

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 HEALTH2ND RESPONDENT
AND
KELIN KENYA..... INTERESTED PARTY

TO: THE HIGH COURT OF KENYA
PETITION

A. Introduction

*We wish to inform you that tomorrow we will be killed with our families,’ Phillip
Gourevitch*

1. Where authorities receive credible warnings of grave and potentially mass harm but do not act upon them with urgency, the consequences can be irreversible. In **‘We wish to inform you that tomorrow we will be killed with our families’**, Philip Gourevitch documents how repeated forewarnings of imminent mass killing were met with institutional paralysis, resulting in catastrophic and preventable loss of life. Similarly, epidemic literature, including **‘And the Band Played On’** and **‘The Coming Plague’**, show that a delayed or inadequate governmental response to known lethal public health threats can transform institutional hesitation into a catalyst for widespread mortality. The central lesson from these accounts is that knowledge of foreseeable and severe risk imposes a heightened duty of immediate and precautionary action.
3. The present circumstances disclose a comparable constitutional danger. Despite the alarms raised by the World Health Organisation, that Ebola is a highly severe and often fatal disease with no universally approved cure

and limited treatment options 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 under Article 26 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.

4. The Government of Kenya, through a secretly entered agreement with the government of the United States of America, is about to open its borders to US citizens who have been affected by this deadly disease.
5. This level of constitutional carelessness and institutionalised defiance of the Constitution is a threat to our constitutional order. It is a demonstration of the executive arm of the government being derelict of its obligations. The Constitution requires the government to take precautionary measures to prevent its citizens from being exposed to deadly diseases.
6. Despite the clear threats and backed up by medical evidence, the government is about to allow the importation of Ebola to Kenya through an agreement 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.
7. The Petition invites this Court to put an end to this level of constitutional carelessness and arrest the massive attack on Kenya's constitutional framework, founded on the respect for the Bill of Rights, public participation and parliamentary democracy.
8. It is for this reason that the Petitioner approaches the Court.

B. Description of Parties

I. Petitioner

9. The Petitioner is the Katiba Institute. It is a research and litigation institution established in 2011 with the mission of supporting the implementation of Kenya's 2010 Constitution, helping to resist efforts to undermine that Constitution, and generally assisting in developing a culture of constitutionalism in Kenya.

II. Respondents

10. The 1st Respondent is the Attorney-General. The Attorney-General is an office established under Article 156 of the Constitution as the principal legal adviser to the government. The Attorney-General represents the national government in court or other legal proceedings.
11. The 2nd Respondent is the Cabinet Secretary for the Ministry of Health. The office is established under Article 152 of the Constitution of Kenya, 2010.

III. Interested Party

12. The interested party is Kelin-Kenya. It is the national coordinator of Transform Health Kenya, a coalition member of the Transform Health Coalition. Transform Health Kenya is a coalition of organisations and institutions in Kenya working on health and human rights, engaging key and affected populations, youth, and women, and on digital health technologies, all of whom are committed to achieving Universal Health Coverage through the use of digital technologies and data.

C. Statement of Standing and Jurisdiction

13. The Petitioner institutes this petition on the strength of Article 3(1), which states that every person has an obligation to respect, uphold, and defend the Constitution of Kenya 2010.

14. The Petitioner is a person envisaged under Articles 22(2)(c) and 258(2)(c) of the Constitution, which provides every person with the right to approach this Honourable Court in the public interest and institute court proceedings, claiming that a right in the Bill of Rights or another constitutional provision, respectively, has been contravened or is threatened with contravention.
15. Under Article 165(3)(d)(i) and (ii) of the Constitution of Kenya, the High Court has jurisdiction to hear any question respecting the interpretation of this Constitution, including the determination of the question whether any law is inconsistent with or in contravention of this Constitution and whether anything said to be done under the authority of this Constitution or any law is inconsistent with, or in contravention of, the Constitution.

D. Background to the petition

16. 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.
17. 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.
18. 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.

19. 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.
20. 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.

E. Legal basis for the petition

21. The Petition contests the constitutionality of the agreement between the Government of Kenya and the Government of the United States of America 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.
22. It discloses explicit constitutional violations carried out with the highest level of contempt.

a) Constitution of Kenya

23. The Preamble to the Constitution recognises the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice, and the rule of law.

24. Article 1(1) of the Constitution of Kenya 2010 embodies the concept of the people's sovereignty and states that 'All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution'.
25. Articles 2(1) and (4) of the Constitution provide that the Constitution is the supreme law of the Republic and binds all persons. Any law inconsistent with the Constitution is void to the extent of the inconsistency, and any act or omission in contravention of the Constitution is invalid.
26. Article 3(1) states, 'Every person has an obligation to respect, uphold and defend this Constitution.'
27. Article 6(2) states that 'the governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations based on consultation and cooperation'.
28. Article 10 establishes the national values and principles of governance. Article 10(1):
- The national values and principles bind all State organs, State officers, public officers, and all persons whenever any of them—
- (a) applies or interprets this Constitution;
 - (b) enacts, applies or interprets any law; or
 - (c) makes or implements public policy decisions.
29. Article 10(2) asserts that 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 marginalised;

(c) good governance, integrity, transparency and accountability; and

(d) sustainable development.

30. Chapter Four of the Constitution establishes the Bill of Rights. Article 19(1) states that '[t]he Bill of Rights is an integral part of Kenya's democratic state and is the framework for social, economic and cultural policies'. According to Article 19(2), human rights and fundamental freedoms are protected to 'preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings'. Article 19(3). Provides that the rights and fundamental freedoms guaranteed in the Bill of Rights:

(a) belong to each individual and are not granted by the State;

(b) do not exclude other rights and fundamental freedoms not in the Bill of Rights but recognised or conferred by law, except to the extent that they are inconsistent with this Chapter; and

(c) are subject only to the limitations contemplated in this Constitution.

31. Article 20 addresses the application of the Bill of Rights. Articles 20(1)-(4) state that:

(1) The Bill of Rights applies to all law and binds all State organs and all persons.

(2) Every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental

freedom.

(3) In applying a provision of the Bill of Rights, a court shall—

(a) develop the law to the extent that it does not give effect to a right or fundamental freedom; and

(b) adopt the interpretation that most favours the enforcement of a right or fundamental freedom.

(4) In interpreting the Bill of Rights, a court, tribunal, or other authority shall promote—

(a) the values that underlie an open and democratic society based on human dignity, equality, equity and freedom; and

(b) the spirit, purport and objects of the Bill of Rights.

32. Article 21 addresses the implementation of rights and fundamental freedoms. Articles 21(1), (2), (3) & (4) state that:

(1) It is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights.

(2) The State shall take legislative, policy and other measures, including the setting of standards, to achieve the progressive realisation of the rights guaranteed under Article 43.

(3) All State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalised communities, and members of particular ethnic, religious or cultural communities.

(4) The State shall enact and implement legislation to fulfil its international obligations regarding human rights and fundamental freedoms.

33. Article 22 provides for the enforcement of the Bill of Rights and provides that ‘every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened’.
34. Article 23(1) gives this Court ‘jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights’.
35. In proceedings alleging that a fundamental right or freedom has been denied, violated, infringed, or threatened, this Court may grant appropriate relief, including:
- (a) a declaration of rights;
 - (b) an injunction;
 - (c) a conservatory order;
 - (d) a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24;
 - (e) an order for compensation; and
 - (f) an order of judicial review.
36. Article 24(1) states that ‘A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including-

- a) the nature of the right or fundamental freedom;
- b) the importance of the purpose of the limitation;
- c) the nature and extent of the limitation;
- d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and
- e) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.

37. Article 26 of the Constitution of Kenya (2010) provides for the right to life.
38. Article 28 entitles every person to dignity and the right to have their dignity respected.
39. Article 35(3) provides for proactive disclosure of information by the State and provides that '[t]he State shall publish and publicise any important information affecting the nation'.
40. Article 43(1)(a) of the Constitution of Kenya) guarantees every person the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care.
41. Article 47(1) states that every person has the right to fair administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair; and (2) if a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
42. Article 48 states that the state shall ensure access to justice for all persons and if any fee is reasonable and shall not impede access to justice.

43. Articles 94, 95 and 96 establish the Parliament in Kenya, and the Constitution grants the institution the mandate of representation and oversight. In effect, the provisions establish a parliamentary democracy.
44. Article 165(3)(a) and (b) establishes the High Court and vests it with unlimited jurisdiction in criminal and civil matters to determine whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened'. It also has jurisdiction under Article 165(3)(d):
- to hear any question respecting the interpretation of this Constitution including the determination of—
- (i) the question whether any law is inconsistent with or in contravention of this Constitution;
- (ii) the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution....
45. Article 258(2) of the Constitution provides that 1) Every person has the right to institute court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention. In addition to a person acting in their interest, court proceedings under clause (1) may be instituted by a person acting in public interest.
46. Article 259(1) requires that the Constitution be interpreted in a manner that:
- (a) promotes its purposes, values and principles;
- (b) advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights;
- (c) permits the development of the law; and
- (d) contributes to good governance.

F. Particulars of Constitutional Violations

I. Violation of the right to life

47. The facts as presented disclose a potential and clear infringement of the right to life under Article 26 of the Constitution. The State is advancing arrangements that expose the population to a highly lethal infectious disease without demonstrated adherence to strict constitutional safeguards. Ebola is widely recognised as a disease with a high mortality rate and rapid transmission potential, and any State action that increases the risk of exposure to such a hazard directly implicates the constitutional protection of life.
48. Article 26 imposes a strict obligation on the State not to deprive life, whether directly or indirectly, except in accordance with the Constitution and due process of law. Where State conduct creates foreseeable and avoidable conditions that heighten the risk of loss of life, and where such conduct is undertaken without transparent risk assessment or adequate precautionary measures, it raises a serious constitutional concern as to whether the State is discharging its duty to safeguard life.
49. In the present circumstances, the alleged advancement of a high-risk quarantine arrangement without clear evidence of robust containment measures, public accountability, or preventive safeguards creates a credible risk that the right to life may be imperilled. The Constitution demands that where life is foreseeably at risk from State action, the highest degree of caution must be exercised, and failure to do so may amount to a violation of Article 26.

II. Violation of the normative value-based system established under Article 10 of the Constitution

50. The objective normative value-based system established in the Constitution was not accidental. Instead, Kenyans reacted to the unchecked powers vested in the executive branch, the lack of

transparency and the failure to entrench accountability. To constrain these powers, Kenyans decided to preclude the exercise of arbitrary power. They envisioned a society founded on values and principles, as set out in Article 10 of the Constitution, such as the rule of law, transparency, accountability, the devolution of powers, and good governance.

51. Kenyans intended that the said provisions should have substantive bite and that they would be enforced and implemented. They desired these values and principles to be put into practice. It follows, therefore, that all State organs, State officers, public officers and all persons, whether they apply or interpret the Constitution, enact, apply or interpret any law or make or implement public policy decisions, must defer to Article 10.

a) Failure to conduct public participation

52. The Constitution establishes a participatory democracy by providing for the requirement of public participation and transparency in all affairs affecting the lives of the citizens of Kenya. The inclusion of public participation as a national value recognises that the Kenyan citizenry is mature enough to express how they want to be governed. Failure to conduct public participation violates Article 10 of the Constitution.
53. The impugned agreements were entered into without the involvement of the people. Yet, these agreements are not internal departmental policies, but are meant to govern the health sector and the establishment of an Ebola quarantine centre in Kenya. The Constitution demands that such life-changing and public affairs matters be subject to real, not illusory, public participation. In this case, no attempt was made.

b) Secrecy and non-transparency

54. So the State does not involve the people in entering into these agreements, but also enters into the agreements in secrecy. Yet the Constitution calls for transparency, thereby violating the principles of good governance and

accountability.

55. In an open society such as the one founded under article 10, the theme is that of openness and not secrecy. Yet in this case, the Country only became aware of the agreements when the United States of America announced the deal, which was then reported by Foreign media. The Government later released a press statement confirming the discussions. It was therefore after the fact. Our transformative Constitution cannot countermand such a level of secrecy.
56. In these circumstances, what the Constitution demands is a proactive government. A government that informs its citizenry of the establishment of an Ebola quarantine centre and the safeguards put in place to protect citizens from contracting the disease.
57. In this open state, the law encompasses a duty on state bodies to disclose information proactively. Therefore, the state must proactively publish information in the public interest. Such information include:
 - a. The full terms of any agreement, memorandum, arrangement or negotiations relating to the proposed facility;
 - b. Any public health, environmental, biosafety or security assessments undertaken in relation thereto;
 - c. Any approvals obtained from Parliament, relevant regulatory agencies, or county governments; and
 - d. The protocols intended to govern the admission, handling, isolation and treatment of exposed persons.
58. But the government in this case chooses to move secretly. Such a move is unconstitutional.

III. Violation of the Right to Health and the State's obligations to uphold the right to health and other rights

59. Article 43(1)(a) of the Constitution of Kenya guarantees every person the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care.
60. Article 43 of the Constitution has to be read together with Article 21(2) of the Constitution which states that '[t]he State shall take legislative, policy and other measures, including the setting of standards, to achieve the progressive realisation of the rights guaranteed under Article 43.
61. With respect to the normative content on the right to health, the Committee of Economic Social and Cultural Rights in its General Comment No. 14, at para 11 provides that 'the right to health is an inclusive right extending not only to timely and appropriate health care *but also to the underlying determinants of health, such as ... access to health-related education and information, A further important aspect is the participation of the population in all health-related decision-making at the community, national and international levels.*
62. General Comment 14 at para 12 provides that the normative content on the right to health includes availability and accessibility. Availability means that there are functioning public health and health-care facilities, goods and services, as well as programmes, that have to be available in sufficient quantity within the State party. The precise nature of the facilities, goods, and services will vary depending on numerous factors, including the State party's level of development.
63. Regarding the issue of availability, Ebola is considered a highly infectious disease. With respect to the availability of the laboratory facilities to handle 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 availability of equipment and highly trained staff who are able to deal with infectious diseases such as Ebola.

64. In this instance, the facilities in Kenya only fall within the category of being classified as Biosafety Levels 1 to 3 (BSL 1-3). BS-L 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.
65. Also, only 3 health facilities can currently test for Ebola in the entire country; therefore, what if there is an outbreak of Ebola? Can we manage to contain it?
66. This shows that there is a lack of availability of the infrastructure or facilities as it is to contain Ebola for those currently in Kenya and adding the additional factor of purposefully introducing Ebola patients where there are lack of facilities to absorb and treat the virus is an added strain to preventative measures the State can take to ensure the highest attainable standards of health.
67. On the other hand, accessibility of the right to health includes '[i]nformation accessibility: accessibility includes the right to seek, receive and impart information and ideas concerning health issues.
68. The establishment of an Ebola quarantine facility in Kenya directly engages Article 43 because Ebola is a highly infectious and often fatal disease that poses a serious threat to public health systems and individual well-being.
69. Any State action that increases exposure risk, strains health infrastructure, or introduces high-consequence infectious disease management obligations must therefore comply with the constitutional duty to ensure prevention, timely response, and protection of the population's health.
70. Article 21(1) of the Constitution imposes on the State both:

- a. a negative duty (duty to observe and respect): not to expose persons to avoidable health risks through state action; and
- b. a positive duty (to protect, and promote): to adopt precautionary, evidence-based measures to prevent disease and protect public health from harm that comes from third parties.

71. Section 4 of the Health Act, CAP241 also elaborates the State's obligation when it comes to the right to health as follows:

4. It is a fundamental duty of the State to observe, respect, protect, promote and fulfill the right to the highest attainable standard of health including reproductive healthcare and emergency medical treatment by *inter alia*—

(a) developing policies, laws and other measures necessary to protect, promote, improve and maintain the health and well-being of every person;

(b) ensuring the prioritization and adequate investment in research for health to promote technology and innovation in healthcare delivery;

(c) ensuring the realization of the health-related rights and interests of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalized communities and members of particular ethnic, religious or cultural communities;

(d) ensuring the provision of a health service package at all levels of the healthcare system, which shall include services addressing promotion, prevention, curative, palliative and rehabilitation, as well as physical and financial access to healthcare;

(e) ensuring adequate investment in research for health to promote technology and innovation in healthcare delivery.

72. A violation of the duty to respect as outlined in the Committee on Economic, Social and Cultural Rights General Comment No. 14 at para 50 includes the following actions of the State: ‘the deliberate withholding or misrepresentation of information vital to health protection or treatment; ...; and the failure of the State to take into account its legal obligations regarding the right to health when entering into bilateral or multilateral agreements with other States, international organizations and other entities, such as multinational corporations.’
73. On the violation of the State’s obligation to protect, para 15 of General Comment No. 14 provides that ‘[v]iolations of the obligation to protect follow from the failure of a State to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to health by third parties. This category includes such omissions as the failure to regulate the activities of individuals, groups or corporations so as to prevent them from violating the right to health of others...’
74. This means that if the Respondents allow for a third party- the United States of America to allow for their patients with Ebola disease to enter Kenya for treatment and exposing us to a public health harm, especially where Kenya is not equipped to handle any Ebola cases, then this means that the State has violated its duty to protect us from third parties.
75. In addition, the State’s failure to undertake proper risk assessment, public participation, and health system preparedness before facilitating such an arrangement amounts to a breach of the State’s obligations under Article 21(1) of the Constitution.
76. When interpreting the right to health under Article 43 of the Constitution it is important to read it with the State’s obligations under Article 21(2) of the Constitution which requires the Respondents in this instance to take legislative, policy and other measures, including the setting of standards to progressively realise the socio economic rights under Article 43(1)(a) of the Constitution.

77. General Comment No. 14 at para 32 discusses the State's obligations in relation to avoiding any retrogressive measures in relation to the right to health. It provides that 'there is a strong presumption that retrogressive measures taken in relation to the right to health are not permissible. If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the State party's maximum available resources.'
78. In addition, the Respondents' actions are retrogressive in nature and not the progressive realisation of the right to health contrary to Article 21(2) of the Constitution. This is due to the introduction of the Ebola disease without clear policies or equipped facilities hence putting people at risk of their right to health under Article 43(1) being violated.

IV. Violation of the Right of access to information

79. Article 35(3) requires the State to 'publish and publicize any important information affecting the nation'.
80. To give effect to this provision, Parliament enacted the Access to Information Act, whose object and purpose is to 'give effect to the right of access to information by citizens as provided under Article 35 of the Constitution'.
81. The Act provides 'a framework for public entities... to proactively disclose information that they hold... and to provide information on request in line with the constitutional principles'. (Ibid at s 3(b). And it promotes 'routine and systematic information disclosure by public entities... on constitutional principles relating to accountability, transparency and public participation and access to information'. Ibid at 3(d).
82. Section 5(1)(c) of the Act requires public entities to:

publish all relevant facts while formulating important policies or

announcing the decisions which affect the public, and... the facts available to it or to which it has reasonable access which in its opinion should be known to them in the best interests of natural justice and promotion of democratic principles.

83. Further, Section 6(4) requires a public entity or private body to disclose information where the public interest in disclosure outweighs the harm to protected interests.

84. Similarly Section 6(6) reads that: 'In considering the public interest referred in subsection (4), particular regard shall be had to the constitutional principles on the need to-

(a) promote accountability of public entities to the public;

(b) ensure that the expenditure of public funds is subject to effective oversight;

(c) promote informed debate on issues of public interest;

(d) keep the public adequately informed about the existence of any danger to public health or safety or to the environment; and

(e) ensure that any statutory authority with regulatory responsibilities is adequately discharging its functions.

85. The right to access information under Kenyan law encompasses a duty on state bodies to disclose information proactively. Therefore, the state must proactively publish information in the public interest.

86. This obligation is important as it recognises that the right of access to information is crucial to the realisation of other rights in the Bill of Rights. For instance, the right to receive or impart information or ideas or hold state institutions accountable depends on the right to access information. Also the enjoyment of the right to life and right to health is dependent on access to information.

87. For this reason, the respondents were constitutionally required to disclose the following information:

- a. The full terms of any agreement, memorandum, arrangement or negotiations relating to the proposed facility;
- b. Any public health, environmental, biosafety or security assessments undertaken in relation thereto;
- c. Any approvals obtained from Parliament, relevant regulatory agencies, or county governments; and
- d. The protocols intended to govern the admission, handling, isolation and treatment of exposed persons.

88. The failure to publish information that is important to the nation is a concomitant violation of the right to access information under article 35 of the Constitution.

V. Violation of the Right to Fair Administrative Action

89. The right to fair administrative action requires administrative actions that flow from statutes and must now meet the constitutional test of legality, reasonableness and procedural fairness. According a party a hearing before taking action against him is no longer discretionary. It is firmly entrenched in our Constitution as an inviolable right. It is an important safeguard against capricious and whimsical actions that lead to abuse of authority by public bodies exercising administrative and quasi-judicial functions. These no longer have a place in our constitutional dispensation.

90. Article 47 of the Constitution guarantees every person the right to expeditious, efficient, lawful, reasonable, and procedurally fair administrative action. This is echoed in section 4(1) of the Fair Administrative Action Act, CAP 7L of the Laws of Kenya (FAA).

91. Section 2 of the Act defines “administrative action” as “powers, functions and duties exercised by authorities” or “any act, omission or decision of

any person, body or authority that affects the legal rights or interests of any person affected by the action”.

92. Under section 7 of the Fair Administrative Action Act, this Court is entitled to review administrative action where:

The administrator—

- a. denied the person to whom the decision relates a reasonable opportunity to state the person’s case
- b. unreasonably delayed or failed to act in the discharge of a duty imposed under any written law
- c. was biased or may reasonably be suspected of bias
- d. acted in excess of jurisdiction or power conferred under any written law.

The administrative action:

- a. is not proportionate to the interests or rights affected
- b. was materially influenced by an error of law;
- c. is unfair or procedurally unfair;
- d. is unreasonable or not informed by the reasons given for it.
- e. is taken or made in abuse of power

93. The facts as presented disclose a violation of Article 47 of the Constitution and the Fair Administrative Action Act, in that the impugned decision-making process fails to meet the constitutional requirements of legality, reasonableness, and procedural fairness. Article 47 guarantees every person the right to administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair, and this requirement is a binding constitutional obligation designed to prevent the arbitrary exercise of public power.

94. The advancement of arrangements to establish a high-risk Ebola quarantine facility in Kenya constitutes administrative action within the meaning of section 2 of the Fair Administrative Action Act, as it is a decision by public authorities that directly affects the rights and interests

of the public, including the rights to life, health, and safety. Such a decision is required to be preceded by full disclosure of material information, rational assessment of risk, and meaningful public participation. The absence of these procedural safeguards renders the process constitutionally defective.

95. Accordingly, the impugned administrative action is taken in breach of Article 47 and falls within the grounds for judicial review under section 7 of the Fair Administrative Action Act, including procedural unfairness, unreasonableness, and abuse of power. It is therefore constitutionally invalid for failure to comply with the mandatory standards of fair administrative action.

VI. Violation of Article 24 of the Constitution

96. For a limitation to be constitutional, it must meet the strict Article 24 Constitutional muster. A party must demonstrate compliance with all elements of the provision. One, a party must demonstrate a rational connection between the aim being pursued and the means. Two, the means being used must be the least restrictive. The respondents' action fails this twin test.
97. One, there is no legitimate aim or rational connection in the establishment of the Ebola quarantine centres in Kenya. Kenya has never recorded a single Ebola case. If establishment of a quarantine centre, it should be established in countries where ebola cases have been reported. Secondly, if the USA has refused its own citizens, what is the justification for Kenya to accept them when there is a threat of exposing its own citizens to such a deadly disease?
98. Second, there exists less restrictive measures that are proportionate. The language of the Bill of Rights states that the enjoyment of a right is the rule, while limitation is an exception. Even when pursuing a legitimate aim, a

limitation should be proportional, and the state is constitutionally obligated to choose the least restrictive means of limiting the right.

99. The least restrictive measure encapsulated under Article 24 of the Constitution requires that, of all the instruments chosen to achieve the aim pursued, it must be the least problematic from the perspective of the individual right at stake. In sum, a limitation should not be overkill.

100. With respect to availability of the laboratory facilities to handle Ebola virus, it is a requirement that such a facility be classified as a Biosafety Level 4 facility (BS L 4 facility). Such a facility has availability of equipment and highly trained staff who are able to deal with infectious diseases such as Ebola.

101. 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 (BS L 1-3). BS-L 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 centers, 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, the BSL-3 facilities are only 3 as at now.

102. The least restrictive measure in this case is that the Ebola cases of USA citizens be handled in the USA where there are better facilities than here in Kenya. Kenya lacks facilities to handle such cases and to expose Kenyans to a risk of contacting the deadly Ebola cannot be said to be a proportionate measure.

VII. Violation of Articles 94, 95 and 96 of the Constitution

103. The Executive's decision to advance arrangements with the United States of America for the establishment of a high-risk Ebola quarantine

facility in Kenya without involving Parliament constitutes a clear constitutional breach.

104. Under the Constitution of Kenya, 2010, Parliament is the primary embodiment of the sovereign will of the people and the central institution through which public power is subjected to democratic accountability. By excluding Parliament from a matter of such grave public health, fiscal, and sovereignty implications, the Executive unlawfully displaces the constitutional architecture of checks and balances and substitutes it with unilateral executive action.
105. This conduct is in direct contravention of Articles 94 and 95(5) of the Constitution, which vest legislative authority in Parliament and impose an oversight mandate over public affairs, including policies and actions with significant national impact. A decision to establish a facility of this nature necessarily engages questions of public expenditure, national security, and public health policy, all of which fall squarely within the constitutional competence of Parliament. The failure to subject the arrangement to parliamentary scrutiny, therefore, amounts to an impermissible usurpation of legislative authority.
106. In the circumstances, the impugned action is constitutionally invalid for want of parliamentary oversight and accountability. It offends the structural principles of constitutional supremacy, separation of powers, and democratic governance, all of which require that decisions of such magnitude be subjected to legislative deliberation and public participation rather than executive fiat.
107. Second, some agreements amount to treaties, and they must follow the procedure laid down under the Treaty Making and Ratification Act. The agreement to establish an Ebola Quarantine center in Kenya with the United States of America falls under Section 3(b) and must follow the procedure laid down in the Treaty-Making and Ratification Act. A bilateral

agreement concerning the security of Kenya and the rights and duties of its citizens can be entered into only in accordance with the Act, which mandates parliamentary involvement.

G. Conclusion

108. In conclusion, this Honourable Court is vested with broad remedial authority under Article 23(3) of the Constitution to fashion appropriate reliefs. It has the mandate to fashion remedies that are effective to vindicate the Constitution.

H. Reliefs Requested

109. As a result, invoking Article 23 of the Constitution, the petitioner seeks the following or other appropriate reliefs:

- a) A declaration that the Respondents' actions in advancing arrangements that expose the population to a high-risk Ebola quarantine facility without demonstrable constitutional safeguards violate Article 26 of the Constitution and are therefore unconstitutional, unlawful, and void.
- b) A declaration that the failure to conduct public participation, ensure transparency, and uphold accountability in the impugned arrangements violates Article 10 of the Constitution, rendering the decision-making process constitutionally invalid.
- c) A declaration that the Respondents' failure to undertake adequate risk assessment, public health safeguards, and preparedness measures in relation to the proposed Ebola quarantine facility violates Article 43 (1)(a) read with Article 21 of the Constitution.
- d) A declaration that the impugned administrative actions are procedurally unfair, unreasonable, and unlawful for failure to comply with Article 47 of the Constitution and sections 4 and

7 of the Fair Administrative Action Act, and are therefore null and void.

- e) A declaration that the Respondents' failure to involve Parliament and comply with the Treaty-Making and Ratification Act renders the impugned arrangement unconstitutional, invalid, and of no legal effect for want of legislative oversight and approval.
- f) A declaration that the Respondents' failure and/or refusal to proactively publish and publicize information relating to the proposed establishment and operation of the impugned infectious disease facility, including the terms of any agreement, public health and biosafety assessments, regulatory approvals, and operational protocols, violates Article 35 of the Constitution as read together with Sections 3, 5 and 6 of the Access to Information Act, and infringes the Petitioners' and the public's right of access to information.
- g) A declaration that the Respondents have violated Article 24 of the Constitution by failing to demonstrate that the intended establishment and operation of Ebola quarantine and treatment facilities in Kenya, and the admission of foreign Ebola-exposed or infected persons into the Republic, constitutes a reasonable and justifiable limitation of rights in an open and democratic society based on human dignity, equality and freedom, including failure to demonstrate a rational connection to a legitimate aim and failure to adopt the least restrictive means available.
- h) A remedy in the nature of structural interdict directing the Respondents, within a time frame to be fixed by this Honourable Court, to file and serve a comprehensive report demonstrating full compliance with the Constitution and applicable law in relation to the proposed Ebola quarantine

arrangement, including evidence of public participation, disclosure of the full terms of any agreement, environmental and health impact assessments, public health risk assessments, and confirmation of compliance with parliamentary and treaty-making requirements

i) Any other prayers this Court deems fit.

Dated 28 May 2026, Nairobi



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