



**Omari v Land Registrar, Eldoret Lands Registry & 2 others (Constitutional
Petition 22A of 2022) [2023] KEHC 20600 (KLR) (21 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20600 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CONSTITUTIONAL PETITION 22A OF 2022**

JRA WANANDA, J

JULY 21, 2023

**IN THE MATTER OF THE CONTRAVENTION OF FUNDAMENTAL
RIGHTS AND FREEDOMS AS ENshrINED UNDER ARTICLES 19, 20,
21, 22, 23, 24, 35 AND 47 OF THE CONSTITUTION OF KENYA, 2010**

AND

IN THE MATTER OF ACCESS TO INFORMATION ACT

BETWEEN

JAMAL DIRIWO OMARI PETITIONER

AND

THE LAND REGISTRAR, ELDORET LANDS REGISTRY 1ST RESPONDENT

THE NATIONAL LAND COMMISSION 2ND RESPONDENT

THE HON ATTORNEY GENERAL 3RD RESPONDENT

JUDGMENT

1. By the Petition dated 17/5/2022, the Petitioner has sought Reliefs as follows:
 - i. A declaration that the Petitioner's fundamental rights and freedoms as enshrined under Articles 35(1) (a & b), 47(1) and 47(2) of *the Constitution* of Kenya 2020, have been contravened, infringed upon by the 1st Respondent herein.
 - ii. An order that the 1st Respondent be compelled to provide information to the Petitioner herein regarding ownership relating to land belonging to Muslim Association Mosque Committee Eldoret.
 - iii. Any other orders and directions as this Court may consider appropriate in the circumstances.
 - iv. Costs and Interest of this Petition.



2. The Petitioner states that he is a member of an entity that he described as Muslim Association Mosque Committee, Eldoret. He does not however disclose the nature of the entity, its legal description or what it is involved or engaged in.
3. The Petitioner then described the 1st Respondent as the County Land Registrar in charge of the Uasin Gishu Land Registry appointed pursuant to Section 12 and 13 of the [Land Registration Act 2012](#) and the 2nd Respondent as a constitutional commission constituted under Article 67(2) of [the Constitution](#) as read together with the [National Land Commission Act](#), Act No. 5 of 2012.
4. Although the Petitioner did not describe the 3rd Respondent, the Hon. Attorney General, I believe the Petitioner joined the 3rd Respondent, pursuant to Article 156 of [the Constitution](#), which describes the 3rd Respondent as the principal legal advisor to the Government.

Petitioner's Case

5. In the Petition, the Petitioner basically states that on 8/12/2020, he conveyed a letter to the 1st Respondent seeking to access information regarding the registered owner of land belonging to the Muslim Association Mosque Committee Eldoret, the Petitioner has not discharged his duty by failing to provide the said information, on 25/1/2021 he conveyed another letter to the 1st Respondent through the Commission on Administrative Justice (hereinafter referred to as "CAJ") requesting the 1st Respondent to supply the said information as had been requested earlier vide his letter dated 8/12/2020, the 1st Respondent declined to release the information, he still sent a reminder letter on 24/3/2021 to the 1st Respondent through the CAJ seeking the information which still the 1st Respondent declined to release.
6. The Petitioner further states that on 27/04/2021 he sent a letter through the CAJ to the 3rd Respondent inquiring about information regarding the registered office bearers of the Muslim Association Mosque Committee Eldoret, the 3rd Respondent has not discharged its duty to furnish the Petitioner with the said information, on 11/5/2021 he sent a further letter to the 1st Respondent through the CAJ which exercised its mandate by virtue of Section 23(2) of the [Access to Information Act 2016](#) and ordered the 1st Respondent to facilitate access to information and records relating to the Petitioner's request within seven (7) days, the 1st Respondent has not furnished him with said information, despite the orders issued by the CAJ the 1st Respondent declined with no reasons whatsoever to issue the information
7. The Petitioner states further that on 21/5/2021, he sent a reminder to the Registrar General through the CAJ as a reminder, seeking the information regarding the registered office bearers of the Muslim Association Mosque Committee Eldoret, on 11/6/2021 the 3rd Respondent sent a letter to CAJ claiming that the Petitioner had not enclosed a copy of the letter referred to and requested him to provide full registration details of the concerned society including the society number/registration number for the 3rd Respondent's action, this request was made yet the Petitioner had provided the information to the 3rd Respondent through the CAJ vide the letter dated 27/4/2021, on 5/7/2021 the Petitioner sent a letter to the 3rd Respondent through the CAJ, enclosing the information that had been requested by the 3rd Respondent including the society's registration number (SOC/1305) as registered by the Registrar of Societies in the year 1957.
8. The Petitioner further states that since sending the letter dated 5/7/2021 furnishing the full particulars demanded by the 3rd Respondent, to date the 3rd Respondent has totally declined to furnish the information as requested, all the Petitioner's efforts at achieving his fundamental freedom of access to information was denied by the 3rd Respondent, his right to access information was denied. He then cited Article 35(1)(a) of [the Constitution](#) and submitted that the 1st and 3rd Respondents have



unlawfully and without justifiable cause denied him the right to access information held by them. He also cited Article 47(2) of *the Constitution* and contended that his rights to access the information sought is likely to be adversely affected by the denial, no reasons, written or otherwise, were ever tendered to him by the 1st Respondent to justify the deprivation or denial of the information, he was never given an opportunity to be heard as envisaged under the said Article 47(2).

9. The Petition is supported by the Petitioner's Affidavit to which copies of the letters referred to above are attached.
10. The 1st and 3rd Respondents are represented by Learned State Counsel Ms Tigoi. On its part, the 2nd Respondent, despite being served, never participated in these proceedings nor filed any Response.

1st and 3rd Respondents' Response

11. The 1st and 3rd Respondents opposed the Petition vide the Replying Affidavit sworn on 26/10/2022 by M. J. Boor who described herself as the County Land Registrar, Uasin Gishu County. She deponed that the Petition is incurably defective, incompetent, frivolous, scandalous and devoid of substance of law, the Petitioner's Affidavit is full of falsehoods and misrepresentations tailored to win sympathy of the Court,
12. She further deponed that the Petitioner's letter dated 8/12/2020 is addressed to the Chief Officer Department of Lands, Housing and Physical Planning and was received by the said office on 10/12/2020 hence it is not true that she refused to discharge her lawful duty of providing information as she did not receive the said letter, she received the Petitioner's letter dated 11/5/2021 from CAJ and responded vide a letter dated 16/5/2021 informing CAJ that the letter dated 8/12/2020 was addressed to the Chief Officer Department of Lands, Housing and Physical Planning, vide the said letter she also informed CAJ that despite the letter being addressed to another entity, she noted that the land parcel numbers therein had not been identified hence difficulty in giving the requested information even if the letter had been addressed to her.
13. In conclusion, she deponed that Section 8 of the *Access to information Act* No. 31 of 2016 elucidates the manner in which information being sought should be presented especially on specificity of the information requested.

Hearing of the Petition

14. Pursuant to directions given, the parties filed written Submissions. The Petitioner filed his Submissions on 26/10/2022 while State Counsel representing the 1st and 3rd Respondents filed hers on 30/03/2023.

Petitioner's submissions

15. The Petitioner submitted that through various letters and reminders addressed to the 1st Respondent by himself and by the CAJ, he has demonstrated how he sought information regarding the ownership of land belonging to the Muslim Association Mosque Committee Eldoret but the 1st Respondent did not discharge its duty to the Petitioner since it failed and or declined to furnish him with the information. He cited Article 35 of *the Constitution* of Kenya and submitted that for purposes of actualizing the Article, Parliament enacted the *Access to Information Act* 2016, Section 4 whereof provides for the procedure to access information. He also cited Section 6 of the Act which lists the instances where the right of access to information shall be limited.
16. The Petitioner then cited several authorities to buttress his arguments. He cited *Katiba Institute v Presidents Delivery Unit & 3 others* [2017] eKLR and submitted that in that case the Court observed



that the right of access information is inviolable because it is neither granted nor grantable by the State and that it is granted and protected by *the Constitution*. He also cited Nairobi Law Monthly Company Limited v Kenya Electricity Generating Company & 2 others and submitted that in that case, the Court stated what the State should bear in mind when considering a request to access information.

17. The Petitioner further cited Trusted Society of Human Rights Alliance & 3 others v Judicial Service Commission & another [2016] eKLR and submitted that in that case the Court reaffirmed that *the Constitution* does not limit the right to access information. The next case cited by the Petitioner is President of Republic of South Africa v M & G Media in which, the Petitioner submitted, the importance of the right to access information as a founding value of constitutional democracy was dealt with by the Constitutional Court of South Africa. Finally, he cited Brummer v Minister for Social Development & others CCT 25/09 2009 ZACC 21 in which, he submitted, the right to access to information as a basis for accountability, responsiveness and openness was emphasized.
18. In end, the Petitioner submitted that his right to access information under Article 35 of *the Constitution* was breached by the 1st and 3rd Respondents and he was thus entitled to the prayers sought.

1st & 3rd Respondents' Submissions

19. Counsel for the 1st and 3rd Respondents relied on the Affidavit sworn by the said M.J. Boor, the County Land Registrar-Uasin Gishu and submitted that the Petitioner's letter dated 8/12/2020 was addressed to the Chief Officer Department of Lands, Housing and Physical Planning and was received by the said office on 10/12/2020, hence it is not true that the 1st Respondent refused to discharge her lawful duties as the letter was not addressed to her office, the 1st Respondent received the letter from CAJ dated 11/05/2021 and responded to the same informing CAJ that the letter dated 8/12/2020 was addressed to the Chief Officer Department of Lands, Housing and Physical Planning, even if the letter dated 8/12/2020 were addressed to the 1st Respondent it could be difficult to provide information on the land since the land parcel numbers are not specified.
20. On whether the Petition meets the threshold of a Constitutional Petition, Counsel cited the cases of Anarita Karimi Njeru v Republic [1979] eKLR and Kiambu County Tenants Welfare V Attorney General & Another [2017] eKLR to the effect that a Petitioner should set out with a reasonable degree of precision the provisions said to be infringed and the manner, nature and extent in and to which they are alleged to be infringed. She submitted that from the parties' pleadings, it is not in dispute that the Petitioner sought for information from the Chief Officer Department of Lands, Housing and Physical Panning and not the 1st Respondent, thus it cannot be said that the 1st Respondent denied the Petitioner the right to access information.
21. Counsel further argued that a perusal of the Petition as drawn and filed reveals that it has not set out with a reasonable degree of precision that which the Petitioner complains of, the provisions said to be infringed and the manner in which they are alleged to be infringed, a party seeking constitutional reliefs is under obligation to prove violation of the alleged rights under the various provisions of the Bill of right, it has time and again been clearly stated that a party must not only state the provisions of *the Constitution* allegedly infringed in relation to the rights violated but to also state the manner of infringement and the nature and the extent of infringement and nature and extent of injury suffered. According to Counsel, the Petitioner has failed to discharge the threshold set out in Anarita Karimi Njeru v Republic (supra) case.
22. On whether the Petitioner's right to access information had been infringed by the Respondents, Counsel reiterated that the Petitioner never sought for information from the 1st Respondent but from a different State Officer that is the Chief Officer Department of Lands, Housing and Physical



Planning vide the letter dated 8/12/2020. Counsel argued that the Petitioner cannot therefore claim infringement on a right he never exercised in the first place and that the Petition does not disclose a cause of action against the 1st and 3rd Respondents. She cited the case of *Sebaggala v Attorney General and Others* [1995-1998] EA 295 on the meaning of and need to disclose a cause of action. Finally, she submitted that the Petition lacks merit and urged the Court to dismiss it.

Analysis and Determination

23. The Petitioner's case is that he requested the 1st Respondent to supply him with information disclosing to him the details and particulars of parcels of land owned by an entity which he described as "Eldoret Muslim Association Jamia Mosque". The Petitioner then also pleads that he separately requested the 3rd Respondent to supply him with information disclosing to him the details and particulars of the registered office bearers of the same entity. His grievance is that the Respondents have failed to supply him with the information sought thus violating his right to access information as enshrined under Article 35 of *the Constitution* and the *Access to Information Act* 2016.

24. I have carefully, considered the pleadings before me, Submissions and authorities cited by the parties. It is my view that the basic issue that arises for determination in this matter is as follows:

"Whether the Respondents violated the Petitioner's right of access to information"

25. I now proceed to analyze the said issue.

26. Article 33(1) (a) of *the Constitution* provides as follows:

"33.

(1) Every person has the right to freedom of expression, which includes—

(a) freedom to seek, receive or impart information or ideas;"

27. On its part, Article 35(1) provides for the right to access information as follows:

1) "Every citizen has the right of access to —

a) information held by the State; and

b) information held by another person and required for the exercise or protection of any right or fundamental freedom.

28. Article 35 above was operationalized by the *Access to Information Act*, 2016. Section 4 thereof, which is material to the Petition provides for the procedure to access information in the following terms;

1) "Subject to this Act and any other written law, every citizen has the right of access to information held by—

a) the State; and

b) another person and where that information is required for the exercise or protection of any right or fundamental freedom.

2) Subject to this Act, every citizen's right to access information is not affected by—

a) any reason the person gives for seeking access; or



- b) the public entity's belief as to what are the person's reasons for seeking access.
- 3) Access to information held by a public entity or a private body shall be provided expeditiously at a reasonable cost.
- 4) This Act shall be interpreted and applied on the basis of a duty to disclose and non-disclosure shall be permitted only in circumstances exempted under section 6.
- 5) Nothing in this Act shall limit the requirement imposed under this Act or any other written law on a public entity or a private body to disclose information.
29. The right to access information is however not absolute since Section 6 of the [Access to Information Act](#) lists instances where the right is limited as follows:
- “1) Pursuant to Article 24 of [the Constitution](#), the right of access to information under Article 35 of [the Constitution](#) shall be limited in respect of information whose disclosure is likely to—
- (a) undermine the national security of Kenya;
 - (b) impede the due process of law;
 - (c) endanger the safety, health or life of any person;
 - (d) involve the unwarranted invasion of the privacy of an individual, other than the applicant or the person on whose behalf an application has, with proper authority, been made;
 - (e) substantially prejudice the commercial interests, including intellectual property rights, of that entity or third party from whom information was obtained;
 - (f) cause substantial harm to the ability of the Government to manage the economy of Kenya;
 - (g) significantly undermine a public or private entity's ability to give adequate and judicious consideration to a matter concerning which no final decision has been taken and which remains the subject of active consideration;
 - (h) damage a public entity's position in any actual or contemplated legal proceedings; or
 - (i) infringe professional confidentiality as recognized in law or by the rules of a registered association of a profession.
30. Section 8 then stipulates the manner in which an application for Access of Information is to be presented. It provides as follows:
- “(1) An application to access information shall be made in writing in English or Kiswahili and the applicant shall provide details and sufficient particulars for the public officer or any other official to understand what information is being requested.



- (2) Where an applicant is unable to make a written request for access to information in accordance with subsection (1) because of illiteracy or disability, the information officer shall take the necessary steps to ensure that the applicant makes a request in manner that meets their needs.
- (3) The information officer shall reduce to writing, in a prescribed form the request made under subsection (2) and the information officer shall then furnish the applicant with a copy of the written request.
- (4) A public entity may prescribe a form for making an application to access information, but any such form shall not be such as to unreasonably delay requests or place an undue burden upon applicants and no application may be rejected on the ground only that the applicant has not used the prescribed form.

31. It is evident that the intention in Article 35(1) of *the Constitution* was to create two distinct situations with regard to the right of access to information. The first one is for a citizen's entitlement, as of right, to information held by the State. The second situation is where a citizen can access information from another private person for the exercise or promotion of another right or freedom. In this instant case, the Petitioner seeks information being held by the two separate State organs, the Land Registrar, Eldoret and the Registrar General.

32. Article 19 of the Universal Declaration of Human Rights (UDHR) adopted by the United Nations in 1948 provides as follows:

‘Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.’

33. Similarly, Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR), adopted by the United Nations in 1966, provides as follows:

‘Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print in the form of art, or through any other media of his choice.’

34. Further, Article 9 of the African Charter on Human and People's Rights (The (Banjul Charter) states as follows:

‘Every individual shall have the right to receive information.’

35. These international instruments were ratified by Kenya and by virtue of Article 2(5) of *the Constitution*, general rules of international law and any treaties or conventions ratified by Kenya form part of the law of this country.

36. The first limb of the Petitioner's contention is that he requested the 1st Respondent to supply him with details and particulars of all the parcels of land owned by the entity that he described as “Muslim Association Mosque Committee Eldoret” but that the letters never elicited a response from the 1st Respondent. Specifically, in his letter dated 8/12/2020 he sought information as follows:

“Kindly supply us with all information and a copy of documents of Eldoret Muslim Association Jamia Mosque Committee plots and tile deeds transfers from the Allotment



letters to tittle deeds since 1986 to 2020 and all plots allocated by the government to build mosques in each and every estate within Uasin Gishu county including the deeds since the same belong to the Muslim community. We need access to the lands serveys server including the map plans for all plots as Assets of ELDORET MUSLIM ASSOCIATION JAMIA MOSQUE COMMITTEE and where they are allocated within Uasin Gishu County since 1986 to 2020”

37. The four (4) letters that the Petitioner has exhibited to his Affidavit in respect to this request are as follows:

Date of Letter	Author	Addressee
8/12/2020	Petitioner	Chief Officer Department of Lands, Housing and Physical Planning, Eldoret
25/01/2021	Commission on Administrative Justice	Eldoret Land Registry, Ministry of Lands, Housing and Physical Planning, Eldoret
24/03/2021	Commission on Administrative Justice	Monica Bor, Eldoret Land Registrar, Ministry of Lands, Housing and Physical Planning, Eldoret
11/05/2021	Commission on Administrative Justice	Monica Bor, Eldoret Land Registrar, Ministry of Lands, Housing and Physical Planning, Eldoret

38. It is therefore clear that among the letters exhibited, the only one that is authored by the Petitioner in regard to the request to the Lands Office at Eldoret is the letter dated 8/12/2020. The rest of the letters were from the CAJ. It is therefore not entirely true and it is, in fact, quite misleading for the Petitioner to depone and keep repeating that he “wrote” the rest of the letters. Granted, the Petitioner stated that he “wrote” the letters “through the Commission of Administrative Justice”. However, the same does not change the misleading nature of his averments.

39. It is also true, as argued by the 1st Respondent” that the said letter dated 8/12/2020 was addressed to the “Chief Officer Department of Lands, Housing and Physical Planning”, and not to the 1st Respondent. It is however also clear that the subsequent letters authored by the CAJ were correctly addressed to the 1st Respondent or to her office. In fact, the last two letters from CAJ were specifically addressed to “Monica Bor” presumably the same deponent of the 1st Respondent’s Replying Affidavit filed herein who described herself as the County Land Registrar Uasin Gishu County.

40. The 1st Respondent has not denied receipt of these letters and the said M. J. Boor has in fact exhibited a copy of her own letter dated 16/05/2021 whereof she alleges to have responded to the letter dated 11/05/20221 from the CAJ. Since the CAJ is not party to this suit, this Court has no way of ascertaining whether this response letter was actually received by CAJ. It however demonstrates that



the said M. J. Boor was at all times aware of and received the letter and/or the request. She cannot therefore argue that she did not act on the request purportedly because it was not addressed to her.

41. Although therefore the Petitioner’s letter dated 8/12/2020 was wrongly addressed to a different entity, I find that this defect was cured by the subsequent letters from the CAJ which were addressed to the correct entity, the 1st Respondent. The 1st Respondent cannot therefore “hide behind” the fact of the wrong addressee to “run away” from her statutory responsibilities, including the obligation to supply information as enshrined in Article 35 of the Constitution and the Access to Information Act 2016 if properly presented.
42. The second limb of the Petition’s case is that he requested the 3rd Respondent to supply him with details and particulars of the office bearers of the entity that he described as “Muslim Association Mosque Committee” but that similarly the 3rd Respondent failed to supply him with the information.
43. I note that the three (3) letters that the Petitioner has exhibited to his Affidavit in respect to this second separate request are as follows:

Date of Letter	Author	Addressee
27/04/2021	Commission on Administrative Justice	Registrar General, Registration of Societies, office of the Attorney General
21/05/2021	Commission on Administrative Justice	Registrar General, Registration of Societies, office of the Attorney General
05/07/2021	Commission on Administrative Justice	Registrar General, Registration of Societies, office of the Attorney General

44. It is therefore clear from the above that among the letters exhibited in request to the 3rd Respondent, not a single one was authored by or emanated from the Petitioner. On the contrary, all three (3) letters exhibited were from the CAJ. Although the letters from CAJ refer to other letters dated 8/12/2020 and 12/03/2021 allegedly received from the Petitioner, for reasons best known to the Petitioner, he chose not to exhibit copies of the letters. He has not offered any explanation on why he has chosen to withhold the letters. Is it that those letters, if exhibited, would adversely affect his case? I may never know. In my opinion, it was crucial for the Petitioner to produce the said letters to enable the Court scrutinize the same before reaching a determination.
45. In the absence of any letter from the Petitioner demanding for information from the 3rd Respondent, my view is that this Court cannot entertain his claim that the 3rd Respondent declined or refused to supply him with the information sought. The letters that have been exhibited are all from the CAJ which is a separate entity and there is none from the Petitioner.
46. In the circumstances, I find that the Petitioner has failed to establish a cause of action against the 3rd Respondent.
47. I also note that the Petitioner has not placed before the Court any material to demonstrate that the entity that he and the CAJ have described variously in some letters and pleadings in conflicting terms as “Muslim Association Mosque Committee Eldoret” in others as “Muslim Association Jamia Mosque”



in others as “Muslim Association Jamia Mosque Committee” in others as “Eldoret Muslim Association Jamia Mosque Committee” and still in others as “Eldoret Muslim Association Jamia Mosque” even exists in the first place.

48. I would expect that before the Court can compel a State Organ or any other party for that matter, to supply information about an entity, it must first be established that the alleged entity actually exists. Without establishing that such entity exists, the Court risks issuing orders in a vacuum and whose enforcement it cannot guarantee. I would have therefore expected the Petitioner, as a first step, to present before the Court at least a Certificate of Registration or Incorporation or any other acceptable document of such nature. As the record stands, the Court is not even certain that the alleged entity even exists or what activity it is involved. The Court cannot therefore engage in an exercise that may well turn out to be a futility.
49. The above is even more relevant in this matter since the Petitioner has himself exhibited a copy of a letter dated 11/06/2021 from the Registrar General in which in a response to CAJ, the Registrar General stated as follows:
- “We have also done a Search in our database and note that we do not have a society registered under the name Muslim Association Jamia Mosque Committee. Kindly request the complainant to provide you with the full registration details of the concerned society including the society number and/or the registration number for our action”
50. The mix-up and uncertainty in the name and identity of the entity whose particulars and details the Petitioner is asking this Court to compel disclosure of is itself clear proof that the Petitioner himself does not even know or is unsure which entity he is seeking details about and whether it even exists. As aforesaid, the Petitioner and the CAJ have referred to the alleged entity in five different and conflicting descriptions, in some as “Muslim Association Mosque Committee Eldoret” in others as “Muslim Association Jamia Mosque” in others as “Muslim Association Jamia Mosque Committee” in others as “Eldoret Muslim Association Jamia Mosque Committee” and still in others as “Eldoret Muslim Association Jamia Mosque”. In this state of affairs, how are the Respondents supposed to establish the exact entity whose details they are being asked to supply when the Petitioner himself does not seem to be certain?
51. There is therefore serious doubt on whether the entity whose details the Petitioner is seeking even exists in the first place and if it does exist, the exact or correct name is uncertain. As aforesaid, the Registrar General responded and stated that it did not have in its database, the name referred to and sought to be supplied with accurate details of the entity concerned to enable his office act on the request. There is however no evidence that the details and/or particulars sought by the Registrar General were ever supplied as requested.
52. Although the Petitioner contends that the details sought by the Registrar General were supplied to him vide the letter dated 5/07/2021 from CAJ, I have perused the letter and note that the although it alludes to attaching “further information as provided for by the Complainant” the alleged “further information as provided by the Complainant” has not been exhibited before this Court. The Court is therefore unable to scrutinize or verify whether the alleged “further information” was indeed supplied to the Registrar General as requested and if so, the nature of such “further information”.
53. I also note that at paragraph 14 of the Petition, the Petitioner has stated that the registration number of the entity is SOC/1305 and that the same was registered in the year 1957. It is however strange that he did not include or supply these details in any of the letters to the Respondents. If he was in possession



of all these details all along, one wonders why he never shared the same with the Respondents and instead chose to submit incomplete particulars.

54. In the absence of proof that such particulars and/or details were supplied to the Registrar General as requested and in view of the uncertainty of the existence and correct name and description of the entity concerned, I find that this Petition is premature.
55. Another scenario that I notice is that although at paragraph 4 of his Petition, as his locus the Petitioner alleges that he is a member of the entity that he describes as “Muslim Association Mosque Committee, Eldoret”, he does not however produce any evidence of such membership. Surely there has to be some document such as a Certificate or certified list to demonstrate the Petitioner’s membership. In the absence of any such evidence, the Court is unable to appreciate the nature of the Petitioner’s interest in the entity and the purpose why he is seeking to be supplied with the information pertaining to that identity. In any case, the Petitioner has not even disclosed to the Court his reasons for seeking the information that he requested.
56. The Petitioner does not also even disclose whether he first sought the information from the entity itself or its officials before moving to directly seek the same from the Respondents. In the circumstances, I find that it was premature for the Petitioner to advance to seeking information from the Respondents before exhausting the relevant channels within the entity that he describes as “Muslim Association Mosque Committee, Eldoret” and in which he claims to be a member. He does not state that he made a request from within and was denied the information.
57. Regarding the request for information from the Land Registrar, Eldoret, it is evident from the wording of the letter dated 8/12/2020, that the Petitioner sought information in respect of all registered properties belonging to the “Eldoret Muslim Association Jamia Mosque” which in the body of the letter he described differently as the “Eldoret Muslim Association Jamia Mosque Committee”. A perusal of the letter reveals that it is not specific insofar as it does not supply the reference numbers of the alleged parcels of land. The letter appears to be “a fishing expedition”. While it is true that the 1st Respondent is in charge of the Uasin Gishu Land Registry and thus the custodian of land records therein, it will not be fair to require her to go looking for information about unknown parcels without having the benefit of the reference numbers. In Kenya, for that matter, the manner of identifying land with specificity is through land reference numbers and which the Petitioner did not supply.
58. To my understanding, land registries in Kenya keep records of land parcels in terms of their reference numbers, not by name of the registered owners. The Petitioner seems to strongly believe that the 1st Respondent only needs to open her computer, type the name of a person therein, click the right button and voila! all parcels of land registered under the name of that person promptly appears on the computer screen. Even if this were the case, the Petitioner has not produced any evidence to demonstrate that indeed it was.
59. I therefore agree with the State Counsel appearing for the 1st and 3rd Respondents that the requests by the Petitioner for information fell short of the requirement of Section 8 of the [Access to information Act](#) No. 31 of 2016 to provide sufficient details and particulars to the concerned public officer. The same provides as follows:
 - “(1) An application to access information shall be made in writing in English or Kiswahili and the applicant shall provide details and sufficient particulars for the public officer or any other official to understand what information is being requested.”



60. Another issue that arises is whether it was proper for the Petitioner to join all the Respondents in one suit as he has done herein when his grievance against each appear to be separate and different. As already aforesaid, the Petitioner's grievance against the 1st Respondent is the alleged failure to supply the Petitioner with details of the parcels of land owned by the entity that he describes as "Muslim Association Mosque Committee Eldoret". On the other hand, his grievance against the 3rd Respondent is the alleged failure to supply the Petitioner with a list of the office bearers of the said "Muslim Association Mosque Committee Eldoret". I find that the grievances presented before this Court are different and the parties against whom the grievance are directed are also different. Accordingly, I find that two causes of action raised herein are separate and distinct and cannot therefore be conveniently litigated upon in one suit since each cause of action raises distinct and unique issues for determination.
61. Regarding the 2nd Respondent, National Lands Commission, I have carefully gone through the Petition and Supporting Affidavit and cannot find what grievance or complaint is being raised against it. There is absolutely none whatsoever. This might explain why the 2nd Respondent never bothered to participate in the suit, never filed any pleading and never attended Court. The closest that the pleadings relate to the 2nd Respondent is paragraph 12 of the Supporting Affidavit in which, without giving any details or the land parcel number, the Petitioner depones that "the 2nd Respondent has already proceeded to unlawfully and illegally revoke the Petitioner's title deed and the same will now be subjected to subdivision to third parties". This deposition alone cannot amount to establishing a cause of action in a Constitutional Petition since this case is not a dispute on ownership or use of land and there is also no prayer made in the Petition to that effect.
62. There is also the failure by the Petitioner to join into this suit the entity that he has described as "Muslim Association Mosque Committee Eldoret". It is clear that it is this entity that is squarely at the centre of this suit. It cannot therefore be doubted that whatever orders that may be given in this suit will directly affect the said entity. How then can this litigation proceed to conclusion without giving the said entity an opportunity to be heard?
63. On this point, I borrow the words of Hon. Justice Mativo (as he then was) in the case of Republic v Principal Secretary, Ministry of Defence & 2 others; Kenya Tents Limited (Interested Party) Ex parte Unique Supplies Ltd [2019] eKLR where he stated as follows:
- “ 41. The ex parte applicant was not enjoined as a party in the proceedings before the Review Board. The failure to enjoin the ex parte applicant in the proceedings or notify it about the Request for Review was a gross violation of the Rules of Natural Justice. As the successful bidder, the ex parte applicant was a necessary party in the proceedings. Such a scenario meant granting orders affecting a party without giving it the benefit of a hearing. The Supreme Court of India in Prabodh Verma v State of UP^[31] and Tridip Kumar Dingal v State of WB^[32] laid down the law in cases of this nature. The Indian Apex Court held that if a person challenges a selection process, successful candidates or at least some of them are necessary parties.
42. The principle that comes out in the said cases is that a person or a body becomes a necessary party if he is entitled in law to defend the orders sought. The term "entitled to defend" confers an inherent right to a person if he or she is affected or is likely to be affected by an order to be passed by any legal forum, for there would be violation of natural justice.



43. I may profitably quote the principle of natural justice enunciated by the Supreme Court of India in *Canara Bank v Debasis Das*:^[33]

“Natural justice has been variously defined. It is another name for common sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.”

And again:-

“Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed there under. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance....”

44. The concept and doctrine of Principles of Natural Justice and its application in Justice delivery system is not new. It seems to be as old as the system of dispensation of justice itself. It has by now assumed the importance of being, so to say, "an essential inbuilt component" of the mechanism, through which decision-making process passes, in the matters touching the rights and liberty of the people. It is no doubt, a procedural requirement but it ensures a strong safeguard against any Judicial or administrative order or action, adversely affecting the substantive rights of the individuals.
45. Apart from the need for independence and impartiality, the right to a fair hearing under Article 50(1) of *the Constitution* encompasses several aspects. These include, the individual being informed of the case against her/him; the individual being given an opportunity to present her/his side of the story or challenge the case against her/him; and the individual having the benefit of a public hearing before a court or other independent and impartial body.
46. The Supreme Court of India put it succinctly in *J.S. Yadav v State of U.P. & Anr*^[34] in Paragraph 31 held thus:-

“No order can be passed behind the back of a person adversely affecting him and such an order if passed, is liable to be ignored being not binding on such a party as the same has been passed



in violation of the principles of natural justice. The principles enshrined in the... Code of Civil Procedure, ... provide that impleadment of a necessary party is mandatory and in case of non-joinder of necessary party, the petitioner-plaintiff may not be entitled for the relief sought by him. The litigant has to ensure that the necessary party is before the court, be it a plaintiff or a defendant, otherwise the proceedings will have to fail...”

47. The facts of this case are graphically clear. The ex parte applicant was a necessary party in the Request for Review. It is beyond doubt that the third Respondent violated Regulation 74, section 170 of the Act, Article 50 and 47 of *the Constitution*. It follows that the ensuing decision is tainted with illegality and procedural impropriety. On this ground alone, this application succeeds.”
64. With all the foregoing omissions and defects that I have pointed out in the Petition, I am of the view that the Petitioner has failed to clearly plead or establish how his rights have been infringed, a requirement that was reiterated in the case of *Anarita Karimi Njeru v Republic (Supra) (No1)-[1979] KLR 154*. This requirement was also affirmed in the Court of Appeal Case of *Mumo Matemo v Trusted Society of Human Rights alliance [2014] eKLR*, wherein it was stated that:
- “...the principle in *Anarita Karimi Njeru (supra)* underscores the importance of defining the dispute to be decided by the court ... Procedure is also a handmaiden of just determination of cases. Cases cannot be dealt with justly unless the parties and the court know the issues in controversy. Pleadings assist in that regard and are a tenet of substantive justice, as they give fair notice to the other party. The principle in *Anarita Karimi Njeru (supra)* that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle”
65. It is also a principle of law that he who asserts must prove, and in this regard, Section 107(1) of the *Evidence Act* (Cap 80) provides that “whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist”.
66. It was therefore the obligation of the Petitioner to present tangible evidence of violation of his rights and freedoms. This is because the Court is enjoined by law to rule only on the basis of the evidence on record. Although the Petitioner produced several of letters requesting the information, the letters alone do not necessarily show that or demonstrate how the Respondents violated and/or breached the Petitioner’s right to access information. I therefore find that the Petitioner did not present any evidence of probative value to enable this Court determine the Petition in his favour.
67. This Court therefore finds that the Petition lacks merit.

Final Orders

68. In the end, I find that the Petition dated 17/05/2022 is not only fatally defective and incompetent but also collapses on merits since it grossly fails to establish any violation of the Petitioner’s Constitutional right of access of information by the Respondents.
- i. Accordingly, the said Petition is dismissed.
 - ii. I find that the Petitioner honestly filed this matter in good faith in seeking to pursue his constitutional rights save that he may not have obtained proper legal advice on how to proceed. In the circumstances, I do not believe that it would be justified to condemn the Petitioner to



pay costs to the Respondents which are State Organs in any event. I therefore make no order on costs.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 21ST DAY OF JULY 2023

WANANDA J. R. ANURO

JUDGE

