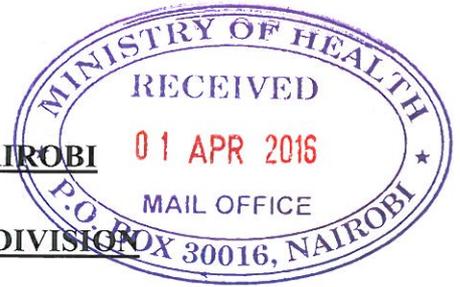


REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
MILIMANI LAW COURTS  
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION  
PETITION NO. 329 OF 2014



IN THE MATTER OF THE ENFORCEMENT OF THE BILL OF RIGHTS UNDER  
ARTICLE 22(1) OF THE CONSTITUTION OF THE REPUBLIC OF KENYA  
AND  
IN THE MATTER OF THE ALLEGED CONTRAVENTION OF ARTICLES 28, 29, 51(1),  
47(1), 39(1) AND 24(1) OF THE CONSTITUTION OF THE REPUBLIC OF KENYA  
AND  
IN THE MATTER OF THE PUBLIC HEALTH ACT, CHAPTER 242 OF THE LAWS OF  
KENYA  
BETWEEN

DANIEL NG'ETICH.....1<sup>ST</sup> PETITIONER  
PATRICK KIPNG'ETICH KIRUI.....2<sup>ND</sup> PETITIONER  
KENYA LEGAL & ETHICAL ISSUES  
NETWORK ON HIV & AIDS (KELIN).....3<sup>RD</sup> PETITIONER

AND

THE HON. THE ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT  
THE PRINCIPAL MAGISTRATE'S COURT AT KAPSABET.....2<sup>ND</sup> RESPONDENT  
PUBLIC HEALTH OFFICER NANDI CENTRAL DISTRICT  
TUBERCULOSIS DEFAULTER TRACING COORDINATOR.....3<sup>RD</sup> RESPONDENT  
THE MINISTER FOR PUBLIC HEALTH & SANITATION.....4<sup>TH</sup> RESPONDENT

DECREE

CLAIM FOR:

- (a) This Honourable Court be pleased to issue a declaration that the confinement of the Petitioners at the Kapsabet G.K. Prison for the purposes of tuberculosis treatment, for a period of eight months, as ordered by the 2<sup>nd</sup> respondent, was not authorized under Section 27 of the Public Health Act, Chapter 242 of the Laws of Kenya, and was therefore unlawful.
- (b) This Honourable Court be pleased to issue a declaration that the confinement of the Petitioners at the Kapsabet G.K. Prison for the purposes of Tuberculosis treatment for a period of eight months, as ordered by the 2<sup>nd</sup> Respondent violated the Petitioners' rights under Article 74, 80 and 81 of the Constitution of the Republic of Kenya, 1969 and Articles 24, 25, 28, 29, 51(1), 47(1) and 24(1) of the Constitution of the Republic of Kenya, 2010.



- (c) This Honourable Court be pleased to issue a declaration that the confinement of patients suffering from infectious diseases in prison facilities for the purpose of treatment is a violation of their rights under Articles 74, 80 and 81 of the Constitution of the Republic of Kenya, 1969 and Articles 24, 25, 28, 29, 51(1), 47(1), 39(1) and 24(1) of the Constitution of the Republic of Kenya, 2010.
- (d) This Honourable Court be pleased to order that the confinement of patients suffering from infectious diseases in prison facilities for the purposes of treatment under section 27 of the Public Health Act, Chapter 242 of the Laws of Kenya violates the Constitution, and any use of these provisions to order such detention in prison is at all times unconstitutional.
- (e) This Honourable Court be pleased to order the 4<sup>th</sup> Respondent to issue a circular within 14 days to all public and private medical facilities and public health officers clarifying that section 27 of the Public Health Act, Chapter 242 of the Laws of Kenya, does not authorize the confinement of persons suffering from infectious diseases in prison facilities for the purposes of treatment and that the 4<sup>th</sup> Respondent inform the Court and the Petitioners in writing once the circular has been issued.
- (f) The court be pleased to order the 4<sup>th</sup> Respondent within three months to develop a policy on the involuntary confinement of individuals with tuberculosis that is compliant with the Constitution of the Republic of Kenya and incorporates principles from the international guidance on the involuntary confinement of individuals with TB.
- (g) The court be pleased to order the 1<sup>st</sup> Respondent to pay general and exemplary damages on an aggravated scale to 1<sup>st</sup> and 2<sup>nd</sup> Petitioners for the physical and psychological suffering occasioned by their unlawful and unconstitutional confinement for 46 days.
- (h) The Court be pleased to order the respondents to pay the costs of this Petition.
- (i) The Court be pleased to make such other orders(s) as it shall deem just.

**THIS SUIT** coming up for hearing on 22<sup>nd</sup> July, 2016, 3<sup>rd</sup> November, 2015 and for Judgment on 24<sup>th</sup> March, 2016 before the Hon. Lady Justice M. Ngugi, **AND UPON HEARING** Counsel for the Petitioners and Counsel for the Respondents;

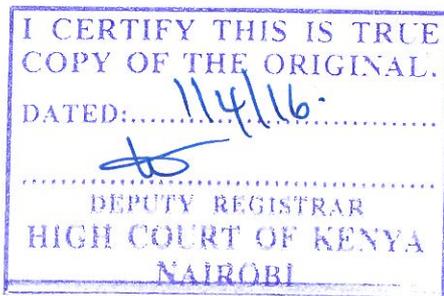
**IT IS HEREBY ORDERED & DIRECTED: -**

1. **THAT** the 4<sup>th</sup> Respondent does issue a circular, within Thirty (30) days hereof, directed to all Public and Private medical facilities and Public Health Officers clarifying that Section 27 of the Public Health Act, Chapter 241 of the Laws of Kenya, does not authorize the confinement of persons suffering from infectious diseases in prison facilities for the purposes of treatment.

2. **THAT** the 4<sup>th</sup> Respondent does, in consultation with County Governments, within Ninety (90) days from the date hereof, develop a policy on the involuntary confinement of persons with TB and other infectious diseases that is compliant with the Constitution and that incorporates principles from the international guidance on the involuntary confinement of individuals with TB and other infectious diseases.
3. **THAT** the 4<sup>th</sup> Respondent does, within Ninety (90) days from the date hereof, file an affidavit in this Court detailing the Policy measures put in place on the involuntary confinement of persons with TB and other infectious diseases.
4. **THAT** each party shall bear its own costs of the Petition.

**GIVEN** under my Hand and Seal of this Honourable Court this 24<sup>th</sup> day of March, 2016.

**ISSUED** at Nairobi this.....<sup>1st</sup>.....day of .....<sup>April</sup>.....2016.



  
**DEPUTY REGISTRAR**  
**HIGH COURT OF KENYA, NAIROBI**