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KELIN
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REPUBLIC OF KENYA CONSTITUTIONAL AND HUMAN RIGHTS
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL PETITION NO. 605 OF 2014

IN THE MATTER OF ENFORCEMENT OF BILL OF RIGHTS UNDER ARTICLE
22(1) OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF THE
FUNDAMENTAL RIGHTS AND OF ARTICLES ART.19, ART.20, ART.21, ART.25,
ART.26, ART.27, ART.28, ART.29, ART.31, ART.33, ART.35, ART.43, ART.45 AND
ART.46 OF THE CONSTITUTION OF KENYA

BETWEEN

SWK.....1ST PETITIONER
PAK.....2ND PETITIONER
GWK.....3RD PETITIONER
AMM.....4TH PETITIONER
KENYA LEGAL & ETHICAL ISSUES
ON HIV AIDS [KELIN].....5TH PETITIONER
AFRICAN GENDER & MEDIA
INITIATIVE TRUST [GEM].....6TH PETITIONER

AND

MEDECINS SANS FRONTIERE-FRANCE.....1ST RESPONDENT
PUMWANI MATERNITY HOSPITAL.....2ND RESPONDENT
MARIE STOPES INTERNATIONAL.....3RD RESPONDENT
COUNTY EXECUTIVE MEMBER
IN CHARGE OF HEALTH SERVICES (NAIROBI COUNTY).....4TH RESPONDENT
CABINET SECRETARY MINISTRY OF HEALTH.....5TH RESPONDENT

NOTICE OF PRELIMINARY OBJECTION

TAKE NOTICE that the Third Respondent herein shall at the hearing of the Amended Petition amended on 10th September 2015 raise a preliminary objection and shall pray for the same to be struck out with costs on the ground that:

- I. The Petition filed herein discloses a purely ordinary civil dispute which is disguised as a constitutional issue contrary to clear statutory procedures laid down in the Civil Procedure Act and it is an abuse of Court process.

2. The civil dispute disclosed in the Petition revolves around a private matter between private persons over a disputed consent given by the Petitioners to the Respondents.
3. Civil remedies would be available to the Petitioners and the said Petitioners have not contended that this Court in exercise of its civil jurisdiction is unable to award them any remedy at all should they be successful or that the remedies known in law are either inadequate or non-existent or unconstitutional.
4. The Petition does not expressly disclose any infringement of the fundamental right of any of the Petitioners by the State.

DATED AT NAIROBI THIS 27TH DAY OF NOVEMBER 2015.

J.K. KIBICHO & COMPANY

ADVOCATES FOR THE THIRD RESPONDENT

DRAWN & FILED BY:-

J.K. KIBICHO & CO. ADVOCATES
ACK GARDEN HOUSE, 2ND FLOOR, WING "C"
1ST NGONG' AVENUE/OFF BISHOPS ROAD
P.O. BOX 73137 – 00200
NAIROBI (Our Ref.: Misc/233/APA/14)

TO BE SERVED UPON:-

I. ALLAN ACHESA MALECHE ADVOCATE
KENYA LEGAL & ETHICAL ISSUES
ON HIV AIDS [KELIN]
MOMBASA ROAD SOMAK BUILDING 4TH FLOOR
P.O. BOX 112 KNH
NAIROBI (O/Ref.: TBA)

2. HAMILTON HARRISON & MATHEWS
ICEA BUILDING
KENYATTA AVENUE
P.O. BOX 30333
NAIROBI
3. MANEGENE & PARTNERS ADVOCATES
BRUCE HOUSE 10TH FLOOR ROOM I00I
STANDARD STREET
P.O. BOX 7183 - 00200
NAIROBI (O/Ref.: TBA)
4. THE HON. ATTORNEY GENERAL
STATE LAW OFFICE
SHERIA HOUSE HARAMBEE AVENUE
P.O. BOX 40112
NAIROBI (O/Ref.: TBA)
5. RACHIER & AMOLLO ADVOCATES
MAYFAIR CENTRE 5TH FLOOR
RALPH BUNCHE ROAD
P.O. BOX 55645- 00200
NAIROBI (O/Ref.: TBA)
6. NUNGO, ODUOR & WAIGWA ADVOCATES
MANSONETTE NO. I
NEXT TO RILY SECURITY GROUP
MOMBASA ROAD OFF BUNYALA ROAD
P.O. BOX 70678 - 00400
NAIROBI (O/Ref.: TBA)