



**Ochuodho (Chairman) & 3 others v County Government of Migori
(Petition 4 of 2016) [2017] KEHC 749 (KLR) (6 March 2017) (Judgment)**

Benard Ochuodho (Chairman) & 3 others v County Government of Migori [2017] eKLR

Neutral citation: [2017] KEHC 749 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI**

PETITION 4 OF 2016

AC MRIMA, J

MARCH 6, 2017

BETWEEN

BENARD OCHUODHO (CHAIRMAN) 1ST PETITIONER
HON EUNICE MBOYA (SECRETARY) 2ND PETITIONER
DAVID OMUGA (COORDINATOR) 3RD PETITIONER
DENNIS OKOYO MAKALE (BOARD MEMBER) 4TH PETITIONER

AND

COUNTY GOVERNMENT OF MIGORI RESPONDENT

Need to demonstrate with particularity how a right was threatened or infringed when filing constitutional petitions

The petitioners were board members of the Migori County People with Disability Development Forum. They took part in the part in the public partition as part of the respondent’s budget making process. They recommended that the respondent set aside Kshs 20 Million for the benefit of the persons with disabilities. The petitioners contended that the sum of Kshs. 20 Million was never released to their benefit as expected. They contended that the exclusion/ misappropriation was a violation of their rights. The court held that Issuing an order to compel the respondent to factor in the budget estimates sums for money meant for the benefit of persons with disabilities in the Financial Year 2016/2017 would be without any basis. The process of coming up with the estimates was long completed. The prevailing budget estimates for the Financial Year 2016/2017 remained unknown to the court and the court could not act in uncertainties. The court dismissed the petition but nevertheless granted an order compelling the respondent to avail the petitioners with all the information pertaining to the policies and programs which it had in place which protected and promoted the best interests of the persons with disabilities within Migori County including how the sum of Kshs. 20 Millions set-aside for the benefit of the persons with disabilities in the Financial Year 2015/2016 was expended, if at all and shall further avail the budget estimates for the Financial Year 2016/2017.



Reported by John Ribia

Civil Practice and Procedure – constitutional petition – form and content – prayer for interlocutory orders - where a petitioner had not stated the rights violated or threatened with violation - whether the High Court could issue interlocutory orders in a constitutional petition where the petitioners had not specified the rights violated or threatened with violation – whether the High Court could grant orders based on speculation where the relevant facts were not placed before it - , articles 22 and 258; (1975) KLR 154.

Constitutional Law – fundamental rights and freedoms – right to access information – where a constitutional petition against a public body was dismissed because of lack of information to back the petitioner’s claims - whether in a constitutional petition against a public body for the violation of human rights that was dismissed due to the petitioner not presenting information to back their claims, the court could order for the information to be provided to the petitioners - , article 35.

Brief facts

The petitioners were board members of the Migori County People with Disability Development Forum. They took part in public participation during the budget making process for both Financial Years 2015/2016 and 2016/2017. In the course of the petitioners' participation they made proposals for finances to be set aside for the benefit of the persons with disabilities. In the Financial Year 2015/2016 the respondent set aside Kshs 20 Million for the benefit of the persons with disabilities. The petitioners contended that the sum of Kshs. 20 Million was never released to their benefit as expected and that no sum at all was set aside for their benefit in the Financial Year 2016/2017. By so doing, the petitioners contend that their rights were violated and infringed upon.

The respondent contended that it never set aside any amount for the benefit of the persons with disabilities in the Financial Year 2016/2017 and that its Annual Development Plan for the Financial Year 2016/2017 was not in tandem with the budget estimates for that Financial Year but were speculative.

Issues

- i. Whether the High Court could issue interlocutory orders in a constitutional petition where the petitioners had not specified the rights violated or threatened with violation.
- ii. Whether the High Court could grant orders based on speculation where the relevant facts were not placed before it.
- iii. Whether in a constitutional petition against a public body for the violation of human rights that was dismissed due to the petitioner not presenting information to back their claims, the court could order for the information to be provided to the petitioners.

Held

1. The budget making process for the Financial Year 2016/2017 began on August 28, 2015 up to June 30, 2016. The implementation thereof began on July 1, 2016 and ran to June 30, 2017 then the prayer for an interlocutory injunction seeking to restrain the process and implementation of the budget estimates for the Financial Year 2016/2017 could not be said to have been wholly overtaken by events. Although the budget making process was completed, the implementation of those budget estimates was on-going up to June 30, 2017. However for such an order to issue there had to be a legal basis and in this case the petitioners had to satisfy the High Court that their rights were threatened with violation or that indeed their rights were violated or that the was being threatened with violation or was indeed violated.
2. It was not clear which of the petitioners' rights under the Constitution were either violated or were threatened with violation or which part of the Constitution was threatened with violation or was indeed violated. It had also not been demonstrated how that violation, if any, would be adequately remedied by issuing an injunction to either stop the budget making process or the implementation of the budget. Petitioners in constitutional petitions were always under a duty to demonstrate with particularity how their rights had been or were threatened with infringement and to further demonstrate the damage suffered or likely to be suffered by the alleged infringement.



3. The budget estimates in issue were not tendered in the petition by either of the parties. The foregone notwithstanding the Financial Year 2016/2017 had at most three months to its end. A substantial part of the budget must have been implemented and since it was not clear whether or not there were any estimates for the persons with disabilities in the said budget, injuncting the implementation of such a budget may not be appropriate in the circumstances.
4. Issuing an order to compel the respondent to factor in the budget estimates sums for money meant for the benefit of persons with disabilities in the Financial Year 2016/2017 would be without any basis. The process of coming up with the estimates was long completed. The prevailing budget estimates for the Financial Year 2016/2017 remained unknown to the court and the court could not act in uncertainties.
5. Inasmuch as the petitioners had a right to know how that sum of money was expended, if at all it was, it was to be noted that the petitioners' society has a membership of around 300 persons with disabilities whereas, according to the petitioners, there are about 57,000 such people in the whole of Migori County. It would be overzealous of the petitioners to expect all sums of money set aside for the benefit of people with disabilities by the respondent in the entire Migori County be channeled through Migori County People with Disability Development Forum.
6. The petition was premised on a background where the petitioners were not possessed of the right information in respect to how the respondent had been dealing with whole issue of the people with disabilities. Since article 54(1)(c) of the provided that persons with disabilities were entitled to reasonable access to information and in view of the provisions of article 23(3) of the Constitution, rule 3(7) and (8) of the coupled with the issue of public interest as viewed against the respondent's position that it had put in place policies and programs which protected and promoted the best interests of all persons living in Migori County and specifically those persons living with disabilities. The instant case presented an instance where the respondent ought to avail such information to the petitioners. That was in line with article 35 of the .

Petition dismissed.

Orders

- i. *The respondent was to within 45 days avail to the petitioners all the information pertaining to the policies and programs which it had in place which protected and promotde the best interests of the persons with disabilities within Migori County including how the sum of Kshs. 20 Millions set-aside for the benefit of the persons with disabilities in the Financial Year 2015/2016 was expended, if at all and shall further avail the budget estimates for the Financial Year 2016/2017.*
- ii. *Each party wasto bear its own costs.*

Citations

Cases

1. Njeru, Anarita Karimi v Republic (Criminal Appeal 4 of 1979; [1979] KECA 12 (KLR)) — Followed

Statutes

1. Constitution of Kenya, 2010 — article 2, 10, 19, 20, 21, 22, 23, 27, 28, 47, 54, 165, 258, 259 — Interpreted
2. County Government Act (Act No 17 of 2012) — section 87, 91, 102 — Interpreted

Advocates

None mentioned

JUDGMENT

1. The four petitioners are variously physically-challenged and filed a petition on their own behalf and on behalf of the other persons living with disabilities under the auspices of the Migori County People with



Disability Development Forum (MICODEF) which is a society that was registered under the Societies Act under number 33591 on August 16, 2012. MICODEF has about 300 registered members within Migori County.

2. MICODEF was formed against the background that Migori County, being one of the 47 Counties in the country, has around 57,000 people living with various forms of disabilities. Its Executive Summary under article 1 of its Constitution states as follows:

“Migori County people with Disability Development Forum was established on June 8, 2011 through the inception of the persons with disability Act No 14 of December 31, 2003 of the Laws of Kenya which was incorporated in the Kenyan Constitution 2010 under devolved government and the creation of and the creation of County structures.

The County has a total of approximately 60,00 people with different nature of disabilities eg physical, visual, albinism, hearing impairment, mental, etc. As they have been encountering such horrifying situations, majority of them are also languish in acute poverty due to lack of assertive devices, education funds, poor health care, discrimination, insecurity, poor nutrition, joblessness, HIV/AIDS, lack of inclusion, involvement and participation in decision making forums. In this response, to all these challenges, the Migori County various disability groups from 8 sub-counties join together to formulate an umbrella body namely Migori People with Disability Development Forum to champion and advocate for their rights and welfare and to also seek for means and ways that an enable them fight and mitigate poverty and become self reliant and sustain able to restore their dignity. Also to enjoy the slogan of disabilities not inability. Other areas of concerns are:-

1. Promotion of Special and formal education among disables
2. Acquisition of assertive devices and tax exemptions
3. Revolving funds to groups and individual trade tools and cash transfer schemes.
4. Enhancement of quality health care / combating HIV / AIDS Scourge
5. Establishing sustainable projects and programmes to create job opportunities to qualified and skilled disabled (5%) job opportunities.

The organization has very organized structures which is formulated from grass root to the County level.

At the County level, the organization is managed by the County Management Board comprising the Governors and the Executive Board.

3. The objectives of MICODEF are spelt out as follows:

Objectives

1. To integrate and mainstream the disability functions and issues if Migori County Government.
2. To effective and efficiently advocate and champion for the devolution of the resources from the National Government to the County Government eg from the NCPWD and the NFDK and other agencies.
3. To collaborate and network with all disability stakeholders.



4. To advocate for the the enhancement and formulation of Migori County assembly and national assembly to effectively implement the PWD's act 2003 and [COK 2010](#) that articulating tax and license exemptions, 5% inclusion of PWDs in all nature and status of leadership, employment, nomination and appointments in all sectors.

Specific Objectives

1. To conduct sensitization and awareness to identify children with disability and special needs for early identification, management and placements through referrals.
2. To facilitate on the promotion of education funds.
3. Bilateral programme exchange with other counties to acquire more skills locally, nationally and internationally.
4. Support to vulnerable students whose parents are living with disabilities.
5. Promote acquisition of assisting devices.
6. To improve the economic empowerment to PWDs through loans and grants.
7. To rehabilitate all the stalled educational institutions and initiate other institutions like the vocational centres, resource centres and orthopedic workshops through infrastructure development funds.
8. To empower the MICODEF secretariat to execute its powers, functions and obligations through 15% and the total county budget funds for proper implementation, monitoring and evaluation.
9. To prepare and document the plan of action, proposal and Puget for the PWDs in Migori County.
10. To effectively collaborate and network in sourcing for funds and other resources, locally, internationally for the betterment of the MICODEF secretariat and Migori County success.
11. To upscale the cash transfer and involvement of PWD's new entry in the cash scheme.
12. To mandate and empower the MICODEF to fully coordinate and implement the PWDs secretariat functions in Migori County.
13. To carry out capacity buildings and trainings to equip the PWDs a general number of public including stakeholders to acquire skills, knowledge and attitude to discharge disability operations.
14. To enhance better health care services which involves free and affordable waiver system within hospitals for vulnerability PWDs in Migori County.
15. To initiate a team of 40 PWDs disseminators representing 40 wards of Migori County.



4. By the petition dated and evenly filed on June 15, 2016, the petitioners decried that the respondent herein, the County Government of Migori, had violated and infringed on their various rights under the Constitution of Kenya (hereinafter referred to as 'the Constitution') and that they were entitled to some remedies. The petitioners reiterated the supremacy of the Constitution under article 2 of the Constitution and the duty bestowed upon every person to respect, uphold and defend the Constitution under article 3 thereof. The petitioners went further and cited articles 10, 19, 20, 21, 22, 23, 27, 28, 47, 54, 165, 258 and 259 of the Constitution in furtherance of their position. Reference was also made to sections 87, 91 and 102 of the County Government Act, No 17 of 2012 (hereinafter referred to as 'the Act').
5. The petition is premised on the factual averments that the respondent in the process of preparing its budget estimates for the Financial Year 2015/2016 invited the petitioners for public participation where they made their proposals that an amount of Kshs 300 Millions be set aside for the benefit of the petitioners. The respondent however set aside Kshs 20 Millions instead. It is further contended that the respondent never set aside any amount of money for the benefit of the petitioners in the Financial Year 2016/2017. It is the petitioners' further position that the respondent's Annual Development Plan for the Financial Year 2016/2017 is not in tandem with the budget estimates for the Financial Year 2016/2017.
6. The petitioners contend that the sum of Kshs 20 Millions was never released to their benefit as expected and that no sum at all was set aside for their benefit in the Financial Year 2016/2017. By so doing, the petitioners contend that their rights were violated and infringed upon.
7. It is on the foregone background that the Petitioners prayed for the following orders:
 - a) An order of temporary injunction be issued against the respondent, their agents, servants, committees and or employees from processing, implementing, working and or debating the budget estimates as currently proposed, whatsoever and howsoever subject only to the observance of the provisions of the Constitution of the Republic of Kenya 2010, the County Government Act 2012 and other relevant statutes.
 - b) An order of judicial review in the nature of *mandamus*, ordering the respondent to factor in funds meant for empowering persons with disabilities in the budget estimates FY 2016/2017 and order the respondent to make available funds that were allocated persons with disabilities in the budget estimate FY 2015/2016.
 - c) That the cost of this petition be provided for."
8. It remains important to note that the petition was filed contemporaneously with a notice of motion which sought some interlocutory orders but which application was later on marked as 'spent' after the High Court sitting in Kisii (Hon Karanja J) declined to make any such orders at the *ex parte* stage. Parties then dealt with the main petition.
9. The respondent however did not file any response to the petition. That was the case after having been indulged by this court on several instances. What remains on record is its grounds of opposition which it filed through its advocates on June 30, 2016 in opposition to the notice of motion which was later abandoned.
10. This court made further orders that the petition was to be disposed of by way of written submissions. To that end the petitioners duly complied with that order but again the respondent did not. In their



submissions, the petitioners more or less reiterated the contents of the petition and made a plea that the petition be allowed accordingly.

11. I have carefully addressed my mind to the petition. In as much as the respondent did not file any response to the petition and any submissions, i will nevertheless have a look at the said grounds of opposition in dealing with this petition. The respondent raised 17 grounds which for ease of reference I hereby reiterate them as under:

1. The matters in dispute, arising from and purporting to allege the non inclusion of in the budget estimates for the Financial Year 2016/2017 of the views and proposals made by persons living with sociabilities is not justiciable.
2. There is no constitutional rights donated to persons living with disabilities and or any statutory provision which mandates and requires the respondent to mandatorily include and factor in the annual budgetary estimates for the county, public funds which must be distributed to them and therefore there have been no violation of any of the petitioners alleged rights which can found a basis for this litigation.
3. The petitioners have misconstrued, misinterpreted and wrongly misunderstood the meaning and import of constitutional and statutory prescriptions and the law as it relates to persons living with disabilities which obliges all states actors to take certain steps, in a progressive manner, over a period of time vis avis rights and protection of such rights in the context of constitutional and legal interpretation and rights protection mandate of the courts and the right of access to justice.
4. The grant of the orders sought will have the effect of grounding the entire operations of the County Government of Migori to a halt and thus will no serve any meaningful purposes as the genuine needs of all persons in Migori County, on the basis of the affirmative action mandate on a genuine needs basis, within the budgetary estimates and availability of resources, has been taken care of.
5. The entire petition and the affidavit evidence in support does not contain any single allegation of violation and or threat to violation of rights of any person and or breach of any law and thus does not disclose any and or any reasonable cause of action.
6. The petition and application does not raise any constitutional grievance mounted on threat to and or violation of any rights as donated under chapter 4 of the [Constitution of Kenya, 2010](#) in the Bill of Rights and which this litigation seeks to either vindicate, protect and or redress.
7. The petitioners have set out on a venture to nowhere in instituting these proceedings as it is not all inclusive neither does it serve any and or the best interest of persons living with disabilities within Migori County but it is rather pegged on the interest of selected few and in particular only the members of Migori County People with Disability Development Forum (MICDEF).
8. The Respondent has a constitutional duty and statutory role, and in its ordinary courses of duty has put in place policies and programs which protects and promotes the best interest of all the persons living in Migori County and specifically those of persons living with disabilities as they are also part and parcel of the citizens within the said county.
9. The Respondent fully complied with the law and involved the all the citizens of Migori County to publicly participate in the budget making process for the FY 2016/2017 and the petitioners herein duly admit to that fact hence the petitioners' claim is founded on, falsehoods, lies unsubstantiated innuendos and bare allegations which largely remain un proven.



10. No evidence whatsoever has been led to support the petitioners allegation that no single amount of money is set aside in the budget estimate for FY 2016/2017 for the empowerment of persons with disabilities and that the County Government Annual Development Plan (ADP) FY 2016/2017 for the empowerment of the disabled is not concurrently supported by the budget estimates.
 11. As it is, the County Government undertakes development projects that benefit all its citizen and has a Department of Social Services which is fully ran and supported on the County Budget to undertake among others and on a progressive basis, programs and policies that improves on the lives of the disadvantaged citizens.
 12. The constitutional and statutory budget making process which began on August 28, 2015 ended on June 30, 2016 and only the implementation face now remains, which begins on July 1, 2016 to June 30, 2017 and hence no justifiable reason exists to warrant the grant of the orders now sought by the petitioners as agaianst the respondent as the same have been overtaken by events.
 13. The respondent is obligated to meet the interests of all its citizens wholly and it is not obligated to act in preference of a group of persons over the entire community as this would amount to discrimination which is unconstitutional and will confer preferential treatment and benefit on such persons which are not being enjoyed a large section of the citizens.
 14. The petitioner and its membership is not a statutory and or public body which must be funded by the County Government while purposes of these proceedings is to have the court to compel the respondent to allocate and distribute public funds to the petitioner, its members and officials.
 15. The proposals submitted by the petitioners during the preparations of the budget estimates were considered and rejected as the figures which they proposed were not only misconceived but also excessive and exaggerated in the sum of Kshs 300 Million and hence unreasonable.
 16. It is the constitutional responsibility and legal mandate of the County Government of Migori and indeed other players, constitutionally and legally mandated to prepare the budget estimates in accordance with very strict constitutional and statutory timelines, a process which has been completed for the County of Migori and since that process, rather than the content is not being questioned, this court has not jurisdiction to interfere lawful exercise of constitutional powers by other constitutional bodies, absent allegations of abuse of power.
 17. The charge of violation of rights of persons living with disabilities in Migori County leveled against the County Government of Migori is thus without evidential basis and is thus misconceived and unfounded and thus both the application and the petition ought to be rejected.”
12. The Constitution makes specific reference to persons with disabilities under article 54. The said article states as follows:
- “54(1) A person with any disability is entitled -
- (a) to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning;



- (b) to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person.
- (c) to reasonable access to all places, public transport and information.
- (d) to use Sign Language, Braille or other appropriate means of communication; and
- (e) to access materials and devices to overcome constraints arising from the person's disability.

(2) The State shall ensure the progressive implementation of the principle that at least five percent of the members of the public in elective and appointive bodies are persons with disabilities.”

13. There is also the *Persons with Disabilities Act*, chapter 133 of the Laws of Kenya (hereinafter referred to as 'the PWD Act') whose preamble states as follows:

“An Act of Parliament to provide for the rights and rehabilitation of persons with disabilities; to achieve equalisation of opportunities for persons with disabilities; to establish the National Council for Persons with Disabilities; and for connected purposes”

14. The PWD Act makes various provisions in respect to persons with disabilities. It creates the National Council for Persons with Disabilities and the Fund, it also outlines the rights, privileges, reliefs and incentives for such persons with disabilities. It further creates offences and prescribes penalties.

15. Turning to the petition at hand, there are several issues which are not in dispute. That the petitioners took part in public participation during the budget making process for both Financial Years 2015/2016 and 2016/2017 is not in dispute. In the course of the petitioners' participation they made proposals for finances to be set aside for the benefit of the persons with disabilities. It is also not in dispute that in the Financial Year 2015/2016 the respondent set aside Kshs 20 Millions for the benefit of the persons with disabilities. It also remains a fact that the Financial Year 2015/2016 ended on June 30, 2016. Further it is not disputed that the budget making process for the Financial Year 2016/2017 began on August 28, 2015 up to June 30, 2016 and that the implementation thereof began on July 1, 2016 and runs to June 30, 2017.

16. The respondent however contends that the allegations that it never set aside any amount for the benefit of the persons with disabilities in the Financial Year 2016/2017 and that its Annual Development Plan for the Financial Year 2016/2017 is not in tandem with the budget estimates for that Financial Year remain but only speculative.

17. In view of the truism that the budget making process for the Financial Year 2016/2017 began on August 28, 2015 up to June 30, 2016 and that the implementation thereof began on July 1, 2016 and runs to June 30, 2017 then the prayer for an interlocutory injunction seeking to restrain the process and implementation of the budget estimates for the Financial Year 2016/2017 cannot be said to have been wholly overtaken by events. I say so because although the budget making process was completed, the implementation of those budget estimates is on-going up to June 30, 2017.

18. However for such an order to issue there has to be a legal basis and in this case the petitioners must satisfy this court that their rights are threatened with violation or that indeed their rights were actually



violated or that the Constitution was being threatened with violation or was indeed violated (See articles 22 and 258 of the Constitution).

19. From the way the petition was tailored, it is not clear which of the Petitioners' rights under the Constitution were either violated or were threatened with violation or which part of the Constitution was threatened with violation or was indeed violated. It has also not been demonstrated how that violation, if any, would be adequately remedied by issuing an injunction to either stop the budget making process or the implementation of the budget. I reiterate that petitioners in constitutional petitions are always under a duty to demonstrate with particularity how their rights have been or are threatened with infringement and to further demonstrate the damage suffered or likely to be suffered by the alleged infringement. To this end, I will fully concur with the decision in the case of Anarita Karimi Njeru v Attorney General (1975) KLR 154.
20. Further, the position taken by the respondent on that particular issue is of importance. Whereas the petitioners contend that no budget estimates were made for the benefit of persons with disabilities in the Financial Year 2016/2017, the respondent dismisses that as purely speculative and without any basis. This court takes note that the budget estimates in issue were not tendered in this petition by either of the parties. The foregone notwithstanding the Financial Year 2016/2017 has at most three months to its end. It therefore means that a substantial part of the budget must have been implemented by now and since it is not clear whether or not there were any estimates for the persons with disabilities in the said budget, injuncting the implementation of such a budget may not be appropriate in the circumstances. I therefore find that the first prayer in the Petition cannot issue and is hereby declined.
21. As to the second prayer in the petition, issuing an order to compel the respondent to factor in the budget estimates sums for money meant for the benefit of persons with disabilities in the Financial Year 2016/2017 would again be without any basis. First, the process of coming up with the estimates was long completed. Second, the prevailing budget estimates for the Financial Year 2016/2017 remain unknown to this court and this court cannot act in uncertainties. One may pose here and ask this question; Suppose this court makes such an order and then it happens that the estimates are already part of the budget, what would then be said of this court? I say no more.
22. There is the other part of the second prayer in the petition where the petitioners are seeking an order that the respondent avails the sums of Kshs 20 Millions set aside in the budget for the Financial Year 2015/2016 for the benefit of the persons with disabilities. In as much as the petitioners have a right to know how that sum of money was expended, if at all it was, it is to be noted that the petitioners' society has a membership of around 300 persons with disabilities whereas, according to the petitioners, there are about 57,000 such people in the whole of Migori County. It would therefore be overzealous of the Petitioners to expect all sums of money set aside for the benefit of people with disabilities by the respondent in the entire Migori County be channeled through MICODEF. That prayer equally cannot be granted and is declined.
23. This court has however noted that the petition is premised on a background where the petitioners are not possessed of the right information in respect to how the respondent has been dealing with whole issue of the people with disabilities. Since article 54(1)(c) of the Constitution provides that persons with disabilities are entitled to reasonable access to information and in view of the provisions of article 23(3) of the Constitution, rule 3(7) and (8) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 coupled with the issue of public interest as viewed against the respondent's position that it has put in place policies and programs which protect and promote the best interests of all persons living in Migori County and specifically those persons living with disabilities (See grounds 8 and 11 of the grounds of opposition), then with a view to meet



the ends of justice, this case presents an instance where the respondent ought to avail such information to the petitioners. Needless to say that is in line with article 35 of the Constitution.

24. In coming to the end of this judgment, this court hereby makes the following final orders:

- a) The petition dated June 15, 2016 be and is hereby dismissed;
- b) The respondent shall within 45 days avail to the petitioners all the information pertaining to the policies and programs which it has in place which protect and promote the best interests of the persons with disabilities within Migori County including how the sum of Kshs 20 Millions set-aside for the benefit of the persons with disabilities in the Financial Year 2015/2016 was expended, if at all and shall further avail the budget estimates for the Financial Year 2016/2017.
- c) Given that the petitioners are persons with disabilities and that they were not possessed of the appropriate factual information, each party shall hence bear its own costs.

Those are the orders of this court.

DELIVERED, DATED AND SIGNED AT MIGORI THIS 06TH DAY OF MARCH 2017.

A. C. MRIMA

JUDGE

