

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

Notice of Motion

(Under Rules 3(2),(3), (4) and (5), 19, 23 and 24 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 and Article 23 of the Constitution of Kenya, 2010)

TAKE NOTICE that this Honourable Court shall be moved on the day of2026 at 9.00 in the morning or soon thereafter as Counsel for the Petitioner/Applicant may be heard on an application for orders that:

- a. This Application and Petition be certified as urgent and heard on a priority basis in the first instance.
- b. A conservatory order issue restraining the Respondents from establishing, operationalising, facilitating, approving or permitting the establishment and/or operation of any Ebola exposure, quarantine, isolation or treatment facility in Kenya pursuant to any arrangement with the United States of America or any foreign government or agency pending the inter-parties hearing and determination of this Application.
- c. A conservatory order issue in the form of a structural interdict compelling the 2nd Respondent to prepare and present to the Court in 24 hours for scrutiny a contingency plan on prevention, surveillance, control and response systems to the Ebola outbreak in Kenya pending the inter-parties hearing and determination of this Application.

- d. A conservatory order issue pending the inter-parties hearing and determination of this Application compelling the Respondents to disclose and furnish to the Petitioner and to the public:
 - 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.
- e. A conservatory order issue restraining the Respondents whether by themselves, their agents, officers or any persons acting under their authority, from admitting into, transferring to, receiving within, or facilitating the entry into Kenya of persons exposed to or infected with Ebola pursuant to the impugned arrangement with the Government of the United States of America or any foreign entity pending the inter-parties hearing and determination of this Application.
- f. A conservatory order issue restraining the Respondents from establishing, operationalising, facilitating, approving or permitting the establishment and/or operationalisation of any Ebola exposure, quarantine, isolation or treatment facility in Kenya pursuant to any arrangement with the United States of America or any foreign government or agency pending the inter-parties hearing and determination of this Petition.
- g. A conservatory order issue in the form of a structural interdict compelling the 2nd Respondent to prepare and present to the Court for scrutiny in 24 hours a contingency plan on prevention, surveillance, control and response systems to the Ebola outbreak in Kenya pending the inter-parties hearing and determination of this Petition.

- h. A conservatory order issue pending the inter-parties hearing and determination of this Petition compelling the Respondents to disclose and furnish to the Petitioner and to the public:
 - 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.
- i. A conservatory order issue restraining the Respondents whether by themselves, their agents, officers or any persons acting under their authority, from admitting into, transferring to, receiving within, or facilitating the entry into Kenya of persons exposed to or infected with Ebola pursuant to the impugned arrangement with the Government of the United States of America or any foreign entity pending the inter-parties hearing and determination of this Petition.

Which Application is based on the following grounds and supported by the affidavit of **Nora Mbagathi**:

1. 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.
2. 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.

3. 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.
4. 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.
5. 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.
6. 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.
1. 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?

7. 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 (Corona virus).
8. 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.
9. In the circumstances, the urgency of arresting this escalating constitutional recklessness and protecting the supremacy of the Constitution cannot be overstated.
10. 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.
11. 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.

12. 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.

13. We ask that this Application be allowed as prayed.

Dated 28 May 2026, Nairobi.



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Drawn and filed by
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