



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

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 19,20,21,25,26,27,28,29,31,33, 35, 43, 45 AND 46 OF THE CONSTITUTION OF KENYA (2010)

BETWEEN

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

AND

- MÉDECINS SANS FRONTIÈRES-FRANCE.....1ST RESPONDENT
- PUMWANI MATERNITY HOSPITAL.....2ND RESPONDENT
- MARIES STOPEs INTERNATIONAL.....3RD RESPONDENT
- COUNTYEXECUTIVE COMMITTEE MEMBER
IN CHARGE OF HEALTH SERVICES – NAIROBI COUNTY.....4THRESPONDENT
- CABINET SECRETARY, MINISTRY OF HEALTH.....5TH RESPONDENT
- THE HON. ATTORNEY GENERAL.....6TH RESPONDENT

Pursuant to Article 22 (1) of the Constitution of Kenya (2010) and The Constitution of Kenya (Protection of rights and fundamental freedoms) Practice and Procedure Rules, 2013.

1ST PETITIONER’S AFFIDAVIT IN SUPPORT OF THE PETITION

I, S.W.K ,an adult female Kenyan of sound mind, residing and working for gain in Nairobi County within the Republic of Kenya, whose address for purposes of this Petition is care of ALLAN ACHESA MALECHE, P.O.BOX 112-00202. NAIROBI, MOMBASA ROAD, SOMAK HOUSE, 4TH FLOOR, do hereby make oath and state as follows;

1. THAT, I am a female adult Kenyan of sound mind and the 1st Petitioner herein and therefore competent to swear to this affidavit in support of the Petition herein.
2. THAT, I am aged 42 years and married to one DK who is a cart pusher and together we have one (1) child born in 2010. I was previously married and my husband passed away, and together we had three children, born in the years 1995, 1997 and 2001.
3. THAT, I am not employed but I engage in small scale farming in Nyandarua County.
4. THAT, I went to school up to Form Four and did my 'O' Level exams.
5. THAT, I have read the Petition quite carefully, the content of which has been fully explained to me by Advocate on record, and I have fully understood the said content of the Petition, which my Advocate on record has presented herein and I wish to adopt the said content of the Petition, as if the same were herein set out seriatim.
6. THAT, on 14 October, 2001, I gave birth to twins at Pumwani Maternity Hospital, was discharged and I went home with my children.
7. THAT, sometime in the year 2003, the children (twins) and myself were sick and I sought medical advice from a local clinic in Mathare where I used to live and I was advised to undergo a HIV test.
8. THAT, I undertook the HIV test and I tested HIV positive.

9. THAT, I was subsequently sent to Lea Toto, an organisation that works on the welfare of children in Kangemi to have the two children (twins) also tested for HIV.
10. THAT, both children were tested with my informed consent and they both tested HIV positive.
11. THAT, I was advised to stop breastfeeding the children and further, the health care professional prescribed septrin for myself and the children which we took up to 2005 when we started taking ARVs.
12. THAT, one of the twins died in 2006 from HIV related illnesses and AIDS.
13. THAT, I and my surviving son started taking ARVs in 2005, and we would collect them at the MSF HIV Clinic (Blue House) in Mathare. My son and I still collect the medication to date at the AIDS Health Care Foundation Clinic (AHF) in Mathare as prescribed.
14. THAT, the MSF HIV Clinic (Blue House) in Mathare, which was run by the 1st respondent at the material time, is now called the AIDS Health Care Foundation Clinic run by AIDS Health Care Foundation.
15. THAT, on or about September, 2009, I conceived and during the pregnancy, I attended ante natal clinics at MSF HIV Clinic (Blue House) in Mathare, which was run by the 1st Respondent herein.
16. THAT, it is at the clinic where I and other pregnant women were taught during the ante natal clinic how to protect our yet to be born children from possible HIV infection.

17. THAT, based on the information I received I made an informed decision that when I gave birth I would breastfeed my child exclusively and at the MSF HIV Clinic (Blue House) in Mathare, I was promised food portions of 2 packets of Ugali flour & 1 litre of cooking oil to be collected every two weeks at MSF HIV Clinic (Blue House) in Mathare.
18. THAT, on or about 20 May, 2010, when I was due to give birth, I checked in at Pumwani Maternity Hospital, the 2nd Respondent herein, with a referral letter from MSF HIV Clinic (Blue House) in Mathare, which was run by the 1st Respondent herein at the material time, and I was referred to a nurse at the facility, whose name I do not recall, who talked to me about my impending delivery.
19. THAT, the nurse informed me that I would have to undergo a caesarean operation to reduce the risk of infecting the new born child with HIV.
20. THAT, when I was about to go to the theatre, for the caesarean operation, another nurse at the Pumwani Maternity Hospital, the 2nd Respondent herein, whose name I cannot recall, came into the ward and started talking to me about family planning.
21. THAT, I informed the nurse that I previously had not used any mode of family planning since I was living separately with my husband and during that period of time I had not been sexually active and only conceived when I reconnected with my husband again.
22. THAT, the nurse informed me that since I already had three children and was expecting another one, I was better off undergoing a procedure of Bilateral Tubal Ligation.

23. THAT, the nurse further informed me that since I was 36 years old and HIV positive, there was no need of me having any more children and that if I got pregnant again I will be weak and might die because of opportunistic infections.
24. THAT, I believed what the nurse said given the fact that she was the healthcare professional and I trusted that she had given me the correct information and advice, based on her professional assessment of my health status, though I did not give any indication as to whether or not I agreed with her assessment of my health status.
25. THAT, before I was wheeled into the theatre, I was given a form and told where exactly on the form, to append my signature, which was pointed out to me by the nurse, which I did, in compliance with the directive, I had received from her.
26. THAT, I did not read the content of the form; neither was the content explained to me by anyone.
27. THAT, to date, I do not know the content of that form on which I signed as a copy has never been provided to me.
28. THAT, the caesarean operation was done and I delivered a baby whom I breastfed and the child is HIV negative. Annexed herein and marked SWK-001 is the Mother's Health Card provided to me with the history of my pregnancy, including pre and post natal clinic attendance.
29. THAT, I was discharged from Pumwani Maternity hospital, the 2nd Respondent herein, a few days later, on or around 23 May, 2010 and I went to MSF HIV Clinic (Blue House) in Mathare which was run by the 1st Respondent herein, to collect food portions for myself as I had been advised during the ante natal visits. ‘

30. THAT, the nutritionist called 'Benta Anyango Owuor' at the MSF HIV Clinic (Blue House) in Mathare, which was run by the 1st Respondent, at the material time, inquired whether I was on any form of family planning as she would not issue me with food portions if I had no proof that I had undergone the procedure of bilateral tubal ligation.
31. THAT, I told the nurse at MSF HIV Clinic (Blue House) in Mathare which was run by the 1st Respondent that a nurse at Pumwani Maternity Hospital, the 2nd Respondent herein had talked to me about the need for family planning and bilateral tubal ligation but I was not aware whether the same was done or not.
32. THAT, it is at this point that the nurse at MSF HIV Clinic (Blue House) in Mathare, which was run by the 1st Respondent instructed me to go back to Pumwani Maternity Hospital, the 2nd Respondent herein to get written confirmation that I was practicing a form of family planning or I had undergone the procedure of bilateral tubal ligation.
33. THAT, the nurse at MSF HIV Clinic (Blue House) in Mathare, informed me that in the absence of the written confirmation from Pumwani Maternity Hospital, the 2nd Respondent that I was on any form of family planning, I would not be given the formula milk for the baby and food portions for myself.
34. THAT, the nurse at MSF HIV Clinic (Blue House) in Mathare, while looking at my card noticed that it had been indicated 'patient wishes to be done BTL' and the same was stamped. Annexed herein and marked as SWK- 002 is a copy of my card from Pumwani Maternity Hospital)
35. THAT, on my subsequent visit to Pumwani Maternity Hospital, as directed by the nurse at MSF HIV Clinic (Blue House), the nurse at Pumwani Maternity

Hospital, the 2nd Respondent informed me that the procedure was performed during the caesarean operation and gave me a document confirming this fact.

36. THAT, I later took the same document given to me by the nurse at Pumwani Maternity Hospital, back to the MSF HIV Clinic (Blue House) in Mathare, which was then run by the 1st Respondent at the material time, presented it to the Nurse at the clinic and immediately thereafter, I was provided with a voucher of Kshs. 1,500 to collect 2 packets of ugali flour and 1 litre of cooking oil from a nearby supermarket.
37. THAT, I continued to take the voucher for the food portions from the MSF HIV Clinic (Blue House) in Mathare weekly up to when my baby was six months old.
38. THAT, my right of access to information was fundamentally breached, as I was not informed of other options of family planning by the Nurse at Pumwani Maternity Hospital, the 2nd Respondent herein and therefore did not get a chance to choose and decide the most appropriate method for me, neither were the details nor the implications of the "bilateral tubal ligation" explained to me at any point in time, both back then or at any material point in time, ever, thereafter.
39. THAT, I did not give my informed consent for the procedure of bilateral tubal ligation to be performed on me.
40. THAT, my husband has occasionally told me that he wants me to bear more children but I cannot because of the bilateral tubal ligation.

41. THAT, on 8 September, 2014 I wrote to Pumwani Maternity Hospital requesting for my hospital and medical records. Annexed herein and marked as SWK -003 is a copy of the said letter.
42. THAT, I did a reminder on 24 November, 2014 requesting for my hospital and medical records but I am yet to receive any form of communication from the hospital. Annexed herein and marked as SWK-004 (a and b) is a copy of the said letter and a certificate of registration for postage.
43. THAT, I sought a medical opinion from Dr. Khisa Weston Wakasiaka to confirm that indeed I was sterilized by way of bilateral tubal ligation and seek if the procedure could be reversed.
44. THAT, the doctor informed me that the procedure is permanent and therefore cannot be reversed.
45. THAT, Dr. Khisa Weston Wakasiaka then conducted a medical test on me on 24 August, 2013 where he confirmed that indeed I was sterilized by way of bilateral tubal ligation. Annexed herein and marked as SWK – 005 is a copy of the medical report.
46. THAT, I also am under emotional stress due to my inability to conceive and give birth and fear that my husband might desert me and I am in constant need of anti-depressants as was indicated after five sessions of psychological and psychiatric review. (Annexed herein and marked SWK -006 is a copy of the Psychological and Psychiatric evaluation report.)
47. THAT, I have been advised by my advocate on record, advice which I very much believe to be true that the procedure of bilateral tubal ligation that was performed on me was an infringement both of my reproductive rights as well as

of my right of access to information proactively, as I was neither given detailed information about the procedure and its implications, nor told about the existence of other alternative choices of family planning and provided with enough information of same, to enable me make an informed choice.

48. THAT, I have been advised by my advocate on record, an advice which I very much believe to be true, that the threat of denial of food portions by the nurse at MSF HIV Clinic (Blue House) in Mathare, pending production of documentation to prove that I was on family planning discriminated against me and was an infringement and violation of my right to life.
49. THAT, I am informed by my advocate on record, an advice which I very much believe to be true, that the decision to sterilize by way of bilateral tubal ligation should only be done when the required detailed information about the procedure and its implications has been provided proactively to the patient and on the basis of which the patient then gives her informed consent to the procedure. Consequently, the abovementioned precondition of proactive disclosure of information to the patient must be met/fulfilled before the informed consent of the patient can be sought and freely obtained/given of her own free-will, without any duress of any sought, whatsoever.
50. THAT, I am informed by my advocate on record, an advice which I very much believe to be true, that, it is demonstrable that the 2nd Respondent, in its failure to exercise reasonableness and also failure to give due regard to the need for me to be fully informed, proactively, about the details and implications of the bilateral tubal ligation procedure, also omitted to consider the fact that the procedure was not an emergency.

THAT, I swear this affidavit in support of the petition herein.

THAT, what is deposed to herein is true to the best of my knowledge, information and belief, save for where sources of information have been disclosed.

SWORN at Nairobi by the said
SWK

This 10th day of September, 2015

Swp
.....
DEPONENT

BEFORE ME

SHEILA K. AMANI
ADVOCATE &
COMMISSIONER FOR OATHS
P. O. Box 44573 - NAIROBI
sheilsamani@yahoo.com

COMMISSIONER FOR OATHS

DRAWN & FILED BY: -

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
EMAIL: amaleche@kelinkenya.org
MOBILE NO: +254 708 389 870
NAIROBI.



MOTHERS HEALTH CARD
AFYA YA MAMA

Health facility Blue House ANC No. 3480

Inpatient No. 2478 Serial No. 12/10

ATTEND ANTE-NATAL CLINIC

DELIVER YOUR BABY IN A HEALTH FACILITY



BREAST FEED YOUR BABY EXCLUSIVELY FOR 6 MONTHS

SPACE YOUR FAMILY

Name of Client [Redacted]

Age 36 yrs Gravida 4 Parity 3+0

L.M.F. 26/8/09 EDD 3/6/10

Marital Status MARRIED Education FORM 4

Address KIAMAIKO

Occupation HIWIFE

Name of partner DANIEL KARUKI Age 35 Occupation JUA KALI

Next of Kin HUSBAND

Next of Kin Address KIAMAIKO - 0718515671

MEDICAL AND SURGICAL HISTORY

Blood Transfusion Nil

Family History _____

Tuberculosis Nil Twins Auntie

Hypertension Nil Diabetes Auntie

PRESENT PREGNANCY

Date	Weight	Urinalysis	B.P.	Pallor	Maturity	Fundal-Height	Presentation	Fetal Heart Rate	Oedema	Comments	T.C.A Date	Initial
3/2/10	60kg	Neg	110/70	NII		28/10	B	138	NII		17/2/10	R.R
17/2/10	60kg		110/60			30/10	C	144		Well	24/3	R.R
24/3	60kg		83			33/10	breach			Well	28/4/10	R.R
28/4/10	60kg		100/60			34/10	C	144		Well	26/5/10	R.R

Clinical notes

5/3/10 - Patient wishes to be done
BTL.

PDMWANI MATERNITY HOSPITAL

DATE: 23/5/10

R.R

DOC: [Signature]

GRAL POL: [Signature]

Susan Wairimu Kinuthia,
C/o Maisonette No. 4 on LR No. 1/714, Kilimani
Kindaruma Road off Ngong Road,
Next to Commodore Office Suites ,
P.O. Box 112- 00202,
Nairobi.

2 September 2014.

The In charge,
Pumwani Maternity Hospital,
P.O. Box 42849- 00100,
Nairobi.

Dear Sir / Madam,

RE: REQUEST FOR MY HOSPITAL AND MEDICAL RECORDS

On or about 5 March, 2010, I was admitted to the maternity ward of your hospital where I underwent a cesarean operation to give birth.

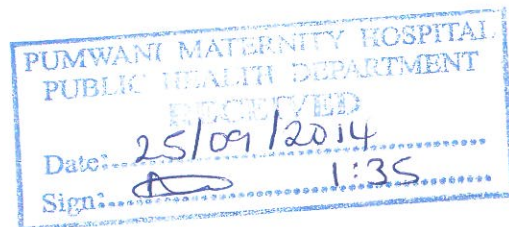
I am writing to request that I be provided my hospital records relating to my treatment and management during the time I was admitted at the Pumwani Maternity Hospital. These records should include but not limited to all the doctors notes, nurses notes, nursing cardex, signed consent forms and theatre operation notes.

I look forward to hearing from you in this regard.

Yours faithfully,

SWK

Susan Wairimu Kinuthia.



C/o Maisonette No. 4 on LR No. 1/714, Kilimani
Kindaruma Road off Ngong Road,
Next to Commodore Office Suites,
P.O. Box 112- 00202,
Nairobi.

8 September 2014.

"REMINDER"

The In charge,
Pumwani Maternity Hospital,
P.O. Box 42849- 00100,
Nairobi.

Dear Sir / Madam,

RE: REQUEST FOR MY HOSPITAL AND MEDICAL RECORDS

On or about 5 March, 2010, I was admitted to the maternity ward of your hospital where I underwent a cesarean operation to give birth.

I am writing to request that I be provided my hospital records relating to my treatment and management during the time I was admitted at the Pumwani Maternity Hospital. These records should include but not limited to all the doctors notes, nurses notes, nursing cardex, signed consent forms and theatre operation notes.

I look forward to hearing from you in this regard.

Yours faithfully,



HURLINGHAM

FAMILY HEALTH CENTRE

Total peace of mind

Dr Khisa W. Wakasiaka MBChB, MMED (NBI)
Specialist Obstet & Gynaecologist

Dr Kagema Frank MBChB, MMED (NBI)
Consultant Gynaecologist Obstetrician

Nyaku House, Hurlingham, Behind Barclays Bank, below
A A offices - 1st floor suite No. 10, Argwings Kodhek Road,
Nairobi, Kenya

P.O. Box 19460 - 00202 Nairobi.
Tel: +254 20 271 860 3 / 0720 432 634.
Email: info@hch.co.ke

MEDICAL REPORT

FULL NAME: SUSAN WAIRIMU

AGE : 40 YEARS

DATE OF BIRTH: 22/10/1973

PATIENT NO: 3562/13

MARITAL STATUS: Married

OCCUPATION: HOUSE WIFE

EMAIL ADDRESS: tnjoki@gem.or.ke

MOBILE: 0704103452

RESIDENCE: MURANG'A

PARITY: 4+0 with last delivery in 2010. All deliveries were by cesarean section. All the four children are alive and well.

CONTRACEPTIVE HISTORY: Had history of bilateral tubal ligation at the time of cesarean section though without informed consent. Had consented only for cesarean delivery.

PAST MEDICAL HISTORY: she is sero-reactive to HIV and is currently on HAART with good response.

ON EXAMINATION: she was in good general condition not pale, a febrile, and no dehydration.

UPPER ABDOMEN: Had a subumbilical midline scar due to previous section. No masses were felt.

RESPIRATORY SYSTEM: grossly normal

MENTAL STATUS: Good

OPERATION: Diagnostic laparoscopy under general anaesthesia on 24/08/2013 at Upper Hill Medical Centre.

FINDINGS: Slightly bulky but normal uterus and ovaries.


Both Fallopian tubes had been ligated at the Isthmus/ampulary region.

Dye infiltration-done, no spillage from the fimbrial ends of the tubes.

RECORDINGS TAKEN: CD Attached.

CONCLUSION: Confirmed previous history of bilateral tubal ligation BTL done.

REVIEW: Two [2] weeks later. All ports had healed well.

HURLINGHOLM FAMILY HEALTH CENTRE
Yours faithfully,


DR. KHISA WAKASIKA

PSYCHOLOGICAL AND PSYCHIATRIC EVALUATION

Patient's Name: _____
Date of Birth: 22 October 1973
Physical Address: Kinangop, Nyandarua, Kenya
Marital Status: Married
Occupation: Farmer
Examiners: Elizabeth A. Khaemba – Clinical Psychologist
Dr. David E. Bukusi - Psychiatrist

Sources of Information

Client: _____
Corroborator- Husband Daniel Kariuki

Reasons for Evaluation

Referred by Kelin International for evaluation of psychological effect of sterilization. Susan was reviewed on the 25th of September, the 2nd, 9th and the 16th and 21st of October 2014. She had a psychiatric evaluation on the 9th of October 2014 and came with her husband on that same date.

Presenting Complaints

Susan used to live in Mathare in 2012. She conceived and attended the pre-natal clinic at the MSF clinic in Mathare. At the MSF clinic, she was reportedly told that she needed to stop giving birth as there was a high risk of having a HIV positive baby. She was also told that she did not have the strength to raise another child. She decided to exclusively breastfeed her baby because she was unable to buy items like a dozen nappies, clothes, etc, that MSF required. She was however still asked to sign a form for sterilization, otherwise she would not get products (cooking flour, porridge flour and oil) that were being given out for free at the clinic. Her antenatal clinic card was stamped that she should have a TL (Tubal Ligation) and she was referred to Pumwani Maternity Hospital.

At Pumwani, she refused to sign the consent without her husband but the doctor at Pumwani insisted that the TL be done. She therefore gave in and was taken to theatre for a combined

Caesarian Section and a TL. Her husband died in 2008. She met another man while in HIV group therapy and they got married. He did not know that she had a TL until recently when he indicated that wants his own child.

History of Psychiatric and General Medical Illness

She had no history of psychiatric illness and had not been admitted to hospital.

Family History

Susan is the 7th born in a family of 10. All her family members are aware of her HIV status, but she had not mentioned the TL. Susan lives with her husband, two children and two grandchildren. She lives with the 4 children and one of them is HIV positive – Jackline 19 years, Lydia 15 years, Kevin 12 years (HIV Positive), Bernice 4 years. Her father alive (78 years) and her mother had died a few years back.

Personal Development History

Susan went to school up to form 4 after which she went for a hairdressing course in Nairobi. She met with her husband shortly after and got married.

Social History

Susan indicated that she had a strong social network in Kinangop and she was part of several groups including a chama and a HIV support group at Kariobangi.

Forensic and Substance Abuse History

She indicated that she did not drink alcohol and had never been arrested.

Mental Status Examination

She was well kempt, clean and appropriately dressed. Her gait appeared normal and she behaved appropriately for the situation. It was easy to create rapport and she answered questions with clarity. She said that her predominant mood was happy. She appeared euthymic (of normal mood).

Her speech was normal in volume and tone. Her thought process was normal and thought associations were clear. She did not have any hallucinations, illusions or delusions. She was conscious and alert.

Axis IV: Stress due to inability to give birth, fear of husband deserting her, lives away from husband.

Axis V: 51-60

Treatment Plan

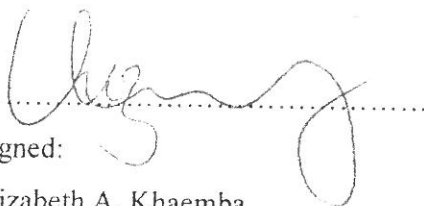
- Counseling support
- Caps Fluoxetine 20mg (an anti-depressant) for one month
- Tabs Alzolam 0.25mg twice a day for five days

Discussion and Opinion

Susan signed consent for a tubal ligation under duress as she was in labour pain when the consent form was issued. She was also not allowed to inform her husband before the TL was done. She did not disclose the tubal ligation to her husband before marriage and this has led to stress in the marriage. She is apprehensive that her husband may leave her and this contributes to her depression and anxiety.

Conclusion & Treatment Options

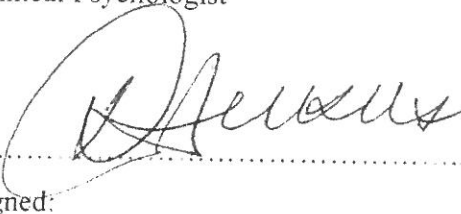
Susan requires anti-depressants and anxiolytics to treat her condition. She will also require therapy to treat her fears and mood disorder.


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Signed:

Elizabeth A. Khaemba

Clinical Psychologist


.....

Signed:

Dr. David E. Bukusi

Psychiatrist

REPUBLIC OF KENYA
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CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
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THE HON. ATTORNEY GENERAL.....6TH RESPONDENT

Pursuant to Article 22 (1) of the Constitution of Kenya (2010) and The Constitution of Kenya (Protection of rights and fundamental freedoms) Practice and Procedure Rules, 2013

2ND PETITIONER'S AFFIDAVIT IN SUPPORT OF THE PETITION

I, P.A.K,an adult female Kenyan of sound mind, residing and working for gain in Nairobi County within the Republic of Kenya, whose address for purposes of

this Petition is care of ALLAN ACHESA MALECHE, P.O.BOX 112-00202. NAIROBI, MOMBASA ROAD, SOMAK HOUSE, 4TH FLOOR, do hereby make oath and state as follows;

1. THAT, I am a female adult Kenyan of sound mind and the 2nd Petitioner herein and therefore competent to swear to this affidavit in support of the Petition herein.
2. THAT, I am aged 45 years and currently not married. I am a casual laborer in Nairobi County within Mathare area.
3. THAT, I have had a total of five children born in 1988, 1992, 1998 and twins in 2004. The first child born in 1988 died from HIV related complications in the year 2006.
4. THAT, I went to school up to Standard Eight and sat for the Kenya Certificate of Primary Education.
5. THAT, I have read, understood and had explained to me, the contents of the Petition which my Advocate on record has presented herein and I wish to adopt the contents of the Petition, as if the same were herein set out seriatim.
6. THAT, I was tested for HIV in the year 2001 at a medical camp in Majengo and the results came out positive.
7. THAT I did not seek any form of treatment as I was healthy until when I lost my husband to HIV related complications.

8. THAT, I was prescribed for septrin on or about at MSF HIV Clinic (Blue House) 15 July, 2002 but later started taking ARVs in July, 2004 when I was pregnant and needed to protect the foetus I was carrying from possible HIV infection.
9. THAT, I am still on anti-retroviral treatment which I take daily as prescribed and I collect the drugs every three months from the MSF HIV Clinic (Blue House) in Mathare which was run by the 1st Respondent to date and is now known as the AIDS Health Care Foundation Clinic.
10. THAT, on 29 October, 2004 I gave birth to twin boys at Pumwani Maternity Hospital, the 2nd Respondent herein, and the maternity bill was paid by the MSF HIV Clinic (Blue House) in Mathare which was then run by the 1st Respondent herein.
11. THAT, I was taken to Pumwani Maternity Hospital, the 2nd Respondent herein by a midwife who was assigned to me by a nutritionist at MSF HIV Clinic (Blue House) in Mathare called Benta. The midwife coordinated my admission at Pumwani Maternity Hospital.
12. THAT, during this period, I was advised by both the doctor who used to attend to me at MSF HIV Clinic (Blue House) in Mathare and the nurse who attended to me at Pumwani Maternity Hospital during the birth of my babies not to breastfeed the children and that I would be provided with food portions (ugali flour, cooking oil and uji flour) for myself for six months and formula milk for the babies for one year.

13. **THAT**, the specific nutritionist who attended to me at MSF HIV Clinic (Blue House) in Mathare always was called Benta Anyango Owuor and every time I went to collect the formula and food portions she would tell me that the next time I would not qualify to get the formula and food portions unless I had proof that I had undergone bilateral tubal ligation.
14. **THAT**, every week while going to collect the formula for my babies at Blue House Clinic, the aforementioned nutritionist 'Benta Anyango Owuor' would confront me each and every week with the issue of my not having undergone a bilateral tubal ligation procedure, "*kufungwa kuzaa*" and that my name was among those who should undergo the said bilateral tubal ligation procedure.
15. **THAT**, this caused tension between myself and Nutritionist – Benta Anyango Owuor, so much so, that, on one occasion, she informed me in very clear terms, that if I did not undergo the procedure, she would stop issuing me with the formula for the babies and the food portions for myself.
- ¥ 16. **THAT**, it is at this point that I gave in and she (Nutritionist - Benta Anyango Owuor) instructed a community health worker to tell me where to go and undergo the bilateral tubal ligation procedure. I attended a family planning drive on 8 June, 2005 that was organized by Marie Stopes which took place at Huruma Lions Health Centre in Huruma.
17. **THAT**, at the Huruma Lions Health Centre in Huruma, I met other women about 20 of them, who had also attended the family planning drive, where our names were taken down and then called one by one and then made to undergo

the procedure of bilateral tubal ligation, which was done, same day (i.e. 8 June 2005).

18. THAT, I went back home after the procedure was done, and was in bed for more than a week as I was in a lot of pain.
19. THAT, on 15 June, 2005 I went for a review at the Marie Stopes Clinic at East Leigh and the health professional informed me that I was healing well. Annexed herein and marked PAK-001 is a copy of the card from Marie Stopes which indicated that I underwent a bilateral tubal ligation procedure and was later attended to for a review.
20. THAT, after I recuperated from the procedure of bilateral tubal ligation, I went back to the Blue House Mathare Clinic and showed the nutritionist 'Benta Anyango Owuor the card that I was given by Marie Stopes to show that I had undergone the procedure of bilateral tubal ligation.
21. THAT, after presenting the card to the nutritionist, the constant disagreements I had with her about family planning and specifically her insistence on my need to undergo a bilateral tubal ligation procedure, ceased from then on.
22. THAT, I did not give my informed consent for the procedure of bilateral tubal ligation to be performed on me, especially since, I had not been proactively given detailed information or any information at all, on what the procedure entailed and its implications on my health, general wellbeing and reproductive health status/right.

23. THAT, I also was not proactively informed about, what other options of family planning was available to me, by either the medical professional at Marie Stopes Clinic at East Leigh, nor by the Marie Stopes that attended to me at the Huruma Lions Health Centre in Huruma nor was any information on what the procedure of bilateral tubal ligation entails or its implications on my health, general wellbeing and reproductive health status/right, explained to me. Consequently, I was also not given a chance to choose and decide the most appropriate family planning method for me.
24. THAT, as a result of the violation of my constitutionally guaranteed right to information, premised on the failure of the medical and health professionals that attended to me as stated above, to proactively avail me with the detailed information on what the bilateral tubal ligation procedure entailed and its implications on my health, general well-being and reproductive health status/right, I did not give my informed consent for the procedure of bilateral tubal ligation to be performed on me.
25. THAT, on 8 September, 2014 I wrote to Marie Stopes East Leigh Clinic requesting for my hospital and medical records. Annexed herein and marked as PAK -002 is a copy of the said letter.
26. THAT, I did a reminder on 24 November, 2014 requesting for my hospital and medical records but I am yet to receive any form of communication from the hospital. Annexed herein and marked as PAK-003 (a and b) is a copy of the said letter and a certificate of registration for postage.

27. THAT, in violation of my constitutionally guaranteed right of access to information, the authorities at Marie Stopes East Leigh Clinic have refused to respond to my request and make the said hospital and medical records of mine that are in their custody, available to me, as requested.
28. THAT, I sought a medical opinion from Dr. Khisa Weston Wakasiaka to confirm if indeed I was sterilized by way of undergoing a bilateral tubal ligation procedure and also to ascertain, if the effects of the procedure was reverse-able. The said Dr. Khisa Weston Wakaisaka, confirmed to me, that the effect of the bilateral tubal ligation procedure was permanent and so, could not be reversed.
29. THAT, Dr. Khisa Weston Wakasiaka then conducted a medical test on me and prepared a report dated 8 October, 2014 wherein, he confirmed that indeed I was sterilized by way of undergoing a procedure for bilateral tubal ligation procedure. Annexed herein and marked as PAK – 004 is a copy of the medical report.
30. THAT, I have been advised by my advocate on record, an advice which I very much believe to be true, that the procedure of bilateral tubal ligation performed on me was an infringement of both my constitutionally guaranteed right of access to information and of my reproductive health rights, as I was neither given information proactively on what the procedure of bilateral tubal ligation entailed, its implications on my health, general wellbeing and reproductive health rights, nor was I proactively made aware of what other alternative choices of family planning was available to me, to explore. I was denied access to all of this very important information, which ought to have been provided to me

proactively, to enable me make an informed choice. Under the circumstance, I aver that I did not give my informed consent to the procedure of bilateral tubal ligation that was performed on me, without due regard being given to the need to respect my constitutionally guaranteed right of access to information as stipulated in the 2010 constitution of the Republic of Kenya.

31. **THAT**, I sought professional psychological and psychiatric evaluation which revealed that I suffer from a major depressive disorder mainly because of real or perceived stigmatization due to my HIV status and sterilization status. Annexed and marked as PAK- 005 is a copy of the psychological and psychiatric evaluation report.

32. **THAT**, I am informed by my advocate on record, an advice which I very much believe to be true, that the decision to sterilize by way of tubal ligation should only be done once the informed consent of the patient is sought and given.

33. **THAT**, I am informed by my advocate on record, an advice which I very much believe to be true that, it is demonstrable that the 3rd Respondent, in its failure to exercise the required degree of reasonableness, omitted to consider the fact that the procedure was not an emergency.

THAT, I swear this affidavit in support of the petition herein.

THAT, what is deposed to herein is true to the best of my knowledge, information and belief, save for where sources of information have been disclosed.

SWORN at Nairobi by the said
PAK

This 10th day of September 2015

Pamela
DEPONENT

BEFORE ME

SHEILA K. AMANI
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COMMISSIONER FOR OATHS
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