

Mo 8/05/15

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

**RECEIVED**  
22 APR 2015  
CONSTITUTIONAL AND HUMAN RIGHTS

**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  
Time: 4:18  
Name: M. W. Muthoni

I **BENTA AWUOR ONYANGO** a resident of Nairobi City County and whose address for purposes of this Petition is Hamilton Harrison and Matthews P.O Box 30333-00100, Nairobi do make oath and say;

1. I have read and understood the Petition as well as the Affidavits which have been filed by or on behalf of the Petitioners in support thereof.
2. I make this affidavit in response to the allegations made against the 1<sup>st</sup> Respondent in the said Petition and Affidavits. The contents of this affidavit are based on my own knowledge and are true.
3. There is now produced and shown to me marked Exhibit "**BAO1**" a paginated bundle of documents I will be referring to in this affidavit.
4. I was an employee of Médecins sans Frontières-France ("MSF") in the Blue House Clinic (Blue House) based in Mathare from April 2002 to October 2012. I worked as a nutrition assistant at the Prevention of Mother to Child Transmission (PMTCT) room.

**The Blue House Clinic**

5. Blue House was an extension of the Upendo dispensary project whose objective was to provide affordable quality health care for the destitute population in Mathare. Copies of the organizational chart showing the internal structure as well as duties and responsibilities of the various persons within the organization appear at pages 1 to 8 of the exhibit marked **BAO1**.
6. Blue House came into operation in June 2001 in the form of a HIV/TB project whose main objective was to improve the quality of care given to HIV and TB patients in Mathare Valley including areas such as Mathare North and Huruma.
7. Blue House was run on an outpatient basis providing HIV/AIDS testing, ARV treatment, hospital referrals and support for HIV patients.

8. Blue House was organized into a triage room, consultation rooms, social room, PMTCT room and pharmacy. The triage room was the first point of contact for clients where they were weighed, tested and sent for consultation. In the consultation rooms, clients would see the clinical officers, nurses or counselors as the case may be.

### **The PMTCT Room**

9. The PMTCT room was set up to manage the prevention of transmission of the HIV/AIDS virus from mothers to infants. It focused on treatment, adherence to good nutrition and delivery methods that reduced the risk of transmission of the virus.
10. My duties as a nutrition assistant at the PMTCT room included but were not limited to offering nutrition assistance, providing education on nutrition and feeding options, preparing dry rations in hygienic conditions and distributing dry rations to children and adults according to their needs. A copy of the job description appears at page 9 to 11 of the exhibit marked **BAO1**.
11. The PMTCT room offered antenatal and post natal services. It is at these sessions that I undertook some of my roles described above initially under the supervision of various nurses from 2008 and later with and under the supervision of Ms Beatrice Runo. The document detailing services provided at the PMTCT room appears at page 12 to 16 of the exhibit marked **BAO1**.
12. As part of its services, Blue House offered food support to its clients. The nature of the food support offered was different between the social room which was needs based and that offered in the PMTCT room.
13. During antenatal sessions, we advised clients on infant feeding options. The clients had the option of replacement feeding or breast feeding. Replacement feeding involves replacing breast milk with milk formula in order to lower the risk of transmission of the HIV virus from the mother to the child. A copy of the MSF Protocol of HIV detailing risk

of transmission posed by varying methods of feeding appears at page 17 to 26 of the exhibit marked **BAO1**.

14. Prior to 2007, all PMTCT clients received food packages. Where a client opted to do replacement feeding, she additionally received milk formula after delivery. Milk formula was supplied in accordance with the dosage specifications guidelines which appear at page 27 of the exhibit marked **BAO1**. The support in form of food and milk formula was offered for a period of a year until 2007 as explained below.
15. After 2007, those clients doing replacement feeding only received milk formula while those doing exclusive breastfeeding received food support in the form of flour and cooking oil. This support was offered for a period of six months.
16. Food support offered by the social room was different from that offered in the PMTCT room. For the social room support, a team of clinical officers, nurses, counselors and the social room staff made the decision as to which clients at Blue House could receive food packages and for what period. The decision depended on different circumstances faced by the client, for instance, if they were malnourished. Once the decision was made, a prescription note was filled by the clinical officer, which was placed in the client file.
17. I had no authority to determine which client received the food packages, I never did so.
18. Prior to my appointment as a nutrition assistant, food packages for all clients were distributed in the social room. Upon my appointment as a nutrition assistant, I was responsible for dispensing food packages to PMTCT clients. Later on, we stopped giving food packages and instead gave food coupons which could be used in local supermarkets.
19. I dispensed the food packages as prescribed above and would consult the relevant clinical officer, nurse or counselors for clarification. In most cases, I consulted the social room which was aware of each individual client's needs.

20. As I have already explained, while conducting all my duties, I was under the direct supervision of Ms Beatrice Runo who held the position of Women Health Supervisor. This was from 9<sup>th</sup> October 2008 to 30<sup>th</sup> November 2012. Prior to this, I was supervised by the nurses or doctors in charge at the time.
21. Blue House social workers and traditional birth attendants would carry out home visits to engage with the clients, find out their progress and any challenges they were facing. In the course of doing so, they could also find out whether the clients were facing challenges with the preparation of the milk formula or whether the food packages were being appropriately utilized. They would establish whether the milk formula was being used for the baby and not by other family members.
22. Food support offered by the social room could be discontinued upon the decision of a team of social workers, clinical officers, counselors and nurses depending on changes in the client's circumstances, for instance, if they had attained the required Body Mass Index (BMI) and therefore support was not necessary or when it was established that the clients were selling the items supplied.
23. In some instances, the clients who such support was discontinued did not fully understand and came to inquire from me what had happened given our shared social background and I explained the reasons to them.
24. Food support offered to breast feeding mothers was never withdrawn as it would not only affect the mother's health but the baby's as well. Further, where it became known that a client practicing replacement feeding was not using the milk formula as directed, for example doing mixed feeding or selling the formula, she was placed on direct observation (Dots) where she was expected to attend the clinic daily to receive milk formula for the day. There was never any question of withdrawing milk formula or the food support provided at the PMTCT room.
25. In addition to my roles, I provided counseling services to PMTCT clients. These were conducted as group sessions under the supervision of Ms Runo or a family planning

nurse. There were numerous matters discussed including safe delivery and infant feeding options.

26. At the request of the client or if during the group session it became clear that one client was having difficulty in expressing herself, we conducted individual counseling sessions. These sessions were conducted under the supervision of Ms Runo or any nurse available at the time. Given the open and interactive nature of the group sessions, such individual sessions were rare.

27. Where the issues raised by the clients went beyond my knowledge, I would invite a nurse to provide the relevant information.

### **Family Planning at Blue House**

28. Blue House was not involved in family planning counseling or associated services prior to the year 2007. Where clients inquired about such services, it was the practice of staff members to refer them to the relevant organizations that had displayed their posters at the Blue House's notice boards or distributed fliers.

29. In May 2007, Blue House was accredited by the Ministry of Health to provide family planning services after which it offered counseling with respect to IUCD (Interuterine contraception device), pills, injectables and bilateral tubal ligation (BTL). It also offered most family planning methods apart from BTL. Where a client formed the opinion that she wanted to undergo BTL, she was referred to the appropriate health facility, more often than not, Marie Stopes, Eastleigh.

30. Family planning sessions were conducted by the family planning nurse in accordance with the Ministry of Health (MOH) Guidelines as published as at the time. A copy of the MOH guidelines appear at page 28 to 52 of **BAO1** the exhibit marked. According to the guidelines, family planning counseling was to be conducted six weeks after the client had delivered. Reference was also made to MSF guidelines on reproductive health and rights.



31. Blue House referred clients to Pumwani Maternity Hospital for the purpose of delivery. The referral letter would only contain the clients name and was signed by the clinical officer or doctor. A sample copy of the referral letter appears at page 53 of the exhibit marked **BAO1**.
32. After delivery, when the mothers came for their food package, I inquired as to whether they were on any method of family planning and for any documentation for follow up purposes.
33. It did not matter whether the documentation was provided as it did not affect the supply of the food package or milk formula. As I have explained, the support in the PMTCT room was fixed initially for a period of a year and thereafter six months before the year 2007. After that, it was fixed depending on the feeding option the mother elected.
34. Further, some clients would inform me that they had discontinued taking ARV's however this also did not preclude them from receiving milk formula which I continued to dispense to them. I maintained a register of all clients receiving food packages and milk formula which showed they received assistance as required regardless of whether or not they were on any family planning methods. A copy of an extract of the said register is marked "A", "B", "C" and "D" appears at page 54 to 57 of the exhibit marked **BAO1**.
35. The family planning information was important not just to maintain a complete record of a client but also to advise the client on whether the antiretroviral drugs may have an impact on their chosen family planning method. The importance of family planning with respect to nutrition was to ensure that a mother for instance, was recommended to space her pregnancies so as to prevent the baby and herself from being malnourished.
36. I also asked the clients for other documentation slips related to any forms of family planning including BTL. I advised the clients to request for slips from the relevant health facility. Some clients could not obtain the slips if the procedure was conducted in a free clinic.

37. In conclusion, the PMTCT clients benefited from the program and still received support from other sections of Blue House. They would interact with the clinicians, nurses and counselors through many consultation sessions and they knew they could talk to any of the staff if they had a particular problem especially with any staff member or in the manner in which they were being treated.

**The Allegations set out in S.W.K's affidavit**

38. I know S.W.K who I first met at Blue House in 2005. She attended four antenatal and 12 postnatal sessions at the PMTCT room. An extract showing the diverse dates on which S.W.K visited the Blue House is annexed at page 58 to 59 of the exhibit marked **BAO1**.

39. During the antenatal sessions Ms Runo and I conducted group sessions where I gave information on infant feeding options and nutrition. S.W.K attended these sessions and made the informed decision to breastfeed her child. This is contrary to what is alleged in paragraph 18 of S.W.K's affidavit that she chose not to breastfeed. As she chose this option, she received food support in the form of flour and cooking oil. The register shows what feeding option she had elected and this information is also contained in her baby's medical file. A copy of an extract of the said documents appears at page 64 to 66 of the exhibit marked **BAO1**.

40. As I indicated earlier, the PMTCT room offered clients practicing exclusive breast feeding food support while those on replacement feeding received milk formula. At the time S.W.K gave birth, that is in 2010, it was not possible for clients to receive both food support and milk formula unless the food support was being provided by the social room. During the antenatal sessions, clients were not advised that they would get both food portions and milk formula as alleged in paragraph 30 of S.W.K's affidavit.

41. Food support could not be withdrawn on the basis that a client was not practicing any form of family planning as alleged in paragraphs 31 and 34 of S.W.K's affidavit.



### The Allegations set out in P.A.K's affidavit

42. I know P.A.K who I first met at Blue House in 2003. She attended the post natal sessions as described above but she did not attend the ante-natal sessions. An extract showing the diverse dates on which P.A.K visited the Blue House is annexed at page 60 to 61 of the exhibit marked **BAO1**.
43. As I have already explained, during the antenatal sessions, clients were informed that it was right to choose which food option to adapt after delivery but to reduce the risk of transmission, they had to choose one and employ it exclusively. At no one point did we advise clients not to breastfeed children whether as alleged by P.A.K in paragraph 11 of her affidavit or at all. Indeed the majority of our clients chose to breastfeed their babies with the full and yielding support of the Blue House staff.
44. While I enquired from her as with all other clients for reasons I have already given, whether they were on any family planning method, it was never a precondition of P.A.K or any other client receiving milk formula either as alleged in paragraphs 12, 13 and 14 of P.A.K's affidavit or at all. I never threatened to withdraw milk formula nor was this the source of any tension. I had no authority to do so. It hurts me deeply that such allegations are being made against me as I have been a passionate and committed advocate for women's reproductive rights including their right whether or not to be on family planning as well as the particular method adopted.
45. I have no recollection of instructing any community health worker to tell P.A.K where to go to undergo BTL. Marie Stopes run an outreach programme during which they offered all family planning options to anyone who was interested. Clients and other area residents learnt of them means of fliers stating where they would be on a particular day. Those fliers were always available at Blue House.
46. Paragraph 20 of P.A.K's affidavit is not true. As I have explained, I never insisted that P.A.K or anyone else undergo BTL. As is clear from her own affidavit, P.A.K received milk formula from November 2004 to June 2005 without any interruption and that

support continued and would have continued whether or not she was on any family planning method.

**The Allegations set out in G.W.K's affidavit**

47. I know G.W.K who I first met at Blue House in 2005. She began attending the PMTCT room in 2009. An extract showing the diverse dates on which G.W.K visited the Blue House is annexed at page 61 to 63 of the exhibit marked **BAO1**.

48. As I have already explained, from 2007 it was not possible for clients to receive both food support and milk formula from the PMTCT room. Therefore G.W.K could not have been collecting both as alleged in paragraph 16 and 20 of her affidavit.

49. After G.W.K delivered, I sought information whether she was on any family planning method but she was not sure whether she had undergone BTL. I suggested that she obtains documentation as this would assist her in knowing whether she had actually undergone the procedure. As she was not sure, I indicated this on the register. A copy of an extract of the said register appears at page 67 and 68 of the exhibit marked **BAO1**.

50. Despite being unsure of whether she had undergone BTL, G.W.K continued to receive milk formula as proof of BTL was never a requirement for getting milk formula as alleged in paragraph 22 of G.W.K's affidavit, or at all.

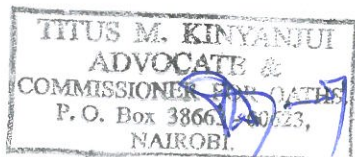
**SWORN** by the said

**BENTA AWOUR ONYANGO** )

At Nairobi this 22<sup>ND</sup> day of APRIL 2015 )

*Benta Awour Onyango*

**BEFORE ME** )



**COMMISSIONER FOR OATHS** )

**DRAWN & FILED BY:**

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