

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/PE/040/143/2025-MW

NAYAN SAVLA.....APPLICANT

VERSUS

MILKA TRADING LIMITED..... 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* and the *Commission on Administrative Justice Act, CAP. 7J*. 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, CAP. 7M* (hereinafter referred to as “the ATI Act”).
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. On 5th November 2025, the Applicant lodged an application with the Commission seeking a review arising from the Respondent's failure to respond to his request for information. The Applicant stated that he had submitted his request to the Respondent through a letter dated 22nd August 2025, but had not received a response despite the lapse of the statutory timeline of 21 days.
5. In his request for information dated 22nd August 2025, the applicant sought the following sets of information:
 - a. The CR12 of Milka Trading Limited and any shareholding or director changes in the last 6 Years;
 - b. Details of the tenders Milka Trading Limited participated in competition with Jumbo Commodities Limited over the last 6 Years; and
 - c. Details of what role Hemang Rana is playing within the organisation.
6. The Commission, through a letter dated 24th November 2025, notified the Respondent of the application and required it to file an institutional report together with any relevant information within seven (7) days, pursuant to *Section 22(3)(a) of the ATI Act, 2016* and *Regulation 25(1) of ATI General Regulations, 2023*.
7. The Respondent, through their advocates, Macharia-Mwangi & Njeru Advocates submitted a response dated 1st December 2025 stating:

- i) That Milka Trading Limited has only two directors and shareholders, namely Kapila Mansukhal Savla and Mili Piyush Savla, and that there has been no change in the directorship or shareholding since the company's incorporation (*a CR12 was attached to this effect*);
- ii) That Nayan Savla is neither a shareholder nor a director of Milka Trading Limited and, according to the Respondent, had not demonstrated any suit involving him and the company; hence, he lacked locus to demand information concerning the company;
- iii) That Milka Trading Limited is a separate legal entity from Jumbo Commodities Limited and that its directors were not privy to tenders procured by Jumbo Commodities Limited;
- iv) That disclosure of Milka Trading Limited's tenders to a person not involved in the company's dealings would be prejudicial to the company;
- v) That the Applicant had previously used information obtained to institute various suits before the Chief Magistrates' Court and the High Court against the company, family members, other persons and institutions;
- vi) That the information concerning Jumbo Commodities Limited had previously been sought by the Applicant and was the subject of ongoing litigation in *Nairobi Petition No. E375 of 2025, Nayan Savla v. Maralal Energy Limited & Others*; and
- vii) That, in view of the above, the Commission should reject the Applicant's request.

8. Through a letter dated 29th December 2025, the Commission acknowledged the response and informed the applicant that it was their considered view that the response from the respondent sufficiently responded to his request for information dated 22nd August 2025 and indicated that the Commission would proceed to close the file.

9. Subsequently the Applicant appealed on 12th July 2026 to the Commission to, *inter alia*, reopen his file, provide written reasons for the closure of the file and to disclose the letter from Macharia Mwangi & Njeru Advocates dated 1st December 2025, Ref: MMN.GENFILE/2025 together with any attachments relied on by it.
10. Based on the foregoing, and pursuant to the Commission's powers and functions on review of decisions and inquiry into complaints under Sections 14, 22 and 23 of the ATI Act, the Commission proceeds to make a determination on the application.

C. ISSUES FOR DETERMINATION

11. The Commission notes that the Applicant initially lodged a request for review on 5th November 2025 following the Respondent's failure to respond to his request for information. Following receipt and consideration of the Respondent's response dated 1st December 2025, the Commission, by its letter dated 29th December 2025, informed the Applicant that the response sufficiently addressed the request and that the file would be closed. The Applicant subsequently wrote to the Commission on 12th July 2026 seeking, *inter alia*, reopening of the file, disclosure of the Respondent's response and reconsideration of the matters previously addressed. The present determination therefore considers both the Applicant's asserted entitlement to the information and whether the matters subsequently raised disclose sufficient grounds for the Commission to reopen or reconsider the concluded review. Accordingly, upon careful consideration of the above, the Commission frames the following issues for determination:

- i) Whether the Commission has jurisdiction to consider the application for review before it;

- ii) Whether the Respondent has a duty to disclose the information sought or has demonstrated a lawful basis for withholding the same; and
- iii) Whether the Commission should reopen the Applicant's file.

D. ANALYSIS OF FACTS, ISSUES AND FINDINGS

i. Whether the Commission has Jurisdiction to Consider the Review Application Before it.

12. *Article 35 of the Constitution*, guarantees every citizen the right of access to information held by the State and information held by another person where such information is required for the exercise or protection of any right or fundamental freedom.

13. The wording of *Article 35(1)(b)* is significant in that it extends the constitutional right beyond information held by the State to information held by “*any other person*”, where the information is required for the exercise or protection of a right or fundamental freedom. *Article 260* of the Constitution defines ‘person’ to *include a company, association or other body of persons whether incorporated or unincorporated*. The use of the expression “*any other person*”, rather than language confined to public entities, demonstrates that the constitutional right is not restricted to information in the custody or possession of State organs or public bodies. It contemplates, subject to the constitutional threshold, access to relevant information held by non-state actors.

14. The Constitutional right is operationalized through the *ATI Act, 2016* under which *Section 4(1)* provides that every citizen has the right of access to information held by a public entity and, subject to *Article 35(1)(b)* of the Constitution, information held by a private body. *Section 4(2)* further

requires that the right be given effect to in accordance with the principles set out in the Act.

15. *Section 2* of the *ATI Act* defines a “*private body*” by reference to specified functional circumstances rather than merely the legal form or incorporation status of an entity. The definition encompasses a private entity or non-State actor which, among other circumstances, receives public resources or benefits, utilizes public funds, performs public functions or provides public services, as well as an entity in possession of information of significant public interest in the circumstances specified in the Act. The statutory definition therefore recognizes that entities which are formally private may, by virtue of their functions, resources, services or the nature of information in their possession, fall within the access to information framework.

16. The relationship between *Article 35(1)(b)* and *Section 2* is therefore material. The constitutional reference to “*any other person*” establishes the broader constitutional basis for access to information held outside the State, while *Section 2* identifies the circumstances in which such non-State actors are treated as private bodies for purposes of the statutory regime. *Section 2* should consequently be understood as providing the statutory framework through which the broader constitutional guarantee is operationalized.

17. This interpretation is also consistent with *Section 14(1)*, which expressly empowers an applicant to apply to the Commission for review of a decision of a public entity or private body in relation to a request for access to information. The reviewable decisions include a decision to grant or refuse access, grant access in edited form, defer access, impose a fee, grant access only to a specific person, or refuse to correct, update or annotate personal information. The express inclusion of

private bodies confirms that Parliament intended the Commission's review jurisdiction to extend beyond public entities, subject to the requirements prescribed by the Constitution and the Act.

18. The High Court has also confirmed that the Commission's jurisdiction under Section 14 extends to private bodies. In *Republic v Sam Nthenya, Chief Executive Officer, Nairobi Women's Hospital & another ex parte Christine Nzula; Commission on Administrative Justice (Interested Party)* [2021] KEHC 13512 (KLR), the Court rejected the argument that a private company was, by virtue of being private, outside the reach of the access to information framework. In Paragraph 40 of the judgement, Ongudi J stated as follows;

The respondents are confirmed to be a private company and so fall under private bodies. Does that in itself exonerate them from complying with the provisions of the Commission on Administration of Justice Act (CAJA) and Access to Information Act? Section 14(1) of the Access to Information Act refers to both public and private entities. The 2nd respondent is a private medical facility which offers services to members of public. The ex parte applicant is one such member of the public. I therefore find that the respondent's argument that they cannot be compelled to issue the information sought does not hold water as the right to access information is a sacrosanct right which applies to actions by both public and private bodies. The same is granted by Article 35 of the Constitution and enforced by the Access to Information Act while the CAJA plays the oversight role.

19. Regulation 2 of the Access to Information (General) Regulations, 2023, adopts the definition under Section 2 of the ATI Act, 2016, and specifies, through the Second Schedule, categories of private bodies to which the

Act and Regulations apply. The Second Schedule lists private bodies providing services in, among others, the health, education, financial, professional, regulatory, media and communication sectors. The effect of the Regulation and the *Second Schedule* is to give further operational and sectoral guidance on the categories of private bodies that fall within the access to information framework.

20. In considering the scope of the *Second Schedule*, the Commission further notes the use of the word “*including*” in the introductory provision. The ordinary meaning of the term is expansive rather than restrictive. In this context, the categories of private bodies and services enumerated in the Schedule are properly understood as illustrative of the types of private bodies contemplated under the regulatory framework and not necessarily as constituting an exhaustive or closed list. The Schedule should consequently be read harmoniously with *Article 35(1)(b)* of the Constitution, *Section 2* and *Section 4(1)* of the ATI Act, and *Regulation 2* of the ATI Regulations without limiting the scope of the constitutional right or the statutory definition of a private body.

21. The Commission is therefore of the view that determining whether a private entity falls within the access to information framework requires consideration of both its status and the statutory circumstances bringing it within the definition of a private body, as well as the nature and purpose of the information sought. The fact that an entity is incorporated or operates as a private company is not, in itself, determinative. Equally, the constitutional expression “*any other person*” does not make every private entity automatically subject to an unrestricted obligation to disclose information. The constitutional and statutory thresholds must be satisfied in each case.

22. The Commission is therefore required, at the jurisdictional stage, to distinguish between two related but separate questions. The first is whether the Respondent is a private body falling within the scope of the *ATI Act, 2016* and the *Access to Information (General) Regulations, 2023* such that its decision in relation to the request is amenable to review by the Commission under section 14(1) of the Act. The second concerns whether the particular information sought is information to which the Applicant has established a right of access under Article 35(1)(b) and the Act. While the first question concerns the Commission's jurisdiction over the Respondent and its decision, the latter concerns the substantive merits of the Applicant's request.

23. The Commission has considered the nature of the Respondent, Milka Trading Limited, and the statutory framework governing access to information held by private entities. From publicly available information obtained from various websites, including the websites of public institutions, Milka Trading Limited appears to be a private commercial entity engaged in the general supply of goods and services and has been registered and/or prequalified as a supplier by various public institutions. The goods and services offered by the Respondent include, among others, office furniture and fittings, office equipment, corporate wear, printing and promotional materials, telecommunications equipment, motor vehicle tyres, tubes, batteries, spare parts and accessories, and other general supplies.

24. From the nature of these goods and services and the Respondent's engagement with public institutions, the Commission observes that its activities are closely connected with the provision and facilitation of public services and the utilisation of public resources. The Respondent's participation in public procurement therefore brings its activities within

the broader public interest contemplated under the access to information framework and warrants consideration under the definition of a “private body” under section 2 of the *ATI Act, 2016*.

25. From the foregoing, the Commission finds that the Respondent's status as a private company does not, by itself, place it outside the scope of the *ATI Act, 2016*. The Respondent's engagement in the supply of goods and services to public institutions and its participation in public procurement are relevant considerations in determining whether it falls within the statutory definition of a private body under Section 2 of the Act. Further, the inclusion of private bodies within the jurisdiction conferred upon the Commission under section 14(1), read together with Regulation 2 and the Second Schedule, demonstrates that the access to information framework is not confined to State organs and public entities. The use of the word “including” in the Second Schedule further supports an inclusive interpretation of the categories of private bodies contemplated under the regulatory framework, without displacing the substantive definition under section 2 of the Act.

26. Accordingly, the Commission is satisfied that it has jurisdiction under Section 14(1) of the *ATI Act* to consider and review the Respondent's decision or conduct in relation to the Applicant's request for information. This finding on jurisdiction does not, however, determine whether the Applicant is entitled to the specific information sought. That question requires a separate consideration of whether the information satisfies the requirements of Article 35(1)(b) of the Constitution and the *ATI Act*, and whether any part of the information is subject to a lawful exemption under the Act.

27. Having established jurisdiction, the Commission will therefore proceed to determine whether the Applicant has established an entitlement to the specific information sought under *Article 35(1)(b)* of the Constitution and the *ATI Act, 2016*, and, if so, whether the Respondent has demonstrated a lawful basis for withholding any part of that information.

ii) Whether the Respondent has a duty to disclose the information sought or has demonstrated a lawful basis for withholding the same

28. Having considered the Applicant's request, the Respondent's response and the applicable constitutional and statutory framework, the Commission considers that the issues of whether the Respondent has a duty to disclose the information sought and whether it has established a lawful basis for withholding any of that information are closely related and are best determined together. *Article 35(1)* of the Constitution draws a distinction between information held by the State under *Article 35(1)(a)* and information held by another person under *Article 35(1)(b)*, where such information is required for the exercise or protection of a right or fundamental freedom.

29. The distinction is material in the present case because the Respondent, Milka Trading Limited, is a private company. The Applicant therefore does not enjoy an unrestricted right to information held by the Respondent merely by virtue of *Article 35(1)(a)*. In respect of information held by a private body, the Applicant must demonstrate the constitutional basis contemplated under *Article 35(1)(b)*, namely, that the information sought is required for the exercise or protection of a right or fundamental freedom. The Applicant seeks, among other things, the CR12 of Milka Trading Limited and information concerning changes in its shareholding and directorship over a period of six years; details of tenders in which the Respondent competed with Jumbo Commodities

Limited over the same period; and information concerning the role of Hemang Rana within the organization.

30. The distinction under Article 35(1) was considered in *Nairobi Law Monthly Company Limited v Kenya Electricity Generating Company & 2 Others* [2013] eKLR, where the Court recognized the two distinct constitutional situations governing access to information. The Court stated thus;

71. The intention in Article 35(1) was clearly to create two distinct situations with regard to the right of access to information: one in which the citizen was entitled as of right to information held by the State; the other in which a citizen could access information from another, a private person, for the exercise or promotion of another right or freedom.

*72. I believe this interpretation accords with the position in other jurisdictions such as South Africa. Commenting on Section 32(1)(a) of [the Constitution](#) of South Africa which contains provisions similar to Article 35(1)(a) of the Constitution of Kenya, Iain Currie & Johan De Waal in *The Bill of Rights Handbook*, 5th Edition, observes at page 694 that the Section:*

“makes public-sector information available on a ‘right to know’ basis, meaning that members of the public are entitled to it, unless there are good reasons for withholding it. Information in public hands is, after all, the public’s information and should be accessible to the public, unless disclosure will cause harm to legitimate government interests or the rights of others. Unless one intends to dissolve the distinction between the public and private spheres, private-sector information must be treated differently. The Constitution makes information in private hands available on a ‘need to know’ basis, meaning that a requester is only entitled to such information if the request can be justified by providing reasons why the information is required. The reasons recognized by s 32(1)(b) of the Constitution as sufficient justification for

imposing duties of transparency on the private sector are that the information is required for the exercise or protection of any right.'

31. In the present case, the Respondent's principal objection is that the Applicant is neither a shareholder nor a director of Milka Trading Limited and therefore lacks the requisite standing to seek information concerning the company. The Commission does not find this argument, standing alone, determinative. Shareholding or directorship is not the test prescribed by *Article 35(1)(b)* or the *ATI Act, 2016*. The relevant question is whether the Applicant has established that the information sought is required for the exercise or protection of a right or fundamental freedom and, where that threshold is met, whether the information is subject to a lawful limitation. The Applicant's status as an outsider to the company therefore does not, without more, extinguish the right to seek information from the Respondent.

32. The Commission further observes that, in respect of information held by a private body, the threshold under *Article 35(1)(b)* is not a mere procedural formality. The Applicant must demonstrate a sufficient nexus between the information sought and the exercise or protection of an identifiable right or fundamental freedom. In the absence of such a nexus, the constitutional basis for compelling disclosure by a private body cannot be established.

33. In the present matter, the Applicant has not demonstrated, with sufficient particularity, the right or fundamental freedom for whose exercise or protection the extensive corporate and commercial information sought is required. This is particularly significant given that the request extends to information of over a period of six years and concerns the Respondent's internal corporate structure and commercial activities.

34. 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."***

Accordingly, where the Respondent seeks to withhold information, it must identify the specific statutory limitation relied upon and demonstrate the nexus between the information sought and the interest protected by that limitation.

35. The Commission must consequently consider the nature of each category of information sought and the basis upon which the Respondent has declined to provide it.
36. With regard to the **CR12 and information concerning shareholding and directorship**, the Commission notes that the Respondent provided a CR12 in its response and relied upon it to indicate that the company has two directors and shareholders and that there had been no changes since incorporation. To that extent, the request for the current CR12 was addressed. The Commission therefore finds no basis to compel the Respondent to provide additional information, particularly where the Applicant has not established the *Article 35(1)(b)* threshold.
37. With respect to the information concerning **Hemang Rana**, The Respondent stated that Hemang Rana is neither an employee, shareholder nor director of the company. The Applicant has subsequently produced a LinkedIn profile which identifies him as General Manager of Milka Trading Limited. As considered below, the LinkedIn profile is not, without more, conclusive evidence of his legal or employment status or of the existence of a corresponding record held by the Respondent. The right of access does not oblige a body to create information that it does not hold. In the circumstances, the Commission finds no sufficient basis upon which the Respondent can be compelled to disclose information concerning an alleged role that has not been demonstrated to exist in the Respondent's records.
38. With respect to the **tender information** sought by the Applicant, the Respondent raised concerns that disclosure of the information would be prejudicial to it and has further referred to the Applicant's previous use of information sought in litigation. The Commission has considered these assertions in light of *Section 6(1)(e) of the ATI Act*, which expressly

protects information whose disclosure is likely to substantially prejudice the commercial interests, including intellectual property rights, of the entity or third party from whom the information was obtained. The statutory test is therefore not whether information is merely described as “commercial” or “confidential”, but whether disclosure is likely to occasion substantial prejudice to a protected commercial interest.

39. In applying *Section 6(1)(e)*, the Commission recognizes that information relating to a company’s participation in tenders and its commercial dealings may contain commercially sensitive information concerning its business operations, competitive position and dealings with other entities. In the circumstances of the present case, the Commission is satisfied that the requested tender information, particularly given its breadth, the six-year period covered and its focus on tenders in which the Respondent competed with Jumbo Commodities Limited, would disclose commercially sensitive aspects of the Respondent’s business operations and competitive dealings. Disclosure of such information is reasonably likely to place the Respondent at a competitive disadvantage and thereby substantially prejudice its legitimate commercial interests within the meaning of *Section 6(1)(e)* of the *ATI Act, 2016*.

40. The Commission has also considered the Respondent’s contention that the Applicant has previously used information obtained from the Respondent to institute litigation and that there is pending litigation involving Jumbo Commodities Limited in *Nairobi Petition No. E375 of 2025(sic), Nayan Savla v. Maralal Energy Limited & Others*.

41. The Commission considered it necessary, in the exercise of its statutory mandate, to establish the existence and nature of the proceedings relied upon by the Respondent. This inquiry was undertaken to ascertain the factual context against which the claimed exemptions fall and not

to relieve the Respondent of its statutory burden of demonstrating the applicability of the exemptions relied upon.

42. In this regard, the Commission has established that there is indeed a matter in which judgment was delivered on 22nd January 2026, namely, *Savla v. Maralal Energy Limited & 2 Others; Commission on Administrative Justice (Interested Party) (Constitutional Petition E375 of 2024) [2026] KEHC 1281 (KLR) (22 January 2026)*. The proceedings principally concerned allegations relating to a denial of access to personal salary and employment information, misuse of his personal data, and non-compliance with binding directives issued by the Commission on Administrative Justice.

43. The Commission therefore finds that the proceedings in *Savla v. Maralal Energy Limited & 2 Others (supra)* are distinguishable from the present matter, both in terms of the subject matter and the information in issue. While the said proceedings principally concerned access to personal salary and employment information, alleged misuse of personal data and compliance with directives issued by the Commission, the present request concerns different information and raises distinct issues under the *ATI Act, 2016*. The existence of the said proceedings, therefore, does not, in itself, establish that disclosure of the information presently sought would prejudice the Respondent's commercial interests or otherwise bring the information within any of the exemptions under *Section 6* of the *ATI Act*.

44. The Commission is clear, as elaborated in its decision in *Kahura Mundia v. Kenya Medical Practitioners and Dentists Council (CAJ/ATI/KMPDC/012/80/2025)*, that the existence of pending or contemplated litigation, or the Applicant's intended use of the information in such proceedings, does not in itself constitute an

exemption under *Section 6 of the ATI Act, 2016*. Neither does the mere fact that information may be relevant to litigation extinguish the right of access to information. Accordingly, the Respondent cannot rely on the existence of the said proceedings, without demonstrating the applicability of a specific statutory exemption to the information sought, as a sufficient ground for refusal.

45. Accordingly, the Commission finds that the Applicant has not established the constitutional basis under *Article 35(1)(b)* of the Constitution sufficient to compel disclosure of the Respondent's private corporate and commercial information, having failed to demonstrate that the information sought is required for the exercise or protection of a right or fundamental freedom.

46. In any event, and without prejudice to the foregoing, to the extent that the information sought concerns the Respondent's tender participation and commercial dealings, the Commission is satisfied that its disclosure is likely to substantially prejudice the Respondent's legitimate commercial interests and is therefore exempt from disclosure under *section 6(1)(e)* of the *ATI Act, 2016*. The Commission has also considered whether partial disclosure or redaction could reasonably protect the Respondent's commercial interests; however, having regard to the breadth and nature of the request and the extent to which the information sought relates to the Respondent's commercial affairs, the Commission finds that partial disclosure would not adequately address the prejudice identified.

47. The Respondent therefore had a lawful basis for withholding the information falling within the identified exemption, and the Review Application is consequently found to be without merit to the extent that it seeks disclosure of the withheld information.

iii) Whether the Commission Should Reopen the Applicant's file

48. The Commission has considered the Applicant's request to reopen his file alongside the grounds advanced in the present Review Application. The Commission notes that the power to review is intended to address a specific decision, omission or failure falling within the Commission's mandate under the *ATI Act, 2016*, and is not intended to provide an avenue for reopening a matter merely because the Applicant remains dissatisfied with the outcome previously reached.
49. In the present case, the Applicant has attempted to introduce what he considers to be new grounds in support of his request to reopen the matter. In particular, he has annexed pleadings relating to *Nayan Savla v. Jumbo Commodities Limited & 2 Others, High Court Commercial Miscellaneous Application No. E876 of 2024 (Commercial Division)* in which he is involved as a shareholder of Jumbo Commodities Limited. The proceedings concern allegations that the company and its directors frustrated the Applicant's statutory rights as a shareholder by failing to circulate a proposed written ordinary resolution, thereby allegedly giving rise to corporate governance, statutory, administrative and constitutional violations.
50. The Applicant further contends that his connection to the present review application is not speculative, as demonstrated by a CR12 he has provided dated 25th October 2021 showing that he is a shareholder of Jumbo Commodities Limited, and maintains that the information sought is necessary for the exercise and protection of his rights as a shareholder, litigant and person seeking access to justice.
51. It is the Commission's view that the mere existence of separate judicial proceedings involving the Applicant and Jumbo Commodities Limited does not, without more, establish a sufficient legal basis for reopening the present file. To the extent that the Applicant seeks to exercise or protect rights arising from his status as a litigant, the Commission advises

that such issues ought to be canvassed through the appropriate and available court process. This approach is consistent with the position adopted in *Kahura Mundia v Kenya Medical Practitioners and Dentists Council*, (*supra*) where the Commission recognized that matters falling within the province of the courts should be pursued through the judicial process rather than through the access to information review mechanism. In particular, the Commission in paragraph 51 stated thus:

The Commission is therefore of the view that, having regard to the pending court proceedings, any request for discovery, inspection or production of documents for purposes of those proceedings should be addressed before the court seized of the matter. That court is best placed to determine the relevance of the documents to the issues before it, whether they ought to be disclosed or produced, and the appropriate conditions, if any, governing their use.

52. The Applicant has further relied on an annexed screenshot of the LinkedIn profile of Hemang Rana, which identifies him, among other roles, as General Manager of Milka Trading Limited. In addition, the Applicant has drawn attention to the inclusion of both Jumbo Commodities Limited and Milka Trading Limited in Category A2 of the list of prequalified suppliers in the State Department for Higher Education & Research, under Tender No. MOE/SDHER/003/2023-2024 for the supply and delivery of computers, laptops, UPS, printers, scanners, mobile devices and related ICT equipment, consumables and supplies.

53. The Commission has considered these assertions and notes that a LinkedIn profile, while potentially indicative of a person's stated professional position, is not necessarily conclusive evidence of that person's legal or employment status. More importantly, the material placed before the Commission does not establish that the Respondent holds a record confirming the alleged role or that such a record forms part of the information held by the Respondent. Similarly, the inclusion of

the two entities in the list of prequalified suppliers does not, without further evidence, establish the existence or possession of the specific information sought. The Commission therefore finds that these matters do not materially alter its previous determination or, in themselves, establish a different entitlement to the information sought under *Article 35(1)(b) of the Constitution*.

54. Finally, the Applicant has raised the fact that the law firm of Macharia-Mwangi & Njeru Advocates appears to have acted previously for both Jumbo Commodities Limited and Milka Trading Limited, which he contends raises a potential conflict of interest requiring clarification. However, the alleged professional relationship between the law firm and the two entities, without further evidence demonstrating how it affects the Commission's previous determination or establishes an entitlement to the information sought, does not in itself provide a sufficient basis for reopening the matter.

55. The Commission has considered the matters raised by the Applicant collectively and finds that, while the documents and assertions may provide additional context regarding his relationship with the parties and persons associated with them, they do not constitute new material facts, changed circumstances, or an error apparent on the record sufficient to warrant reopening the file. The Applicant has not demonstrated that the separate court proceedings, the alleged non-response to his email, the tender prequalification information, or the purported conflict of interest materially affects the Commission's earlier determination or establishes a legal entitlement to the information sought under *Article 35(1)(b) of the Constitution*. To the extent that the Applicant requires any information for purposes of exercising or protecting his rights as a litigant,

he is at liberty to apply to the court seized of the matter for such information or any appropriate directions necessary for the conduct of the proceedings.

56. Accordingly, the Commission finds that the grounds advanced by the Applicant, whether considered individually or cumulatively, are not sufficient to justify the exercise of the Commission's discretion to reopen the file.

57. With respect to the Applicant's request for a copy of the letter from the Applicant's advocates dated 1st December 2025, the Commission has checked its records and established that the said letter was forwarded to the Applicant as an attachment to the Commission's forwarding letter dated 29th December 2025. The records indicate that the forwarding letter and attachment were sent by the officer handling the Applicant's matter to the Applicant's email address, xxxxxxxxxxxxxx, on 30th December 2025 at 12:55 p.m. Accordingly, the Commission finds that the Applicant's request for a copy of the said letter had already been addressed, the letter having previously been transmitted to him.

58. In the circumstances, the Commission finds no sufficient basis to exercise its discretion to reopen the Applicant's file.

E. FINAL ORDERS

59. 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) and 23(2)c of the ATI Act, 2016* and

Regulation 25(10) of the Access to Information (General) Regulations, 2023, hereby dismisses the Review Application dated 5th November 2025 and declines the request to reopen the file.

Dated, Signed and **Issued** at **Nairobi** this.....17TH .. day of ...**SEPTEMBER**...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.”