

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA IN NAIROBI
HCCHRPET/E/2026

KATIBA INSTITUTE PETITIONER
VERSUS
ATTORNEY-GENERAL..... 1ST RESPONDENT
CABINET SECRETARY FOR
THE MINISTRY OF HEALTH 2ND RESPONDENT
AND
KELIN KENYA..... INTERESTED PARTY

Affidavit of Nora Mbagathi in Support of the Petition and Application

I, Nora Mbagathi, make oath and state:

1. I am an adult resident of Nairobi and the Executive Director at Katiba Institute, the Petitioner. My address of service is Post Office Box Number 26586-00100, Nairobi, in the Republic of Kenya.
2. I am familiar with the issues relating to this Petition and am competent to swear this affidavit.
3. Credible media reports indicate constitutional recklessness by the Executive in advancing arrangements with grave public health, sovereignty, and constitutional implications without demonstrable compliance with the Constitution. The reports further indicate advanced Kenya-US discussions on establishing in Kenya a quarantine facility for American citizens exposed to Ebola and other highly infectious diseases, with the Government confirming readiness to proceed, effectively positioning Kenya as an offshore quarantine site for foreign states. (Copies of the credible media reports are marked as **Annexure NM1**) and (Copy of the Press statement by the 2nd Respondent is marked as **Annexure NM2**)
4. This development follows public statements by the United States Secretary of State, Marco Rubio, emphasising that the primary objective of United States foreign policy is to prevent the entry of Ebola into the United States. In response, Kenya appears to have been selected as an alternative containment site, thereby externalising infectious disease risk

management to the Republic's territory. (Copy of the public statements is marked as *Annexure NM3*)

5. The impugned arrangement is being undertaken in a manner that is not transparent and is devoid of constitutional accountability, public participation, Parliamentary oversight, or full disclosure of its health, environmental, and security implications. There is no further indication that any environmental or health impact assessment has been undertaken, notwithstanding the extreme risks involved.
6. Ebola is, according to the World Health Organisation, a highly severe and often fatal disease with no universally approved cure and limited treatment options. It is highly infectious and poses a significant threat to public health systems, particularly in contexts of limited containment capacity, thereby presenting a direct and immediate threat to the rights to life and health under Article 43 of the Constitution and triggering a heightened constitutional obligation on the State to exercise maximum precaution in any related policy response. (Copy of the expert opinion of WHO is marked as *Annexure NM4*)
7. In these circumstances, the Respondents' actions amount to a departure from constitutional obligation and a descent into constitutional recklessness, wherein foundational safeguards are subordinated to Executive expediency.
8. Further, with respect to the availability of the laboratory facilities to handle the Ebola virus, it is a requirement that such a facility be classified as a Biosafety Level 4 facility (BSL 4 facility). Such a facility has the availability of equipment and highly trained staff who are able to deal with infectious diseases such as Ebola.
9. In this instance, the facilities in Kenya, unlike in the USA, only fall within the category of being classified as Biosafety Levels 1 to 3 (BSL 1-3). BSL-1 facilities deal with basic biosafety procedures that are low risk. These facilities are often located in secondary schools, universities and research facilities, BSL-2 facilities deal with moderate risk and are

considered as primary health and diagnostic facilities in national and county hospitals or health centres, and clinical laboratories, whereas BSL-3 facilities deal with high-risk diseases such as Tuberculosis and HIV and are very limited in number in Kenya. To make matters worse, there are only 3 BSL-3 facilities as of now. Therefore, what if there is an outbreak of Ebola? Can we manage to contain it? (*Copy of the information on the availability of BSL-3 Facilities is marked as annexure NM-5*)

9. This Court has previously intervened in comparable circumstances, including in *Law Society of Kenya & 7 others v Cabinet Secretary for Health & 8 others; China Southern Co. Airline Ltd (Interested Party) [2020] KEHC 9970 (KLR)*, where conservatory orders were issued to prevent exposure of the public to constitutional and public health risk (Coronavirus). (*Copy of the decision is marked as Annexure NM6*)
10. Unless this Honourable Court urgently intervenes, there is a real and imminent danger that Kenya may be converted into an offshore quarantine centre for foreign states, thereby exposing citizens to avoidable loss of life and rendering these proceedings nugatory.
11. In the circumstances, the urgency of arresting this escalating constitutional recklessness and protecting the supremacy of the Constitution cannot be overstated.
12. The foregoing arguable issues disclose a prima facie case with a high likelihood of success, which needs to be preserved until the same is properly ventilated before the court, as the foregoing events are a threat to the Bill of Rights, good governance, accountability, constitutionalism, and the rule of law.
13. It is thus contrary to the public interest. This is because the public interest calls for protection of the health of people as opposed to potential exposure to harm against life and health to both Kenyans, those living in Kenya and most especially health care workers through introduction of the Ebola disease.

14. Unless the Petition and the Application are certified as urgent, and the prayers sought in the application granted, the Petition shall be rendered nugatory because:

- a) The Respondents will convert Kenya into an offshore quarantine centre for foreigners.
- b) Those living in Kenya will die as they will be exposed to a deadly disease which has no cure.
- c) The Respondents will violate the Constitution by entering into an agreement without following the law: Involving the people, the Parliament and without conducting a health and environment assessment.
- d) Remedies issued at the Judgement stage are insufficient to address the harm done to the Constitution, as this Court cannot resurrect Kenyans who would have been exposed to the deadly Ebola disease.
- e) The public interest calls for ensuring that the constitutional provisions and values are scrupulously adhered to.
- f) It is the duty of this Honourable Court to arrest a threat to the Bill of Rights and the Constitution of Kenya.

15. What I have stated in this affidavit is true and accurate to the best of my knowledge, information, and belief. When I have relied on information outside my direct experience, I have explained why that information is reliable and included supporting exhibits

Sworn by Nora Mbagathi on 28 May 2026 in Nairobi



BEFORE ME
COMMISSIONER OF OATHS

A handwritten signature in black ink, appearing to be "Nora Mbagathi".

Nora Mbagathi
Deponent

Drawn and filed by

Joshua Malidzo Nyawa,

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