

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI** 22 of 626  
**HCCHRPET E228 OF 2023**

KENYA HUMAN RIGHTS COMMISSION .....	1 <sup>ST</sup> PETITIONER
KATIBA INSTITUTE .....	2 <sup>ND</sup> PETITIONER
THE INSTITUTE FOR SOCIAL ACCOUNTABILITY (TISA).....	3 <sup>RD</sup> PETITIONER
TRANSPARENCY INTERNATIONAL KENYA .....	4 <sup>TH</sup> PETITIONER
INTERNATIONAL COMMISSION OF JURIST – KENYA (ICJ KENYA.....	5 <sup>TH</sup> PETITIONER
SIASA PLACE.....	6 <sup>TH</sup> PETITIONER
TRIBELESS YOUTH.....	7 <sup>TH</sup> PETITIONER
VERSUS	
NATIONAL ASSEMBLY.....	1 <sup>ST</sup> RESPONDENT
ATTORNEY-GENERAL.....	2 <sup>ND</sup> RESPONDENT
LAW SOCIETY OF KENYA.....	INTERESTED PARTY

**SUPPORTING AFFIDAVIT**

I, Christine Nkonge of P. O. Box 26586-00100, Nairobi, make oath and state as follows:

1. I am the 2<sup>nd</sup> Petitioner’s Executive Director, familiar with the facts and duly authorised to swear this affidavit on behalf of the other Petitioners.
2. I am aware that the World Bank’s Kenya Economic Update June 2023 indicates that in 2022 Kenya’s economic growth momentum was not only affected by the multiple challenges experienced in the year, but the **cost of living** also rose due to surging inflation. The World Bank records:

Multiple challenges loomed over the economy’s growth momentum and raised **cost of living**. Inflation surged to multi-year highs in 2022 in the wake of **rising world food and fuel prices** caused by global supply chain disruption and the Russian invasion of Ukraine. On top of that, the adverse weather shock experienced by the East African countries in the form of the worst drought in four decades not only aggravated the inflationary pressures but also **subjected millions of people to severe food insecurity and loss of livelihoods**. The shilling remained under pressure throughout 2022 as major central banks set on a tightening cycle and Kenya’s official foreign exchange reserves started to deplete in the context of high external financing needs amid difficulty of access to international

capital markets.

*I annex a copy of the World Bank's Kenya Economic Update June 2023 marked as 'CN-1'.*

3. Accordingly, the **cost of living** is a recurrent theme in the Budget Policy Statement, 2023. The Budget Policy Statement is statutorily underpinned by section 25 of the Public Finance Management Act, 2012 and is formulated as part of the National Treasury's Article 225(1) financial control mandate. The 2023 Policy acknowledges a 'backdrop of global economic slowdown underpinned by the ongoing Russia-Ukraine conflict, elevated global inflation, the lingering effects of the COVID-19 pandemic, and persistent supply chain disruptions and the drought effects that have created **urgency on food security** and climate change effects'.
4. Acknowledging the resulting impact on the lives and livelihoods of Kenyans, the BPS states:

Food inflation remained the main driver of overall year-on-year inflation in January 2023, contributing 5.2 percentage points, an increase, compared to a contribution of 3.2 percentage points in January 2022 (Figure 2.3). The increase was mainly attributed to relatively higher prices of key food items particularly cowpeas, maize grain (loose), beans, potatoes (Irish), green grams, and mangoes.

5. The Policy further states:

Fuel inflation also increased to contribute 2.4 percentage points to year-on-year overall inflation in January 2023 from a contribution of 1.4 percentage points in January 2022. This was mainly driven by increases in electricity prices due to higher tariffs and increased prices of kerosene/paraffin, diesel and petrol on account of higher international oil prices and scaling down of the fuel subsidy.

6. Thus, under the theme of Agricultural Transformation and Inclusive Growth, the Budget Policy Statement, 2023 recommends:

Cost of living. The cost of living can only be resolved by

raising agricultural productivity. The battle is between farmers needing higher incomes and consumers who want low prices. Food accounts for 54 percent of household expenditures but poor households spend more than 60 percent.

**Ending poverty:** Extreme poverty and vulnerability is also an agricultural phenomenon. Support to farmers to raise productivity would not only enable 4 2023 Budget Policy Statement them to feed themselves, but also generate a surplus that contributes to national food security and the economy.

*I annex a copy of the Budget Policy Statement 2023, marked as CN-2.*

7. Despite these concerns in June, the National Assembly passed, and the President assented to the Finance Act 2023 imposing onerous tax burdens on Kenyans amidst the rising cost of living and a global economic recession. The Finance Act, 2023 comprises 159 pages and substantively amends the following 12 Acts:
- Income Tax Act, Cap 470
  - Value Added Tax Act, 2013
  - Excise Duty Act, 2015
  - Tax Procedures Act, 2015
  - Miscellaneous Fees and Levies Act, 2016
  - Betting, Gaming and Lotteries Act, 1991
  - Kenya Roads Board Act, 1999
  - Kenya Revenue Authority Act, 1995
  - Employment Act, 2007
  - Unclaimed Financial Assets Act, 2011
  - Statutory Instruments Act, 2013
  - Retirement Benefits (Deputy President and Designated State Officers) Act, 2015
- I annex a copy of the Finance Act 2013 marked as CN-3.*
8. During the public hearings between 22-26 May 2023, many Kenyans protested the onerous and inequitable tax measures in the Bill citing the high **cost of living**. Only the additional benefits to the children of the retired Deputy President were part of the Bill. The additional retirement benefits for the children of selected retired state officers (other than a Deputy President) were not part of the Bill, so the public could not comment on them.

*I annex a copy of the Petitioners' submissions to the Committee, and the Committee's Report (indicating that the tax burden was a key concern to Kenyans) marked as CN-4 and CN-5.*

9. I am aware that the National Assembly passed the Bill without the concurrence of the Senate. The Bill concerns county government in functional areas like liquor control and housing.
10. I am advised by counsel that the Finance Act 2023, among others, violates Articles 10, 27, and 201 of the Constitution.
11. I am aware that business owners have expressed concern that implementing the onerous tax measures in the Finance Act 2023 will force them to lay off staff or shut down, thus leading to a massive loss of life and livelihoods by affected employees.
12. I swear this affidavit from facts within my knowledge, believing it to be true to the best of my knowledge unless I have otherwise disclosed the source of the information.
13. Without a stay, the court would face a *fait accompli* and its orders would neither reverse the *status quo* nor compensate the threatened violation of the right to fair administrative action.

Sworn at Nairobi by Christine Nkonge on 04 July 2023.



A handwritten signature in blue ink, appearing to be "Christine Nkonge".

Christine Nkonge

**Drawn and filed by**

Ochiel Dudley

House No. 5, The Crescent, off Parklands Road

P. O. Box 26586-00100, Nairobi

[litigation@katibainstitute.org](mailto:litigation@katibainstitute.org) / [ochieljd@katibainstitute.org](mailto:ochieljd@katibainstitute.org)

+254731 740 766