

MINISTRY OF ROADS AND TRANSPORT
STATE DEPARTMENT OF TRANSPORT
25 JAN 2024
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Our Copy

1

THE NATIONAL TREASURY
RECEIVED
25 JAN 2024
MAIN REGISTRY
Box 30007 - 00100, NAIROBI

REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CONSTITUTION AND HUMAN RIGHTS DIVISION
CONSTITUTIONAL PETITION NO. E032..... OF 2021

**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 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.....1ST PETITIONER
WANJIRU GIKONYO.....2ND PETITIONER

AND

PRINCIPAL SECRETARY, MINISTRY OF TRANSPORT.....1ST RESPONDENT
PRINCIPAL SECRETARY, NATIONAL TREASURY AND PLANNING.....2ND RESPONDENT
ATTORNEY GENERAL.....3RD RESPONDENT
SOLOMON KITUNGU.....4TH RESPONDENT
DR. JULIUS MUIA.....5TH RESPONDENT
KATIBA INSTITUTE1ST INTERESTED PARTY
THE COMMISSION ON ADMINISTRATIVE JUSTICE.....2ND INTERESTED PARTY

NOTICE OF MOTION

**(Section 5 of Judicature Act, Rule 39 of the High Court (Organization and Administration)
(General) Rules, 2016, Under Sections 1A, 1B, 3A of the Civil Procedure Act and Order 53 Rule 4
of the Civil Procedure Rules.)**

COMMISSION ON ADMINISTRATIVE JUSTICE
FRONT OFFICE
25 JAN 2024
RECEIVED
P.O. Box 20414 - 00200, NAIROBI

RECEIVED
KATIBA INSTITUTE
Date: 25/1/24 Time: 03:00pm
By: Elisha Otieno
Sign: *[Signature]*

2

TAKE NOTICE that this **Honourable Court** will be moved on theday of2020 at 9.00 O'clock in the forenoon or soon thereafter for the hearing of an Application by Counsel for the Plaintiff/Applicant **FOR ORDERS:**

1. **THAT** this Application be certified urgent and be heard *exparte* in the first instance.
2. **THAT** the Honourable Court do issue summons to the **Principal Secretary, National Treasury and Planning Mr. Chris Kiptoo and Principal Secretary, State Department for Transport Mr. Mohamed Daghar** attend to and appear before the Honourable Court on a date to be determined, to show cause why they should not be committed to jail or penalized for contempt of court.
3. **THAT** the **Principal Secretary, National Treasury and Planning Mr. Chris Kiptoo and Principal Secretary, State Department for Transport Mr. Mohamed Daghar** be committed to jail for six months; or penalized on such terms as the Honourable Court may determine, for contempt of court for having deliberately disobeyed orders of this court issued on 16th May 2022.
4. **THAT** any other or further orders of the court geared towards protecting the dignity and authority of the court.

WHICH APPLICATION IS PREDICATED ON THE FOLLOWING GROUNDS:

1. That the Respondents have deliberately disobeyed the orders of this court issued on the 16th May 2022 despite having been served with the said orders and decree
2. That in direct violation of the Orders of the Honourable Court, the Respondents have refused and or failed to release to the Petitioner the information vide his letter dated 16th December 2019 and 13th May 2021
3. That the Applicant has made several follow ups and reminders with the Respondents to release the information sought and to comply with the said decree and orders of the Honourable Court but the Respondents have persistently failed and or refused to act in obedience of the orders of the Honourable Court.
4. The dignity of the court must be protected at all times.
5. The act of the Respondent refusing to heed to the Orders of this Honourable Court is purely on the basis of the position which they presently hold and the interest of justice in the circumstances of this case may require that the Honourable Court issue a

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suspended sentence to Mr. Chris Kiptoo and Mr. Mohamed Daghar, which sentence is to take effect immediately on the day they vacate offices in the public service.

6. That the constitutional provisions on accountability are binding on all public officers and it is important that the Respondents be held accountable for their actions while in office including where appropriate being penalized for acts of contempt of court committed while in office and the same to be effected upon vacation of office where necessary.
7. The culture of disobeying court orders and decisions should not be tolerated and the courts must exercise their constitutional authority of punishing people for contempt of court.
8. The continued disobedience of the Court Order is a mockery to justice and should not be tolerated
9. To preserve the dignity of court and inviolability of the judicial process it is imperative that this application be heard forthwith.
10. The action to belittle and disregard court orders at will cannot be taken lightly and should be arrested at the earliest opportunity.
11. Unless this application is immediately heard, the respect and dignity of this Honourable court is likely to be greatly eroded and put in disrepute.

AND is FURTHER supported by the annexed affidavit of **KHELEF KHALIFA** and other grounds to be adduced in court during the hearing.

DATED at **NAIROBI** this...^{24th} day of ^{January}..... 2023th

OTIENO OGOLA & COMPANY
ADVOCATES FOR THE PETITIONERS/APPLICANT

DRAWN & FILED BY: -

OTIENO OGOLA & CO ADVOCATES
B11 OFFICE SUITE, 11TH FLOOR, CMS AFRICA HOUSE
CHANIA AVENUE OFF MARCUS GARVEY ROAD
P O BOX 22671-00100

NAIROBI. Email: willisotieno51@gmail.com Tel: 0721976194

TO BE SERVED UPON:

1. CHRIS KIPTOO
PRINCIPAL SECRETARY- NATIONAL TREASURY
NAIROBI
2. MOHAMED DAGHAR
PRINCIPAL SECRETARY- STATE DEPARTMENT FOR TRANSPORT
NAIROBI
3. THE ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL
MOMBASA

Note: "If any party served does not appear at the time and place above mentioned such Order will be made and proceedings taken as the Court may deem just and expedient."

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REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CONSTITUTION AND HUMAN RIGHTS DIVISION
CONSTITUTIONAL PETITION NO. E032..... OF 2021

**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
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CORPORATION, GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA, CHINA
DEVELOPMENT BANK AND AFRICA STAR RAILWAY COMPANY**

BETWEEN

KHELEF KHALIFA.....1ST PETITIONER
WANJIRU GIKONYO.....2ND PETITIONER

AND

PRINCIPAL SECRETARY, MINISTRY OF TRANSPORT.....1ST RESPONDENT
PRINCIPAL SECRETARY, NATIONAL TREASURY AND PLANNING.....2ND RESPONDENT
ATTORNEY GENERAL.....3RD RESPONDENT
SOLOMON KITUNGU.....4TH RESPONDENT
DR. JULIUS MUIA.....5TH RESPONDENT
KATIBA INSTITUTE1ST INTERESTED PARTY
THE COMMISSION ON ADMINISTRATIVE JUSTICE.....2ND INTERESTED PARTY

SUPPORTING AFFIDAVIT

I, **KHELEF KHALIFA**, an adult male of sound mind and of P.O. Box 42261-80100 Mombasa and resident of the Mombasa County within the Republic of Kenya, do hereby make oath and state as follows; -

- 6
1. **THAT** I am the 1st Petitioner herein and thus conversant with the facts of the matter herein, and hence competent to swear and depose this affidavit.
 2. **THAT** I am an adult male adult citizen of the Republic of Kenya and also the Chairman of Muslims for Human Rights, an organization championing for human rights and good governance in Kenya. I am also a member of Okoa Mombasa, a coalition of workers' unions, businesses, professional associations, and civil society organizations who have come together out of concern for the livelihoods and well-being of the residents of Mombasa.
 3. **THAT** I swear this Affidavit in support to our application herein for the two named State officers to be cited for contempt of court and appropriate sanctions imposed upon them.
 4. **THAT** the Honourable Court on 16th May 2021 issued a Decree in Petition Number E32 of 2021 in which it decreed that my fundamental rights had been violated by the Respondents and proceeded to further decree that the Respondents to FORTHWITH provide me, at my cost, information that I had sought vide my letters to them dated 6th December 2019 and 13th May 2021. ***(Annexed herewith and marked KK- 1 is a copy of the said Decree as extracted and served).***
 5. **THAT** I am informed by my Counsel on record, which information I believe to be true that the said Decree was served upon the Respondents and they acknowledged receipt on the face of the Decree and the letters forwarding the Decree ***(Annexed herewith and marked KK- 2 are copies of Affidavits of service).***
 6. **THAT** I am further informed by my counsel which information I believe to be true that my Counsels have sent several requests and reminders to the Respondents imploring them to abide by the Decree and release the firearms and ammunition as directed by the Honourable Court.

- 7-
7. **THAT** despite the service and several reminders to the Respondents to comply with the Decree and supply the information sought to me, the Respondents have disdainfully flatly refused to release the said information and to comply with the decree of the Honourable Court.
 8. **THAT** this act of the Respondents has shown and demonstrates utter disdain for court orders and judicial processes.
 9. **THAT** the act of the Respondents is of utter utmost contempt of court and demonstrates disrespect to the Honourable Court and the same should not go unpunished.
 10. **THAT** it is a direct affront to the judicial processes and the authority of the Honourable Court for a party to flagrantly dishonor orders issued by the Honourable Court especially when they have conceded to the issuance of the said orders.
 11. **THAT** the Respondents have recklessly and with utmost disregard of the Constitution and the Court engaged in acts that are a complete challenge to the authority of these Honourable Court and its processes.
 12. **THAT** the court should jealously guard the dignity and authority of the court by being firm on anybody who disobeys court orders or interferes with the ability of parties to freely participate in the court's proceedings.
 13. **THAT** to preserve the dignity of court and the inviolability of our judicial process, it is imperative that M. Chris Kiptoo and Mr. Mohamed Daghar be summoned by the

Honourable Court to show cause why they should not be committed to jail for contempt.

14. **THAT** I am aware as a citizen that this Honourable Court's Orders while in force must be obeyed and respected by all.

15. **THAT** it is fair and just that the orders prayed for be granted with costs for justice to be done.

16. **THAT** I swear this affidavit in support of the Application herein for the named person to be held in contempt of court and penalized.

17. **THAT** what is deponed to hereinabove is true to the best of my knowledge save as to matters deponed to an information sources whereof have been disclosed and matters deponed to belief, the grounds whereupon have been stated.

SWORN at NAIROBI by the said
KHELEF KHALIFA

This ^{24th} day of January 2024

) *Khelef Khalifa*

)

DEPONENT

BEFORE ME:

COMMISSIONER FOR OATHS

DRAWN & FILED BY:

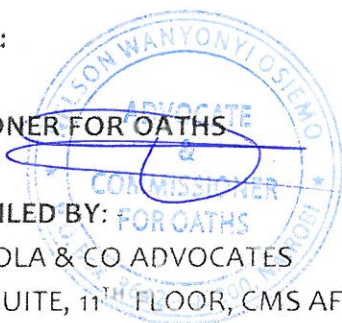
OTIENO OGOLA & CO ADVOCATES

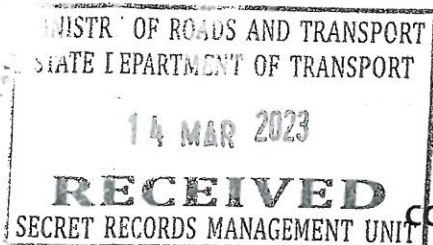
B11 OFFICE SUITE, 11TH FLOOR, CMS AFRICA HOUSE

CHANIA AVENUE OFF MARCUS GARVEY ROAD

P O BOX 22671-00100

NAIROBI





This is the annexure referred as KK-1
in the affidavit of Khelef Khalifa
Sworn at NRB this 24th day of January
2024 D commissioner for Oaths

DWT copy 9

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

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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.....1ST PETITIONER
WANJIRU GIKONYO.....2ND PETITIONER

AND

PRINCIPAL SECRETARY, MINISTRY OF TRANSPORT.....1ST RESPONDENT
PRINCIPAL SECRETARY, NATIONAL TREASURY AND PLANNING.....2ND RESPONDENT
ATTORNEY GENERAL.....3RD RESPONDENT
SOLOMON KITUNGU.....4TH RESPONDENT
DR. JULIUS MUIA.....5TH RESPONDENT
KATIBA INSTITUTE1ST INTERESTED PARTY
THE COMMISSION ON ADMINISTRATIVE JUSTICE.....2ND 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 13th 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

OTIENO OGOLA & CO. ADVOCATES
ADVOCATES FOR THE PETITIONERS

DRAWN AND FILED BY:

OTIENO OGOLA & CO ADVOCATES

OFFICE SUITE B11 CMC AFRICA BUILDING 11TH FLOOR

CHANIA AVENUE OFF MARCEYS GURVEY ROAD

P. O. BOX 22671-00100

NAIROBI

TO BE SERVED UPON:

ATTORNEY GENERAL

STATE LAW OFFICE

SHERIA HOUSE

HARAMBEE AVENUE

NAIROBI

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

KHELIF KHALIFA.....1ST PETITIONER
WANJIRU GITHONYO.....2ND PETITIONER

VERSUS

PRINCIPAL SECRETARY, MINISTER OF TRANSPORT.....1ST RESPONDENT

PRINCIPAL SECRETARY, NATIONAL TREASURY &

PLANNING.....2ND RESPONDENT

ATTORNEY GENERAL.....3RD RESPONDENT

SOLOMON KITUNGU.....4TH RESPONDENT

DR. JULIUS MUIA.....5TH RESPONDENT

KATIBA INSTITUTE.....1ST INTERESTED PARTY

THE COMMISSION ON ADMINISTRATIVE JUSTICE.....2ND INTERESTED PARTY

ORDER

(IN CHAMBERS BEFORE HON. JUSTICE J.M. MATIVO (JUDGE) ON 13TH 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 1st Petitioner's request dated 16th 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 1st 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 1st 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 13th day of May, 2022

DEPUTY REGISTRAR
HIGH COURT MOMBASA

ISSUED FROM MOMBASA this 16th day of May 2022

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This is the annexure referred as KK-2
in the affidavit of Khelef Khalifa
Sworn at NRB this 24th day of January
2024 SD commissioner for Oaths

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
CASE NO.32 OF 2021
BETWEEN

KHELEF KHALIFA 1st PETITIONER
WANJIRU GIKONYO..... 2nd PETITIONER
versus

PRINCIPAL SECRETARY,MINISTRY OF TRANSPORT.....1st RESPONDENT
PRINCIPAL SECRETARY,NATIONAL TREASURY AND PLANNING.....2nd RESPONDENT
ATTORNEY GENERAL.....3rd RESPONDENT
SOLOMON KITUNGU.....4th RESPONDENT
DR.JULIUS MUIA.....5th RESPONDENT
KATIBA INSTITUTE.....INTERESTED PARTY
COMMISSION ON ADMINISTRATIVE JUSTICE.....INTERESTED PARTY

AFFIDAVIT OF SERVICE

I Felix Omondi Owino of care of P.O Box 1067-00100 Nairobi in the Republic of Kenya do hereby make oath and state as follows:

1. **That** I am a licensed court process server duly authorized by the High Court of Kenya to serve court documents within the Republic of Kenya.
2. **That** on the 14th March 2023, I received **Penal Notice** dated 13^h March 2023 from the firm of Otieno Ogola & Company Advocates with instructions to serve the same upon the National Treasury and the Minister of roads and Transport.
3. **THAT** on the same day , I proceeded to the office of **Principal Secretary,Ministry of Transport and Principal Secretary,National Treasury and Planning** offices and found their respective secretaries at their reception desks, I introduced myself to them and gave them the documents which they perused and acknowledged receipt by stamping the front page of my copy.
4. **THAT** thereafter, I returned the copy to the firm of **Otieno Ogola & Company Advocates** duly served .
5. **THAT** what is stated hereinabove is true to the best of my knowledge, information and belief.

SWORN at Nairobi by the said

FELIX OMONDI OWINO)

This...14th... day of...March... 2023

Before me)

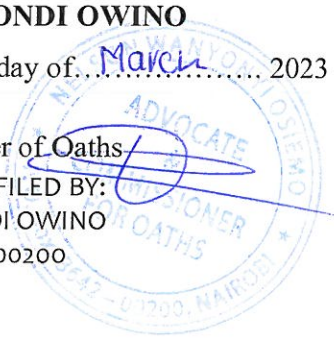
Commissioner of Oaths)

DRAWN AND FILED BY:)

FELIX OMONDI OWINO

P.O.BOX1067-00200

NAIROBI.





REPUBLIC OF KENYA
THE JUDICIARY
Fees Receipt
FSED-0138506



Issued On: 2024-01-25 12:05:30

Received from **OTIENO OGOLA & CO. ADVOCATES** in Case No:
HCCHRPET/E032/2021 as below

Document Type	Units	Amount Assessed
1 Application Under certificate of Urgency	1	2250.00
Total : Ksh.2,250.00		

Payment Mode	Transaction No.	Transaction Date	Amount Paid
1 - MPESA	SAP11V3M81	2024-01-25 12:05:18+03	2,250.00

Total Payment : KES 2,250.00 (Two Thousand Two Hundred and Fifty Only)

CTS Invoice REF : E3BMNJ96

Issued By: System
Signature & Stamp

Justice be our Shield and Defender



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),
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2016

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BRIDGE CORPORATION, GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA, CHINA
DEVELOPMENT BANK AND AFRICA STAR RAILWAY COMPANY

BETWEEN

KHELEF KHALIFA.....1ST PETITIONER
WANJIRU GIKONYO.....2ND PETITIONER

AND

PRINCIPAL SECRETARY, MINISTRY OF TRANSPORT.....1ST RESPONDENT
PRINCIPAL SECRETARY, NATIONAL TREASURY AND PLANNING.....2ND RESPONDENT
ATTORNEY GENERAL.....3RD RESPONDENT
SOLOMON KITUNGU.....4TH RESPONDENT
DR. JULIUS MUIA.....5TH RESPONDENT
KATIBA INSTITUTE1ST INTERESTED PARTY
THE COMMISSION ON ADMINISTRATIVE JUSTICE.....2ND 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 13th 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 this13..... day ofMarch..... 2022

OTIENO OGOLA & CO. ADVOCATES
ADVOCATES FOR THE PETITIONERS

DRAWN AND FILED BY:

OTIENO OGOLA & CO ADVOCATES

OFFICE SUITE B11 CMC AFRICA BUILDING 11TH FLOOR

CHANIA AVENUE OFF MARCEYS GURVEY ROAD

P. O. BOX 22671-00100

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.....1ST PETITIONER
WANJIRU GITHONYO.....2ND PETITIONER
VERSUS

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

ORDER

(IN CHAMBERS BEFORE HON. JUSTICE J.M. MATIVO (JUDGE) ON 13TH 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 1st Petitioner's request dated 16th 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 1st 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 1st 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 13th day of May, 2022

DEPUTY REGISTRAR
HIGH COURT MOMBASA

ISSUED FROM MOMBASA this 16th day of May 2022