



COMMUNIQUE:

#QUAROSIPANO / #QuarantineIsNotPunishment *CM & 8 Others v the Attorney General & Others*

6 April 2020

INTRODUCTION

On 6th April 2020, nine Petitioners filed an urgent case against the government in the High Court, Nairobi. The Petitioners seek to protect the human rights of people who are held in mandatory quarantine as part of the government's response to COVID-19.

WHO IS INVOLVED?

There are nine Petitioners. The 1st – 7th Petitioners are Kenyans who were held in mandatory quarantine. One of the petitioners was held together with her 9-year old daughter.

The 1st-7th Petitioners have brought this case in their own interest to vindicate rights that were allegedly violated in quarantine, and in the public interest to ensure that other Kenyans do not undergo the same experiences.

These seven individuals have asked the Court to keep their identities anonymous to protect the confidentiality of their health status and personal information.

The 8th Petitioner is the Kenya Legal and Ethical Issues Network on HIV/AIDS ("KELIN"). It is a non-profit organisation that works for access to justice and the promotion of health-related human rights in Kenya. The 9th Petitioner is the Katiba Institute, a research, policy and litigation institute that works to further constitutionalism in Kenya.

KELIN and the Katiba Institute have brought the case in the public interest.

There are three Respondents in the case: The Attorney General; the Cabinet Secretary in charge of the Ministry of Health; and the Cabinet Secretary in charge of the Ministry of the Interior and Coordination of National Government. Both Cabinet Secretaries are part of the National Emergency Response Committee on COVID-19.

FACTS OF THE CASE

COVID-19 was declared a pandemic by the World Health Organisation on 11 March 2020. Kenya's first COVID-19 case was confirmed only a day later.

On 22 March 2020, the Ministry of Health announced that in light of the COVID-19 pandemic, all international flights to and from Kenya would be suspended from 25 March and that any person who arrived in Kenya between 22 and 25 March would be subject to mandatory quarantine for 14 days. It was also announced that anyone who violated the self-quarantine protocols would be forcefully quarantined for 14 days at their own expense and thereafter arrested and charged under the Public Health Act.

The 1st – 7th Petitioners are people who made arrangements to urgently return home to Kenya because of the pandemic, arriving between 23-25 March. On arrival, they were subjected to mandatory quarantine for between 14 and 30 days. Their complaints include the following:

- On arriving in Kenya, the Petitioners and hundreds of other people experienced great confusion, uncertainty and inadequate information from officials because of the government’s lack of preparedness and coordination.
- They were forced to wait in close proximity to each other, with no physical distancing or hygiene measures necessarily to prevent the spread of COVID-19.
- They were provided with a list of facilities that contained mostly four- and five-star rated hotels and informed that government-run facilities were already filled up. Some refused to go, but others were forced to go to the hotels to protect their health and safety.
- After long periods of confusion and little to no information, they were placed in crammed buses for transport to the quarantine facilities.
- Those forced to stay in hotels were compelled to make upfront payments for their entire quarantine period before they could be checked in. In this period, they were in crowded reception areas.
- In some cases, quarantine facilities did not observe infection-prevention measures such as physical distancing.
- The Petitioners were not given comprehensive health check-ups, contrary to the protocols, and, although their temperature was checked daily, no other efforts were made to ensure their physical and mental health was intact. The health practitioners stationed at their facilities did not have the capacity to provide mental health care.
- When the Petitioners were eventually tested they were not provided with their results. When results were finally disclosed, they were communicated in public forums, not directly to the petitioners.
- There were no guidelines in place to make sure that children were properly cared for in quarantine.
- People in quarantine were not given information about what was happening, when they could go home, or how to protect themselves and others from infection.
- Even after they tested negative for COVID-19, they were not allowed to leave until they paid for their detention. The Petitioners had to borrow money. One of the petitioners was detained for an additional period at the facility after being unable to pay.

The Petitioners attest to how these circumstances caused them great distress, anxiety, panic attacks, sleeplessness, and worry.

The Petitioners are also concerned that people who are alleged to violate COVID-19 rules, regulations, and curfew orders are being forced into quarantine and detained at their own expense. They are concerned that this is an unlawful and improper use of what should be a public health measure, not a form of punishment.

LEGAL ISSUES

The crux of this case is whether the manner in which the government is implementing mandatory quarantine as a response to COVID-19 is lawful and constitutional. In particular, the Court is asked to decide whether this is a justifiable limitation of peoples’ constitutional rights.

ARE THE PETITIONERS TRYING TO BAN QUARANTINE?

The Petitioners case is NOT about whether quarantine per se is allowed by law. Their case is that, firstly, putting people in quarantine and “curfew breakers holding places” limits their rights to liberty, freedom of movement, privacy, and an economic livelihood. Under Kenya’s Constitution, where rights are limited, this can only be done in strict compliance with the law and the Constitution.

They also claim that the government cannot use mandatory quarantine as a form of punishment. Finally, they claim that where people are quarantined to protect public health, the government also has a duty to protect the health and human rights of those in quarantine. People must be kept in safe, decent and healthy conditions. They should not have to pay to further the government's public health objectives. To be lawful, quarantine must at a minimum not be arbitrary or irrational.

WHY DID THE PETITIONERS BRING THE CASE?

The 1st-7th Petitioners say that their human rights have been violated while they were in quarantine. They want to enforce and protect their rights and ensure this does not happen to other people who are likely to be placed in quarantine. Together with KELIN and the Katiba Institute, they are aware that quarantine measures are ongoing in Kenya. They want to ensure that other people held in quarantine have their human rights respected - they have brought the Petition to make sure this happens.

In addition, the Petitioners note that more than 455 people who are alleged to have violated curfew and other COVID-19 regulations are being held in mandatory quarantine. They are concerned that quarantine is being used inappropriately as a form of punishment and in a way that does not promote public health. They want to protect and enforce the rule of law and ensure government officials are complying with the law.

WHAT DO THE PETITIONERS WANT FROM THE COURT?

- The Petitioners want the Court to declare that arresting and detaining people in self-paid mandatory quarantine and “curfew breakers holding places” for violating curfew orders and other COVID-19 rules and regulations violates constitutional rights and principles, the rule of law, the Fair Administrative Action Act and the Public Order Act. They ask the Court to prohibit the use of quarantine as a punishment and order that people held under these conditions should be released and brought to court to stand trial if they are charged with offences.
- The Petitioners ask the Court to compel the Ministry for the Interior and Coordination of National Government to issue a circular stating that arresting and detaining people in quarantine for breaking curfew or COVID-19 regulations is prohibited.
- The Petitioners also ask that the Court declare that the 1st–7th Petitioners rights were violated by their treatment before and during mandatory quarantine. This includes declarations that: it is unconstitutional for the Ministry of Health to detain people in quarantine even though it is not medically necessary because they are unable to pay for mandatory quarantine; the way in which the 1st-7th Petitioners’ COVID-19 test results were handled was unlawful and unconstitutional, and the lack of guidelines for how to care for children in quarantine is unconstitutional.
- The Petitioners ask that the government repay the costs they were forced to pay to be quarantined and waive the fees for those unable to pay. They also ask for damages for their emotional distress.
- The Petitioners ask the Court to order that the Quarantine Protocols be revised to comply with the Constitution and the World Health Organisation guidelines on quarantine.
- The Petitioners ask that the Court compel the Ministry of Health to develop guidelines on the care of children in quarantine.
- Finally, they ask that the respondents report back to the Court within three weeks of their compliance with the Court orders.

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