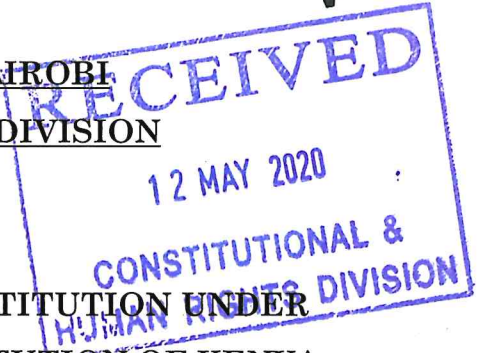


REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO 151 OF 2020



**IN THE MATTER OF THE DEFENCE OF THE CONSTITUTION UNDER
ARTICLES 3, 10, 19, 20, 22 AND 258 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF THE ALLEGED VIOLATION OF ARTICLES 19, 21, 28,
29, 31, 39,43, 47,51 AND 53 OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 8(6) OF
THE PUBLIC ORDER ACT, CAP 56 OF THE LAWS OF KENYA**

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF SECTIONS 4
AND 5 OF THE HEALTH ACT NO. 21 OF 2017**

AND

**IN THE MATTER OF THE ALLEGED VIOLATION OF SECTIONS 4 AND 5
OF THE ACCESS TO INFORMATION ACT, NO. 31 OF 2016**

AND

**IN THE MATTER OF SECTIONS 4 AND 5 OF THE FAIR ADMINISTRATIVE
ACTION ACT NO. 4 OF 2015**

AND

IN THE MATTER OF THE ALLEGED CONTRAVENTION OF THE PUBLIC HEALTH (COVID 19 RESTRICTION OF MOVEMENT OF PERSONS AND OTHER RELATED MEASURES) RULES, 2020 AND PUBLIC HEALTH ACT (PREVENTION, CONTROL AND SUPPRESSION OF COVID 19) REGULATIONS, 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

VERSUS

- HON. ATTORNEY GENERAL1ST RESPONDENT
- THE CABINET SECRETARY, HEALTH 2ND RESPONDENT
- THE CABINET SECRETARY, INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT...3RD RESPONDENT

AND

**MAKANYENGO, DR MARGARET OTHIENO... PROPOSED AMICUS
CURIAE /APPLICANT**

NOTICE OF MOTION FOR LEAVE TO INTERVENE AS AMICUS CURIAE

**(Under Article 20(3) (a), Article 22(3)(e) of the Constitution of Kenya, Rule 6 of the
Constitution of Kenya (Protection of Rights and Fundamental Freedoms)
Practice and Procedure Rules, 2013 and All Other Enabling Provisions of the
Law)**

TAKE NOTICE THAT this Honorable Court shall be moved on the _____day of May
2020 at 9.00 o'clock in the forenoon or as soon thereafter as the counsel for the Applicant
may be heard on an Application for **ORDERS THAT:**

1. **DR MARGARET OTHIENO MAKANYENGO** (“Dr Makanyengo”) the Applicant herein, be granted leave to be enjoined as an Amicus Curiae in this Petition.
2. That upon the granting of prayer No. 1 above, the Honourable Court do give directions on how the intended *Amicus Curiae* shall participate in further proceedings herein on such other or further directions as the court may deem fit to give.
3. There be no award of costs for or against the Amicus Curiae.

WHICH APPLICATION is based on the **GROUND**S:

1. **THAT** the Applicant is qualified and experienced as a medical doctor and psychiatrist in the management and care of mental health generally, and specifically in relation to:
 - 1.1. the mental health effects of isolation and detention in healthcare settings;
 - 1.2. mental-health affirming responses to emergencies and humanitarian crises;
 - 1.3. the role of stigma in the management of infectious diseases; and
 - 1.4. the impact and its mitigation of these phenomena on children.

2. **THAT** the Applicant's qualifications, knowledge and experience as an established consultant psychiatrist with over 32 years of experience and a masters in psychiatry, place her in a position to contribute useful information and novel perspectives on the issues before the Honourable Court, information which will assist the Court in appreciating the impact of its determination of the Petition on the rights and wellbeing of all affected Kenyans and, in particular, in its effect on the right to the highest attainable standard of health.

3. **THAT** the Applicant's submissions will assist the Court in conducting a nuanced analysis of the positive and negative impacts associated with public health measures such as quarantine on the mental health and well-being of people who are and will be affected by the State's response to COVID-19.

4. **THAT** if granted leave to intervene as Amicus Curiae, the Applicant intends to make submissions on the following issues:

- 4.1. A distinction from a health policy perspective, between the concepts of “quarantine” and “isolation”, and explain institutionalised and other approaches to quarantine.
- 4.2. An explanation of the concept of “mental health” in reference to the right to the highest attainable standard of health in Article 43(1)(a) of the Constitution.
- 4.3. A description of how the COVID-19 pandemic generally has widespread implications for collective and individual mental health, emotional and social functioning and wellbeing.
- 4.4. From a mental health care, policy and rights perspective, the evolving appreciation of the significant and long-term impact of enforced isolation and detention on individuals in health care settings.
- 4.5. The general features of quarantine in relation to its effect on individuals’ mental health.
- 4.6. The impact of COVID-19 generally, isolation and quarantine on children’s mental health and wellbeing and how these negative impacts may be prevented or mitigated.
- 4.7. The inter-relationship between stigma associated with infectious diseases such as COVID-19 and coercive public health measures such as quarantine.

4.8. Best practice in policy to mitigate and prevent negative mental health impacts of quarantine and in the context of emergency and humanitarian responses.

AND WHICH APPLICATION is supported by the annexed affidavit of **DR MARGARET OTHIENO MAKANYENGO** and on such other or further grounds, reasons and arguments as shall be adduced or advanced at the hearing hereof.

DATED at Nairobi this 11th day of MAY 2020



**Caroline Oduor & Associates,
ADVOCATES FOR THE APPLICANT**

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