

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/PO/047/5/25-JK

DENNIS TIYO..... APPLICANT

VERSUS

NAROK COUNTY LAND REGISTRYRESPONDENT

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 disclosure of such information enhances transparency in public administration, promotes responsible management of public resources, and enables citizens to meaningfully participate in governance.

B. FACTS OF THE REVIEW APPLICATION

- 4. The Commission received an application for review under *section 14(1) (a), ATI Act, 2016* dated 27th March 2025 from the Applicant, Dennis Tiyo, indicating that he lodged a request for information dated 10th February 2025 to the Respondent requesting for land dispute resolution report for parcel no. CIS-MARA/OLOLULUNGA/xxxx.
- 5. The Appcant avers that on 15th March 2024, a land survey exercise was undertaken in Ololulunga location affecting land parcel Nos. 6305, 6307, 6308, 6309, 6310, 6311, 6312, 6313 and 6314 but no report was issued to date. The Applicant states that he is being affected by a boundary dispute as his neighbor erected a fence which cut across his farm limiting access to his land.
- 6. Upon receipt of the Application, the Commission wrote to the Respondent through a letter dated 19th June 2025 forwarding the request for information and requiring the Respondent to give an institutional report in line with *Section 22 (3) of the ATI Act, 2016* and *Regulation 25(1) of the ATI General Regulations, 2023* within seven (7) days.

7. The Respondent did not respond to the Commission letter dated 19th June 2025 whereof summons dated 13th November 2025 were issued requiring the Respondent to appear before the Commission on 25th November 2025 pursuant to *Article 35 (1) and 252 (3) of the Constitution* as read together with *Sections 21 and 2 (1) of the ATI Act, 2016*. The summons were served and duly stamped as received by the Respondent on 14th November 2025.
8. The Respondent attended the summons as scheduled and provided a letter dated 19th November 2025 indicating that the survey exercise was conducted on 17th May 2024 to verify and mark the boundaries of parcels CIS MARA/OLOLULUNGA/6305-6314. The Respondent stated that the exercise covered the upper part of the land parcels since the lower boundary bordered a different registration section which was not part of the verification exercise. The exercise was then rescheduled to a later date to allow all parties to be included in the exercise thus there was no conclusive report available. The Land Registrar requested for fourteen days to complete the verification and issue a conclusive final report.
9. The time requested by the Respondent of fourteen days lapsed on 5th December 2025. Despite the request for extension of time, the Respondent did not issue the requested report or provide any further response 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) of the Act* 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 conclusive response from the Respondent, the Commission proceeds to determine this matter pursuant to section 23(3)(a)(i) of *ATI Act, 2016*, which permits the Commission to determine an application where the requested information or report is not received within the stipulated time.

C. ISSUES FOR DETERMINATION

12. After a careful analysis of the request for information dated 10th February 2025 and the review application dated 27th March 2025 by the Applicant together with the Respondent's response letter dated 19th November 2025, the Commission frames the following issues as the issues for determination in this review:

- i. Whether the Commission has jurisdiction to review the Respondent's decision under the *ATI Act, 2016*;
- ii. Whether the information requested for, is held by the Respondent;
- iii. Whether the Applicant is entitled to the information sought.

D. ANALYSIS OF FACTS, ISSUES AND FINDINGS

- i. Whether the Commission has jurisdiction to review the Respondent's decision under the *ATI Act, 2016*;**

13. Section 14(1)(a) of the *ATI Act, 2016* expressly empowers the Commission to review decisions of a public entity or private body that declines to

grant access to requested information. It is quite clear that 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.”***

14. The Respondent is a land registry established pursuant to section 7(1) of the *Land Registration Act, 2012* (LRA, 2012). The Respondent is established to offer land administration and registration services as provided by section 6 of the LRA within Narok County.

15. From the foregoing legal framework, the Commission finds that the Respondent is a public entity within the meaning of Section 2 of the *ATI Act, 2016* and that it has jurisdiction to review the Respondent's decision and conduct relating to the Applicant's Request for information.

ii. Whether the information requested for, is held by the Respondent

16. Section 4 (1) of the *ATI Act, 2016* stipulates that “...every citizen has the right of access to information **held** by the State”. 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'**.*

17. 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. Thus, the obligation to provide such information cannot be invoked if the Respondent demonstrates that it is not in possession of such information.

18. Section 7 of the LRA, 2012 provide that...

"There shall be maintained, in each registration unit, a land registry in which there shall be kept—
(a) a land register, in the form to be determined by the Cabinet Secretary;
(b) the cadastral map;
(c) parcel files containing the instruments and documents that support subsisting entries in the land register;
(d) any plans which shall, after a date appointed by the Cabinet Secretary, be geo-referenced;
(e) the presentation book, in which shall be kept a record of all applications numbered consecutively in the order in which they are presented to the registry;
(f) an index, in alphabetical order, of the names of the proprietors; and
(g) a register and a file of powers of attorney."

19. Section 9 of the said Act requires every land registrar to maintain a register and any document required to be kept under the Act in a secure, accessible and reliable format. This obligation to maintain

records extend to electronic records and the Integrated Land Resource Register as stated in the said section.

20. Further, *section 19* of the said Act provides that in the event of a land boundary dispute, the Registrar is required to give notice to the owners and occupiers of the land adjoining the boundaries in question of the intention to ascertain and fix the boundaries, give all of them an opportunity to be heard, cause a survey to be done indicating the precise position of the boundaries in question, then make a note in the register that the boundaries have been fixed.

21. The requested information in this review is a land dispute resolution report for parcel no. CIS-MARA/OLOLULUNGA/xxxx which clearly falls within the information and documents which are held by the Respondent pursuant to its obligations as stipulated above.

22. Based on the foregoing, the Commission finds that the Respondent holds the requested information.

iii. Whether the Applicant is entitled to the information sought

23. 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.**

24. The Commission takes judicial notice that the Applicant, Dennis Tiyo is a citizen of Kenya meeting the citizenship criteria under *Article 35* and *section 4* of the *ATI Act*. Accordingly, the Commission finds and holds

that the Applicant is entitled to invoke and enjoy the right of access to information as guaranteed under the Constitution and the ATI Act, 2016.

25. The right of access to information is however not absolute. Section 6 (1) of the ATI Act, 2016 restricts disclosure of information 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 the 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 proceeding; or***
- (i) Infringe professional confidentiality as recognized in law or by the rules of a registered association of a profession."***

26. In the present case, the Commission notes that the Respondent in its letter dated 19th November 2025 did not expressly decline disclosure on the basis of the exemptions provided under Section 6(1) of the ATI Act, 2016. Rather, the Respondent indicated that the verification exercise had not been concluded and requested for additional time to finalize the exercise whereof the conclusive final report would be supplied.

27. In the case of **Michael Kiarie vs Soikan Pelia ELC Case No.868 of 2017 (2024) KEELC 5539 KLR**, the Court affirmed the powers of the land Registrar in resolution of boundary dispute by stating that ...

“From the pleadings, evidence and testimonies, this is clearly a boundary dispute. Sections 16, 17 and 18 of the Land Registration Act stipulate that determination of boundary disputes lies in the jurisdiction of the Land Registrar. Section 18 (1) Except where, in accordance with section 20, it is noted in the register that the boundaries of a parcel have been fixed, the cadastral map and any filed plan shall be deemed to indicate the approximate boundaries and the approximate situation only of the parcel. The court shall not entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined in accordance with this section.”

28. Section 19 (1) of LRA, 2012 outlines the process of fixing boundaries by stating that...

“If the Registrar considers it desirable to indicate on a filed plan approved by the office or authority responsible for the survey of land, or otherwise to define in the register, the precise position of the boundaries of a parcel or any parts thereof, or if an interested

person has made an application to the Registrar, the Registrar shall give notice to the owners and occupiers of the land adjoining the boundaries in question of the intention to ascertain and fix the boundaries.'

29. In addition to the notice to all persons involved in a boundary dispute, section 19(2) of LRA, 2012 requires the land registrar afford all persons involved an opportunity to be heard before a decision can be made. This process provides an open and inclusive structure where all concerned parties are involved and given an opportunity to be heard in resolution of the dispute.

30. After a decision on the land boundary dispute is made, the registrar is required by section 19(2) and (3) LRA, 2012 to...

"(2)...cause to be defined by survey, the precise position of the boundaries in question, file a plan containing the necessary particulars and make a note in the register that the boundaries have been fixed, and the plan shall be deemed to accurately define the boundaries of the parcel.

(3) Where the dimensions and boundaries of a parcel are defined by reference to a plan verified by the office or authority responsible for the survey of land, a note shall be made in the register, and the parcel shall be deemed to have had its boundaries fixed under this section."

31. Section 7(2) of the LRA, 2012 provides that the registrar shall upon payment of prescribed fee make information in the land registry accessible to any person. Further, Section 10 of the Act provides that...

“Subject to the Constitution and any other law regarding freedom of and access to information, the Registrar shall make information in the register accessible to the public by electronic means or any other means as the Chief Land Registrar may reasonably prescribe”

32. The Commission after a careful analysis of the request for information, is of the considered view that the information required to be included in lands records under section 19(2) and (3) of the LRA, 2012 constitutes part of the report of resolution of a boundary dispute which was requested by the Applicant.
33. The Commission find and holds that these records constitute public information or record which should be legally accessible to the Applicant as demonstrated herein before.
34. Article 47 of the Constitution and Section 4(1) of the Fair Administrative Action Act, 2015 provides that every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair. Written communication stipulating the decision made including reasons for the decision made by a public entity or public officer are a foundational pillar of the right to fair administrative action.
35. Consequently, the Commission is of the considered view that records of proceedings conducted by the Respondent under Section 19 (1) and (2) LRA, 2012 and the decision thereof constitutes the other part of the boundary resolution report which the Applicant requested.
36. On this part, the Commission is conscious that records constituting such proceedings may contain private information which is exempt from

disclosure pursuant to Section 6(1)(d) of the ATI Act, 2016. Access to such records requires a delicate balance to manage the competing rights and interests; on one hand, the Applicant right of access to information to enable realization of his right to property and on the other, the Respondent's obligation to prevent unwarranted disclosure of private information.

37. 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.”

38. 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.

39. One such mechanism is the redaction of exempt information from the requested proceedings report and provision of a redacted copy 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.

40. In light of the foregoing, the Commission holds that the requested boundary resolution proceedings report is subject to disclosure, taking into account redactions as may be necessary to protect information falling within the statutory exemptions.

E. FINAL ORDERS

41. 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, 2016 and Regulations 25(8) of the Access to Information (General) Regulations, 2023 **ORDERS:**

1. **THAT** the Land Registrar, Narok Land Registry should provide access to information and records kept pursuant to section 19 (2) and (3) LRA, 2012 resulting from land boundary dispute resolution for parcel no. CIS-MARA/OLOLULUNGA/xxxx.
2. **THAT** the Land Registrar, Narok Land Registry should provide access to proceedings and decision resulting from land boundary dispute resolution for parcel no. CIS-MARA/OLOLULUNGA/xxxx taking into account necessary redactions to protect information falling within statutory exemptions.
3. **THAT** compliance with No. 1 and 2 above be within **twenty-one (21) days** from the date hereof.

4. **THAT** in the event of non-compliance with the orders above, the Commission shall recommend criminal prosecution against the Land Registrar, Narok County Registry in line with Section 28 of the Access to Information Act, 2016.

Dated, Signed and **Issued** at **Nairobi** this.....**28th** day of**AUGUST**.....2026



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."***

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."***