



**Riungu v Commission on Administrative Justice & another (Petition E115 of 2023)
[2025] KEHC 12461 (KLR) (Constitutional and Human Rights) (13 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 12461 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS**

PETITION E115 OF 2023

AB MWAMUYE, J

AUGUST 13, 2025

BETWEEN

KENNEDY MURIITHI RIUNGU PETITIONER

AND

COMMISSION ON ADMINISTRATIVE JUSTICE 1ST RESPONDENT

CAPITAL MARKETS AUTHORITY 2ND RESPONDENT

JUDGMENT

1. The Petitioner approached this court vide Petition dated 11th April 2023 seeking the following orders: -
 - a. A declaratory order declaring that the 1st Respondent is in breach of the Petitioner's right to fair administrative action under Article 47 of *the Constitution* for refusing and/or failing to respond and or act on the Petitioners' correspondence dated 28th October 2022, 15th February 2023 and on 16th March 2023.
 - b. A declaratory order declaring that the 1st Respondent is in breach of the Petitioner's right of the *Access to Information Act* under Article 35 of *the Constitution* for refusing to provide the Petitioner from the 1st Respondent on 15th February 2023 and on 16th March 2023.
 - c. A judicial review order of mandamus directing the 1st Respondent to provide the Petitioner with documents requested by the Petitioner from the Respondent on 15th February 2023 and on 16th March 2023 within a time to be set by court failing which the proceedings of 31st March 2023 to stand quashed.
 - d. A declaratory order declaring that the 2nd Respondent's letter dated 5th April 2023 is a threat to the Petitioner's constitutional right to fair administrative action under Article 47 and to fair hearing under Article 50 of *the Constitution* as it is misleading and expresses the intention of the



2nd Respondent to proceed with the hearing of a Notice to Show Cause against the Petitioner notwithstanding the failure and refusal by the 1st Respondent to provide the Petitioner with information and documents requested by the Petitioner from the 1st Respondent on 15th February 2023 and on 16th March 2023.

- e. A Prohibitory injunction and/or order restraining the 2nd Respondent from making decisions in respect of the Notice to Show Cause issued on 10th July 2020 against the Petitioner pending the provision of the documents and information requested by the Petitioner from the 1st Respondent on 15th February 2023 and on 16th March 2023 and also pending the hearing and determination of this Petition.
 - f. An order of compensation by way of General damages for the breach and threatened breach of the Petitioner's constitutional right to fair administrative action, access to information and fair hearing and the resulting distress and mental anguish suffered by the Petitioner.
 - g. Costs on full indemnity basis.
 - h. Such further or other orders as it may deem just and expedient for the ends of justice.
2. The Petition was accompanied by an Affidavit in support dated 11th April, 2023 sworn by the Petitioner, Kennedy Muriithi Riungu to which he averred that there is pending before the 2nd Respondent a Notice to Show proceedings against him initiated by the 2nd Respondent on 10th July 2020.
 3. He avers that upon being served with the Notice to Show Cause, on 11th August 2020, he wrote to the 2nd Respondent requesting for certain documents and information. He states that the 2nd Respondent failed to respond to the request for information within 21 days as prescribed under Section 9 of the [Access to Information Act](#).
 4. The Petitioner avers further that he made various follow-ups which went unanswered thus on 12th October, 2022 he moved to the 1st Respondent under Section 23 of the [Access to Information Act](#) to review and make a decision on the refusal of the 2nd Respondent to provide the information/documents sought.
 5. He asserts that a letter dated 25th October 2022, the 1st Respondent wrote to the 2nd Respondent to respond to his request for information in line Section 9(4) of the [Access to Information Act](#) however, his advocates wrote an email to the on 28th October 2023 pointing out that 21 days had lapsed since the request for information therefore it was no longer viable for the 1st Respondent to make a decision on the request of 11th August 2020 nor for it to direct the 2nd Respondent to now make a decision on the request.
 6. He further asserts that vide a letter dated 16th December 2022 he was summoned together with his advocates as well as the 2nd Respondents to appear before it on 31st January 2023 to which he attended and consequently orders were made by the 1st Respondent that the 2nd Respondent provide the following documents: -
 - a. Recorded statement of the Petitioner taken in the course of the investigations carried out by CMA prior to the issuance of the NTSC dated 10th July 2020;
 - b. Portions of financial accounts that were presented to the Boad audit committee meetings at the two meetings of 3rd August 2017 and 7th November 2017 as well as the complete minutes for the two Board Audit Committee meetings;



- c. Investment Reports for all Sanlam Life Portfolios sent monthly by Sanlam Investments Limited to the management of Sanlam Life Insurance for the month of June, July, August and September 2017 together with the cover emails;
 - d. Correspondence between the Authority and Sanlam Investment Limited with regard to the Petitioner's Fit and Proper Application made in September 2018;
 - e. With reference to the notice on revocation of the license for Sanlam Investment Ltd, issued by CMA in 2018 in Kenya Gazette Notice No. 2548, dated 16th March 2018, copies of complaints, received by the Authority from Sanlam Life Insurance Ltd;
 - f. They would provide information on the position relating to the Petitioner's fit and proper application made on behalf of the Petitioner by Ghengis Capital.
7. The Petitioner states that on 15th February 2023 through his advocates wrote to the 1st Respondent requesting to be provided with certified copies of the proceedings of the meeting held on 31st January 2023 together with the Commission's sealed and authenticated orders arising from the meeting but despite the foregoing, the Commission did not provide the documents sought and also did not respond to the request. Instead, on 16th March 2023 the Commission issued yet another decision which totally ignored the request of 15th February 2023.
 8. According to the Petitioner, the Commission has not as much responded to the request for documents and the 21 days which it ought to have responded have lapsed however, on 5th April 2023 he received from the 2nd Respondent communication in a letter dated 4th April 2023 requiring him to now respond to the Notice to Show Cause of 10th July 2020 within 14 days indicating a deadline of 13th April 2023.
 9. The Petitioner contends that the 2nd Respondent by dint of the misleading letter dated 4th April 2014 intends to proceed with Notice to Show Cause notwithstanding that the 1st Respondent has not responded to or provided the documents that the Petitioner had requested on 16th March 2023 and has equally not complied with the undertakings it had made on 31st January 2023 to provide various documents together with the ones provided in the letter dated 4th April 2023 which are documents instrumental and necessary for him to adequately and fairly respond to the Notice to Show Cause.
 10. The Petitioner avers that he would be greatly prejudiced if the 2nd Respondent was to proceed with the Notice to Show Cause proceedings and render a decision. Further, he disclosed that he has pending constitution petition being Constitutional Petition No. 482 of 2022; Kennedy Riungu vs. Capital Markets Authority where he has sued the 2nd Respondent for an inordinate delay in making a decision on the Petitioner's "Fit & Proper" Applications made on 14th September 2018 and on 25th arch 2022 and although facts may overlap between this and the other petition, the cause of action in the two Petitions are distinct.
 11. In response and in opposition to the Petition, the 1st Respondent filed a replying affidavit dated 30th November 2023 sworn by Mercy K. Wambua, the Commission Secretary for the Commission on Administrative Justice, who avers that on 12th October 2022, the 1st Respondent received an application from the Petitioner for review of a decision of failing to facilitate access to information and/or documents by the 2nd Respondent.
 12. She asserts that the 1st Respondent examined the application for review by the Petitioner and having ascertained that the same met the requirements of the law, initiated a letter of inquiry dated 21st



- October 2022 to the 2nd Respondent as required by Section 22 (3) of the [Access to Information Act, 2016](#) requesting the 2nd Respondent to provide the Information pursuant to Section 9(4) of the [Access to Information Act, 2016](#).
13. She further avers that the 1st Respondent received a response from the 2nd Respondent vide a letter dated 31st October 2022 where the 2nd Respondent advised that there was a pending regulatory administrative process against the Petitioner and indicated that they had already provided the Petitioner with some information and encouraged him to recognize the Authority's mandate and file his written response to the Notice to Show Cause issued to him in order to allow conclusion of the matter.
 14. According to the 1st Respondent, they acknowledged receipt of the 2nd Respondent's letter dated 31st October 2022 vide a letter dated 8th November 2022, which letter was copied to the Petitioner. However, the Petitioner wrote to the 1st Respondent vide a letter dated 9th December 2022 objecting to the 1st Respondent's procedure and requesting the 1st Respondent to issue a decision on the request for review of the application dated 12th October 2022.
 15. She avers that the 1st Respondent invited the parties to attend a meeting at the 1st Respondent's offices on 31st January 2023. Further, that at the conclusion of the meeting, the 2nd Respondent was to file an official response to the request for information on or before 7th February 2023 and thereafter the 1st Respondent would issue a decision on application for review under section 23(2) of the [Access to Information Act](#).
 16. She further avers that vide letter dated 6th February, 2023, the 2nd Respondent requested for extension of time for a further 14 days and consequently sent its response vide letter dated 20th February 2023 after which the 1st Respondent issued a well-reasoned decision on the Petitioner's application for review with orders against the 2nd Respondent on 16th March 2023.
 17. She states that the Petitioner and his advocates are aware of the facts and outcome of the meeting of 31st January 2023 which was clearly captured in the decision of the 1st Respondent dated 16th March 2023. According to the 1st Respondent, the Commission's role in the meeting was merely to facilitate a discussion between the Petitioner and the 2nd Respondent within the premises of a mediation process and therefore cannot be compelled to provide information that does not exist.
 18. She asserts that the procedure adopted by the 1st Respondent having been elaborated in its decision of 16th March 2023 can only be questioned in an appeal in the absence of which the Petitioner cannot in the present petition question such processes as a petition is not the right forum to question the decision.
 19. The 2nd Respondent equally filed a Replying Affidavit in opposition to the petition which affidavit is dated 16th June 2023 and sworn by Lawrence Mumina, the Senior Manager, Investigations and Enforcement Department at the Capital Markets Authority. He avers that the 2nd Respondent issued the Petitioner with a NTSC dated 20th July 2020 requiring the Petitioner to respond to allegations of regulatory infractions, however, instead of responding to the NTSC, the Petitioner requested to be furnished with fifteen (15) additional documents through a letter dated 11th August 2020.
 20. The 2nd Respondent contends that they revisited the issue of the Petitioner's NTSC on 26th May 2022 by inviting the Petitioner to a meeting that took place on 7th June 2022 where the 2nd Respondent was emphatic that it had shared all the relevant documents with the Petitioner together with the NTSC. However, on 29th August 2022, after further considerations, the 2nd Respondent furnished the Petitioner with some requested additional documents and told the Petitioner via email to respond to the NTSC by 12th September, 2022.



21. According to the 2nd Respondent, instead of the Petitioner responding to the NTSC, he petitioned the 1st Respondent under Section 14(1) of the [Access to Information Act](#) through a letter dated 5th October, 2022 to intervene and compel the 2nd Respondent to supply the 15 documents that the Petitioner had sought through his letter dated 11th August 2020.
22. The 2nd Respondent states that on 21st October 2022m, the 1st Respondent wrote to the 2nd Respondent requiring it to respond to the Petitioner's request for documents line with Section 9(4) of the ATIA and on 31st October 2022, the 2nd Respondent wrote back to the 1st Respondent indicating that there was pending regulatory action against the Petitioner and most importantly that it had shared all relevant documents with the Petitioner as at the time it issued a NTSC.
23. The 2nd Respondent states further that the 1st Respondent through a letter dated 16th December 2022 summoned the 2nd Respondent and the Petitioner to appear before it on 31st January 2023. They aver that during the meeting, the 1st Respondent declined to make the order compelling the 2nd Respondents to supply the documents sought and made it clear that it was not bound to make an order for the 2nd Respondent to supply the documents sought by the Petitioner even if the 21 days period had lapsed since the 1st request and they also indicated that it had convened the meeting with a view of employing ADR mechanisms.
24. They assert that the 1st Respondent was keen to understand the lawful reasons that barred the 2nd Respondent from sharing the documents sought and therefore directed the 2nd Respondent to file a reply to the application for review that had been filed by the Petitioner. Accordingly, the 2nd Respondent replied to the Petition before the 1st Respondent on 20th February, 2023 and a decision rendered on 16th March, 2023, confirming that the Petitioner had taken all lawful and reasonable steps in furnishing the Petitioner with all the relevant documents.
25. According to the 2nd Respondent, the Petitioner has not filed an appeal against the said decision and that they complied with the 1st Respondent's orders by furnishing redacted complaint and abridged version of the investigations report thus the Petitioner was now able to respond to the NTSC dated 20th July, 2020.
26. The 2nd Respondent asserts that there is no provision in the ATIA which precludes the 1st Respondent from taking the action it took by requiring the 2nd Respondent to give an explanation why it could not share certain information and/or documents with the Petitioner and that it should be noted that procedure of lodging a complaint under Section 22 is the same as lodging a review under Section 14 of AITA according to Section 14(4) of the AITA. Thus the 1st Respondent acted in accordance with its powers under Section 22 and 23 of the AITA in the manner it treated the Petitioner's review application.
27. The 2nd Respondent aver that the 1st Respondent was acting within its statutory power as it is also required to uphold the 2nd Respondent's right to fair administrative Action under Article 47 of [the Constitution](#) of Kenya, 2010 by giving the 2nd Respondent a chance to be heard and present its case by addressing the issues raised by the Petitioner in his review application.
28. The Petitioner replied to the responses vide a Supplementary affidavit dated 5th June 2024 and avers that at no point did the 1st Respondent inform the parties that the meeting of 31st January 2023 would be a mediation even during the meeting.



29. He further avers that on 13th April 2023 through his lawyers, he wrote to the 2nd Respondents copying the 1st Respondent and pointed out the documents that were missing following the orders and undertakings of 31st January 2023 and the orders that the 1st Respondent made on 16th March 2023.
30. He further avers that to date neither the 1st nor the 2nd Respondent have responded to his letter dated 13th April 2023 and that he wished to state that the instant Petition does not amount to neither is the Petition intended to be an appeal against the 1st Respondent's decision made on 16th March 2023 as an appeal entails a different and separate process once the court orders the provision of the documents and information regarding the meeting of 31st January 2023.
31. The petition was canvassed by way of written submissions, and in compliance all parties filed and served their submissions.

Petitioner's Submissions

32. The Petitioner filed written submissions dated 5th June 2024, where he submits that nothing in the law precludes the 1st Respondent's duty to keep records even if the meeting of 31st January 2023 was to be deemed to have been a mediation meeting, this court should note that the mediation procedure as statutory prescribed for the 1st Respondent does not preclude the duty to keep records therefore the excuse that the 1st Respondent does not have the information sought is an afterthought.
33. The Petitioner further submits that the 1st Respondent has not mentioned that by availing to the Petitioner the information that was sought on 15th February 2023 and 16th March 2023, its ability to resolve the matter before it would be undermined; let alone detailing how such disclosure would in fact undermine its mandate thus the denial amounts to deliberate hampering of the Petitioner's right to access to justice provided under Article 48 of *the Constitution*.
34. The Petitioner argues that the administrative failure on the part of the 1st Respondent is pronounced by the fact that they are bound by Section 9 of the ATIA to act within 21 days. In-fact Section 11 states that where a decision has been made to provide information sought a public entity is supposed to provide the information within 15 days. Reliance was placed on Katiba Institute Guide 2018 which quotes the case of Republic v Registrar of Companies Ex Parte Independent Electoral Board of Kenya National Chamber of Commerce & Industry (KNCCI) [2016] eKLR.
35. The Petitioner further argues that by threatening to carry on with the NTSC proceedings without availing and or allowing him to obtain information, materials and evidence to be relied upon during proceedings, the 2nd Respondent has threatened to breach the Petitioner's constitutional right to fair administrative action right to a fair hearing. Reliance was placed on the case of Pinnacle Projects Limited v Presbyterian Church of East Africa, Ngong Parish & another [2019]eKLR.

1st Respondent's Submissions

36. The 1st Respondent filed submissions dated 21st June 2024 where they reiterated contents of their replying affidavit and further submits that it had no obligation to maintain an official record of the meeting held on 31st January 2023. The foregoing position is firmly supported and anchored by the well-known principles of ADR of flexibility, informality, consent, good faith and confidentiality as well as neutrality in the event of a third – party presence.
37. They further submit that the request for information by the Petitioner dated 15th February 2023 was for certified copies of the proceedings and sealed & authenticated orders of the meeting of 31st January



2023 which connotes official record and official orders of the meeting of 31st January 2023 which the 1st Respondent does not hold as such, the request for information is unattainable.

38. The 1st Respondent argues that in reference to paragraph 25 of the Replying Affidavit, they averred that the Petitioner was supplied with the Commission's decision dated 16th March 2023 at paragraph 18 which accounted for the most important aspect of the meeting without necessarily outlining much details of the decision as doing so would infringe the principle of confidentiality. They aver that even if it would be assumed that a record of the meeting of 31st January 2023 exists, such would be an informal record kept by the 1st Respondent for its own purposes but would not be accessible to the Petitioner.
39. They argue that the Petitioner is not entitled to access information or a record which may be prejudicial to the 2nd Respondent who is a party to the facilitated meeting to the facilitated meeting of 31st January 2023 since allowing the Petitioner to access such information or record and later use of the same in a legal proceeding would be catastrophic to the practice of ADR most especially on the principle of confidentiality.
40. The 1st Respondent submits that the [*Access to Information Act*](#), 2016 outlines a clear procedure which must be followed once a review has been lodged with the 1st Respondent. they further aver that the Commission is at liberty to call for information or report from a public entity or any body as required by Section 22 (3) (a) of the ATI Act, 2016. In addition, Section 23(2) requires the Commission to be fully satisfied on the correctness of facts as supplied by the parties to a review application before making a decision or an order in relation to request for information.
41. They assert that the procedure adopted by the Commission was elaborated in its replying affidavit under paragraph 8 to 21 and also in its decision dated 16th March 2023 at paragraphs 13 to 18. The Petitioner was kept abreast of the process and steps undertaken by the 1st Respondent in resolving his review application it cannot therefore be faulted for doing what is required by law. Thus, the Petitioner cannot be heard through a Constitutional Petition to question the process since the procedure is clear on how to do so. They cited the case of Boniface Mwangi v Resident Magistrate's Court at Milimani & 2 others as quoted in Gulf Energy Limited v Rubis Energy Kenya PLC [2021] eKLR in support of the above submissions.

2nd Respondent's Submissions

42. The 2nd Respondent filed written submissions dated 24th June 2024 where they submitted that Article 50 of [*the Constitution*](#) of Kenya, 2010 is not applicable in the present Petition since the 2nd Petitioner has already commenced administrative actions through the Notice to Show Cause. According to the 2nd Respondent administrative actions undertaken by the 2nd Respondent are subject to the standards established under Article 47 of [*the Constitution*](#) which position was confirmed by the case of Dry Associates Limited v Capital Markets Authority & Another Interested Party Crown Berger (K) Ltd and also the case of Nicholas Odhiambo Awino v Machakos University.
43. They submit that the 2nd Respondent complied with the CAJ's order of 16th March, 2023 which read fully as follows: -
 1. That the Respondent should redact the investigations report or in the alternative prepare an abridged version thereof and supply such redacted or abridged version of the report to the Applicant.



2. That the Respondent should supply copies of the complaint lodged with it to the Applicant or in the alternative, the information contained in a manner that allows compliance with the law.
3. That compliance of the above orders be within 21 days from the date hereof.

The 2nd Respondent submits that they fully complied with the orders of the CAJ in supplying the abridged version of the investigations report and redacted complaint contrary to the opposing submissions.

Analysis and Determination

44. I have considered the pleadings, arguments by parties and the decisions relied on. The issue that arises for determination is whether this Court has jurisdiction to determine the instant Petition.
45. Article 35(1) of *the Constitution* provides: -
 1. Every citizen has the right of access to –
 - a. information held by the State; and
 - b. information held by another person and required for the exercise or protection of any right or fundamental freedom.
 - (3) The state shall publish and publicise any important information affecting the nation.
46. The *Access to Information Act* No. 31 of 2016 gives effect to Article 35 of *the Constitution*. Under the *Access to Information Act* the 1st Respondent is empowered with the function and power to enforce its provisions. This is because it is the oversight authority as provided under Section 20(1) of the Act.
47. Section 6(g) of the *Access to Information Act*, 2016 states that Pursuant to Article 24 of *the Constitution*, the right to access of Information under Article 35 shall be limited to information whose disclosure is likely to inter alia, significantly undermine a public or private entity's ability to give adequate and judicious consideration to a matter concerning which no final decision has been taken and which remains the subject of active consideration.
48. Section 9(6) of the ATI Act, 2016 further provides that where the Applicant shall not receive a response to an application for access to information, within the period stated in subsection (1), the application shall be deemed to have been rejected.
49. Part IV of the Act provides for review of decisions by the commission. Under Section 14(1), it states that an Applicant may apply in writing to the Commission requesting a review of any of the outlined decisions of a public entity or a private body in relation to a request for access to information. The decisions include inter alia under subsection (a), a decision refusing to grant access to the information applied for.
50. Under Section 21 of the Act, one of the functions of the Commission is to request and receive reports from public entities with respect to the implementation of the ATI Act, 2016 and for the Act relating to data protection and to assess and review those reports with a view of assessing and evaluating the use and disclosure of information and protection of personal data.
51. Section 22 (3) of the ATI Act, 2016 states as follows: -
 - (3) Upon receipt of a complaint under subsection (1), the Commission may –



- a. Call for information or a report regarding such complaint from the public entity or any other body with such reasonable time as may be specified by the Commission and –
 - i. If the information or report called for is not received within the time stipulated by the Commission, the Commission may proceed to inquire into the complaint without such information or report; and
 - (ii) if on receipt of the information or receipt the Commission is satisfied either that no further action is required or that the required action has been initiated by the public entity, the Commission shall, in writing inform the complainant accordingly and take no further action; or
 - (b) without prejudice to paragraph (a), initiate such inquiry as it considers necessary, having regard to the nature of the complaint.
52. Section 23(3) of the ATI Act, further states that a person who is not satisfied with an order made by the Commission under subsection (2) may appeal to the High Court within twenty-one days from the date the order was made.
 53. The Commission on Administrative Justice is mandated to investigate complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct within the public sector. The 1st Respondent was therefore mandated to entertain and make recommendations with regard to the Petitioner’s complaint.
 54. Under Section 29 of the CAJA, once it has investigated a complaint arising from the carrying out of an administrative action of a public officer or any other public body, CAJ is under mandatory obligation to resolve the matter before it by conciliation, mediation or negotiation. If a matter cannot be resolved, and it determines that the administrative action was carried out unjustly or unreasonably, the CAJ shall make such recommendations as it deems fit.
 55. My interpretations in the above provisions is that by virtue of Article 59(5)(c) of *the Constitution*, the 1st Respondent is a commission within the meaning of Chapter Fifteen of *the Constitution* and has the status and powers of the Commission. Furthermore, the 1st Respondent is the body mandated to receive complaints on the refusal by a public body to issue information as dictated by Article 35 of *the Constitution*. In essence it is reasonable to state that a person seeking this information should first exhaust or satisfy the laid down mechanism in law before approaching the court.
 56. The Court in the case of *Dock Workers Union of Kenya v Kenya Ports Authority; Prtside Freight Terminals Limited & Another (Interested Parties)* [2021 eKLR while emphasizing the jurisdiction of the Interested Party opined as follows:
 - “29. Under section 23 of the *Access to Information Act* No. 31 of 2016, the High Court has been established to have appellate jurisdiction. In *Savraj Singh Chana v Diamond Trust Bank (Kenya) Limited & another* [2020] eKLR Korir J observed correctly in my view as follows:

“It is appreciated that the cited decision does indeed recognize that the unlimited jurisdiction of the High Court of Kenya under Article 165(3)(b) of *the Constitution* to determine questions on whether a right or fundamental freedom has been infringed or violated. Nevertheless, it must be appreciated that the High Court does not exercise its jurisdiction in a vacuum. Jurisdiction is exercised within



the laid down principles of law. One of those principles is one which requires that where a statutory mechanism has been provided for the resolution of a dispute, that procedure should first be exhausted before the courts can be approached for resolution of that dispute. Indeed, like any other legal principle, this doctrine has exceptions. In my view, it is the duty of a party who bypasses a statutory dispute resolution mechanism to demonstrate that there were reasons to avoid that route. In the case before me, the Petitioner has simply pointed to the jurisdiction of this Court. The exhaustion principle does not actually take away the constitutional jurisdiction of this Court. What it simply does is to provide the parties with a faster and more efficient mechanism for the resolution of their disputes. The courts will step in later if any party is aggrieved by the provision of the statutory body mandated to resolve the dispute.

The preamble of the *Access to Information Act*, 2016 clearly states that it is an “Act of Parliament to give effect to Article 35 of *the Constitution*; to confer on the Commission of Administrative Justice the oversight and enforcement functions and powers and for connected purposes.”

“It is therefore an Act of Parliament specifically enacted to give effect to the right of access to information under Article 35 of *the Constitution*. The legislators in their wisdom, and that wisdom has not been challenged, deemed it necessary that any issue concerning denial of information should first be addressed on the Commission on Administrative Justice. Indeed Section 23(2) empowers the Commission on Administrative Justice as follows: -

“The Commission may if satisfied that there has been an infringement of the provisions of this Act, order-

1. the release of any information withheld unlawfully;
2. a recommendation for the payment of compensation; or
3. any other lawful remedy or redress.”

“A person who is not satisfied with an order made by the Commission under subsection (2) may appeal to the High Court within twenty-one days from the



date the order was made.”

“I do not think that Parliament intended to bestow both original and appellate jurisdiction on the High Court in matters where the Commission on Administrative Justice has been given jurisdiction under the [Access to Information Act](#). Section 23(5) of the Act actually provides that an order of the Commission on Administrative Justice can be enforced as a decree. What the Petitioner seeks from this Court is readily available to



him before
the
Commission
on
Administrative
Justice.”

30. The Supreme Court in *Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR, underlined the importance of courts and tribunals operating within their jurisdictional fields as follows:

“A Court’s jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the Constitution* or other written law.”

57. The facts stated herein reveal that the Petitioner did make a complaint to the 1st Respondent vide a letter dated 12th October, 2022. The 1st Respondent instructed the 2nd Respondent to issue the information but was stopped by the Petitioner since it was no longer available for the 2nd Respondent to make a decision on the request for information. The 1st Respondent then wrote a letter dated 16th December 2022, inviting the Petitioner and the 2nd Respondent to a meeting on 31st January 2023 to try and solve the dispute amicably. In order to adhere to the Constitutional requirements, the *Fair Administrative Action Act*, 2015 and the rules of natural justice the Commission while guided by Section 22(3) (a) of the *Access to Information Act*, decided to call for information from the public entity upon receipt of review or complaint under the Act.
58. In my view, the 1st Respondent proceeded to exercise its powers as stipulated under Section 23(3) (a) proceeded to look at the 2nd Respondent’s response together with the Petitioner’s application and rendered its decision dated 16th March 2023. I believe the Petitioner is well informed of his right to appeal as provided under Section 23(3) of the *Access to Information Act*. The consequence of failing to appeal in essence allowed the 2nd Respondent under Section 23(5) of the Act to apply to the High Court ex-parte for leave to enforce the order as a decree.
59. I am persuaded to adopt the finding of the court in the case of *Republic v Isaiah Kubai & another; Commission on Administrative Justice (Interested Party) Ex-Patre Duncan Muthusi* [2019] KEELRC 43 (KLR) where the court faced with a similar scenario found as follows:

“...Second, it is clear that the interested party made an order by the letter dated 30.07.2019 pursuant to section 23(2) (a) of the *Access to Information Act*, 2016 and the letter clearly states the determination by the interested party. The court does not find any reason to doubt that the interested party made a determination and therefore an order as envisaged in the Act.

Third, the Court returns that the applicant has satisfied all the requirements under the *Access to Information Act*, 2016 to justify an order for leave as envisaged in Section 23(5) of the Act. The claimant has shown that the interested party made the order, the order has not been complied with as per his Advocates’ letter of 05.08.2019, no appeal against the order was preferred on the part of the respondents, and the time prescribed to appeal has lapsed.

Forth, the Court returns that the interested party has jurisdiction under the *Access to Information Act*, 2016 to make such orders as appropriate under section 23(2) against both



public entities and private bodies and with respect of access to information held by such entities and bodies. It is also true that Articles 35, 10 and 41 as invoked for the applicant apply to both public entities and private bodies. The sections of the [Access to Information Act](#), 2016 as invoked and cited for the applicant are clear on that wide jurisdiction of the interested party over the public entities and private bodies.

60. It is my humble opinion following this analysis that the 1st Respondent has powers to receive complaints and action them by law while the High Court is vested with a broad appellate jurisdiction and a narrower constitutional review jurisdiction. The Petitioner has invoked the latter after having failed to utilize the appellate route prescribed by the Act.
61. In the circumstances of this case, it is the overall finding of this Court that the Petitioner has failed to disclose and prove to the required standard any violation of [the Constitution](#) or Statute that would lead to a successful invocation of this Court's jurisdiction. I hereby find that the Petition herein is devoid of merit and I dismiss the same with no orders as to costs.

Orders accordingly. File Closed Accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 13TH DAY OF AUGUST 2025.

.....

BAHATI MWAMUYE

JUDGE

In the presence of: -

Counsel for the Petitioner –Ms. Ochieng h'b Mr. Ataka

Counsel for the 1st Respondent –Ms. Musembi

Counsel for the 2nd Respondent – Ms. Githundu

Court Assistant – Ms. Lwambia

