

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/MSA/ATI/CG/TANA RIVER/059/4/2025 – EG

TANA RIVER CIVIL SOCIETY ORGANIZATIONS NETWORK.....APPLICANT

VERSUS

COUNTY GOVERNMENT OF TANA RIVER..... RESPONDENT

RULING

A. BACKGROUND

1. The Commission on Administrative Justice (Office of the Ombudsman) (hereinafter referred to as "*the Commission*") is established under *Article 59(4)* of the *Constitution of Kenya, 2010* and the *Commission on Administrative Justice Act, 2011*. The Commission is mandated to address maladministration in the public sector and promote administrative justice, transparency, and accountability in public administration. In addition, the Commission serves as the oversight and enforcement body for the right of access to information under *Article 35* of the *Constitution*, as operationalized through the *Access to Information Act, 2016* (hereinafter referred to as *ATI Act, 2016*).
2. *Article 35* of the *Constitution* guarantees every citizen the right 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.
3. Access to information is the cornerstone of democratic governance and accountability. Public entities hold information in trust for the people of Kenya, and the disclosure of such information enhances transparency in public administration, promotes responsible management of public resources, and enables citizens to participate meaningfully in governance.

B. FACTS OF THE REVIEW APPLICATION

4. The Commission received an application for review *under Section 14(1) (c), ATI Act, 2016* dated 4th August 2025 from the Applicant, Tana River Civil Society Organizations Network. Through a letter dated 20th June 2025, the Applicant made a request for Information to the Respondent requesting full details relating to Inuka Fund Disbursements for the financial years: 2019-2020 and 2020-2021.
5. Initially, the Applicant had made a request for information dated 4th November 2024 seeking the following:
 1. The total amount distributed under the fund for the financial years 2019-2020 and 2020-2021;
 2. The total amount distributed to each sub-county;
 3. The list of the beneficiaries in each sub-county indicating the amount distributed and the approval minutes by sub-county committees and the board;
 4. The state of loan services from the beneficiaries as per the date of the request;

5. The reasons as to why the loan scheme was not functioning or effective to the date of the request so as to measure whether it met its objectives or intended purpose of the funds;
 6. Whether there was another loan scheme established to support the business economy in the County; and
 7. Whether the Inuka Funds board existed and if so, its effectiveness.
6. In its response, dated 4th March 2025, the Respondent provided information relating to Inuka Fund since inception. The information provided included the total allocations to the fund, the total disbursements as at 4th March 2025, the total number of beneficiaries to whom the funds had been disbursed as at 4th March 2025 and the total allocation per each sub-county. Additionally, the Respondent stated that it was in the process of finalizing necessary documentation to enable a detailed report to be supplied.
7. The Applicant considered the response thereof as unsatisfactory since only a few sets of the requested information were supplied leaving other information not disclosed. This prompted the Applicant to lodge a further request dated 20th June 2025 for disclosure of the remaining details of the Inuka Fund disbursement. The Respondent did not disclose the remaining information or respond to the request resulting to the present Application before the Commission.
8. Upon receipt of the application, the Commission issued an Access to Information Notice dated 7th August 2025 requiring the Respondent to provide an institutional report or any relevant information regarding the request. The Respondent did not reply to the Commission's letter or provide the information sought by the Applicant.

9. Accordingly, the Commission proceeded to issue summons to Mrs. Mwanajuma Hiribae, the Acting County Secretary of the Respondent, to appear before the Commission on 2nd February 2026, pursuant to *Article 35(1) and 252(3) of the Constitution*, as read with *sections 21 and 23(1) of the ATI Act, 2016*. The Commission's summons was served upon the Respondent and were duly stamped as received by the Respondent's Main Registry on 21st January 2026. The Respondent Acting County Secretary did not attend the summons hearing or respond to the Commission.

10. *Section 23(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. Further, *section 23(3)(a)(i)* provides that ...

“If the information or report called for is not received within the time stipulated by the Commission, the Commission may proceed to inquire into the complaint without such information”.

11. In the absence of a response, the Commission proceeds to determine this Application pursuant to *Section 23(3)(a)(i) of the ATI Act, 2016*, which permits the determination of a review application where the requested information or report is not received by the Commission within the stipulated time.

C. ISSUES FOR DETERMINATION

12. After a careful analysis of the request for information by the Applicant dated 4th November 2024 and the further request dated 20th June 2025, and the Respondent's response dated 4th March 2025, the Commission outlines the following as the issues for determination in this Application:

- i. Whether the Commission has jurisdiction to review the Respondent's decision/action under the ATI Act,2016;
- ii. Whether the Applicant is entitled to the right of Access to Information;
- iii. Whether the information requested is held by the Respondent;
- iv. Whether the information sought by the Applicant was fully disclosed to the Applicant;
- v. Whether the remaining requested information if any should be disclosed to the Applicant under the ATI Act, 2016; and
- vi. Whether legal sanctions should issue against Mrs. Mwanajuma Hiribae, the Respondent's Acting County Secretary for failure to honour the Commission's Summons.

D. ANALYSIS OF FACTS, ISSUES AND FINDINGS

- i. **Whether the Commission has Jurisdiction to Review the Respondent's Decision or Inaction under the ATI Act,2016**

13.The Supreme Court in *Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 others* [2012] eKLR, held that jurisdiction must be derived from the Constitution or legislation or both.

14.*Section 14(1) of the ATI Act, 2016*, empowers the Commission to review decisions of public entities and private bodies declining to grant access to information requested by citizens or in any other way violating citizens' right to information. The *ATI Act, 2016*, applies to all public entities based on the understanding that the State is the duty bearer of the right of access to information and exercises its functions through public entities. *Section 2 of the ATI Act, 2016*, defines a public entity as...

“(a) any public office, as defined in Article 260 of the Constitution;
or

(b) any entity performing a function within a commission, office, agency or other body established under the Constitution.”

15. The Respondent in this matter is the County Government of Tana River, established under *Article 176* of the Constitution and operationalized by the *County Governments Act, 2012*. It follows therefore that the Respondent is a duty bearer as envisaged under *Article 35* of the Constitution and *Section 2* of the *ATI Act, 2016*.

16. Consequently, the Commission finds and holds that it has jurisdiction to review the Respondent's decision, action or inaction under the *ATI Act, 2016*.

ii. Whether the Requested Information is Held by the Respondent

17. *Article 35* of the Constitution guarantees every citizen the right of access to information held by the State. The term 'citizen' is defined by *Section 2* of the *ATI Act, 2016*, to mean **“any individual who has Kenyan citizenship, and any private entity that is controlled by one or more Kenyan citizens.”**

18. The Applicant in this review application is Tana River Civil Society Organizations Network, a consortium of 56 civil society organizations working within Tana River County. As Non-Governmental Organizations operating within the Republic of Kenya, the Applicant qualifies as a juristic person controlled and managed by Kenyan citizens. The Applicant therefore falls within the definition of a 'citizen' for purposes of the Act.

19. This position was affirmed by the High Court in ***Katiba Institute Vs President's Delivery Unit (Constitutional Petition 468 of 2017)***

[2017] KEHC 2183 (KLR), where the Court held that a juristic person whose directors are Kenyan citizens qualifies as a 'citizen' and is therefore entitled to exercise the right of access to information under *Article 35* of the *Constitution* and *Section 4* of the *ATI, Act 2016*.

20. Additionally, the Commission takes judicial notice that Mr. John Dhado and Mr. Rashid James who are the Chairperson and the Secretary General of the Applicant respectively are Kenyan citizens hence meeting the citizenship criteria under *Article 35* and *section 4* of the *ATI Act, 2016*.

21. Accordingly, the Commission finds and holds that the Applicant, being a private body controlled by one or more Kenyan citizens, is a citizen within the meaning of *Article 35* of the *Constitution* and thus entitled to invoke and enjoy the right of access to information under the *Constitution* and the *ATI Act, 2016*.

iii. Whether the Information Requested is Held by the Respondent;

22. *Section 4(1)* of the *ATI Act, 2016* guarantees every citizen the right to access information held by public entities by providing that...

“Every citizen has the right of access to information held by

a. the State; and

b. another person where that information is required for the exercise or protection of any right or fundamental freedom....” .

23. Similarly, *Article 35* of the *Constitution*, which guarantees the right of access to information utilizes the word ***‘held’***. According to Oxford Advanced Learners Dictionary (9th Edition), the word *‘held’* is the past tense, past participle of the word *‘hold’*. Black’s Law Dictionary (11th

Edition) defines the word 'hold' as ... **'to possess by a lawful title'** [also] **'to keep in custody or under an obligation'**.

24. The use of the word 'held' in both the Constitution and the *ATI Act, 2016*, connotes that the information sought by the requester must be present with the Respondent. *Section 10* of the *ATI Act, 2016* provides an elaborate mechanism through which a request for information should be processed and transferred to another entity where the recipient of a request for information is not in actual possession of the information sought but has knowledge of the entity with actual possession of such information.

25. A public entity in receipt of a request for information has a statutory obligation to respond to the request and indicate whether it holds the requested information. This position is reinforced by *Section 9(4)(a)* of the *ATI Act, 2016*, which requires a public entity to issue a decision to a requester specifying whether or not it holds the information sought. This requirement is fundamental, as it forms the basis for processing a request and facilitating the realization of the right of access to information.

26. In its response letter dated 4th March 2025, the Respondent while responding to the initial request dated 4th November 2024, provided information relating to Inuka Fund since inception. Additionally, the Respondent stated that it was in the process of finalizing necessary documentation to enable a detailed response to the Applicant. This response clearly demonstrates that the Respondent holds the requested information.

27. Further, *Section 12 (2)(c)* of the *Tana River County Government Inuka Fund, 2016 as amended by the Tana River County Government Inuka Fund (Amendment) Act, 2020* requires the Fund Administrator to

maintain proper accounting records and report to the Auditor General and the National Assembly on administration of the Fund among other functions. This is a clear and express statutory obligation imposing the duty on the Respondent to create, preserve, and properly manage Inuka Funds records.

28. Accordingly, and based on the foregoing analysis, the Commission finds and holds that the requested information and records are held or are under the control of the Respondent.

iv. Whether the Information Sought was fully Disclosed to the Applicant

29. The Applicant in its request for information dated 4th November 2024 sought the following: -

1. The total amount distributed under the fund for the financial years 2019-2020 and 2020-2021;
2. The total amount distributed to each sub-county;
3. The list of the beneficiaries in each sub-county indicating the amount distributed and the approval minutes by sub-county committees and the board;
4. The state of loan services from the beneficiaries as per the date of the request;
5. The reasons as to why the loan scheme was not functioning or effective to the date of the request so as to measure whether it met its objectives or intended purpose of the funds;
6. Whether there was another loan scheme established to support the business economy in the County; and
7. Whether the Inuka Funds board existed and if so, its effectiveness.

30. In a letter dated 4th March 2025, the Respondent indicated that the total amount allocated for Inuka Fund utilization was Kshs 77,319,588/- whereby Kshs. 51, 546,392/- and Kshs. 25, 773,196/- was allocated on 24th June 2020 and 7th July 2021 respectively. Further, the Respondent stated that out of the total allocation to Inuka Fund, Kshs.75, 000,000/- was designated for disbursement to qualified beneficiaries.
31. In relation to disbursements, the Respondent indicated that a total of Kshs. 30,057,000/- had been disbursed to 243 beneficiaries with 10 of them being groups as at 4th March 2025. The Respondent indicated the disbursement per sub-county was Kshs 20,868,000/- to Tana River Sub-County benefiting 124 beneficiaries; Kshs 7,049,000/- to Tana Delta Sub-County benefiting 63 beneficiaries and Kshs 2,650,000/- to Tana North benefiting 56 beneficiaries.
32. After a careful analysis of the initial request dated 4th November 2024 vis a vis the response dated 4th March 2025, the Commission is of the considered view that the detailed breakdown of allocations, disbursements and information on number of beneficiaries in each sub-county sufficiently responds to the requested sets of information in Nos. 1 and 2 only. The Applicant was thus justified to make a further request dated 20th June 2025 as the Respondent's response was incomplete.
33. Hence, the Commission finds and holds that the response dated 4th March 2025 did not address the requested sets of information in numbers 3 to 7 of the Applicant's request.

v. Whether the Remaining Information should be Disclosed to the Applicant under the ATI Act, 2016

34. Inuka Fund was established as a public fund by the Respondent through the *Tana River County Inuka Fund Act, 2016* and *Tana River County Inuka Fund (Amendment) Act, 2020*. Section 4(2) of the *Tana River County Inuka Fund (Amendment) Act, 2020* provides that the Tana River County Inuka Fund shall be credited by the sum of money allocated by the County Assembly from time to time among other sources. The Respondent is required by the said County Law to administer the Inuka Fund for empowerment of youth and women within Tana River County.

35. Transparency in public expenditure is a fundamental Constitutional principle which should be strictly adhered to in the implementation of the Inuka Fund by the Respondent. Disclosure of Inuka Funds information becomes a matter of public interest in furtherance of transparency, accountability and open governance. Additionally, the Commission notes that most of the information relating to Inuka Fund falls within the scope of proactive disclosure under Section 5 of the *ATI Act, 2016* and Regulation 10 of the *ATI (General) Regulations, 2023*.

36. Nevertheless, section 6 of the *ATI Act* restricts disclosure in respect of specific categories of information whose release is likely to—

- a. undermine the national security of Kenya;**
- b. impede the due process of law;**
- c. endanger the safety, health or life of any person;**
- d. involve the unwarranted invasion of the privacy of an individual, other than the applicant or the person on whose behalf an application has, with proper authority, been made;**

- e. substantially prejudice the commercial interests, including intellectual property rights, of that entity or third party from whom information was obtained;**
- f. cause substantial harm to the ability of the Government to manage the economy of Kenya;**
- g. significantly undermine a public or private entity's ability to give adequate and judicious consideration to a matter concerning which no final decision has been taken and which remains the subject of active consideration;**
- h. damage a public entity's position in any actual or contemplated legal proceedings; or**
- i. infringe professional confidentiality as recognized in law or by the rules of a registered association of a profession.**

37. The Commission has carefully examined the requested sets of information in numbers 3 to 7 of the Applicant's request and is of the considered view that the request in No. (3) being **'The list of the beneficiaries in each sub-county indicating the amount distributed and the approval minutes by sub-county committee and the board'** may contain sensitive personal information relating to identifiable individuals or third parties in some parts. Accordingly, disclosure of the requested list of beneficiaries as well as the approval minutes by the Sub-County Committee and those of the Board without appropriate safeguards, is likely to constitute disclosure of exempt information within the scope *Section 6(1)(d)* of the *ATI Act, 2016*.

38. The Commission has made a finding herein before that the requested information ought to be disclosed as a matter of public interest as it relates to expenditure of public resources where transparency and accountability is required. This means that the requested information in

No. 3 cannot be withheld completely as its disclosure is important to enhance citizen oversight over public resource expenditure.

39. A delicate balancing act is required in this situation to manage the competing rights and interests; on one hand, the Applicant right to access information to hold the County Government to account on use of public resources and on the other, the Respondent's obligation to prevent unwarranted disclosure of private information.

40. The Court in **Kenya Human Rights Commission Vs Communication Authority of Kenya & 4 Others [2018] eKLR** at paragraph 72, held that ...

“A limitation of a constitutional right will be constitutionally permissible if (i) it is designated for a proper purpose; (ii) the measures undertaken to effectuate such a limitation are rationally connected to the fulfilment of that purpose; (iii) the measures undertaken are necessary in that there are no alternative measures that may similarly achieve that same purpose with a lesser degree of limitation; and finally (iv) there needs to be a proper relation (“proportionality stricto sensu” or “balancing”) between the importance of achieving the proper purpose and the special importance of preventing the limitation on the constitutional right.”

41. In determining whether there exists a lawful mechanism through which access to the requested documents may be granted while safeguarding protected interests, the Commission is of the view that disclosure need not be denied in its entirety where mechanisms exist to facilitate partial access. One such mechanism is the redaction of exempt information from the requested ‘*lists of beneficiaries and approval minutes*’ and provision of the redacted copies to the

Applicant. This approach will enable access to the substantive information sought while ensuring that protected information under *Section 6(1)(d)* of the *ATI Act, 2016*, is not disclosed.

42. In light of the foregoing, the Commission holds that the requested information in No. 3 of the Applicant's request is subject to disclosure, taking into account redactions as may be necessary to protect information falling within the statutory exemptions. In this case, the Commission advises that supplying the '*lists of beneficiaries and approval minutes*' in each sub-county indicating names and the amount disbursed without other personal information such as Identity Card Numbers, date of birth, KRA pin numbers, telephone numbers and so on will suffice to comply with the Applicant's request.

43. In relation to Numbers 4, 5, 6 and 7 of the Applicant's request, the Commission upon careful evaluation of the nature of the requested information finds that these sets of information do not fall within any of the exemptions under *section 6(1)* of the *ATI Act, 2016*. Thus, the Commission holds that such requested information should be disclosed to the Applicant.

vi. Whether Legal Sanctions Should Issue Against Mrs. Mwanajuma Hiribae, the Respondent's Acting County Secretary for Failure to Honour the Commission's Summons.

44. *Article 252(3)* of the *Constitution* grants the Commission power to issue summons, if necessary, in the course of conducting investigations into complaints lodged before it. This is operationalized by *sections 26(a)* and *27* of the Commission's constitutive Act as well as the *ATI Act, 2016*.

45. *Section 23 (1)(a)* of the *ATI Act, 2016* grants the Commission powers to...

“a. Issue summonses or other orders requiring the attendance of any person before the Commission and the production of any document or record relevant to any investigation by the Commission;
b. Question any person in respect of any subject matter under investigation before the Commission; and
c. Require any person to disclose any information within such person's knowledge relevant to any investigation by the Commission.”

46. The Commission is empowered by Section 23 (2) of the ATI Act, 2016 to issue appropriate orders if there has been infringement of the provisions of the Act. In addition, Section 28 (8) of the Act provides that...

“a person who fails to attend before the Commission in accordance with any summons or order issued under subsection 23(1)(a) commits an offence and shall be liable, on conviction, to a fine not exceeding three hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both.”

47. Pursuant to the afore-stated legal provisions, the Commission on 19th January 2026 issued Summons to Mrs. Mwanajuma Hiribae, the Acting County Secretary of the Respondent. The Summons were duly served and stamped as received by the Respondent on 21st January 2026. The Summons required attendance of the Acting County Secretary on 2nd February 2026 for the purpose of interview, questioning and/or disclosure of information or production of documents and examination in relation to the present Application. The Acting County Secretary did not attend

the summons hearing, she did not file a response with the Commission or disclose the requested information.

48. The Commission therefore finds and holds that the Acting County Secretary, in failing to respond to the Request for Review and honouring the Summons, is culpable of commission of an offence under *section 28(8) (a) of the ATI Act, 2016.*

49. Accordingly, the Commission shall forward the name of Mrs. Mwanajuma Hiribae to the Office of the Director of Public Prosecution for prosecution in accordance with the law.

E. FINAL ORDERS

50. Having made a careful analysis of all the facts and information provided in this review application, the Commission, pursuant to the powers granted by sections 22(3)(a)(i) and 23(2) of the Access to Information Act and Regulations 25(8) and 25(9) of the Access to Information (General) Regulations, 2023 **ORDERS:**

1. THAT the Acting County Secretary, County Government of Tana River shall facilitate full disclosure of information and records held relating to the request made by Tana River Civil Society Organizations Network through a letter dated 4th November 2024 in numbers 4, 5, 6 and 7 being:

- i. A report on the status of the loan scheme disbursed to all beneficiaries as at 4th November 2024;

- ii. A statement on whether the loan scheme was functional as at 4th November 2024 and if not, the reasons thereof and whether the scheme met its objectives or intended purpose;
- iii. An explanation on whether there was another loan scheme established to support the business economy in the County; and
- iv. An explanation on whether the Inuka Funds board existed and if so, its effectiveness.

2. **THAT** the Acting County Secretary, County Government of Tana River shall facilitate information and records requested in No. 3 of the Applicant's letter dated 4th November 2024 on '*the list of the beneficiaries in each sub-county indicating the amount distributed and the approval minutes by sub-county committees and the board*' taking into account necessary redactions to protect information falling within statutory exemptions.

3. **THAT** compliance with the above orders shall be within **twenty-one (21) days** from the date of this ruling.

4. **THAT** in the event of non-compliance with the orders above, the Commission shall recommend criminal prosecution against the Acting County Secretary, County Government of Tana River in line with Section 28 of the Access to Information Act, 2016.

5. **THAT** the Commission Secretary, Commission on Administrative Justice shall within thirty days (30) days from the date of this ruling, prepare and forward to the Director of Public Prosecutions, the File

and all required documents to enable consideration and possible prosecution of Mrs. Mwanajuma Hiribae.

Dated, Signed and **Delivered** at **Nairobi** this...**4th** day of.....**JUNE**.....2026



DOROTHY JEMATOR
ACCESS TO INFORMATION COMMISSIONER

TAKE NOTICE THAT:

Section 23(3) of the ATI 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.”**

Section 23 (5) of the ATI Act, 2016 provides that **“If no appeal is filed under subsection (3), the party in favour of whom the order is made by the Commission may apply ex-parte by summons for leave to enforce such order as a decree, and the order may be executed in the same manner as an order of the High Court to the like effect.”**