of the two levels of government in exchanging information and coordination of policies.”

34. According to the Petitioner, the said Respondents are in further breach of Article 10(2) of the Constitution and Section 87 of the County Government Act on Public Participation in respect to such monumental project that has the potential of allowing a private entity to control 15,000 Acres of County land for a period of 30 years.

35. There is no scintilla of evidence that has been presented to demonstrate that the County Government of Taita Taveta was involved in the decision to Lease out the Bachuma Farm.

36. The Court was urged to find that there was no public participation in the decision to lease County Land and that the same is a breach of the constitutional pre-requirements. The Court was equally urged to grant the reliefs sought in the Petition.

The case of the 1st, 2nd, 4th and 5th Respondent and their submissions

37. Their case was hinged on the Replying Affidavit sworn by Hon. Jonathan Mueke on 3rd July 2025, the written submissions dated 22nd September 2025 and oral submissions made by Learned Counsel Ms. Mwanaszumba.

38. It was their case that pursuant to the Fourth Schedule of the Constitution of Kenya, 2010 the functions of the national government include international trade, development of national policy and veterinary certification for exports. The operationalization of the Bachuma livestock Quarantine Station (BLQS) falls squarely within these mandates as it facilitates international livestock trade and compliance with World Organization for Animal Health (WOAH) standards, a responsibility vested in the national government through the Directorate of Veterinary Services (DVS).

39. It was averred that the Bachuma Livestock Quarantine Station (BLQS) is situated in Taita Taveta County on approximately fifteen thousand (15,000) acres of land formerly under the Bachuma Livestock Marketing Division (LMD). The land was

reserved for strategic livestock marketing and productivity infrastructure under the national government and specifically for the Veterinary Department, which falls under the State Department for Livestock development under the reference No. 43054/111/4.

40. It was also averred that a reservation is formally recognized under Kenyan land law and constitutes a legitimate form of government land tenure under Section 12 of the Land Act, 2012.

41. It was stated that the BLQS facility was conceptualized under Kenya's Vision 2030 as a Disease-Free Zone (DFZ), prioritizing animal health and trade, initially designed under a regional zoning approach, the DFZ model was revived in 2013 in favor of Livestock Export Zones (LEZs), including bio-secured livestock quarantine facilities, diagnostic laboratories, feedlots, and marshalling yards. The regional zoning was not feasible for implementation due to Kenya's Land ownership model and various stakeholder concerns.

42. It was further stated that between 2010 and 2013, twelve (12) veterinary clinical centers were planned and developed to

support the Coastal DFZ model in strategic locations across various sub-counties. These were overseen by District Veterinary Officers and funded through the national Ministry at the time. Following devolution, these centers were transitioned to county governments to complete and operate.

43. It was further stated that following the commencement of devolution, veterinary clinical centers in Voi and Mwatate were handed over to the County Government of Taita Taveta at near-completion (99% and 69% respectively). However, the Bachuma Livestock Quarantine Station remained under the national government due to its primary function in international trade facilitation which is a national function under the Fourth Schedule of the Constitution.

44. It was contended that the development of the BLQS facility continued post-devolution under the State Department for livestock development (SDLD) to support export certification, disease surveillance and compliance with international trade standards, particularly the World Organization for Animal Health (WOAH) Terrestrial Animal Health Code to which Kenya is a signatory. During inception it was agreed to phase the

construction as per the master plan due to the budget available. As per the phasing only first section of 200 acres had been constructed for immediate operationalization of the facility.

45. It was further contended that while county governments are responsible for local veterinary services, including disease surveillance and routine animal health, the National Directorate of Veterinary services retains exclusive jurisdiction over regulation, certification and international reporting which are integral to the operation of any export quarantine facility. Therefore, the operation and management of BLZS must remain under the facility. Therefore, the operation and management of BLQS must remain under the National government to comply with Kenya's international obligations and ensure consistency in export certification.

46. It was stated that international stakeholders, including Middle East importers and local exporters, have consistently expressed interest in the operationalization of the BLQS to

facilitate livestock exports and enhance livestock in Kenya's pastoral regions.

47. That the operationalization of the BLQS facility aligns with the National Government's responsibility to facilitate international trade and veterinary certification. The station serves as a cross-county function and will require the coordination of livestock sourced from multiple counties, which is best managed under the oversight of the Director of Veterinary Services (DVS), who also serves as the Chief Veterinary Officer of Kenya and delegate to WOA. H.

48. That under WOA. H. guidelines, all export-bound livestock must be quarantined and certified in a nationally recognized, bio-secure facility. The DVS bears full responsibility for disease control and international veterinary reporting, making it critical that the facility remains under national management.

49. That Kenya, being a signatory to the World Trade Organization (WTO) Sanitary and Phytosanitary (SPS) Agreement and the WOA. H. Terrestrial Animal Health Code, is obligated to maintain and operate livestock quarantine stations that meet international biosecurity and animal health certification

standards. This obligation cannot be devolved to the counties as the responsibility for ensuring compliance with international treaties rests with the national government under Article 2(6) of the Constitution.

50. Due to frequent budget cuts and funding constraints, the project remains incomplete and has suffered deterioration due to vandalism, weather, and wildlife interference. The State Department resolved to engage a private investor through a long-term lease under the Land act No. 6 of 2012 and the Public Procurement and asset Disposal Act (2015), facilitated via the Land Commercialization Initiative (LCI). The County Government of Taita Taveta was and has been treated as a key stakeholder for the BLQS, and numerous economic and employment benefits are expected to accrue to the county once the BLQS facility is operationalized.

51. It was averred that engagement of a private investor was pursued transparently, through publicly advertised competitive process under the LCI framework.

52. That the BLQS facility is under the National Government and the impugned tender process was being carried out in line

with the Public Procurement and Assent Disposal Act, 2015, which does not require public participation in the nature or form implied by the Petitioner, beyond the statutory safeguards of public advertisement, competitive bidding and transparency embedded in the public procurement framework.

53. In their written submissions, Counsel submitted on the following issues:-

(a) Whether the purpose for which the Bachuma Livestock Quarantine Station (BLQS) was established creates a conflict between the National Government function and County Government function thus posing a threat to devolution.

(b) Whether public participation was ripe.

54. It was argued that as relates to the functions of the two levels of Government, pursuant to the Fourth Schedule of the Constitution of Kenya, 2010, the functions of the national government include international trade, development of national policy and veterinary certification for exports. The operationalization of the Bachuma livestock Quarantine

Station (BLQS) falls squarely within these mandates as it facilitates international livestock trade and compliance with World Organization for Animal Health (WOAH) standards, a responsibility vested in the national government through the Directorate of Veterinary Services (DVS).

55. The Respondents highlighted the history of the parcel of land and why the facility remained under the National Government purview post devolution - Bachuma Livestock Quarantine Station remained under the national government due to its primary function in international trade facilitation, which is a national function under the Fourth Schedule of the Constitution of Kenya.

56. It was submitted that according to the Petitioner there is no dispute in terms of functions of county government vs national government in this case as the national government's use of the BLQS falls squarely within its mandate as constitutionally provided- operationalization of the BLQS facility aligns with the National Government's responsibility to facilitate international trade and veterinary certification. The station serves as a cross-county function

and will require the coordination of livestock sourced from multiple counties, which is best managed under the oversight of the Director of Veterinary Services (DVS), who also serves as the Chief's Veterinary oversight of the Director of Veterinary Services (DVS), who also serves as the Chief Veterinary Officer of Kenya and delegate to WOA. This is in addition to the fact that the land was reserved for use by the National Government.

57. The assertions by the Petitioner in its supplementary affidavit that it has been utilizing the whole of Bachuma land for animal holding, livestock multiplication and advancement of breeding programmes is not entirely true and is meant to mislead this Court to believe that Bachuma Land in its entirety belongs to the County Government. What has been attached as evidence of this use pre-2015 is irrelevant as indicated in paragraphs 5 - 7 of the Affidavit sworn by Hon. Mueke in terms of the history of the BLQS as they do not tally with the new model of livestock export Zones. The Disease-Free zoning program before then was regional. The shift only

left Bachuma as a national facility while all other clinical centers were transferred to counties.

58. It was submitted that while the evidence presented by the Petitioner from 2014 - 2017 clearly suggests use by itself it does not indicate that the use was for the full 15,000 acres of land. The portion being utilized by the county government is very minimal and has temporary structures to conduct the county's agricultural functions. There is no evidence presented to suggest that between the years of 2014-2017 or even 2014-2023 when both levels of government have been utilizing Bachuma land for their different functions, that the County Government raised any issues. It is only until the National Government decided to lease out the BLQS for its national Government function, that issues arose and the county requested for 1000ha to it as evidenced by their letter TTC 1 to the Principal Secretary, State Department for Livestock dated 26th July 2024.

59. It was further submitted that it is misleading and erroneous for the County Government, well aware of the use for which the land has been used for previously to describe it as a

function within its realm by describing its intended use of the land in a way that captures part of the activities conducted by the national government in the overall international trade function as a purely agricultural function. The evidence both from the historical use of the land, historical policies that have tried to maximize the use of the land indicate that the land has always been reserved for purposes of facilitating international trade in Livestock export a position which had not been controverted by the Petitioner.

60. It was also submitted that the Petitioner's contention that it intends to put the suit property into a prospective investment plan is nothing short of an afterthought. The same borders on bad faith and second-guessing of the National government, with the Respondents herein, in a bid to hold them at ransom in the execution of their constitutional functions.

61. It was further submitted that the National Government has always been in use and occupation of the parcel of land without any qualms from the County Government. It is only due to frequent budget cuts and funding constraints, that has caused the project to suffer deterioration due to vandalism,

weather and wildlife that the state Department resolved to engage a private investor through a long-term lease under the Land Act No. 6 of 2012 and the Public Procurement and Asset Disposal Act (2015), facilitated via the Land Commercialization initiative (LCI).

62. On whether public participation was ripe, it was argued that the BLQS facility is under the National Government and the impugned tender process was being carried out in line with the Public Procurement and Asset Disposal Act, 2015, which did not require public participation in the nature or form implied by the Petitioner, beyond the statutory safeguards of public advertisement, competitive bidding and transparency embedded in the public procurement framework.

63. It was submitted that the State Department of Agriculture resolved to engage a private investor through a long-term lease under the Land Act No. 6 of 2012 and the Public Procurement and Asset Disposal Act (2015), facilitated via the Land Commercialization Initiative (LCI). The engagement of a private investor was pursued transparently, through publicly advertised competitive process under the LCI framework.

64. It was argued that the policy process was at its very nascent stage. Little had even been put into place to realize the intended goal. Public participation occurs at all levels of the project phase. The Respondents were just about to kick-start the process by inviting interested parties to express their interest to test its viability to the LCI. Thereafter, the same was to be forwarded to the National Land Commission where a full-blown public participation would precede the allocation. The stage in the implementation where the invitation of interest was being done, it would have been virtually impossible to invite all Kenyans to express their interest. Instead of the Petitioner responding to the invitation, they instead demanded the entire parcel of land. Unfortunately, they nipped the whole process just before it could even materialize and as such have frustrated the entire process and accused the Respondents of not conducting public participation.

65. It was contended that Kenya is a State Party to World Trade Organization and is bound by the Sanitary and Phytosanitary agreement of the WTO. Kenya is equally a Party to World

Organization of Animal Health having ratified it in 1981. By dint of Article 2(5) and (6) of the Constitution, Kenya is bound by those treaties and must fulfil its obligations under those Treaties.

66. It was also submitted that amongst the priorities in implementing these obligations, Kenya has passed several policies to ensure it is compliant. Amongst them is the ASTGS where at Pillar 4, it seeks to commercialize parts of its land to fasten and hasten the realization of having a fully functional and fully-fledged Disease Free Zone for livestock destined for export. This is exclusively for purposes of meeting the threshold for internationally qualified export of livestock. Nothing borders on selfish gains as imputed by the Petitioner and which bad faith is within their thought and unfounded suspicions.

67. It is also submitted that the standard of public participation demanded by the Petitioner at this juncture is out of context. This Court should, therefore, exercise judicial restraint and refer to the administrative policy workings of the Respondents. As a peculiarly policy-centric mandate, the

Respondents having engaged the public, albeit to the stage it had reached prior to the issuance of conservatory orders, should be allowed to undertake their mandate to conclusion. The submissions by the Petitioner seek to harm string the Respondents in executing their mandate. This is clearly not intended both in the constitutional architecture of subsidiarity and mutual working relationship.

68. During the hearing of the Petition, Learned Counsel Mwanaszumbah reiterated the averments made in their Replying Affidavit and written submissions and urged the Court to dismiss the Petition with costs.

The case of the 3rd Respondent and written submissions

69. The 3rd Respondent participated in the proceedings by filing written submissions dated 18th September 2025.

70. It was submitted that the Petition does not disclose any cause of action against the 3rd Respondent. They also submitted that Article 63(2) of the Constitution of Kenya stipulates that public land shall vest in and be held by County Government in trust for the people resident in the said County and hence the

court should make a just determination on the matter considering that the same had been referred to Mediation but there was no positive outcome.

Analysis and Determination

71. Having considered the Petition, rival affidavits, written and oral submissions made by the parties herein, the following issues arise for determination: -

- (i) Whether the Respondents actions violated Articles 10, 153(4)(a), 179, 186, 187 and the Fourth Schedule of the Constitution as well as Section 87 of the County Governments Act (2012).**
- (ii) Whether the purpose for which the Bachuma Livestock Quarantine Station (BLQS) was established creates a conflict between the National Government function and County Government function thus posing a threat to devolution.**
- (iii) Whether the Petitioner is entitled to the reliefs sought.**

Issue No. (i)

Whether the Respondent's actions violated Articles 10, 153(4)(a), 179, 186, 187 and the Fourth Schedule as well as Section 87 of the County Government Act (2012)

72. It was the Petitioner's case that Article 174 of the Constitution sets out the objectives of devolution. The said provisions is an espousal of the ***Doctrine of Subsidiarity*** and reliance was made to the Supreme Court case of **Institute For Social Accountability & Another =Vs= Seante & 5 Others (Supra)** where it was held that:

"The approach in the fourth Schedule to the Constitution resonated with the principle of subsidiarity, which underpinned the division of powers under devolved systems of government. Subsidiarity was the broad presumption that sub-national governments ought to be assigned those

functions and powers which vitally affected the life of the inhabitants and allowed the development of Kenya in accordance with local conditions of sub-national units, while matters of national importance concerning Kenya as a whole and overarching policy formulation were assigned to the National Government.”

73. It is evident that the Constitution under Article 186(1) provides that, “the functions and powers of the National government and the County Governments, respectively are as set out in the Fourth Schedule.” Part 2 of the Fourth Schedule has delineated the functions and Agriculture, along with the allied functions like livestock breeding and management or crop husbandry etc, is a reserve of the County Government. The National Government only bears a “policy” function which for all intents and purposes is implemented by the County Governments.

74. The said position, in respect to Agriculture is amplified in the Gazette Notice No. 16478 published by the Intergovernmental Relations Technical Committee.

75. It therefore follows that the 1st, 2nd, 4th and 5th Respondents arguments that the leasing of the Bachuma LMD Farm is pursuant to a National Government function and therefore the Petition has no role to play at that stage is misplaced and contrary to the applicable provisions of the Constitution that relate to devolution.

76. The evidence herein shows that the tender that was placed by the Ministry of Agriculture and Livestock Development on 23rd July 2024 was in respect to the lease of Bachuma Livestock Quarantine Station in Management development and Maintenance of Livestock Quarantine facility for screening and shipment for 30 years on the parcel of land known as Bachuma LMD Farm measuring 15,000 acres which is located in the County Government of Taita Taveta.

77. As stated earlier, Article 186(1) provides that the functions and powers of the National Government and the County Government respectively are as set out in the Fourth Schedule. Part 2 of the Fourth Schedule has clearly delineated the functions and Agriculture, along with its allied functions like livestock breeding and management or crop husbandry

are a reserve of the County Government and from the said provision the National Government only bears a policy function which policy ought to be implemented by the County Government.

78. Under Article 10 of the Constitution, State Officers must adhere to principles of good governance, including the rule of law and public participation.

79. While the Respondents argued that between 2010 and 2013, twelve (12) Veterinary Clinical Centers were planned and developed to support the Coastal DFZ model in strategic location across various sub counties. Following devolution, the said centers were transited to County Governments to complete and operate.

80. It is worth noting that cooperation between the two levels of Government is emphasized especially in matters that cut across between the two levels of Government. Article 189 of the Constitution calls for the cooperation of the two levels of government in exchanging information and of coordination of policies. I entirely agree with the holding in **Okiya Omtata**

Okoti & anor v Attorney General & 6 others [2020]

eKLR where it was observed thus:

“... Given the extent of consultation and participation that is required in devolution exercise, the distribution of powers and functions within the two levels of government, in the Fourth Schedule, that were broad, was not by accident as this paved the way for consultation and compromise to give content to the functions during the transfer of the functions distributed...”

81. While it is the Respondents' contention that the Bachuma Livestock Quarantine Station remained under the National Government which according to them is a national function, a keen perusal of the the Fourth Schedule of the Constitution speaks otherwise since the National Government only retains policy function and as such the actions of the 1st, 2nd Respondents in proceeding with the said tender without undertaking public participation was in violation and contravention of Articles 10, 153(4)(a), 174, 186, 187 of the Constitution and the Fourth Schedule of the Constitution as

well as Section 87 of the county Government Act (2012). This court is equally guided by the decision of the Supreme Court the case of **Senate & 2 Others =Vs= Council Of County Governors & 8 Others (2022) (Supra)** where the Supreme Court observed that: _

“Purely, by the design and architecture of the Constitution and by the Clear language of Article 1(3) and (4) of the Constitution, the people of Kenya intended that their sovereign power be exercised at two levels of government; the National and County levels. The Constitution also declares that the two levels are distinct but inter-dependent. They are expected in deed, bound to conduct their mutual relations on the basis of consultation and cooperation. However, to avoid gridlock in their operations, even as they consult and cooperate, the two levels of government must perform their functions and exercise their powers in a manner that respects the functional and institutional integrity of each other.”

82. Similarly in the Supreme Court case of **Institute For Social Accountability & Another =Vs= Senate & 5 Others (Supra)** It was held that:

“The approach in the fourth Schedule to the Constitution resonated with the principle of subsidiarity, which underpinned the division of powers under devolved systems of government. Subsidiarity was the broad presumption that sub-national governments ought to be assigned those functions and powers which vitally affected the life of the inhabitants and allowed the development of Kenya in accordance with local conditions of sub-national units, while matters of national importance concerning Kenya as a whole and overarching policy formulation were assigned to the National Government.”

83. In the execution of its functions, the National Government is not expected to usurp or encroach on the County functions in any manner contrary to the Constitution. The 1st, 2nd and 4th Respondents bypassed the constitutional

requirements for consultation and mutuality in undertaking the functions contemplated under the Fourth Schedule of the Constitution. The 1st, 2nd, 4th and 5th Respondents are indeed in breach of the aforementioned provisions of the Constitution.

Issue No. (ii)

Whether the purpose for which the Bachuma Livestock Quarantine Station (BLQS) was established creates a conflict between the National Government function and County Government function thus posing a threat to devolution

84. This was an issue that was raised by the 1st, 2nd, 4th and 5th Respondents. It was contended that the land falls squarely under the National Government and specifically for the Veterinary Department and further that the County Government has been using a very minimal portion of it.

85. It was also contended that the National Government has always been in use and occupation of the parcel of land without any qualms from the County Government. It is only due to frequent budget cuts and funding constraints, that has

caused the project to suffer deterioration due to vandalism, weather and wildlife that the state Department resolved to engage a private investor through a long-term lease under the Land Act No. 6 of 2012 and the Public Procurement and Asset Disposal Act (2015), facilitated via the Land Commercialization initiative (LCI). While that remains the position of the Respondents, it is worth noting that the said position cannot be considered in isolation to the existing provisions of the Constitution that refer to devolution.

86. The Respondents ought to have been aware that Article 63(2) of the Constitution of Kenya stipulates that public land shall vest in and be held by County Government in trust for the people resident in the said County.

87. Further, the provisions of Article 3(1) of the Constitution provide that every person has an obligation to respect, uphold and defend the Constitution. This means that while carrying out their functions and obligations under the Constitution and any other legislation, the Respondents must equally comply with the provisions of the Constitution.

88. While it is evident that Bachuma Livestock Quarantine Station (BLQS) was established before the 2010 Constitution and considering the provisions of Article 186 and the Fourth Schedule of the Constitution, the utilization of the said Station to the exclusion of the Petition poses a threat to devolution in line with the applicable provisions of the Constitution of Kenya 2010.

Issue No. (iii)

Whether the Petitioner is entitled to the reliefs sought

89. The Petitioner sought for various reliefs as enumerated in the Petition.

90. Having come to the conclusion that the petitioner has successfully demonstrated the Respondents' actions were contrary to the provisions of Articles 10, 153(4) (a), 174, 186, 187 and the Fourth Schedule of the Constitution as well as Section 87 of the County Governments Acts, the issue is now whether they are entitled to the reliefs sought.

91. Article 23 (3) provides that a court may grant appropriate reliefs, including a declaration of rights and among others. In

Mumo Matuemu =Versus= Trusted Society of Human

Rights Alliance & 5 Others (2013) eKLR the Court emphasized that where constitutional rights are infringed, court must grant appropriate remedies.

92. Among the reliefs sought by the Petitioner was an order of mandamus directing the Respondents to facilitate the unconditional transfer of Bamucha LMD Farm to the Petitioner. However, from the analysis of the evidence adduced herein, the Petitioner had not tendered any evidence demonstrating that the 3rd Respondent being the National Land Commission had been engaged in respect to the same and as such the same cannot be granted in the manner sought by the Petitioner. See the cases of **In the Matter of the National Land Commission Advisory Opinion Reference 2 of 2014; [2015] eKLR and Khalif v Principal Secretary Ministry of Lands and Physical Planning & 4 others; National Land Commission & another (Interested Parties) (Petition 479 of 2017) [2025] KEHC 13714 (KLR) (Constitutional and Human Rights) (23 September 2025) (Judgment).**

93. In respect to the other reliefs, this Court is satisfied that Petitioner has successfully demonstrated breaches of Constitutional and statutory provisions by the Respondents and the court shall proceed to grant them the appropriate reliefs.

Final Orders

94. In the end, the Petition dated 11th September 2024 is hereby allowed in the following terms; -

(1) A declaration be and is hereby issued that: -

(a) The invitation by the Ministry of Agriculture and Livestock Development for TENDER NO. MOALD/SDA/BLOS/IT/01/2024/2025 inviting bids for Lease of Bachuma Livestock Quarantine Station in Maintenance of Livestock Quarantine facility for screening and shipment of livestock contravenes Articles 60, 62, 186, 187 and the Fourth Schedule of the Constitution and is therefore null and void.

(b) By publishing and/or countenancing undertaking of Tender No. MOALD/SDA/BLQS/IT/01/2024/2025 which contravenes the Constitution, the Respondents

failed in their duty to uphold the Constitution as required at Article 153(2) of the Constitution.

(c) The invitation by the Ministry of Agriculture and Livestock Development for Tender No. MOALD/SDA/BLQS/IT/01/2024/2025 inviting bids for the lease of Bachuma Livestock Quarantine Station in Management, Development and Maintenance of Livestock Quarantine facility for screening and shipment of livestock contravenes the principle of public participation under Article 10 of the Constitution and Section 87 of the County Government Act (2012).

(2) An order of:-

(a) INHIBITION be and is hereby issued restraining the ministry of Agriculture and Livestock Development from implementing, awarding and/or actualizing TENDER NO. MOALD/SDA/BLQS/IT/01/2024/2025 inviting Bids for the LEASE OF BACHUMA LIVESTOCK QUARANTINE STATION IN MAANGEMENT, DEVELOPMENT AND

**MAINTAINANCE OF LIVESTOCK QUARANTINE FACILITY
FOR SCREENING AND SHIPMENT OF LIVESTOCK.**

**(b) CERTIORARI be and is hereby issued quashing
TENDER NO. MOALD/SDA/BLQS/IT/10/2024/2025
inviting Bids for the LEASE OF BACHUMA LIVESTOCK
QUARANTINE STATION IN MANAGEMENT,
DEVELOPMENT AND MAINTAINANCE OF LIVESTOCK
QUARANTINE FACILITY FOR SCREENING AND
SHIPMENT OF LIVESTOCK.**

(3) Each party to bear own costs of the Petition.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS
23RD OCTOBER 2025.**

E. K. WABWOTO

JUDGE

In the presence of: -

Mr. Maingi for the Petitioner.

N/A for the 1st, 2nd, 4th and 5th Respondents.

Mr. Kiilu for the 3rd Respondent.

N/A for the Interested Party.

Court Assistant: Mary Ngoira.

ORIGINAL