

**THE REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**  
**CONSTITUTIONAL PETITION NO.....OF 2022**

IN THE MATTER OF: ARTICLES 1,2,3,10,19,20,21,22,23,38,47, 73, 75, 94,159,165,  
201,211,214,225 AND 259 OF THE CONSTITUTION OF KENYA

**AND**

IN THE MATTER OF: SECTION 4, 5, 6, 7 & 8 OF THE ACCESS TO INFORMATION  
ACT, No. 31 of 2016

**AND**

IN THE MATTER OF: ACCESS TO TREATIES, CONVENTIONS & AGREEMENTS  
SIGNED FOR & ON BEHALF OF THE REPUBLIC OF KENYA

**BETWEEN**

KENYA HUMAN RIGHTS COMMISSION..... 1st PETITIONER  
WANJIRU GIKONYO..... 2<sup>nd</sup> PETITIONER

**VERSUS**

THE ATTORNEY GENERAL.....1<sup>st</sup> RESPONDENT  
THE CABINET SECRETARY, NATIONAL TREASURY.....2<sup>nd</sup> RESPONDENT  
THE LAW SOCIETY OF KENYA.....1<sup>st</sup> INTERESTED PARTY  
KATIBA INSTITUTE ..... 2<sup>nd</sup> INTERESTED PARTY

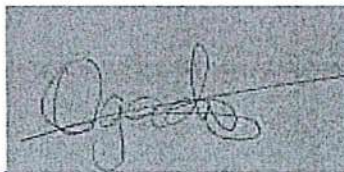
**CERTIFICATE OF URGENCY**

I, Evans Ogada, Advocate, certifies this matter urgent because:

1. The Petitioners/Applicants herein through a letter dated on 7<sup>th</sup> February 2022 sought from the Cabinet Secretary National Treasury the Treaties/ Agreements and/or Contracts signed between the Republic of Kenya and any other state, any international financial institution, any international corporation and also information relating to sovereign bonds floated for and on behalf of Kenya in the past nine years by the National Executive by way of a formal request letter.

2. Despite formal service for access to information and documents as enumerated in paragraph (1) hereinabove, the 2<sup>nd</sup> Respondent has refused, willfully neglected and/or ignored to provide the information and documents sought by the letter.
3. The failure to provide information is not isolated as this is not an isolated incident in which the 2<sup>nd</sup> Respondent has refused, willfully neglected and/or ignored to provide the information and documents related to public borrowing.
4. The information in the public domain is that the 2<sup>nd</sup> Respondent continues to borrow in the name of the Republic of Kenya without being accountable to the public and in any case, without availing documents related to the borrowing to the public.
5. The borrowing of funds continues to present a concern as it has contributed to uproar amongst the public owing to the ever increasing cost of living.
6. The obligation to avail these public documents to the public is paramount since it is a constitutional and democratic requirement in order for citizens to engage actively and meaningfully.
7. If this matter is not certified as urgent, not only will the impunity manifested by the state in terms of public borrowing continue, but also the public runs the risk of accumulating further debt obligations. The Court will face a fait accompli such that any subsequent orders would neither reverse or stop the harm that would have been occasioned owing to unchecked, unaccountable run away borrowing by the State.

**DATED AT NAIROBI THIS      21st                      DAY OF                      APRIL                      2022.**

A rectangular box containing a handwritten signature in black ink. The signature is cursive and appears to read 'Evans Ogada'. The box is positioned above a dotted line.

**EVANS OGADA**

**Advocate for the Applicant/Petitioner**

**DRAWN BY:**

EVANS OGADA  
PROF. MIGAI AKECH  
& ASSOCIATES, ADVOCATES,  
HURLINGHAM OFFICE PARK,  
HOUSE A6,  
ARGWINGS KODHEK ROAD  
P.O BOX 12285-00100

**NAIROBI.**

**EMAIL:** [ogadae@yahoo.com](mailto:ogadae@yahoo.com)  
**TELEPHONE NO:** 0721 285076

**TO BE SERVED UPON:**

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**THE REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**  
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KENYA HUMAN RIGHTS COMMISSION.....1<sup>st</sup> APPLICANT

WANJIRU GIKONYO..... 2<sup>nd</sup> APPLICANT

**VERSUS**

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THE LAW SOCIETY OF KENYA..... 1<sup>st</sup> INTERESTED PARTY

KATIBA INSTITUTE ..... 2<sup>nd</sup> INTERESTED PARTY

## NOTICE OF MOTION

*(Under 1,2,3,10,19,20,21,22,23,28,33,35,94,159,165,201,211, 213,258 & 259, 2010 of the Constitution of Kenya 2010, Rules 4, 13, 19 and Rule 23(1),23 (2) and Rule 24(1) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 and all other enabling Constitutional and Statutory Provisions of the Law)*

TAKE NOTICE that this Honourable Court will be moved on the..... day of.....2022 at 9.00 o'clock in the forenoon or soon thereafter as the Counsel for the Petitioner/ Applicant may be heard on the Application for ORDERS:

1. **THAT**, this Application and Petition be certified urgent and service of the same be dispensed with in the first instance.
2. **THAT**, the Honourable Court be pleased to issue interim orders ex parte in the first instance compelling the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to release in the interim, in whole and/or in part the Treaties/ Agreements and/or Contracts signed between the Republic of Kenya and any other state, any international financial institution, any international corporation and also information relating to sovereign bonds floated for and on behalf of Kenya in the past nine years sought by the Applicants through a letter dated 7<sup>th</sup> February 2022.
3. **THAT**, the Honourable Court pursuant to Article 23(3) of the Constitution, rules 4 and 23 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013 be pleased any other appropriate interim reliefs.
4. **THAT**, the costs of this Application be borne by the Respondents

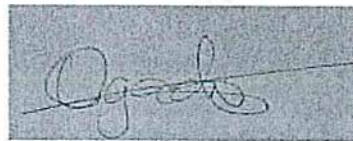
**WHICH APPLICATION** is premised on the following grounds *inter alia* **THAT**; -

1. The Applicants herein through a letter dated 7<sup>th</sup> February 2022 sought from the Cabinet Secretary National Treasury the Treaties/ Agreements and/or Contracts signed between the Republic of Kenya and any other state, any international financial institution, any international corporation and also information relating to sovereign bonds floated for and on behalf of Kenya in the past nine years.

2. The 2nd Respondent, the Cabinet Secretary for the National Treasury, despite being formally served to provide for access to information and documents as enumerated in paragraph (1) hereinabove, has refused, willfully neglected and/or ignored to provide the information and documents sought.
3. The failure to provide the information and documents enumerated in paragraph (1) hereinabove materially desecrates the Constitution and the law, and the failure to be accountable to the public is compounded by the continued borrowing by the State, with little or no accountability to the public.
4. The failure to provide the information and documents enumerated in paragraph (1) hereinabove also makes it difficult for the public to ascertain whether the State has complied with the Constitution and the law in so far as public borrowing is concerned.
5. Public borrowing must conform to the normative demands of the Constitution which include but not limited to public participation and accountability.
6. The balance of convenience lies in granting of the orders sought as its failure will result in great prejudice to the public and public interest.
7. This Court is entitled to act in public interest and issue the reliefs sought in this Application.
8. No such prejudice shall be suffered by the respondents should the court grant the orders sought herein.

**WHICH APPLICATION** is further supported by the Affidavit of **DAVIS MALOMBE** and on such other and/or further grounds as may be adduced at the hearing hereof.

**DATED AT NAIROBI THIS 21<sup>st</sup> DAY OF APRIL 2022.**



.....  
**EVANS OGADA**

**Advocate for the Applicant/Petitioner**

**DRAWN BY:**

EVANS OGADA  
PROF. MIGAI AKECH  
& ASSOCIATES, ADVOCATES,  
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## PETITION

**TO:**

**THE HIGH COURT OF KENYA AT NAIROBI**

**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**MILIMANI LAW COURTS.**

### INTRODUCTION

1. The Petition of Kenya Human Rights Commission (1<sup>st</sup> Petitioner) & Wanjiru Gikonyo, National Coordinator of the Institute for Social Accountability (2<sup>nd</sup> petitioner), whose address of service for purpose of this suit shall be care of: Evans Ogada, Advocate, 2<sup>nd</sup> floor, Hurlingham Office Park Room A6, Argwings Kodhek Road, Nairobi & of P.O. Box 12285-00100 Nairobi. The Petition raises fundamental constitutional and legal questions with regards to the lack of public access with regards to Contracts, Treaties, Financing Agreements, and Information on Sovereign bond holding entered into by the Government of Kenya for and on behalf of the citizens of Kenya in the last nine years. This petition seeks to compel the production of the information on sovereign bond holding, treaties, contracts and financing agreements that the Petitioners sought to obtain from the 2<sup>nd</sup> Respondent through a letter dated 7<sup>th</sup> February 2022, and which request has been ignored despite express and mandatory provisions of the Constitution and the law on access to information.

### THE PARTIES

2. The 1<sup>st</sup> Petitioner is a non-governmental organization (NGO) founded in 1992 and registered in Kenya in 1994 and whose core agenda is campaigning for the entrenchment of a human rights and democratic culture in Kenya. The 2<sup>nd</sup> Petitioner is the National Coordinator of the Institute for Social Accountability, a non-governmental organization that was launched in Nairobi in 2008 to promote citizen empowerment and government accountability. The

Petitioners address of service for purpose of this suit shall be care of: Evans Ogada, Advocate, 2<sup>nd</sup> floor, Hurlingham Office Park Room A6, Argwings Kodhek Road, Nairobi & of P.O. Box 12285-00100 Nairobi

3. The 1<sup>st</sup> Respondent is a public office established under Article 156 of the *Constitution of Kenya, 2010* and is sued in this Petition in its capacity as the principal legal advisor and representative of the government in all proceedings other than criminal proceedings. Its address of service for purposes of this Petition shall be **OFFICE OF THE ATTORNEY GENERAL AND DEPARTMENT OF JUSTICE, SHERIA HOUSE, HARAMBEE AVENUE, P.O BOX 40112-00100, NAIROBI.** (*For purposes of this suit service upon the Respondent shall be effected through the Petitioner's Advocates office.*)
4. The 2<sup>nd</sup> Respondent is a Cabinet Secretary in charge of the Ministry of Finance and Planning in the National Executive, which ministry derives its mandate from Article 225 (1) of the Constitution of Kenya, 2010. The address of service for purposes of this Petition shall be **The National Treasury, Harambee Avenue Treasury Building, P.O. Box 30007-00100 Nairobi.** (*For purposes of this suit service upon the Respondent shall be effected through the Petitioner's Advocates office.*)
5. The 1<sup>st</sup> Interested Party is a statutory body established by the Law Society of Kenya Act, 2014 and whose mandate is enumerated in section 4 of the Act to include inter-alia: assist the government and the courts in matters relating to legislation and the administration of justice; uphold the Constitution of Kenya and advance the rule of law and the administration of justice; and protect and assist the members of the public in Kenya in matters relating to or ancillary or incidental to the law.
6. The 2<sup>nd</sup> Interested Party is a renowned and respected civil society organization, whose core function is the promotion of knowledge and understanding of Kenya's Constitution and constitutionalism, and to defend and facilitate implementation of the Constitution.

## CONSTITUTIONAL AND STATUTORY FOUNDATION

### i. Constitutional Grounds

7. The Preamble to the Constitution of Kenya, 2010 lays a fundamental moral ground; the aspiration of Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice, and the rule of law.
8. The concept of sovereignty expressed in Article 1 the Constitution places all sovereign power in the people of Kenya and that sovereign authority delegated to state organs can only be claimed and exercised according to the Constitution.
9. Under Article 2, the Constitution is the Supreme Law of the land and it binds all persons and all State organs at both levels of government. No person may claim or exercise State authority except as authorized under the Constitution.
10. Additionally, article 2(6) of the Constitution states that any treaty or convention ratified by Kenya shall form part of the law of Kenya under the Constitution.
11. Article 3 of the Constitution requires the Respondents like all Kenyans and State organs to respect, uphold and defend the Constitution.
12. The national values and principles of governance enumerated in Article 10 bind all state organs as well as everyone who applies or interprets the Constitution or any law or performs any public duty. The national values and principles of governance pertinent to this Petition include: the rule of law, democracy, the participation of the people, equity, social justice, good governance, integrity, transparency, and accountability.
13. Article 22 and 258 enshrine a cardinal right, allowing everyone access to courts of justice whenever they have a dispute that is amenable to adjudication by the Courts.
14. Article 48 further guarantees the right to access to justice.
15. Article 35 guarantees every citizen access to information held by the State, information required for the exercise and protection of any right or freedom.
16. Article 47 entitles every person to fair administrative action which is expeditious, efficient, lawful, reasonable, and procedurally fair. If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

17. Article 73(2)(b) demands objectivity and impartiality in decision making; ensuring that decisions are not influenced by nepotism, favouritism, other improper motives or corrupt practices.
18. Article 73(2), the guiding principles of leadership and integrity also include
- a) Selection on the basis of personal integrity, competence and suitability, or election in free and fair elections;
  - b) Objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favouritism, other improper motives or corrupt practices
  - c) Selfless service based solely on the public interest, demonstrated by:
    - i. Honesty in the execution of public duties; and
    - ii. The declaration of any personal interest that may conflict with public duties;
  - d) Accountability to the public for decisions and actions; and
  - e) Discipline and commitment in service to the people.
19. Article 75(1)(b) requires all state officers “avoid any conflict between personal interests and public or official duties or compromising any public or official interest in favor of a personal interest”.
20. Article 93 establishes Parliament as consisting of the National Assembly and the Senate and directs both to perform their functions under the Constitution. Under Article 94 the legislative authority of the Republic is derived from the people is vested in and exercised by parliament. The Article obligates parliament to protect the Constitution and promote the democratic governance of the Republic.
21. Under Article 94 outlines the role of parliament relevant to this petition:
- 1) The legislative authority of the Republic is derived from the people and, at the national level, is vested in and exercised by Parliament.
  - 2) Parliament manifests the diversity of the nation, represents the will of the people, and exercises their sovereignty.
  - 3) Parliament may consider and pass amendments to this Constitution, and alter county boundaries as provided for in this Constitution.

- 4) Parliament shall protect this Constitution and promote the democratic governance of the Republic.
- 5) No person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation.
- 6) An Act of Parliament, or legislation of a county, that confers on any State organ, State officer or person the authority to make provision having the force of law in Kenya, as contemplated in clause (5), shall expressly specify the purpose and objectives for which that authority is conferred, the limits of the authority, the nature and scope of the law that may be made, and the principles and standards applicable to the law made under the authority.

22. Article 159 decrees that judicial authority is derived from the people, and vests in courts and tribunals established by or under the Constitution. Further, under Article 165(3)(d)(ii) of the Constitution the High Court has jurisdiction to interpret the Constitution and to determine and remedy constitutional violations.
23. Article 201 states that there shall be openness and accountability, including public participation in financial matters. Equally, article 201(c) states that the burdens and benefits of resources and public borrowing shall be shared equitably between present and future generations.
24. Article 259(8) demands that if a particular time is not prescribed by the Constitution for performing a required act, the act shall be done without unreasonable delay, and as often as the occasion arises.

## **ii. Statutory Framework**

### **a) Access to Information Act.**

25. Section 4 states that every citizen has the right of access to information held by—
  - (a) The State; and
  - (b) Another person and where that information is required for the exercise or protection of any right or fundamental freedom.

26. Section 5 obligates that a state entity shall facilitate access to information held by such entity.
27. Section 6 highlights the limitations of right of access to information.

**b) The Fair Administrative Action Act**

28. Section 4 states that administrative action to be taken expeditiously, efficiently and lawfully.
29. Section 6 states that every person materially or adversely affected by any administrative action has a right to be supplied with such information.

**c) Interpretation and General Provisions Act, Cap 2**

30. Consistent with Article 259(8) under section 58 of the Act, where no time is prescribed or allowed within which anything shall be done such thing shall be done without unreasonable delay, and as often as due occasion arises

**FACTUAL MATRIX**

31. Over the course of nine years, the National Executive has been borrowing money for and on behalf of Kenyans, taking loans bilaterally from states, international financial institutional institutions as well as international corporations.
32. The National Executive has also floated sovereign bonds domestically and internationally as means of raising funds.
33. The processes of borrowing through loans and raising sums through the floating of sovereign bonds has not been transparent as the Kenyan public is not involved in the process and as is only left to rely on media stories.
34. Despite Constitutional and legal norms that require public disclosure of all aspects of public borrowing, the National Executive continues to operate in an opaque, shadowy manner regardless of the constitutional and legal positions.

**Facts of the Petition.**

35. On 7<sup>th</sup> February 2022, the Petitioners wrote to the Cabinet Secretary National Treasury & Planning Ministry, seeking to be furnished with the following;



- a) Any information on any sovereign bond agreement/contract signed by the Government of Kenya and any sovereign bond holder(s) that contain the terms and conditions in case of default.
  - b) The List of Kenya's sovereign bond holders including beneficial ownership information of the issuing company (-ies).
  - c) The use made of the proceeds of the sovereign bonds.
36. The Petitioners also sought to be provided with the copies and information relating to treaties entered into by the Republic of Kenya with regards to procuring external lending in the last nine years.
37. The Petitioners requested that the information be provided as soon as possible but certainly not later than 21 days of the date of the service of the letter.
38. The request for information was duly served on the office of the 2<sup>nd</sup> Respondent on 11<sup>th</sup> February 2022.
39. The 2<sup>nd</sup> Respondent has willfully ignored and/or refused to provide the information and/or documents requested for by the Petitioners through their letter dated 7<sup>th</sup> February 2022.
40. The refusal by the 2<sup>nd</sup> Respondent to provide information that should ordinarily be made public is not only unconstitutional but also illegal.

#### **PARTICULARS OF UNCONSTITUTIONALITY**

41. The refusal by the 2<sup>nd</sup> Respondent to provide the documents and/or information requested for by the Petitioners through their joint letter dated 7<sup>th</sup> February 2022 runs afoul of article 35 of the Constitution that decrees that every citizen has the right of access to information held by the State.
42. The refusal by the 2<sup>nd</sup> Respondent to provide the documents and/or information requested for by the Petitioners through their joint letter dated 7<sup>th</sup> February 2022 also contradicts the constitutional principle captured in article 201(a) which enumerates that there shall be openness and accountability including public participation in (public) financial matters.
43. The refusal by the 2<sup>nd</sup> Respondent to provide the documents and/or information requested for by the Petitioners through their joint letter dated 7<sup>th</sup> February 2022 contradicts the

constitutional principle of the Rule of Law captured in article 10 which obligates that any treaties ratified by Kenya must be publicly available as items of domestic law.

44. The refusal by the 2<sup>nd</sup> Respondent to provide the documents and/or information requested for by the Petitioners through their joint letter dated 7<sup>th</sup> February 2022 contradicts the constitutional principle of public participation which is assaulted when the State denies the public information through which they can meaningfully participate.

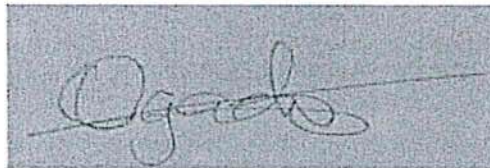
## RELIEFS

45. Whereof, the Petitioners seek the following or other appropriate reliefs:

- a) A declaration be and issued that the failure to provide the Treaties/ Agreements and/or Contracts signed between the Republic of Kenya and any other state, any international financial institution, any international corporation and any other entity however described is unconstitutional in so far as it contradicts the constitutional requirements on access to information.
- b) A declaration be and issued that the failure to provide information relating to sovereign bonds floated for and on behalf of Kenya in the past nine years by the National Executive is unconstitutional for not being open and accountable as required by article 201 of the Constitution.
- c) A declaration be and issued that the failure to provide the Treaties/ Agreements and/or Contracts signed between the Republic of Kenya and any other state, any international financial institution, any international corporation and any other entity however described is unconstitutional in so far as it contradicts the constitutional principle of the Rule of Law at article 10 which requires that any legal instrument must be publicly accessible and available.
- d) A declaration be and issued that the failure by the 2<sup>nd</sup> Respondent to provide the Treaties/ Agreements and/or Contracts signed between the Republic of Kenya and any other state, any international financial institution, any international corporation in paragraph (a) hereinabove and the information relating to sovereign bonds floated for and on behalf of Kenya in the past nine years in paragraph (b) hereinabove amounts to a violation of Chapter 6 provisions of the Constitution and the laws that flow therefrom.

- e) An order of mandamus does issue compelling the Respondents and/or any other responsible State and/or Public Officer to provide the documents and/or information sought in paragraphs (a) and (b) hereinabove.
- f) An order of mandamus compelling respondents and/or any other responsible state/public officer to provide documents and information sought in the access to information request letter, specifically;
  - i. Any information on any sovereign bond agreement/contract signed by the Government of Kenya and any bondholder(s) that contain the terms and conditions in case of default.
  - ii. The List of Kenya's sovereign bond holders including beneficial ownership information of the issuing company (-ies).
  - iii. The use made of the proceeds of the sovereign bonds
- g) The Respondents bear the costs of this Petition for their willful constitutional violations.

DATED AT NAIROBI THIS 21<sup>st</sup> DAY OF APRIL 2022.

A rectangular box containing a handwritten signature in blue ink. The signature is cursive and appears to read 'Evans Ogada'.

**EVANS OGADA**

**Advocate for the Applicant/Petitioner**

**DRAWN BY:**

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SIGNED FOR & ON BEHALF OF THE REPUBLIC OF KENYA

**BETWEEN**

KENYA HUMAN RIGHTS COMMISSION.....1<sup>st</sup> PETITIONER/APPLICANT  
WANJIRU GIKONYO.....2<sup>nd</sup> PETITIONER/APPLICANT

**VERSUS**

THE ATTORNEY GENERAL.....1<sup>st</sup> RESPONDENT  
THE CABINET SECRETARY, NATIONAL TREASURY.....2<sup>nd</sup> RESPONDENT  
THE LAW SOCIETY OF KENYA.....1<sup>st</sup> INTERESTED PARTY  
KATIBA INSTITUTE ..... 2<sup>nd</sup> INTERESTED PARTY

**SUPPORTING AFFIDAVIT IN SUPPORT OF THE APPLICATION AND PETITION**

I, **DAVIS MALOMBE**, of P.O.BOX 3365-00100, Nairobi Kenya do hereby swear and state as follows:

1. **THAT**, I am the Executive Director the Kenya Human Rights Commission, a non-governmental organization duly registered under the Laws of Kenya, the 1<sup>st</sup> Petitioner herein and conversant with the facts leading to this case hence competent to swear this Affidavit.

2. **THAT**, I swear this affidavit behalf of the 1<sup>st</sup> Petitioner and on behalf of the 2<sup>nd</sup> Petitioner herein, The Institute for Social Accountability, having been duly authorized as such under a letter of authority. (*Annexed herein and marked as DM-1 is authority from The Institute for Social Accountability*)
3. **THAT**, on 7<sup>th</sup> February 2022, the Petitioners instructed Mr. Evans Ogada, Advocate to seek from the Cabinet Secretary National Treasury the Treaties/ Agreements and/or Contracts signed between the Republic of Kenya and any other state, any international financial institution, any international corporation and also information relating to sovereign bonds floated for and on behalf of Kenya in the past nine years by the National Executive by way of a formal request letter. (*Annexed herein and marked as DM-2 is a copy of an Access to Information Letter to the Cabinet Secretary Treasury as well as an Affidavit of Service*).
4. **THAT**, despite being served by the request for access to information and documents as enumerated in paragraph (3) hereinabove, the 2<sup>nd</sup> Respondent has refused, willfully neglected and/or ignored to provide the information and documents sought by the letter.
5. **THAT**, the Commission on Administrative Justice wrote to the 2<sup>nd</sup> Respondent requesting the Cabinet Secretary to provide the information and documents sought by the Applicants/Petitioners herein through the letter mentioned in paragraph 3 hereinabove but the 2<sup>nd</sup> Respondent failed to provide the documents and/or information within the timelines specified. (*Annexed herein and marked as DM-3 is a copy of the letter by the Commission on Administrative Justice to the Cabinet Secretary, National Treasury dated 4<sup>th</sup> April 2022*)
6. **THAT**, I am advised by my Advocate on record and which advice I believe to be true that the Constitution of Kenya 2010 and the Access to Information Act obligate the provision and access to the information requested and that the provision of the requested information will not prejudice the Respondents in any way whatsoever.
7. **THAT**, I am advised by my Advocate on record and which advise I believe to be true, that in any case that the Treaties/ Agreements and/or Contracts signed between the Republic of Kenya and any other state, any international financial institution, any international corporation that the Petitioners seek to be produced are constitutionally and legally deemed

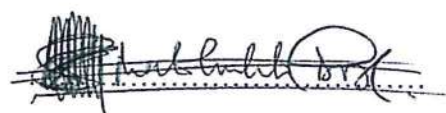
legal instruments that must be publicly published and availed as a requirement of the Rule of Law.

8. **THAT**, I am advised by my Advocate on record and which advise I believe to be true, that the documents and information sought from the Cabinet Secretary National Treasury, that is Treaties/ Agreements and/or Contracts signed between the Republic of Kenya and any other state, any international financial institution, any international corporation and also information relating to sovereign bonds floated for and on behalf of Kenya in the past nine years by the National Executive, are required as of constitutional edict to be publicly published and availed as an imperative of openness and accountability and in order to foster public participation.
9. **THAT**, I am advised by my Advocate on record and which advise I believe to be true, that the failure by the 2<sup>nd</sup> Respondent to provide documents and information related to public financing as enumerated in paragraph (3) hereinabove amounts to a breach of Chapter 6 of the Constitution on the part of the 2<sup>nd</sup> Respondent.
10. **THAT**, any act of governance MUST accord with the prescriptions of the Constitution of Kenya, 2010.
11. **THAT**, the Applicant/Petitioner has therefore made out a case to warrant the grant of the prayers sought herein and no prejudice stands to be suffered by the Respondents should the prayers as sought herein be granted.
12. **THAT**, I swear this affidavit in support of the prayers sought in the Petition and Application filed herein.
13. **THAT**, all that is deponed to herein is true to the best of my knowledge and belief save as to sources wherein the same have been disclosed.



SWORN BY THE SAID: }

DAVIS MALOMBE }



At NAIROBI this 01st day of April 2022 }

DEPONENT

BEFORE ME: }



COMMISSIONER OF OATHS }

**DRAWN BY:**

EVANS OGADA  
PROF. MIGAI AKECH  
& ASSOCIATES, ADVOCATES,  
HURLINGHAM OFFICE PARK,  
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**NAIROBI.**

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**TO BE SERVED UPON:**

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