

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

AND

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

AND

IN THE MATTER OF ALLEGED VIOLATION OF SECTION 4 AND 5 OF THE
HEALTH ACT NO. 21 OF 2017

IN THE MATTER OF ALLEGED VIOLATION OF SECTION 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 ALLEGED CONTRAVENTION OF THE PUBLIC HEALTH
(COVID 19 RESTRICTION OF MOVEMENT OF PERSONS AND OTHER
RELATED MEASURES) RULES, 2010 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	1 ST PETITIONER
M.O.A.....	2 ND PETITIONER
M. O.....	3 RD PETITIONER
M.W.M.....	4 TH PETITIONER
K.F.....	5 TH PETITIONER
F.A.....	6 TH PETITIONER
K.B.....	7 TH PETITIONER
KENYA LEGAL & ETHICAL ISSUES NETWORK ON HIV & AIDS (KELIN).....	8 TH PETITIONER
KATIBA INSTITUTE.....	9 TH PETITIONER

VERSUS

HON. ATTORNEY GENERAL.....	1 ST RESPONDENT
THE CANINET SECRETARY, HEALTH.....	2 ND RESPONDENT
THE CABINET SECRETARY, INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT.....	3 RD RESPONDENT

AND

M/S INDEPENDENT MEDICO-LEGAL UNIT (IMLU) .	1 ST INTERESTED PARTY
DR. MARGARET OTHIENO MAKANYENGO	1 ST AMICUS CURIAE
INTERNATIONAL COMMISSION OF JURISTS (ICJ, KENYA).....	2 ND AMICUS CURIEAE/APPLICANT

RULING

PETITION

1. The Petition herein seek to protect and enforce the fundamental rights and freedoms of 1st to 7th Petitioners who are persons detained at various mandatory quarantine facilities within the Republic of Kenya for allegedly violating the curfew orders and other COVID-19 Pandemic

Regulations and Directives. The Petition is premised on inter alia; violation of the Petitioners rights to dignity and protection from cruel, inhumane and degrading treatment.

2. The Petitioners seek various remedies from this Court including declarations on violations of the Constitution; Judicial Review Orders of Mandamus and Prohibition; an interdict order and orders for compensation.

APPLICATIONS

3. Before me are three applications. The first application is for joinder of the proposed Interested Party's. The application is dated 11th May 2020 by M/s Independent Medico-legal Unit (IMLU) through the firm of M/s Caroline Kituku & Co. Advocates. The other two applications are dated 11th may 2020 by Dr. Margaret Othieno Makanyengo ("Dr. Makayengo") filed through the firm of M/s Caroline Oduor & Associates Advocates, whereas the second application is by international commission of Jurists Kenya Section (ICJ Kenya) filed through the firm of M/s C. B. Mwongela & Co. Advocates.

PETITIONERS RESPONSE

4. The Petitioners support the three applications and have filed submissions in support.

RESPONDENTS RESPONSE

5. The Respondents are opposed to the three applications and have filed grounds of opposition and submissions.

ANALYSIS AND DETERMINATION

6. I have considered the applicants, affidavits in support; the ground in opposition and parties rival submissions. I propose to deal with the application for joinder of the proposed Interested Party first and separately from the two applications for joinder as Amicus Curie, herein. I will set the issues for determination of the two applications separately:-

A. Application for joinder as intended Interested Party.

- i) Whether the applicant has met the requirements for joinder as an Interested Party?*

B. Applications for joinder as Amicus Curie

- i) Whether the Applicants have met the threshold required for enjoinder as Amicus Curie in Applications dated 11th may 2020 and 22nd May 2020??*

A. (i) WHETHER THE APPLICANT HAS MET THE REQUIREMENTS FOR JOINDER AS AN INTERESTED PARTY?

7. The Independent Medico-Legal Unit (IMLU) in her application dated 11th May 2020 seeks leave to be admitted in these proceedings as an Interested Party. That upon granting leave to participate in these proceedings, the Court do give directions on how the Interested Party shall participate in further proceedings herein as court shall deem fit and just. It is further sought that there be no award of costs against the Interested Party.

8. The application is based on several grounds on the face of the application and further supported by proposed Interested Party's, supporting affidavit by Peter Kiama sworn on 11th May 2020.

9. The 1st Respondent filed grounds of opposition dated 27th May 2020 opposing the proposed Interested Party's application being as follows:-

- i) The Intended Interested Party has not set out sufficient grounds for its joinder into the proceedings herein.*
- ii) The Intended interested Party has not set out its personal interest or stake in the matter that is distinct form any of the other parties already privy to the matter;*
- iii) The intended Interested Party has not set out any interest in the matter that is clearly identifiable and which may stand apart from anything that it merely peripheral to the matters in issue.*

- iv) *The intended Interested Party has not demonstrated any prejudice that it will suffer in case of non-joinder.*
- v) *The intended Interested Party has failed to set out the case and/or submission it intends to make before the Court, and demonstrate the relevance of those submissions and further has failed to demonstrate that its submission are not merely a replication of what the other parties will be making before the Court.*
- vi) *The Intended Interested Party is essentially seeking to introduce an entirely new case distinct from what the Petitioners are claiming.*
- vii) *That proposed Interested Party is a private entity that has neither disclosed nor demonstrated any direct interest in the Petition herein.*

viii) The intended Interested Party will not be affected by the determination of this Honourable court on the Petition made either way.

ix) The intended Interested Party has not demonstrated that its purported interest will not be well articulated unless it is enjoined and appears in the proceedings to champion its cause.

10. The Proposed Interested Party IMLU is a governance, health and human rights non-profit organization and seeks to join these proceedings by virtue of its interest in reduction of torture and other cruel; inhuman or degrading treatment or punishment in Kenya by 2021. It urges that over the last two decades, it has gained extensive experience of working on the protection from torture, cruel and degrading inhumane treatment and was worked with various International mechanisms and also made a case for Kenya at the African Commission on Human and Peoples Rights (ACHPR), the United Nations Human Rights Committee (UNHRC) and the UN Committee against Torture (UNCAT).

11. **Rule 2 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure, Rules 2013** (commonly referred to as **“The Mutunga Rules”**) defines an **“Interested Party”** as an entity that has an identifiable stake or legal interest in the proceedings.

12. The Supreme Court in the case of **Francis K. Muruatetu and another v. Republic & 5 others (2016) eKLR**, set out identifiable key elements for consideration in an application for joinder as an Interested Party. The elements are as follows:-

“a. The Personal interest or stake that the party has in the matter must be set out in the application. The Interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.

b. The prejudice to be suffered by the intended Interested Party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.

c. Lastly, a party must, in its application, set out the case and/or submission it intends to make before the court, and demonstrate the relevance of those submissions. It should also demonstrate that these submission are not merely a replication of what the other parties will be making before the court.”

13. The Respondents opposing the application contend that the proposed interested party has failed to demonstrate its personal interest or stake in the outcome of this matter in the application or at very least its partisan position with regard to its stake in the proceedings. It is further stated that the interest identified by the applicant is based on its strategic plan in which the applicant hopes to carry out work with victims of torture, violence and discrimination, urging that in view of the aforesaid the interest demonstrated by the applicant is merely peripheral at this point as the petitioners are yet to demonstrate and prove their case before this Honourable Court and have not been found to fall within the target group. It is further their contention that for a party to be joined as an interested party, the party's stake must not

only clearly be identifiable but must be proximate enough, to stand apart from anything that is merely peripheral.

14. The Respondents further contend while the Applicant has indicated its interest in the matter herein, it has yet to demonstrate the prejudice to be suffered in case of non-joinder, as anything short of remote, posed out the Applicant has not indicated to the court any prejudice which would be suffered by it should its application for joinder be rejected. It is further stated, whereas the applicant has indicated its interest in matters of reduction of torture, violence and dissemination, it has failed to demonstrate that it has a real stake in the issue raised by the Petitioners other than curiosity as to the adjudication of the matter raised in the Petition that may touch on its area of work.
15. The Proposed Interested Party counters the Respondents submissions urging that IMLU has a legitimate and identifiable stake in these proceedings by virtue of the fact that it is an organization that defends and promotes the right under **Article 29(d) and (f) of the Constitution** and which is directly in the instant petition. It is stated to the extent that the instant petition raises the questions as to whether

the right to protection from torture, other cruel, degrading and inhumane treatment of persons held in mandatory quarantine facilities has been violated, falls squarely within the mandate of the proposed Interested Party.

16. It is averred that IMLU seeks to utilize its expertise towards assisting the court in interpreting and applying the right to protection from torture; other cruel, dignity and inhumane treatment. IMLU's intervention it is submitted will benefit the court in regard to the interpretation and application of relevant constitutional principles comparative law and international law and in designing appropriate remedies for the Petitioners for the alleged violation of **Article 29(d) and (f) of the Constitution**.
17. In the case of ***Trusted Society of Human Rights Alliance v. Mumo Matemu (2014) eKLR*** the Supreme Court in its judgment stated that an Interested Party is the one who has a stake in the proceedings and would be affected by the decision of the Court when it is made, either way. The proposed Interested Party has demonstrated that the determination of this Petition, either way, will have an impact on the freedom from torture, other cruel and inhumane treatment, a matter

that has been shown to fall squarely within IMLU's mandate. The IMLU seeks in this Petition to provide cogent and helpful broad framework for the Court's consideration in analysing the violation of the freedom from torture, other cruel, inhumane and degrading treatment as provided under **Article 29(d) and (f) of the Constitution 2010**.

18. The Petitioners support proposed Interested Party's application and relied on the Supreme Case decision in the case **Francis Kariuki Muruatetu (supra)**. They contend that the application by the proposed Interested Party has met the threshold set in the aforesaid case.
19. I have considered the parties rival submission and the requirements that has to be met before a proposed Interested Party can be joined as an Interested Party. In the proceedings before Court, the proposed Interested Party, has demonstrated the personal interest or stake that it has in the matter in its application. The interest demonstrated is clearly identifiable and is proximate enough, to stand apart from anything that is merely peripheral. The proposed Interested Party has shown the prejudice to be suffered by it in case of non-joinder to the satisfaction of this court. The proposed Interested Party has also set out the case and/or submissions it intend to make before the court and

has also demonstrated the relevance of those submissions. It has also been shown the submission are not merely a replication of what other parties will be making before the Court. In view of the above I am satisfied the proposed interested party has met the requirements for joinder in these proceedings as an interested party.

B. ISSUE IN RESPECT OF THE APPLICATIONS FOR JOINDER OF AMICUS CURIE

i) WHETHER THE APPLICANTS HAVE MET THE THRESHOLD REQUIRED FOR ENJOINMENT AS AMICUS CURIAE IN APPLICATIONS?

20. I now turn to the two applications for joinder of **Dr. Margaret Othieno Makanyengo (Dr. Makanyengo) as an Amicus Curie** in this Petition dated 11th May 2020 and the second application by **International Commissions of Jurists Kenya sector (ICJ Kenya)** for joinder in these proceedings as **amicus curiae**.

21. The application by **Dr. Makanyengo dated 11th May 2020** seek leave for the Applicant to be enjoined as an Amicus curie in this Petition. The Applicant further pray upon being granted leave to join the proceedings court do give directions on how the intended Amicus curie shall participate in further proceedings herein. The Applicant prays there be no award of costs for against the Amicus Curiae.
22. The application is premised on various grounds set out on the face of the application. It is further based on supporting affidavit by **Dr. Margaret Othieno Makanyengo** sworn on 11th may 2020 and annexures attached thereto.
23. The **Notice of Motion by ICJ Kenya dated 22nd May 2020** seek leave to join ICJ Kenya in these proceedings as amicus curiae. The application is premised on several grounds on the face of the application. It is supported by an affidavit of Kelvin Mogeni sworn on 22nd May 2020.
24. The Respondents are opposed to both applications. The Respondents filed ground of opposition dated 29th June 2020 in opposition of the application by **Dr. Margaret Othieno Makanyengo dated 11th May**

2020. The Respondent further filed grounds of opposition dated 29th June 2020 in opposition to the application by **ICJ – Kenya dated 22nd May 2020.**

25. The legal framework for admission of amicus curiae before this court is statutory embodied in **Rule 6 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013** (Commonly known as “**The Mutunga Rules**”) made under **Article 22(3) (e) of the Constitution**. In addition the Courts have made pronouncements regarding the participation of parties in proceedings as amicus curiae and have considered the principles developed on the subject.
26. The Principle which guide the court when determining an application for leave to be joined as an **Amicus Curiae** is clearly enunciated in the case of **Justice Philip K. Tunui & another v. Judicial Service Commission & 2 Others (2014) eKLR**. The guiding principles were further adopted in the case of **Trusted Society of Human Rights Alliance vs. Mumo Matemu & 5 Others (2015) eKLR** which provides as follows :-

- “a) The applicant ought not to raise any perception of bias or partisanship, by documents filed, or by his submissions.***
- b) The applicant ought to be neutral in the dispute, where the dispute is adversarial in nature.***
- c) The applicant ought to show that the submissions intended to be advanced will give such assistance to the Court as would otherwise not have been available. The applicant ought to draw the attention of the Court to relevant matters of law or fact which would otherwise not have been taken into account. Therefore, the applicant ought to show that there is no intention of repeating arguments already made by the parties. And such new matter as the applicant seeks to advance, must be based on the data already laid before the Court, and not fresh evidence.***
- d) The applicant ought to show expertise in the field relevant to the matter in dispute, and in this regard, general expertise in law does not suffice.***

e) *Whereas consent of the parties, to proposed amicus role, is a factor to be taken into consideration, it is not the determining factor.*”

a) *The applicant ought not to raise any perception of bias or partisanship, by documents filed, or by his submissions.*

27. *Rule 2 of “Mutunga” Rules* defines a *“friend of the Court”* as follows:

“—friend of the court - is an independent and impartial expert on an issue which is the subject matter of proceedings but is not party to the case and serves to benefit the court with their expertise;”

28. From ground 2, 3 and 4 of *Dr. Makanyengo’s application* they address the independence and impartiality of the Applicant. They address the intention of the applicant to provide expert assistance to facilitate the comprehensive examination and consideration of both the *positive and negative consequences* of this Honourable Court’s

determination of the Petition on the mental health and well-being of the affected persons and the public.

29. It is further noted that in addition in paragraph 2 and 3 of the application the applicant became aware of the proceedings in the public domain. In light of the Applicant's expertise and interest in the issues raised in the Petition from a mental health perspective the Applicant seeks to offer-support with no personal gain from the outcome of the proceedings.

b) The Applicant ought to be neutral in the dispute, where the dispute is adversarial in nature.

30. Where the dispute is adversarial in nature; the Applicant herein in support of the neutrality herein aver that she relies on ground 2 and 3 of the Application and paragraph 16, 17, 18 and 20 of her affidavit. I note that paragraph 17, reference is made to the effects of the Court's determination on the right to the highest attainable standard of health of all affected citizens enshrined in **Article 43(1) a of the Constitution**. This is indicative of the Applicant's sole motivation for being joined as Amicus Curiae, which is fidelity to the law.

31. Reading from the Applicant's application and affidavit I note her appreciations and respect of the role of the Court in developing constitutional guidance and clarity with respect to Kenya's response to the COVID -19 pandemic, particularly with respect to mandatory quarantine.

32. I further note that there exists no written or verbal record of any statement made by the Applicant that would suggest a productivity towards the opposing the Petition.

c) The applicant ought to show that the submissions intended to be advanced will give such assistance to the Court as would otherwise not have been available. The applicant ought to draw the attention of the Court to relevant matters of law or fact which would otherwise not have been taken into account. Therefore, the applicant ought to show that there is no intention of repeating arguments already made by the parties. Any such new matter as the applicant seeks to advance, must be based on the data already laid before the Court, and not fresh evidence.

33. The Applicant contention is that the unique nature and value of information guaranteed by the applicant is clearly expounded upon in Ground 4 and Paragraphs 3 – 14 and 18 of the Application and Applicant's Affidavit respectively. It is noted that, none of the parties in the Petition have, as at the date of the Application, indicated or demonstrated that they are capable of dealing with the issues that are under the aforesaid Ground and Paragraphs.

34. The Applicant assert that the issues to be adhered by the Applicant are already squarely raised in the Petition and would not introduce extraneous unrelated issues outside the Petition before this Court but instead seek to provide an understanding of the mental health considerations in the context of managing infectious diseases. In ***Francis Kariuki Muruatetu & another v. Republic & 5 others (2016)*** eKLR the Supreme Court allowed the application by the intended amicus curiae at paragraph 52 on the grounds that:-

“We perceive from the application and the submissions that the applicant is neutral on the dispute – a status which we expect it will maintain throughout the proceedings. It is also apparent that

the applicant will restrict its submissions to the issues raised, without digressing into issues outside the Petition before this Court – which position we also expect it will maintain throughout the proceedings. It is clear to us that the submissions to be advanced will be of valuable assistance to this Court and the applicant has demonstrated expertise in the field relevant to the matter before this court. We, therefore, find that the applicant has met the criteria set out in Mumo Matemu, on joinder of amicus curiae.”

35. It is further the Applicants position that given the academic and professional expertise and knowledge possessed by the Applicant, the pedigree with which the Applicant wishes to advance the intended topic is invariably different from arguments already raised by the parties and will likely be of valuable assistance to the court.

d) The applicant ought to show expertise in the field relevant to the matter in dispute, and in this regard, general expertise in law does not suffice.

36. The Applicant refer and rely fully on paragraphs 3 – 18 of the Application which demonstrate the vast knowledge and experience acquired by the Applicant over the span of 32 years in the field of psychiatry in government facilities and also in the private sector.
37. The present petition has been instituted to address the violation of rights by those held or to be held in mandatory quarantine. In this regard, the Applicant purely intends to raise issues regarding mandatory quarantine from a mental health perspective without reference to any violation of rights or the government's response to the COVID-19 pandemic on the affected population.
38. It is therefore Applicants contention that the application and the applicant's affidavit adequately refer to the special expertise required in order to meet the current threshold as it is directly relevant to the matter in dispute and will provide the court with insight into the mental health considerations.

e) ***Whereas consent of the parties, to proposed amicus role, is a factor to be taken into consideration, and whether it is a determining factor.***

39. The Applicant urge that although the support of the parties will not guarantee a favourable ruling for joinder as an amicus curiae, it is indicative of their understanding of the valuable insight and guidance the issues raised shall provide the Honourable Court.

40. The law on amicus curiae was also described in the case of ***Katiba Institute vs. Judicial Service Commission & 8 Others (2017) eKLR***, where the Court of Appeal held that:-

“Rule 6 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, (the Mutunga Rules) made under Article 22 of the Constitution provides for the procedure to be followed in respect of application to join proceedings as amicus curiae. Rule 2 defines a friend of the court as “an independent and impartial expert on an issue which is the subject matter of the proceedings but is not party to

the case and serves to benefit the court with their expertise.” It is therefore correct, as submitted by the appellant, that the requirements under the Constitution and under Mutunga Rules that a person seeking leave to appear, as amicus curiae in any particular case should meet are expertise, independence and impartiality. The grant or refusal of leave to be admitted as amicus curiae in any given case involves the exercise of judicial discretion.”

41. **ICJ – Kenya** submit that it is an organization that has expertise in constitutional law, human rights and international human rights. That its mission is to promote human rights, justice and democracy in Kenya and around Africa through application of legal expertise and international best practices. It is urged by the Applicant that it is upon this premise that it has over years reviewed all aspects of the rule of law and human rights within the Republic of Kenya and the African region and taken such action to assist in promoting or ensuring that enjoyment.

42. The instant petition raises substantial questions of human rights violation in the responses to the COVID-19 pandemic, in the context of the enforcement of mandatory quarantine, which issues are critical to the Applicant's mandate. Secondly the Applicant is a body of legal experts and therefore seeks the opportunity to bring its diverse legal expertise to assist the court in reaching a fair, well-reasoned determination that promotes human rights and rule of law.
43. It is further stated by the Applicant that it has also in the past, and in several occasions, been granted leave by the Court as amicus curiae to offer its legal expertise in similar cases raising constitutional issues and that it has successfully offered such expertise and is committed to continue to do so, to enable the court arrive at an informed decision.
44. On the question of impartiality, this court is guided by the case of ***Trusted Society Human Rights Alliance vs. Mumo Matemu & 5 others (2014) eKLR***, where the Court reiterated that:

“... an amicus is only interested in the Court making a decision of professional integrity. An amicus has no interest in the decision being made either way, but seeks that it be legal, well informed,

and in the interest of justice and the public expectation. As a 'friend' of the Court, his cause is to ensure that a legal and legitimate decision is achieved."

45. The Applicant herein clearly submits that its only interest in the Petition is to assist the Court reach a legal, well informed decision in the interest of justice and the public good and further it is dedicated to the implementation of the 2010 constitution and more specifically the constitutional principles of the Rule of law and human rights; and that it only seeks to further this agenda if its prayers are allowed by the Court.

46. The Petitioners support the application by **Dr. Makanyengo** and that of **ICJ – Kenya**. The petitioners contend the two applications meet the criteria required for enjoinder as amicus curiae. They urge that **Dr. Makanyenga** is an independent medical professional with no connections to any party to the Petition and that her intentions are adequately explained in the application and that they are unable to detect any bias or partisan language used. They urge it is evident that

the Applicant will use her expertise to promote and fulfil **Article 43(1) of the Constitution** and not to further any party's objections.

47. The Petitioners' view is that the Applicant will add valuable insight to the Court and provide more in-depth of the infectiousness and consequences of the governments' response to the COVID-19 pandemic, considering the Petition has been made in the public interest, to bring to light constitutional and legal violations during the state's implementation of the mandatory quarantine. It is further of paramount importance to note that there is no detailed description of mental health implications of mandatory quarantine in the instant Petition. It therefore follows the Applicant's expertise will provide important expert information necessary to determine the effects caused by the mandatory quarantine.

48. Similarly the Petitioners on the application by **ICJ-Kenya**, urge based on the Amicus Curiae application, the Applicant meets the criteria for joinder as an Amicus Curiae. They contend the Applicant herein has met the provision of **Rule 6 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and**

Procedure Rules, 2013 and criteria developed in the Supreme Court case of ***Trusted Society of Human Rights Alliance v. Mumo Matemu & 5 others (2015) eKLR***.

49. From clear perusal of the Applicant's affidavit of Kelvin Mogeni and the reasons put forth seeking to join the case, it is clear that ***ICJ – Kenya*** intention is to offer constitutional and comparative international law expertise in relation to human rights; as per its mandate. It shows that it is not biased. Its admission is demonstrated would not prejudice the Petitioners or any other party.
50. The Respondents are opposed to the application by ***Dr. Margaret Othieno Makanyengo*** and relies on grounds of opposition dated 29th June 2020. They are also opposed to the application by ***ICJ-Kenya*** and rely on grounds of opposition dated 29th June 2020. The Respondents further rely on submissions dated 29th June 2020.
51. The Respondents urge that under ***Rule 6 of the Mutunga Rules***, the court may allow any person with expertise in particular issue which is before the Court to appear as a friend of Court. The Respondents contend that the Applicants/Intended Amicus Curiae have failed to

meet the threshold for admission as a friend of the Court as outlined in the law and as such seek the application to be dismissed. The Respondents in support of their proposition refer to the case of ***Trusted Society of Human Rights Alliance v. Mumo Matemu & 5 others (2015) eKLR*** in respect of the numerous guidelines for consideration of the question of amicus curiae.

52. The Respondents further, state in addition to the guiding principles, the following directions may be applied by a court considering an amicus curiae application:-

“i) A party seeking to appear in any proceedings as amicus curiae should prepare an amicus brief, detailing the points of law set to be canvassed during oral presentation. This brief should accompany the motion seeking leave to be enjoined in the proceedings as amicus.

ii) The Court may exercise its inherent power to call upon a person to appear in any proceedings as amicus curiae.

- ii) In proceedings before the Supreme Court, the Bench as constituted by the President of the Court, may exercise its discretion to admit or decline an application from a party seeking to appear in any proceedings as amicus curiae, and denial or acceptance such of an application should have finality.*
- iii) The Court reserves the right to summarily examine amicus motions, accompanied by amicus briefs, on paper without any oral hearing.*
- iv) The Court may also consider suggestions from parties to any proceedings, to have a particular person, State Organ or Organisation admitted in any proceedings as amicus curiae."*

53. I have considered the Applicant's applications; the affidavits in support, the relevant law and authorities relied upon as well as the grounds of opposition and parties rival submissions, and I am satisfied the Applicants meet the criteria for admission as Amicus Curiae as per

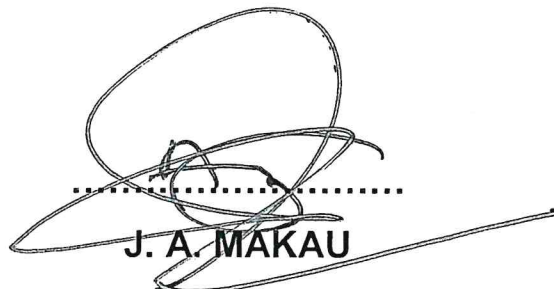
guidelines set out in *Trusted Society of Human Rights Alliance vs. Mumu Matemu & 5 others (2015) eKLR*. The Applicants have demonstrated and shown that they will abide by the guidelines set out therein.

54. The upshot is that I proceed to make the following orders:-

- a) *The application by Independent Medico-Legal Unit (IMLU) to be granted leave to be enjoined as an Interested Party dated 11th May 2020 is allowed; and IMLU is joined as 1st Interested Party in these proceedings.*
- b) *The 1st Interested Party to file and serve response to the Petition within 15 days from the date of this Ruling.*
- c) *The Applications by Intended Amicus Curiae dated 11th May 2020, AND 22ND May 2020 are hereby respectively allowed. Dr. Margaret Othieno Makanyengo (Dr. Makanyengo) is hereby enjoined to the proceedings as the 1st Amicus Curiae, whereas ICJ-Kenya is hereby enjoined in these proceedings as the 2nd Amicus Curie in these proceedings.*

- d) *The 1st and 2nd Amicus Curiae shall restrict their participation to the role of amicus curiae as set out in the Supreme Court Petition No. 12 of 2013 Trusted Society of Human Rights Alliance vs. Mumo Matemu & 5 others Supreme Court Petition No. 12 of 2013(2015) eKLR.*
- e) *The 1st and 2nd Amicus Curiae shall limit their submission on points of law, on issues which are alive in the Petitioners' pleadings, and shall not introduce extraneous matters.*
- f) *The 1st and 2nd Amicus Curiae shall make their written and oral submissions through their respective counsel.*
- g) *The parties herein shall bear their own respective costs in respect of the applications herein.*

Dated, Signed and Delivered at Nairobi on this 22nd day of October, 2020.



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J. A. MAKAU
JUDGE