

OFFICE OF THE ATTORNEY GENERAL AND DEPARTMENT OF JUSTICE
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REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
IN THE CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
CONSTITUTIONAL PETITION NO. 250 OF 2015

IN THE MATTER OF ARTICLES 19, 20, 21, 22, 258 AND 259(1) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 10(1) (a), (b), (c) & (2) (a), (b), 20, 21, 24, 27, 28, 29(1), 31 and (b), 43(1)(a), 46(c), 47(2) AND 53(2) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA (SUPERVISORY JURISDICTION AND PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL) HIGH COURT PRACTICE RULES, 2006

BETWEEN

KENYA LEGAL AND ETHICAL ISSUES NETWORK ON HIV & AIDS (KELIN).....1ST PETITIONER/APPLICANT
CHILDREN OF GOD RELIEF INSTITUTE (NYUMBANI).....2ND PETITIONER/APPLICANT
JAMES NJENGA KAMAU3RD PETITIONER/APPLICANT
MILLICENT KIPSANG.....4TH PETITIONER/APPLICANT

AND

CABINET SECRETARY, MINISTRY OF HEALTH.....1ST RESPONDENT
THE NATIONAL AIDS CONTROL COUNCIL.....2ND RESPONDENT
CABINET SECRETARY, MINISTRY OF EDUCATION, SCIENCE AND TECHNOLOGY.....3RD RESPONDENT
CABINET SECRETARY, MINISTRY OF INTERIOR AND CO-ORDINATION OF NATIONAL GOVERNMENT.....4TH RESPONDENT
THE ATTORNEY GENERAL.....5TH RESPONDENT

AND

MR. ANAND GROVER AMICUS CURIAE

DECREE

CLAIM FOR:

- (a)** A declaration that the directive dated 23rd February 2015, issued by the National Government through H.E Uhuru Muigai Kenyatta, the President of the Republic of Kenya, is a breach of the Petitioner's constitutional rights under Articles 10(1), (b), (c) and 2(a), 20, 21, 24, 27, 28, 29(1), 31, 43(1)(a), 46(c), 47(2) and 53(2) of the Constitution.

- (b) A declaration that the actions and omissions of the Respondents in relation to the directive dated 23rd February 2015, violate the fundamental rights and freedoms of the Petitioners, the persons they represent and their families under Articles 10(1) (b), (c) and 2(a), 20, 21, 24, 27, 28, 29(1), 31, 43(1)(a), 46(c), 47(2) and 53(2) of the Constitution.
- (c) An order compelling the 1st – 4th Respondents to destroy all data in their possession, collected as a result of the directive dated 23rd February 2015, linking names of persons living with HIV and their HIV status, within a period of 14 days.
- (d) In the alternative and without prejudice to prayer (c), that the Court issues an order compelling the 1st -4th Respondents, within 14 days to codify the names collected as a result of the directive dated 23rd February 2015 [and] be stored in a manner that does not link their names and their HIV status in a public document.
- (e) An order compelling the 1st Respondent to put in place within 90 days of the Court's judgment, the privacy guidelines, in form of regulations as required by Section 20 of the HIV and AIDS Prevention and Control Act, on the collection and storage of data relating to HIV incorporating the following:
- (i) Detailed guidelines on the management of HIV/AIDS information by all persons who render HIV testing services, especially VCT centers;
 - (ii) Detailed guidelines on the management of HIV/AIDS information in hospitals and other medical institutions;
 - (iii) Detailed guidelines on the recording, collection, storage and use of HIV/AIDS information by government agencies for public health and other epidemiological purposes;
 - (iv) Detailed guidelines on the dissemination and/or sharing of HIV/AIDS information between family members and relatives or within the home setting;
 - (v) Detailed guidelines on the collection and use of HIV/AIDS information in the workplace;
 - (vi) Detailed guidelines on the collection and use of HIV/AIDS information in schools, colleges and institutions of higher learning; and
 - (vii) Detailed guidelines on the collection and use of HIV/AIDS information in prisons and other correctional institutions.
- (f) This Honourable Court issues an order directing the 1st – 4th Respondents to issue a circular, within 14 days of the Court's judgment, informing their officers, employees and or agents that the directive issued on 23rd February 2015 is unconstitutional, is null and void for all intents and purposes.

- (g) This Honourable Court issues an order directing the 1st and 2nd Respondents to conduct public awareness campaigns to educate citizens [and] persons living with and affected by HIV about their rights, stigma and discrimination and other matters relating to HIV in line with sections 4-8 of the HIV/AIDS Prevention and Control Act.
- (h) This Honourable Court issues an order directing the Respondents within 90 days of the court's judgment to file an affidavit in this Court detailing out their compliance with prayers (e), (f) and (g).
- (i) This Honourable Court be pleased to issue an order that since this Petition is in the public interest, each party should bear their own costs.
- (j) This Honourable Court be pleased to issue such further or other orders as it may deem just and expedient for the ends of justice.

THIS PETITION coming up for hearing on 17th May 2016 and 23rd May 2016 before Hon. Mr. Justice Isaac Lenaola **AND WHEREAS** this matter coming up for delivery of Judgement on 7th December 2017 before the Hon. Mr. Justice E. Muriithi **AND UPON HEARING** Counsel for the Petitioners/Applicants, Counsel for Respondents and Counsel for Amicus Curiae;

IT IS HEREBY ORDERED/DECREED:

1. **THAT** a declaration is hereby issued that the directive dated 23rd February 2015, issued by the National Government through H. E. Uhuru Muigai Kenyatta, the President of the Republic of Kenya, is a breach of the Petitioner's Constitutional Right under Articles 31, and 53(2) of the Constitution.
2. **THAT** a declaration is hereby issued that the actions and omissions of the Respondents in relation to the directive dated 23rd February 2015, violate the fundamental rights and freedoms of the Petitioners, the persons they represent and their families under Articles 31 and 53(2) of the Constitution.
3. **THAT** an order is hereby issued compelling the 1st – 4th Respondents, within 45 days of this judgment to codify the names collected as a result of the directive dated 23rd February 2015 and the same be stored in a manner that does not link the names of persons named therein with their HIV status in a public document.
4. **THAT** each party bear its own costs.

GIVEN under my Hand and the Seal of this Court at Nairobi this 7th day of **December, 2016**.

ISSUED at Nairobi this 13th day of *December* 2016.

I CERTIFY THIS IS TRUE
 COPY OF THE ORIGINAL
 DATED: 13/12/16

 DEPUTY REGISTRAR
 HIGH COURT OF KENYA
 NAIROBI

[Signature]
DEPUTY REGISTRAR
HIGH COURT OF KENYA, NAIROBI

