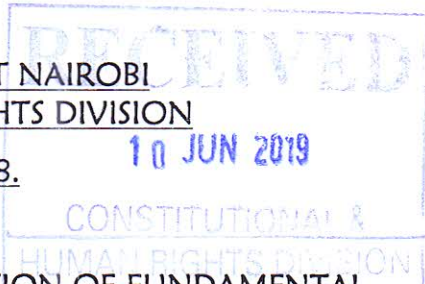


REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 447 OF 2018.



IN THE MATTER OF: THREATENED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 27, 28, 29, 31, 43(1)(a), 45(2), 49, 50(2) AND 53 (1) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF: THE CONSTITUTIONALITY OF SECTION 26 OF THE SEXUAL OFFENCES ACT NO. 6 OF 2006

AND

IN THE MATTER OF: DEFENCE OF THE CONSTITUTION UNDER ARTICLE 3(1) OF THE CONSTITUTION OF KENYA

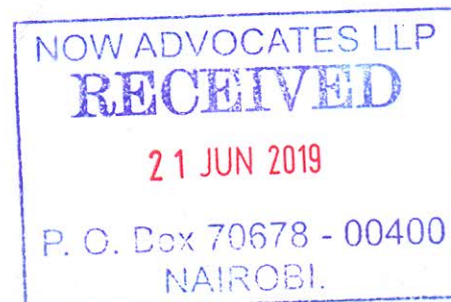
AND

IN THE MATTER OF: INTERPRETATION, ENFORCEMENT AND PROTECTION OF BILL OF RIGHTS UNDER ARTICLES 19, 20, 22, 23, 24, 165, 258 AND 259 OF THE CONSTITUTION.

BETWEEN

EM.....1ST PETITIONER/APPLICANT
SN.....2ND PETITIONER/APPLICANT
SKM.....3RD PETITIONER/APPLICANT
MA.....4TH PETITIONER/APPLICANT
MR.....5TH PETITIONER/APPLICANT
JW.....6TH PETITIONER/APPLICANT
KENYA LEGAL AND ETHICAL ISSUES NETWORK
ON HIV & AIDS(KELIN).....7TH PETITIONER/APPLICANT

VERSUS



ATTORNEY GENERAL.....1ST RESPONDENT

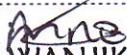
DIRECTOR OF PUBLIC PROSECUTIONS.....2ND RESPONDENT

1ST RESPONDENTS' GROUNDS OF OPPOSITION

TAKE NOTICE that the 1st shall oppose the petition herein on the following GROUNDS:

1. THAT the petitioners has failed to demonstrate that the challenged section is unconstitutional or in any manner infringes any provisions of the constitution.
2. THAT the challenged provisions are clear, precise, and unambiguous and do not disclose any infringement of the provisions of the constitution.
3. THAT the Petitioner has failed to consider the history behind the enactment of the challenged provision in question. Thus any interpretation of these provisions should bear in mind the history, the desires and aspirations of the Kenyans on whom the Constitution vests the sovereign power.
4. THAT section 26 of The Sexual Offences Act is constitutional and that Parliament exercised its mandate in enacting the Act as such it was necessary to align the said provisions with the provisions of Articles 60 and 67 of the Constitution of Kenya, 2010.
5. THAT there is the general presumption that every Act of Parliament is constitutional and the burden of proof lies on every person who alleges otherwise.
6. THAT the object and purpose of the impugned statute must be determined for it is important to discern the intention expressed in the Act. Further, while examining whether a particular statutory provision is unconstitutional, the court must have regard not only to its purpose but also its effect and the purpose of section 26 of the sexual offences act was to address the intentional spread of HIV AIDS.
7. THAT the petition is misconceived, incompetent and bad in law and the orders sought by the petitioners are not tenable against the Respondents.

DATED at NAIROBI this day of 2019


ANNE WANJIKU MWANGI
SENIOR LITIGATION COUNSEL
FOR: THE HON. ATTORNEY GENERAL

DRAWN & FILED BY

The Hon. Attorney General

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