



REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CONSTITUTION AND HUMAN RIGHTS DIVISION  
CONSTITUTIONAL PETITION NO. .... E032.....



IN THE MATTER OF THE ENFORCEMENT OF THE BILL OF RIGHTS UNDER ARTICLE 22 (1),  
AND THE ENFORCEMENT OF THE CONSTITUTION UNDER ARTICLE 258 OF THE  
CONSTITUTION OF KENYA (2010)

AND

IN THE MATTER OF CONTRAVENTIONS AND THREATENED CONTRAVENTIONS OF  
FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 1, 2(2), 3(1), 10(2), 19, 20, 21,  
33, 35, 201 AND 227 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF SECTIONS 4, 9, 20 AND 28 OF THE ACCESS TO INFORMATION ACT,  
2016

AND

IN THE MATTER OF: DENIAL OF ACCESS TO INFORMATION PERTAINING TO THE  
CONTRACT BETWEEN KENYA GOVERNMENT, CHINA EXIM BANK, CHINA ROAD AND  
BRIDGE CORPORATION, GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA, CHINA  
DEVELOPMENT BANK AND AFRICA STAR RAILWAY COMPANY

BETWEEN

KHELEF KHALIFA.....1<sup>ST</sup> PETITIONER  
WANJIRU GIKONYO.....2<sup>ND</sup> PETITIONER

AND

PRINCIPAL SECRETARY, MINISTRY OF TRANSPORT.....1<sup>ST</sup> RESPONDENT  
PRINCIPAL SECRETARY, NATIONAL TREASURY AND PLANNING.....2<sup>ND</sup> RESPONDENT  
ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT  
SOLOMON KITUNGU.....4<sup>TH</sup> RESPONDENT  
DR. JULIUS MUIA.....5<sup>TH</sup> RESPONDENT  
KATIBA INSTITUTE .....1<sup>ST</sup> INTERESTED PARTY  
THE COMMISSION ON ADMINISTRATIVE JUSTICE.....2<sup>ND</sup> INTERESTED PARTY

#### PENAL NOTICE

PRINCIPAL SECRETARY, NATIONAL TREASURY AND PLANNING  
PRINCIPAL SECRETARY, MINISTRY OF TRANSPORT

TAKE NOTICE that the Honourable Justice John Mativo on the 13<sup>th</sup> May 2022 gave Orders  
that;

- a) A declaration be and is hereby issued that the failure by the Respondents to provide  
information sought under Article 35(1)(a) and also to publicise the information in

accordance with Article 35(3) on the basis of the 1st Petitioner's request dated 16th December 2019 is a violation of the right to access to information.

- b) A declaration be and is hereby issued that the failure by the Respondents to provide information sought under Article 35(1)(a) and also to publicise the information in accordance with Article 35(3) on the basis of the 1st Petitioner's request dated December 16, 2019 is a violation of Article 10 of the constitution.
- c) An order compelling the Respondents to forthwith provide, at the Respondents' cost, information sought by the 1st Petitioner in his letters to the Respondents dated December 16, 2019 and May 13, 2021.
- d) No orders as to costs.

A copy of the Order which had been served upon yourselves is hereby attached for your ease of reference

You have by your conduct failed to comply with the Orders thereby you are in contempt of the Honourable Court.

Kindly proceed to purge the said act of contempt forthwith and uphold and respect the authority of the Honourable Court and its Orders duly issued and served upon yourselves

**TAKE FURTHER NOTICE** that if you fail to purge the said act of contempt or engage in any further acts that are in contemptuous of the Orders of the Honourable Court in any manner whatsoever you shall be personally liable and guilty of contempt of court which is punishable by up to six (6) months imprisonment without the option of a fine as the court may deem fit. We shall further urge the Court to find any such contemnor to be unfit to continue holding public office for as long as the act of contempt remains unpurged.

**DATED** at **NAIROBI** this .....13..... day of .....March..... 2022

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**OTIENO OGOLA & CO. ADVOCATES**  
**ADVOCATES FOR THE PETITIONERS**

**DRAWN AND FILED BY:**

OTIENO OGOLA & CO ADVOCATES

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**NAIROBI**

**TO BE SERVED UPON:**

ATTORNEY GENERAL

STATE LAW OFFICE

SHERIA HOUSE

HARAMBEE AVENUE

**NAIROBI**

REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MOMBASA  
CONSTITUTIONAL & JUDICIAL REVIEW DIVISIONS  
CONSTITUTIONAL PETITION NO. E032 OF 2021

KHELIF KHALIFA.....1<sup>ST</sup> PETITIONER  
WANJIRU GITHONYO.....2<sup>ND</sup> PETITIONER

VERSUS

PRINCIPAL SECRETARY, MINISTER OF TRANSPORT.....1<sup>ST</sup> RESPONDENT  
PRINCIPAL SECRETARY, NATIONAL TREASURY &  
PLANNING.....2<sup>ND</sup> RESPONDENT  
ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT  
SOLOMON KITUNGU.....4<sup>TH</sup> RESPONDENT  
DR. JULIUS MUJA.....5<sup>TH</sup> RESPONDENT  
KATIBA INSTITUTE.....1<sup>ST</sup> INTERESTED PARTY  
THE COMMISSION ON ADMINISTRATIVE JUSTICE.....2<sup>ND</sup> INTERESTED PARTY

ORDER

(IN CHAMBERS BEFORE HON. JUSTICE J.M. MATIVO (JUDGE) ON 13<sup>TH</sup> MAY 2022)

IT IS HEREBY ORDERED:-

1. THAT a declaration be and is hereby issued that the failure by the Respondents to provide information sought under Article 35(1)(a) and also to publicise the information in accordance with Article 35(3) on the basis of the 1<sup>st</sup> Petitioner's request dated 16<sup>th</sup> December 2019 is a violation of the rights to access to information.
2. THAT a declaration be and is hereby issued that the failure by the Respondents to provide information sought under Article 35(1)(a) and also to publicise the information in accordance with Article 35(3) on the basis of the 1<sup>st</sup> Petitioner's request dated December 16 2019 is a violation Article 10 of the Constitution.

3. THAT an order compelling the Respondents to forthwith provide, at the Respondents' cost, information sought by the 1<sup>st</sup> Petitioner in his letters to the Respondents dated December 16, 2019 and May 13, 2021.

4. THAT no orders as to costs.



Given under my hand and seal of this Honourable Court this 13<sup>th</sup> day of May, 2022

DEPUTY REGISTRAR  
HIGH COURT MOMBASA

ISSUED FROM MOMBASA this 16<sup>th</sup> day of May 2022