

**THE COMMISSION ON ADMINISTRATIVE JUSTICE**  
(Office of the Ombudsman)



*Hata Mnyonge ana Haki*

**REPUBLIC OF KENYA**  
**COMMISSION ON ADMINISTRATIVE JUSTICE**  
**(OFFICE OF THE OMBUDSMAN)**  
**ATI REVIEW APPLICATION NO. CAJ/ATI/KUPPET KISII/013/125/25-MW**

**FRED APIMA OBITA.....APPLICANT**

**VERSUS**

**KENYA UNION OF POST PRIMARY EDUCATION TEACHERS,  
KISII BRANCH.....RESPONDENT**

**RULING**

**Background**

1. The Commission on Administrative Justice (Office of the Ombudsman) (herein after referred as CAJ or the Commission) is established under Article 59(4) of the Constitution, and its constitutive Act; Commission on Administrative Justice Act, 2011 (CAJ Act, 2011) with the mandate to enforce administrative justice in the public sector by addressing all forms of maladministration. The Commission has a further mandate of oversight and enforcement of the right of access to information as guaranteed by Article 35 of the Constitution, through the Access to Information Act, 2016 (ATI Act, 2016).
2. The Commission's work is guided by the following laws: -
  - i) The Constitution;

- ii) The Commission on Administrative Justice Act, 2011 and its Regulations of 2013;
- iii) Access to Information Act, 2016;
- iv) The Fair Administrative Action Act, 2015;
- v) The Public Service (Values & Principles) Act, 2015.

### **Facts of the Review Application**

3. Section 14(1) of the Access to Information Act, 2016 grants any requester of information the right to apply to the Commission for review of a decision by a public entity or private body. The review can be premised on a decision...
  - a. Refusing to grant access to the information applied for;**
  - b. Granting access to information in edited form;**
  - c. Purporting to grant access, but not actually granting the access in accordance with an application;**
  - d. Deferring providing the access to information;**
  - e. Relating to imposition of a fee or the amount of the fee;**
  - f. Relating to the remission of a prescribed application fee;**
  - g. Granting access to information only to a specified person; or**
  - h. Refusing to correct, update or annotate a record of personal information in accordance with an application made under section 13.**
4. The Commission on 13<sup>th</sup> March 2025, received an application for review under Section 14(1)(a), ATI Act dated 11<sup>th</sup> March 2025 from the Applicant herein to review the decision of the Respondent declining to avail information sought through a letter dated 17<sup>th</sup> February 2025.
5. The Applicant through a letter dated 17<sup>th</sup> February 2025 addressed to the Kenya Union of Post Primary Education Teachers (KUPPET), Kisii Branch sought for documents relating to the management of the Kisii Branch, Burial Benevolent Fund (BBF) Scheme namely: -

- a. Certified Bank Statement of the Burial Benevolent Fund account from June 2024 up to date;
- b. All monthly bereavement cases paid from June 2024 up to date, clearly indicating; name of the beneficiary of BBF, date of payment, cheque number and amount disbursed for each case;
- c. Certified payment vouchers of monthly allowance paid to all Sub-County Delegates or Representative from June 2024 up to date including; name of all Sub-County Delegates, amount paid to each Sub-County Delegate, date of payment and cheque number;
- d. Certified payment vouchers of allowances paid to BBF officials/union officials for attending BBF meetings and burials from June 2024 up to date clearly indicating; amount paid to each BBF official/union official; and
- e. Any other certified payment voucher for the entity paid using BBF funds if any accompanied with; cheque number, date of payment and authenticated minutes authorizing such payments.

### **Commission's Review Procedure**

6. Section 22(3)(a) of ATI Act, 2016 gives the Commission the power to call for information or report regarding a complaint lodged with it from a public entity or private body. Upon receipt of the Applicant's request for review letter dated 11<sup>th</sup> March 2025, the Commission wrote a letter Ref: CAJ/ATI/KUPPETKISII/013/125/25-MW dated 18<sup>th</sup> March 2025 to the Respondent requiring the Respondent to furnish the Commission with its Institutional Report to enable the Commission make an appropriate decision on the application.
7. The Respondent through the firm of Aboki Begi & Company Advocates responded to the Commission's letter through a letter dated 21<sup>st</sup> March 2025 referenced: AB/KSI/657/2024. The Respondent in its letter advised the Applicant through the KUPPET Kisii Branch Treasurer will be allowed

to inspect the Books of Accounts in accordance with Article 19.0 (a) of the KUPPET BBF Guidelines upon request.

8. The Commission through a letter dated 8<sup>th</sup> April 2025 forwarded the Respondent's letter dated 21<sup>st</sup> March 2025 to the Applicant for his action.
9. The Applicant in compliance with the Respondent's letter dated 21<sup>st</sup> March 2025, made a request to the KUPPET Kisii Branch Treasurer to inspect the BBF Books of Accounts through a letter dated 25<sup>th</sup> April 2025 which was also sent on email on even-date.
10. The Applicant through a letter dated 5<sup>th</sup> May 2025, sought the Commission's intervention after the Respondent's Treasurer refused to allow him to inspect the BBF Books of Accounts. As such, the Commission will proceed as guided by Sections 22(3)(a)(i) and 23(2)(a) of ATI, 2016.

**Issues for determination:**

11. After a careful analysis of the request for information by the Applicant dated 17<sup>th</sup> February 2025, as well as the request for review letter dated 11<sup>th</sup> March 2025 and the Respondents response dated 21<sup>st</sup> March 2025, together with the letter by the Applicant dated 5<sup>th</sup> May 2025, the Commission frames the following as the issues for determination in this review:

- i. **Whether the Commission has jurisdiction under ATI Act, 2016 to review a decision by Respondent;**
- ii. **Whether the Respondent has in its custody the information requested by the Applicant;**
- iii. **Whether the information requested by the Applicant and which is in the custody of the Respondent should be disclosed to the Applicant;**
- iv. **The orders which the Applicant is entitled to.**

**Whether the Commission has jurisdiction under ATI Act, 2016 to review a decision by Respondent:**

12. The Respondent through the firm of Aboki Begi & Company Advocates in its letter dated 21<sup>st</sup> March 2025 referenced: AB/KSI/657/2024 reiterated that KUPPET was a private body but not one contemplated under the provisions of Section 2 of the ATI Act thus opposing the exercise of Commission's jurisdiction.
13. The Respondent is a trade union established under the Labour Relations Act Cap 233 Laws of Kenya. Further, the Kenya Union of Post Primary Education Teachers (KUPPET) Constitution 2017, affirms that KUPPET is a trade union constituted in accordance with its Constitution constituting of paid up members.
14. The application of the ATI Act, 2016 as far as private bodies are concerned is not express to all private bodies and has to be determined on a case-to-case basis. This draws from the definition of a private body in Section 2 of the ATI Act, 2016 which defines private body as...

***“Private body’ means any private entity or non-state actor that -***  
***(a) receives public resources and benefits, utilizes public funds, engages in public functions, provides public services, has exclusive contracts to exploit natural resources (with regard to said funds, functions, services or resources); or***  
***(b) is in possession of information which is of significant public interest due to its relation to the protection of human rights, the environment or public health and safety, or to exposure of corruption or illegal actions or where the release of the information may assist in exercising or protecting any right;”***
15. The Second Schedule of the Access to Information (General) Regulations, 2023 provides for categories of private bodies to which the ATI Act, 2016 and Regulations therein apply. Specifically, the Schedule stipulates that the ATI Act, 2016 and the Regulations apply to private bodies providing services including trade unions under paragraph (m).

16. Section 2 of the Labour Relations Act, Cap 233 Laws of Kenya defines a trade union as...

***“trade union” means an association of employees whose principal purpose is to regulate relations between employees and employers, including any employers’ organisation;***

17. The Commission notes that the KUPPET Constitution 2017, provides that its main objectives are *inter-alia*; to advocate for the establishment of sound, ethical and professional policies that guarantee job security and fair solution to the member’s grievances and offer assistance and encourage teachers to form saving and credit societies, Burial and Benevolent Funds.

18. The Commission holds that the Respondent having been constituted by paid up members and based on its objectives as per its Constitution engages in public functions as thus falls within the realm of the ATI Act.

19. Accordingly, the Commission holds that the Respondent being a trade union is a relevant private body under the ATI Act, 2016 as affirmed in the decision of *Republic v Isaiah Kubai, Banking Insurance & Finance Union and Commission on Administrative Justice Ex-Parte Duncan Muthusi [2019] KEELRC 43(KLR)* and will thus exercise its review function over the decision by the Respondent.

**Whether the Respondent had in its custody/possession the information requested by the Applicant:**

20. Section 4 (1) of the ATI Act provides that “...every citizen has the right of access to information **held** by –...”. Similarly, Article 35 of the Constitution which guarantees the right of access to information utilizes the word ‘*held*’. According to Oxford Advanced Learners Dictionary (9<sup>th</sup> Edition), the word ‘*held*’ is the past tense, past participle of the word ‘*hold*’. Black’s Law Dictionary (11<sup>th</sup> Edition) defines the word ‘*hold*’ as ... **‘to possess by a lawful title’ [also] ‘to keep in custody or under an**

**obligation**'. Thus, the use of the word 'held' in both the Constitution and the ATI Act connotes that the information sought by the requester must be present with the Respondent.

21. The Access to Information Act gives a clear procedure which must be followed once a request for information has been lodged with a public entity. The Commission wishes to clarify that the procedure on information disclosure applicable to public entities is equally applicable to 'relevant private bodies' including the Respondent herein.
22. Section 9(4) of the ATI Act, 2016 stipulates the different decisions which can be made by a public entity or relevant private body on a request for information. The section states *inter-alia* that...

**“(4) As soon as the information access officer has made a decision as to whether to provide access to information, he or she shall immediately communicate the decision to the requester, indicating—**

**(a) whether or not the public entity or private body holds the information sought; ...”**

23. Part III of the KUPPET National Governing Council Welfare Guidelines 2023, confer on the Respondent's Executive Secretary the role of coordinating all activities of the BBF Scheme in liaison with the respective delegates and guide on the best practice of the management of the BBF.
24. The treasurer of the BBF Scheme who by dint of Part II of the KUPPET National Governing Council Welfare Guidelines 2023 is an office bearer of the BBF Scheme is obligated to *inter-alia*; keep records of income and expenditure of the scheme herein. As such, the Commission is convinced that from the Respondent's policy framework, the Respondent had an obligation to create and keep records requested by the Applicant.
25. Further, the Respondent through the firm of Aboki Begi & Company Advocates in the letter dated 21<sup>st</sup> March 2025 referenced:

AB/KSI/657/2024 advised the Applicant to request through the KUPPET Kisii Branch Treasurer to be allowed to inspect the Books of Accounts in accordance with Article 19.0 (a) of the KUPPET BBF Guidelines. This is a clear statement indicating that such records are actively held by the Respondent.

26. In view of the foregoing, the Commission holds that the requested information is held by the Respondent.

**Whether the information requested by the Applicant and which is in the custody of the Respondent should be disclosed to the Applicant:**

27. Article 35 of the Constitution guarantees the right of every citizen to access: -

***a. Information held by the State; and***

***b. Information held by another person and required for the exercise or protection of any right or fundamental freedom.***

The importance of access to information to a country's citizenry is premised on the fact that all sovereign power belongs to the people and all State information is held by public entities in trust for the people. Article 1 of the Constitution expressly provides that all sovereign power belongs to the people and should only be exercised in accordance with the Constitution. Access to information therefore, equips citizens with requisite knowledge to scrutinize the actions and decisions of duty bearers such as the Respondent herein thereby promoting transparency, accountability and combating illegal acts such as corruption.

28. Section 11(3) of the ATI Act 2016 provides ...

***“Any information to be made accessible to an applicant shall be produced forthwith at the place where it is kept, for inspection in the form in which it is held unless the applicant requests that it be made available in another form and, if it is practicable to do so, such information may be copied, reproduced or used for***

**conversion to a sound transmission at the expense of the applicant.”**

29. The Applicant is a paid-up member of KUPPET Social Welfare Association as evidenced from his payslip for the month of January 2025 where a deduction of Ksh.200 was made for the subsequent remittance to the KUPPET BBF Scheme. It is on this basis that the Respondent through a letter dated 21<sup>st</sup> March 2025 referenced: AB/KSI/657/2024 advised the Applicant to inspect the Books of Accounts in accordance with Article 19.0 (a) of the KUPPET BBF Guidelines which bind the Applicant herein.
30. The Respondent having failed to grant the Applicant access to documents sought through inspection as provided by the KUPPET BBF Guidelines access herein shall be made by certified copies. Thus, the Commission holds that the Applicant herein by dint of being a paid-up member of the KUPPET is entitled to access the documents sought through a letter dated 17<sup>th</sup> February 2025, either through inspection or through supply of certified copies.

**The orders which the Applicant is entitled to:**

31. Having made a careful analysis of all the facts and information provided in this Review Application, the Commission, pursuant to the powers granted under Section 23(2)(a) of the Access to Information Act 2016, and Regulation 25(8) of the Access to Information (General) Regulations, 2023, the Commission **ORDERS**:
1. **THAT** the Respondent through the Kisii Branch Executive Secretary, Kenya Union of Post Primary Education Teachers facilitates access to documents held relating to the request for information made by Fred Apima through a letter dated 17<sup>th</sup> February 2025 namely;
    - a. Certified copies of Bank Statement of the Burial Benevolent Fund account from June 2024 up to date;
    - b. Certified copies of all monthly bereavement cases paid from June 2024 up to date, clearly indicating; name of the beneficiary of BBF,

date of payment, cheque number and amount disbursed for each case;

- c. Certified copies of payment vouchers of monthly allowance paid to all Sub-County Delegates or Representative from June 2024 up to date including; name of all Sub-County Delegates, amount paid to each Sub-County Delegate, date of payment and cheque number;
  - d. Certified copies of payment vouchers of allowances paid to BBF officials/union officials for attending BBF meetings and burials from June 2024 up to date clearly indicating; amount paid to each BBF official/union official; and
  - e. Any other certified copies of payment vouchers for the entity paid using BBF funds accompanied with; cheque number, date of payment and authenticated minutes authorizing such payments.
2. **THAT** compliance with No. 1 be within **fourteen (14) days** from the date hereof.
  3. **THAT** in the event of failure to comply with Order No. 2 above, the Respondent shall be liable to pay the Applicant the sum of **Kenya Shillings Ten Thousand (Ksh. 10,000/=) per day** as compensation in line with Section 23(2)(b) of the Access to Information Act until all documents sought are facilitated.

**Dated, Signed** and **Issued** at **Nairobi** this...**29<sup>th</sup>** .... day of...**December**.....2025.



**DOROTHY JEMATOR**  
**ACCESS TO INFORMATION COMMISSIONER**

**TAKE NOTICE THAT** section 23(3) of the Access to Information Act, 2016 provides that ***“A person who is not satisfied with an order made by the Commission under subsection (2) may appeal to the High Court within twenty-one days from the date the order was made.”***]