



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CONSTITUTIONAL PETITION NO. E031 OF 2024
IN THE MATTER OF ARTICLES 22, 23, AND 258 OF THE
CONSTITUTION OF KENYA 2010

-AND-

IN THE MATTER OF THE CONTRAVENTION AND THREATENED
CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS
UNDER ARTICLES 1, 2, 6 (3), 10, 11 (1), 19, 20, 21, 24, 27, 29, 40,
44, 47, 73 (1), 153(4)(a), 154, 174, 175, AND 232 OF THE
CONSTITUTION OF KENYA, 2010

-AND-

IN THE MATTER OF NATIONAL GOVERNMENT CO-ORDINATION ACT

-BETWEEN-

SEBASTIAN KAARIA

M^UITONGA.....1ST PETITIONER

JONAH K.

MWENDA.....2ND

PETITIONER

JOSEPH MURIUNGI

KAARU.....3RD

PETITIONER MAITIMA

SEVERINO.....4TH

PETITIONER

ALEX MUGAMBI

KABURU.....5TH

PETITIONER

-VERSUS-

ATTORNEY

GENERAL.....1ST

RESPONDENT

CABINET SECRETARY FOR INTERIOR AND

CO-ORDINATION OF NATIONAL GOVERNMENT.....2ND

RESPONDENT

CABINET SECRETARY FOR LANDS AND PHYSICAL

PLANNING.....

.....3RD RESPONDENT

CABINET SECRETARY FOR

EDUCATION4TH RESPONDENT

CABINET SECRETARY FOR ENVIRONMENT,

CLIMATE CHANGE AND

FORESTRY5TH RESPONDENT

CABINET SECRETARY FOR

HEALTH.....6TH RESPONDENT

THE INDEPENDENT ELECTORAL AND BOUNDARIES

COMMISSION.....

....7TH RESPONDENT

NITHI WATER AND SANITATION COMPANY.....

8TH RESPONDENT

-AND-

COUNTY GOVERNMENT OF THARAKA NITHI.....1ST

INTERESTED PARTY COUNTY GOVERNMENT OF

MERU.....2ND INTERESTED PARTY GEORGE

GITONGA MURUGARA.....3RD

INTERESTED PARTY PAUL MUGAMBI

MAKUNYI.....4TH INTERESTED

PARTY JOSEPH KINTYUA

ZM5TH INTERESTED

PARTY LUKE NYAGA

MARENKO.....6TH INTERESTED

PARTY SALVESTAS MUTWIRI

MUGAI.....7TH INTERESTED PARTY

JULIUS NTONJA GICHUGU8TH

INTERESTED PARTY

JUDGMENT

Introduction

1. Vide the Gazette Notices Nos. 1766 dated 14th February, 2024 and 15341 dated 22nd November, 2024 the 2nd Respondent herein created a number of administrative units around the country including *Tharaka West Sub-County with its proposed headquarters at Kibung'a; Uragate Division; Uragate Sub-Location in Tharaka North Sub-County; Kibung'a Sub-Location in Tharaka South Sub-County; and Kithino Location in Chiakariga Sub-County* all in Tharaka Nithi County. According to the notices, the 2nd Respondent did so in exercise of the powers conferred by section 14(1) of the National Government Coordination Act, 2013.
2. The Petitioners herein lodged this Petition dated the 11th day of December, 2024 following the creation of the aforementioned administrative units.
3. The Petitioners describe themselves as residents of Meru County and have moved this court under Articles 22, 23 and 258 of the Constitution of Kenya, 2010. They state that they have lodged this petition as a matter of public interest challenging the creation of the said administrative units on several grounds.
4. The petitioners seek the following reliefs:
 - i. A declaration be and is hereby issued that the Respondents violated Article 10, 27, 28 and 47 of the Constitution by creating new administrative units in the border of Tharaka Nithi and Meru

Counties through Gazette Notices Nos. 1766 and 15341 of 14th February, 2024 and 22nd November, 2024 without proper public participation.

- ii. An Order of Certiorari be issued bringing into this court and quashing Gazette Notices Nos. 1766 and 15341 of 14th February, 2024 and 22nd November, 2024 establishing the impugned administrative units, to wit, Kibung'a Sub-Location, Kibung'a headquarters of Tharaka West Subcounty; Kithino Location in Chiakariga Sub-County; Uragate Division & Uragate Sub-Location in Tharaka North Sub-County.
- iii. An Order does issue compelling the Respondents to take all such measures and steps as provided by the Constitution and the relevant statutes to resolve the pre-existing disputes at the subject localities before creating any administrative unit(s) at the border of Meru and Tharaka Nithi Counties which should be preceded by proper and extensive public participation.
- iv. A declaration be and is hereby issued that all the administrative units created by the 2nd Respondent must have distinct boundaries within their respective counties to avoid jurisdictional overlap that escalates disputes and to avert disputes over administrative boundaries.
- v. The Respondents whether acting in person, through their agents, servants, employees or any other person acting at their

behest be restrained by conservatory orders from recruiting chiefs, assistant chiefs, support staff, establishing infrastructure, implementing development projects or in any other way further implementing Gazette Notice no. 1766 and 15341 of 14th February, 2024 and 22nd November, 2024 respectively in as far as the impugned administrative units is concerned, to wit, Kibung'a Sub-Location, Kibung'a headquarters of Tharaka West Subcounty; Kithino Location in Chiakariga Sub-County; Uragate Division & Uragate Sub-Location in Tharaka North Sub-County until Order is complied with.

- vi. That the court be pleased to issue any other order that it deems just and expedient in the circumstances for the ends of justice to meet.
- vii. Costs of the Petition be borne by the Respondents.

Petitioners' case

5. The petition is propped by the affidavits by the 1st, 2nd, 3rd, 4th and 5th petitioners all sworn on 4th December, 2024. It is their case that they have lost personal properties, been violently attacked, denied an opportunity to make incident reports of illegal and violent invasion of their properties, affected by the almost daily displacements, demolition and destruction of their properties and witnessed the same occasioned to fellow residents of Meru County by people coming from

Tharaka Nithi County, who claim the said properties; which the impugned administrative units are constituted, being at the border of the said two (2) counties, are territories of Tharaka Nithi County as opposed to Meru County.

6. The petitioners argued that they, and the residents of Meru County situate at the border of the two (2) counties, have been disenfranchised in various development projects, including the implementation of the Kakimiki Water Project as a project of Tharaka Nithi County despite being implemented right through the properties of residents of Meru County. That they have witnessed the 'removal' of some schools from Meru County and into Tharaka Nithi County and subsequently illegally gazetted and used as polling stations for Tharaka Nithi County by the 7th Respondent (IEBC) in the 2022 general elections. That there has been destruction of projects put up by the 2nd interested party (Meru County) on the pretext that they are in areas considered to be in the territory of Tharaka Nithi County.
7. The petitioners aver that the government failed to mark the boundary of Meru and Tharaka Nithi Counties on the ground in conformity with the Provinces and Districts Act, CAP 105 Laws of Kenya. Therefore, there lacks a clear description of boundaries of the said administration units which has resulted in an overlap of the said administration units and areas' jurisdiction; 'not on paper but on the ground'. It also contended that the overlap of administrative units at the border of

Meru and Tharaka Counties has resulted in administration officers from Tharaka Nithi County administering their areas of jurisdiction way into Meru County and now seek to legalize these illegal acts through the said units.

8. Further, the petitioners contend that the government has failed to consider and avert occurrence of perennial armed and violent conflicts and never-ending disputes over the boundary of Meru and Tharaka Nithi County.
9. It is also averred that the creation of the units was done without an all-inclusive and extensive public participation, in a clear show of defiance and lack of consideration of the real issues. That the creation of the units ignored and violated the moratorium placed by the Government in June, 2022.
10. It is also averred that the 2nd Respondent created the new units on the side of Tharaka Nithi County only but failed to do the same in Meru County at the said border of Meru and Tharaka Nithi County.
11. It is also averred that there is lack of clear description of the boundaries of the said units, which creates more confusion and is likely to fuel more deadly disputes between the residents of Meru and Tharaka Nithi Counties.
12. It is thus the petitioners' position that, in light of the foregoing, prior to the formation of the impugned new administrative units, the

2nd Respondent should have satisfied itself of all issues of the two (2) counties' boundary has been resolved, that there are no disputes around land ownership and occupation, that the revenue points and markets for each county have been ascertained and that each county is aware of its physical location of its border points to avert dispute over territory by residents and administration officers, through an adequate, all-inclusive and extensive public participation, which has heightened as opposed to alleviating the acrimony.

1st to 6th Respondents' case

13. The 1st to 6th respondents opposed the petition through a replying affidavit deposed by one David Kariuki Gitonga, the County Commissioner, Tharaka Nithi County.

14. He confirmed that there have been some acrimony which often has led to violent and armed clashes, arson and destruction of public and private property between the communities that live on the border between Tharaka Nithi and Meru Counties ever since the creation and gazettelement of Tharaka Nithi District out of Meru District in 1992 by the late President Daniel Arap Moi, under the Districts and Provinces Act CAP 105. That this was on the misguided notion that the said Tharaka Nithi County, its people and administrative units have encroached into Meru County.

15. He further averred that in view of the perennial conflicts, the then Minister of State for Provincial Administration and Internal

Security, vide Gazette Notice No. 11412 Vol. CX-No.93 dated 4th December, 2008 established the Taskforce on delineation and demarcation of the greater Meru District generally and the boundary between Tharaka and Tigania districts (hereinafter the taskforce), tasked to oversee the said delineation and demarcation of the disputed boundaries, sensitization of the local community on the exercise and the need for peaceful co-existence and receive, hear, evaluate and determine complaints and concerns from the public.

16. He further avers that as per the Taskforce's report; dubbed the Zachary Ogogo Report, it was stated that the boundaries for the present-day greater Meru were drawn as early as 1962 through the Kenya Constituencies Delimitation Commission during the colonial government era and subsequently reviewed in 1966, 1986 and 1996, where the whole area is now fully settled and various Ameru sub-tribes coexist peacefully save for instances of incitement during the electioneering period.

17. He added that the taskforce report noted that the agitation amongst the Ameru that their boundaries extend beyond the official lines, so as to include their kith and kin is an illusion, misleading, and untenable in the modern socio-political environment. Further, that it was established that both constituency and civic boundaries do not overlap, having existed since 1997 and are yet to be challenged in court. However, the need for affirmative action was recommended for

the minority communities on both sides of the new boundaries owing to social and infrastructural under-development owing to marginalization in the region.

18. He further averred that pursuant to information received from the 3rd respondent (through the Director of Survey under the Ministry of Lands, Public works and urban development), the 2nd respondent (Cabinet secretary for interior and National Administration) and the 4th respondent (through the Principal Secretary for the State Department of Basic Education) Tharaka Nithi County and the impugned administrative units do not encroach/overlap into Meru County, there is no moratorium in place by the government or the Ministry of Interior and National Administration on the creation of new administrative boundaries and the renaming and transfer of schools by the Ministry of Education from Meru to Tharaka Nithi county is false, incorrect and devoid of evidence.

19. It is the respondents' position, that contrary to the petitioners' allegations, the newly created administrative units were already in existence with clear demarcated boundaries and were simply upgraded in status to enhance service delivery. Specifically, that Kibung'a Sub Location was initially Turima Division created in 1992, elevated to a Division in 2007 and now upgraded to a Sub-county.

20. In so far as public participation, the respondents' position is that the 2nd respondent complied with the dictates of Article 10 of the

Constitution prior to the creation of the administrative units. For context, that the public participation exercises were conducted on 24th January, 2023 at the Mukothima Chief's Office and at Gatue Chiefs Camp, where both members of the public and Tharaka-North leaders agreed that the existing Tharaka North Sub-County be subdivided and create Mukothima Sub-County (now Tharaka West Sub-county). That on 2nd August, 2024 a public participation meeting was held in Tharaka Sub-County CDF Hall, where the agreed issues was on the proposed division of Tharaka West Sub County in to two (2) the existing, and a new Tharaka West Sub County.

21. Further, it was argued that media reports based on politically instigated comments by politicians cannot be termed authoritative proof or sources of information without proper evidence. That, by information from the Principal Secretary for Lands Settlement, the stalled adjudication processes in the border between Tharaka Nithi and Meru Counties, within Karocho and Kiamuri "B" are set to resume in order to curb any agitations and clashes therein.

7th Respondent's case

22. It was the IEBC's case that they are wrongly joined to the petition. It is its contention that its role and mandate provided for under Article 88(4) of the Constitution read together with Section 4 of the Independent Electoral and Boundaries Commission Act, CAP 7C differs exponentially with the role of the 2nd respondent under Section

14 of the National Government and Coordination Act, since administrative units are different from electoral units.

8th Respondent and 1st Interested party's case

23. The County Attorney for Tharaka Nithi County entered appearance for the 8th Respondent and the 1st interested party but failed to file any responses to the petition.

2nd interested party's case

24. By way of a Replying Affidavit, one Maranya Mari Domisiano, the CEC Member for Legal and Public Services, Meru County, supported the petition. He deposed that the creation of the impugned administrative units has caused administrative overlap on the border of Tharaka Nithi and Meru counties. For instance, the created Kithino Location allegedly in Chiakariga is wholly in Meru County and overlaps the former adjudication section of Nkuene/Mitunguu/Kithino. Similarly, the new administrative units in Tharaka Nithi County to wit *Tumbura, Ruungu, Turima, Kibung'a Murinda, Kithioroka, Kathura and Kaongoni units* overlap the jurisdiction of the ones in Meru County being *Mbirikine, Kiagu, Kathwene, Kaurone and Nkuene units*.

25. It is further deposed that the boundary has been a source of dispute, acrimony and destruction of private and public property between the Atharaka and Ameru people whilst the cess points for the 1st interested party have been placed at markets in Meru County

specifically *Turima Tweru, Kathwene and Makandune* markets affecting the 2nd interested party's ability to collect taxes.

26. It is thus their case that the creation of the impugned units was done without adequate public participation of the people of Meru County and discriminately and conveniently done to favor the Atharaka people at the expense of the Ameru people.

3rd interested party's case

27. In his replying affidavit sworn on 27th March, 2025, the 3rd interested party relied on the deposition of the 1st to 6th respondents thereby maintaining that prior to the establishment of the impugned administrative units, sufficient public participation was undertaken and minutes of the said meetings recorded.

28. Further, he argued that the petitioners lacked the locus standi to institute the present petition owing to their failure to demonstrate how the issues of the impugned administrative units involved the Meru County.

29. It was his case that the prayers sought, specifically the quashing of the two gazette notices cannot ensue as the notices not only establish the said impugned units but it extends to various administrative units countrywide which are not challenged in the present petition. Further, that it is not within the purview of this court to establish or determine the boundaries of the warring counties as the same is the sole preserve of the National Government.

4th to 9th interested parties' case

30. Paul Mugambi Makunyi and Kennedy Kamunyi swore replying affidavits on 7th May, 2025 and 15th May, 2025 respectively, and on behalf the said interest parties. They depone that they are residents of Tharaka Nithi County. They confirmed that prior to the establishment of the impugned administrative units, together with other residents, they took part in public participation meetings. Specifically, that the meetings occurred in: *Chiakariga ward which culminated in the formation of Kithino location, in Mukothima ward on 24th January, 2023 on the creation of sub-units Uragate Division and Uragate Sub-location, and in Marimanti ward on 23rd January, 2023 for the establishment of Kibunga sub-location.*

31. It is their position that the Cabinet Secretary for Interior and Co-ordination of National Government in exercise of his mandate procedurally issued gazette notices Nos. 1766 of 14th February, 2024 and 15341 of 22nd November, 2024 as the previously existing moratorium by the previous Cabinet Secretary precluding the creation of new administrative units until August, 2022 was not in operation as at the time.

Proceedings

32. The petitioners had contemporaneously filed a notice of motion dated 11th December 2024. By consent of the parties, the

interlocutory application herein was deemed as spent and the conservatory orders in place were extended.

Written submissions

33. The active parties herein in their written submissions, specifically by the petitioners dated 30th July, 2025, by the 1st to 6th respondents in unison dated 14th July, 2025, by the 7th respondent dated 21st July, 2025, dated 30th July, 2025 by the 2nd interested party dated 23rd June, 2025 and by the 3rd interested by the 4th to 9th interested parties in unison, dated 14th July, 2025 simply reiterated their arguments as captured hereinabove. The parties identified the issues for this court's analysis and determination, cited relevant authorities and laws in aid of their respective positions which I have collectively considered, and I hereby determine as hereunder.

Analysis and Determination

Whether the petitioners have the locus standi to institute the instant constitutional petition and whether the same meets the laid down threshold?

34. Locus standi is defined in ***Black's Law Dictionary, 9th Edition*** (page 1026) as "*the right to bring an action or to be heard in a given forum*". It signifies a person(s) right to be heard, the sufficiency of interest that one must have to sustain his/her standing to sue in a court/tribunal of law. Therefore, if a party is found to have no *locus*

standi, then it means he/she cannot be heard even on whether he/she has a case worth listening to. It is further evident that if this court was to find that the petitioners have no *locus standi*, then the petitioners cannot be heard and that point alone may dispose of the petition.

35. In this instant, the petitioners right to institute these proceedings is contested by dint that the cause of action and its issues raised herein, generally speaking, pertain to the county of Tharaka-Nithi whilst the petitioners, admittedly so, are residents of Meru County.

36. It is noteworthy that the promulgation of the 2010 Constitution enlarged the scope of locus standi in Kenya. **Articles 22** and **258** specifically empowered every person, whether corporate or non-incorporate, to move the Courts, contesting any contravention of the Bill of Rights, or the Constitution in general.

37. **Article 22** of the **Constitution** thus provides:

(1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.

(2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by-

...

(c) a person(s) acting in the public interest; or

38. In the same breath **Article 258** thus provides:

(1) Every person has the right to institute court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention.

(2) In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by

—

...

(c) a person(s) acting in the public interest;

39. It would follow that courts are no longer tunnel-visioned on a narrow interpretation of locus standi. Simply put, audience would be granted to a public-spirited person(s), who though not directly aggrieved, approaches the court in good faith, in matters of public interest, seeking to uphold the tenets, the guaranteed rights, freedoms and supremacy of the Constitution. Of course, each consideration must be on a case-to-case basis, with its unique sets of realities.

40. The peculiarity of the matter at hand, as presented, stems from a dispute arising from the gazettelement of 'new' administrative units within the localities along the boundary of Meru and Tharaka-Nithi Counties, but said to within the borders of the latter county. The *prima facie* argument by the petitioners is that persistent clashes have subsisted between the residents of either county along their border

lines primarily because of the disputed demarcation and delimitation of the boundary between them.

41. It is argued that despite the alleged violent clashes over the disputed boundary, the impugned administrative units were created without adequate public participation of the people of Meru County who reside along the borders and discriminately favored their brothers and sisters in Tharaka-Nithi County, which actions have heightened the acrimony between them as opposed to alleviating it.
42. In my view, cognizant of the broadened constitutional scope of *locus standi* within the auspices of the infringement, violation or threat to fundamental rights and freedoms and/or contraventions of the constitution, it would be not only premature but an injustice to lock out the petitioners on account of their residency.
43. Needless to add, there is a consensus by all parties to the petition that there exist protracted tensions between the residents on both sides of the impugned boundary, thus their presence in these proceedings cannot be relegated or termed as foreign, especially if there are allegations of violations or threats of fundamental rights or freedoms.
44. To borrow the words of G.V. Odunga J. (as he then was) in **Ochillah v Director of Public Prosecutions & another (Miscellaneous Application 90 of 2021) [2022] KEHC 15455 (KLR)** this court reiterates that:

“...in matters of alleged violation of fundamental freedoms and rights, this court ought not to be too rigid on the manner in which the litigant finds himself in court whether the entry was through the door or the window. Once the litigant has entered the court, he ought not to be treated as a gate crasher.

Whether the Petition meets the threshold of a constitutional petition.

45. The Court of Appeal case of **Mumo Matemu v Trusted Society of Human Rights Alliance & another (2013) eKLR** provided the standards of proof in the constitutional petitions as founded in the case of **Anarita Karimi Njeru v Republic [1980] eKLR 154.** It held:

“Constitutional violations must be pleaded with a reasonable degree of precision...”Further, in the “Thorp v Holdsworth (1886) 3 Ch D 637 at 639, Jesse, MR said in the year 1876 and which hold true today: “The whole object of pleadings is to bring the parties to an issue and the meaning of the rule... was to prevent the issue being enlarged which would prevent either party from knowing when the cause came on for trial what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to define

issues and thereby diminish expense and delay especially as regards the amount of testimony required on either side at the hearing.”

46. **Article 23(3)** of the **Constitution** empowers a court to grant appropriate reliefs in any proceedings brought under **Article 22** where there has been violation or threat of a violation of a fundamental right or freedom, as is the instant.

47. Therefore, it is this court’s full satisfaction and holding that the petitioners indeed have the locus standi to petition this forum, and their filed petition herein meets the basic threshold of constitutional petition as spelt out herein above.

Whether the 7th Respondent has been properly joined to this petition

48. The 7th Respondent’s position is that it has been wrongly joined to the petition as it has no role in the creation of administrative units.

49. The 7th respondent is a creature of the Constitution. It is established under Article 88(1) of the Constitution and its functions are provided for under Article 88(4) thereof, read together with Section 4 of the Independent Electoral and Boundaries Commission Act (IEBC Act). These functions are set out under Article 88(4) as follows;

4. The Commission is responsible for conducting or supervising referenda and elections to any elective body or office established by this Constitution, and any other elections as prescribed by an Act of Parliament and, in particular, for-- (a) ...;

(b) ...;

(c) the delimitation of constituencies and wards;

50. In **Supreme Court Petition No. 21 (E023) of 2020 Member of Parliament Balambala vs Abdi Ahmed Abdi & 7 Others**, cited by the 7th Respondent, the apex court observed the difference between Electoral Boundaries under the functions of the IEBC and Administrative Boundaries under the Ministry of Interior. It held that;

“ 79. We are therefore in agreement with the appellant’s submission that administrative units are different from electoral units in relation to the manner in which they are created. We say so because our reading of Article 89 of the Constitution and Section 14 of the National Government Coordination Act leads us to the conclusion that the establishment of the administrative units is a preserve of the national government and the same is done by the Cabinet Secretary as defined under Section 2 of the Act while the creation of electoral units is done

by the IEBC as mandated under Article 88(4)(c) of the Constitution.

In addition, the argument by the 8th respondent that electoral units need not conform to administrative units is borne out by the law...

[.....We say so, having found that the creation of administrative units does not influence or affect constituency boundaries...

81. Furthermore, when IEBC is delimiting constituency boundaries, administrative units are not one of the factors to be considered. The submission by the 8th respondent that it is good practice if the boundaries of administrative units conform to those of electoral units is attractive. Still, instances may arise where the two do not conform and that fact alone does not render the boundaries unlawful. We say so, having found that the creation of administrative units does not influence or affect constituency boundaries

51. From the above, it is quite clear that the 7th Respondent has no role in the creation of the impugned administrative units. Its role is quite distinct from that of the 2nd Respondent. Therefore, I am in agreement with the submission that it was wrongly joined to the petition.

Whether there is an encroachment and an administrative overlap on the border of Tharaka Nithi County into Meru County by the creation of the impugned administrative units under Gazette Notices Nos. 1766 and 15341 of 14th February, 2024 and 22nd November, 2024

52. There is really no dispute that the law has mandated the 2nd Respondent to create administrative units, in order to improve service delivery.
53. The National Government Coordination Act 2013 was enacted to give effect to Article 6(3) of the Constitution which commands every national State organ to ensure reasonable access to its services in all parts of the Republic, so far as it is appropriate to do so having regard to the nature of the service.
54. The Act establishes an administrative and institutional framework for the coordination of national government functions at the national and county levels of governance and; to give effect to articles 131(1)(b) and 132(3)(b) of the Constitution.
52. The Act lays down the procedure for the creation of administrative units. Under section 14 it provides as follows:

“ Service delivery co-ordination units.

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

2. In establishing the national government service delivery co-ordination units, the Cabinet Secretary shall accord and respect the county government decentralized units established under section 48 of the County Government Act, 2012 (No 17 of 2012).

3. Where a county government has not decentralised its units pursuant to section 48(1)(e) of the County Government Act, 2012, the national government may, where necessary, establish its own service delivery coordination units for purposes of coordination of national government functions.

4. For purposes of this section, the locations and sublocations in existence immediately before the commencement of this Act shall continue to exist as national government service delivery units.

5. The national government service delivery coordination units established under this section shall be headed by national government administrative officers appointed under section 15.”

52. The main contention by the petitioners is that all the administrative units created on the side of Tharaka Nithi County vide the impugned Gazette Notices encroach into the territory of Meru County, resulting into double jurisdiction and overlap of the area of administration such that the government administration officers on the side of Tharaka Nithi County administer jurisdictions that are way into Meru County. That this has led to perennial fatal clashes, displacements, evictions and invasion of their properties and those of other residents of Meru County.
53. Notable instances of the purported administrative overlap and encroachment as enunciated in length by the petitioners include: Mbeti village in Kaurone Sub-Location in Meru County which allegedly experiences jurisdiction overlap between itself and Murinda Administrative unit on the side of Tharaka Nithi County whereby the administration officers of Murinda Administrative Unit on the ground allegedly have claimed almost half of Kaurone Sub Location in Meru County.
54. There is an apprehension by the petitioners that the creation of a Location by the name 'Kithino' in Chiakariga Sub-County of Tharaka Nithi County which bears almost a similar name as the 'Kithinu' which appears in certificate of titles of properties situate at Mbeti in Kaurone Sub-Location Meru County, which reads "Nkuene/Mitunguu-Kithinu/...", may be used to invalidate their titles.

55. Further, they argue that the implementation of a mega water project known as Kibung'a Kakimiki Water Project is ongoing for the benefit of residents of Tharaka Nithi County by Nithi Water and Sanitation Company Ltd., yet its implementation is allegedly through the properties owned by the 1st petitioner and other residents of Mbeti, Kiamuri 'B' and Kiburine Kwa Ng'ombe in Meru County.
56. It is further argued that the Tharaka Nithi County Government in cahoots with the Ministry of Education have forcefully, unprocedurally and illegally renamed and transferred some schools from Meru County to Tharaka Nithi County, constructed administration offices, polytechnics and universities in the disputed areas in favor of Tharaka Nithi County and levied cess inside the territory of Meru County.
57. Against the above backdrop, I am of the view that to establish the realism or lack of it of the purported administrative overlap along the border of Tharaka Nithi and Meru Counties, specifically within the impugned administrative units, it is only prudent that this court delves into history and examine aspects of boundaries delimitation and delineation of the two (2) counties and their respective administrative units.
58. Meru and Tharaka Nithi counties are listed as the 12th and 13th counties in the First Schedule of the Constitution, 2010, and pursuant to Article 6 (1) thereof. However, the Constitution neither has provisions setting out the boundaries of the counties nor does it refer

to any other law. It would follow that to arrive at what the exact boundaries of the two (2) counties are then this court must look at the relevant laws, case laws and available texts.

59. Upon the wake of the promulgation of the Constitution of Kenya, 2010, the Committee of Experts tasked with the review of the “Revised Harmonized Draft Constitution of Kenya”(RHDC) in its report noted that under levels of devolved government, in accordance with the majority’s preferences, the levels of government in the RHDC were reduced to two: national and county. For the units of county governments, the Districts enacted in 1992 by The District and Provinces Act were adopted as proposed.

60. From the foregoing, it is not in doubt that the County boundaries in place under the 2010 Constitution are based on the ***Districts and Provinces Act*** of 1992. Needless to add, it is clear that even the warring parties are fully aware that the basis of the current county boundaries has its foundation under the said Act.

61. The ***Districts and Provinces Act, 1992*** was assented into on June 22, 1992 and came into operation on June 26, 1992 and provided for divisions of Districts and Provinces. The preamble of which provides as follows:

An Act of Parliament to prescribe the districts and provinces into which Kenya is divided.

62. ***Section 2*** provided that;

“Kenya is divided into the Nairobi Area, the boundaries of which are set out in the First Schedule, and the several districts the respective boundaries of which are set out in the Second Schedule.”

63. The **Act** provided for 47 districts, including Meru and Tharaka Nithi listed as the 12th and 13th districts and their respective boundaries particularized under the Second Schedule.
64. The petitioners’ arguments appear to be based on two fronts, the alleged historical boundary disputes between the two counties and the overlap of jurisdiction of the roles of the administrative units.
65. The petitioners have therefore invited this court to examine and determine what they term as the failure by the government to mark the boundary of Meru and Tharaka Nithi Counties on the ground in conformity with the Districts and Provinces Act,1992. That the created impugned administrative units lack clear boundary definition and have caused an overlap of the administrative units’ jurisdiction not on paper, but on the ground. Simply put, there is failure to adjudicate on both the counties and the impugned administrative units’ boundary disputes.
66. The question that automatically springs to my mind is whether this court has the requisite jurisdiction to determine the question of boundary disputes, be it between individuals, institutions or in this instance, between the two counties.

67. To my understanding this is within the purview of the Environment and Land Court.

68. The jurisdiction of the of the Environment and Land Court is provided for by the provisions of **Article 162(2)** and **(3)** of the **Constitution of Kenya, Sections 3 & 13(2)** of the **ELC Act No 19 of 2011, Section 10** of the **Land Registration Act, No 3 of 2012** and **Section 150** of the **Land Act, No 6 of 2012**.

69. **Section 13** of the **Environment and Land Court Act** provides as follows:

Jurisdiction of the court

(1) The court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.

(2) In exercise of its jurisdiction under article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes—

(a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;

(b) relating to compulsory acquisition of land;

(c) relating to land administration and management;

(d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and

(e) any other dispute relating to environment and land.

70. In weighing the notable grounds as alleged by the petitioners which would *prima facie* surmount the said encroachment of their county borders and administrative units overlaps as against the above constitutional and statutory provisos, it is without doubt that this court is found wanting in jurisdiction to consider or determine this head.

71. It is not lost to me that disputes revolving land are very emotive issues. The petitioners' passionate discourse herein cannot be gainsaid. Notably, they decried that the violent clashes and conflicts have been ripe and alive between the Tharaka and Meru ethnic groups converging at the said border points for more than 50 years now, marred in fatalities, displacements, evictions, invasion and encroachment of not only their properties but of other residents as well. References were made by the petitioners and the 1st to 6th respondents to several land adjudication committees and taskforces

set up during the colonial and post-colonial era which unsuccessfully attempted to settle the acrimony along the border lines.

72. In line with the doctrine of exhaustion, courts have been succinct to state that issues to do with allegations of land historical injustices, as is in this instant, are best resolved by the National Land Commission. In **Okoiti v Parliament of Kenya & 2 others; County Government of Taita Taveta & 3 others (Interested Parties) (Petition 33 of 2021) [2022] KEELC 33 (KLR)** the ELC seating in Mombasa held as follows:

90. As stated above, this court reiterates that the boundary disputes afflicting the three Counties of Taita Taveta, Kwale and Makueni and thus other spiral effects it has had onto the violation of the fundamental rights of the ordinarily residents of the area are essentially caused by the insurgencies of historical injustices within the area by the colonial leadership.

...

95. ... I agree that where there exists a proper and suitable alternative forum for resolving disputes then there is need to strictly adhere and present a dispute before such forum... based on the Doctrine of Exhaustion, this court has asked itself if there is any

other existing alternative forum upon which the petitioner should approach before coming to this court.

96. ... the Constitution comes to our rescue as it makes a provision for that forum. This is under the provision under article 67 of the constitution establishes an institution called “the National Land Commission” and its functions are:

...

(e) to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;

97. The provision of section 15 of the National Land Commission Act, No 5 of 2012 act provides for historical land injustices that pursuant to article 67(3) of the Constitution, the Commission shall receive, admit and investigate all historical land injustice complaints and recommend appropriate redress.

For the purposes of that section, a historical land injustice means a grievance which:—

(a) was occasioned by a violation of right in land on the basis of any law, policy, declaration, administrative practice, treaty or agreement;

(b)resulted in displacement from their habitual place of residence;

(c)occurred between 15th June 1895 when Kenya became a protectorate under the British East African Protectorate and 27th August, 2010 when the Constitution of Kenya was promulgated;

(d) has not been sufficiently resolved and subsists up to the period specified under paragraph (c);

73. Similarly, In the case of **Ledidi Ole Tauta & others v Attorney General & 2 others [2015] eKLR**, the same court, (Nyamweya, Ougo & Mutungi, J) in its wisdom stated that:

“In our view it is (sic) the National Land Commission that has the mandate to investigate into historical land injustices and make appropriate recommendations for redress. The court is not the appropriate organ to carry out the investigation and/or inquiry and where the law has made provision for a state organ or institution to carry out a specific function that institution should be allowed to carry out its mandate. The court should not usurp the roles of other state institutions. We therefore are of the view, it was premature on the part of the petitioners to come to court without ... having the

National Land Commission exercise its mandate under article 67(2)(e) of the Constitution.”

74. At this juncture, it is deducible that the myriad of grounds as raised by the petitioners under this head, including the disputed county and administrative units boundaries and their commensurate historical land injustices, administrative overlaps and disenfranchisement of their benefits ought to be canvassed and redressed sequentially at the National Lands Commission under Article 67 (2) (e) of the Constitution and Section 15 of the National Land Commission Act, and where necessary escalated to the Environment and Land Court as cited above.
75. This court is not clothed with the requisite jurisdiction to adjudicate on the grievances raised on this head. Simply put, this court cannot take any further step. As far as the issue of the boundaries is concerned then, this court finds that it lacks the requisite jurisdiction.
76. On the question of overlap of roles of the administrative units, I am of the view that this cannot happen unless the administrators deliberately choose to disregard their boundaries. By law the boundaries of the counties are known. The same follow those set out under the ***Districts and Provinces Act, 1992.***

77. The said Act sets with clarity the boundaries for all counties the successors to the Districts as we used to know them. For instance the boundaries of the two counties are stated to be as follows;

THE MERU DISTRICT

Commencing at the north-western corner of L.R.No.5181 on the Ngare Ndare River;thence south-easterly by part of the northern boundary of that portion to the most westerly corner of L.R.No.2791;thence north-easterly by the north-western boundary of L.R.No.2791 to the south-western corner of L.R.No.2792;thence northerly, easterly and south-easterly by the western and generally northern boundaries of the latter portion and continuing south-easterly by the boundary of L.R.No.2794 to the Eastern Marania River;thence downstream by the course of that river and the Isiolo River, to the southern boundary of Isiolo Town (L.R.No.7918);thence easterly by part of the southern boundary of that town, north-easterly and northerly by the eastern boundary and westerly by part of the northern boundary of that town to its intersection with the Isiolo River;thence generally northerly by the centre course of that river for a distance of approximately 9 kilometres (5½ miles) to the old

K.A.R.Wagon Camp (geographical co-ordinates approximately 37° 35' E., 0° 29' N.);thence north-easterly by a straight line to trigonometrical beacon Shaba (SKP.230);thence continuing north-easterly by a straight line to trigonometrical beacon 95/Y/1 on the northern spur of Matalama, about 8 kilometres (5 miles) north-east of Magadol (Kombe) Crater;thence south-easterly by a straight line to trigonometrical beacon Yakabasati(SK 2);thence south-easterly by a straight line to trigonometrical beacon Kinna (109/Y/2);thence south-easterly by a straight line to the Kithima ya Mugoma Spring;thence southerly by a straight line to a point Isula Kanini on the Murera or Bisanguracha River;thence generally south-easterly downstream by the centre course of that river to its confluence with the Rojewero or Mackenzie River;thence downstream by the centre course of that river to its confluence with the Tana River;thence up-stream by the centre course of Tana River to its confluence with the Ura River;thence up-stream by the course of that river to its intersection with the eastern boundary of Thangatha Location;thence southerly and again generally south-westerly by the generally eastern boundaries of Thangatha, Mbeu, Giaki,

Kiagu and Mitunguu Locations boundary to the Mutonga River;thence up-stream by Mutonga River to the confluence of Mutonga River and North Mara River;thence generally westerly and up-stream by the centre course of North Mara River to its intersection with Mount Kenya Forest boundary;thence westerly by a straight line to the summit of Mount Kenya (Batian);thence north-westerly by a straight line to the point where the Liki River emerges from the Mount Kenya Forest approximately 3 kilometres (1¾ miles) from the most easterly corner of Nanyuki Town;thence north-westerly and downstream by that river which forms part of the generally north-eastern boundary of Nanyuki Town to its intersection with the generally northern boundary of the Timau-Nanyuki road reserve;thence generally north-easterly by that road reserve boundary to its intersection with the generally western boundary of Timau Town;thence northerly, north-easterly and south-easterly by the western, northern and part of the eastern boundaries of that township to its intersection with the generally northern boundary of the Timau-Isiolo road reserve;thence generally north-easterly by that road reserve boundary to its intersection with the

Engare Ndare River;thence generally north-north-easterly and downstream by that river to the point of commencement.

THE THARAKA-NITHI DISTRICT

Commencing at the summit of Mount Kenya (Batian);thence north-easterly by a straight line to the intersection with the Mount Kenya Forest boundary at the northern corner of Chogoria Location;thence south-easterly by the northern boundary of that location to its intersection with the Mutonga River;thence generally easterly by that river to its intersection with the north-western corner of Tunyai Location;thence north-easterly by the generally western boundary of Tunyai, Turima, Nkondi, Gatue, Gikingo and Kanjoro Locations boundary to the Ura River;thence easterly by the course of that river to its intersection with the Tana River;thence generally south-westerly, westerly and again generally south-westerly up-stream by the centre of that river to its confluence with the Mutonga River;thence generally north-westerly up-stream by the course of that river to its confluence with the Thuci River;thence generally south-westerly and westerly by the centre course of that river to its intersection with the Mount Kenya Forest boundary;thence

north-westerly by a straight line to the point of commencement.

78. To my knowledge, these are legal boundaries in existence, since the County Boundaries Bill is yet to be assented into law.
79. From my interpretation of the material before me it is apparent that the proposed units are carved out of the already existing units within Tharaka Nithi County. Any realignment thereof, within that county's boundaries, cannot be termed as encroachment into Meru County.
80. It is apparent then that the issue is not whether the administrative boundaries are known, but whether there is observance to the same. There is no doubt that there are interests fueled by politics and the scramble for revenue by the devolved units/counties. This, in my view does not change what the law dictates.

Whether the 2nd respondent failed to undertake an all-inclusive public participation prior to the establishment of the new administrative units?

52. **Public participation** is a national value that is an expression of the sovereignty of the people as articulated under **Article 1** and **Article 10** of the **Constitution**. Hence, public participation is an established right in Kenya; a justiciable one, and one of the corner

stones of our new democracy. In fact, jurisprudence is replete with instances where Courts have firmly struck down any laws or public acts that are deemed to have fallen short of the threshold of public participation.

53. What constitutes proper **public participation** in matters that affect the public has been addressed severally by courts within and outside this jurisdiction. The petitioners rightly cited the authority in **Mui Coal Basin Local Community & 15 others v Permanent Secretary Ministry of Energy & 17 others [2015] KEHC 473 (KLR)** where a collegiate bench of this court set out a measure of the sufficiency of public participation. The bench held as follows:

97. From our analysis of the case law, international law and comparative law, we find that public participation in the area of environmental governance as implicated in this case, at a minimum, entails the following elements or principles:

a. First, it is incumbent upon the government agency or public official involved to fashion a programme of public participation that accords with the nature of the subject matter. It is the government agency or Public Official who is to craft the modalities of public participation but in so doing the government

agency or Public Official must take into account both the quantity and quality of the governed to participate in their own governance.

- b. Second, public participation calls for innovation and malleability depending on the nature of the subject matter, culture, logistical constraints, and so forth. In other words, no single regime or programme of public participation can be prescribed and the Courts will not use any litmus test to determine if public participation has been achieved or not. The only test the Courts use is one of effectiveness.**
- c. Third, whatever programme of public participation is fashioned, it must include access to and dissemination of relevant information.**
- d. Fourth, public participation does not dictate that everyone must give their views on an issue of environmental governance. To have such a standard would be to give a virtual veto power to each individual in the community to determine community collective affairs. A public participation programme, especially in environmental governance matters must, however, show intentional inclusivity and diversity. Any clear and**

intentional attempts to keep out bona fide stakeholders would render the public participation programme ineffective and illegal by definition. In determining inclusivity in the design of a public participation regime, the government agency or Public Official must take into account the subsidiarity principle: those most affected by a policy, legislation or action must have a bigger say in that policy, legislation or action and their views must be more deliberately sought and taken into account.

e. Fifth, the right of public participation does not guarantee that each individual's views will be taken as controlling; the right is one to represent one's views - not a duty of the agency to accept the view given as dispositive. However, there is a duty for the government agency or Public Official involved to take into consideration, in good faith, all the views received as part of public participation programme.

f. Sixthly, the right of public participation is not meant to usurp the technical or democratic role of the office holders but to cross-fertilize and enrich

their views with the views of those who will be most affected by the decision or policy at hand.

54. A disclaimer noted by the bench above is that the principles as couched were on public participation in the area of environmental governance as implicated in the cited case. Nevertheless, the above principles are relevant and cut across various scenarios where public participation is necessary; thus, its application herein is worthwhile.

55. The Supreme Court of Kenya also weighed in on the issue in **British American tobacco Company Limited vs The Cabinet Secretary for the Ministry of Health and 2 others [2019] KESC 15 (KLR)**. It laid down the guiding principles of public participation as follows;

(i)A constitutional principle under article 10(2) of the *Constitution*, public participation applies to all aspects of governance.

(ii)The public officer and or entity charged with the performance of a particular duty bears the onus of ensuring and facilitating public participation.

(iii)The lack of a prescribed legal framework for public participation is no excuse for not conducting public participation; the onus is on the public entity to give effect to this constitutional principle using reasonable means.

(iv)Public participation must be real and not illusory. It is not a cosmetic or a public relations act. It is not a mere formality to be undertaken as a matter of course just to ‘fulfill’ a constitutional requirement. There is need for both quantitative and qualitative components in public participation.

(v)Public participation is not an abstract notion; it must be purposive and meaningful.

(vi)Public participation must be accompanied by reasonable notice and reasonable opportunity. Reasonableness will be determined on a case to case basis.

(vii)Public participation is not necessarily a process consisting of oral hearings, written submissions can also be made. The fact that someone was not heard is not enough to annul the process.

(viii)Allegation of lack of public participation does not automatically vitiate the process. The allegations must be considered within the peculiar circumstances of each case: the mode, degree, scope and extent of public participation is to be determined on a case to case basis.

(ix)Components of meaningful public participation include the following:

- a.clarity of the subject matter for the public to understand;**
- b.structures and processes (medium of engagement) of participation that are clear and simple;**
- c.opportunity for balanced influence from the public in general;**
- d.commitment to the process;**
- e.inclusive and effective representation;**
- f.integrity and transparency of the process;**
- g.capacity to engage on the part of the public, including that the public must be first sensitized on the subject matter.”**

52. In my view, in as much as there are infinite variations and forms of facilitating an appropriate degree of public participation, what matters is that at the end of the day a reasonable opportunity is offered to members of the public and all interested parties to know about the issues and to have an adequate say. What amounts to a reasonable opportunity will depend on the circumstances of each case.

53. From the onset, it is not disputed that actual public participation was undertaken prior to the establishment of the impugned

administrative units. However, the bone of contention as raised by the petitioners is that the public participation was only one-sided. That, despite disputes over boundary delineation being an emotive issue marred with violent conflict between the residents of Tharaka Nithi and Meru Counties, the residents of the latter county were not consulted on the creation and/or upgrading of the administrative units in the former county's side of the boundary.

54. In justifying their need to be consulted or involved in the public participation, the petitioners made reference to a moratorium issued in June, 2022 by the former Cabinet Secretary for Interior Dr. Fred Matiang'i on the creation of new administrative units around the disputed boundaries experiencing cross-border conflicts among them the Meru-Tharaka Nithi boundary. They stated that former CS for Interior justified the need for moratorium as to allow for adequate public participation, the need to avoid milking political capital out of the exercises and to avoid aggravating ethnic, clan and other potential disparities around the process.

55. On the other hand, the 1st to 6th respondents and the 4th to 9th interested parties render the involvement of the petitioners as inconsequential and unwarranted by dint that first, they are neither residents of Tharaka Nithi County nor are they situated in the impugned administrative units. It is their position that the newly created administrative units were already in existence with clear

demarcated boundaries and were simply upgraded in status to enhance service delivery.

56. It would follow that to settle whether the involvement of the petitioners in the public participation was paramount, it has to be established whether indeed they are bona fide stakeholders whose views are viable as among the most affected persons by the creation of the impugned administrative units.
57. Needless to reiterate, there is no single regime of public participation that can be prescribed, and the reasonable test to determine if public participation has been achieved or not is one of effectiveness.
58. For context, the 1st and 6th respondents and the 4th to 9th interested parties alluded that in compliance with Article 10 of the constitution sufficient public participation was undertaken in *Marimanti ward on 23rd January, 2023 for the establishment of Kibunga sub-location, in Mukothima ward on 24th January, 2023 on the creation of sub-units Uragate Division and Uragate Sub-location, in Chiakariga ward on the same day which culminated in the formation of Kithino location, and on 2nd August, 2024 a public participation meeting was held in Tharaka Sub-County CDF Hall, where the agreed issues was on the proposed division of Tharaka South Sub County in to two (2).*

59. I have perused the certified minutes on record and their commensurate attendance records, and I find them evidentiary satisfactory.

60. As for the petitioners, I have considered their annexed photostat excerpt of the media report by the Kenya Times on the moratorium issued in June, 2022 by the former Cabinet Secretary for Interior Dr. Fred Matiang'i. Respectfully, it does little to aid the petitioners' argument. In as much as the moratorium stayed the further creation of administrative units at the time owing to what he termed as politicization of boundary issues, he was quick to note that the issues required no politics as the boundaries were well defined in the Act (statute). He added that it was not in the place of administrators to deliberate upon issues touching on boundaries stating that the process works strictly according to the prescription of the Act. Simply put, that the creation and/or elevation of administration units are defined as per their respective boundaries in the Act.

61. The above is corroborated by the report by the "Taskforce on Delineation and Demarcation of the Greater Meru District Generally and Specifically the Boundary Between Tharaka and Tigania" (alias the Ogongo Commission/ Report) as produced by the petitioners on record, where in its findings it noted thus:

7.0 FINDINGS

1. The boundaries for present-day Greater Meru were drawn as early as 1962 during the time of the colonial government report of Kenya Constituencies Delimitation Commission...

2. The agitation amongst the AMERU that their boundaries extend beyond the official line (so as to include all their kith and kin) is both misleading and an illusion. Furthermore, the present settlement pattern renders such an arrangement untenable in the modern socio-political environment.

3. This whole area is now fully settled and various Ameru sub-tribes otherwise co-exist peacefully. It was noted that disputes amongst them coincide with electioneering periods or whenever they are incited by “warlords”. From evidence gathered it is clear that if politics were removed from the dispute, conflict in the area would be minimal.

...

7. The region as a whole is seriously under-developed, in terms of roads, health facilities, schools, water and sanitation to name just a few. The lack of reasonable infrastructure has a negative impact on crime control. Overall, there is a sense of marginalization in the region

which is prevalent in Igembe and Tigania but strongest in Tharaka.

8. Despite all the noise, it was established that both constituency and civic boundaries do not overlap. They have existed since 1997 and yet nobody has ever gone to court to challenge the existence of either constituencies or civic wards.

62. From the above, there is little to justify the need for involvement of the petitioners in the creation of the impugned administrative units. In fact, the petitioners' reliance on the cited "*Ogongo Commissions' report*" and the Moratorium by the Former CS Interior, inadvertently undermines their pursuits, reason being, what is apparent and deducible is that the purported disputes are otherwise instigated and fueled by politics whilst the agitation on boundaries is simply an illusion thwarted by already established official demarcations.

63. Therefore, the notion by the petitioners that the creation and gazettelement of the impugned administrative units by the Cabinet Secretary for Interior and National Administration was in breach of the moratorium issued by his predecessor is misguided. As the holder of the office, and in exercise of the powers conferred to him under the National Government Co-ordination Act, 2013 he was within his mandate to alter and/or review the previous position as deemed lawful and just.

64. Further, a cursory consideration of the petitioners' written submissions dated 30th July, 2025, specifically *on page 4 and 5*, under *paragraphs (ii), (vi), (viii)*, respectively shows that they consistently submitted that the purported *'undefined boundaries and overlap of administrative units and their jurisdiction were only "on the ground and not on paper"* and thereby decried that *"to ensure fairness and considerations the 2nd respondent ought to have created a similar number of administration units in Meru County at the said border."*

65. In my view, the above is a clear acknowledgment by the petitioners that the impugned administrative units as gazetted are factually within the official statutory boundaries and the purported overlaps are simply speculative and fictitious. Additionally, the petitioners call for comparative creation of similar administrative units on their side of the border smacks of an underlying disgruntled neighbor, who instead of using the right channels through their duly elected representatives to champion for a similar cause, opted to curtail their fellow neighbor's successes.

66. It is my firm understanding that the lawful and procedural creation of administrative units not only enhances co-ordination of the functions of government and service delivery, but more importantly grants the citizenry, who are otherwise marginalized, access to crucial government services, which is the hallmark of a devolved system of governance and one of the cornerstones of Kenya's Constitution.

- 67.** To this end, I am unable to find that the petitioners, being residents of Meru County, are bona fide stakeholders whose consultation and participation was paramount in so far as the creation of the impugned administrative units within Tharaka Nithi County is concerned.
- 68.** Accordingly, on the evidentiary account presented by the 1st to 6th respondents and corroborated by the 4th to 9th interested parties, I am satisfied that the 2nd respondent duly complied with Article 10 of the Constitution and thereby undertook sufficient and satisfactory public participation among the bona fide stakeholders prior to the creation of the impugned administrative units to wit its results attest to its efficacy.
- 69.** Ultimately, I find no fault in the Gazette Notices Nos. 1766 dated 14th February, 2024 and 15341 dated 22nd November, 2024 by the 2nd Respondent in so far as the creation of the impugned new administrative units herein is concerned.
- 70.** It is clear that in exercise of the powers conferred by section 14(1) of the National Government Co-ordination Act, 2013, the Cabinet Secretary for Interior and National Administration established the impugned administrative units as service delivery co-ordination units, within the confines of the law.
- 71.** The upshot of it all is that the petition cannot succeed.

Costs

52. The rule of thumb on costs is that costs follow the event. The rationale is to compensate the successful party for the time and trouble taken in presenting or defending the case. However, it is still established that the award on cost is at the discretion of the court, on a case-to-case basis.
53. As I had stated earlier, the matter raised herein constituted of issues of great public interest.
54. Rule 26(1) and (2) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms Practice and Procedure Rules 2013) provides as follows regarding costs: -

“26. (1) The award of costs is at the discretion of the Court.

(2) In exercising its discretion to award costs, the Court shall take appropriate measures to ensure that every person has access to the Court to determine their rights and fundamental freedoms.”

55. Further in ***John Harun Mwau & 3 Others vs Attorney General & 2 Others [2012] eKLR*** it was held that: -

“In matters concerning public interest litigation, a litigant who has brought proceedings to advance a

legitimate public interest and contributed to a proper understanding of the law in question without private gain should not be deterred from adopting a course that is beneficial to the public for fear of costs being imposed. Costs should therefore not be imposed on a party who has brought a case against the state but lost. Equally, there is no reason why the state should not be ordered to pay costs to a successful litigant. The court also retains its jurisdiction to impose costs as a sanction where the matter is frivolous, vexatious or an abuse of the court process.”

56. Guided by the above, I am of the view that any award of costs against the petitioners would be to discourage public spirited persons from approaching the courts for adjudication of public litigation matters.

57. For the foregoing reasons, I order that each party bears its own costs.

Disposition

58. I find that the petition dated 11th December, 2024, is devoid of merit for reasons stated hereinabove and the same is dismissed, with each party to bear its own costs.

59. In orbiter, I wish to say one last thing.

60. Despite my findings above, I wish to reiterate the clarion call made by Advocate for the 2nd interested party, that there is need for peace in the border between the two counties. Personal interests must be shelved by the political leaders of the two Counties, both at the national and county levels. They must remember that the boundaries set by the law are not akin to the infamous Berlin Wall, confining each community to one side of the structure. They must face the reality that there are members of the Meru Community living within Tharaka Nithi County. It goes without saying that there also members of the Tharaka Community living within Meru County. The clashes witnessed in the past will not cease unless the leaders shelve their political interests, sit together and embrace the needs of the people that they represent. Service delivery should not be a reason to divide the people. It should do the opposite. Whether one lives on either side of the boundary, he/she is a citizen of this country and is entitled to live in an open, peaceful and democratic society with aspirations that are set out in the preamble to our Constitution as follows;

“We, the people of Kenya—

**ACKNOWLEDGING the supremacy of the Almighty God of
all creation:**

**HONOURING those who heroically struggled to bring
freedom and justice to our land:**

PROUD of our ethnic, cultural and religious diversity, and
determined to live in peace and unity as one indivisible
sovereign nation:(Emphasis mine)

RESPECTFUL of the environment, which is our heritage,
and determined to
sustain it for the benefit of future generations:

COMMITTED to nurturing and protecting the well-being
of the individual, the family, communities and the
nation:

RECOGNISING the aspirations of all Kenyans for a
government based on the essential values of human
rights, equality, freedom, democracy, social justice and
the rule of law:

EXERCISING our sovereign and inalienable right to
determine the form of
governance of our country and having participated fully
in the making of this Constitution:

ADOPT, ENACT and give this Constitution to ourselves
and to our future
generations.

61. I say no more.

Dated, signed and delivered virtually at MERU this 31st day of
October, 2025.

A handwritten signature in black ink, appearing to read 'H.M. Nyaga', is written over a horizontal line.

H.M. NYAGA

JUDGE