



**Savla v Maralal Energy Limited & 2 others; Commission on Administrative Justice
(Interested Party) (Constitutional Petition E375 of 2024) [2026] KEHC 1281 (KLR)
(Constitutional and Human Rights) (22 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 1281 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
CONSTITUTIONAL PETITION E375 OF 2024
B MWAMUYE, J
JANUARY 22, 2026
IN THE MATTER OF ARTICLES 10, 20, 22, 23(3)(A), (B), (C), (D) & (E) & 24 OF THE
CONSTITUTION OF KENYA 2010
AND
IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHTS AND
FREEDOMS OF THE INDIVIDUAL UNDER ARTICLES 31, 35, 41 & 43 OF THE
CONSTITUTION OF KENYA
AND
IN THE MATTER OF CONTRAVENTION OF SECTION 4 OF THE ACCESS TO
INFORMATION ACT NO. 31 OF 2016 AND SECTION 26 OF THE DATA PROTECTION
ACT, 2019 OF THE LAWS OF KENYA

BETWEEN

NAYAN SAVLA PETITIONER

AND

MARALAL ENERGY LIMITED 1ST RESPONDENT

JAMBO COMMODITIES LIMITED 2ND RESPONDENT

NDOGO CAPITAL LIMITED 3RD RESPONDENT

AND

COMMISSION ON ADMINISTRATIVE JUSTICE INTERESTED PARTY



JUDGMENT

Introduction

1. Before this Court for determination is a Constitutional Petition dated 19th July 2024 filed by Nayan Savla (the Petitioner). The Petition alleges a systemic violation of the Petitioner's fundamental rights and freedoms arising from the actions and omissions of the three Respondent companies, all of which are described as family-owned enterprises. The gravamen of the Petitioner's complaint is a denial of access to personal salary and employment information, misuse of his personal data, and non-compliance with binding directives issued by the Commission on Administrative Justice (the Interested Party or CAJ).
2. The Petitioner therefore seeks the following reliefs from this Honourable Court:
 - a. A declaration that the Petitioner's constitutional rights to; access to information under Article 35; to privacy under Article 31; to fair administrative action under Article 47; to dignity under Article 28; and to a fair hearing under Article 50 of *the Constitution* of Kenya were breached by the Respondents.
 - b. A declaration that the Petitioner's right to information under Section 4 of the *Access to Information Act* No. 31 of 2016, and right to correction of false and or misleading data, and to deletion of false or misleading data under Section 26 of the *Data Protection Act, 2019* of the Laws of Kenya Section were breached by the Respondents.
 - c. A declaration that the filing of annual returns for the years 2016 and 2017 in the Petitioner's name was a gross misuse of the Petitioner's private information and data and therefore a breach of among others Articles 31 and 35 of *the Constitution* of Kenya, Section 4 of the *Access to Information Act*, No. 31 of 2016 and Section 26 of the Data Protection Act, 24 of 2019.
 - d. Leave be granted to the Petitioner to enforce the directives of the Commissioner on Administrative Justice issued on 24th November 2022, 23rd January 2023, and 17th July 2023, under Section 23(2) (a) of the *Access to Information Act*, No.31 of 2016, against the Respondents.
 - e. The Court do order that the directives of the Commission of Administrative Justice issued on 24th November 2022, 23rd January 2023, and 17th July 2023 operate as decrees of this Honourable Court and be executed in the same manner as orders of the Court.
 - f. A declaration that the failure by the Respondents to provide the Petitioner with information regarding his salaries, allowances and financial information as directed by the Commission of Administration directives of 24th November 2022, 23rd January 2023, and 17th July 2023 is a breach of among others Article 35 of *the Constitution* of Kenya, and Section 4 of the *Access to Information Act*, No. 31 of 2016 and Section 26 of the Data Protection Act, 24 of 2019.
 - g. General and Special damages for breach of the Petitioner's rights;



9. Each order granted a seven-day compliance period and expressly notified the Respondents of their right to appeal to the High Court within twenty-one days, as per Section 23(3) of the ATI Act. It is common ground that none of the Respondents filed an appeal against these orders.
10. Concurrently, the Petitioner alleges that his personal data, specifically his KRA PIN, was used by the 1st and 2nd Respondents to file income tax returns for the years 2016 and 2017, indicating salary payments that he claims never reached him. This, he asserts, exposes him to potential tax liabilities and reputational harm.
11. The Respondents, through the affidavit of Mansukhlal Kachra Savla, present a starkly different narrative. They frame the Petitioner's shareholding as ex-gratia, granted by a supportive father who fully funded the companies. They question the Petitioner's capacity to sue, annexing a medical report diagnosing him with schizoaffective disorder. They portray the Petitioner as having voluntarily isolated himself from the businesses, which are now run by his brother due to the deponent's frail health. They deny any duress or assault, asserting that any medical interventions were for the Petitioner's welfare.
12. Crucially, the Respondents do not squarely deny holding the information sought. Instead, they express apprehension that providing such information to the Petitioner would be used to "rock" or "sabotage" the family businesses, citing a history of multiple lawsuits filed by the Petitioner against family members. They argue that the Petitioner continues to receive a salary from the 2nd Respondent, which is used to support his family, including payment of his children's school fees. They characterize the Petition as a contractual or company law dispute masquerading as a constitutional issue, initiated in bad faith to arm-twist the family.

Petitioner's Case

13. The Petitioner's case is encapsulated in his Petition, Supporting Affidavit, Further Affidavit, and Written Submissions. His core assertions are that the Respondents' refusal to provide information he is entitled to, and their misuse of his personal data, constitute violations of multiple constitutional and statutory rights. He specifically invokes:
 - a. Article 35: The right of access to information held by another person required for the protection of any right.
 - b. Article 31: The right to privacy, including protection against unnecessary revelation of his information.
 - c. Article 47: The right to fair administrative action.
 - d. Article 28: The right to dignity.
 - e. Article 43: The right to the highest attainable standard of health.
 - f. Section 4 of the ATI Act and Section 26 of the [*Data Protection Act, 2019*](#).
14. The Petitioner further asserted that the refusal to grant him the information sought prompted him to apply other dispute resolution mechanisms such as mediation which did not yield any fruits and made him to approach the CAJ for assistance.
15. The Petitioner gave details of the factual chronology of his requests, the CAJ's intervention, and the Respondents' subsequent non-compliance with the CAJ's final and binding orders.
16. It is the Petitioner's case that the denial of financial information made it difficult for him to manage his health conditions (hereditary glaucoma and Long QT syndrome) due to financial hardship.



17. In his Further Affidavit, the Petitioner denies the claim that the 1st and 3rd Respondents company are no longer in operation by stating that the companies are still in operation.
18. Further, the Petitioner denied suffering from schizoaffective disorder and substance use disorder and argued that the medical report the Respondents rely on was issued without his consent which is also contested in other suits being HCCHRPET No. E039 of 2023 and HCCHRPET No. E287 of 2022.
19. Regarding the allegations that the Petitioner has failed to file company returns, he argues that the same is baseless as the Respondents have not furnished him with any audited accounts nor held any general meeting for confirmation of the said accounts. Additionally, he argues that the school fees for his children is catered for by the 2nd Respondent where his father is not directly involved in its daily operations.
20. Furthermore, it is the Petitioner's contention that he incurred losses and continues to incur losses while seeking treatment for torture occasioned by the Respondents through their agents. Also, he avers that the Respondents through their agents have been verbally abusing him and threatening him to withdraw the instant suit for them to abide by the decrees issued in the suits where judgments have been delivered in his favour.
21. The Petitioner's written Submissions and Supplementary Submissions, are comprehensive. They are structured around four key issues for determination. First, on the violation of Article 35 and the ATI Act, the Petitioner argues that the two-pronged test is satisfied: the information is held by the Respondents, and it is required to protect his rights to privacy, fair administrative action, dignity, and health. He invokes the doctrine of horizontality under Article 20(1), emphasizing that the Bill of Rights binds private entities like the Respondents.
22. Regarding the violation of his right to fair administrative action under Article 47, it was submitted that the refusal by the Respondents to give him the information sought, he was unable to pursue claims for unpaid salary, unlawful directorial removal and breach of employment contract. Further, it is argued that the refusal to provide any written justification and lawful reasons for withholding the information, the Respondents violated the provisions of Section 6 (1) and (2) of the *Fair Administrative Action Act* which mandates the Respondents to provide reasons for withholding the information sought.
23. On violations of his right to dignity and health, it is the Petitioner's contention that by withholding and misappropriating his information, the Respondents violated his right to privacy and data, this he argues, exposed him to legal, financial and reputational risk undermining his dignity. Further he argues that being excluded from corporate operations and being portrayed as a mentally unstable person, dehumanized him and made him lose family respect which undermined his dignity. Furthermore, he argued that the actions of the Respondents to withhold the information directly affected his livelihood and health since he could not access the highest attainable medical standard due to financial constraints and systemic exclusion.
24. Second, on the violation of Article 31 and Section 26 of the Data Protection Act, he submitted that the unauthorized use of his KRA PIN to file tax returns and the denial of access to his own personal data constitute clear breaches. Reliance was placed on the decision in *Jessica Clarise Wanjiru v Davinci Aesthetics & Reconstruction Centre & 2 Others* [2017] eKLR on the broad nature of the right to privacy.
25. Third, on the enforceability of the CAJ directives, he argues that the CAJ acted within its lawful mandate, the orders are final due to the lack of appeal, and this Court has both the jurisdiction and duty under Articles 165(3)(b) and 23 (3) to enforce them as decrees. Reliance was placed on *International Centre for policy and Conflict & 5 others v The AG & 4 others* [2013] eKLR to buttress his arguments.



26. Fourth, on entitlement to reliefs, he submits that declarations are necessary to vindicate violated rights. On damages, while acknowledging that proof of specific loss is not always mandatory in constitutional litigation, he details the financial, medical, emotional, and reputational harm suffered, urging the Court to award compensatory, aggravated, and exemplary damages placing reliance on the decision in *Gitobu Imanyara & 2 Others v Attorney General* [2016] eKLR in support of his arguments.
27. In his Supplementary Submissions, the Petitioner counters the Respondents' technical objections, arguing that the Petition meets the substantive test for precision set in *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* [2013] eKLR, as it clearly sets out the rights infringed, the Respondents' actions, and the impact. Further reliance was placed on decisions in *Thorp v Holdsworth* (1876) 3 Ch. D. 637 at 639 and *Omondi & another v AG & 2 others; Ethekeon & 7 others* (Constitutional Petition E 269 of 2025) [2025] KEHC 9956 (KLR) in support of his arguments.
28. He also refutes the claim that the right to information is absolute, arguing that the Respondents have failed to discharge their burden under Section 6 of the ATI Act and Article 24 of *the Constitution* to justify any limitation. He urged this Honourable Court to allow the Petition as prayed.

Respondents' Case

29. The Respondents' case is primarily contained in the Replying Affidavit of Mansukhlal Kachra Savla sworn on 23rd May 2025 and their Written Submissions dated 18th November 2025. Their defense is multi-pronged:
 - a. Lack of Capacity: They challenge the Petitioner's legal capacity to institute proceedings based on the annexed medical report indicating that he suffers from schizoaffective disorder (a form of chronic psychiatric disorder) and substance use disorder.
 - b. Improper Forum / Disguised Dispute: They contend the Petition raises purely commercial, contractual, or company law grievances that should be ventilated in the appropriate civil division, not as a constitutional petition. They rely heavily on the doctrine of constitutional avoidance.
 - c. Non-Absolute Right: They argue that the right to access information under Article 35 is not absolute and can be limited, particularly where, as alleged, disclosure would be used to harm the business and family harmony.
 - d. No Evidence of Breach or Loss: They deny any violation of rights and assert that the Petitioner has failed to provide cogent evidence of duress, assault, data misuse, or quantifiable loss. They state he continues to receive financial support.
 - e. Bad Faith / Alternative Dispute Resolution: They allege the Petitioner's motives are mala fides, aimed at sabotage, and that the dispute, being familial, should be resolved through mediation or internal company mechanisms. Further, it is averred that this instant suit is a culmination of many suits filed by the Petitioner against all the other family members which has drained and continues to drain their finances and drive a wedge among family members.
30. Further, it was deponed that the Petitioner's shareholding in any of the family companies was ex-gratia as he did not contribute any capital to any of the companies which was fully funded by his father. Additionally, it is averred that only the 2nd Respondent is operational while the 1st and 3rd Respondents are not operational.



31. It is the Respondents case that the Petitioner has failed to disclose to this Court material facts that he still draws salary from the 2nd Respondent which is used to assist his family despite him not being involved in the daily operations of the 1st Respondent. Additionally, the Respondents deny the allegations that the Petitioner's salary has been applied to unknown individuals and companies and argues that the Petitioner still receives his salary and that his father has continued to support him even though he is not working in any of the family companies.
32. The Respondents in their written Submissions first challenge the Petition's drafting, invoking the classic standard in *Anarita Karimi Njeru v Republic* (1976-1980) 1 KLR 1272 but concede the more flexible, substantive test from *Trusted Society of Human Rights Alliance v Attorney General & 2 others* [2012] eKLR. Nevertheless, they maintain the Petition is imprecise as the Petitioner has not drafted the Petition with precision indicating the alleged infringement and violations of his rights by the Respondents.
33. Their central argument is the doctrine of constitutional avoidance. They rely on a line of authorities including *Veronica Sum v National Bank Of Kenya Ltd* [2016] KEHC 4226 (KLR), *Mabeya t/a Gynocare Women and Fistula Hospital v Kenya Power and Lighting Company* [2023] KEHC 18902 (KLR), *Omar v Attorney General & 3 others* [2024] KEHC 6181 (KLR), and *Anyango v Attorney General & 2 others* [2024] KEHC 254 (KLR), to contend that where an alternative remedy exists under ordinary civil law (contract, tort, company law), a constitutional petition is an abuse. They contended that the core dispute herein relates to shareholding, directorship, and employment matters squarely within the realm of private law and not within this Honourable Court.
34. On the CAJ orders, they submitted, citing *Riungu v Commission on Administrative Justice & another* [2025] KEHC 12461 (KLR), that any enforcement and its adoption as decree can only be done by the High Court and not through a constitutional petition.
35. Finally, on damages, they argued that the Petitioner has provided no evidence of any loss suffered, relying on *Mereka v Sikalieh* (Petition E299 of 2022) [2025] KEHC 3467 (KLR) which adopted the decision in *Gitobu Imanyara & 2 Others v. Attorney General, SC Petition No. 15 of 2017* urged this Honourable Court not to grant the prayers sought for special damages as well as aggravated damages.

Interested Party's Case

36. The Interested Party filed a Replying Affidavit sworn by Mercy K. Wambua on 30th April 2025 and separate Written Submissions dated 23rd October, 2025. It is deponed that its role is confined to its statutory mandate under the ATI Act. It meticulously documents the process it followed: receiving the Petitioner's complaints, inquiring with the Respondents, and issuing the three orders after the Respondents failed to provide the information or substantively engage.
37. It is averred that the Commission gave a timeline for compliance being seven days on each of the orders that were given to the Respondents.
38. It is the Interested Party's case that no appeals were lodged against its orders, and there being no appeal in the High Court pursuant to Section 23 (3) of the ATI Act, the actions of the Respondents amount to violation of the aforesaid Act. It firmly submitted that it acted within its mandate under Sections 14 (1) (a), 22 (3) (a) (i) and 23 (2) of the ATI Act, and that, in the absence of an appeal, its orders are final, binding, and enforceable as decrees of the High Court pursuant to Section 23(5) of the ATI Act. It relied on the decision in *Republic v Isaiah Kubai & another; Commission on Administrative Justice (Interested Party) Ex-parte Duncan Muthusi* [2019] KEELRC 43 (KLR). It supports the Petition to the extent it seeks enforcement of these orders.



Analysis and Determination

39. Having carefully considered the pleadings, affidavits, exhibits, and submissions of all parties, the following issues arise for the determination of this Court:
- i. Whether the Petitioner has the legal capacity to institute and maintain these proceedings.
 - ii. Whether the Petition meets the requisite standard of precision for a constitutional petition.
 - iii. Whether the doctrine of constitutional avoidance ousts this Court's jurisdiction, rendering the Petition a disguised commercial dispute.
 - iv. Whether the Respondents violated the Petitioner's right of access to information under Article 35 of *the Constitution* and Section 4 of the *Access to Information Act, 2016*.
 - v. Whether the Respondents violated the Petitioner's right to privacy and data protection under Article 31 of *the Constitution* and Section 26 of the *Data Protection Act, 2019*.
 - vi. Whether the directives issued by the Commission on Administrative Justice are final, binding, and enforceable by this Court as decrees.
 - vii. Whether the Petitioner is entitled to the reliefs sought.

Whether the Petitioner has the legal capacity to institute and maintain these proceedings.

40. The Respondents predicate their challenge to the Petitioner's capacity on a medical report by Dr. Marx Okonji dated 10th February 2022, which indicates a diagnosis of schizoaffective disorder. Capacity to sue is a foundational legal concept. A person must have the mental competence to understand the nature and implications of the legal proceedings they are initiating. However, the presumption in law is in favour of capacity. The burden of proving incapacity rests squarely on the party alleging it. A single medical report, especially one that is contested, as the Petitioner asserts by referencing other pending cases (HCCHRPET No. E039 of 2023 and E287 of 2022), is not conclusive proof of legal incapacity in perpetuity.
41. More critically, the Petitioner's conduct throughout these proceedings belies the claim of incapacity. He has, through counsel, filed detailed pleadings, comprehensive affidavits, and articulate submissions that engage with complex points of constitutional and statutory law. He has responded to the Respondents' allegations with specific denials and counter-arguments. This demonstrated ability to instruct counsel and pursue a coherent legal strategy is strong evidence of present capacity. The Supreme Court in *MMG v Tribunal Appointed to Investigate the Conduct of Hon. Justice MMG [2023] KESC 73 (KLR)* emphasized that the test for capacity is functional and legal, not purely medical. In making the determination, the apex court stated as follows:

“This court, guided by prevailing social needs as well as relevant case law as developed in comparative jurisdictions, is well aware of the necessity to strike a balance, on the one hand, of the rights of an individual in a free society and, on the other hand, the need to protect the individual, employment environment, and society at large, from the adverse effects of mental illnesses and disorders. Therefore, in determining cases of mental incapacity,



and bearing in mind that conclusions cannot be transposed from one case to another, we establish the following guidelines for courts to follow in matters which involve an assessment of mental incapacity:

1. Mental incapacity includes but is not limited to a person's inability to make a decision, understand information about a decision, remember information, use the information to make a decision, or communicate a decision.
 2. Mental incapacity can result from mental illness but it does not necessarily follow that mental illness equals mental incapacity.....”
42. The Court also relied on a commentary on mental capacity, Paula Case (Case P Dangerous Liaisons? Psychiatry and Law in the Court of Protection – Expert Discourses of ‘Insight’ (and ‘Compliance’). *Med Law Rev* (2016) 24(3):360–78. 10.1093/medlaw/fww027) which underscored that: -
- “The domain of mental capacity assessment defies categorisation—it is ‘... not straightforwardly medical, legal, biological or psychological’. In cases where P’s mental capacity is disputed, the Mental Capacity Act 2005 (applies a test that fuses clinical and legal competences. The statutory test for incapacity requires those alleging incapacity to demonstrate that P is ‘unable to make a decision’ because of an ‘impairment or disturbance in the functioning of the mind or brain’. In cases that come before the Court of Protection (CoP), the evidence of an expert witness (usually a psychiatrist) that P is suffering from an ‘impairment’ is generally accepted, but the courts claim to be the ultimate arbiter of whether P is in fact ‘unable to make a decision’.”
43. The Court must look at whether the litigant can understand the proceedings and make rational decisions about them. The Petitioner’s engagement satisfies this test. Consequently, I find that the Respondents have not discharged the burden of proving that the Petitioner lacks the capacity to sue. This ground therefore fails.

Whether the Petition meets the requisite standard of precision for a constitutional petition.

44. The Respondents’ reliance on the strict formalism of *Anarita Karimi Njeru v Republic* (supra) is, with respect, misplaced in the context of the 2010 Constitution. As the Court of Appeal authoritatively stated in *Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others* (supra), the *Anarita Karimi Njeru v Republic* (supra) rule is an important guideline but not an inflexible straitjacket.
45. Rule 4(1) of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (the “Mutunga Rules”) provides that:
- “Where any right or fundamental freedom provided for in *the Constitution* is allegedly denied, violated or infringed or threatened, a person so affected or likely to be affected, may make an application to the High Court in accordance to these rules.”
46. Rule 10 of the Mutunga Rules governs that the form that a constitution should take. Rule 10(2) of the same Rules specifically provide as follows:
- “(2) The petition shall disclose the following—
- (a) the petitioner’s name and address;
 - (b) the facts relied upon;



- (c) the constitutional provision violated;
- (d) the nature of injury caused or likely to be caused to the petitioner or the person in whose name the petitioner has instituted the suit; or in a public interest case to the public, class of persons or community;
- (e) details regarding any civil or criminal case, involving the petitioner or any of the petitioners, which is related to the matters in issue in the petition;
- (f) the petition shall be signed by the petitioner or the advocate of the petitioner; and
- (g) the relief sought by the petitioner.”

47. In *Sella Rose Anyango v Attorney General and 2 others* (2021) eKLR the Court held: -

“The case of *Anarita Karimi Njeru* (supra) has been relied upon from time and time again to demonstrate the threshold of a successful Constitutional Petition. It should be appreciated the requirements for a successful Constitutional Petition are simple and are thus; the Petitioner should set out the Constitutional provisions, which he believes have been violated threatened, and the manner in which the Respondent(s) have violated those provisions. It is not enough for the Petitioner to just list the Constitutional provisions without demonstrating how they were infringed upon.”

48. The proper test is substantive: does the petition raise issues that are so vague or insubstantial that the Court cannot fathom the alleged violation or the respondent cannot adequately prepare a defense?

49. Applying this test, the Petition before me is sufficiently precise. It identifies the specific constitutional provisions alleged to be violated: Articles 28, 31, 35, 41, 43, and 47. It details the manner of infringement: the refusal to provide salary and company information despite formal requests and CAJ orders; the alleged misuse of KRA PIN for tax filings. It specifies the Respondents’ actions and omissions. The Respondents have not been ambushed; their Replying Affidavit and Submissions engage directly with each of these allegations, offering factual rebuttals and legal arguments. The Petition meets the substantive standard required.

Whether the doctrine of constitutional avoidance ousts this Court’s jurisdiction, rendering the Petition a disguised commercial dispute.

50. This is the Respondents’ most potent argument. The doctrine of constitutional avoidance is a salutary judicial principle that cautions courts against deciding constitutional questions when a case can be disposed of on other, non-constitutional grounds. It prevents the trivialization of *the Constitution*. The authorities cited by the Respondents are indeed persuasive in their contexts, typically, disputes over loan repayments, electricity bills, commercial contracts, or pure tort claims like malicious prosecution.

51. The doctrine of avoidance was reinforced in *Sports and Recreation Commission v Sagittarius Wrestling Club and Anor* [2001] (2) ZLR 501 (S), where the court stated the following: -

“...Courts will not normally consider a constitutional question unless the existence of a remedy depends upon it; if a remedy is available to an applicant under some other legislative



provision or on some other basis, whether legal or factual, a court will usually decline to determine whether there has been, in addition, a breach of the Declaration of Rights..”

52. In *Chawira & Ors v Minister of Justice Legal and Parliamentary Affairs & Ors* CCZ 3/17, the Constitutional Court of Zimbabwe held that: -

“As we have already seen, in the normal run of things courts are generally loathe to determine a constitutional issue in the face of alternative remedies. In that event they would rather skirt and avoid the constitutional issue and resort to the available alternative remedies.”

53. Justice Mativo in *Lugo v Director of Public Prosecutions* [2022] KEHC 10574 (KLR) explained the concept more elaborately as follows: -

“The doctrine of ripeness and constitutional avoidance gives credence to the concept that *the Constitution* does not operate in a vacuum or isolation. It has to be interpreted and applied in conjunction with the applicable legislation together with other legal remedies. Where there are alternative remedies the preferred route is to apply such remedies before resorting to *the Constitution*. The possibility of the elevation of any dispute to a constitutional issue is what is sought to be avoided by doctrine of ripeness and constitutional avoidance. It is borne out of realization that all legislative and common law remedies are part of the legal system. In other words a constitutional issue is not ripe until the determination of constitutional issue is the only course that give the litigant the remedy he seeks. Both Constitutional avoidance and ripeness avert determination of constitutional issues until it becomes necessary to the extent that it is the only course available to assist the litigants cause. The exceptions to the doctrine of constitutional avoidance are: i.Where the constitutional violation is so clear and of direct relevance to the matterii.In the absence of an apparent form of ordinary relief and,iii.Where it is found that it would be a waste of effort to seek a non-constitutional resolution of the dispute.”

54. The doctrine of constitutional avoidance is not an absolute bar, nor does it apply where the gravamen of the complaint is a direct violation of a constitutional right by a state or private actor, and the remedy sought is intrinsically constitutional.

55. Furthermore, I place reliance in the academic work of Walter Khobe Ochieng, ‘From constitutional avoidance to the primacy of rights approach to adjudication in Kenya: A case study of the interplay between constitutional rights and the law of contract’ (2022) 6 *Kabarak Journal of Law and Ethics*, 160 where he states as follows;

“However, it should be noted that the principle that constitutional issues should be avoided is not an absolute rule. It does not require that litigants may only invoke *the Constitution* as a last resort. Just like all legal principles, context is a key imperative and circumstances of the case at hand will dictate the applicability of the doctrine of avoidance. In instances where a palpable, direct and clear violation of *the Constitution* is evident, and non-constitutional relief is not readily apparent, the dispute ought to be resolved through the direct application of constitutional norms. An overly cautious attitude, comfortable with directing most litigants to statutory remedies, might abdicate the court’s obligation to protect and promote the values that underpin the Bill of Rights.

On its face, this salutary rule of constitutional avoidance seems unobjectionable. However, misgivings have been expressed as to the propriety of a full-blown deployment of this approach with some scholars arguing that it ‘wastes away rights’. Stu Woolman, for instance,



has argued that the avoidance approach has deleterious consequences as it undermines the bill of rights and the rule of law. Woolman notes that a muscular maximalist approach could play the role of in.”

56. The doctrines of constitutional avoidance shun to deal with a constitutional issue where there exists another legal course which can give the litigant the relief he seeks. The doctrine of constitutional avoidance deters the determination of the constitutional issues until it becomes very necessary to the extent that it is the only course available to assist the litigant’s cause.
57. The present case is distinguishable from those cited by the Respondents. The Petitioner’s primary claim is not for unpaid salary (a pure contractual claim) or for a directorship (a company law claim). His primary claim is that he has been denied information that he has a constitutional right to access under Article 35. The object of his quest is not merely to compute arrears but to uncover alleged data misuse, protect his privacy, and hold the Respondents accountable. The vehicle for this right is the ATI Act, which confers enforcement powers on the CAJ. The Respondents’ defiance of the CAJ’s final orders directly engages the constitutional architecture for enforcing the right to information.
58. Furthermore, the alleged misuse of his KRA PIN to file false tax returns is a quintessential data protection issue under Article 31 and the Data Protection Act, a statutory embodiment of the constitutional right to privacy. This is not a contractual term in an employment agreement; it is an allegation of unlawful processing of personal data.
59. In *Kipkorir v KCB Bank Kenya Limited* [2023] KEHC 26420 (KLR) the court determined that the Petitioner’s right to information had been violated after seeking relevant information which was not availed to her. The Court thus stated: -

“This Court, therefore, finds that the Petitioner sought for information relating to a transaction in her account on 8th January 2020 which information was neither availed nor any otherwise communication made to her. That is a clear derogation of Article 35 rights.”

60. Further, in *Republic v Isaiah Kubai & another; Commission on Administrative Justice (Interested Party) Ex-Parte Duncan Muthusi* (supra), the Court entertained an application to enforce a CAJ order against a private trade union, squarely applying constitutional and ATI Act principles without deferring to internal union dispute mechanisms.
61. The existence of a familial and commercial context does not immunize actions from constitutional scrutiny. Article 20(1) of *the Constitution* explicitly provides that the Bill of Rights binds all persons, including private entities. The Respondents, as juristic persons, are not exempt from constitutional obligations. While internal company remedies or mediation might resolve the underlying familial strife, they cannot provide the specific constitutional declarations sought, nor can they enforce the CAJ orders with the authority of a court decree. The constitutional issues raised are direct, relevant, and not merely ancillary to a commercial claim. Therefore, the doctrine of constitutional avoidance does not apply to oust this Court’s jurisdiction.

Whether the Respondents violated the Petitioner’s right of access to information under Article 35 of *the Constitution* and Section 4 of the *Access to Information Act*, 2016.

62. Article 35(1)(b) guarantees every citizen the right to access information “held by another person and required for the exercise or protection of any right or fundamental freedom.” Section 4 of the ATI Act operationalizes this right. The analysis involves a two-stage inquiry: (a) whether the information is held by the Respondent, and (b) whether it is required for the protection of a right.



63. On the first limb, there is virtually no dispute. The Respondents’ own affidavit acknowledges the Petitioner was a director/shareholder. Salary records, employment details, and company financials are inherently information held by a company concerning its personnel and operations. The CAJ, in its investigative role, determined the information existed and was held by the Respondents before issuing its orders. The Respondents’ defense is not that the information does not exist, but that they fear its misuse.
64. On the second limb, the Petitioner has convincingly demonstrated the nexus between the information and the protection of his rights. He requires salary information to ascertain the truth behind the KRA filings, which implicates his right to privacy and his right to correct false data under the Data Protection Act. He needs access to the 3rd Respondent’s financial records to fulfill his duties as a director and majority shareholder, to respond to KRA queries, and to protect his proprietary interests—all of which engage rights to property and fair administrative action.
65. As held in *Katiba Institute v Presidents Delivery Unit & 3 others* [2017] KEHC 2183 (KLR), the right to information is a key tool for accountability and the protection of other rights. In arriving at the conclusion, the court stated as follows:
- “ 56. The above statement captures the essence of the petition before me that the respondents were under obligation to obey the law and allow the petitioner access information or where not possible give reasons for that. They failed in both instances thus violated the petitioner’s rights under *the Constitution* and the law.
57. We must appreciate as a nation that the right to access information is not a fringe right to other rights in the Bill of Rights. It is integral to the democracy conceptualized by our Constitution, in that it encourages public participation, abhors secrecy in governance and above all seeks to ensure that public power delegated to leaders is not abused.
58. From my evaluation and analysis of the facts and evidence in this petition, and submissions by counsel for the parties and bearing in mind precedent and the law, I come to the inescapable conclusion that the respondents violated the petitioner’s right of 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 its case to the required standard and must succeed”
66. The Respondents’ argument that the right is not absolute is legally correct but factually inapplicable here. Limitations under Article 24 and Section 6 of the ATI Act must be justified. The burden of justifying non-disclosure rests on the entity withholding the information. In *Zebedeo John Opre v The Independent Electoral And Boundaries Commission* [2017] KEHC 9217 (KLR), the court emphasized that exemptions must be narrowly construed and proved by the withholding entity. The Court thus stated: -
- “The right of access to information is not absolute, but to satisfy the requirements set out under article 24 of *the Constitution*, the respondent must demonstrate that the limitation imposed on the constitutional right is “fair, reasonable, necessary and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom and that it falls within the exceptions provided in section 6 of the act.” In my view, the Respondent did not satisfy this constitutional test nor did they establish that the refusal



falls within the exceptions in section 6. The Respondents only made a reliance of section 6 without offering evidence to discharge the burden.”

67. In the present case, the Respondents have not pointed to any specific exemption under Section 6(1) of the ATI Act. Their vague apprehension of “sabotage” is a generalized fear, not a specific, evidenced harm recognized by law as a valid ground for denying a citizen access to his own personal data and information about companies in which he holds a stake. A respondent cannot create its own limitation based on subjective distrust.
68. The Respondents’ failure to provide the information upon request, and more egregiously, their defiance of the CAJ’s binding orders, constitutes a clear and ongoing violation of Article 35 and Section 4 of the ATI Act. The violation is compounded by the fact that the CAJ orders, having not been appealed, became final. As stated in *Republic v Isaiah Kubai & another; Commission on Administrative Justice(Interested Party) Ex-Parte Duncan Muthusi* (supra), the proper recourse for dissatisfaction was an appeal, not continued defiance.

Whether the Respondents violated the Petitioner’s right to privacy and data protection under Article 31 of *the Constitution* and Section 26 of the *Data Protection Act, 2019*.

69. Article 31(c) protects against the unnecessary revelation of one’s information. The Data Protection Act gives this right concrete form. Section 26 grants data subjects, inter alia, the right to be informed of the use of their data, the right to access it, and the right to correction or deletion of false data. Section 25 imposes principles of lawfulness, fairness, and transparency on data controllers.
70. The Petitioner alleges that his KRA PIN was used to file income tax returns indicating salary payments. The Respondents’ affidavit does not directly deny this specific allegation. Instead, they annex a P9 form showing salary entries. This, in a twist, may corroborate the Petitioner’s claim that his data was used to create a record of salary payments. If, as the Petitioner asserts, these payments were not received by him but were remitted to “unknown individuals” or otherwise misapplied, then the use of his unique personal identifier (KRA PIN) to create an official financial record without his full knowledge and for purposes that misrepresent his income status is a serious matter.
71. Processing personal data (including a KRA PIN) for the purpose of filing a statutory return without ensuring the underlying transaction (payment of salary) aligns with the data subject’s reality, and without his informed consent where required, breaches the principles of lawfulness and fairness. It potentially exposes him to tax liabilities for income not received and misrepresents his financial profile. This constitutes an infringement of his right to privacy as informational autonomy. The High Court in *Mwonga & 4 others v Ogega & another* [2024] KEHC 16469 (KLR) recognized that unauthorized use of personal information for purposes beyond what the data subject consented to violates privacy.
72. Furthermore, the blanket denial of his requests to access this very data (the salary records and filings) frustrates his complementary right under Section 26(b) of the Data Protection Act to access his personal data. He cannot verify, correct, or delete allegedly false information if he is barred from seeing it. This interplay between the denial of access (Article 35) and the misuse of data (Article 31) creates a compounded violation. I find that the Petitioner has established a prima facie case of violation of his right to privacy and data protection. The Respondents’ generalized denials are insufficient to rebut the specific allegations and the logical inferences from the documented KRA filings.



Whether the directives issued by the Commission on Administrative Justice are final, binding, and enforceable by this Court as decrees.

73. This issue is largely settled by statute and precedent. The Interested Party’s mandate under the ATI Act is clear. Sections 22 and 23 grant it powers to inquire into complaints and issue binding orders for disclosure. Section 23(3) provides a 21-day window for appeal to the High Court. Section 23(5) is unequivocal: “an order of the Commission shall be enforceable as if it were an order of the High Court.”
74. The factual sequence is critical and undisputed: Orders were issued on 24/11/2022, 23/1/2023, and 17/7/2023. No appeals were filed within the statutory period. The Respondents’ attempt to engage the CAJ after the 3rd order was issued was rightly characterized by the CAJ as occurring when it was functus officio. The legal consequence is that the orders attained finality.
75. The Respondents’ submission that enforcement should be via a separate miscellaneous application, as suggested in *Riungu v Commission on Administrative Justice & another* (supra) misses a key point. In the above-mentioned authority, the petitioner was challenging the CAJ’s decision itself on constitutional grounds after failing to appeal. Here, the Petitioner is not challenging the CAJ’s decision; he is seeking to enforce it, and he has correctly come to the High Court, the court designated for appeals and endowed with inherent jurisdiction to do so. A constitutional petition seeking enforcement is a competent vehicle, especially when coupled with claims for ancillary constitutional relief (declarations, damages). *The Republic v Isaiah Kubai & another; Commission on Administrative Justice (Interested Party) Ex-Parte Duncan Muthusi* (supra), case is directly on point, where the ELRC granted leave to enforce a CAJ order as a decree within a constitutional and statutory framework. This Court has the same power.
76. Therefore, the CAJ directives are final, binding, and enforceable. The Respondents’ continued non-compliance is not only a violation of the ATI Act but also a flouting of the legal authority of a constitutional commission.
77. In conclusion, this Petition is not a frivolous attempt to constitutionalize a private dispute. It is a legitimate invocation of the Court’s jurisdiction to protect fundamental rights that have been infringed by private entities. The right to know, the right to control one’s personal information, and the right to have lawful directives of a constitutional commission obeyed are not secondary to commercial arrangements. They are foundational.
78. The supreme Court in *Charles Muturi Macharia & 6 Others v Standard-Group & 4 Others* (supra) guided as follows in regard to award of remedies in constitutional matters:
- “By the provisions of Articles 22 and 23 of *the Constitution*, the High Court has the power and authority to enforce and uphold the Bill of Rights in claims of infringements. In proceedings brought by any person claiming that a right or fundamental freedom has been denied, violated or infringed, or is threatened, the court may, under Article 23 grant appropriate relief, including:
- a. a declaration of rights
 - b. an injunction
 - c. a conservatory order



- d. a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under article 24.
- e. an order for compensation
- f. an order of judicial review.”

This Court in the case of *Gitobu Imanyara & 2 Others v. Attorney General*, SC Petition No. 15 of 2017, described Article 23 as “the launching pad of any analysis on remedies for Constitutional violations”. This statement has repeatedly been made in other decisions like *Mitu-Bell Welfare Society v Kenya Airports Authority & 2 others*; *Initiative for Strategic Litigation in Africa (Amicus Curiae)*, SC Petition No. 3 of 2018; [2021] KESC 34 (KLR) and others. As a launching pad, it is acknowledged that the list of six remedies in Article 23(3) is not closed; that the court can grant any other appropriate relief not included in the list; that whether or not to grant a constitutional relief is an act of judicial discretion which must be exercised upon known legal principles and not arbitrarily, whimsically or capriciously.”

79. In *Bitange Ndemo v Director of Public Prosecutions & 4 others* [2016] eKLR the court held: -

“A declaration is a formal statement by the court pronouncing upon the existence or non-existence of a legal constitutional state of affairs. It declares what the legal position is and what are the rights of the parties. It does not contain an order which can be enforced against the respondents, as it only declares what is the legal position. It is not a coercive remedy and can be carefully couched or tailored so as not to interfere with the activities of public authorities more than is necessary to ensure that those public authorities comply with the law.”

80. Accordingly, judgment is entered in favour of the Petitioner against the Respondents jointly and severally, and the following final orders hereby issue:

- a. A declaration is hereby issued that the 1st, 2nd, and 3rd Respondents violated the Petitioner’s right of access to information guaranteed under Article 35 of *the Constitution* and Section 4 of the *Access to Information Act*, No. 31 of 2016.
- b. A declaration is hereby issued that the Respondents’ use of the Petitioner’s personal data, including his KRA PIN, for filing statutory returns while denying him access to the underlying records and benefits, violated his right to privacy under Article 31 of *the Constitution* and his rights as a data subject under Section 26 of the *Data Protection Act, 2019*.
- c. Leave is hereby granted to the Petitioner to enforce the directives of the Commission on Administrative Justice issued on 24th November 2022, 23rd January 2023, and 17th July 2023 as decrees of this Honourable Court.
- d. The 1st, 2nd, and 3rd Respondents are hereby ordered to fully comply with the specific directives contained in the Commission on Administrative Justice orders dated 24th November 2022, 23rd January 2023, and 17th July 2023, respectively, within thirty (30) days from the date of this judgment.
- e. The Petitioner is awarded costs, to be borne by the Respondents.

Orders accordingly. File Closed Accordingly.



DATED, SIGNED AND DELIVERED VIRTUALLY THIS 22ND DAY OF JANUARY 2026.

BAHATI MWAMUYE MBS

JUDGE

In the presence of: -

Counsel for the Petitioner –Ms. Ayimba h/b Mr. Okumu

Counsel for the Respondents –Mr. Kimani

Counsel for the Interested Party –No appearance

Court Assistant –Ms. Lwambia

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