



REPUBLIC OF KENYA



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**Kano & another v Cabinet Secretary Ministry of Interior & Co-ordination
& another; Saney & 3 others (Interested Parties) (Constitutional Petition
E019 of 2024) [2025] KEHC 5550 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5550 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CONSTITUTIONAL PETITION E019 OF 2024**

JN ONYIEGO, J

APRIL 30, 2025

**IN THE MATTER OF ARTICLES
1,2,3,10(2),20,21,22,23,118,189(1) OF THE CONSTITUTION**

AND

**IN THE MATTER OF CONTRAVENTION OF ARTICLES
1,10,11,19(2),44 AND 56 OF THE CONSTITUTION**

AND

IN THE MATTER OF ARTICLES 165(3) (D)(II) OF THE CONSTITUTION

AND

IN THE MATTER OF BREACH OF THE RIGHT TO FAIR ADMINISTRATION ACT

AND

IN THE MATTER OF NATIONAL GOVERNMENT COORDINATION ACT 2013

BETWEEN

MOHAMED ABDOW KANO 1ST PETITIONER

AHMED ABDI ALI 2ND PETITIONER

AND

**CABINET SECRETARY MINISTRY OF INTERIOR & CO-
ORDINATION 1ST RESPONDENT**

THE ATTORNEY GENERAL 2ND RESPONDENT



AND

HON IBRAHIM ABDI SANEY INTERESTED PARTY
IBRAHIM HASSAN ISSACK INTERESTED PARTY
ABDIHAKIM ABDIKADIR SAMO INTERESTED PARTY
HASSAN MAHAMED AHMED INTERESTED PARTY

JUDGMENT

1. The petitioners approached this court via a petition dated 04.12.2024 seeking orders that:
 - a. A declaration that the establishment of the new administrative units namely Wajir North Sub County Location Qafole, Watiti dini, Karadusa, Danaba North and Sub Location Welmura, Danabe North, Fargadud and Medina. Buna Sub County division Makalgufu, Location Detacgdera, Suraya, Luqe, sub location Detachdera, Luqe and Bero vide Gazette Notice Number 15341 Vol. CXXVI No. 203 of 22.11.2024 was conducted without any or adequate public participation.
 - b. A declaration that there was no public participation resulting in recommendations for the creation of the impugned administrative units.
 - c. A declaration that the entities purportedly created and described as ‘divisions’ are not known to law and there is no legal basis for their creation.
 - d. A declaration that the boundaries for those units have not been identified and demarcated vis a vis existing electoral boundaries.
 - e. An order of certiorari to issue bringing into this court and quashing Gazete Notice Number 15341 Vol. CXXVI No. 203 of 22.11.2024 establishing the impugned administrative units and addresses to all regional commissioners operationalizing the impugned new administrative units namely: Wajir North Sub County Location Qafole, Watiti dini, Karaduse, Danaba North and Sub Location Welmura, Danabe North, Fargadud and Medina. Buna Sub County division Makalgufu, Location Detacgdera, Suraya, Luqe, sub location Detachdera, Luqe and Bero.
 - f. Costs of the petition.
2. The petition is anchored on the fact that on or about 22.11.2024, the 1st respondent while exercising his mandate as the cabinet secretary for the Ministry of Interior and National Co-ordination vide Gazette Notice No. 15341 Vol. CXXVI No. 203 of 22.11.2024 established new administrative units as service delivery co-ordination units as follows: Wajir North Sub County Location Qafole, Watiti Dini, Karuduse, Danaba North, Sub Location Welmura, Fargadud and Medina, Bero Sub Location in Buna Sub County.
3. That the 1st respondent acting under powers conferred on him under section 14(1) of the National Government Coordination Act, 2013 established the said administrative units without the participation of the people of Wajir North Sub tribe and Buna sub tribe. It was averred that the exercise was carried out without taking into consideration the likely significant impact on the citizens concerned.



4. It was averred that the petitioners are apprehensive that the 1st respondent's directive if not revoked, the socio – economic gains realized by the presence of the sub county offices in Wajir North Sub County and Bero Sub location in Buna Sub County shall be clawed back leading to the marginalization of the region thus defeating the objects of devolution as contemplated in article 174 (c –h) of the constitution. This court was therefore urged to grant the orders sought.
5. The respondents upon being served with the pleadings did not immediately enter appearance nor file a response to the petition but along the way, the 1st to 4th interested parties through the firm of Prof. Tom Ojienda & Associates moved this court via an application dated 31.12.2024 seeking to be enjoined in these proceedings and further, be allowed to file responses to both the application and petition dated 04.12.2024.
6. The 1st-4th interest parties basically describing themselves as member of parliament, former member of county assembly, resident wajir north and former Member county assembly respectively opposed the petition thus averring that the creation of the impugned administrative units was in the wider interest of the people of Wajir North Sub-County and that sufficient public participation was conducted. They attached documentary evidence as proof that public participation was conducted.
7. The joinder application was however allowed by consent and parties proceeded to prosecute the petition.
8. The 1st and 2nd respondents filed an undated grounds of opposition urging that section 14 of the National Government Coordination Act provides that the National Government shall where necessary, establish its own service delivery coordination units for purposes of coordination of various government activities. That all the available channels in the administrative hierarchy were used in seeking the mandate of the residents in identifying the headquarters of the new sub-counties.
9. It was further urged that the available channels in the administrative hierarchy were used in seeking the mandate of the residents in identifying the respective headquarters of the new sub-counties. That the creation of new administrative units is meant to serve the residents in line with the mandate given to the ministry under the Act and the establishment follows a scientific criterion with regard to population density, availability of facilities to serve people and centrality of the area in question.
10. That the petitioners misconceived facts in this matter as they want to portray the same as a clan dispute as opposed to service delivery to the residents who badly need the services. It was averred that the petition essentially seeks to challenge the exercise of an executive prerogative and is otherwise inviting the court to substitute its views on how the 1st respondent ought to discharge its mandate under the Act. That to that extent, the prayers sought by the appellant offends the principle of separation of powers which inter alia obligates the court to exercise restraint and to accord the executive sufficient latitude to discharge its mandate under the constitution. To that end, this court was urged to dismiss the suit herein.
11. In further opposing the petition, the respondents through Kepha Onyiso, the deputy Chief State Counsel in the Attorney General's office currently seconded to the Legal Unit in the Ministry of Interior and National Administration swore a replying affidavit on 14.03.2025 deposing that indeed public participation was carried out in Buna and Wajir North Sub counties and the exercise followed all necessary procedures. Additionally, that the exercise complied with the applicable legal frameworks to ensure that the communities in these locations had the opportunity to participate and express their views on the matter at hand.



12. He deposed that he was forwarded the Public Participation Report Minutes conducted on 22.06.2024 for Buna and Wajir North Sub Counties. That the report provides a detailed account of the public participation process and includes information on the meetings held, the attendance, the signatures and the feedback received from the local community. That he reviewed the report and he could attest to its accuracy as it reflects the participation and input from the Koromey community. To that end, the deponent urged that the suit herein ought to be dismissed for want of merit.
13. Additionally, on behalf of the respondents, Mr. Kennedy Changandu, the Deputy County Commissioner, Buna Sub County also opposed the petition through an affidavit sworn on 10.03.2025 deponing that section 14 of the National Government Coordination Act provides that the National Government may where necessary, establish its own service delivery and coordination units for the purposes of coordination of government functions. He stated that previously, there have been several requests for the establishment of new administrative units in Buna Sub County as residents were decrying lack of security or service delivery. That the views of the persons, stakeholders, key opinion shapers had to be considered before any decisions could be made. As a result, public participation exercise was held on 18.09.2024 in a meeting convened by Assistant County Commissioner Buna.
14. He averred that among the attendees in those forums were MCA Malkagufu, Batalu, Sub County Administrators, Ward Administrators from Batalu and Malkagufu, senior chiefs, Chiefs assistant chiefs, elders and key community opinion leaders. That amongst other fruitful deliberations, members unanimously agreed to have Detachdera, Luqe, Surayu, Fullo, Soweto, Kiwanja Ndege, Jibder, Beramo South, Salla, Garse Ake, Kuro and Diborbor in Beramo and Buna Sub Counties as administrative units because of their centrality and infrastructure availability. In the same breadth, it was averred that the newly created administrative units shall serve the residents well.
15. Similarly, Henry Katana, the Deputy County Commissioner, Wajir North Sub County swore on 11.02.2025, a replying affidavit opposing the petition by deposing that section 14 of the National Government Coordination Act provides that the National Government may where necessary, establish its own service delivery and coordination units for the purposes of coordination of government functions. That all the available channels in the administrative hierarchy were used in seeking the mandate of the residents in identifying the new administrative units. It was deposed that there had been several requests for the establishment of new administrative units in Wajir North Sub County as residents have been decrying lack of service delivery and lack of operationalization of the already existing ones. That among the requests was the issue of security, service delivery and intercountry relations which is important in administration.
16. That amongst many other fruitful deliberations, members as indicated in agenda No. 2 of the minutes, agreed unanimously to have Qafole, Watiti Dini, Karaduse, Danaba North, Welmura, Fargadud, Madina in Wajir North Sub County because of their centrality with facilities and infrastructure. That the minutes were circulated for concurrence and perusal in the Sub County, County and Regional Commissioner's office as attested in the stamped minutes circulated to DCC Wajir North Sub County, CC Wajir, RC North Eastern and PS interior.
17. That the County Commissioner indicated regarding the parameters used in establishing the administrative units to the Regional Commissioner North Eastern. In his view, the petitioners misconceived facts in this matter by portraying the same to be a clan dispute as opposed to service delivery to the residents who badly need the services.
18. The petitioner filed further affidavit sworn on 20.03.2025 as a response to the replying affidavits sworn by the respondents. It was deposed that there was no proof provided of sufficient notices made by the respondents in informing the public to participate in the creation of the new administrative units. That



- nothing in the documents annexed indicates that information had been disseminated through public barazas, churches, mosques or any other avenue to ensure that the information reached the targeted audience for public participation.
19. It was urged that the dates indicated as the ones the respondents held meetings were conflicting hence not supporting their allegation that indeed public participation was held. Similarly, it was deposed that it was not shown how the alleged attendees were picked to attend the alleged meetings. In other words, it was urged that the report by the respondents were marred with contradictions and inconsistencies. In the end, this court was urged to allow the petition as prayed.
 20. The petition was canvassed by way of written submissions.
 21. The petitioners in their submissions dated 24.03.2025 submitted that in regards to two issues as follows:
 - i. Whether there was public participation in the creation of Wajir North sub County Location Qafole, Watiti dini, Karadusa, Danaba North and Sub Location Welmura, Danabe North, Fargadud and Medina. Buna Sub County division Makalgufu, Location Detacgdera, Suraya, Luqe, sub location Detachdera, Luqe and Bero.
 - ii. Whether the creation of the impugned units amounts to a usurpation of the mandate of the IEBC.
 22. On the first issue, it was urged that the establishment of the impugned sub county was in blatant violation of *the constitution* of Kenya and without consultation or participation of the people directly affected by the creation of the new administrative units. The petitioners relied inter alia on the cases of Doctors for Life International vs The Speaker National Assembly and Others (CCT12/05) (2006) ZACC 11) where the South African Court defined what facilitation of public involvement is, as ‘the phrase ‘facilitate public involvement’ is a broad concept which relates to the duty to ensure public participation in the law – making process...”
 23. The court was similarly referred to the case of Robert N. Gakuru & Others vs Governor Kiambu County & 3 Others [2014] eKLR, and Khelef Khalifa & 2 Others vs Independent Electoral and Boundaries Commission and Another [2017] eKLR where the court in its decision outlined the principles of public participation in a decision – making process.
 24. It was contended that once a petitioner has attacked the legislative process on grounds that the law making process did not meet the constitutional standard of public participation, the respondent is thus under a legal obligation to demonstrate that the legislative process did meet the constitutional standards of public participation. That the documents relied upon by the respondents do not reveal that the alleged meetings ever took place.
 25. Learned counsel contended that there was no proof that the alleged meetings in the alleged affected areas were conducted. That in some of the areas, the Deputy County Commissioner was not in attendance while in other places, it was not revealed how the attendees were picked.
 26. On the second issue, it was submitted that the provisions of article 89 expressly give the mandate of delimitation and delineation of electoral units such as a constituency to the Independent Electoral and Boundaries Commission. That the process of delimitation of boundaries cannot be legitimate without the elaborate process of public participation of all stakeholders. In the end, it was urged that the prayers sought herein be allowed.
 27. The respondents in their submissions dated 14.03.2025 urged that the petitioners’ rights were not violated in any way as the created new administrative units will have a significant impact to the citizens



- of this area. That the primary and paramount mandate of the National Government of Kenya is to ensure delivery and access of all government services to the citizenry.
28. It was urged that the creation of the units was made in good faith and with good will to the citizenry in furthering the achievement of the government's ultimate mandate.
 29. It was contended that section 14 of the [National Government Co-ordination Act](#) gives power to the National Government to establish its own service delivery coordination units for purposes of coordination of government functions where necessary. Counsel further contended that public participation does not mean that every-one must be consulted. To support that position, reliance was placed in the cases of *Ngige Tharau & 128 Others vs Principal Secretary of Lands, Housing and Urban Development & 2 Others* [2016] eKLR, where the respective courts held that public participation does not mean that everyone must be consulted; rather a reasonable opportunity ought to be availed to which stakeholders can put across their views.
 30. Further reference was made in respect to the case of *Kituo Cha Sheria & Another vs Central Bank of Kenya & 8 Others*, in which the High court noted that every case in which an allegation of lack of public participation is alleged must be considered in the peculiar circumstances of the case. That this is a region where the court ought to take judicial notice of the fact that in addition to delivery of services, issues of security and insecurity are on the rise and that is why the stakeholders meeting comprised of unit heads who interact on daily basis with the citizenry and are conversant with the issues that arise more often than not. That the stakeholders are better placed to know the needs of the people and what the area needs.
 31. In the end, it was urged that the alleged violation of rights has not been proven and therefore, the court ought to dismiss this petition with costs.
 32. The interested parties filed submissions dated 17.03.2025 through the firm of Ojienda S.C who submitted in regards to two issues to wit: whether there was sufficient public participation and; whether the creation of the impugned units amounts to a usurpation of the mandate of the IEBC.
 33. On the first issue, reliance was placed on the case of *Kenya Human Rights Commission vs Attorney General & another* [2018] eKLR to advance the point that public participation is an essential national value and principle that must be observed by all persons, state organs and public officers in the exercise of their responsibilities. Further reliance was placed in the case of *Nairobi Metropolitan PSV Saccos Union Ltd & 25 others vs County Government of Nairobi & 3 Others* [2014] eKLR, where the court held that public participation can be exercised directly or indirectly through elected leaders. To that end, it was submitted that the creation of the said administrative units met all the prerequisite parameters following meetings of meaningful and good faith deliberations held amongst members including religious leaders and community elders in the various units.
 34. That on 18.09.2024, a stakeholders meeting was held at the boardroom and attended by over 50 members. Among the attendees were the Deputy County Commissioner Buna members of County Assembly, elders, area chiefs, women representatives, elders and youth representatives. It was urged that some of the issues discussed were the need for additional administrative units. That the set of events and activities are characteristics of a properly conducted public participation fulfilling all the prerequisite elements like inclusivity of stakeholders, sufficient notice to the target audience, good and meaningful engagements indicative in the agenda of the meeting etc.
 35. On the second issue, it was submitted that section 14 of the National Government Coordination [Act No. 1 of 2013](#) places the mandate of establishing administrative units in the National Government and



in particular, the Cabinet Secretary responsible for matters relating to the coordination of national government functions.

36. It follows therefore 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, with the approval of the president after which the same is gazetted. It was urged that in reference to section 14, there is no requirement of compliance with article 89 of *the constitution* as alleged by the petitioner.
37. It was counsel's further submission that, the purpose of the units as indicated by the County Commissioner is to improve service delivery to the citizens, reduce the cost of seeking services amongst others. To that end, reliance was placed on the case of R vs District Commissioner Marakwet West District & 6 Others Eldoret High Court Misc. Civil Application No. 23 of 2009 where the court enumerated the factors to be considered to include the demographic pattern of the area, the geographical and physical features, the internal harmony of the population, infrastructure, security demands and land for expansion.
38. On the issue of delimitation of boundaries, it was submitted that this was dealt with conclusively in the case of Hussein Abdi Omar & 3 Others vs attorney General & 4 Others [2012] eKLR where the court held that ...the apprehensions expressed by the petitioners that the creation of administrative units will influence the constitutional boundaries is thus in the light of these clearly unfounded. To that end, this court was urged to dismiss the application herein.
39. I have considered the petition herein and the responses thereof. I have further considered parties' rival submissions together with the authorities attached. In my considered view, the following issues fall due for determination:
- i. Who has the mandate and duty to create an administrative unit in Kenya.
 - ii. Whether the establishment of Wajir North Sub County Location Qafole, Watiti dini, Karadusa, Danaba North and Sub Location Welmura, Danabe North, Fargadud and Medina. Buna Sub County division Makalgufu, Location Detacgdera, Suraya, Luqe, sub location Detachdera, Luqe and Bero violated the provisions of *the constitution*.
40. *The constitution* under chapter eleven speaks about the devolved government and specifically, article 176(2) of *the constitution* which is more applicable to the case herein provides that, every county government shall decentralize its functions and the provision of its services to the extent that it is efficient and practicable to do so.
41. It therefore follows that the creation of administrative units and specifically at the sub-county level of administration, is provided for under section 48 of the County Government Act, 2012 which state;
- 'Decentralized Units,
1. subject to subsection (3), the functions and provisions of services of each County Government shall be decentralized to-
 - a). ...
 - b) the sub-counties equivalent to the constituencies within the County established under the article 89 of *the constitution*...
 - e) such other or further units as a county government may determine.
42. It is trite that a Sub-County is therefore a creature of *the Constitution* under article 176(2) of *the Constitution* and section 48(1)(b)(e) of the County Government Act 2012, through which the County



Government perform their functions and provide services to its electorate. The National Government, as noted in part 4 under the 6th Schedule of *the Constitution*, is required to align and restructure its systems of administration to accord with and respect the system of devolved government as established in *the constitution*.

43. It is not lost to this court that the respondents have put up a strong fight by urging that in creating the impugned sub-county, the first respondent acted on the powers donated to that office under section 14 of the National Government Coordination Act, section 14 of the National Government Coordination Act 2013 which provides as follows: -

“Service delivery coordination Units,

- 1) The Cabinet Secretary may with the approval of the president and by a notice in the Gazette, establish national government service delivery coordination units.”

44. Under subsection 2 of the same section, the spirit and letter of article 176 (2) of *the Constitution* and Section 48 of the County Government Act 2012 is well captured. The subsection reads;

“In establishing the National Government service delivery units, the Cabinet Secretary shall accord and respect the County Government decentralized units established under section 48 of the County Government Act.”

45. My understanding of the above translates to the fact that the 1st respondent is therefore expressly authorized with the approval of the President of the Republic of Kenya to establish National Government Service Delivery Units. In this matter, it is not contested that the 1st respondent acted on the President’s authority in establishing the subject units. In the same breadth, I also opine that the 1st respondent in creating the delivery units, was required therefore to ensure that the same was in tandem with decentralized units established by the County Government and *the constitution*.

46. Equally, the petitioners urged that the creation of the units impliedly usurped the mandate of the IEBC. As already illustrated above, the mandate of the 1st respondent has been clearly shown in regards to the provisions of the law and specifically in relation to the matter at hand being creation of delivery units. It is trite that article 89 of *the constitution* gives the mandate of delimitation and delineation of electoral units such as a Constituency to the Independent Electoral and Boundaries Commission. Article 89(2) provides as follows: -“The Independent electoral and Boundaries Commission shall review the names and boundaries of Constituencies at intervals of not less than 8 years and not more than 12 years ...”.

47. Therefore, without losing focus on the issue before the court, the petitioners decried the act by the 1st respondent in creating the impugned delivery units in Wajir North Sub County hence not the question of the process of delimitation of the boundaries in regard to the said Sub County.

48. Back to the case before this court, it is not controverted that the 1st respondent created new administrative units namely Wajir North Sub County Location Qafole, Watiti dini, Karadusa, Danaba North and Sub Location Welmura, Danabe North, Fargadud and Medina. Buna Sub County division Makalgufu, Location Detacgdera, Suraya, Luqe, sub location Detachdera, Luqe and Bero vide Gazette Notice Number 15341 Vol. CXXVI No. 203 of 22.11. 2024. The question thus this court has to answer is whether the 1st respondent acted in tandem with the provision of law as already enumerated above.

49. This court has carefully considered this petition and the response made in respect to this crucial issue of Public participation. The petitioners have attacked the creation of new administrative units on grounds that there was no public participation.



50. There is no contest therefore, that public participation forms part of the core values and principles of good governance. Article 10 of *the Constitution* of Kenya provides that one of the National values and principles of governance in Kenya is Public participation. For avoidance of doubt, Article 10 does state as follows;
1. ... that the national values and principles of governance in this article shall bind all state organs, state officers, public officers and all persons whenever any of them-
 - a. Applies or interprets *the constitution*
 - b. Enacts, applies or interprets any law; or
 - c. Makes or implements public policy decisions.
 2. The national values and principles of governance include: -
 - a. Patriotism, national unity sharing and devolution of power, the rule of law democracy and participation of the people;
 - b. Human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized.
 - c. Good governance, integrity, transparency and accountability; and
 - d. Sustainable development.
51. The above values and principles bind all state organs, state officers and all other persons in applying or interpreting *the constitution*, enacting or applying any law or implementation.
52. In the case of Richard Owuor & 2 others (Suing on behalf of Busia Sugarcane Importers Association versus Cabinet Secretary, Ministry of Agriculture Livestock, Fisheries and Cooperatives & 8 others [2020] eKLR, Justice Mrima made the following observations: -“Consultations or stakeholder’s engagement tends to give more latitude to key stakeholders in a given field to take part in the process towards making laws or formulations of administrative decisions which to a large extent impacts on them. That is because such key stakeholders are mostly affected by the law, policy or decisions in a profound way. Therefore, in appropriate instances a Government agency or a Public Officer undertaking public participation may have to consider incorporating the aspect of consultation or stakeholder’s engagement...”
53. In the case of Doctors for Life International vs Speaker of the National Assembly & others [Supra] it was held as follows:-
- “The phrase “facilitate public involvement” is a broad concept, which relates to the duty to ensure public participation in the law making process. The key words in this are “facilitate” and “involvement”. To “facilitate” means to “make easy or easier” “promote” or “help forward”. The phrase “public involvement” is commonly used to describe the process of allowing the public to participate in the decision-making process. The dictionary definition of “involve” includes to “bring a person into a matter” while participation is defined as (a) taking part with others (in an action or matter); ...the active involvement of members of a community or organization in decisions which affect them. According to their plain and ordinary meaning, the words public involvement or public participation refer to the process by which the public participates in something...it is clear and I must state so, that it is impossible to define the forms of facilitating appropriate degree of public participation. To my mind, so long as members of the public are accorded a reasonable opportunity to



know about the issues at hand and make known their contribution and say on such issues, then it is possible to say that there was public participation.”

54. Having set out the law on public participation, I will now address the grievance raised by the petitioners and the evidence in rebuttal laid before me by the respondents and the interested parties. As already mentioned elsewhere in this judgment, the main question that needs to be answered is whether due process was followed.
55. In response to the petitioners’ grievance that there was lack of public participation involving the community in question, it was contended that the annexed reports by the respondents were marred with contradictions and inconsistencies.
56. This court has independently perused the annexed reports by the respondents and points as follows: the report does not reveal how the attendees were picked and whether the notices of the impending meetings were issued or how they were issued, whether the attendees were fully briefed about the agenda of the meeting and whether all the stakeholders were invited and sufficient notice issued.
57. In Petition No. 5 of 2017, the Supreme Court at para 90 reiterated the centrality of public participation as regards the issue of digital migration, in the case of Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others, [2014] eKLR as follows:

“Public participation is the cornerstone of sustainable development and it is so provided in *the Constitution*... [381] Public participation calls for the appreciation by State, Government and all stakeholders implicated in this appeal that the Kenyan citizenry is adult enough to understand what its rights are under Article 34. In the cases of establishment, licensing, promotion and protection of media freedom, public participation ensures that private “sweet heart” deals, secret contracting processes, skewed sharing of benefits-generally a contract and investment regime enveloped in non-disclosure, do not happen. Thus, threats to both political stability and sustainable development are nipped in the bud by public participation. Indeed, if they did the word and spirit of *the Constitution* would both be subverted.”

58. The said court further in para 96 stated as follows:

From the foregoing analysis, we would like to underscore that public participation and consultation is a living constitutional principle that goes to the constitutional tenet of the sovereignty of the people. It is through public participation that the people continue to find their sovereign place in the governance they have delegated to both the National and County Governments. Consequently, while Courts have pronounced themselves on this issue, in line with this Court’s mandate under Section 3 of the *Supreme Court Act*, we would like to delimit the following framework for public participation:

Guiding Principles for public participation

- i. As 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.
59. Having noted some of the deficiencies in the report annexed by the respondents, it is my conviction that the grievances by the petitioners are legitimate because they have not been responded to adequately. The aspect of public participation need not only be quantitative but also qualitative. Thus, this court finds that the level of participation of the majority stakeholders alluded to by the respondents did not reach the requisite threshold as already discussed in the various case law alluded to herein and in particular the Supreme court case.
60. While the court notes that some level of consultation was carried out by the 1st respondent as alluded to above, it is my view that the same was not adequate. The foregoing notwithstanding, it is a matter of common knowledge that the sub-county in question like many other north Eastern region has for long time been excluded in realizing some of the benefits arising from the national government.
61. Although I have held that sufficient public participation was not done, it would be prudent for this court to balance the public interest of the people of Wajir benefiting from the mentioned units and the due process being followed. To that extent, justice would demand that instead of annulling the entire process, a structural interdict order would suffice to the extent that, the respondents are directed to regularize the process by conducting a public participation exercise in conformity with the law within of 90 days.
62. As a consequence of the above, the commendable orders I find appropriate to issue are that:



- a. A declaration be and is hereby made to the effect that the establishment of the new administrative units namely Wajir North Sub County Location Qafole, Watiti dini, Karadusa, Danaba North and Sub Location Welmura, Danabe North, Fargadud and Medina. Buna Sub County division Makalgufu, Location Detacgdera, Suraya, Luqe, sub location Detachdera, Luqe and Bero vide Gazette Notice Number 15341 Vol. CXXVI No. 203 of 22.11.2024 was conducted without adequate public participation.
- b. That in order to avoid disruption of normal services in the respective units, and also take care of public interest of the people of Wajir North Sub-county, the respondents are given 90 days to regularize and comply with the law. This judgement shall therefore take effect after a period of 90 days in the event there is no compliance.
- c. That this being a public interest litigation, each party to bear its own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30TH DAY OF APRIL 2025

J. N. ONYIEGO

JUDGE

