



Abdirahman & another v County Governor of Mandera & 4 others; Haji & 2 others (Interested Parties) (Petition E337 of 2024) [2025] KEHC 12499 (KLR) (Constitutional and Human Rights) (13 August 2025) (Judgment)

Neutral citation: [2025] KEHC 12499 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS**

PETITION E337 OF 2024

AB MWAMUYE, J

AUGUST 13, 2025

**IN THE MATTER OF ARTICLES 1, 2, 3, 10, 19, 22, 23,
179(1) 184(1), 185(3) & (4) & 259 OF THE CONSTITUTION**

AND

**IN THE MATTER OF VIOLATION OF ARTICLES
10, 179(1), 184(1) 185(3) OF THE CONSTITUTION**

AND

IN THE MATTER OF SECTION 14A OF THE URBAN AREAS AND CITIES ACT, 2011;

AND

**IN THE MATTER OF SECTIONS 30(3)(G), 37, 49, 87, 89, 102, 103, 105,
107, 112 AND 115 OF THE COUNTY GOVERNMENT ACT, 2012.**

AND

IN THE MATTER OF GAZETTE NOTICE NO. 7402 OF 14TH JUNE 2024

BETWEEN

HON MOHAMED ABDI ABDIRAHMAN 1ST PETITIONER

HON HUSSEIN WEYTAN M ABDIRAHMAN 2ND PETITIONER

AND

COUNTY GOVERNOR OF MANDERA 1ST RESPONDENT

THE COUNTY GOVERNMENT OF MANDERA 2ND RESPONDENT

**THE CABINET SECRETARY, MINISTRY OF LANDS, PUBLIC WORKS,
HOUSING & URBAN DEVELOPMENT 3RD RESPONDENT**



**THE COUNTY ASSEMBLY, MANDERA COUNTY GOVERNMENT ... 4TH
RESPONDENT**

THE HON ATTORNEY GENERAL 5TH RESPONDENT

AND

HON YUSUF ADAN HAJI INTERESTED PARTY

HON ABDULLAHI BASHIR SHEIKH INTERESTED PARTY

HON HARO ABDUL EBRAHIM INTERESTED PARTY

JUDGMENT

Introduction And Background

1. The Petitioners, in their Petition assert that the sovereign power of the people, as enshrined in Article 1, was exercised in disregard of constitutional safeguards when the Respondents initiated the process of delineating boundaries of various urban areas within Mandera County. The Petitioners are members of the national legislative assembly and claim standing in this matter not only as representatives of the people but also as affected residents of the County. They contend that the impugned decisions were reached without meaningful public participation, involvement of the County Executive Committee, or approval of the County Assembly as required under law. The Petition further challenges the procedural legality and constitutionality of Gazette Notice No. 7204 dated 14th June 2024, which formalised the appointment of an ad hoc committee for boundary delimitation.
2. The genesis of the dispute lies in a letter dated 15th May 2023, authored by the 1st Respondent, who is the Governor of Mandera County. In that letter, the Governor petitioned the 3rd Respondent, the Cabinet Secretary responsible for urban development, to commence delineation of urban boundaries and nominated persons to sit in the envisaged ad hoc committee. This triggered a chain of administrative actions culminating in the issuance of the Gazette Notice that established the committee. The Petitioners state that the larger North Eastern region, where Mandera County is situated, is highly sensitive to land issues, which are often deeply intertwined with clan-based politics and historical injustices. In their view, the unilateral approach adopted in such a sensitive matter portends grave dangers, including the resurgence of tribal clashes and the potential misuse of public funds.
3. The Petitioners argue that the delineation exercise is part of the county planning function, which is constitutionally and statutorily governed. They contend that Article 179(1) of *the Constitution* vests executive authority in the County Executive Committee, yet no such committee decision was made to authorize the process. Further, Article 184(1)(c) and various provisions of the *Urban Areas and Cities Act* and the *County Governments Act* impose an obligation to ensure public participation in urban governance and planning. These legal safeguards, in the Petitioners' view, were ignored in totality. Notably, they also highlight that the County's approved budget for the Financial Year 2024/25 does not contain any allocation for the boundary delineation exercise, thereby rendering the process not only unconstitutional but also fiscally irregular.

Petitioners' Case

4. The Petitioners' case is premised on the assertion that the 1st Respondent acted unilaterally, illegally, and in breach of *the Constitution* and governing statutes. They maintain that the initiation of the



boundary delineation exercise must originate from a formal resolution of the County Executive Committee and that such resolution must undergo public scrutiny and County Assembly approval. They assert that the 1st Respondent's failure to engage the requisite county institutions and the public constitutes a violation of the values espoused in Articles 1, 10, and 184 of *the Constitution*. This failure, it is claimed, also contravenes statutory provisions under Sections 102, 105, 107, and 108 of the *County Governments Act*, as well as Sections 21 and the Second Schedule of the *Urban Areas and Cities Act*.

5. According to the Petitioners, upon learning of the developments, they each wrote formal letters dated 20th and 21st June 2023 to the 3rd Respondent, urging a halt to the process pending proper public participation. Despite acknowledgement of receipt, no substantive response was received. The Petitioners express concern that the process may proceed unchecked, in violation of constitutional norms and established administrative procedures. They warn that such disregard for due process, particularly in a volatile region like Mandera County, risks inciting inter-clan hostilities and could destabilize the region's fragile peace. They also raise the alarm that lack of budgetary provision for the process may lead to unauthorised or opaque expenditures.
6. The Petitioners challenge the legality of Gazette Notice No. 7204, arguing that it was premised on a flawed and unconstitutional process. They claim that the composition and appointment of the ad hoc committee were not preceded by any demonstrable process of inclusivity or consultation. Their concern is that such committees, once legitimised, may become tools for elite capture of sensitive urban planning functions, which ought to be conducted transparently and with citizen input. They aver that the constitutional principles of good governance, public participation, accountability, and the rule of law have all been violated. The Petitioners thus seek, among other remedies, declarations invalidating the Gazette Notice and conservatory orders suspending its implementation.
7. Finally, the Petitioners beseech this Court to act as the guardian of *the Constitution* by halting what they term an ultra vires exercise of gubernatorial power. They argue that the involvement of the County Executive Committee and County Assembly is not a procedural nicety but a substantive requirement under *the Constitution* and enabling statutes. They caution that failure to stop the impugned process will embolden impunity within devolved units and erode the constitutional architecture of public participation and fiscal accountability. They further posit that since the Respondents will suffer no prejudice if the process is halted to enable compliance with the law, the balance of convenience tilts in favour of granting the orders sought. Accordingly, they urge this Court to grant the reliefs sought in the Petition, together with costs.

1st and 2nd Respondents' Case

8. The 1st and 2nd Respondents, in their replying affidavit, firmly refute the allegations by the Petitioners that the delineation of urban boundaries in Mandera County was initiated unilaterally and without public participation. They assert that the process was grounded in law and transparent public engagement. It began with an advertisement on 7th October 2022 inviting the public to participate in the formulation of the County Integrated Development Plan (CIDP) 2023–2027. Public participation forums were held at ward and constituency levels, including in Lafey Constituency and Mandera East, where the Petitioners reside. These consultative sessions gave residents the opportunity to identify development priorities, one of which was the delineation of urban areas.
9. Following the forums, the County Government prepared the CIDP in December 2022 and submitted it to the County Assembly for approval. The CIDP was considered by the County Assembly's Budget and Appropriations Committee, which further conducted public participation in all sub-counties in May 2023. Notably, despite public invitations, no memoranda were submitted by the deadline. The Committee nonetheless compiled a report and made key recommendations, including collaboration



with stakeholders and budget alignment. The County Assembly adopted the report on 11th July 2023, with further amendments on 12th July 2023, thereby legitimizing the delineation process as part of the broader development agenda.

10. The Respondents contend that delineation is a strategic initiative under the Lands, Housing, Physical Planning, and Urban Development sector, aiming to ensure orderly development and resolve land disputes. A budget of Kshs. 45 million was allocated in the CIDP over the planning period. In line with Section 126 of the *Public Finance Management Act*, the County also developed an Annual Development Plan (ADP) for the 2024/2025 financial year, which further detailed the proposed delineation projects. Public participation for the ADP was conducted in August 2023, including through written memoranda and forums held in Lafey Constituency and Mandera East. The ADP was approved by the County Assembly on 28th November 2023.
11. The 1st and 2nd Respondents further clarify that the delineation process is a statutory obligation under the *Urban Areas and Cities Act* and does not require specific approval by the County Executive Committee. Instead, the planning was done through legally sanctioned documents such as the CIDP and ADP, which had been duly approved by both the executive and the County Assembly. In compliance with Section 4A(1) and (3) of the *Urban Areas and Cities Act*, the Governor wrote to the Cabinet Secretary for Lands requesting initiation of the delineation exercise and nominated three county officials to the ad hoc committee to oversee the process. The Ministry of Lands in turn engaged the Independent Electoral and Boundaries Commission (IEBC) for representation and proceeded to gazette the committee.
12. The ad hoc Committee, as gazetted on 14th June 2024, is mandated to conduct public engagement across the sixteen urban areas earmarked for delineation, compile its findings and submit them for approval to the County Assembly. The Respondents maintain that the Petitioners' allegations of exclusion and lack of participation are unfounded since the process is still ongoing and will include further opportunities for public engagement. The letters written by the Petitioners to the 3rd Respondent, opposing the delineation, are dismissed as ill-informed and premature, considering the outlined inclusive framework.
13. In light of the foregoing, the Respondents argue that the Petition and Notice of Motion are misconceived, premature, and devoid of merit. They contend that no constitutional or statutory violations have occurred and that the Petition was brought in bad faith, merely to frustrate a lawful and consultative process. Accordingly, they pray that the Petition and application be dismissed with costs for being frivolous, vexatious, and an abuse of the court process. They further seek the immediate vacation of the conservatory orders issued on 12th July 2024 to allow the lawful delineation process to proceed without disruption.
14. The Respondents underscore that the process of delineating urban boundaries was initiated strictly in accordance with constitutional and statutory provisions. The procedural compliance included multiple rounds of public participation, legislative approval, inter-agency collaboration, and Gazette formalization. The overarching goal remains the achievement of orderly urban planning, improved governance, and better service delivery in Mandera County. Hence, the Respondents view the Petition as an unjustifiable obstruction to a legal development agenda already in motion.
15. The Respondents reiterate that they have acted within the law, followed due process, and that the Petitioners still retain avenues to participate in the delineation exercise through the ad hoc Committee. As such, it was averred that there exists no legal or constitutional basis for the orders sought by the Petitioners, and the Petition should be dismissed accordingly.



The 3rd & 5th Respondents' Case

16. The 3rd and 5th Respondents oppose the Constitutional Petition and the accompanying Notice of Motion on several substantive grounds, contending that the petitioners have failed to establish any legal or factual basis for the reliefs sought against them. They assert that the reliance on section 4A of the *Urban Areas and Cities Act* by the petitioners is misplaced, as no breach of that provision or any constitutional violation has been demonstrated on the part of the 3rd Respondent. It is their position that the petition lacks precision and does not properly disclose any actionable wrongdoing attributable to the 3rd or 5th Respondents within the meaning of constitutional litigation standards.
17. It is further argued that the delineation process of urban areas in Mandera County was initiated by the County Governor and not by the 3rd Respondent acting independently. According to their pleadings, the 3rd Respondent's role was merely administrative and confined to gazetting the members of the ad hoc committee as provided under the *Urban Areas and Cities Act*. It is emphasized that the statute envisages a collaborative inter-governmental framework, where the Cabinet Secretary acts upon request and after internal county processes have been completed. The Respondents maintain that their role was executed lawfully and within the statutory mandate conferred by section 4A(3) of the Act.
18. They also contend that the impugned Gazette Notice cannot be faulted as irregular or unlawful since its issuance presupposes that the prerequisite procedures, such as public participation, County Executive Committee deliberations, and submission of the delineation plan to the County Assembly, had already taken place at the county level. The Respondents insist that it was not within their remit to verify compliance with these preliminary steps, and their involvement was purely procedural, flowing from a lawful request. Consequently, the petitioners' attempt to impute liability upon the 3rd and 5th Respondents for alleged procedural irregularities committed at the county level is, in their view, legally untenable.
19. Finally, the Respondents argued that the prayers sought, including the request for conservatory orders, are not sustainable against them as the pleadings fail to disclose any ultra vires action. They urge the Court to find that the petition is misconceived, misinformed, and lacking in merit, especially with regard to their involvement in the delineation process. The petitioners, they argue, have not established any nexus between the alleged constitutional violations and the 3rd Respondent's statutory acts. Accordingly, they pray that the Court dismisses the petition and motion in their entirety, insofar as they relate to the 3rd and 5th Respondents.

The 4th Respondent's Case

20. The 4th Respondent, in response to the Petition and the Notice of Motion Application, filed a detailed Replying Affidavit through one Ahmed H. Surow. The deponent averred that the impugned delineation process was grounded in lawful procedures and wide-ranging public participation. It was deponed that the process leading to the development and eventual approval of the Mandera County Integrated Development Plan (CIDP) 2023–2027 was commenced through a public advertisement dated 7th October 2022. The said advertisement invited members of the public to participate in the formulation of the CIDP in line with Article 220(2) of *the Constitution*, Section 104(1) of the *County Governments Act*, and Section 207 of the *Public Finance Management Act*, 2012. The 4th Respondent emphasized that the CIDP forms the foundational framework upon which all subsequent planning, including the delineation of urban boundaries, is anchored.
21. The 4th Respondent further elaborated that the 2nd Respondent conducted public participation forums at both ward and constituency levels between 14th and 22nd October 2022. It was noted



that specific forums were held in Lafey Constituency on 19th October 2022 and in Mandera East on 22nd October 2022. Thereafter, the CIDP 2023–2027 was formulated and submitted to the County Assembly on 3rd March 2023. The County Assembly, through its Budget and Appropriations Committee, facilitated another round of public participation pursuant to Article 196(1)(b) of *the Constitution*, Sections 87 and 115(1) of the *County Governments Act*. The public was engaged through oral hearings and written memoranda, and this culminated in the Assembly adopting the Committee’s report on 12th July 2023. The 4th Respondent argued that this thorough engagement process evidenced the County Government’s compliance with constitutional and statutory dictates on public participation.

22. In furtherance of the CIDP, the 4th Respondent averred that the County Executive prepared the County Annual Development Plan (CADP) for the 2024/2025 financial year in August 2023. This plan detailed priority development projects and formed the basis of the county’s budget for that period, in accordance with Section 126 of the *Public Finance Management Act*. Like its predecessor, the CADP was subjected to robust public participation through consultative forums and memoranda, as mandated by Article 191(1) of *the Constitution* and Section 207 of the PFMA. It was emphasized that these participatory processes were neither superficial nor tokenistic but structured, inclusive, and substantive.
23. It was further deponed that the Mandera County Assembly Committee on Budget and Appropriations invited views from the public and stakeholders on the CADP 2024/2025 through oral presentations and written memoranda. This invitation was issued in compliance with Article 196(1) (b) of *the Constitution*, Sections 87 and 126(1) & (3) of the PFMA, and Standing Order No. 123(3) of the Mandera County Assembly. The Committee adopted the final report on 28th November 2023. The 4th Respondent therefore contended that the constitutional requirement for civic engagement had been sufficiently met at every stage of the planning process. It was urged that the Petitioners’ claims of exclusion from the delineation process were premature and misleading.
24. In relation to the actual delineation of urban boundaries, it was asserted that the process was yet to be concluded. The public would still have an opportunity to present views to the ad hoc committee gazetted by the 3rd Respondent, which was tasked with collecting views across 16 urban centres. The ad hoc committee’s report, after synthesizing public input, would be presented to the 1st Respondent, who would then forward the recommendations to the 4th Respondent for approval. It was the 4th Respondent’s position that the delineation process remained open, participatory, and within the confines of the applicable legal frameworks, including the *Urban Areas and Cities Act*, 2011.
25. The 4th Respondent further decried the conservatory orders issued on 12th July 2024, asserting that they had the effect of halting a lawful and consultative process. The 4th Respondent maintained that it had acted lawfully and within the bounds of *the Constitution* and statutory law. It was averred that no rights of the Petitioners had been infringed or threatened. It was thus the 4th Respondent’s firm position that the Petition and the interim conservatory orders were without merit and ought to be dismissed.

Interested Parties’ Case

26. The Interested Parties, through their replying affidavit sworn by Hon. Yussuf Adan Haji, assert that they are well acquainted with the delineation exercise within Mandera County, which forms the subject of the Petition. In response to the Petition, they contend that the entire suit is scandalous, frivolous, and vexatious. They averred that the Petition fails to meet the legal threshold established in *Anarita Karimi Njeru v Republic (1979) eKLR*, in that it neither identifies specific constitutional provisions alleged to have been violated nor explains how the alleged infringements occurred. Moreover, they argue that the



Petition is premature and offends the doctrines of ripeness and justiciability, as the delineation process, being administrative in nature and involving an ad hoc committee, has not reached a stage where court intervention is warranted.

27. The Interested Parties argue that the Petition lacks legal merit due to its deficient form and content. It is their position that the Petition is drafted in an inelegant and ambiguous manner, devoid of adequate particulars and clarity as to the actual grievance or cause of action. The constitutional violations alleged are, in their view, couched in generalities and unsupported by credible or verifiable evidence. They assert that the Petition is riddled with speculative claims and conjecture that are insufficient to ground any judicial intervention, especially in a matter that is still unfolding and has not matured to a justiciable controversy.
28. On the substance of the delineation exercise, the Interested Parties averred that the Petitioners have grossly misconstrued the applicable legal framework and misunderstood the procedural stages required. They emphasize that the delineation process is governed by Article 184 of *the Constitution*, the *Urban Areas and Cities Act*, and the Urban Areas and Cities (General) Regulations, 2022. The process begins with a formal request by the County Governor to the Cabinet Secretary, followed by the formation of an ad hoc committee whose mandate includes public participation, stakeholder engagement, and preparation of a report, which is then considered sequentially by the County Executive Committee, the County Assembly, and ultimately submitted for gazettelement.
29. The Interested Parties contend that the Petitioners' claims of exclusion from public participation are premature and misleading. They clarify that the ad hoc committee, entrusted by Regulation 9 of the cited Regulations to conduct public participation, has not yet undertaken that exercise, and therefore the Petition is pre-emptive. Furthermore, they point out that through an advertisement dated 7th October 2022, the 2nd Respondent informed the public of its Integrated Development Plan (IDP) for the period 2023–2027 and invited feedback from residents.
30. The Interested Parties further affirm that the Annual Development Plan for 2024/2025 incorporated the delineation exercise as a key county priority, and funding for the same was duly approved by the County Executive. This, they argue, affirms the lawfulness and procedural integrity of the process.
31. In conclusion, the Interested Parties urge the Court to dismiss the Petition in its entirety. They maintain that the Petition is not only fatally defective in form but also lacks any demonstrable violation of *the Constitution* or statute. They argued that the delineation process remains ongoing and has not reached a stage that necessitates judicial review. As a supplementary indication of the exercise's broader vision, they draw the Court's attention to a newspaper article authored by the County CECM for Lands, which lauds Mandera County's approach to urbanization as a potential model for sustainable land planning.

The Petitioners' Submissions

32. The Petitioners submitted that the central issue for determination is whether there was sufficient public participation in the delineation exercise of urban areas within Mandera County. They emphasized that public participation is a constitutional imperative under Articles 10(2)(a), 174(c), 184(1)(c), and 232(1)(d) of *the Constitution*, and must be observed in all facets of governance, including planning, legislation, and administrative actions. The Petitioners relied on the *Urban Areas and Cities Act*, as well as the *County Governments Act*, particularly Sections 21, 105, 107, and 115, to underscore the statutory obligation for inclusive citizen engagement in county planning processes. They argued that this obligation is not a procedural technicality but a substantive principle that mandates meaningful and effective involvement of the public in decision-making.



33. It was the Petitioners' contention that the Respondents failed to meet the threshold for effective public participation. They relied on the case of *Kenya Flower Council v Meru County Government* [2019] eKLR, where the court emphasized that participation must be real, comprehensive, and not merely cosmetic. The Petitioners argued that the nomination of members to the ad hoc committee involved in the delineation process was done arbitrarily, without consultation or transparency, thereby violating Article 10 of *the Constitution*. They maintained that the process lacked inclusivity and was not supported by evidence of a clear or measurable engagement strategy with the public.
34. The Petitioners further submitted that the alleged public participation in the Annual Development Plan (ADP) 2024/2025 and County Integrated Development Plan (CIPD) 2023-2027 did not include or mention the delineation of urban boundaries. The ambiguity in the language used in the documents, such as "resolving land disputes," failed to communicate the specific intent to carry out delineation, thereby denying the public a fair opportunity to participate or give informed views on the subject.
35. Moreover, the Petitioners pointed to the low turnout during the alleged public participation forums, attributing this to inadequate notification strategies that ignored the high illiteracy levels in Mandera County. They criticized the use of a single newspaper advertisement as insufficient and called for the use of alternative and accessible platforms such as local radio stations, public barazas, mosques, and churches to reach a wider audience. The Petitioners asserted that the attendance lists presented by the Respondents reveal minimal public engagement, further proving the ineffectiveness of the methods used to inform the public of the planned delineation exercise.
36. The Petitioners raised concern that proceeding with the delineation without genuine public participation would expose the County to governance failures and misuse of public funds, in contravention of Article 201(a) on public finance principles. They rejected the Respondents' claim that Kshs. 45 million allocated in the CIPD was subject to public participation, reiterating that the budgeting and planning processes that led to such allocation were fatally flawed. They insisted that both the planning and funding of the delineation project lacked the necessary public input and transparency required under the law.
37. Additionally, the Petitioners argued that insufficient public participation poses serious risks to the peace and cohesion of Mandera County, given its complex cultural and clan dynamics. They warned that a unilateral delineation process may fuel inter-clan tensions, destabilizing an already fragile region. It was their position that proper consultation and inclusion of all stakeholders in the decision-making process are vital not only for legal compliance but also for sustaining peace and public trust in governance.
38. The Petitioners urged the Court to find that the Respondents acted arbitrarily and violated the constitutional rights of the people of Mandera County by excluding them from a critical governance process. They asserted that public participation is a direct expression of the people's sovereign power under Article 1 of *the Constitution* and must be respected as such. The Petitioners maintained that the delineation process lacked integrity, failed to reflect the will of the people, and contravened fundamental constitutional and statutory requirements. As such, they prayed that the Court grant the reliefs sought to safeguard the principles of participatory governance and accountability.

1st & 2nd Respondents' Submissions

39. The 1st and 2nd Respondents submit that the Petition before the Court is without merit and ought to be dismissed, as the process leading to the delineation of urban boundaries in Mandera County was not only lawful but was undertaken with due regard to constitutional and statutory



- obligations. At the centre of their submissions is the issue of public participation, which they argue was undertaken comprehensively and reasonably, consistent with Articles 10, 174, 184, 196, and 232 of *the Constitution*, and as elaborated in various statutes including the *County Governments Act* and the *Urban Areas and Cities Act*. They contend that the Petitioners' assertion that the process lacked public involvement is misleading, as the delineation process was embedded in the County Integrated Development Plan (CIDP) 2023–2027 and the Annual Development Plan (ADP) 2024/2025, both of which underwent public participation. Furthermore, the Respondents maintain that the Petitioners were given multiple opportunities to engage and air their views, but they inexplicably failed to do so.
40. The Respondents argue that the CIDP 2023–2027 and the ADP 2024/2025 were not only products of a participatory process but were also approved by the County Executive Committee and the County Assembly. The CIDP, they assert, identified the delineation of urban boundaries as a key strategy under the Lands, Housing, Physical Planning and Urban Development Sector, with a specific budgetary allocation of KES 45 million spread across four financial years. They further state that public consultative forums were held at the ward and constituency levels between October 2022 and October 2023, and notices were widely published in national newspapers. In this regard, the Petitioners' failure to participate or mobilize others cannot be blamed on the Respondents. The public gave input, on issues related to spatial planning and urban boundary demarcation.
41. To buttress their case, the Respondents rely on the guiding principles of public participation articulated by the Supreme Court in the *British American Tobacco Kenya PLC v Cabinet Secretary for the Ministry of Health & 2 Others; Kenya Tobacco Control Alliance & Another (Interested Parties); Mastermind Tobacco Kenya Limited (Affected Party)* and reaffirmed in *The Finance Act 2023* decision. They submit that the test for public participation is reasonableness and context, not perfection. Accordingly, they aver that public participation need not result in unanimity or consensus, but it must allow citizens to have a reasonable opportunity to know, consider and contribute to a public policy process. In their view, this standard was fully met, and indeed exceeded, by the Respondents in the process of planning and initiating the delineation exercise. In the absence of any tangible evidence from the Petitioners showing exclusion or suppression of views, the Respondents maintain that the allegations of inadequate participation are hollow and unsubstantiated.
42. Addressing the issue of whether there was a legal requirement for the County Executive Committee to approve the delineation process, the Respondents argue that neither *the Constitution* nor the *Urban Areas and Cities Act* imposes such a condition. Nonetheless, they submit that the approval was in fact obtained through the adoption of the CIDP and ADP, which explicitly earmarked the delineation exercise as a strategic priority. They also note that the process was driven by statutory planning frameworks required under the *Public Finance Management Act* and the *County Governments Act*, which mandate development plans to guide budgeting and resource allocation. Thus, the claim that the delineation exercise was undertaken without approval is both legally and factually incorrect.
43. On the legality of the ad hoc Committee appointed by the 3rd Respondent to undertake the delineation, the Respondents submit that the appointment was in full compliance with Section 4A of the *Urban Areas and Cities Act*. They contend that the 1st Respondent properly initiated the request for the delineation, nominated the required county officers, and that the Cabinet Secretary acted within her statutory mandate to gazette the Committee. The composition of the Committee, including representatives from the national and county governments as well as professional associations, complied fully with the legal requirements. The Respondents thus submit that there is no procedural or legal flaw in the Committee's constitution that would warrant the quashing of Gazette Notice No. 7204 as sought by the Petitioners.



44. In response to the Petitioners' plea for a permanent injunction to halt the delineation process pending further public participation, the Respondents argue that such a prayer is moot and unfounded. They assert that not only has extensive public participation already occurred, but further engagement is planned through the ad hoc Committee and subsequent County Assembly proceedings before implementation of any recommendations. In their view, the Petitioners' grievances are speculative, premature, and offend the doctrine of ripeness.
45. The Respondents also submit that the Petitioners have failed to meet the legal threshold for the issuance of judicial review orders, particularly the writ of certiorari. Reliance was placed in *Pastoli v. Kabale District Local Government Council & Others* [2008] 2 EA 300 and *Kenya National Examination Council v. Geoffrey Gathegi & 9 Others* [1997] eKLR to argue that for certiorari to issue, there must be demonstrable illegality, irrationality, or procedural impropriety. In this instance, they argue, none of these elements are present. The delineation process is grounded in law, was preceded by participatory planning, and involves a multi-stage consultative process. The Petitioners have neither shown that the Committee acted ultra vires, nor that its appointment was tainted with bad faith or procedural injustice.
46. The Respondents further argued that the Petition is not only without merit but is also driven by bad faith and political undertones. They submitted that land issues in Mandera County are sensitive and emotive, often influenced by clannism, and that the government must carefully balance the interests of all stakeholders in fostering orderly urban development and land use. The delineation of boundaries, they argue, is a necessary step in ensuring sustainable urban expansion, equitable resource distribution, and conflict mitigation. By opposing a lawful and consultative process, the Petitioners risk undermining efforts towards orderly governance and development. The Respondents therefore urge the Court to dismiss the Petition in its entirety with costs.

3rd & 5th Respondents' Submissions

47. The 3rd and 5th Respondents oppose the constitutional petition on the ground that the Cabinet Secretary responsible for lands and urban development acted within the powers conferred by Section 4A of the *Urban Areas and Cities Act*, 2011. They submit that the Act provides a two-pronged mechanism for the creation of urban centres and municipalities: either at the initiative of the Cabinet Secretary or upon a petition by a County Governor. In the present case, it is their contention that the process was commenced at the request of the Governor of Mandera County, not suo moto by the Cabinet Secretary. Consequently, the role of the 3rd Respondent was limited to gazetting the ad hoc committee upon receiving names from the County Governor, and the petitioners have failed to demonstrate that the 3rd Respondent exceeded this statutory mandate.
48. On the question of the legality of the Gazette Notice No. 7402 of 14th June 2024, the Respondents argue that there has been no demonstration of any violation of *the Constitution* or relevant laws by the 3rd Respondent. They placed reliance in *Pastoli v Kabale District Council & Others* [2008] 2 EA 300, which sets out the standard for judicial review, requiring proof of illegality, irrationality, or procedural impropriety. Further reliance was placed in *R v Revenue Commissioner ex parte Preston* [1985] 1 AC 835 and *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 Others* [2013] eKLR, to reinforce that courts should not interfere with executive decisions unless they are irrational, unlawful, or procedurally unfair. The respondents therefore submitted that the gazettment of the ad hoc committee cannot be faulted as it was a facilitative act following the due process initiated by the County Executive.



49. On the issue of public participation, the Respondents acknowledge that public involvement is a critical constitutional requirement under Article 10(2) of *the Constitution*. However, they assert that the allegations of non-involvement are unsubstantiated. They note that the County Assembly, in its response, has denied the petitioners' claims and provided evidence of steps taken to ensure public participation. The respondents argue that public participation does not require universal consultation but must be reasonable and adequate in the circumstances. In support, they rely on *Legal Advice Centre v County Government of Mombasa & 4 Others* [2018] eKLR, which affirms that the intensity and nature of participation depend on the impact and importance of the decision in question.
50. It was further submitted that the petitioners have failed to meet the threshold for the grant of judicial review orders. They emphasise that the Gazette Notice was lawfully issued in furtherance of a process validly initiated by the County Governor, and that all requisite internal processes were presumed to have been followed prior to the Cabinet Secretary's involvement. The respondents submit that no evidence has been adduced to show that the 3rd Respondent acted ultra vires or that the Gazette Notice was issued irregularly. As such, they urge the Court to dismiss the petition with costs, noting that the prayers sought are unjustified and lack legal foundation.

Issues for Determination

51. Having carefully considered the pleadings, affidavits, the parties written submissions and authorities relied on, the key issue for determination is whether the Respondents violated the Constitutional and statutory requirements on public participation and institutional approvals.
52. At the heart of this matter is the constitutional imperative of public participation under Article 10(2) (a) and Article 174(c) of *the Constitution* of Kenya, 2010, which enshrine the principles of openness, accountability and inclusiveness in governance. It is common ground that the delineation of urban boundaries falls squarely within the planning function of county government, a function that must be undertaken in accordance with Article 184(1)(c), which requires that every county government 'ensure reasonable access to the county government by the people to whom the county government belongs, and in particular to its programmes, functions and facilities'.
53. Public participation is a fundamental national value that reflects the people's sovereignty, as outlined in Article 1 of *the Constitution*. Article 10 recognizes public participation as a national value that embodies this sovereignty. Therefore, public participation is a recognized right in Kenya; it is a justiciable right and one of the foundational elements of our new democracy. Our legal framework has clearly established that courts will invalidate any laws, public actions, or projects that do not satisfy the requirements for public participation. Indeed, it can be accurately stated that our Constitution, in envisioning a fresh start for our nation in 2010, considers secrecy regarding matters of public interest detrimental to our democracy.
54. The Petitioners contend, and the affidavits before this Court support, that no demonstrable record exists of specific public participation targeted at urban boundary delineation, distinct from the CIDP and ADP exercises. The Respondents maintain that inclusion of the exercise in those plans suffices. However, it is trite in law, that public participation must be 'real, substantial and not a sham'. In *Kenya Flower Council v Meru County Government* [2019] KEHC 1523 (KLR) the Court stated:

“Public participation should not, therefore, be treated as mere formality, but as a substantive principle of governance which should be adhered to with utmost seriousness. Thus, any process employed to facilitate public participation must be real-time, efficient, effective, comprehensive and measurable.”



55. In *Doctors' for Life International v The Speaker National Assembly and Others* (CCT12/05) (2006) ZACC 11) the South African court defined what facilitation of public involvement is;

“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 phrase 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”; . . . 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. Facilitation of public involvement in the legislative process, therefore, means taking steps to ensure that the public participate in the legislative process. That is the plain meaning of section 72(1) (a). This construction of section 72(1)(a) is consistent with the participative nature of our democracy. As this Court held in *New Clicks*, “[t]he Constitution calls for open and transparent government, and requires public participation in the making of laws by Parliament and deliberative legislative assemblies.” The democratic government that is contemplated in *the Constitution* is thus a representative and participatory democracy which is accountable, responsive and transparent and which makes provision for the public to participate in the law-making process.”

56. Similarly, in *Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others* [2014] eKLR, the Supreme Court reiterated that: -

“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.”

57. The *County Governments Act*, No. 17 of 2012, further elaborates the procedure. Section 102 obliges the County Executive Committee to prepare policies and plans through participatory processes; Section 105 requires public notice and stakeholder consultation prior to policy adoption. There is no dispute that the Petitioners individually wrote to the 3rd Respondent on 20th and 21st June 2024, seeking a halt pending meaningful participation, yet received no substantive response. The absence of any record of such participation, whether in minutes, public notices, or reports, casts doubt on the reasonableness of the process. Public participation is not a one-off formality but a continuous and evolving process.



58. In *Independent Electoral and Boundaries Commission (IEBC) v National Super Alliance (NASA) Kenya & 6 Others*, Civil Appeal No 224 of 2017 [2017] eKLR, the court underscored that: -

“ 165. What is critical is a reasonable notice and reasonable opportunity for public participation. In determining what is reasonable notice, a realistic time frame for public participation should be given. In addition, the purposes and level of public participation should be indicated. Reasonableness is also to be determined from the nature and importance of legislation or decision to be made, and the intensity of the impact of the legislation or decision on the public. The length of consultation during public participation should be given and the issues for consultation. Mechanisms to enable the widest reach to members of public should be put in place; and if the matter is urgent the urgency should be explained.”

59. The Respondents’ reliance on the CIDP 2023–2027 and ADP 2024/25 processes does not dispel concerns. Mere inclusion of a project in a development plan is insufficient if the public is unaware that a specific exercise was contemplated. Here, the Petitioners point to annexed CIDP pages showing only general references to ‘spatial planning’ and ‘land dispute resolution’, without explicit mention of boundary delineation. That ambiguity deprived citizens of informed engagement. Public participation must be targeted: it must focus on the subject matter under consideration and inform the public of its scope and implications.

60. Moreover, the timing and modalities of the cited participation exercises are uncertain. The CIDP process commenced in October 2022, culminating in Assembly approval in July 2023, while the ADP participation occurred in August 2023. Yet the Gazette Notice formalising the delineation committee issued on 14th June 2024. There is a temporal gap of nearly a year between initial planning and concrete action. Protracted delays between participation and implementation may render earlier exercises stale. This calls into question whether the public participation purportedly done in 2022 and 2023 remained meaningful in mid-2024 when the exercise took shape.

61. In addition to public participation, Article 179(1) vests executive authority in the County Executive Committee (CEC) for county functions. The Petitioners assert, and the County Assembly’s resolutions confirm, that no formal CEC resolution specific to boundary delineation exists. The Respondents argue that approval via the CIDP and ADP suffices as de facto CEC consent. However, the *County Governments Act* requires that any major policy decision of the CEC be evidenced by a signed resolution. Absent such a resolution, the Governor’s unilateral letter to the Cabinet Secretary lacks the imprimatur of the full CEC, rendering it procedurally irregular.

62. The Respondents further rely on Section 4A(1) and (3) of the *Urban Areas and Cities Act*, No. 13 of 2011, which empowers the Cabinet Secretary to establish ad hoc committees upon request by a county governor. That provision contemplates a proper internal county process preceding Cabinet Secretary action. The statute does not envisage a governor bypassing the CEC and Assembly, then invoking Section 4A. Executive powers must be exercised within bounds and consistent with enabling statutes. Here, the enabling statute presumes compliance with county procedures prior to request.

63. The constitutional guarantee of sovereignty under Article 1(1) vests power in the people, exercised through public participation and legislative representation. The Petitioners, as national MPs and residents, possess locus to protect the collective interest. Their exclusion from a critical phase of boundary delineation implicates the very sovereignty of the people.



64. Fiscal considerations compound the procedural irregularities. Article 201(a) demands openness and accountability in public finance. The Petitioners note that the County's approved budget for FY 2024/25 contains no allocation for boundary delineation. Section 126 of the *Public Finance Management Act*, No. 18 of 2012, requires that annual development plans reflect specific projects and budgets. Proceeding with an unfunded exercise would contravene this statutory scheme and risk opaque expenditures.
65. In *Kenya Flower Council v Meru County Government (Supra)*, the court underscored that: -
“.....public awareness of the intended legislation was done by a single newspaper advertisement, and announcement in vernacular radio stations. The petitioner stated that its members do not speak the local language and that the announcements were not sufficient for purposes of public participation. It bears repeating and I take the view that sufficient public participation entails employing such processes or systems or methods that are effective and comprehensive as to ensure the public in general and the residents of the county in particular are adequately made aware of the intended law and its contents and implication as well as the manner of participation in the process so as to elicit and enlist their participation in the process of formulation and enactment of the intended law. One advertisement in the local daily newspaper and vernacular radio station is not enough considering the law in question is on imposition of taxes and charges. In addition, not all intended audience speak or understand the vernacular language of Meru. Accordingly, the systems or mechanisms employed by the county government of Meru to facilitate public participation herein were severely restricted and could not achieve meaningful or satisfactory public participation in the formulation, enactment and implementation of the law herein which imposed cess taxes and levies on the petitioner.”
66. In this case, the advertisement appeared in a local newspaper. A single advertisement in local newspapers is insufficient given the significance of the matter at hand. Furthermore, not all residents have the means or ability to access a newspaper or comprehend its content, especially considering the circumstances of some residents who are illiterate. As a result, the methods used by the county government of Mandera to promote public participation were highly limited and failed to accomplish meaningful or effective public involvement in the boundary delineation process.
67. The Respondents' contention that the Petition is premature overlooks the fact that procedural compliance must precede action. The doctrine of ripeness, requires a final decision for judicial review. Here, the issuance of the Gazette Notice constitutes a final administrative act. Judicial intervention is thus warranted to assess both legality and compliance with participation requirements.
68. Weighing these considerations, the evidence establishes that the Respondents failed to conduct targeted, meaningful public participation on boundary delineation, omitted formal CEC approval, and initiated an unfunded process in breach of constitutional and statutory mandates. The jurisprudence demands nothing less than strict adherence to these safeguards so as to give effect to the sovereignty of the people. In *Mui Coal Basin Local Community & 15 others v Permanent Secretary Ministry of Energy & 17 others* [2015] KEHC 473 (KLR), the court highlighted that “However, as we have alluded above, the Courts look at the bona fides of the public actor, the nature of the subject matter, the length and quality of engagement and the number of mechanisms used to reach as many people as possible.” Accordingly, the process leading up to Gazette Notice No. 7204 must be declared unlawful and in breach of Articles 1, 10, 174, 184 and 201 of *the Constitution*, Sections 102, 105, 107 and 108 of the *County Governments Act*, and Section 126 of the *Public Finance Management Act*.



69. In the circumstances, this Court finds and determines that the Respondents' actions to date are ultra vires and constitute a material breach of procedural fairness and public participation. The delineation exercise must be suspended and recommenced in compliance with all constitutional and statutory requirements.

70. From the foregoing, this court makes the following orders:

- a. Gazette Notice No. 7204 dated 14th June 2024 is hereby declared unconstitutional and is quashed.
- b. The delineation process initiated in Mandera County is suspended forthwith pending full compliance with Articles 10, 179, and 184 of *the Constitution* and all relevant statutory provisions and shall only recommence in compliance thereto.
- c. In the interests of justice, each party shall bear their own costs.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 13TH DAY OF AUGUST, 2025.

.....
BAHATI MWAMUYE

JUDGE

In the presence of: -

Counsel for the Petitioners – Ms. Mwangi h/b Mr. Kinaro

Counsel for the 1st & 2nd Respondents – Ms. Ahomo

Counsel for the Interested Parties - M.r Mohamed

Court Assistant – Ms. Lwambia

