



**Abdi & another v Cabinet Secretary for Interior and National Administration & 3 others
(Constitutional Petition E020 of 2024) [2026] KEHC 2807 (KLR) (27 February 2026) (Judgment)**

Neutral citation: [2026] KEHC 2807 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CONSTITUTIONAL PETITION E020 OF 2024**

JN ONYIEGO, J

FEBRUARY 27, 2026

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

AND

**IN THE MATTER OF THE NATIONAL
GOVERNMENT CO- ORDINATION ACT, SECTION 14**

AND

**IN THE MATTER OF VIOLATION AND ABROGATION OF THE CONSTITUTION OF
KENYA UNDER ARTICLES 1,2,6(3),10,11(1),19,20,21,23,24,27,47,73(1),153 AND 154**

BETWEEN

HUSSEIN DAUD ABDI 1ST PETITIONER

HASSAN ISSA MOHAMED 2ND PETITIONER

AND

**THE CABINET SECRETARY FOR INTERIOR AND NATIONAL
ADMINISTRATION 1ST RESPONDENT**

THE HON ATTORNEY GENERAL 2ND RESPONDENT

AND

HON IBRAHIM ABDI SANEY 1ST INTERESTED PARTY

AHMED IBRAHIM IDO 2ND INTERESTED PARTY

JUDGMENT

1. The petitioners moved this court via a petition dated 06.12.2024 seeking for orders that:



- i. A declaration that the respondents' act of illegally establishing Luqe Location and Luqe sub – location as part of administrative unit in Buna Sub – County is a violation of article 10, 27, 28, 47 and 63 of *the constitution*.
 - ii. A declaration that the establishment of Luqe Location and Luqe sub – location as part of administrative unit in Buna Sub – County vide Gazette Notice No. 15341 dated 22.11.2024 was conducted without any public participation.
 - iii. An order of certiorari to remove into this Honourable Court and quash Gazette Notice No. 15341 of 22.11.2024 published in Nairobi in Kenya Gazette Vol. CXXVI – No. 203 in so far as the same relates to the creation of the proposed Luqe Location and Luqe sub – location in Buna Sub – County.
 - iv. An order of prohibition prohibiting the respondents from illegally establishing the proposed Luqe Location and Luqe sub – location in Buna Sub – County.
 - v. A declaration that Luqe is a grazing land located within the boundaries of Tarbaj sub – County in Wajir county.
 - vi. Cost of this petition.
2. The petition is grounded on facts apparent on its face and further supported by the 1st petitioner's affidavit sworn on his own behalf and that of the 2nd petitioner on 6012-2024. It was deposed that on 22.11.2024, the 1st respondent, through Gazette Notice No. 15341, established Luqe Location and Luqe Sub-Location as administrative units within Buna Sub-County. According to the petitioners, the Gazette Notice sought to reorganize and recreate boundaries between two sub-counties by moving Luqe to Buna Sub-County, despite the fact that geographically it lay within Tarbaj Sub-County.
 3. They averred that in February 2018, the community residing in Sarman Ward convened a meeting and resolved to declare and reserve Luqe area as a grazing land for the community. It was further averred that the establishment of Luqe Location and Luqe Sub-Location as part of Buna Sub-County was unlawful and contrary to section 14(2) and (4) of the National Government and Co-ordination Act, since Luqe constituted community grazing land within the boundaries of Sarman Ward in Tarbaj Sub-County.
 4. The petitioners stated that the impugned Gazette Notice had been issued without any consultation with the community or the persons affected nor adherence to proper procedure or due process. They stated that the publication of the Gazette Notice had already led to tension and was likely to cause further unnecessary conflict among the communities living in both Tarbaj and Buna Sub-Counties.
 5. The petitioners averred that Luqe area was a grazing land for the communities in Tarbaj Sub-County and therefore contended that the Gazette Notice amounted to economic sabotage. They stated that the community depended entirely on livestock grazing, and that depriving them of this land—their sole source of livelihood—was a violation of their human dignity. They further asserted that unless the Court intervened to restrain the respondent's arbitrary and whimsical actions, it was incumbent upon the Court to uphold the principles of good governance and the rule of law by allowing the suit.
 6. In a further affidavit sworn on 19.11.2025, the 1st petitioner deposed that the creation of Luqe Location and Luqe Sub-Location as administrative units within Buna Sub-County was both illegal and erroneous. He stated that Luqe was geographically part of Sarman Ward in Tarbaj Sub-County and therefore could not properly fall under Buna Sub-County. He added that the alleged public



- participation process was inadequate, noting that Basanencha Primary School, which had been cited in the supporting documents, was located within Tarbaj Sub-County and not Buna Sub-County.
7. It was further pointed out that the said school was situated about thirty kilometers away from Luqe, the area the respondents intended to designate as a location and sub-location. It was also alleged that when stakeholders from Tarbaj Sub-County attempted to attend the purported public participation exercise, they were prevented from doing so, subjected to violence, and assaulted in order to stop them from expressing their views.
 8. It was urged that despite the attempts to exclude residents and stakeholders from the public participation process, they had nonetheless presented their reports and submissions opposing the establishment of Luqe Location and Sub-Location. They explained that their opposition was based on the fact that Luqe was geographically part of Sarman Ward in Tarbaj Sub-County and not within Buna Sub-County.
 9. The 2nd respondent, through Counsel Opio Immaculate, filed grounds of opposition dated 31.10.2025 to challenge the petition. Counsel opined that the creation, alteration or reorganization of administrative and sub-administrative units was a function of the National Government, exercised through the Cabinet Secretary for Interior under sections 14 and 15 of the National Government Coordination Act, 2013, read together with the County Government Act, 2012. It was argued that the petition raised matters that were administrative and policy-oriented, falling within the executive discretion of the first respondent under the National Government Coordination Act, 2013, rather than constitutional questions that would justify the court's jurisdiction under Articles 22 and 258 of *the Constitution*. Counsel further stated that the decision to establish Luqe Location and Luqe Sub-Location was within the lawful mandate of the first respondent and therefore not justiciable unless it was shown that the respondents had acted outside their powers, which the petitioners had not demonstrated.
 10. Additionally, Counsel Opio further argued that the petition offended the principles established in the case of Annarita Karimi Njeru vs Republic [1979] KLR 154, which require constitutional violations to be pleaded with precision. Learned Counsel opined that such pleadings must specify the exact constitutional provisions said to have been infringed, the manner in which the infringement occurred, and the connection between the respondents' actions and the alleged violations. It was stated that the petition before the court merely advanced broad and generalized claims of violations of Articles 10, 47, and 63 of *the Constitution*, without showing how or to what extent the respondents' administrative actions had infringed any identifiable rights or freedoms of the petitioners or the community they represented.
 11. It was contended that the petitioners did not produce any evidence – cartographic, legal or administrative – to show that Luqe is within Tarbaj Sub – County or that the gazetted change deprives them of land or rights in any legally recognized manner. That public participation was conducted through the county Commissioner's office and local leadership prior to the publication of the Gazette Notice, satisfying the threshold of reasonableness and adequacy under article 10 and the jurisprudence advanced in the case of Robert N. Gakuru vs Governor Kiambu County [2014] eKLR.
 12. Counsel urged that the petitioners' claims of tension, conflict and economic sabotage were speculative, conjectural and unsubstantiated. To reinforce this position, reliance was placed on the case of Trusted Society of Human Rights Alliance vs Mumo Matemu [2014] eKLR, where the court held that constitutional reliefs could not be granted merely on the basis of fear or anticipation without empirical evidence of violation or imminent threat. Counsel maintained that the reliefs sought were unavailable and unmerited, since orders of certiorari and prohibition could not be issued against a lawful exercise



- of discretion under statute unless it was shown to be ultra vires, irrational, or procedurally unfair—none of which had been demonstrated in the present matter.
13. That the public interest outweighed any private or perceived grievances raised by the petitioners and their community. It was urged that, for this reason, the court should not interfere with executive discretion where such discretion had been exercised in good faith and in accordance with the law.
 14. The 1st interested party on his own behalf and that of the second interested party filed a replying affidavit sworn on 25.10.2025 deposing that the petition is misconceived, misleading and devoid of any factual or legal basis capable of attracting the intervention of this Honourable Court. That the legal effect of Gazette Notice No. 15341 of 22.11.2024 which was issued by the 1st respondent pursuant to the lawful authority under section 14 of the National Government Coordination Act was for purposes of improving administrative coordination and delivery of public service. That any attempts to challenge the same on the basis of alleged lack of public participation and boundary alteration are misconceived and contrary to the express provisions of the law.
 15. That it is a matter of record that in constitutional petition No. E019 of 2024, this Honourable Court directed that before any administrative reorganization within Wajir County was undertaken, a fresh and inclusive public participation process had to be carried out. He stated that, in full compliance with this order, the first respondent conducted a comprehensive and transparent exercise that involved all the affected communities.
 16. That following the said order, the Ministry of Interior, through the County Commissioner's office, issued public notices inviting residents from the affected sub counties to participate in consultations. That these notices were distributed through local radio stations, chief's offices, mosques and public notice boards. He averred that notices were translated into both English and vernacular languages to ensure that every resident had a fair opportunity to understand and contribute. According to him, public participation was held across Buna Sub county and surrounding areas during which community elders, women, women representatives, youth groups and local administrators attended and expressed their views.
 17. It was averred that public participation does not obligate one to seek the input of all persons affected by the decision but rather only a substantial amount that reflect the general views of the public which threshold has been met in the instant case. That the test is whether the public had a reasonable opportunity to know about the process and to express their views. According to him, the public forums conducted in Wajir county were participatory, well publicized and inclusive and therefore, the petitioner's mere dissatisfaction with the outcome cannot transform into a constitutional violation.
 18. That the creation of administrative units does not in any way alter constitutional or statutory boundaries. That the foregoing is anchored on article 89(3) and (5) of *the constitution* which provides that the authority to review, delimit or alter boundaries lies solely with the Independent Electoral Boundaries Commission. It was urged that the petitioners did not provide any cartographic evidence, official map or documentation from the Survey of Kenya or IEBC to demonstrate the exact boundary they allege has been interfered with. That the claims herein are simply speculative and incredible.
 19. Additionally, that the rationale behind such administrative organization is to ensure that all citizens, irrespective of their geographic or socio-economic circumstances are able to access public administration, security, registration and development services without undue hardship. In the end, this court was urged to find that the petition herein is an abuse of the court process and thus ought to be dismissed.
 20. The petition was canvassed by way of written submissions.



Petitioners' submissions.

21. The petitioners in their submissions dated 17.11.2025 urged that the 1st respondent's decision did not allow any meaningful participation and neither did it give reasons for the relocation of Luqe Location and Sub Location to another sub County and therefore, the same is unconstitutional and unprocedural. Reliance to support the forgoing was placed on the case of British American Tobacco Kenya, PLC vs Cabinet Secretary for the Ministry of Health and 2 Others, where the Supreme Court established that, the Public participation must be accompanied by reasonable notice and reasonable opportunity and reasonableness will be determined on a case to case basis. The court also proceeded to state that allegations of lack of public participation does not automatically vitiate the process. That allegations must be considered within the peculiar circumstances of each case hence the mode, degree, scope and public participation is to be determined on a case to case basis.
22. That the relocation of the sub location is a public venture and the same ought to involve the residents of the affected areas. It was urged that the decision affects the public and more particularly, those residing in the affected location. That the decision to restructure the boundaries of the two sub counties was ultra vires and further, the same offends the statutory provisions of the National Coordination Act and the petitioners' rights to fair administrative action and legitimate expectation. In the end, this court was urged to find that the petitioners had proved their case and as such, this Honourable Court should allow the petition.

Respondents' submissions.

23. The respondents' filed submissions dated 11.12.2025 wherein it was urged that challenging the Gazette Notice No. 15341 of 22.11.2024 was unfounded. It was contended that the establishment of Luqe Location and Sub-location within Buna Sub-County was a lawful exercise of executive authority under Section 14(1) of the National Government Coordination Act, which empowers the Cabinet Secretary to create or alter administrative units without requiring county concurrence. They emphasized that this was a policy decision aimed at improving service delivery, security, and administration, and not a constitutional matter.
24. They contended that the Petitioners had failed to demonstrate any violation of Articles 10, 47, or 63 of *the Constitution*. According to them, Article 10 must be applied contextually and the creation of new units actually promoted equity and good governance. They further argued that Article 47 did not apply because the establishment of administrative units was a high-level policy action, not an individualized administrative decision requiring personal notice. On Article 63, they maintained that administrative boundaries did not affect land ownership and the Petitioners had not provided evidence of dispossession or community land records.
25. The Respondents further contended that adequate public participation had been conducted. They pointed to consultations held on 26.06.2025 at Basinecha Primary School, involving local chiefs, elders and community members from various locations, with affidavits and identity cards annexed to prove attendance. They argued that public participation does not require unanimity but only reasonable opportunity for input, which had been satisfied.
26. Finally, they submitted that the Petitioners were not entitled to the reliefs sought. That Orders of Certiorari or Prohibition could not lie against a lawful, completed action carried out within statutory mandate. They described the grievances as political rather than legal, lacking evidence of harm or rights violation. That Public interest, they said, favored retaining the new administrative units, which enhanced government presence, cohesion and efficiency. They therefore prayed that the Court dismiss the Petition with costs and uphold the Gazette Notice.



Interested parties' submissions.

27. The interested party filed submissions dated 19.11.2025 basically reiterating the position of the respondents. They opposed the petition by arguing that the creation of Luqe location and Luqe sub-location was lawful and properly conducted. It was stated that public participation had been carried out both before and after the gazette, in compliance with a prior court order. That notices were disseminated widely through local radio, mosques, chiefs' offices and translated into vernacular languages to ensure inclusivity. It was emphasized that elders, women, youth groups and administrators attended, with minutes and attendance registers prepared, and that the process was peaceful. The interested parties dismissed claims of violence and argued that unsigned documents presented by the petitioners lacked authenticity.
28. On the issue of boundaries, they maintained that the creation of the administrative units did not alter or interfere with sub-county boundaries, noting that only the Independent Electoral and Boundaries Commission has the constitutional mandate to review boundaries. They argued that chiefs have no authority to delineate boundaries and that the petitioners had failed to provide maps or evidence to support their claims. That the impugned units established under Section 14 of the National Government Coordination Act were geared towards improving service delivery and governance at the grassroots.
29. Regarding grazing zones, the Interested Parties contended that the creation of administrative units did not dispossess communities of land or undermine grazing rights. They argued that the units were meant to coexist with existing land use and that community members had considered conservation and grazing issues during public participation. They acknowledged elders' declarations reserving Luqe as grazing land but insisted such declarations could not override statutory and constitutional decisions. They concluded that the petitioners' fears of conflict were unfounded.
30. In summary, the Interested Parties urged the court to dismiss the petition, asserting that the Gazette Notice was lawful, public participation was meaningful, boundaries were not altered and grazing rights were not infringed. They maintained that the petition lacked merit and that dismissing it would protect the constitutional rights of residents.

Analysis and determination.

31. I have considered the petition herein, the responses by the respondents and the respective submissions. In my view, the issues calling for determination are:
 - i. Whether the respondents conducted public participation before creating the impugned units.
 - ii. Whether the petitioners herein have made a case for grant of the orders sought.
32. The crux of the petition herein is the creation and relocation of the impugned administrative units outside their Tarbaj sub-county to Buna Sub-county without public participation.
33. The National Government Coordination Act 2013 was passed to establish 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*. The procedure for the creation of administrative units is provided for under Section 14 of the National Government Coordination Act which provides as follows:

“Service delivery co-ordination units.



- (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 coordination units, the Cabinet Secretary shall accord and respect the county government decentralized units established under section 48 of the County Government Act.
- (3) Where a county government has not decentralised its units pursuant to section 48(1)(e) of the County Government Act, 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 constituencies, locations and sub locations 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.”

34. Section 14 of the National Government Coordination Act grants the 1st respondent authority, with the President’s approval and through a notice in the Kenya Gazette, to establish national government service delivery coordination units. Section 14(4) further stipulates that all locations and sub-locations existing prior to the commencement of the Act shall continue to function as national government service delivery units.
35. It follows that the alteration or establishment of administrative boundaries by the 1st respondent cannot be regarded as a mere internal operational matter. Rather, it constitutes an executive decision made in the exercise of executive authority, and is therefore subject to regulation under both the law and *the Constitution*.
36. On matters of public participation, the High Court in Robert N. Gakuru & Others vs Governor Kiambu County & 3 Others (supra) while referring to the South African decision in Doctors for Life International vs Speaker of the National Assembly & Others (CCT12/05) [2006] ZACC 11; 2006 (12) BCLR 1399 (cc); 2006(6) SA 416 (CC) adopted the following definition of public participation: -

“According to their plain and ordinary meaning, the words public involvement or public participation refers to the process by which the public participates in something. Facilitation of public involvement in the legislative process, therefore, means taking steps to ensure that the public participate in the legislative process”.
37. Articles 118 (1) (b) and 196 (1) (b) of *the Constitution* guides the national and county legislatures to respectively facilitate public participation. The same is further guaranteed by article 10, 27, 33, 35 and 119 of *the Constitution* of Kenya, 2010.
38. It therefore follows that the right to public participation is intended to ensure that office holders are enriched with the perspectives of those most directly affected by a policy or decision. However, it was emphasized that public participation does not require every individual to give their views, as this would be impracticable. Instead, there must be clear evidence of intentional inclusivity in the participation process, reflecting the principle that those most affected by a policy, legislation, or action should have



a greater say and that their views should be deliberately sought and taken into account. [Also See Mui Coal Basin Local Community & 15 Others vs Permanent Secretary Ministry of Energy & 17 Others (2015) eKLR].

39. Noting that the petitioners have alleged that the 1st respondent erred in creating the service delivery unit, it goes without saying that he who alleges must prove. Section 107 (1) of the *Evidence Act*, Cap 80 Laws of Kenya, provides that:-

‘Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist’.

40. In the case of *Anne Wambui Ndiritu vs Joseph Kiprono Ropkoi & Another* [2005] 1 EA 334, the Court of Appeal held that: -

‘As a general proposition under Section 107 (1) of the *Evidence Act*, Cap 80, the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. There is however the evidential burden that is case upon any party the burden of proving any particular fact which he desires the court to believe in its existence which is captured in Sections 109 and 112 of the Act’.

41. The above notwithstanding, Petition No. E031 of 2024 as consolidated with Petition No. E032 & E033 of 2024, the Supreme Court while relying on a decision by the Constitutional Court of South Africa in *Mogale and Others vs Speaker of the National Assembly and Others* (CCT 73/22) [2023] ZACC 14 at paragraph 37, stated that there are three factors that ought to be considered in determining whether the process adopted by a duty bearer in facilitating public participation was reasonable. The Court held thus:

“In determining whether conduct has been reasonable in the context of public participation the following factors are of particular importance:

- a) What Parliament itself has determined is reasonable, and how it has decided it will facilitate public involvement;
- b) The importance of the legislation and its impact on the public; and
- c) Time constraints on the passage of a particular bill, and the potential expense.” [Emphasis added]

[Also see Petition No. E031 of 2024 as consolidated with Petition No. E032 & E033 of 2024 of the Supreme Court of Kenya].

42. The court, taking the foregoing into account, the question that it seeks to answer is whether in the creation of Luqe location and Luqe Sub – location as administrative units in Buna Sub County, the same was done inter alia without public participation?

43. The petitioners urged the creation of Luqe Location and Luqe Sub-Location within Buna Sub-County was illegal and erroneous, since Luqe geographically belonged to Sarman Ward in Tarbaj Sub-County. It was contended that the public participation process was inadequate, noting that the school cited in support was far from Luqe and outside Buna Sub-County. It was further averred that stakeholders from Tarbaj Sub-County were prevented from attending the exercise and were subjected to violence to stop them from expressing their views. Arguably, that the actions of the 1st respondent have since created tension in the area.



44. Before taking a further step, my understanding of the averment by the petitioners as enumerated above is that indeed, public participation was carried out but the same was inadequate. To avert the allegations by the petitioners, the respondents urged that adequate public participation had taken place, citing consultations on 26.06.2025 at Basinecha Primary School with chiefs, elders, and community members, supported by affidavits and identity cards to prove attendance. They emphasized that public participation requires only a reasonable opportunity for input, not unanimity. According to them, the yard stick for public participation was met.
45. From the evidence adduced by the petitioners, it was not convincing that the creation of the administrative units had been created without public participation only but also the same according to them was not satisfactory. According to them, all stakeholders were not involved.
46. The allegation that the creation of the said administrative units has since caused tension was not convincing to say the least. The annexed letter from the chairman Tarbaj Community Land and other annexures demonstrated a not so pleased people from the Tarbaj sub county petitioning against buna sub county residents who had allegedly encroached their land. In my view, there was no nexus in relation to the alleged encroached land and the creation of the delivery units by the government.
47. There is nothing like no man's land. Grazing land must geographically belong to a given unit and what matters is sharing certain natural resources like water regardless where one comes from. It is worth nothing that there should not be any confusion between electoral boundaries delimitation which is the role of IEBC under Article 89 of *the constitution* and creation of administrative units under the *national Government co-ordination Act*. See member of parliament Balambala Constituency v Abdi & 7others (petition21(E03) of 2020)(2023)KESC(KLR)(16 June 2023)(Judgment) where the court supreme court held;
78. Section 14 of the National Government Coordination Act therefore expressly authorizes the 2nd respondent with the approval of the President, and through a notice in the Kenya Gazette to establish national government service delivery coordination units. Section 14(4) specifically provides that locations and sub locations in existence before the commencement of the National Government Coordination Act shall continue to exist as national government service delivery units.
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*”
48. From the above holding, the power to create administrative units cannot be taken away from the 1st respondent as long as proper procedure is followed among them consultation through adequate public participation.
49. I am alive to the fact that in conducting public participation, it is more to the quality and not the quantity and I say so for the reason that in conducting public participation, not all stakeholder's views are required as the same is practically impossible. In fact, the same should be a reasonable opportunity for input, not unanimity. Additionally, it is my belief that in letting the units stand, the same shall enable service delivery closer to the people who for the longest, have travelled long distance(s) to realize government services.



50. From the evidence adduced by the respondents and interested parties and which is not disputed by the petitioners, public participation was conducted. The fact that there was some dissent from some class of people does not render the exercise inadequate. Not everybody must be satisfied. The evidence tendered is satisfactory for purposes of creation of the administrative units which is in the public interest of the affected communities.
51. From the facts herein, the petitioners in my view did not demonstrate that public participation was not conducted in creating the new administrative units and as such, the petition herein is dismissed for want of merit with no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 27TH DAY OF FEBRUARY 2026

J.N.ONYIEGO

JUDGE

