

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' GROUNDS OF OPPOSITION

TAKE NOTICE that at the hearing of the Petition herein, the Respondents shall oppose the Petition on the following grounds:

1. THAT the Petitioners have failed to appreciate the role of the police service in the maintenance of law and order in the face of the COVID-19 restrictions.
2. THAT the COVID-19 rules and restrictions enjoy a presumption of constitutionality having been passed in accordance with the provisions of the law.
3. THAT the Petitioners have failed to appreciate the role of the law enforcement officials in enforcing the COVID-19 regulations and protocols.
4. THAT the Petitioners have failed to prove and demonstrate specifically the manner in which the Respondents violated their rights to privacy and access to information.

5. THAT the Petitioners have misapprehended and misunderstood the provisions of the impugned Access to Information Act and Fair Administrative Action Act.
6. THAT the Petitioners have failed to demonstrate that the emotional, physical and psychological distress suffered by the Petitioners if any was occasioned by the direct actions of the Respondents.
7. THAT the Petitioners have failed to demonstrate that the rights which were limited by the State with regards to COVID-19 restrictions were rights which may not be limited under the law.
8. THAT under Article 24 of the Constitution of Kenya, the State has a right to limit the rights of persons.
9. THAT the Petition herein is premised on hearsay as the Petitioners have failed to adduce any evidence of any conversations or actions which are alleged.
10. THAT the Petitioners have failed to meet the requirements of section 107 of the Evidence Act, which provides that 'he who alleges must prove'.
11. THAT the Petitioners have failed to provide justification for the grant of the orders for costs paid during mandatory quarantine by the State in absolute violation of the principle of *privity of contract*.
12. THAT the Petitioners have failed to effectively justify the need for any supervisory orders with regard to COVID-19 rules and protocols in complete violation of the principle of separation of powers.

DATED AT NAIROBI THIS29TH DAY OFJUNE..... 2021



MITCHELLE OMUOM
SENIOR STATE COUNSEL
FOR: THE ATTORNEY-GENERAL

DRAWN & FILED BY:
THE ATTORNEY-GENERAL,
Attorney-General's Chambers,
7th Floor, Sheria House,
Harambee Avenue,
Nairobi.

TO BE SERVED UPON:

1. Carolene Kituku & Co advocates,
Tetezi Tower, 1st floor,
George Padmore Road,
Nairobi
Carolene.kituku@gmail.com

2. Allan Maleche, Advocate
KELIN
Somak House, 4th Floor
Mombasa Road.
Nairobi
amaleche@kelinkenya.org

3. Emily Kinama, Advocate
C/O Katiba Institute
House No. 5, The Crescent, Off Parklands Road
P.O.Box 26586-00100
Nairobi
info@katibainstitute.org

4. Caroline Oduor & Associates,
Blue Violet Plaza,
1st Floor, Wing A, Suite No.101,
Kindaruma Road, Off Ngong Road,
P.O. Box 18872-00100,
Nairobi
info@coduoradvocates.co.ke

5. C. B. Mwangela & Co. Advocates,
View park Towers, 13th Floor,
Monrovia Street/ Utalii Lane,
P.O. Box 8841-00200,
Nairobi
office@cbmwongela.com