

REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION  
PETITION NO. 151 OF 2020

BETWEEN

C.M (suing on her on behalf and on behalf  
of PM (Minor) as parent.....1ST PETITIONER  
M.O.A.....2ND PETITIONER  
M.O.....3RD PETITIONER  
M.W.M.....4TH PETITIONER  
K.F.....5TH PETITIONER  
F.A.....6TH PETITIONER  
K.B.....7TH PETITIONER  
KENYA LEGAL & ETHICAL ISSUES  
NETWORK ON HIV & AIDS (KELIN).....8TH  
PETITIONER  
KATIBA INSTITUTE.....9TH  
PETITIONER

AND

HON. ATTORNEY-GENERAL.....1ST RESPONDENT  
CABINET SECRETARY, HEALTH.....2ND RESPONDENT  
CABINET SECRETARY, INTERIOR  
& CO-ORDINATION OF THE NATIONAL GOVERNMENT.....3RD  
RESPONDENT

RESPONDENTS' REPLYING AFFIDAVIT

I, DR. PATRICK AMOTH, a resident of Nairobi and of Post Office Box Number 40663-00100 Nairobi, do hereby make oath and solemnly state as follows:

1. THAT I am the Acting Director General for Health. I am conversant with the facts of this petition hence duly competent and authorized to swear this affidavit.
2. THAT I have read and understood contents of the petition herein, the supporting affidavits thereto and the annexures and where necessary I have sought and obtained advice from the State Counsel on record and wish to respond as follows;
3. THAT I swear this Affidavit in complete opposition of the Petition aforesaid.

4. THAT I am aware that COVID-19 is a grave threat to the people of Kenya and has occasioned the loss of hundreds of lives and disrupted the livelihoods of many persons and economies of the world, Kenya included.
5. THAT the confirmation of the 1<sup>st</sup> COVID-19 case and the imminent threat occasioned by the confirmation of the disease required urgent interventions to stop and control the spread of the disease through the establishment of various control measures.
6. THAT on 11th March 2020, the World Health Organization (WHO) declared COVID-19 a highly infectious viral disease that affects the respiratory tract and since then the disease continues to spread both within and across borders.
7. THAT on 13<sup>th</sup> March 2020, the State confirmed the first case of COVID-19 in Kenya.
8. THAT I am aware that the measures placed by the State limited the movement of various persons while in quarantine in, which limitation was for the protection of the lives of the more than 44 million Kenyans.
9. THAT the State consistently put in place a contingency plan on prevention, surveillance, control and response measures in a bid to stop rapid spread of the coronavirus in the country.
10. THAT I am aware, that in a bid to ensure the health and safety of its citizenry, the State published the Public Health (COVID-19 Restriction for Movement of Persons and Related Measures) Rules, 2020 and the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures Variation Measures) No. 2 of 2020.
11. THAT I am advised by counsel on record which advise I verily believe to be accurate that under the Health Act and the Public Health Act, the Cabinet Secretary is empowered to make regulations on infectious, communicable and non-communicable diseases among others in Kenya.
12. THAT further the Public Health Act provides that the regulations by the Cabinet Secretary may impose restrictions on medical examinations, detention, quarantine, isolation and medical surveillance.

- b. All passengers entering the country from 22<sup>nd</sup> March 2020, regardless of nationality would be required to undergo mandatory quarantine at a government designated facility. That the costs associated with the quarantine would be at the passengers own expense.
  - c. All countries wishing to evacuate their nationals were required to evacuate them within the period before 25<sup>th</sup> March 2020.
  - d. All Kenyans residing abroad during the period were advised to observe the guidelines of the countries in which they were resident.
  - e. All the persons entering the country who fail to observe self-quarantine protocols will be forcefully quarantined for 14-days at their cost and thereafter arrested and charged for offences under the Public Health Act.
15. THAT it is not true that the Respondents did not fail to proactively publish and publicise important information about the pandemic and the State response as alleged and puts the Petitioners to strict proof thereof.
16. THAT all the guidelines and measures undertaken by the Government to contain the spread of COVID-19 disease were published and publicized and were made available to the general public.
17. THAT the various directives and measures taken by the state were publicized in various media including but not limited to visual and print media and the same were available on radio, official government websites and even social media and press releases.
18. THAT further, the Ministry of Health provided prompt and regular updates to the members of public regarding COVID-19 in the country and further advised on the modalities of reporting any suspected cases and accessing medical facilities. The Ministry also availed emergency contacts.
19. THAT I am advised by the State Counsel on record which advice I verily believe to be true that under Section 6 of the Access to Information Act, a public entity is not obliged to supply information to a requester if the information requested for is reasonably accessible by other means.

20. THAT aside from provision of regular updates on COVID – 19 to the public by the Ministry of Health, all the information requested for by the petitioners was published and publicized to the general public and therefore the State did not withhold or deny the petitioners information.
21. THAT continuously throughout the period the State has continued to revise its protocols, measures and guidelines, aligning them with the international standards as well as the local situation throughout the period of the pandemic.
22. THAT this has resulted in various revisions of for example requirements for testing, quarantine centers and curfew.
23. THAT contrary to the allegations by the Petitioners, the guidelines for the treatment, handling and management of all persons being held in mandatory quarantine were on Ministry of health website.
24. THAT I am advised by counsel on record whose advise I verily believe that save for the rights listed under Article 25 of the Constitution of Kenya, and other statutory exceptions, the State has a right to limit the rights and freedoms of persons particularly where the limitation is for the greater good of the society.
25. THAT the universal standard for the control of the spread of COVID-19 included the restriction of movement across borders and the implementation of mass testing, quarantine and social distancing.
26. THAT I am aware that following the directive passengers arrived in the country from various destinations and that each of the passengers were required to go into mandatory quarantine.
27. THAT I am aware that the State provided a list of options of various public and private institutions as quarantine centers.
28. THAT it was clear at all times that all passengers were to cater for their own quarantine expenses and would therefore pick their quarantine centers based on this ability.


29. THAT the Petitioners are not entitled to the payment for their quarantine by the State as the State was not privy to their various agreements.
30. THAT at all times the measures by the state have encouraged social distancing and responsible behaviour by the public to ensure the containment of the spread of the COVID-19 disease.
31. THAT despite the accusations by the Petitioners at no time did the State encourage or permit the flouting of containment measures and the Petitioners are put to strict proof of the same.
32. THAT I am advised by counsel on record which advice I verily believe to be true that the limitation of rights as alleged by the Petitioners is justifiable as the same is in line with the provisions of the constitution.
33. THAT the Petitioners have failed to recognize the novelty and sensitivity of the COVID-19 Pandemic as well as the magnitude of risk to the general populace through the flouting of government rules, regulations and protocols.
34. THAT I am also advised by counsel on record that the Petitioners have failed to demonstrate that the actions taken by the State were outside of the provisions of the law.
35. THAT the Petitioners have failed to appreciate the role and the place of mandatory quarantine of individuals who may have come into contact with the coronavirus through the flouting of the government regulations in place.
36. THAT there was no breach of the Fair Administrative Act as alleged by the petitioners.
37. THAT mandatory quarantine and its necessary extension thereof is an acceptable WHO recommended practice used globally and was introduced in the country as a precautionary measure to mitigate the spread of COVID -19 at the formative period and therefore ensure that persons who may have been exposed to the virus remain isolated for the entire 14 days' incubation period of the virus to assure their health status.
38. THAT I have been advised by experts in public health which advice I verily believe to be correct that uncontrolled interactions between persons, including

those who may have been asymptomatic infected individuals would accelerate community transmission across the country thereby jeopardizing efforts of containing the spread of COVID-19 disease.

39. THAT the petition is totally devoid of any merit and it does not meet the threshold under the Constitution and Statutory law for this court to grant the orders sought.

40. THAT I swear this affidavit in reply to and opposition of the petition herein and the verifying affidavits thereof.

41. THAT what is deponed hereto is true to the best of my knowledge and belief save and except where otherwise expressly stated, all my sources having been disclosed.

SWORN at NAIROBI by the said )  
DR. PATRICK AMOTH, EBS )  
this.....<sup>25<sup>th</sup></sup> day of <sup>August</sup> 2021 )  
BEFORE ME )  
 )  
COMMISSIONER FOR OATHS )



DEPONENT

**DRAWN & FILED BY:**  
The Hon. Attorney General  
Sheria House  
P.O. Box 40112-00100  
**NAIROBI**  
Email: [communications@ag.go.ke](mailto:communications@ag.go.ke)

**TO BE SERVED UPON:**  
Carolene Kituku & Co advocates,  
Tetezi Tower, 1<sup>st</sup> floor,  
George Padmore Road,  
Nairobi  
Email: [Carolene.kituku@gmail.com](mailto:Carolene.kituku@gmail.com)

Allan Maleche, Advocate  
KELIN  
Somak House, 4<sup>th</sup> Floor  
Mombasa Road.  
Nairobi  
Email: [amaleche@kelinkenya.org](mailto:amaleche@kelinkenya.org)

Emily Kinama, Advocate  
C/O Katiba Institute  
House No. 5, The Crescent, Off Parklands Road  
P.O.Box 26586-00100  
NAIROBI  
[info@katibainstitute.org](mailto:info@katibainstitute.org)