

mn. 8/5/2015

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

RECEIVED  
21 APR 2015  
CONSTITUTIONAL AND HUMAN RIGHTS  
DIVISION

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

AND

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF ARTICLES 19, 20, 21,  
25, 27, 28, 29, 31, 33, 35, 43, 45 AND 46 OF THE CONSTITUTION OF KENYA (2010)

BETWEEN

- SWK.....1<sup>ST</sup> PETITIONER
- PAK.....2<sup>ND</sup> PETITIONER
- GWK.....3<sup>RD</sup> PETITIONER
- AMM.....4<sup>TH</sup> PETITIONER
- KENYA LEGAL AND ETHICAL ISSUES NETWORK  
ON HIV & AIDS (KELIN).....5<sup>TH</sup> PETITIONER
- AFRICAN GENDER AND MEDIA INITIATIVE TRUST (GEM)  
.....6<sup>TH</sup> PETITIONER

AND

- MÈDICINS SANS FRONTIÈRES – FRANCE ..... 1<sup>ST</sup> RESPONDENT
- PUMWANI MATERNITY HOSPITAL.....2<sup>ND</sup> RESPONDENT
- MARIE STOPES INTERNATIONAL.....3<sup>RD</sup> RESPONDENT
- COUNTY EXECUTIVE COMMITTEE MEMBER  
IN CHARGE OF HEALTH SERVICES- NAIROBI COUNTY.....4<sup>TH</sup> RESPONDENT
- CABINET SECRETARY, MINISTRY OF HEALTH.....5<sup>TH</sup> RESPONDENT

AFFIDAVIT IN SUPPORT OF THE 1<sup>ST</sup> RESPONDENT

RECEIVED  
22 APR 2015  
4:18  
Muthoni Wajake

STATE LAW OFFICE  
P. O. BOX 40112-00100,  
NAIROBI  
23 MAY 2015  
CIVIL LITIGATION REGISTRY  
RECEIVED  
Officer: Susan

I **P.B** a resident of Mathare 3C and Post Box Number —  
do make oath and say;

1. I had been sick for a while and a friend advised me to get tested for HIV/AIDS and to attend the Blue House Clinic (Blue House) based in Mathare. I decided to visit Blue House in 2004 where I was tested for HIV/AIDS which result was positive.
2. By the time, I had a 2 week old baby and I was directed to the Prevention of Mother to Child Transmission (PMTCT) room where I could receive information and support to ensure proper wellbeing of myself and my new born.
3. The PMTCT room offered food support to all its clients in the form of flour and cooking oil. I was able to receive this support on a weekly basis. Further, once I became aware of my HIV status, I chose not to breastfeed my baby and collected milk formula which was offered at the PMTCT room.
4. The PMTCT program also offered postnatal sessions which I attended and received information on numerous topics including family planning from the nurse whose name I cannot recall. These sessions were conducted in a group where we were taught, among other things, of various family planning methods we could utilize, those which were offered at Blue House and those not offered.
5. Given the previous challenges I had faced prior to coming to Blue House, I had decided to undergo bilateral tubal ligation (BTL) but my parents came out very strongly against this. I had two previous marriages. I gave birth to four girls and both of my spouses, left me as I had not borne them sons. Sadly, one of my daughters passed away. I could not cope with these desertions, my daughter's death as well as my inability to support more children. I therefore made my mind up to undergo the procedure.
6. At Blue House, I informed the nurse on duty, Jane about my decision. She counseled me on the permanency of the method and other side effects. She also inquired whether I had discussed it with my spouse. I decided to stick with my decision.

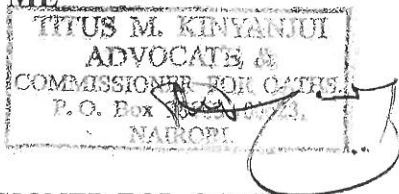
7. I went to Huruma Lions Clinic run by Marie Stopes. I saw a doctor there who also counseled me on the procedure and the need for my informed consent before undergoing the procedure. I gave it. The procedure was done around 2005.
  
8. After undergoing BTL I continued going to Blue House for assistance including milk formula which I continued to receive for a period of one year. I was not pressured into undergoing BTL and neither was I threatened that the food support would stop if I did not. All the clients, even those not on family planning got food support at it was never withdrawn under such circumstances. The decision to undergo BTL was mine and mine alone completely independent of and not influenced by the milk formula I received from MSF.
  
9. The contents of this affidavit are based on my own knowledge and are true.

**SWORN** by the said  
**P.B** )

At Nairobi this 22<sup>nd</sup> day of April 2015 )

PBCW

**BEFORE ME** )



COMMISSIONER FOR OATHS )

**DRAWN & FILED BY:**  
 HAMILTON HARRISON & MATHEWS  
 4<sup>TH</sup> FLOOR, ICEA BUILDING, KENYATTA AVENUE  
 P.O. BOX 30333-00100  
**NAIROBI**

**TO BE SERVED UPON:**

1. ALLAN ACHESA MALECHE  
KENYA LEGAL AND ETHICAL ISSUES NETWORK ON HIV & AIDS (KELIN)  
KINDARUMA ROAD, OFF NGONG ROAD, KILIMANI  
P.O BOX 112-00200 KNH  
**NAIROBI**
  
2. J.K KIBICHO & CO ADVOCATES  
ACK GARDEN HOUSE, 2<sup>ND</sup> FLOOR, WING A  
1<sup>ST</sup> NGONG AVENUE, OFF BISHOPS ROAD  
P.O BOX 73137-00200  
**NAIROBI**
  
3. MANEGENE & PARTNERS ADVOCATES  
BRUCE HOUSE, 10<sup>TH</sup> FLOOR, ROOM 1001  
STANDARD STREET,  
P.O BOX 7183-00200  
**NAIROBI**
  
4. COUNTY EXECUTIVE COMMITTEE MEMBER IN CHARGE OF HEALTH  
SERVICES,  
NAIROBI COUNTY GOVERNMENT  
**NAIROBI**