

PETITION E028 OF 2022

1. What is the Case About?



This Petition concerns the dismissal of the Petitioner (PKJ) from recruitment into the Kenya Defence Forces (KDF) on the basis that he was HIV positive. This dismissal occurred after the petitioner had undergone both medical and physical evaluation which confirmed that he was fit for recruitment. Although the Petitioner received a calling letter from the KDF, he was dismissed upon reporting to the Recruits Training School. His dismissal was accompanied by a public disclosure of his HIV status to fellow recruits.

2. Who were the parties?



1. **PKJ was the petitioner**, in this case represented by Kenya Legal and Ethical Issues Network on HIV and AIDS (KELIN).
2. **The 2nd Respondent** was the Cabinet Secretary responsible for defence, tasked with overall policy, control, and supervision of the Kenya Defence Forces.
3. **The 3rd Respondent** was the Chief of the Kenya Defence Forces appointed under section 23(1) of the Kenya Defence Forces.
4. **The 4th Respondent the Defence Council**, established under Article 241 of the Constitution. Under section 28 of the Kenya Defence Forces, the 4th Respondent oversees recruitment and the appointment of members to the Kenya Defence Forces.

3. What was the Petitioner's claim?



1. The Petitioner argued that his dismissal after successful recruitment into the Kenya Defence Forces based on HIV status, was a violation of his right to equality and freedom from discrimination guaranteed under Article 27 of the Constitution.
2. This was another breach of his right to fair labour practices, guaranteed by Article 41 of the Constitution.
3. The non-consensual HIV test and public disclosure of the Petitioner's status violated his dignity and right to be free from physical and psychological abuse.

4. What was the Respondents' Defence?



1. The Respondents argued that the Petitioner did not present any witnesses to support his claim that his HIV status was shared openly with other recruits.
2. They also questioned whether the documents the Petitioner submitted—such as the calling letter, recruitment certificate, and attestation form—were genuine, claiming they were fake and not issued by the KDF.

5. What was the court's decision



1. The court found that the Petitioner's dismissal due to his HIV status amounted to direct discrimination and lacked justification.
2. The act of the officers of the respondents publicly announcing the Petitioner's HIV status, was not only insensitive but also degrading and humiliating violating the Petitioner's right to dignity.
3. The court noted that although the Petitioner had not yet become a formal employee of KDF, he was already engaged in the structured recruitment and training process of the respondents which was subject to constitutional labor practices.
4. The decision of the KDF to remove the Petitioner from the recruitment process without any lawful or reasonable procedure was a violation of his right to fair administrative action.

6. How did the Court remedy the violation of the petitioner's right



1. The court declared that the actions of the 2nd and 3rd Respondent violated the Petitioner's constitutional rights under:
 - Article 27: The right to equality And Freedom from discrimination
 - Article 28: The right to Human Dignity
 - Article 29: The right to Freedom and Security of the Person
 - Article 41: The right to fair labor practices
 - Article 47: The right to fair administrative action
2. The Court directed the Respondents to enlist the Petitioner in the next recruitment exercise, unless there were valid reasons not to which should be communicated to the Petitioner.
3. The court issued a mandatory order compelling the Respondents to within 90 days publish its policy on recruitment and retention of Persons Living with HIV (PLHIV) that is compliant with the Constitution.
4. The judgment included a follow-up order requiring the 2nd and 3rd Respondents to report back to court within 120 days, confirming they had created a constitutionally compliant policy on the recruitment and retention of PLHIV.

7. The Impact of the Court's decision



1. This is the first High Court case in Kenya to directly tackle HIV related discrimination in the military. The court's decision forces the KDF to create a fair policy and sends a clear signal that PLHIV cannot be excluded from national service.
2. More than resolving one case, the judgment sets an important standard for future recruitment practices across public institutions including the military affirming that PLHIV must be treated with dignity and equality.