



Nyanguti v County Government of Kisumu & 3 others (Petition E010 of 2024) [2024] KEHC 15628 (KLR) (2 December 2024) (Judgment)

Neutral citation: [2024] KEHC 15628 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
PETITION E010 OF 2024
RE ABURILI, J
DECEMBER 2, 2024**

BETWEEN

MICHAEL OTIENO NYANGUTI PETITIONER

AND

THE COUNTY GOVERNMENT OF KISUMU 1ST RESPONDENT

THE GOVERNOR OF KISUMU COUNTY 2ND RESPONDENT

**COUNTY SECRETARY OF THE COUNTY GOVERNMENT OF
KISUMU 3RD RESPONDENT**

**COUNTY EXECUTIVE COMMITTEE MEMBER INCHARGE OF FINANCE
AND PLANNING COUNTY GOVERNMENT OF KISUMU . 4TH RESPONDENT**

JUDGMENT

1. The petitioner describes himself as a human rights defender and chairperson of Magnam Environmental Network, a Community Based Organization in Kisumu County that was formed with the purpose of promoting environmental conservation, democratic governance, economic development and prosperity of the riparian of the Lake Victoria fisher folk communities.
2. The respondents are the County Government of Kisumu and the various officials who serve therein.
3. On 20th May 2024 the petitioner filed this petition seeking the following orders:
 - a. A declaration to be issued that the respondents’ actions have violated Articles 35 (1) and 35 (3) and Article 47 (1) of *the Constitution* of Kenya, 2010 by refusing to release and to publish and publicise information requested by the Petitioner and making the same information publicly available on the County Government of Kisumu website.



- b. A declaration be issued that the failure by the Respondents to provide information sought under Article 35 (1) (a) and also to publish and publicise the information on the County Government website in accordance with Article 35 (3) on the basis of the Petitioner's request, is a violation of Article 10 of *the Constitution* and specifically the values and principles of the rule of law, participation of the people, human rights, good governance, transparency and accountability.
 - c. A further declaration to be issued that the failure by the Respondents to provide information sought under Article 35 (1) (a) and also to publicise the information in the county website in accordance with Article 35 (3) on the basis of the Petitioner's request is a violation of the obligations imposed on the Respondents to ensure public finance is utilized in an open and accountable manner and in a prudent and responsible manner as stipulated in Article 201 (a) and (d) of *the Constitution*.
 - d. A mandatory order to be issued compelling the Respondents to forthwith/immediately, publish and publicise in the County Government of Kisumu website the requested signed and authentic budget documents sought by the Petitioner and all such documents in future mandatorily required to be published by law.
 - e. A further order that the Respondents forthwith provide at the Petitioner's cost, certified copies of information sought in relation to the Agriculture project touching on implementation of Central Kisumu Ward Projects for financial year 2022 – 2023.
 - f. That the costs of the suit be provided.
 - g. Any other relief/orders the court deems just to grant.
4. It was the petitioner's case that he on several occasions, on the 27th June 2023 and 30th November 2023 wrote to the 3rd respondent seeking the publication of various authentic and signed budget documents on the Official County Website dating back to the financial year 2013-2014 as well as copies of documents touching on implementation of Central Kisumu Ward Projects for the financial year 2022 – 2023.
 5. The petitioner averred that he also copied the letters to the Commission on Administration of Justice who on the 4th December 2023 advised that the requests be served on the respondents.
 6. The petitioner further averred that in an effort to pursue an alternative grievance mechanism, he requested, through a letter dated 2nd January 2024, the Commission on Administration of Justice to intervene and the Commission through a letter dated 18th January 2024 addressed the same to the 3rd respondent.
 7. It is the petitioner's case that to date, the respondents have refused to publish the information sought which infringes the constitutional right of Kisumu residents to information and further that the said refusal is against the provisions of the *Public Finance Management Act*, 2012.
 8. The respondents in this case have not appeared or filed any documents in the matter despite service of the same by the petitioner.
 9. The application was canvassed vide written submission.



The Petitioners' Submissions

10. The petitioner submitted that having failed/refused to publish and publicise information requested, the respondents' collective actions violated Articles 35 (1) (a), 35 (3) and 47 (1) of *the Constitution* of Kenya and Section 125, 126 (4), 129 (6), 131 (5) and 166 (4) of the *Public Finance Management Act*, 2012.
11. It was submitted that the respondents upon receipt of the petitioner's request for information they were obliged to respond but they instead chose to ignore the same and thus acted in bad faith.
12. The petitioner submitted that the respondents' actions/inactions violated the spirit of Article 10 of *the Constitution* and specifically the values and principles of the rule of law, participation of the people, human rights, good governance, transparency and accountability.
13. It was submitted that all the documents requested for are public documents that are not classified for limitation and that the respondents will not be harmed or prejudiced in anyway should such documents be published and publicised as required by *the Constitution* of Kenya 2010 and all other relevant laws and statutes ratified by Kenya.

Analysis & Determination

14. I have carefully considered the pleadings, submissions and authorities cited by parties. There are only two issues for determination namely: -
 - a Whether the Respondent violated the Petitioner's right of access to information
 - b Whether the Respondent should be compelled to give information
15. The Petitioner's main contention is that through the letters dated 27th June 2023 and 30th November 2023 wrote to the 3rd respondent seeking the publication of various authentic and signed budget documents on the Official County Website dating back to the financial year 2013 -2014 as well as copies of documents touching on implementation of Central Kisumu Ward Projects for the financial year 2022 – 2023.
16. The Petitioner contends that the Respondents have violated Articles 35 (1) (a), 35 (3) and 47 (1) of *the Constitution* of Kenya and Section 125, 126 (4), 129 (6), 131 (5) and 166 (4) of the *Public Finance Management Act*, 2012.
17. Article 35 of *the Constitution* of Kenya provides for the right to access information.
18. Article 35 of *the Constitution* provides that;
 1. Every citizen has the right of access to—Information held by the State; and Information held by another person and required for the exercise or protection of any right or fundamental freedom.
 2. Every person has the right to the correction or deletion of untrue or misleading information that affects the person.
 3. The State shall publish and publicise any important information affecting the nation.
19. Article 35 of *the Constitution* has been operationalized by the *Access to Information Act*. Section 4 of the Act which is material to this petition provides for the procedure to access information. The section provides:



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.
20. The intention in Article 35(1) was clearly to create two distinct situations with regard to the right of access to information: one in which the citizen was entitled as of right to information held by the State; the other in which a citizen could access information from another, a private person, for the exercise or promotion of another right or freedom.
21. Article 19 of the Universal Declaration of Human Rights (UDHR) adopted by the United Nations in 1948 provides that
- ‘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.’
22. Similarly, Article 19 (2) of the International Covenant on Civil and Political Rights (ICCPR), adopted by the United Nations in 1966, provides that:
- ‘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.’
23. Article 9 of the African Charter on Human and People’s Rights (The (Banjul Charter) states that:
- ‘Every individual shall have the right to receive information.’
24. 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.
25. Further to the above, Sections 125, 126 (4), 129 (6), 131 (5) and 166 (4) of the *Public Finance Management Act*, 2012 provide for the regular and frequent publication and publicizing of financial and relevant budgetary documents by the devolved units, the Counties.



26. It is 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'.
27. The burden of proving the allegations lay squarely upon the Petitioner. The Petitioner has tendered evidence in form of letters to show that he requested seeking the publication of various authentic and signed budget documents on the Official County Website dating back to the financial year 2013 -2014 as well as copies of documents touching on implementation of Central Kisumu Ward Projects for the financial year 2022 – 2023.
28. The respondents herein have not taken part in these proceedings in any way despite being served with the petition.
29. For the above reasons, I find that the petitioner has established that the Respondents did breach the Petitioner's right to access to information and that no effort was made to justify this violation. For that reason, I am equally satisfied that the Petitioner has proved his case to the required standard and must succeed.
30. In the end the petition dated 20th May 2024 is allowed and the orders sought therein at (a) to (e) are hereby granted as prayed.
31. The Respondents are granted 60 days of the date of service of this judgment and decree upon them to comply and publicize all the information sought by the petitioner in this petition as allowed herein.
32. As this is public interest litigation which was not defended, each party shall bear their own costs of the petition.
33. This file is closed.
34. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 2ND DAY OF DECEMBER, 2024

R.E. ABURILI

JUDGE

