

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
MILIMANI CONSTITUTIONAL & HUMAN RIGHTS DIVISION
CONSTITUTIONAL PETITION NO.....OF 2023

IN THE MATTER OF:
ARTICLES 258(1) AND 165 & ALLEGED CONTRAVENTION OF ARTICLES 6, 10(2),
174 & 201 OF THE CONSTITUTION OF KENYA

AND
IN THE MATTER OF:
PUBLIC FINANCE MANAGEMENT ACT, 2012
AND
IN THE MATTER OF ALLEGED CONTRAVENTION OF SECTION 12(1)(e)

AND
IN THE MATTER OF REGULATION 6(1) OF THE PUBLIC FINANCE MANAGEMENT
(NATIONAL GOVERNMENT) REGULATIONS, 2015

BETWEEN
PROF. FREDRICK OGOLA.....1ST PETITIONER
BENARD ODERO OKELLO.....2ND PETITIONER

-VERSUS-

CABINET SECRETARY, NATIONAL TREASURY
& ECONOMIC PLANNING.....1ST RESPONDENT
CABINET SECRETARY, MINISTRY OF INFORMATION,
COMMUNICATION & THE DIGITAL ECONOMY.....2ND RESPONDENT
ATTORNEY GENERAL.....3RD RESPONDENT

=====

CERTIFICATE OF URGENCY

I **DR. DUNCAN M. O'KUBASU** an Advocate of the High Court of Kenya practising as such in the firm of Okubasu & Munene Advocates do hereby certify that the Application filed herewith is extremely urgent deserving to be heard during the current VACATION PERIOD for reasons **THAT:-**

- 1) The Respondents acting unilaterally and arbitrarily have directed the closure of all government digital payment systems so as to allow on-boarding of all

government services, national and county, into one digital payment platform eCitizen.go.ke effective 30th September 2023.

- 2) The directive reeks of unconstitutionality to wit:-
- a) Contrary to the principles of public finance management, there is currently not in force any framework for managing the proposed single digital payment platform; and
 - b) Contrary to the principles of public finance management, there has not been any public participation in formulating the single digital payment platform; and
 - c) Contrary to the principles of public finance management and devolution, the single digital payment platform does not promote the distinctiveness of the national and county levels of government.
- 3) Owing to the lack of a framework in the implementation of the single digital payment system, there is no mechanism of enforcing accountability and therefore the people of the Republic of Kenya stand to suffer greatly. If the Application herewith seeking for interim reliefs is not admitted for hearing forthwith.
- 4) The reasons herein above singularly and jointly underscore the urgency of the Application herewith and it is therefore in the interest of justice that the same be admitted for hearing during the current vacation period.

DATED at Nairobi this.....^{17th}.....day of^{August}..... 2023.

OKUBASU & MUNENE ADVOCATES
ADVOCATES FOR THE PETITIONERS

DRAWN & FILED BY:
OKUBASU & MUNENE ADVOCATES
OM LAW OFFICES
3RD FLOOR, RM 303 & 304 MADONNA HOUSE
WESTLANDS ROAD
P.O BOX 128-00610
NAIROBI.
Email: info@omkadvocates.com
Tel : 0748417648

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TO BE SERVED UPON

CABINET SECRETARY, NATIONAL TREASURY & ECONOMIC PLANNING
TREASURY BUILDING, 10TH FLOOR
HARAMBEE AVENUE
P. O. BOX 30005 – 00100

NAIROBI

CABINET SECRETARY, MINISTRY OF INFORMATION, COMMUNICATION & THE
DIGITAL ECONOMY
TELPOSTA TOWERS, KENYATTA AVE. KOINANGE STREET
P.O BOX 30025-00100,

NAIROBI

ATTORNEY GENERAL
SHERIA HOUSE, HARAMBEE AVENUE
P.O. BOX 40112-00100,

NAIROBI

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ATTORNEY GENERAL.....3RD RESPONDENT

=====

EX-PARTE CHAMBER SUMMONS

(Under Rule 3 of the High Court (Practice and Procedure Rules)
Judicature Act, Cap 8 of the Laws of Kenya)

LET ALL PARTIES concerned attend the Honourable Vacation Judge in Chambers on the..... Day of..... 2023 at 9.00 O'clock in the forenoon or so soon thereafter as the matter may be heard on the hearing of an application on the part of Counsel for the Applicant for the following ORDERS:-

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1. **THAT** this Honourable Court be pleased to certify the instant matter as urgent and service be dispensed with during this vacation period;
2. **THAT** this honourable Court be pleased to admit the Notice of Motion application filed herewith during the current vacation and proceed to hear the same;
3. **THAT** costs of this application be provided for

WHICH APPLICATION is based on the following GROUNDS:-

- 1) The Respondents acting unilaterally and arbitrarily have directed the closure of all government digital payment systems so as to allow on-boarding of all government services, national and county, into one digital payment platform eCitizen.go.ke effective 30th September 2023.
- 2) The directive reeks of unconstitutionality to wit:-
 - a) Contrary to the principles of public finance management, there is currently not in force any framework for managing the proposed single digital payment platform; and
 - b) Contrary to the principles of public finance management, there has not been any public participation in formulating the single digital payment platform; and
 - c) Contrary to the principles of public finance management and devolution, the single digital payment platform does not promote the distinctiveness of the national and county levels of government.
- 3) Owing to the lack of a framework in the implementation of the single digital payment system, there is no mechanism of enforcing accountability and therefore the people of the Republic of Kenya stand to suffer greatly. If the Application herewith seeking for interim reliefs is not admitted for hearing forthwith.
- 4) It is in the interest of justice that Suit/Application herewith be admitted for hearing during the current vacation period.

WHICH APPLICATION is further supported by the annexed Affidavit of **MUSYOKA DAVID, V** and such other grounds to be adduced at the hearing hereof

DATED at Nairobi this.....17th.....day ofAugust..... 2023.

OKUBASU & MUNENE ADVOCATES
ADVOCATES FOR THE PETITIONERS

DRAWN & FILED BY:

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COMMUNICATION & THE DIGITAL ECONOMY.....2ND RESPONDENT
ATTORNEY GENERAL.....3RD RESPONDENT

=====

SUPPORTING AFFIDAVIT

I MUSYOKA DAVID, V an adult male of sound mind and of P.O BOX 128-00610 Nairobi within the Republic of Kenya do hereby make oath and state as follows:-

- 1) **THAT** I am an Advocate of the High Court of Kenya instructed by the firm of Okubasu & Munene Advocates and which firm has conduct of this suit on behalf of the Petitioner.
- 2) **THAT** I swear this Affidavit in support of the Chamber Summons Application herewith seeking for this suit to be admitted for hearing during the current vacation period.



DRAWN & FILED BY:

OKUBASU & MUNENE ADVOCATES
OM LAW OFFICES
3RD FLOOR, RM 303 & 304 MADONNA HOUSE
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ATTORNEY GENERAL
SHERIA HOUSE, HARAMBEE AVENUE
P.O. BOX 40112-00100,

NAIROBI

ANNEXURE
MDV

This is the referred to in the affidavit sworn before me on the day of ...

COMMISSIONER FOR OATHS

IN Gazette Notice No. 15927 of 2022, include the following "The auction date is 23rd January, 2023 and the viewing dates are 23rd January, 2023 and 24th January, 2023"

IN Gazette Notice No. 530 of 2021, amend the expression printed of as "19th January, 2020" to read "19th January, 2021"

IN Gazette Notice No. 11614 of 2022, Cause No. E54 of 2022, amend the deceased's name printed as "Mary Nungari Kamau" to read "Mary Nungari Kimani"

IN Gazette Notice No. 15808, amend the name of the Governor, Laikipia County printed as "John Wakahora Irungu" to read "Joshua Wakahora Irungu".

GAZETTE NOTICE NO. 16008

THE CONSTITUTION OF KENYA

INTRODUCTION OF THE GOVERNMENT SERVICES DIGITAL PAYMENTS PROGRAMME

IT IS notified for the general information of the public that pursuant to the principle of openness and accountability stipulated in Article 201 (a) of the Constitution of Kenya, guiding public finance management and Article 6 (3) providing for the widest possible access to government services, the Government of the Republic of Kenya has developed the eCitizen.go.ke Digital Payments Platform through which citizens and all persons will be able to pay for government services. This Digital Payments platform is integrated with all available electronic payment platforms in Kenya, including mobile money telephone payment services.

The details of the Digital Payments Platform are as follows:

- (a) eCitizen.go.ke is a wholly owned domain and portal of the Government of Kenya;
- (b) eCitizen.go.ke is the official Government Digital Payments Platform;
- (c) all payments for Government services shall progressively be made through eCitizen.go.ke;
- (d) the unique identifier for individuals is the National Identity Card for citizens;
- (e) the unique identifier for foreigners is the Alien Identity Card;
- (f) the unique identifier for companies, institutions and organizations shall be the official registration number;
- (g) the official Government of Kenya Pay Bill Number is 222 222;
- (h) the official Government of Kenya Short Code Number is 222; and
- (i) the official Government of Kenya USSD Number is 2222.

The public is advised to visit www.eCitizen.go.ke to view the list of services for which payment may be made digitally. The Government shall disseminate the information in this Notice through the electronic and print media.

Dated the 20th December, 2022.

NJUGUNA NDUNG'U,
Cabinet Secretary for the
National Treasury and Economic Planning.

*Gazette Notice No. 9290 of 2014 is revoked.

GAZETTE NOTICE NO. 16009

THE CONSTITUTION OF KENYA
THE COUNTY GOVERNMENTS ACT
(No. 17 of 2012)
COUNTY GOVERNMENT OF MIGORI
COUNTY PENDING BILLS COMMITTEE

APPOINTMENT

IT IS notified for general public information that the Governor of the County Government of Migori, has established a committee known as the County Pending Bills Committee pursuant to Gazette Notice No. 11921 of 2022. The purpose of the Committee is to bring to finality the problem of pending bills claimed against the County Government of Migori. I, Ochiilo George Mbogo Ayacko, Governor, Migori County, have appointed the below mentioned names to be in the County Ineligible Pending Bills Resolution Committee in line with the Public Finance Management Act:

Name	Position
Apollo Mboya	Chairperson
John Odoyo Achuora (Dr.)	Secretary
Janet Kagali (Ms.)	Member
Lazarus Onyancha	Member
Samuel Doe Atula	Member

Terms of Reference

- (a) Obtain full list of the Pending Bills as at 30th June, 2022.
- (b) Obtain request(s) for review of bill(s) from the affected supplier(s) contained in the bills' list.
- (c) Record description of the works done, goods supplied, services given and dates including exact locations.
- (d) Obtain evidence of delivery/performance or reports (for consultancy services).
- (e) Obtain evidence of receipt of goods and services/performance.
- (f) Carry out (where applicable) physical verification including circumstantial and corroborative evidence of work done and delivery.
- (g) Quantify and evaluate value for money of the work done, goods delivered, or services given.
- (h) Advise Migori County Government on an appropriate arrangement of payment of the verified pending bills that is open, equitable, accountable and practical; and
- (i) Advise on future management of bills and payables to avoid delayed payments.

In performance of its functions, the Taskforce—

- (a) shall hold such number of meetings at such places and such times and review all documents that are required as the Taskforce may consider necessary for the proper discharge of its mandate;
- (b) shall have access to reports of any previous investigations relevant to its mandate;
- (c) shall, as it considers appropriate, carry out or cause to be carried out such studies or research as may inform the Taskforce on its mandate;
- (d) subject to the foregoing, the Taskforce shall have all the independence necessary for carrying out its function or expedient for the proper execution of its mandate.
- (e) deliberations of the Taskforce shall remain confidential and members shall execute a Confidentiality Agreement.
- (f) the Taskforce may summon any current or former member of staff of the County, or any person to provide any given information that would help the Taskforce in its work.
- (g) The Taskforce may co-opt any person whose knowledge, skills or competencies may be necessary to facilitate its work.

The Secretariat of the Taskforce

The Secretariat of the Taskforce shall be based at the office of the Governor, County Government Headquarters and shall be responsible to the Taskforce for—

- (a) providing appropriate background briefing to the Taskforce;
- (b) preparing the Taskforce's report's reports and disseminating any information deemed relevant to the Taskforce;

9A

This is the Exhibit marked BB-2
referred to in the annexed Affidavit Denial
of Bernard Peter
sworn before me this 17th day of August, 2023
at Stanley
Chirchich
COMMISSIONER FOR OATHS

EXECUTIVE OFFICE OF THE PRESIDENT
CHIEF OF STAFF AND HEAD OF THE PUBLIC SERVICE

STATE HOUSE
P.O. Box 40530-00100
Nairobi, Kenya

10th July 23
....., 20.....

Telegraphic Address
Telephone: +254-20-2227436
When replying please quote

SH/EOP/1 VOL. II (14)

Ref. No
and date

To: All Principal Secretaries/ Accounting Officers (*With sufficient copies to all Chief Executive Officers of State Corporations and Semi-Autonomous Government Agencies*)
Clerk, National Assembly
Clerk, Senate
Chief Registrar of Judiciary
The Solicitor General
Chief Executive Officer, Council of Governors
All Holders of Independent Offices
All Secretaries, Constitutional Commissions

RE: ON-BOARDING OF GOVERNMENT SERVICES ON TO THE E-CITIZEN PLATFORM

On 30th June 2023, His Excellency the President unveiled an expanded array of e-citizen services that marked Kenya's watershed moment in the pursuit of digital transformation. Consequently, the eCitizen platform Unstructured Supplementary Service Data (USSD) code *2222# by which citizens can now access 5,084 government services online was launched. This significant milestone in Kenya's digital transformation aims to enhance the accessibility and efficiency of government services for the citizens.

Following the launch, His Excellency the President directed that **all** government departments onboard the remaining services onto the e-citizen platform within 90 days from the date of the launch, being **30th September 2023**.

Accordingly, and by way of this Circular, each Accounting Officer/Chief Executive Officer, is directed to take the necessary steps to ensure the implementation of the Presidential directive.

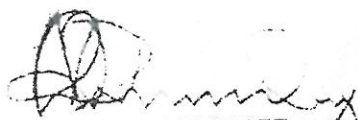
You are further directed to submit to this office, a periodic report every two (2) weeks, explaining in detail the progress made in onboarding the remaining government services onto the e-citizen platform. This information should be availed in hard and soft copy to:

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The Chief of Staff and Head of Public Service
Att: Ms. Leah Kasera
Harambee House
Tel: 2227411 Ext.22352
NAIROBI
Email: cas@harambee.gov.ke

You are also directed to ensure that all **Ministries, Counties, Departments and Agencies** (MCDAs) payments are migrated to the single government digital payment platform **Paybill Number 222222**, and all **other payment platforms are shut down within 30 days of this circular.**

Accounting Officers across government are further directed to ensure the contents of this Circular are brought to the attention of all institutions under their State Departments and/or supervision; as well as ensure full implementation and compliance with the same.



FELIX K. KOSKEI
CHIEF OF STAFF & HEAD OF PUBLIC SERVICE

Copy To: All Cabinet Secretaries
The Attorney General
Secretary to the Cabinet
Chairperson, Council of Governors
All Chairpersons, Constitutional Commissions
All Chairpersons, State Corporations

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REPUBLIC OF KENYA
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BETWEEN

PROF. FREDRICK OGOLA.....1ST PETITIONER

BENARD ODERO OKELLO.....2ND PETITIONER

-VERSUS-

**CABINET SECRETARY, NATIONAL TREASURY
& ECONOMIC PLANNING.....1ST RESPONDENT**

**CABINET SECRETARY, MINISTRY OF INFORMATION,
COMMUNICATION & THE DIGITAL ECONOMY.....2ND RESPONDENT**

ATTORNEY GENERAL.....3RD RESPONDENT

=====

NOTICE OF MOTION

[Under Articles 22 and 23 of the Constitution of Kenya, Rules 13, 19, 23(1) and (3) of the Constitution of Kenya (Protection of Rights & Fundamental Freedoms) Practice and Procedure Rules 2013 all the enabling provisions of the law]

TAKE NOTICE that the Honourable Court shall be moved on the.....day of.....2023 at 0900hrs in the forenoon or soon thereafter as counsel for the Applicant seeks to be heard on an Application for ORDERS:-

- 1) **THAT** this Application be certified urgent and be admitted for hearing during the instant Vacation Period.

- 2) **THAT** pending the hearing and determination of this Application and so as to preserve the subject matter herein, conservatory orders do issue staying execution/further execution/implementation/further implementation of the directive to on-board government services to a single Digital Payment Platform of **Paybill Number 222222** on the eCitizen.go.ke platform as conveyed in Gazette Vol. CXXIV—No. 287 Gazette Notice No. 16008 and published on the 30th of December 2022.
- 3) **THAT** pending the hearing and determination of the Petition and so as to preserve the subject matter herein, conservatory orders do issue staying execution/further execution/implementation/further implementation of the directive to on-board government services to a single Digital Payment Platform of **Paybill Number 222222** on the eCitizen.go.ke platform as conveyed in Gazette Vol. CXXIV—No. 287 Gazette Notice No. 16008 and published on the 30th of December 2022.
- 4) Costs of this Application be provided for.

AND WHICH application is premised on the following GROUNDS:-

1. The 1st Respondent vide Gazette Vol. CXXIV—No. 287 Gazette Notice No. 16008 and published on the 30th of December 2022 issued a directive directing the on-boarding of all government services (National and County) to the eCitizen.go.ke Digital Payments Platform.
2. That through a circular dated 10th July 2023, the Chief of Staff and Head of Public Service indicated that the President of the Republic of Kenya had directed that all government services ought to be on-boarded to the payment platform by 30th September 2023.
3. If implemented, all Ministries, Counties, Departments and Agencies will have a single digital payment platform being **Paybill Number 222222** and all other payment platforms used by the different entities will be shut down.
4. The directive to have all government entities use a single payment platform offends the canons of public finance management and is thus unlawful & unconstitutional since:-
 - a) The decision was arbitrarily made by the President and/or Cabinet Secretary in charge of National Treasury in the absence of Public Participation contrary to Article 201(a) as read together with Article 10 of the Constitution and **Regulation 6(1)** of The Public Finance Management (National Government) Regulations, 2015; and
 - b) No framework has been established to manage cash transactions through the single digital payment system contrary to section 29(1) of the Public

Finance Management Act hence risk of lack of openness and accountability contra Article 201(a) of the Constitution; and

- c) The inclusion of county services in the single digital payment system by the 1st Respondent usurps the role of County Treasury as set out under Section 104 of the Public Finance Management Act and further fails to respect and promote the distinctiveness of the national and county levels of government as required by section 12(1)(e) of the Public Finance Management Act.
5. The directive to have a single digital payment system if implemented would violate the basic principles of Public Finance Management as encapsulated under Article 201 of the Constitution putting the people of Kenya at risk of suffering immense prejudice.
6. The people of the Republic of Kenya stand to suffer irreparable harm if the orders sought herein are not granted as prayed.
7. It is clearly in the interest of justice to have the conservatory orders sought herein granted.
8. There is already in existence several digital payment systems used by different Government Agencies and there would therefore be no prejudice whatsoever suffered by any of the Respondents herein if the orders sought are granted.

WHICH APPLICATION is further supported by the Annexed Affidavit of **BENARD ODERO OKELLO** and which Affidavit is sworn in support of both the Application herein and Petition herewith and such other grounds to be adduced at the hearing hereof.

DATED at Nairobi this.....17th.....day ofAug 2023.....

OKUBASU & MUNENE ADVOCATES
ADVOCATES FOR THE PETITIONERS

DRAWN & FILED BY:

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ATTORNEY GENERAL.....3RD RESPONDENT

=====

TO:
THE HIGH COURT OF KENYA
NAIROBI

PETITION

This is the humble petition of the Petitioner

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A. DESCRIPTION OF THE PARTIES

1. The 1st Petitioner is a male adult of sound mind and a citizen of the Republic of Kenya. His address for service for the purpose of this suit shall be **C/o Okubasu, & Munene Advocates, 3rd Floor, Suite 303, Madonna House, Westlands Road, Westland's Road P.O. Box 128-00610 NAIROBI Tel: 0748417648 email: info@omkadvocates.com**
2. The 2nd Petitioner is an Advocate of the High Court and a Kenyan Citizen residing within the Republic of Kenya. His address for service for the purpose of this suit shall be **C/o Okubasu, & Munene Advocates, 3rd Floor, Suite 303, Madonna House, Westlands Road, Westland's Road P.O. Box 128-00610 NAIROBI Tel: 0748417648 email: info@omkadvocates.com**
3. 1st Respondent is the Cabinet Secretary in charge of National Treasury and holding office pursuant to Article 152 of the Constitution and whose role, among others, includes designing and prescribing financial management systems to manage public finance.
4. The 2nd Respondent is the Cabinet Secretary in charge of Digital Economy holding office pursuant to Article 152 of the Constitution and whose role, among other, includes coming up with policies and/or regulations governing the digital economy.
5. The 3rd Respondent is an office established 156 of the Constitution and whose key role is acting as Government's principal legal advisor.

B. LOCUS

6. The Petitioners are entitled to Petition this Honourable Court pursuant to Article 258 of the Constitution.
7. Article 258(1) of the Constitution provides that "Every person has the right to institute court proceedings claiming that the Constitution has been contravened, or is threatened with contravention.

C. LEGAL FOUNDATIONS OF THE PETITION

8. **Article 2(1)** of the Constitution of Kenya (hereinafter referred to as “the Constitution”) pronounces the supremacy of the Constitution and provides that the Constitution binds all persons and State organs at both levels of government.
9. **Article 2(2)** of the Constitution provides that nobody may claim or exercise State authority except as authorised in the Constitution.
10. **Article 6(2)** of the Constitution provides that the governments at the national and county levels are distinct and inter-dependent and shall conduct their mutual relations on the basis of consultation and cooperation.
11. **Article 10** of the Constitution sets out the national values and principles of government that are binding on every State organ or officer whenever any of them applies or interprets the Constitution and any other law and makes or implements any public policy decisions. Among the values and principles of governance are rule of law, equity, inclusiveness, equality, human rights, non-discrimination, good governance, transparency and accountability.
12. **Article 153(4)(a)** of the Constitution provides that Cabinet Secretaries shall act in accordance with the constitution.
13. **Article 156(6)** of the Constitution provides that the Attorney-General shall promote, protect and uphold the rule of law and defend the public interest.
14. **Article 165** of the Constitution bequeaths this Honourable Court with the power and jurisdiction to entertain this Petition.
15. **Article 201(a)** of the Constitution provides that openness and accountability including public participation in financial matters shall be a principle guiding all aspects of public finance.
16. **Article 201(d)** of the Constitution provides that public money shall be used in a prudent and responsible way.
17. **Article 201(e)** of the Constitution provides that financial management shall be responsible and fiscal reporting shall be clear.
18. **Section 12(1)(e)** of the Public Finance Management Act provides that the 1st Respondent is responsible for designing and prescribing an efficient financial management system for the national and county governments to ensure

transparent financial management and standard financial reporting provided that the National Treasury shall prescribe regulations that ensure that operations of a system under this paragraph respect distinctiveness of the national and county levels of government.

19. **Section 12(2)(a)** of the Public Finance Management Act provides that the 1st Respondent shall promote transparency, effective management and accountability with regard to public finances in the national government.
20. **Section 29(1)** of the Public Finance Management Act provides the National Treasury shall establish a framework within which the national government shall manage its cash transactions.
21. **Section 104(1)(i)** of the Public Finance Management Act obligates the the County Treasury with ensuring proper management and control of, and accounting for the finances of the county government and its entities in order to promote efficient and effective use of the county's budgetary resources
22. **Regulation 6(1)** of The Public Finance Management (National Government) Regulations, 2015 requires that the public shall be provided with full access to financial information in a timely manner for purposes of seeking public input.
23. **Regulation 83(1)** of The Public Finance Management (National Government) Regulations, 2015 requires National Treasury to be responsible for establishing sound cash management systems, procedures and processes, to ensure efficient and effective banking and cash management practices.

D. FACTUAL MATRIX

24. In an era where the cyber/digital space increasingly grows by the day, without doubt the common man must adapt to the changes. It is further without doubt that the growth of the cyber/digital space has made life more efficient and easier; be it for the populace or the government.
25. However, it must not be lost that technology, albeit efficient, also has its own challenges. For instance in the recent past Kenya has experienced stalled government services on account of government portals/websites being hacked hence leaving the users of these services at the mercies of the said hackers and unable to acquire the services they crave.
26. The Petitioners aver that there is therefore need to have in place a formidable framework governing government operations in all digital spaces lest the country plunges into a crisis.

27. That the 1st Respondent vide Gazette Vol. CXXIV—No. 287 Gazette Notice No. 16008 and published on the 30th of December 2022 issued a directive directing the on-boarding of all government services (National and County) to the eCitizen.go.ke Digital Payments Platform.
28. Further, through a circular dated 10th July 2023, the Chief of Staff and Head of Public Service indicated that the President of the Republic of Kenya had directed that all government services ought to be on-boarded to the payment platform by 30th September 2023.
29. If implemented, all Ministries, Counties, Departments and Agencies will have a single digital payment platform being **Paybill Number 222222** and all other payment platforms used by the different entities will be shut down.
30. The Petitioners aver that the directive to have all government entities use a single payment platform was arbitrarily made by the President and/or Cabinet Secretary in charge of National Treasury in the absence of Public Participation contrary to Article 201(a) as read together with Article 10 of the Constitution and **Regulation 6(1)** of The Public Finance Management (National Government) Regulations, 2015
31. The Petitioners further aver that no framework has been established to manage cash transactions through the single digital payment system contrary to section 29(1) of the Public Finance Management Act hence risk of lack of openness and accountability contra Article 201(a) of the Constitution.
32. The Petitioners aver that the inclusion of county services in the single digital payment system by the 1st Respondent usurps the role of County Treasury as set out under Section 104 of the Public Finance Management Act and further fails to respect and promote the distinctiveness of the national and county levels of government as required by section 12(1)(e) of the Public Finance Management Act.
33. The Petitioners aver that the directive to have a single digital payment system if implemented would violate the basic principles of Public Finance Management as encapsulated under Article 201 of the Constitution putting the people of Kenya at risk of immense prejudice.

34. The Petitioners aver that the failure to have a framework governing the payment system means there is no accountability system which would likely lead to squandering of public funds.
35. The Petitioners aver that the failure to have an alternative means of paying for government services would lead to a complete Government shutdown in the event the single existing system fails.
36. The Petitioners aver that failure to have a distinctive payment system for National Government & County Entities erodes the doctrine of devolution as engraved in the Constitution as both levels of government ought to have clear cut financial management systems.
37. The Petitioners aver that the on-boarding of government systems in a single digital payment system is utterly unconstitutional.

E. VIOLATIONS OF THE CONSTITUTION

38. By arbitrarily and unilaterally seeking to establish a single digital payment system for all government services, National and County, without the input of public participation, the Respondents have jointly and severally violated Article 201(a) as read together with Article 10(1), 2(a) of the Constitution and **Regulation 6(1)** of The Public Finance Management (National Government) Regulations, 2015;
39. By arbitrarily and unilaterally seeking to establish a single digital payment system for all government services, National and County, in the absence of an established management framework, the Respondents have jointly and severally violated Article 201(a) of the Constitution as read together with section 29(1) of the Public Finance Management Act.
40. By arbitrarily and unilaterally seeking to establish a single digital payment system for all government services, National and County, the Respondents have jointly and severally usurped the role of County Treasury as set out under Section 104 of the Public Finance Management Act and further failed to respect and promote the distinctiveness of the national and county levels of government as required by section 12(1)(e) of the Public Finance Management Act which acts constitutes a violation of Articles 6(3) , 10(1) & 2(a) of the Constitution
41. By inclusion of county entities in the single digital payment system, the Respondents have jointly and severally infringes on the objectives of devolution set out under Article 174 of the Constitution.

F. RELIEFS

42. REASONS WHEREFORE, thy humble Petitioners seeks the following reliefs

- a) A **DECLARATION** that the directive to on-board government services to a single Digital Payment Platform of **Paybill Number 222222** on eCitizen.go.ke as conveyed in Gazette Vol. CXXIV—No. 287 Gazette Notice No. 16008 and published on the 30th of December 2022 in the absence of public participation is in violation of Articles 201(a) as read together with Articles 10(1), 2(a) of the Constitution and Regulation 6(1) of The Public Finance Management (National Government) Regulations, 2015 and therefore unlawful and unconstitutional.
- b) A **DECLARATION** that the directive to on-board government services to a single Digital Payment Platform of **Paybill Number 222222** on eCitizen.go.ke as conveyed in Gazette Vol. CXXIV—No. 287 Gazette Notice No. 16008 and published on the 30th of December 2022 in the absence of a management framework is in violation of Article 201(a) of the Constitution as read together with section 29(1) of the Public Finance Management Act and therefore unlawful and unconstitutional.
- c) A **DECLARATION** that the directive to on-board government services to a single Digital Payment Platform of **Paybill Number 222222** on eCitizen.go.ke as conveyed in Gazette Vol. CXXIV—No. 287 Gazette Notice No. 16008 and published on the 30th of December 2022 offends the doctrine of devolution in violation of Articles 6(3), 10(1) & 2(a), 174 of the Constitution as read with section 12(1)(e) of the Public Finance Management Act and therefore unlawful and unconstitutional.
- d) An order of **CERTIORARI** do and hereby issue quashing the directive to on-board government services to a single Digital Payment Platform of **Paybill Number 222222** on eCitizen.go.ke as conveyed in Gazette Vol. CXXIV—No. 287 Gazette Notice No. 16008 and published on the 30th of December 2022
- e) Any other order that this Honourable Court might deem fit.
- f) Costs.

DATED at Nairobi this.....17th.....day of August..... 2023.

OKUBASU & MUNENE ADVOCATES
ADVOCATES FOR THE PETITIONERS

DRAWN & FILED BY:

OKUBASU & MUNENE ADVOCATES
OM LAW OFFICES
3RD FLOOR, RM 303 & 304 MADONNA HOUSE
WESTLANDS ROAD
P.O BOX 128-00610

NAIROBI.

Email: info@omkadvocates.com

Tel : 0748417648

TO BE SERVED UPON

CABINET SECRETARY, NATIONAL TREASURY & ECONOMIC PLANNING
TREASURY BUILDING, 10TH FLOOR
HARAMBEE AVENUE
P. O. BOX 30005 – 00100

NAIROBI

CABINET SECRETARY, MINISTRY OF INFORMATION, COMMUNICATION & THE
DIGITAL ECONOMY
TELPOSTA TOWERS, KENYATTA AVE. KOINANGE STREET
P.O BOX 30025-00100,

NAIROBI

ATTORNEY GENERAL
SHERIA HOUSE, HARAMBEE AVENUE
P.O. BOX 40112-00100,

NAIROBI

21

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
MILIMANI CONSTITUTIONAL & HUMAN RIGHTS DIVISION
CONSTITUTIONAL PETITION NO.....OF 2023

IN THE MATTER OF:

**ARTICLES 258(1) AND 165 & ALLEGED CONTRAVENTION OF ARTICLES 6, 10(2),
174 & 201 OF THE CONSTITUTION OF KENYA**

AND

IN THE MATTER OF:

PUBLIC FINANCE MANAGEMENT ACT, 2012

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF SECTION 12(1)(e)

AND

**IN THE MATTER OF REGULATION 6(1) OF THE PUBLIC FINANCE MANAGEMENT
(NATIONAL GOVERNMENT) REGULATIONS, 2015**

BETWEEN

PROF. FREDRICK OGOLA.....1ST PETITIONER

BENARD ODERO OKELLO.....2ND PETITIONER

-VERSUS-

CABINET SECRETARY, NATIONAL TREASURY
& ECONOMIC PLANNING.....1ST RESPONDENT

CABINET SECRETARY, MINISTRY OF INFORMATION,
COMMUNICATION & THE DIGITAL ECONOMY.....2ND RESPONDENT

ATTORNEY GENERAL.....3RD RESPONDENT

=====

SUPPORTING AFFIDAVIT

(in support of Notice of Motion Application and Petition)

I BENARD ODERO OKELLO an adult male of sound mind and of C/O P.O BOX 128-00610 Nairobi within the Republic of Kenya do hereby make oath and state as follows:-

- 1) **THAT** I am the 2nd Petitioner/Applicant herein well versed with the facts hereto hence duly competent to swear this Affidavit in support of both the Notice of Motion Application and Petition herewith.
- 2) **THAT** I am an Advocate of the High Court of Kenya and swear this Affidavit on my behalf and on behalf of the 1st Petitioner herein..
- 3) **THAT** the 1st Respondent vide Gazette Vol. CXXIV—No. 287 Gazette Notice No. 16008 and published on the 30th of December 2022 issued a directive directing the on-boarding of all government services (National and County) to the eCitizen.go.ke Digital Payments Platform. **(annexed herewith and marked GA, - 1 is a copy of the gazette notice)**
- 4) **THAT** further, through a circular dated 10th July 2023, the Chief of Staff and Head of Public Service indicated that the President of the Republic of Kenya had directed that all government services ought to be on-boarded to the payment platform by 30th September 2023. **(annexed herewith and marked GA, -2 is a copy of the circular)**
- 5) **THAT** If implemented, all Ministries, Counties, Departments and Agencies will have a single digital payment platform being **Paybill Number 222222** and all other payment platforms used by the different entities will be shut down.
- 6) **THAT** the directive to have all government entities use a single payment platform was arbitrarily made by the President of the Republic and/or Cabinet Secretary in charge of National Treasury in the absence of Public Participation contrary to Article 201(a) as read together with Article 10 of the Constitution and **Regulation 6(1)** of The Public Finance Management (National Government) Regulations, 2015
- 7) **THAT** no framework has been established to manage cash transactions through the single digital payment system contrary to section 29(1) of the Public Finance Management Act hence risk of lack of openness and accountability contra Article 201(a) of the Constitution.
- 8) **THAT** the inclusion of county services in the single digital payment system by the 1st Respondent usurps the role of County Treasury as set out under Section 104 of the Public Finance Management Act and further fails to respect and promote the distinctiveness of the national and county levels of government as required by section 12(1)(e) of the Public Finance Management Act.
- 9) **THAT** in an era where the cyber/digital space increasingly grows by the day, without doubt the common man must adapt to the changes. It is further without doubt that the growth of the cyber/digital space has made life more efficient and easier; be it for the populace or the government.

- 10) **THAT** I am aware that technology has its own challenges.
- 11) **THAT** for instance in the recent past Kenya has experienced stalled government services on account of government portals/websites being hacked hence leaving the users of these services at the mercies of the said hackers and unable to acquire the services they crave. (annexed herewith and marked ~~GM-3~~ is evidence)
- 12) **THAT** there is therefore need to have in place a formidable framework governing government operations in all digital spaces lest the country plunges into a crisis.
- 13) **THAT** the directive to have a single digital payment system if implemented would violate the basic principles of Public Finance Management as encapsulated under Article 201 of the Constitution putting the people of Kenya at risk of immense prejudice.
- 14) **THAT** the failure to have a framework governing the payment system means there is no accountability system which would likely lead to squandering of public funds.
- 15) **THAT** the failure to have an alternative means of paying for government services would lead to a complete Government shutdown in the event the single existing system fails.
- 16) **THAT** the failure to have a distinctive payment system for National Government & County Entities erodes the doctrine of devolution as engraved in the Constitution as both levels of government ought to have clear cut financial management systems.
- 17) **THAT** there is already in existence other payment systems and the Respondents therefore do no stand to suffer any prejudice in the event the conservatory orders sought in the Application are granted.
- 18) **THAT** the people of the Republic of Kenya, including myself, stand to suffer irreparable harm if the conservatory orders sought herein are not granted.
- 19) **THAT** it is in the interest of justice that the orders sought in both the Application and Petition are granted.

THAT what is stated herein is true to the best of my knowledge, information and belief.

SWORN by the said
BENARD ODERO OKELLO

At **NAIROBI** this *Aug* day of *Aug* 2023

BEFORE ME
COMMISSIONER FOR OATHS



)
).....
)
)
)

DRAWN & FILED BY:

OKUBASU & MUNENE ADVOCATES
OM LAW OFFICES
3RD FLOOR, RM 303 & 304 MADONNA HOUSE
WESTLANDS ROAD
P.O BOX 128-00610
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P.O BOX 30025-00100,
NAIROBI

ATTORNEY GENERAL
SHERIA HOUSE, HARAMBEE AVENUE
P.O. BOX 40112-00100,
NAIROBI

28
25

ANNEXURE

BO-1

CORRIGENDA

IN Gazette Notice No. 15927 of 2022, include the following "The auction date is 25th January, 2023 and the viewing dates are 23rd January, 2023 and 24th January, 2023".

IN Gazette Notice No. 530 of 2021, amend the expression printed as "19th January, 2020" to read "19th January, 2021".

IN Gazette Notice No. 11611 of 2022, Cause No. E54 of 2022, amend the deceased's name printed as "Mary Nungari Kamau" to read "Mary Nungari Kimani".

IN Gazette Notice No. 15808, amend the name of the Governor, Laikipia County printed as "John Wakahora Irungu" to read "Joshua Wakahora Irungu".

GAZETTE NOTICE NO. 16008

THE CONSTITUTION OF KENYA

INTRODUCTION OF THE GOVERNMENT SERVICES DIGITAL PAYMENTS PROGRAMME

IT IS notified for the general information of the public that pursuant to the principle of openness and accountability stipulated in Article 201 (a) of the Constitution of Kenya, guiding public finance management and Article 6 (3) providing for the widest possible access to government services, the Government of the Republic of Kenya has developed the eCitizen.go.ke Digital Payments Platform through which citizens and all persons will be able to pay for government services. This Digital Payments platform is integrated with all available electronic payment platforms in Kenya, including mobile money telephone payment services.

The details of the Digital Payments Platform are as follows:

- eCitizen.go.ke is a wholly owned domain and portal of the Government of Kenya;
- eCitizen.go.ke is the official Government Digital Payments Platform;
- all payments for Government services shall progressively be made through eCitizen.go.ke;
- the unique identifier for individuals is the National Identity Card for citizens;
- the unique identifier for foreigners is the Alien Identity Card;
- the unique identifier for companies, institutions and organizations shall be the official registration number;
- the official Government of Kenya Pay Bill Number is 222 222;
- the official Government of Kenya Short Code Number is 222; and
- the official Government of Kenya USSD Number is 2222.

The public is advised to visit www.eCitizen.go.ke to view the list of services for which payment may be made digitally. The Government shall disseminate the information in this Notice through the electronic and print media.

Dated the 20th December, 2022.

NJUGUNA NDUNG'U,
Cabinet Secretary for the
National Treasury and Economic Planning.

*Gazette Notice No. 9290 of 2014 is revoked.

GAZETTE NOTICE NO. 16009

THE CONSTITUTION OF KENYA
THE COUNTY GOVERNMENTS ACT

(No. 17 of 2012)

COUNTY GOVERNMENT OF MIGORI
COUNTY PENDING BILLS COMMITTEE

APPOINTMENT

IT IS notified for general public information that the Governor of the County Government of Migori, has established a committee known as the County Pending Bills Committee pursuant to Gazette Notice No. 11921 of 2022. The purpose of the Committee is to bring to finality the problem of pending bills claimed against the County Government of Migori. I, Ochiilo George Mbogo Ayacko, Governor, Migori County, have appointed the below mentioned names to be in the County Ineligible Pending Bills Resolution Committee in line with the Public Finance Management Act:

Name	Position
Apollo Mboya	Chairperson
John Odoyo Achuora (Dr.)	Secretary
Janet Kagali (Ms.)	Member
Lazarus Onyancha	Member
Samuel Doe Atula	Member

Terms of Reference

- Obtain full list of the Pending Bills as at 30th June, 2022.
- Obtain request(s) for review of bill(s) from the affected supplier(s) contained in the bills' list.
- Record description of the works done, goods supplied, services given and dates including exact locations.
- Obtain evidence of delivery/performance or reports (for consultancy services).
- Obtain evidence of receipt of goods and services/performance.
- Carry out (where applicable) physical verification including circumstantial and corroborative evidence of work done and delivery.
- Quantify and evaluate value for money of the work done, goods delivered, or services given.
- Advise Migori County Government on an appropriate arrangement of payment of the verified pending bills that is open, equitable, accountable and practical; and
- Advise on future management of bills and payables to avoid delayed payments.

In performance of its functions, the Taskforce—

- shall hold such number of meetings at such places and such times and review all documents that are required as the Taskforce may consider necessary for the proper discharge of its mandate;
- shall have access to reports of any previous investigations relevant to its mandate;
- shall, as it considers appropriate, carry out or cause to be carried out such studies or research as may inform the Taskforce on its mandate;
- subject to the foregoing, the Taskforce shall have all the independence necessary for carrying out its function or expedient for the proper execution of its mandate.
- deliberations of the Taskforce shall remain confidential and members shall execute a confidentiality Agreement;
- the Taskforce may summon any current or former member of staff of the County or any person to provide any given information that would help the Taskforce in its work.
- The Taskforce may co-opt any person whose knowledge, skills or competencies may be necessary to facilitate its work

The Secretariat of the Taskforce

The Secretariat of the Taskforce shall be based at the office of the Governor, County Government Headquarters and shall be responsible to the Taskforce for—

- providing appropriate background briefing to the Taskforce;
- preparing the Taskforce's reports and disseminating any information deemed relevant to the Taskforce;

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ANNEXURE

BO-2

This is the Exhibit marked **BP-2**
referred to in the annexed Affidavit Declaration
of **Bernard Paden**
sworn before me this **17th**
day of **August** 20**23**
at **Nairobi**
Commissioner
COMMISSIONER FOR OATHS

EXECUTIVE OFFICE OF THE PRESIDENT
CHIEF OF STAFF AND HEAD OF THE PUBLIC SERVICE

STATE HOUSE
P.O. Box 40530-00100
Nairobi, Kenya

10th July 23
....., 20.....

Telegraphic Address

Telephone: +254-20-2227436

When replying please quote

SH/EOP/1 VOL. II (14)

Ref. No.

and date

To: All Principal Secretaries/ Accounting Officers (*With sufficient copies to all Chief Executive Officers of State Corporations and Semi-Autonomous Government Agencies*)
Clerk, National Assembly
Clerk, Senate
Chief Registrar of Judiciary
The Solicitor General
Chief Executive Officer, Council of Governors
All Holders of Independent Offices
All Secretaries, Constitutional Commissions

RE: ON-BOARDING OF GOVERNMENT SERVICES ON TO THE E-CITIZEN PLATFORM

On 30th June 2023, His Excellency the President unveiled an expanded array of e-citizen services that marked Kenya's watershed moment in the pursuit of digital transformation. Consequently, the eCitizen platform Unstructured Supplementary Service Data (USSD) code *2222# by which citizens can now access 5,084 government services online was launched. This significant milestone in Kenya's digital transformation aims to enhance the accessibility and efficiency of government services for the citizens.

Following the launch, His Excellency the President directed that **all** government departments onboard the remaining services onto the e-citizen platform within 90 days from the date of the launch, being **30th September 2023**.

Accordingly, and by way of this Circular, each Accounting Officer/Chief Executive Officer, is directed to take the necessary steps to ensure the implementation of the Presidential directive.

You are further directed to submit to this office, a periodic report every two (2) weeks, explaining in detail the progress made in onboarding the remaining government services onto the e-citizen platform. This information should be availed in hard and soft copy to:

The Chief of Staff and Head of Public Service
Att: Ms. Leah Kasera
Harambee House
Tel: 2227411 Ext.22352
NAIROBI
Email: cos.hbps@president.go.ke

You are also directed to ensure that all **Ministries, Counties, Departments and Agencies** (MCDAs) payments are migrated to the single government digital payment platform **Paybill Number 222222**, and all **other payment platforms are shut down within 30 days of this circular.**

Accounting Officers across government are further directed to ensure the contents of this Circular are brought to the attention of all institutions under their State Departments and/or supervision; as well as ensure full implementation and compliance with the same.



FELIX K. KOSKEI
CHIEF OF STAFF & HEAD OF PUBLIC SERVICE

Copy To: All Cabinet Secretaries
The Attorney General
Secretary to the Cabinet
Chairperson, Council of Governors
All Chairpersons, Constitutional Commissions
All Chairpersons, State Corporations

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ANNEXURE

B0-3



REPUBLIC OF KENYA

MINISTRY OF INFORMATION, COMMUNICATIONS AND THE DIGITAL ECONOMY

Office of the Cabinet Secretary

Telephone: +254-20-4920000/100 Fax: +254-20-3316004 Email: cabinet.secretary@mti.go.ke

Telposita Towers, 10th Floor P. O. Box 30025-00100 NAIROBI - KENYA

When replying please quote:

27th July, 2023

STATEMENT ON ATTACK ON THE E-CITIZEN PLATFORM

The Government of Kenya would like to make the following statement regarding the e-Citizen Platform:

- 1. Over the past one week, there have been unsuccessful cyber attacks attempts targeting both the Government and the Private sectors.
2. The e-Citizen Portal is among the targets of these unsuccessful attacks. The attack on the e-Citizen platform entailed an unsuccessful attempt to overload the system through extraordinary requests, with the intention of clogging it, but our technical teams blocked the source IP address where the requests were emanating from. For clarity, both the privacy and security of data were not compromised. The system was not hacked.
3. As a consequence of the attack efforts, however, the system has been experiencing intermittent interruptions that are affecting the normal speed in accessing services on the Platform. These attempts have, however, been rebuffed by the security systems and applications in place. Shortly, we will revert to optimal utilization levels.
4. The relevant Government of Kenya agencies are on high alert and have enhanced the security of the e-Citizen portal and all Government Services Sites. All Systems and Portals under the control of the Government of Kenya are safe.
5. The Government will continue its cyber surveillance efforts and encourages the Public and Private sectors to heighten their cyber surveillance efforts so that jointly, we secure Kenya's Cyberspace.

Handwritten signature and date 27/07/23

Page 1 of 2

STATEMENT ON ATTACK ON THE E-CITIZEN PLATFORM

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25 minutes ago 28



EDUCATION

Mwingi West Member of Parliament Attacks TSC Over Teachers Pay Discrepancy

28 minutes ago 68

Handwritten legal notes: 'This is the Exhibit marked B023 referred to in the annexed Affidavit / Declaration of Bonavent Githa... sworn before me this 20th day of August 2023 at... COMMISSIONER FOR OATHS'

CAREER-JOBS

Ugandan Employer Explains The Reasons Why He Prefers Kenyan Workers

32 minutes ago 24

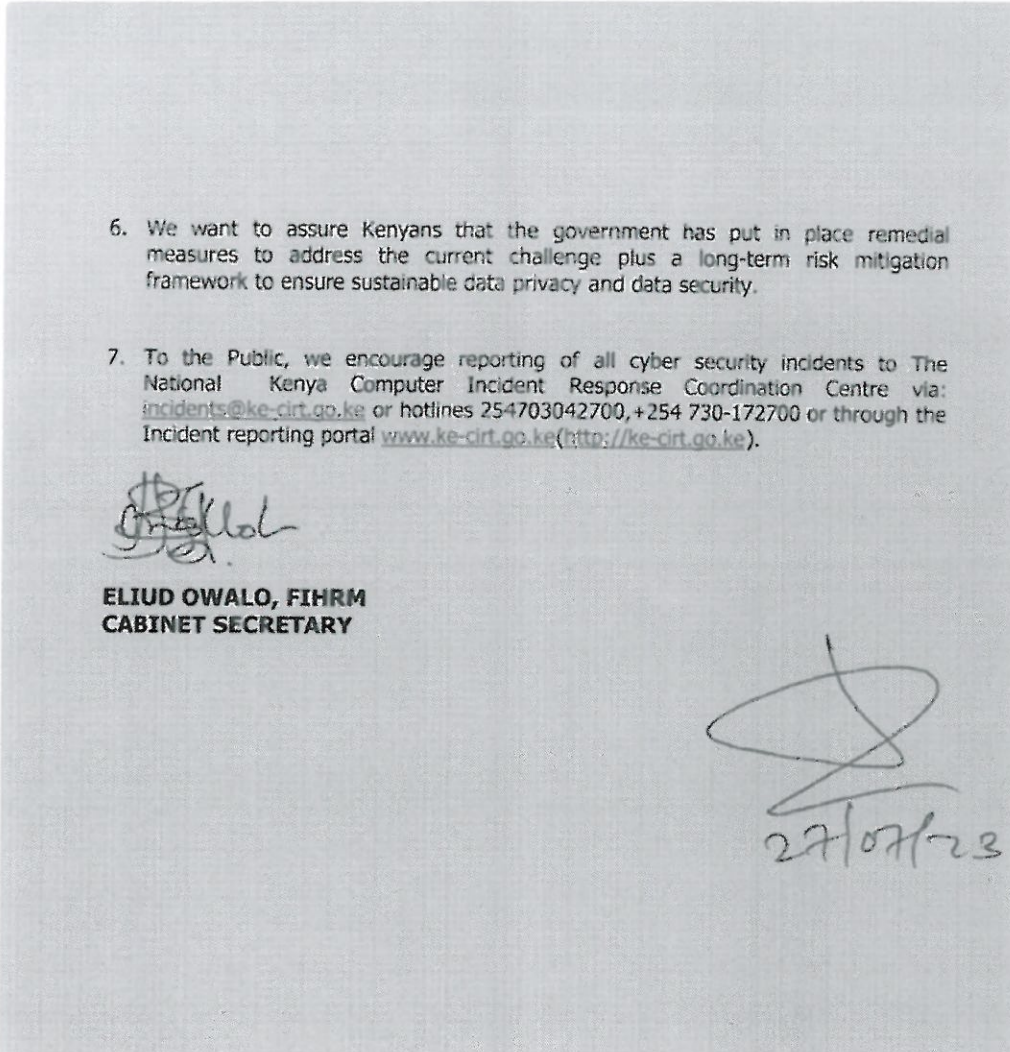
EDUCATION

Helping Underage Students Access Education: A Closer Look at HELB's New Funding Model

41 minutes ago 4

Large handwritten number 29

5. The Government will continue its cyber surveillance efforts and encourages the Public and Private sectors to heighten their cyber surveillance efforts so that jointly, we secure Kenya's Cyberspace.



POLITICS

Kenya Passes Law That Blocks Employers From Calling Employees On Work Matters After Work...

1 hour ago 52

MILITARY

Ruto's Government Will Fix Insecurities In The North Rift, Duale Says

1 hour ago 0

6. We want to assure Kenyans that the government has put in place remedial measures to address the current challenge plus a long-term risk mitigation framework to ensure sustainable data privacy and data security.

7. To the Public, we encourage reporting of all cyber security incidents to The National Kenya Computer Incident Response Coordination Centre via: incidents@ke-cirt.go.ke or hotlines 254703042700,+254 730-172700 or through the Incident reporting portal www.ke-cirt.go.ke(https://ke-cirt.go.ke).

ELIUD OWALO, FIHRM

CABINET SECRETARY

Content created and supplied by: SadiqSaad (via Opera News)

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[Eliud Owalo](#)

[Kenya](#)

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[e-Citizen Portal](#)

HEALTH

How Pig Kidney Can Function In A Human For A Month.

2 hours ago 12

COMMENTS