



**Ochieng & another v Ministry of Interior and Coordination of National Government & another
(Constitutional Petition E002 of 2024) [2024] KEHC 7667 (KLR) (27 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7667 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CONSTITUTIONAL PETITION E002 OF 2024**

**KW KIARIE, J
JUNE 27, 2024**

BETWEEN

CALEB ONYANGO OCHIENG 1ST PETITIONER

KEPHA OTIENO ODONGO 2ND PETITIONER

AND

**MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL
GOVERNMENT 1ST RESPONDENT**

PROF KITHURE KINDIKI 2ND RESPONDENT

RULING

1. Caleb Onyango Ochieng and Kepha Otieno Odongo, the petitioner herein, filed a petition dated the 12th day of March 2024. They are seeking the following orders:
 - a. That this matter be certified as urgent and be heard ex parte in the first instance.
 - b. That pending hearing and determination of this application, this Honourable Court is pleased to stay the enforcement, implementation, further implementation, creation and establishment of the Asumbi town sub-location vide Gazette Notice No.17 of February 2024 until this application is heard and concluded.
 - c. After hearing this application, this Honourable Court is pleased to stay the enforcement, implementation, further implementation, creation, and establishment of the Asumbi town sub-location via Gazette Notice No. 17 of February 2024 until the substantive petition is heard and concluded.
 - d. That the respondents be compelled to submit to the petitioners all records of public participation, memoranda, minutes, and any other document in their custody that was used to establish the Asumbi town sublocation.



- e. The cost of this application should be provided for.
2. The petition was premised on the following grounds:
 - a. The petitioners are residents of Gem Central Location comprising families of Kabor and Kajulu (ancestral names) who played a vital role during the intended establishment of the Kabor Sub-location, Upper Kajulu Sub-location and Lower Kajulu Sub-location, which were ultimately never established.
 - b. On February 14, 2024, the second respondent published Kenya Gazette Vol. CXXVI, No. 17 of 2024, establishing administrative units as service delivery units, including one Asumbi town sub-location, which, for clarity and avoidance of doubt, was neither discussed, proposed, contemplated, or surrendered for public participation through any verbal or memorandum whatsoever.
 - c. That Asumbi town sits on the land that ancestrally belonged to families of Kabor and Kajulu, jointly forming Gem Central Location, from which the petitioners ascended and thus the effect. [sic]
 - d. Besides residents being strangers to the newly created Asumbi town sublocation, the same does not explain the jurisdiction in terms of boundaries or explain to the affected person their legitimate expectations in terms of governance.
 - e. The second respondent's conduct, while effecting the first respondent's mandate, offended Section 4 of the National Government Coordination Act No. 1 of 2013 by failing to comply with Article 10 of *the constitution*, which highlights principles necessary for administration.
 3. The respondents opposed the petition on the following grounds:
 - a. That there is no prima facie case demonstrated by the petitioners with a likelihood of success, and neither has the petitioner shown any real danger that they will suffer as a result of the alleged violation and/or threatened violation of *the Constitution*.
 - b. That the Notice of Motion Application and the petition have not met the threshold for the grant of conservatory orders.
 - c. That conservatory orders ought to be granted on the inherent merit of a case, bearing in mind the public interest, the constitutional values and the proportionate magnitudes of a case, which in the instant case all tilt against issuing any conservatory orders since the interests of the State merges with the public interest.
 - d. That the petitioners have laid no constitutional and/or legal basis for the court to grant the orders sought in the Notice of Motion Application and the Petition since the issues raised in the petition are administrative and solely aimed at bringing services closer to the people.
 - e. The petitioners' Notice of Motion Application and the Petition are full of allegations that are not supported by evidence.
 - f. The petition is essentially grounded in sectarian interests, contrary to Articles 1 and 10 of *the Constitution* of Kenya, 2010.
 4. When the petitioners wrote to the respondent on the 27th day of February 2024, this is what they stated in part:



Take notice that if the demands of our client are not met within 7 days of this letter, we shall move to court and subject you to the mother of all litigation, squash your directives regarding the subject sublocation (Asumbi) and compel you to act as was tabled and approved during public participation at your cost and peril. [Emphasis added].

It is clear from this excerpt that there was public participation.

5. Public participation enhances decision-making by providing comprehensive information, including additional facts, values, and perspectives from public input. This enables decision-makers to incorporate the best information and expertise from all stakeholders, leading to more implementable and sustainable decisions that consider the needs and interests of all stakeholders, including vulnerable and marginalized populations. Additionally, stakeholders better understand and are more invested in the outcomes. In my view, public participation does connote unanimity. In any society, there will always be varied opinions. The High Court in *Robert N. Gakuru & Others v Governor Kiambu County & 3 Others* (2014) eKLR held that the right to public participation does not impose a duty to the agency to accept the views given as dispositive. However, caution must be taken as to contend that public views ought not to count in decision-making would negate the spirit of *the Constitution*.
6. Public participation was conducted in the instant petition; therefore, the orders sought cannot be granted. The petition is dismissed. Each party will bear its costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 27TH DAY OF JUNE 2024

KIARIE WAWERU KIARIE

JUDGE.

