

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ISIOLO**  
**CONSTITUTIONAL PETITION NO. E002 OF 2024**

**MBIRA SIME & 10  
OTHERS .....PETITIONERS**

VERSUS

**THE ATTORNEY  
GENERAL .....1<sup>ST</sup> RESPONDENT**

**THE CABINET SECRETARY FOR INTERIOR &  
NATIONAL COORDINATION .....2<sup>ND</sup>  
RESPONDENT**

AND

**THE INDEPENDENT ELECTORAL &  
BOUNDARIES COMMISSION .....1<sup>ST</sup>  
INTERESTED PARTY**

**COUNTY GOVERNMENT OF ISIOLO ...2<sup>ND</sup>  
INTERESTED PARTY**

**JUDGMENT**

1. The Petitioners herein seek orders as follows:

- a. **A DECLARATION DO ISSUE TO THAT** *the 2<sup>nd</sup> Respondent's decision contained in the Kenya Gazette Notice number Gazette Notice No. 15341 published in the Kenya Gazette Notice No. CXXVI - No. 203 of the 22<sup>nd</sup> November, 2024 purportedly creating ONASALAT SUB-LOCATION in Wajir County outside the its geographical boundaries which lies in*

*Isiolo County, Cherab Sub-County is illegal, unlawful, unconstitutional and consequently null and void ab initio.*

- b. A DECLARATION DO ISSUE THAT the 2<sup>nd</sup> respondent's decision contained in the Kenya Gazette Notice number CXXXV1 - No. 203 of 22<sup>nd</sup> November, 2024 purportedly creating ONASALAT SUB-LOCATION in Wajir County outside the its geographical boundaries which lies in Isiolo County, Cherab Sub-location violates the Petitioners Constitutional Rights 6, 10, 27, 47 and 38 of the Constitution of Kenya 2010.*
- c. AN ORDER OF JUDICIAL REVIEW DO ISSUE the 2<sup>nd</sup> Respondent's decision contained in Kenya Gazette Notice No. 1534 published in Kenya Gazette Notice No. CXXVI-NO. 203 of 22<sup>nd</sup> November, 2024.*
- d. AN ORDER OF PROHIBITION be and hereby issue and directed at the Respondents and in particular the 2<sup>nd</sup> Respondent jointly and severally either by themselves or their agents restraining them from implementing, effecting, operationalizing and/or action on decision contained in Gazette Notice No. 15341 published in Kenya Gazette Notice Volume CXXV1 - NO. 203 dated 22<sup>nd</sup> November, 2024 purportedly establishing ONASALAT SUB-LOCATION within HADADO SUBCOUNTY within Wajir County in the Republic of Kenya.*
- e. Compensation for violation of Constitutional rights and freedom.*
- f. Costs of the petition.*

*g. Such other relief as this Honourable Court may deem just, expedient, fit to equitable to grant.*

2. The eleven (11) Petitioners identify themselves as residents of Onsalat Sub-location of Dadacha Barasa Location, Cherab Sub-county within Isiolo County. The petition is brought against the Cabinet Secretary of Interior and National Coordination (The cabinet Secretary) and the Attorney General. The Independent Electoral and Boundaries Commission (IEBC) and County Government of Isiolo are interested parties.

### **The Petitioner's case**

3. The petitioners state that, contrary to the dictates of the Constitution, the 2<sup>nd</sup> Respondent has purportedly established Onsalat sub-location within Wajir County. That the establishment was made pursuant to Gazette Notice number 15341 published in Gazette Notice Number CXXV1-NO. 203 dated 22.11.2024.

4. It is stated that Onsalat Sub location has legally and historically been part of Isiolo County, within Merti Sub-county and consequently relocating it to Wajir County without the participation of persons affected mostly by it flies in the face of Constitutional tenets of fair Administrative action as enshrined in the Articles 10 and 47 of the Constitution. That the Act further violated Section 114 (1) of the National Government and Co-ordination Act , 2013 and the objects of devolution as set out under Article 174 ( C ).

5. It is argued that the relocation of Onasalat Sublocation to Wajir County was done without the historical, geographical and legal consideration. That the relocation would mean that the residents of

Merti Sub County will have to travel to Wajir to access basic Services like Birth Certificates, Burial permits and National Identity cards. That the Respondent action will be inimical to the principle of Devolved Government which include *ineralia* , the provision of proximate , easily accessible services throughout Kenya.

6. It is stated that the distance between Merti as an Administrative unit of Onsalat Sublocation to wajir is 306 kilometers; that it will take the petitioners 6 hours by road and 68 hours by foot to reach Wajir for such basic services as aforesaid. It is further stated that Onsalat Sublocation falls within the Geographical boundaries of Isiolo District as established by the Districts and Provinces Act. No. 105 A of the 1995, thereby falling under Cherab Ward in present day Isiolo County. That was prior to the enactment of National Government Coordination Act 2003.
7. The Petitioners further stated that having registered as voters within Isiolo County the relocation will interfere with their political rights as enshrined in Article 38 of the Constitution. It is stated that the relocation was done without public participation transparency, accountability and openness contrary to Article 10 of the Constitution.
8. It is further stated that the relocation contravenes Article 6(3) of the Constitution which requires a National State organ to ensure reasonable access to its service. That the decision, if made, would contravene the principles of separation of powers as enshrined under Article 6 of the Constitution as read with part 2 of the 4<sup>th</sup> schedule to the Constitution. That it amounts to usurpation of powers of the

independent commissions to be set up by parliament in accordance with Article 188(1) of the Constitution for purposes of altering boundaries of a county, and those of the 1<sup>st</sup> interested party under Article 89(3) who is mandated to review , boundaries of a county. It is finally stated that the action of the 2<sup>nd</sup> Respondent violated the following Article of the Constitution: Article 10 on National values and principles of governance; that it interfered with the engagement of their fundamental rights under Article 19 ; failure to apply and interpret the Constitution in a manner that serves public interest contrary to Article 20(1); that decision was made without being given access to information appertaining to it, contrary to Article 35 of the Constitution; that the decision subjected them to discrimination, contrary to Article 27; that they were denied the benefit of Fair Administrative Act as enshrined under Article 47, and finally , the violation of their political Rights under Article 38.

### **The 1<sup>st</sup> interested party's case**

- 9.** Through the affidavit of the manager in charge of the **Electoral Boundaries**, the 1<sup>st</sup> interested party states that its mandate is limited to delimitation of political /electoral boundaries . That it has no role in declaration of Administrative Boundaries as the latter delimitation, falls under the exclusive mandate of the 2<sup>nd</sup> Respondent.
- 10.** The other parties did not respond to the petition. The hearing of the proceeded by way of written submissions.

### **Petitioner's submissions**

11. It is the petitioners' submissions that the Respondents have failed to demonstrate there was any public participation conducted before the impugned decision was made.
12. The petitioners have further highlighted the indispensable nature of public participation. In this regard they have relied on a number of past decisions. Among the decisions cited are : the decision in the South Africa Case of ***Doctors for life International Versus Speaker of National Assembly & others (2006) EACC*** and Kenya Supreme Court decision in ***British American Tobacco (K) Ltd Vs Cabinet Secretary Vs. Cabinet Secretary Ministry of Health & 2 others (2019) KESC 15 (KLR)***.
13. The Petitioners have further referred the court to two other previous decisions of the High Court in which, for want of public participation, the courts nullified relocation of Administrative boundaries in Garissa and Narok County Respectively.
14. It is finally submitted that in the circumstances of this case, the petitioners are deserving of the award of costs.
15. The 1<sup>st</sup> interested party did not file any submissions.

### **Analysis and determination**

16. I have identified the following issues for determination.
  - a. *Does the 2<sup>nd</sup> Respondent have the mandate to establish or relocate the Administrative boundaries.*

*b. If in the affirmative, was there sufficient public participation prior to the relocation of Onsalat Sub location.*

*The Mandate of the 2<sup>nd</sup> Respondent to set up Administrative Boundaries*

17. **Section 4(1) of the National Government Co-ordination Act** confers the Cabinet Secretary in charge of the Interior and National co-ordination( The cabinet secretary), to establish Administrative units, with the approval of the president. Though not expressly stated it follows that the mandate extends to relocation of the Administrative units. The 2<sup>nd</sup> respondent was therefore exercising powers bestowed upon him by the law.
18. The Petitioner has argued that in relocating Onsalat to Wajir County, the 2<sup>nd</sup> Respondent usurped the powers of the 1<sup>st</sup> and 2<sup>nd</sup> interested parties namely the Independent Electoral Boundaries Commission (IEBC) and the County Government of Isiolo.(CGI)
19. In respect to the 1<sup>st</sup> interested Party, under Article 88(4) ( C ) and 89, of the constitution, the work of delimitation of constituencies and wards for electoral purposes is their exclusive mandate. Thus the delimitation by the 2<sup>nd</sup> Respondent and the 1<sup>st</sup> interested party serve different purposes. There is no conflict or usurpation of any party's mandate.
20. On the 2<sup>nd</sup> interested party, section48 (1) ( e ) of the County Government Act, gives the powers to a county Government to decentralize its services by creation of small service delivery units throughout

the county. However under section 14(3) of the **National Government Co-ordination Act** the National Government can establish its own service delivery units where a County Government has not decentralized .There was no evidence that the County Government of Isiolo had established a delivery unit at onsalat sub- location that has now resulted in two parallel service delivery points.

21. In the circumstances I am satisfied that in relocating Onsalat Sub-location the 2<sup>nd</sup> Respondent was exercising its mandate and which mandate did not usurp the powers of the 1<sup>st</sup> interested parties or interfered with the working of the 2<sup>nd</sup> interested party.

22. On the alleged infringement of Article 188 (1), it is the finding of this court that there was no such infringement . The article speaks about the alteration of the boundaries of a county, not sub- units . If the boundaries of a county have to be altered , it has to be by a commission set up for that purpose, and must pass through the approval of the National Assembly and the senate.

#### *Public participation*

23. Under Article 10 of the constitution, Public participation is one of the National Values and Principles of Governance.

24. The Supreme Court of Kenya has declared the concept as a living constitutional principle that goes to the constitutional tenet of the sovereignty of the people. The court then went on to establish the threshold of public participation. This was in the case of **British American Tobacco Kenya, PLC v**

**Cabinet Secretary for the Ministry of Health & 2 others** [2019] KESC 15 (KLR), where the court held:

*“..... In line with the court’s mandate under section 3 of the Supreme Court Act, the following are the guiding principles for public participation:*

- 1. As a constitutional principle under article 10(2) of the Constitution, public participation applied to all aspects of governance.*
- 2. The public officer and/or entity charged with the performance of a particular duty bore the onus of ensuring and facilitating public participation.*
- 3. The lack of a prescribed legal framework for public participation was no excuse for not conducting public participation; the onus was on the public entity to give effect to the constitutional principle using reasonable means.*
- 4. Public participation had to be real and not illusory. It was not a cosmetic, public relations act or a mere formality to be undertaken as a matter of course just to ‘fulfill’ a constitutional requirement. There was need for both quantitative and qualitative components in public participation.*
- 5. Public participation was not an abstract notion; it must be purposive and meaningful.*
- 6. Public participation had to be accompanied by reasonable notice and reasonable opportunity. Reasonableness could be determined on a case to case basis.*

7. *Public participation was not necessarily a process consisting of oral hearings, written submissions could also be made. The fact that someone was not heard was not enough to annul the process.*

8. *Allegations of lack of public participation did not automatically vitiate the process. The allegations had to be considered within the peculiar circumstances of each case: the mode, degree, scope and extent of public participation was to be determined on a case to case basis."*

**25.** The Court of Appeal spoke to the purpose of public participation in the case of **Legal Advice Centre & 2 others v County Government of Mombasa & 4 others [2018] KECA 381 (KLR)**

where it held as follows: -

*"The purpose of permitting public participation in the law-making process is to afford the public the opportunity to influence the decision of the law-makers. This requires the law-makers to consider the representations made and thereafter make an informed decision. Law-makers must provide opportunities for the public to be involved in meaningful ways, to listen to their concerns, values, and preferences, and to consider these in shaping their decisions and policies. Were it to be otherwise, the duty to facilitate public participation would have no meaning."*

26. In brief, pursuant to Article 10 as aforesaid and Article 1 of the constitution which recognizes the sovereignty of the people, it is evident that both levels of Government, and all public institutions must

involve the public in all the decisions that affect them.

27. The petitioners have demonstrated that the impugned decision was going to affect them and other residents of onsalat sub- location. It was asserted ,and there has been no rebuttal to the assertion that the residents of Onasalat sublocation were not consulted on the relocation. They would have to travel long distance in order to procure documents like birth certificates ,death certificates as well as other government services , from Wajir, a distance of more than 300 kilometers from Onsalat location.

28. It was evident therefore, to the cabinet secretary , that the decision was going to directly affect people of Onsalat sublocation. They ought to have had a say on the relocation.

29. I am satisfied that the petitioners have demonstrated that there was no public participation . The 2<sup>nd</sup> Respondent action was a violation of Article 1 on the sovereignty of the people, Article 10 on National Values and Principles of Governance and Article 47 on the Fair Administrative Action

30. In conclusion, the petition succeeds and the following orders are hereby issued:

a. A declaration is hereby issued that the decision of the 2<sup>nd</sup> Respondent conveyed through the Gazette Notice Number 15341 published in Kenya Notice number CXXVI - No. 2038 published on 22<sup>nd</sup> November, 2024 relocating Onsalat Sub-location to Wajir County is unconstitutional/null and void for constituting a violation of Articles 1, 10, and 47 of the Constitution.

- b. The Court therefore quashes only the part of the Gazette Notice number 15341 which places Onsalat sublocation in Wajir County.
- c. For avoidance of doubt all other parts of Gazette notice number 15341, remain undisturbed.
- d. Any other orders sought, but have not been expressly granted are deemed to have been denied.
- e. This being a public interest litigation each party to meet their own costs.

Dated , signed and delivered at Isiolo this 3<sup>rd</sup> day of December 2025.

S. Chirchir  
Judge.

In the presence of:  
Roba Katelo- court Assistant