

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
MILIMANI LAW COURTS
PETITION NO. _____ OF 2022

IN THE MATTER OF: ARTICLES 1, 2(1) AND 2(2), 3(1), 22, 23, 48, 50(1), 80, 93, 152, 153(4)(a), 156(1), (4) AND (6), 159(1) AND (2), 160(1), 165(1), (3)(a), (b) AND (d), 258, 259 AND 260 OF THE CONSTITUTION OF KENYA, 2010.

IN THE MATTER OF: ALLEGED THREAT TO AND VIOLATION OF ARTICLES 1, 2(1) AND (2), 3(1), 10, 73, 74, 75, 94(4), 152(4)(a), 153(4)(a), 156(6), 232(1) AND (2) AND 249(1) AND (2) OF THE CONSTITUTION OF KENYA, 2010.

IN THE MATTER OF: ALLEGED THREAT TO AND VIOLATION OF THE BILL OF RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ARTICLES 19, 20, 21, 24, 27, 28, 31, 33, 34, 35, 43, 46, 47, 53, 54, 55, 56 AND 57 OF THE CONSTITUTION OF KENYA, 2010.

IN THE MATTER OF: ALLEGED CONTRAVENTION OF SECTIONS 27A AND 27D, KENYA INFORMATION AND COMMUNICATIONS ACT, 1998, SECTION 24, STATUTORY INSTRUMENTS ACT, 2013, SECTIONS 25, 26, 27, 29, 30, 31, 32, 36, 38, 39 40 AND 44, DATA PROTECTION ACT, 2019.

IN THE MATTER OF: CONSTITUTIONAL VALIDITY OF SECTIONS 5B (5), 27 AND 27D, KENYA INFORMATION AND COMMUNICATION ACT, 1998.

IN THE MATTER OF: CONSTITUTIONAL VALIDITY OF KENYA INFORMATION AND COMMUNICATION REGULATIONS (REGISTRATION OF SUBSCRIBERS OF TELECOMMUNICATIONS SERVICES) REGULATIONS, 2014 – LEGAL NOTICE NO. 10 OF 2014.

IN THE MATTER OF: CONSTITUTIONAL VALIDITY OF KENYA INFORMATION AND COMMUNICATION REGULATIONS (REGISTRATION OF SUBSCRIBERS OF TELECOMMUNICATIONS SERVICES) REGULATIONS, 2015 – LEGAL NOTICE NO. 163 OF 2015.

IN THE MATTER OF: CONSTITUTIONAL VALIDITY OF REGULATIONS 5(1)(g), 12 AND 15(6), KENYA INFORMATION AND COMMUNICATION (REGISTRATION OF SIM-CARDS) REGULATIONS, 2015 – LEGAL NOTICE NO. 163 OF 2015

IN THE MATTER OF: CONSTITUTIONAL VALIDITY OF DIRECTIVE REQUIRING REGISTERED MOBILE TELEPHONE SERVICE SUBSCRIBERS TO REGISTER AFRESH.

IN THE MATTER OF: CONSTITUTIONAL VALIDITY OF DIRECTIVE REQUIRING NATURAL PERSONS SEEKING TO REGISTER AS MOBILE TELEPHONE SERVICE SUBSCRIBERS MUST, AS A PRE-CONDITION OF SUCH REGISTRATION, ALLOW THE TAKING, PROCESSING AND RETENTION OF THEIR PHOTOGRAPHS BEFORE THEY CAN REGISTER.

IN THE MATTER OF: THE DOCTRINES OF LEGITIMATE EXPECTATION, ULTRA VIRES AND VOID AB INITIO.

BETWEEN

ELIUD KARANJA MATINDI -----PETITIONER

~VERSUS~

COMMUNICATIONS AUTHORITY OF KENYA-----1ST RESPONDENT

**CABINET SECRETARY, MINISTRY OF INFORMATION, COMMUNICATION
AND TECHNOLOGY-----2ND RESPONDENT**

THE DATA PROTECTION COMMISSIONER-----3RD RESPONDENT

KENYA NATIONAL COMMISSION ON HUMAN RIGHTS-----4TH RESPONDENT

NATIONAL GENDER AND EQUALITY COMMISSION-----5TH RESPONDENT

COMMISSION ON ADMINISTRATIVE JUSTICE-----6TH RESPONDENT

HON. ATTORNEY-GENERAL OF THE REPUBLIC OF KENYA-7TH RESPONDENT

SAFARICOM PLC-----8TH RESPONDENT

AIRTEL NETWORKS KENYA LIMITED-----9TH RESPONDENT

NATIONAL ASSEMBLY OF THE REPUBLIC OF KENYA-----10TH RESPONDENT

AND

TELKOM-----INTERESTED PARTY

PETITION

**THE HONOURABLE JUDGE
THE HIGH COURT OF KENYA
NAIROBI**

THE HUMBLE PETITION OF ELIUD KARANJA MATINDI IS AS FOLLOWS:

A. PARTICULARS OF THE PETITIONER.

- 1.** The **PETITIONER, ELIUD KARANJA MATINDI**, is an adult citizen of Kenya, currently resident in **POOLE** in the local authority area of **Bournemouth, Christchurch and Poole** in the United Kingdom of Great Britain and Northern Ireland. He is a public-spirited individual, a champion and defender of the Constitution of Kenya, 2010. He desires to see full and faithful implementation of the Constitution, as the only basis for the realisation of aspirations of the people of Kenya for a government and society that is based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law. He brings this suit on own behalf in the public interest in defence of the Constitution.

- 2.** The Petitioner's address of service for the purpose of this Petition is by E-mail address bavance13@gmail.com.

B. PARTICULARS OF THE RESPONDENTS AND INTERESTED PARTY

- 3.** The **1ST RESPONDENT**, the **COMMUNICATIONS AUTHORITY OF KENYA [CAK]**, is a statutory body established under **Section 3, Kenya Information and Communications [hereinafter referred to as KICA, 1998] Act, 1998**. The object and purpose of CAK includes to licence and regulate information and communication services in the country in accordance with the provisions of the Act.

- 4.** The 1st Respondent is sued in these proceedings for issuing a Directive to mobile telephone service providers that it licenses and regulates (including the 8th and 9th Respondents and the Interested Party), requiring them to carry out fresh registration of all their mobile telephone service subscribers, including subscribers who have already registered for such services. The 1st Respondent's Directive further requires the mobile telephone service

providers that it licenses and regulates (including the 8th and 9th Respondents and the Interested Party), to suspend the services of any of their subscribers who will not have registered as required from **15.04.2022**, with deactivation of service ninety days after such suspension, if still not registered.

- 5.** The 1st Respondent is further sued in these proceedings for unconstitutionally and unnecessarily requiring the 8th and 9th Respondents and the Interested Party and their respective agents to collect, process and retain photographic images of natural persons who are or wish to be subscribers of mobile telephone services that it licenses and regulates, as a precondition of the mandatory registration of SIM cards.
- 6.** The 1st Respondent is, additionally, sued for overseeing the unconstitutional and unlawful requirements that mobile telephone subscribers must disclose any other mobile telephone numbers registered to them, including with other mobile telephone service providers, when registering for a mobile telephone service. The 1st Respondent further unconstitutionally and unlawfully oversees and requires indefinite retention of a mobile telephone service subscriber's records after the deactivation of the service. The 1st Respondent has also violated the Petitioner's right to access to information.
- 7.** The 1st Respondent is also sued for exercising non-existent powers and issuing the **Kenya Information and Communication Regulations (Registration of Subscribers of Telecommunications Services) Regulations, 2015 – Legal Notice No. 163 of 2015**.
- 8.** The 1st Respondent's address of service for purpose of this Petition is, in addition to through the 2nd and 7th Respondents, by E-mail address info@ca.go.ke.
- 9.** The **2ND RESPONDENT, CABINET SECRETARY, MINISTRY OF INFORMATION, COMMUNICATION AND TECHNOLOGY**, is a State officer established by Article 152 of the Constitution and is, for the time being, the person responsible for information, communication and technology under **KICA, 1998**.
- 10.** The 2nd Respondent is sued in these proceedings for being the beneficiary of unconstitutional powers under **KICA, 1998**, including **Sections 5B (5), 27 and 27D**.

- 11.** The 2nd Respondent's address of service for purpose of this Petition, on their own behalf and on behalf of the 3rd Respondent is, in addition to being through the 7th Respondent, by E-mail address info@information.go.ke.
- 12.** The **3RD RESPONDENT, THE DATA PROTECTION COMMISSIONER**, is the head and accounting officer of the State office established by **Section 5, Data Protection Act [DPA], 2019**.
- 13.** The 3rd Respondent is sued in these proceedings, as the enforcement agency of the **DPA, 2019** which was enacted to give effect to **Article 31(c) and (d)** of the Constitution of Kenya, for failing to stop violation of the right to privacy of mobile telephone subscribers affected by the impugned Directive from the 1st Respondent and implemented by the 8th and 9th Respondents.
- 14.** The 3rd Respondent is further sued in these proceedings by overseeing and allowing the unconstitutional requirement for unnecessary disclosure and indefinite retention of the personal information of mobile telephone service subscribers.
- 15.** The 3rd Respondent is, in addition, sued for failing to ensure compliance by the 1st, 8th and 9th Respondents to carry out data protection impact assessments in relation to the impugned Directive.
- 16.** The 3rd Respondent's address of service for the purpose of this Petition, in addition to being through the 2nd and 7th Respondents, is by the E-mail address – info@odpc.go.ke
- 17.** The **4TH RESPONDENT, KENYA NATIONAL COMMISSION ON HUMAN RIGHTS**, is a constitutional commission established pursuant to **Article 59(4)** of the Constitution of Kenya, as read together with **Articles 248(2)(a) and 249**, and **Sections 3 and 4** of the **Kenya National Commission on Human Rights Act, 2011**.
- 18.** The 4th Respondent has been sued in these proceedings for failing to fulfil its constitutional and statutory functions, including to, among others, promote respect for human rights and develop a culture of human rights in the Republic and promote the protection and observance of human rights in public and private institutions. This is by failing to challenge the impugned Directive from the 1st Respondent that all mobile telephone

subscribers must register afresh their mobile telephone SIM cards and, as a precondition of such registration, natural persons must consent to have their photographs taken, processed and retained. Failure to comply with this Directive would lead to the suspension of mobile telephone services for those affected from **15.04.2022** and, subsequently, deactivation of the service after ninety days from the date of suspension, if still not compliant.

19. The 4th Respondent's address of service for the purpose of this Petition, in addition to being through the 7th Respondent, is by the E-mail address haki@knchr.org.

20. The 5TH RESPONDENT, NATIONAL GENDER AND EQUALITY COMMISSION, is a constitutional commission established pursuant to **Article 59(4) of the Constitution of Kenya, as read together with **Articles 248(2)(a)** and **249**, and **Sections 3** and **4** of the **National Gender and Equality Commission Act, 2011**.**

21. The 5th Respondent has been sued in these proceedings for failing to challenge the impugned Directive of the 1st Respondent requiring that natural persons wishing to register as mobile telephone service subscribers must consent to having their photographs taken, processed and retained as a precondition of registering for such services, failure to which their services would be suspended from **15.04.2022 and, thereafter, deactivated.**

22. The planned unconstitutional and unlawful suspension and subsequent deactivation of the mobile telephone services of the affected persons would seriously impinge on the 5th Respondent's abilities to fulfil and ensure protection of matters within its constitutional and statutory functions, including to, among others, promote gender equality and freedom from discrimination in accordance with **Article 27 of the Constitution, to monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions and to co-ordinate and facilitate mainstreaming of issues of gender, persons with disability and other marginalised groups in national development and to advise the Government on all aspects thereof.**

23. The 5th Respondent's address of service for the purpose of this Petition, is, in the first instance, through the 7th Respondent.

- 24.** The **6TH RESPONDENT, COMMISSION ON ADMINISTRATIVE JUSTICE**, is a constitutional commission established pursuant to **Article 59(4)** of the Constitution of Kenya, as read together with **Articles 248(2)(a)** and **249**, and **Sections 3** and **4** of the **Commission on Administrative Justice Act, 2011**.
- 25.** The 6th Respondent has been sued in these proceedings for failing to fulfil its constitutional and statutory functions, including to investigate any conduct in state affairs, or any act or omission in public administration by any State organ, State or public officer in National and County Governments that is alleged or suspected to be prejudicial or improper or is likely to result in any impropriety or prejudice. This is by failing to challenge the impugned Directive from the 1st Respondent that all mobile telephone subscribers must register afresh their mobile telephone SIM cards and, as a precondition of such registration, natural persons must consent to have their photographs taken, processed and retained. Failure to comply with this Directive would lead to the suspension of mobile telephone services for those affected from **15.04.2022** and, subsequently, deactivation of the service after ninety days from the date of suspension if still not compliant.
- 26.** The 6th Respondent's address of service for the purpose of this Petition, in addition to being through the 7th Respondent, is by the E-mail address info@ombudsman.go.ke.
- 27.** The **7TH RESPONDENT, THE HON. ATTORNEY-GENERAL OF THE REPUBLIC OF KENYA**, is a State officer and head of the constitutional office established by **Article 156 of the Constitution**.
- 28.** The 7th Respondent is sued in this Petition as the principal legal adviser to the Government, with the responsibility for ensuring compliance by the Government of Kenya with the Constitution and all the other laws of Kenya.
- 29.** The 7th Respondent is also sued as the representative of the national government in court or in any other legal proceedings to which the national government is a party, other than criminal proceedings.
- 30.** Further, the 7th Respondent is sued for failing to discharge his duty to promote, protect and uphold the rule of law and defend the public interest.

31. The 7th Respondent's address of service for the purpose of this Petition, on their own behalf and on behalf of the 1st to 6th Respondents, is through their E-mail addresses slo@ag.go.ke, info@ag.go.ke and communications@ag.go.ke.

32. The **8TH RESPONDENT, SAFARICOM PLC**, is a telecommunications company licensed and regulated by the 1st Respondent to, among others things, provide mobile telephone services in Kenya. Their registered office is given as Safaricom House, Waiyaki Way, Westlands, Nairobi.

33. The 8th Respondent has been sued in these proceedings for unconstitutionally implementing the impugned Directive from the 1st Respondent and requiring all its registered mobile telephone service subscribers to freshly register their SIM cards. As a precondition for this fresh registration, all natural persons must submit to have their photographs taken, processed and retained. Failure to meet these conditions will lead to the suspension of the affected subscriber's SIM cards and services from **15.04.2022** and, if still not compliant, deactivation of the SIM cards and services ninety days from the date of suspension.

34. The 8th Respondent is further sued for unconstitutionally and unlawfully requiring people applying to register as mobile telephone service subscribers to disclose all other telephone numbers registered under their names, including those registered with other mobile telephone service providers. The 8th Respondent is, in addition, sued for unconstitutionally retaining personal records and information of mobile telephone subscribers whose services have been deactivated, for an indefinite period of time.

35. The 8th Respondent's address of service for the purpose of this Petition is, in the first instance, through E-mail addresses ceo@safaricom.co.ke and dataprotectionoffice@safaricom.co.ke.

36. The **9TH RESPONDENT, AIRTEL NETWORKS KENYA LIMITED**, is a telecommunications company licensed and regulated by the 1st Respondent to, among others things, provide mobile telephone services in Kenya. Their head office address is given as Parkside Towers, Mombasa Road, Nairobi.

37. The 9th Respondent has been sued in these proceedings for unconstitutionally implementing the impugned Directive from the 1st Respondent and requiring all its registered mobile telephone service subscribers to freshly register their SIM cards. As a precondition for this fresh registration, all natural persons must submit to have their photographs taken, processed and retained. Failure to meet these conditions will lead to the suspension of the affected subscriber's SIM cards and services from **15.04.2022** and, if still not compliant, deactivation of the SIM cards and services ninety days from the date of suspension.

38. The 9th Respondent is further sued for unconstitutionally and unlawfully requiring people applying to register as mobile telephone service subscribers to disclose all other telephone numbers registered under their names, including those registered with other mobile telephone service providers. The 9th Respondent is, in addition, sued for unconstitutionally retaining personal records and information of mobile telephone subscribers whose services have been deactivated, for an indefinite period of time.

39. The 9th Respondent's address of service for the purpose of this Petition is through the E-mail address customerservice@ke.airtel.com and aml@ke.airtel.com.

40. The **10TH RESPONDENT, NATIONAL ASSEMBLY OF THE REPUBLIC OF KENYA**, is a State organ established by **Article 93** of the Constitution.

41. As provided by **Articles 94, 95, 185(2) and 186(1)**, as read together with Part 1 of the Fourth Schedule of Constitution of Kenya, the 10th Respondent has the powers to make provision having the force of law in Kenya, including **KICA, 1998**.

42. The 10th Respondent is sued in these proceedings for enacting unconstitutional provisions of the law, namely, **Sections 5B (5), 27 and 27D, KICA, 1998**, the **Kenya Information and Communication Regulations (Registration of Subscribers of Telecommunications Services) Regulations, 2014 – Legal Notice No. 10 of 2014**, the **Kenya Information and Communication Regulations (Registration of Subscribers of Telecommunications Services) Regulations, 2015 – Legal Notice No. 163 of 2015** and **Regulations 5(1)(g), 12 and 15 (6), Kenya Information and Communication Regulations (Registration of Subscribers of Telecommunications Services) Regulations, 2015 – Legal Notice No. 163 of 2015**.

43. The 10th Respondent's address of service for the purpose of this Petition is through its litigation E-Mail address - nationalassembly.litigation@gmail.com.

44. The **INTERESTED PARTY, TELKOM**, is a telecommunications company licensed and regulated by the 1st Respondent to, among others things, provide mobile telephone services in Kenya. Their head office is given as Telkom Plaza, Ralph Bunche Road, Nairobi.

45. The Interested Party has been enjoined in this Petition as they have identifiable stake or legal interests in these proceedings.

46. The Interested Party's address of service for the purpose of this Petition is through the E-mail address externalrelations@telkom.co.ke.

C. THE PETITIONER'S STANDING TO COMMENCE THESE PROCEEDINGS AND THE HONOURABLE COURT'S JURISDICTION.

47. As stated in the **Preamble** to the Constitution of Kenya, the Petitioner, alongside the other people of Kenya, aspires for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law.

48. Under **Article 3(1)** of the Constitution of Kenya, the Petitioner, the Respondents, the Interested Party and this Honourable Court, are all under an obligation to respect, uphold and defend the Constitution.

49. Under **Article 22** of the Constitution of Kenya, the Petitioner has the right to institute court proceedings, including in the public interest, claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed or is threatened.

50. Under **Article 23** of the Constitution of Kenya, this Honourable Court has jurisdiction, in accordance with **Article 165**, to hear and determine applications for redress of a denial, violation, or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.

51. Under **Article 165(3)(d)(i), (ii) and (iii)** of the Constitution of Kenya, the High Court has jurisdiction to hear, among others, any question respecting the interpretation of the

Constitution, including the determination of the question whether any law is inconsistent with or in contravention of the Constitution, whether anything said to be done under the authority of the Constitution or of any law is inconsistent with, or in contravention of the Constitution.

52. Under **Article 258** of the Constitution of Kenya, the Petitioner has the right to institute court proceedings, including in the public interest, claiming that the Constitution has been contravened, or is threatened with contravention.

53. Articles **1(3)(c), 4(2), 10, 20(3) and (4), 22, 23, 50(1), 159, 165, 258 and 259** of the Constitution of Kenya, as read together with **Section 5 of the High Court (Organization and Administration) Act, 2015**, vest jurisdiction in the High Court, to, inter alia, hear any question regarding the violation of rights and fundamental freedoms, determining if acts or omissions are constitutional and the interpretation of the Constitution, including questions of contradiction between any law and the Constitution, and to protect the Constitution from any threats or violations.

D. THE FACTS RELIED UPON IN THIS PETITION.

54. On **24.02.2022**, the Petitioner submitted an application for information under the **Access to Information Act, 2016**, to the 1st Respondent asking for a copy of a claimed Directive requiring telecommunication operators in the country to carry out fresh registration of all their mobile telephone service subscribers. The claimed Directive also required the telecommunication operators to collect, process, record and retain photographic images of their mobile telephone services subscribers. The request for information further asked the 1st Respondent to provide the legal basis for imposing the claimed Directive.

55. The request was submitted via E-mail as well as a direct message to the 1st Respondent's verified Twitter account – **@CA_Kenya**.

56. On **25.02.2022**, the Petitioner received a direct message from the 1st Respondent's verified Twitter account – **@CA_Kenya**, acknowledging receipt of the application for information, with advise that a response would be provided in due course.

- 57.** As of the date of the filing of this Petition, the Petitioner has not received the information requested from the 1st Respondent.
- 58.** On **04.03.2022**, the Petitioner submitted a request for information under the **Access to Information Act, 2016**, to the 8th Respondent. The request was for a copy of the claimed Directive from the 1st Respondent requiring the 8th Respondent to record and keep photographic images of their mobile telephone subscribers. The request was submitted via an email address provided through the 8th Respondent's verified customer care Twitter account - **@Safaricom_Care**.
- 59.** On **11.03.2022** and, in response to the Petitioner's request for information, the 8th Respondent confirmed that they collected and recorded photographic images of their subscribers to ensure all customer identification documents were in line with the **Registration of SIM Cards Regulations (2015)**.
- 60.** They further stated that collection of photographic images was also for security purposes as part of their KYC (Know Your Customer) process to safeguard their customers as well as for due diligence in accordance with Anti-Money Laundering purposes.
- 61.** On **11.03.2022** and, in a further request for information under the **Access to Information Act, 2016**, the Petitioner requested the 8th Respondent to provide or direct the Petitioner to where they could find a copy of their Data Protection Impact Assessment, as required by **Section 31 of the Data Protection Act, 2019**, with regards to the collection and recording of photographic images of their subscribers. The Petitioner further asked the 8th Respondent to provide details of their designation as a relevant body for the purposes of the **Proceeds of Crime and Anti-Money Laundering Act, 2009**.
- 62.** As of the date of the filing of this Petition, the Petitioner has not received the additional requested information from the 8th Respondent.
- 63.** In a message posted on its verified Twitter account - **@Airtel_Kenya** – on **09.03.2022**, the 9th Respondent confirmed that, like the 8th Respondent, it too was collecting photographs of its subscribers as part of the verification and updating of their SIM registration details as per the requirements from the 3rd Respondent.

64. In a series of exchanges between the Petitioner and the Interested Party through its (Interested Party's) verified Twitter account - **@TelkomKenya** – on **13.03.2022**, the Interested Party confirmed it was doing details updating in compliance with the communication authority of Kenya (sic) and was requiring its mobile telephone service subscribers to upload photos of their IDs on both sides (sic) using a designated link on their website.

65. Available information indicates that the 1st Respondent has ordered the 8th and 9th Respondents and, in every likelihood, the Interested Party, to suspend mobile telephone and related services to any subscribers, including those already registered, who would not have registered afresh and, as a precondition of this registration, submitted to have their photographs taken, processed and retained as a precondition of the SIM registration process, by **15.04.2022**. Suspended SIM cards would then be deactivated after ninety days, with the personal records and information of the previously-registered owners of those SIM cards retained for an indefinite period.

E. THE LEGAL FOUNDATIONS OF THIS PETITION INCLUDE:

66. Article 1 of the Constitution which provides that all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with the Constitution. The people of Kenya may exercise their sovereign power either directly or through their democratically elected representatives.

67. Article 2 of the Constitution which provides for the supremacy of the Constitution and that it binds all persons and all state organs at both levels of government. The Article further decrees that no person may claim or exercise State authority except as authorised under the Constitution.

68. Article 3 (1) of the Constitution which states that every person has an obligation to respect, uphold and defend the Constitution.

69. Article 10(1) of the Constitution which states that the national values and principles of governance, as set out in **Article 10 (2)**, bind all State organs, State officers, public officers and all persons whenever any of them applies or interpret the Constitution; enacts, applies or interprets any law; or makes or implements public policy decisions.

70. Article 10 (2) of the Constitution which states that the national values and principles of governance include patriotism, sharing and devolution of power, the rule of law, democracy, participation of the people, human dignity, equity, social justice, inclusiveness, equality, human rights, protection of the marginalised, good governance, integrity, transparency, accountability and sustainable development.

71. Article 19 of the Constitution which provides that the Bill of Rights is an integral part of Kenya's democratic state and is the framework for social, economic and cultural policies. The purpose of recognising and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities, to promote social justice and the realisation of the potential of all human beings. The Article further provides that the rights and fundamental freedoms in the Bill of Rights belong to each individual and are not granted by the State, do not exclude other rights and fundamental freedoms not in the Bill of Rights, but recognised or conferred by law (except to the extent that they are inconsistent with Chapter Four of the Constitution), and are subject only to the limitations contemplated in the Constitution.

72. Article 20 of the Constitution which states, among others, that the Bill of Rights applies to all law, binds all State organs and all persons and that every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom.

73. Article 21 of the Constitution which, among others, imposes a mandatory, positive duty on the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights. The Article requires the State to take legislative, policy and other measures, including the setting of standards, to achieve the progressive realisation of the rights guaranteed under **Article 43**. This duty includes ensuring legislative or administrative actions, whether by the State or by any other person, do not threaten, undermine or regress the rights guaranteed under **Article 43**. The Article further imposes a duty on all State organs and all public officers to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalised communities and members of particular ethnic, religious or cultural communities.

- 74. Article 22** of the Constitution, as read together with **Article 258**, which states that every person has the right to institute court proceedings, on their behalf or on behalf of others, including acting in the public interest, claiming that a right or fundamental freedom in the Bill of Rights and/or other provisions of the Constitution have been denied, violated or infringed, or are threatened with contravention.
- 75. Article 23** of the Constitution, as read together with **Article 165**, which vests this Honourable Court with the jurisdiction to hear and determine applications for redress of a denial, violation, infringement of, or threat to a right or fundamental freedom or other provisions of the Constitution. It also provides the remedies that the court can award in its endeavour to enforce the Bill of Rights.
- 76. Article 24** of the Constitution which sets out under what circumstances a right or fundamental freedom in the Bill of Rights may be limited.
- 77. Article 27** of the Constitution which enshrines equality and freedom from discrimination. The Article, which prohibits discrimination on any ground, binds the State and all persons.
- 78. Article 28** of the Constitution which enshrines every person's right to inherent dignity and the right to have that dignity respected and protected.
- 79. Article 31** of the Constitution which enshrines that every person has a right to privacy, which includes the right not to have information relating to their private affairs unnecessarily required or revealed.
- 80. Article 33** which enshrines freedom of expression, including the right to seek, receive or impart information or ideas.
- 81. Article 34** which guarantees freedom of the media.
- 82. Article 35(1)** of the Constitution which enshrines the right of every citizen to access information held by the State and by another person and required for the exercise or protection of any right or fundamental freedom. **Article 35(3)** further requires the State to publish and publicise any important information affecting the nation.
- 83. Article 43** which guarantees the right to economic and social rights. These include the right to highest attainable standard of health, accessible and adequate housing, reasonable

standards of sanitation, freedom from hunger, adequate food of acceptable quality, clean and safe water in adequate quantities, social security and education.

84. Article 46 which guarantees the rights of consumers of goods and services, including their economic interests, whether offered by the State or private persons.

85. Article 47 which enacts the right to fair administrative action.

86. Article 48 which enshrines the State's duty to ensure access to justice for all persons.

87. Article 50(1) of the Constitution which provides that every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.

88. Article 53 which elaborates to bring greater certainty to the rights and fundamental freedoms enjoyed by children.

89. Article 54 which elaborates to bring greater certainty to the rights and fundamental freedoms enjoyed by persons with disabilities.

90. Article 55 which elaborates to bring greater certainty to the rights and fundamental freedoms enjoyed by the youth.

91. Article 56 which elaborates to bring greater certainty to the rights and fundamental freedoms enjoyed by minorities and marginalised groups.

92. Article 57 which elaborates to bring greater certainty to the rights and fundamental freedoms enjoyed by older members of society.

93. Article 59 which provides for the Kenya National Human Rights and Equality Commission, including its functions and options for its restructuring.

94. Article 73 which, among others, enshrines that authority assigned to a State officer is a public trust to be exercised in a manner that is consistent with the purposes and objects of the Constitution, demonstrates respect for the people, brings honour to the nation and dignity to the office and promotes public confidence in the integrity of the office. Further

this authority vests in the State officer the responsibility to serve the people, rather than the power to rule them.

95. Article 75 of the Constitution, which sets the expected standard of conduct of State officers, including prohibition on conduct which demeans the office the officer holds.

96. Article 80 of the Constitution which among others, require enactment of legislation to, with the necessary modifications, apply the provisions of Chapter Six of the Constitution to public officers.

97. Article 93 of the Constitution which establishes the National Assembly as part of the Parliament of Kenya.

98. Article 94 of the Constitution which sets out the role of Parliament.

99. Article 95 of the Constitution which sets out the role of the National Assembly.

100. Article 152 of the Constitution which provides for the Cabinet of the Republic of Kenya.

101. Article 153 of the Constitution which provides for the decisions, responsibilities and accountability of the Cabinet, including that Cabinet Secretaries must act in accordance with the Constitution.

102. Article 156 of the Constitution which establishes and sets out the duties, powers and responsibilities of the Attorney-General.

103. Article 159 of the Constitution that provides for judicial authority, which is derived from the people, and vests in, and shall be exercised by, the courts and tribunals established by or under the Constitution.

104. Article 165(1) and (3) of the Constitution which, among others, establishes this Honourable Court and vests it with jurisdiction to hear and determine this Petition.

105. Article 232 of the Constitution which provides for, among others, the values and principles of public service, including high standards of professional ethics, responsive, prompt, effective, impartial and equitable provision of services, involvement of the people

in the process of policy making, accountability for administrative acts, transparency and provision to the public of timely, accurate information. The Article further provides that the values and principles of public service apply to public service in all State organs in both levels of government and to all State corporations, including the Respondents and the Interested Parties.

106. **Article 248** of the Constitution, which sets out the relevant commissions and independent offices for the purpose of Chapter Fifteen of the Constitution.

107. **Article 249** of the Constitution which sets out, among others, the objects and authority of independent the commissions and offices bound by Chapter Fifteen of the Constitution. These include protecting the sovereignty of the people, securing observance by all State organs of democratic values and principles, and promotion of constitutionalism.

108. **Article 258** of the Constitution, which enshrines the right of every person to institute court proceedings, including in the public interest, claiming that the Constitution has been contravened or is threatened with contravention.

109. **Article 259** of the Constitution which provides, among others, that the Constitution shall be interpreted in a manner that:

- a. Promotes its purposes, values and principles;
- b. Advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights;
- c. Permits the development of the law; and
- d. Contributes to good governance.

110. **Article 260** of the Constitution which provides for the interpretation of the Constitution.

111. The legal foundations of this Petition further include:

- a. **Section 2, Kenya Information and Communications Act, 1998.**
- b. **Section 3, Kenya Information and Communications Act, 1998**, which establishes the Communications Authority of Kenya.

- c. **Section 5, Kenya Information and Communications Act, 1998**, which sets the object and purpose of the Commission.
- d. **Section 5A, Kenya Information and Communications Act, 1998**, which establishes the independence of the Authority.
- e. **Section 5B, Kenya Information and Communications Act, 1998**, which reinforces the freedom of the media as enshrined in Article 34(1) and (2).
- f. **Section 5C, Kenya Information and Communications Act, 1998**, which empowers the Cabinet Secretary to issue policy guidelines of a general nature relating to the provisions of the Act.
- g. **Section 6, Kenya Information and Communications Act, 1998**, which establishes the Board of the Commission.
- h. **Section 7, Kenya Information and Communications Act, 1998**, which sets out the powers of the Commission's Board.
- i. **Section 24, Kenya Information and Communications Act, 1998**, which imposes requirement for licenses under the Act for operation of telecommunication systems or provision of telecommunication services.
- j. **Section 25, Kenya Information and Communications Act, 1998**, which empowers the Commission, on application, to grant licences for the operation of telecommunication systems or provision of telecommunication services.
- k. **Section 27, Kenya Information and Communications Act, 1998**, which provides powers for the making regulations generally with regards to telecommunication services.
- l. **Section 27A, Kenya Information and Communications Act, 1998**, which imposes a duty on a telecommunications operator to obtain specified identification information from a person seeking to buy a SIM card or otherwise access telecommunication services provided by the telecommunications operator.

- m. **Section 27B, Kenya Information and Communications Act, 1998**, which empowers a telecommunications operator to use agents to register existing and new subscribers on behalf of the telecommunications operator.
- n. **Section 27C, Kenya Information and Communications Act, 1998**, which sets out the duties of telecommunication subscribers.
- o. **Section 27D, Kenya Information and Communications Act, 1998**, which empowers the Cabinet Secretary to make regulations to guide registration of SIM-cards.
- p. **Section 2, Proceeds of Crime and Anti-Money Laundering Act, 2009**, which defines which institutions are subject to the provisions of the Act.
- q. **Section 45, Proceeds of Crime and Anti-Money Laundering Act, 2009**, which imposes an obligation on designated institutions to verify the identity of their customers.
- r. **Section 3, Kenya National Commission on Human Rights Act, 2011**, which establishes the Commission.
- s. **Section 4, Kenya National Commission on Human Rights Act, 2011**, confirming the status of the Commission as a constitutional commission under Chapter Fifteen of the Constitution of Kenya.
- t. **Section 8, Kenya National Commission on Human Rights Act, 2011**, setting out the functions of the Commission, including promote the protection and observance of human rights in public and private institutions.
- u. **Section 3, National Gender and Equality Commission Act, 2011**, which establishes the Commission.
- v. **Section 4, National Gender and Equality Commission Act, 2011**, confirming the status of the Commission as a constitutional commission under Chapter Fifteen of the Constitution of Kenya.
- w. **Section 8, National Gender and Equality Commission Act, 2011**, setting out the functions of the Commission, including to monitor, facilitate and advise on

the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions.

- x. **Section 3, Commission on Administrative Justice Act, 2011**, which establishes the Commission.
- y. **Section 4, Commission on Administrative Justice Act, 2011**, confirming the status of the Commission as a constitutional commission under Chapter Fifteen of the Constitution of Kenya.
- z. **Section 8, Commission on Administrative Justice Act, 2011**, setting out the functions of the Commission, including to investigate any conduct in state affairs, or any act or omission in public administration by any State organ, State or public officer in National and County Governments that is alleged or suspected to be prejudicial or improper or is likely to result in any impropriety or prejudice.
- aa. **Section 3, Leadership and Integrity Act, 2012**, which sets out the primary purpose of the Act as to ensure that State officers respect the values, principles and requirements of the Constitution, including **Article 10, the Bill of Rights, Articles 73, 75 and 232**.
- bb. **Section 4, Leadership and Integrity Act, 2012**, which imposes a responsibility on every person to implement the provisions of the Act to the extent required by the Act.
- cc. **Section 7, Leadership and Integrity Act, 2012**, which requires State officers to respect and abide by the Constitution and the law, carry out their duties in accordance with the law and, in carrying out their duties, not to violate the rights and fundamental freedoms of any person unless otherwise expressly provided for in the law and in accordance with Article 24 of the Constitution.
- dd. **Section 8, Leadership and Integrity Act, 2012**, which provides that a State office is a position of public trust, with the authority and responsibility vested in a State officer to be exercised in the best interest of the people of Kenya.

- ee. **Section 9, Leadership and Integrity Act, 2012**, which, subject to the Constitution and any other law, imposes personal responsibility on State officers for the reasonably foreseeable consequences of any actions or omissions arising from the discharge of the duties of office.
- ff. **Section 10, Leadership and Integrity Act, 2012**, which legislates about performance of duties by State officers.
- gg. **Section 11, Leadership and Integrity Act, 2012**, which sets the professional standards required of State officers.
- hh. **Section 52, Leadership and Integrity Act, 2012**, which, subject to the exception therein, extends Chapter Six of the Constitution and Part II of the Act to all public officers as if they were State officers.
- ii. **Section 23, Statutory Instruments Act, 2013**, which provides for commencement of statutory instruments.
- jj. **Section 24, Statutory Instruments Act, 2013**, which provides for the exercise of powers.
- kk. **Section 3, Public Service (Values and Principles) Act, 2015**, which, among others, provides a general code on values and principles of public service.
- ll. **Section 4, Public Service (Values and Principles) Act, 2015**, which provides that the Act applies to the public service, in, among others, all State organs in the national government.
- mm. **Section 5, Public Service (Values and Principles) Act, 2015**, which requires public officers to maintain high standards of professional ethics.
- nn. **Section 6, Public Service (Values and Principles) Act, 2015**, which require public officers to ensure efficient, effective and economic use of resources.
- oo. **Section 7, Public Service (Values and Principles) Act, 2015**, which requires responsive, prompt, effective, impartial and equitable provision of services.

- pp. Section 8, Public Service (Values and Principles) Act, 2015**, which requires transparency and provision to the public of timely and accurate information.
- qq. Section 9, Public Service (Values and Principles) Act, 2015**, which make every public officer accountable for his or her administrative acts.
- rr. Section 2, Data Protection Act, 2019**, which provides an interpretation for some provisions of the Act, including biometric data, consent, data subject, personal data and sensitive personal data.
- ss. Section 3, Data Protection Act, 2019**, setting out the object and purpose of the Act.
- tt. Section 4, Data Protection Act, 2019**, setting out the application of the Act.
- uu. Section 5, Data Protection Act, 2019**, establishing the Office of the Data Protection Commissioner, a State office for the purpose of the Constitution, and the Data Commissioner as its head and accountable officer.
- vv. Section 8, Data Protection Act, 2019**, setting out the functions of the Office.
- ww. Section 9, Data Protection Act, 2019**, donating powers to the Office to enable it fulfil its mandate in accordance with the Constitution and the Act.
- xx. Section 15, Data Protection Act, 2019**, requiring the Data Commissioner to take the prescribed oath of office before assuming office.
- yy. Section 25, Data Protection Act, 2019**, setting out the principles of data protection.
- zz. Section 26, Data Protection Act, 2019**, which sets out the rights of a data subject.
- aaa. Section 27, Data Protection Act, 2019**, setting out how the rights of a data subject may be exercised.
- bbb. Section 29, Data Protection Act, 2019**, setting out the duties of a data controller or processor before collecting personal data.

- ccc. **Section 30, Data Protection Act, 2019**, which sets out what amounts to lawful processing of personal data.
- ddd. **Section 31, Data Protection Act, 2019**, on data protection impact assessments.
- eee. **Section 32, Data Protection Act, 2019**, on conditions of consent.
- fff. **Section 36, Data Protection Act, 2019** on objecting to processing of personal data by a data subject.
- ggg. **Section 38, Data Protection Act, 2019** on the right to data portability.
- hhh. **Section 39, Data Protection Act, 2019** on limitation to retention of personal data.
- iii. **Section 40, Data Protection Act, 2019**, on the right of rectification and erasure.
- jjj. **Section 44, Data Protection Act, 2019**, on restriction of processing of sensitive personal data.

F. VIOLATIONS OR INFRINGEMENT OF AND THREATS TO THE CONSTITUTION, [INCLUDING THE BILL OF RIGHTS], STATUTES, REGULATIONS AND OTHER APPLICABLE LAWS AND RULES.

112. The Petitioner submits the Respondents, by their acts or omissions, are in violation or infringement of and threat to the Constitution (including the Bill of Rights), statutes, Regulations and other applicable laws and rules by:

- a. Requiring mobile telephone service subscribers who have already registered their SIM cards with their service provider to register afresh.
- b. Requiring natural persons who wish to register as mobile telephone service subscribers to submit to their photographs being taken, processed and retained as a precondition of such registration.

- c. Requiring mobile telephone service subscribers to disclose all mobile telephone numbers already registered to them, including with other mobile telephone service providers as part of the registration process.
- d. Retaining for an indefinite period the personal information and records of persons whose mobile telephone services have been deactivated.
- e. Enacting **Sections 5B (5), 27 and 27D, KICA, 1998.**
- f. Continued enactment of **Kenya Information and Communication Regulations (Registration of Subscribers of Telecommunications Services) Regulations, 2014 – Legal Notice No. 10 of 2014.**
- g. Enacting **Kenya Information and Communication Regulations (Registration of Subscribers of Telecommunications Services) Regulations, 2015 – Legal Notice No. 163 of 2015.**
- h. Enacting **Regulations 5(1)(g), 12 and 15(6) Kenya Information and Communication Regulations (Registration of Subscribers of Telecommunications Services) Regulations, 2015 – Legal Notice No. 163 of 2015.**
- i. Planned suspension, from 15.04.2022, of mobile telephone services to registered subscribers who would not have freshly registered their SIM cards with their mobile telephone service providers, including the requirement for natural persons to accede to their photographs being taken, processed and retained as a precondition of the registration process, with such suspended services being deactivated ninety days after suspension.
- j. Violating the right of access to information.

G. NATURE OF INJURY CAUSED TO THE PETITIONER AND THE GENERAL PUBLIC DUE TO THE VIOLATIONS OR INFRINGEMENT OF AND THREATS TO THE CONSTITUTION, [INCLUDING THE BILL OF RIGHTS], STATUTES, REGULATIONS AND OTHER APPLICABLE LAWS AND RULES.

113. The foregoing disclosures are a violation or infringements of and threats to the following provisions of the Constitution (including the Bill of Rights), statutes, Regulations and other applicable laws and rules:

- a. **Article 1(1)**, which declares that all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with the Constitution.
- b. **Article 1(2)**, which empowers the people of Kenya to exercise their sovereign power either directly or indirectly through their democratically elected representatives.
- c. **Article 1(3)**, through which the people of Kenya have delegated their sovereign power to named State organs, including Parliament, the national executive and the Judiciary. These State organs are required to perform their functions in accordance with the Constitution.
- d. **Article 2(1)**, which declares the supremacy of the Constitution, that it binds all persons and all State organs.
- e. **Article 2(2)**, which restricts any person from claiming or exercising State authority except as authorised under the Constitution.
- f. **Article 2(4)**, which provides, among others, that any law that is inconsistent with the Constitution is void to the extent of the inconsistency, and any act or omission in contravention of the Constitution is invalid.
- g. **Article 3(1)**, which obliges the Respondents and Interested Parties to respect, uphold and defend the Constitution.
- h. **Article 10(1)**, which declares that the national values and principles of governance are binding on all State organs, State officers, public officers and all persons whenever any of them applies or interpret the Constitution, enacts any laws or makes or implements public policy decisions.
- i. **Article 10(2)** which declares that the national values and principles of governance include the rule of law, democracy, participation of the people,

human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised, good governance, integrity, transparency and accountability.

- j. Article 19**, which declares that the Bill of Rights is an integral part of Kenya's democratic state and is the framework for social, economic and cultural policies. Recognition and protection of human rights and fundamental freedoms under the Constitution is to preserve the dignity of individuals and their communities and promote social justice and the realisation of the potential of all human beings.
- k. Article 20**, which declares that the Bill of Rights applies to all law and binds all State organs and all persons. It further decrees that every person, including persons already registered as mobile telephone service subscribers as set out in statute and Regulations, are entitled to the enjoyment of the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom. Rather than meet the requirements of this Article, the Respondents have, due to their own incompetence and disregard of the law, chosen to mete out unconstitutional and unlawful collective punishment on all mobile telephone service subscribers in Kenya, including those who have already registered their SIM cards as required by law. In addition, the Respondents have chosen to unconstitutionally discriminate against natural persons who have previously registered or are seeking to register as mobile telephone subscribers by requiring them to unnecessarily provide for collection, processing and retention digital, photographic copies of their faces.
- l. Article 21**, which imposes a duty on the Respondents, as State organs, to observe, respect, protect, promote and fulfil the right and fundamental freedoms in the Bill of Rights for all subscribers of mobile telephone services in Kenya, subject only to limitations that meet the requirements of **Article 24**.
- m. Article 24** of the Constitution, which provides the conditions that must be met before a right or fundamental freedom in the Bill of Rights can be limited. There is currently no law empowering the Respondents to require fresh

registration of mobile telephone SIM cards previously registered by mobile telephone service providers in Kenya. There is further no law requiring natural persons who wish to register as mobile telephone service subscribers must allow and consent to the collection, processing, recording and retention of their photographic images as part of the registration process.

- n. **Article 27** of the Constitution which, among others, outlaws unlawful discrimination, whether directly or indirectly, by the State or by any person, on any ground. This includes the unlawful the discrimination as between natural persons and corporate persons or statutory bodies in the requirement for the provision of photographic images of persons applying to be registered as mobile telephone service subscribers.
- o. By violating the rights and fundamental freedoms as enshrined in the Bill of Rights, the Respondents have violated **Article 28** of the Constitution.
- p. **Article 31(c)** on the right of persons not to have information relating to their private affairs unnecessarily required or revealed. The right to privacy, as enshrined by Article 31(c), is an inherent right that requires no further action by a person for its enjoyment. It is for any person who wishes to interfere, infringe or limit the right to positively demonstrate how such proposed infringement meets the requirements of **Article 24**. In the absence of any laws permitting registered mobile telephone service subscribers to register afresh and, in addition, for natural persons to submit to the collection, processing and retention of their photographic images, the Respondents have no basis in law to make these requirements lawful and, therefore, necessary. The same applies to the indefinite retention of a subscriber's personal information and data even after deactivation of the subscribed service. The duty to justify interference is additionally required for the disclosure of all other telephone numbers registered to a subscriber, including ones registered with other mobile telephone service providers.
- q. **Article 33** on the right to freedom of expression. Failure to comply with the unconstitutional and unlawful Directive will lead to mobile telephone service subscribers who have already registered their SIM cards in accordance with

the law having their services suspended from **15.04.2022**. Such services would, subsequently be unconstitutionally and unlawfully deactivated ninety days after the suspension.

- r. **Article 34** on the right to freedom and independence of the media, including electronic media that many mobile telephones service subscribers who have registered their SIM cards as required by law access through their mobile telephones and other electronic devices that rely on the registered mobile telephone SIM cards to access media content.
- s. **Article 35** on the right of citizens to access information held by the State or another person and required for the exercise or protection of any fundamental right or freedom.
- t. **Article 43** which enshrines economic and social rights. The intended unconstitutional and unlawful suspension of mobile telephone services for people who have already registered their SIM cards, as intended by the Respondents, will cut off people who use their registered mobile telephone services to send and receive money. This will include registered subscribers who receive money from the State as part of its obligations under Article 43(3). The unconstitutional suspension and deactivation will also violate registered users' ability to use mobile telephone money to pay or receive money to pay for the goods and services protected under the Article.
- u. **Article 47** which enshrines the right to fair administrative action. The Respondents intend to unconstitutionally and unlawfully suspend mobile telephone services of subscribers who have already registered their SIM cards in accordance with the law as an act of collective punishment against claimed persons who, notwithstanding the legal obligations on the 1st, 2nd and 3rd Respondents, may be using unregistered SIM cards. In any event, even for any unregistered subscribers, the 1st, 2nd and 3rd Respondents must, in the first instance, issue a personal notification of the intention to suspend the telecommunication service. Further, the law requires the 1st, 2nd and 3rd Respondents to maintain and ensure maintenance of SIM card registration records for every subscriber. There would, therefore, be no lawful basis for the

suspension and deactivation of mobile telephone services for registered subscribers as required by the impugned Directive.

- v. Given the importance of mobile telephone services in the country, including their use as a means of sending and receiving money, the intended suspension and deactivation of lawfully registered SIM cards as a result of the impugned Directive will, in addition to being a violation of the rights of the affected lawful customers, lead to disproportionate hardships and violations to the rights and freedoms of children (**Article 53**), persons with disabilities (**Article 54**), the youth (**Article 55**), minorities and marginalised groups (**Article 56**) and older members of society (**Article 57**).
- w. **Article 73** on the responsibilities of leadership of State and public officers.
- x. **Article 74** on oath of office of State officers.
- y. **Article 94(4)** on the duty of the National Assembly, as part of Parliament, to protect the Constitution and promote the democratic governance of the country. **Article 94(5)** further provides that no person or body has the power to make provision having the force of law in Kenya except under the authority conferred by the Constitution of by legislation.
- z. By presiding over the gross violation of the Constitution, statutes, Regulations and other applicable laws, the Respondents have violated **Article 156** of the Constitution, including by failing to promote, protect and uphold the rule of law and defend the public interest.
- aa. **Article 232** which sets out the values and principles of public service.
- bb. By their acts and omissions, the Respondents have violated **Article 249** of the Constitution.
- cc. By their acts and omissions, the Respondents have violated **Article 259**, including by failing to interpret the Constitution and then applying that interpretation in a manner that promotes its purpose, values and principles, advances the rule of law, and human rights and fundamental freedoms in the

Bill of Rights, permits the development of the law and contributes to good governance.

H. CASES RELATED TO ISSUES IN THE PETITION.

114. The Petitioner confirms there is no case pending in any court involving the parties herein and over the same subject matters raised hereof.

I. ISSUES IN DISPUTE TO BE RESOLVED BY THE APPLICATION OF LAW.

115. On the basis of the above, the evidence and submissions in support, the Petitioner submits the following as issues in dispute and humbly invites this Honourable Court to resolve them by the application of law:

- a. The constitutional validity of **Section 5B (5), 27 and 27D, the Kenya Information and Communications Act, 1998.**
- b. The constitutional validity of the **Kenya Information and Communications (Registration of Subscribers of Telecommunications Services), Regulations, 2014 – Legal Notice No. 10 of 2014.**
- c. The constitutional validity of the **Kenya Information and Communications (Registration of Subscribers of Telecommunications Services), Regulations, 2015 – Legal Notice No. 163 of 2015.**
- d. The constitutional validity of **Regulations 5(1)(g), 12 and 15(6), Kenya Information and Communications (Registration of Subscribers of Telecommunications Services), Regulations, 2015 – Legal Notice No. 163 of 2015.**
- e. The constitutional validity of the Directive from the 1st Respondent requiring the 8th and 9th Respondents and the Interested Party to carry out fresh registration of their existing and already-registered mobile telephone service subscribers.

- f. The constitutional validity of the requirement from the 1st Respondent to the 8th and 9th Respondents and the Interested Party to collect, process and retain the photographs of natural persons registering as mobile telephone service subscribers.
- g. The constitutional validity of the 8th and 9th Respondents' collection, processing and retention of photographs of natural persons registering as their mobile telephone service subscribers.
- h. The constitutional validity of the Directive from the 1st Respondent requiring suspension from the mobile telephone networks and services provided by the 8th and 9th Respondents and the Interested Party, from **15.04.2022** and eventual deactivation of SIM cards, of registered subscribers who fail to register afresh in line with the Directive from the 1st Respondent.
- i. The constitutionality of the conduct of the 3rd, 4th, 5th and 6th Respondents, who by their acts or omissions, have allowed or failed to intervene to stop or oppose the Directive from the 1st Respondent to the 8th and 9th Respondents and the Interested Party, to register existing and new mobile telephone service subscribers, with the natural persons required to submit to the collection, processing and retention of their photographs, upon which failure to comply with the Directive, would lead to the suspension and deactivation of the registered subscribers' mobile telephone services.
- j. Whether persons registered as mobile telephone subscribers must appear in person before the telecommunications operator or their agent for the purpose of verification of their registration particulars.
- k. The constitutionality of the 1st Respondent's refusal to provide the information applied for by the Petitioner.
- l. Whether the Respondents should, jointly and severally, be required pay the Petitioner's costs for the Petition.

J. RELIEFS SOUGHT BY THE PETITIONER.

116. REASONS WHEREFORE, THE Petitioner therefore humbly prays for
DECLARATION THAT:

- a. Section 5B (5), 27 and 27D, Kenya Information and Communications Act, 1998, are unconstitutional and, therefore, null and void.
- b. The Kenya Information and Communications (Registration of Subscribers of Telecommunications Services), Regulations, 2014 – Legal Notice No. 10 of 2014, are unconstitutional and, therefore, null and void.
- c. The Kenya Information and Communications (Registration of Subscribers of Telecommunications Services), Regulations, 2015 – Legal Notice No. 163 of 2015, are unconstitutional and, therefore, null and void.
- d. Regulations 5(1)(g), 12 and 15(6), Kenya Information and Communications (Registration of Subscribers of Telecommunications Services), Regulations, 2015 – Legal Notice No. 163 of 2015, are unconstitutional and, therefore, null and void.
- e. The Directive from the 1st Respondent for the 1st and 2nd Respondents and the Interested Party to carry out fresh registration of their existing and already-registered mobile telephone service subscribers is unconstitutional and, therefore, null and void.
- f. Any collection, processing and retention by the 8th and 9th Respondents and the Interested Party of photographs of natural persons registering as mobile telephone service subscribers is unconstitutional and, therefore, null and void.
- g. The requirement from the 1st Respondent to the 8th and 9th Respondents and the Interested Party to collect, process and retain the photographs of natural persons registering as mobile telephone service subscriber is unconstitutional and, therefore, null and void.
- h. The suspension, from **15.04.2022**, and eventual deactivation of SIM cards and exclusion from the mobile telephone networks operated by the 8th and 9th

Respondents and the Interested Party, of registered subscribers who fail to register afresh in line with the Directive from the 1st Respondent, is unconstitutional and, therefore, null and void.

- i. The conduct of the 3rd 4th, 5th and 6th Respondents, in allowing or failing to intervene to stop or oppose the Directive from the 1st Respondent to the 8th and 9th Respondents and the Interested Party, to require fresh registration of existing mobile telephone subscribers, with the natural persons seeking such registration required to submit to the collection, processing and retention of their photographs, upon which failure to comply with the Directive, would lead to the refusal of registration, suspension and deactivation of the registered subscribers' mobile telephone services, is a breach of their constitutional duties and responsibilities.
- j. The 1st Respondent's refusal to provide the information applied for by the Petitioner was a breach of the Petitioner's right of access to information under Article 35 of the Constitution and the Access to Information Act, 2016.
- k. The Respondents should, jointly and severally, pay the Petitioner's costs for this Petition.

117. UPON THE ABOVE DECLARATIONS, THIS HONOURABLE COURT BE PLEASED TO ISSUE AN ORDER:

- a. **QUASHING** Sections 5B (5), 27 and 27D, Kenya Information and Communications Act, 1998.
- b. **QUASHING** The Kenya Information and Communications (Registration of Subscribers of Telecommunications Services), Regulations, 2014 – Legal Notice No. 10 of 2014.
- c. **QUASHING** The Kenya Information and Communications (Registration of Subscribers of Telecommunications Services), Regulations, 2015 – Legal Notice No. 163 of 2015.

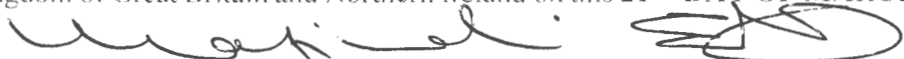
- d. **QUASHING** Regulations 5(1)(g), 12 and 15(6), Kenya Information and Communications (Registration of Subscribers of Telecommunications Services), Regulations, 2015 – Legal Notice No. 163 of 2015.
- e. **QUASHING** the impugned Directive from the 1st Respondent to the 8th and 9th Respondents and the Interested Party requiring them to carry out fresh registration of their existing, registered mobile telephone service subscribers.
- f. **QUASHING** the impugned Directive from the 1st Respondent to the 8th and 8th Respondents and the Interested Party requiring them to collect, process and retain photographic images of their mobile telephone service subscribers who are natural persons.
- g. **ORDERING** the permanent deletion and expunging from any and all records and systems maintained by or under the direction and control of the 1st, 8th and 9th Respondents and the Interested Party, telephone numbers, other than their own telephone numbers, that were collected, processed and retained from their mobile telephone service subscribers as part of the registration process.
- h. **ORDERING** the permanent deletion and expunging from any and all records and systems maintained by or under the direction and control of the 1st, 8th and 9th Respondents and the Interested Party, any and all photographs (other than those that may be contained in a document of identification as set out in **Regulation 5(1)(b), Kenya Information and Communications (Registration of Subscribers of Telecommunications Services), Regulations, 2015 – Legal Notice No. 163 of 2015**, of natural persons who are registered mobile telephone subscribers that were collected, processed and retained as part of the registration process.
- i. **ORDERING** the 1st, 7th, 8th and 9th Respondents and the Interested Party to, within twenty-eight days of the judgement in this matter or such other time that the Court may deem appropriate, file with the Honourable Court’s Registry and publish in at least two newspapers of national circulation, sworn affidavits confirming the permanent deletion and expunging from any and all records and systems maintained by or under the direction and control of the 1st, 8th and 9th

Respondents and the Interested Party, any and all photographs (other than those that may be contained in a document of identification as set out in **Regulation 5(1)(b), Kenya Information and Communications (Registration of Subscribers of Telecommunications Services), Regulations, 2015 – Legal Notice No, 163 of 2015,**) of natural persons who are registered mobile telephone subscribers collected, processed and retained as part of SIM-card registration process.

- j. **ORDERING** the 1st, 7th, 8th and 9th Respondents and the Interested Party to, within twenty-eight days of the judgement in this matter or such other time that the Court may deem appropriate, file with the Honourable Court's Registry and publish in at least two newspapers of national circulation, sworn affidavits confirming the permanent deletion and expunging from any and all records and systems maintained by or under the direction and control of the 1st, 8th and 9th Respondents and the Interested Party, of telephone numbers, other than their own telephone numbers, that were collected, processed and retained from their mobile telephone service subscribers as part of the registration process.
- k. **COMPELLING** the Respondents, jointly and severally, to pay the Petitioner's costs for this suit.
- l. **ANY SUCH OTHER ORDERS OR DIRECTIONS** as this Honourable Court may deem just and fit to grant to meet the ends of justice and the requirements of the Constitution of Kenya, 2010.

WHICH PETITION is supported by the accompanying affidavit of the Petitioner, **ELIUD KARANJA MATINDI**, and such other reasons, grounds and arguments as shall be adduced at the hearing hereof.

DATED at **POOLE**, in the local authority area of **Bournemouth, Christchurch and Poole**, United Kingdom of Great Britain and Northern Ireland on this **21ST DAY OF MARCH, 2022**.



ELIUD KARANJA MATINDI
PETITIONER

DRAWN AND FILED BY:

ELIUD KARANJA MATINDI, PETITIONER, AND WHOSE ADDRESS OF SERVICE FOR THE PURPOSE OF THESE PROCEEDINGS IS BY EMAIL ADDRESS Bavance13@gmail.com

TO BE SERVED UPON:

1 COMMUNICATIONS AUTHORITY OF KENYA-----1ST RESPONDENT.

Address of service for purpose of this Petition, in addition to through the 2nd and 7th Respondents, is by E-mail address info@ca.go.ke.

2 CABINET SECRETARY, MINISTRY OF INFORMATION, COMMUNICATION AND TECHNOLOGY-----2ND RESPONDENT.

Address of service for purpose of this Petition, in addition to through the 7th Respondent, is by E-mail address info@information.go.ke.

3 THE DATA PROTECTION COMMISSIONER-----3RD RESPONDENT

Address of service for purpose of this Petition, in addition to through the 2nd and 7th Respondents, is by E-mail address info@odpc.go.ke.

4 KENYA NATIONAL COMMISSION ON HUMAN RIGHTS-----

-----4TH RESPONDENT.

Address of service for the purpose of this Petition, in addition to being through the 7th Respondent, is by E-mail address haki@knchr.org.

5 NATIONAL GENDER AND EQUALITY COMMISSION-----

-----5TH RESPONDENT.

Address of service for the purpose of this Petition, is, in the first instance, through the 7th Respondent.

6 COMMISSION ON ADMINISTRATIVE JUSTICE-----6TH RESPONDENT.

Address of service for the purpose of this Petition, in addition to being through the 7th Respondent, is E-mail address info@ombudsman.go.ke.

**7 HON. ATTORNEY-GENERAL OF THE REPUBLIC OF KENYA-----
-----7TH RESPONDENT.**

Address of service for the purpose of this Petition, on their own behalf and on behalf of the 1st to 6th Respondents, is through E-mail addresses slo@ag.go.ke, info@ag.go.ke and communications@ag.go.ke.

8 SAFARICOM PLC-----8TH RESPONDENT.

Address of service for the purpose of this Petition is, in the first instance, through E-mail addresses ceo@safaricom.co.ke and dataprotectionoffice@safaricom.co.ke.

9 AIRTEL NETWORKS KENYA LIMITED-----9TH RESPONDENT.

Address of service for the purpose of this Petition is through the E-mail address customerservice@ke.airtel.com and aml@ke.airtel.com.

**10 NATIONAL ASSEMBLY OF THE REPUBLIC OF KENYA-----
-----10TH RESPONDENT**

Address of service for the purpose of this Petition is through its litigation E-Mail address - nationalassembly.litigation@gmail.com.

11 TELKOM-----INTERESTED PARTY

Address of service for the purpose of this Petition is through the E-mail address externalrelations@telkom.co.ke.