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22 APR 2015
CONSTITUTIONAL AND HUMAN RIGHTS
DIVISION

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
19,20,21,25,25,27,28,29,31,33,35,43,45 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

MÈDICINS SANS FRONTIÈRES – FRANCE 1ST RESPONDENT

PUMWANI MATERNITY HOSPITAL.....2ND RESPONDENT

MARIE STOPES INTERNATIONAL.....3RD RESPONDENT

COUNTY EXECUTIVE COMMITTEE MEMBER

IN CHARGE OF HEALTH SERVICES- NAIROBI COUNTY.....4TH RESPONDENT

CABINET SECRETARY, MINISTRY OF HEALTH.....5TH RESPONDENT

AFFIDAVIT

RECEIVED
22 APR 2015
Time: 4:18 Lydke
Name: Muthoni

I **BEATRICE RUNO** a resident of Nairobi City County 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 and 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 1st 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 "**BR1**" a paginated bundle of documents I will be referring to in this affidavit.
4. I was an employee of Médecins Sans Frontières (MSF) ("the 1st Respondent herein") in the Blue House Clinic (Blue House) based in Mathare from September 2008 to November 2012. My role was that of a Supervisor at the Prevention of Mother To Child Transmission (PMTCT) room. A copy of the job description appears at page 1 to 3 of the exhibit marked **BR1**.
5. Blue House was a clinic offering a range services to people infected with HIV/AIDS in the Mathare area. These services included triage, laboratory, counseling, social, pharmacy, TB treatment and referral services. The consultation rooms were staffed with doctors, nurses, clinical officers, social workers and counsellors.
6. Blue House was managed by the head nurse who reported to the MSF field coordinator located at the MSF offices. Later, a clinic manager was employed to oversee the entire clinic.

The PMTCT Room

7. When I started my employment in the PMTCT room, I undertook an induction program for a month. I visited the numerous facilities that Blue House referred its clients to

including Pumwani Maternity Hospital, Huruma Nursing, Family Health Options and Marie Stopes. The purpose was to familiarize myself with these centres to understand how they operated and how they benefited the Blue House clients.

8. The PMTCT room offered immunization services for pregnant mothers and their babies, as well as antenatal and post natal services. The document detailing services provided at the PMTCT room appears at page 4 to 8 of the exhibit marked **BR1**.
9. I worked with and supervised Ms Benta Onyango in the PMTCT room for the duration of my employment. Ms Onyango had a copy of the PMPTCT room guidelines and was also guided by the duties detailed in her job description. Ms Onyango and I met every morning to set up the room and to discuss any difficult client cases.

Antenatal Sessions

10. As I have already mentioned, the PMTCT room offered services exclusively to pregnant women suffering from HIV/AIDS. One of the services available were ante-natal learning/counseling sessions. There were five antenatal sessions which were conducted every week as group sessions. These sessions were conducted in English or Swahili.
11. During the first session, Ms Onyango and I (“we”) would provide our clients with an overview of HIV, its transmission and the importance of undertaking CD4 count (a test that measures the number of CD4 cells in the blood which indicates how well the immune system is working). We would also discuss danger signs in pregnancy which included but not limited to sever abdominal pain, high fever, pain in passing urine, severe headaches and blurred vision. ✓
12. During the second session, we would discuss infant feeding options to provide the client ✓ with information to enable her to decide whether to practice exclusive breast feeding or replacement feeding. Replacement feeding involves the mother replacing breast milk with milk formula. We would also discuss nutrition during pregnancy, hygiene and danger signs in pregnancy.

13. During the third session, we discussed whether the client had disclosed her HIV status to spouses or relatives, the importance of adherence to antenatal appointments and danger signs in pregnancy. ✓
14. During the fourth session, we discussed the importance of taking PMTCT drugs among others, to help clients deliver a HIV negative baby, safe delivery and the importance of having a hospital delivery. We would also discuss the role of Community Owned Resource Persons (CORPS) and danger signs in pregnancy.
15. When discussing safe delivery during the fourth session, apart from recommending delivery in hospital, no emphasis was placed on any one method of delivery for example, elective caesarean procedures as this was a decision to be made by the doctor at the time of delivery. This was a shift from previous practice where HIV positive women had to undergo this procedure to minimize the transmission of the virus to the baby which was highly likely if the baby was delivered normally. However, upon the introduction of antiretroviral drugs (ARV's) and particularly since April 2003 at Blue House, this practice was abandoned and clients could undergo normal deliveries. The terms of agreement in the Memorandum of Understanding between MSF France and Pumwani Maternity Hospital explicitly recognized all modes of delivery services that were to be provided by Pumwani Maternity Hospital including normal delivery and cesarean section. A copy of the MOU appears at page 9 to 11 of the exhibit marked **BR1**.
16. During the final and fifth session, we would conduct an open forum where we would discuss any subject and the clients would have an opportunity to ask questions about topics covered in previous sessions. ✍ New kw
17. Though unlikely, on the rare occasions a client requested one, individual one-on-one sessions were available. ✍
18. During the antenatal sessions, the clients did not receive food support from the PMTCT room. If they were receiving food support, this was supplied in the social room depending

on the client's individual circumstances. A copy of the HIV/TB Nutrition Protocol appears at page 12 to 14 of the exhibit marked **BR1**.

19. During the period between antenatal sessions and postnatal sessions, the clients would have decided what feeding option they would adopt. Mixed feeding was discouraged as it came with increased health risks. Very few clients opted for replacement feeding as the overwhelming majority chose exclusive breastfeeding.

20. Any client who opted for replacement feeding was expected to bring their own feeding equipment like thermos flasks, bottles and spoons. However, when she could not afford to purchase them, MSF would provide these items. The initial ration of milk formula was given to expectant mother just before delivery either when she was ready to go to hospital or just delivered to them by community own resource persons at the hospital.

21. Any client who opted to breastfeed would receive flour and cooking oil to enable her to remain healthy enough to produce sufficient milk for her baby. ✓

22. When a client was 36 months into her pregnancy, I wrote a referral letter for her to deliver at Pumwani Maternity Hospital. A sample copy of the referral letter appears at page 15 of the exhibit marked **BR1**.

Postnatal Sessions

23. Clients were encouraged to commence attendance of postnatal sessions within one week of delivery. There were a total of four group sessions conducted by myself and Ms Onyango. The reason for this was to allow for postnatal examination of the client and examination of the baby. There would be separate sessions for mothers on exclusive breast feeding and those on replacement feeding.

24. During the first session, we would discuss feeding methods, hygiene, first aid and family planning. As a qualified family planning nurse, I provided information on all the methods available at the Blue House and those not available. Blue House offered implants, intra Uterine Coil Device (IUCD), pills and injectables.

25. During the second session, we would discuss the importance of PCR (Polymerase Chain Reaction) test which was a test performed on the baby to detect whether it is infected with the virus. We would also discuss disclosure of HIV status and family planning.
26. During the third session, we would discuss the importance of immunization, which ones were to be given and at what age. We would also discuss growth and development of the baby and family planning.
27. During the fourth session, we would discuss weaning, nutrition and family planning. Thereafter, an open forum would be conducted on a needs basis.
28. I was solely responsible for giving family planning advice. Doctors or clinical officers attending to the clients would also request information of any family planning method a client was on would only request for this information as some drugs could not be administered without such information, for example pills.
29. In conducting the sessions, I was following and always applied the Ministry of Health Guidelines on Reproductive Health and Family Planning Policy ("the MOH guidelines"). Ms Onyango also had access to the guidelines and was familiar with them. A copy of the MOH guidelines appears at page 16 to 40 of the exhibit marked **BR1**.
30. The MOH guidelines emphasized the recognition of the client's right to decide whether to practice family planning, the freedom to choose which method to use, the right to privacy and confidentiality, the right to refuse any types of examination and freedom to choose, when and where to seek the services in accordance with MSF policies. I recognized these rights and conducted counseling in line with these guidelines.
31. I focused on family planning during the postnatal sessions as it was recognized that clients had a 6 week period within which they were more likely to fall pregnant. Most clients also wanted to space out their pregnancies. Further, the client's immunity was significantly reduced after delivery. It was important they learnt the risks of conceiving

too early, for example, they would be too weak to care for the new born or they may succumb to opportunistic infections.

32. When a client indicated that she was contemplating undergoing Bilateral Tubal Ligation (BTL), I would conduct an individual counseling session with her. Once again, I was guided by and always applied the MOH guidelines which particularly emphasized the permanence of the method and the need for consent. I discussed the need for her to give an informed consent as well as consent in the event of further surgery that could be required while undergoing the procedure. I also informed her of the advantages, limitations and side effects of the procedure as per the MOH guidelines. I emphasized that she had time to think about her choice, consult whomever she wanted to talk to and could revert to me for further counseling.
33. During all these post-natal sessions, I made it clear that family planning was optional. No one at the PMTCT room or any other part of Blue House advised the clients not to have babies. I understood and respected their reproductive rights and always used a nonjudgmental approach.
34. As a matter of fact, some clients never chose any method of family planning but continued to receive support from the PMTCT room and Blue House generally.

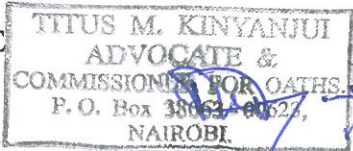
Dispensation of Milk Formula at the PMTCT room

35. Ms Onyango dispensed milk formula to clients who opted to do replacement feeding in the PMTCT room. She did so under my supervision.
36. Ms Onyango asked the clients whether they were on family planning because the PMTCT room and Blue House staff generally adopted a practice of keeping complete and accurate records of its clients as this was necessary to provide as comprehensive set services as possible.

37. It was in this context that Ms Onyango requested for proof of any family planning method adopted by the clients for her records. It is simply not true that she threatened the clients by indicating that they would not receive the milk formula if proof of BTL was not produced. Proof of BTL or of any other family planning method was not a precondition to receiving milk formula or any other service from Blue House
38. Ms Onyango did not and could not withdraw milk formula from the clients at all as she had no authority to do so. If (which is not the case) she made any such threat, I would have learnt of it immediately and ensured that the support was not withdrawn.
39. Withdrawal of milk formula was not allowed due to the health risks it would pose to the baby. In the event that clients were receiving milk formula from other facilities, we advised them on the importance of not mixing different brands. Even in this situation, milk formula was never withheld.
40. The PMTCT clients and all other Blue House clients interacted with many staff members at the clinic. They would have consultation sessions with the nurses, counselors, social room and interact with community health workers. The staff made it known to the clients that they could ask for any assistance and confide in them if they experienced any discriminatory treatment or other issues.
41. I categorically deny that anyone attending the Blue House clinic was and/or could have been threatened with the withdrawal of any form of assistance she was receiving unless and until she underwent the BLT procedure and provided proof that she had done so. This is simply not true.

SWORN by the said
BEATRICE RUNO
 At Nairobi this 22nd day of April 2015

BEFORE ME



 TITUS M. KINYANJUI
 ADVOCATE &
 COMMISSIONER FOR OATHS
 P. O. Box 38063-00624,
 NAIROBI

COMMISSIONER FOR OATHS

BRuno

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TO BE SERVED UPON:

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P.O BOX 112-00200 KNH
NAIROBI
2. J.K KIBICHO & CO ADVOCATES
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1ST NGONG AVENUE, OFF BISHOPS ROAD
P.O BOX 73137-00200
NAIROBI
3. MANEGENE & PARTNERS ADVOCATES
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NAIROBI
4. COUNTY EXECUTIVE COMMITTEE MEMBER IN CHARGE OF HEALTH
SERVICES,
NAIROBI COUNTY GOVERNMENT
NAIROBI