



Legal Aid Self-Representation Guide

KELIN LEGAL AID SELF-REPRESENTATION GUIDE

While accessing health services, people can be denied care or be treated in a way that violates their rights. The Constitution of Kenya 2010 guarantees everyone the right to the highest attainable standard of healthcare amongst other rights that permit every person the right to dignified and inclusive healthcare. If these rights are violated, a person can seek justice using formal systems such as through courts of law or relevant tribunals.

Below is a practical guide for pursuing justice on Health-Related Constitutional Violations;



STEP 1: UNDERSTANDING YOUR RIGHTS



A. The Constitution of Kenya 2010

Article 43(1)(a) – every person has the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care

Article 43(2) – a person shall not be denied emergency medical treatment.

Other Relevant Rights

Article 21-(1) It is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights.

(2) The State shall take legislative, policy and other measures, including the setting of standards, to achieve the progressive realisation of the rights guaranteed under Article 43.

Article 26 – (1) every person has the right to life

(4) Abortion is not permitted unless, in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law.

Article 27- (4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

Article 28 - every person has inherent dignity and the right to have that dignity respected and protected.

Article 29 - every person has the right to freedom and security of the person which includes the right not to be (f) treated or punished in a cruel, inhuman or degrading manner.

Article 31- every person has the right to privacy which includes the right not to have (c) information relating to their family or private affairs unnecessarily required or revealed.

Article 35 - every citizen has the right of access to (a) information held by the State; and (b) information held by another person and required for the exercise or protection of any right or fundamental freedom.

Article 48 - the State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.

Relevant Legislation

- [The Health Act No 21 of 2017](#)
- [Public Health Act Cap 242](#)
- [Access to Information Act No 31 of 2016](#)
- [Sexual Offences Act No 3 of 2006](#)
- [HIV and AIDS Prevention and Control Act No 14 of 2006](#)
- [Digital Health Act No 15 of 2023](#)
- [Medical Practitioners and Dentists Act Cap 253](#)
- [Mental Health Act Cap 248](#)
- [County Government Act No 17 of 2012](#)
- [Children Act No 29 of 2022](#)
- [Prohibition of Female Genital Mutilation Act No 32 of 2011](#)

Other Laws

- [African Charter on Human and Peoples' Rights](#)
- [Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa](#)
- [Convention on the Elimination of All Forms of Discrimination against Women](#)
- [National Adolescent Sexual and Reproductive Health Policy 2015](#)
- [National Guidelines for Provision of Adolescent Youth-Friendly Services in Kenya 2016](#)
- [The National Reproductive Health Policy 2022- 2032](#)

STEP 2: CHOOSING THE APPROPRIATE FORUM



Forum	Nature of Case	Legal Basis	Key Considerations	Remedies/ Orders
High Court of Kenya (Constitutional Division)	Violation of constitutional rights	Article 165 of the Constitution	Best for public interest litigation or strategic cases with wide impact	Declaration of violation of rights Judicial review orders Compensation/damages Injunctions Policy directives and institutional reforms Orders for enforcement of rights
Magistrate's Court	Tort claims such as medical negligence	Magistrates' Courts Act	Jurisdiction limited by monetary threshold up to 20 million	Damages Injunctions
HIV&AIDS Tribunal	HIV & AIDS related violations	HIV&AIDS Prevention and Control Act	HIV & AIDS related violations of rights	Compensation for harm suffered Order to stop discriminatory actions Order for reinstatement Public apology Any just and equitable relief

Forum	Nature of Case	Legal Basis	Key Considerations	Remedies/Orders
Kenya Medical Practitioners and Dentists Council (KMPDC)	Misconduct or negligence by medical practitioners	Medical Practitioners and Dentists Act	Quasi-judicial forum, mostly for professional misconduct cases	Warning, reprimand or censure of a practitioner Suspension or revocation of a practitioner's license Professional development orders

STEP 3: **PREPARATION OF PLEADINGS**



Pleadings are formally drafted documents filed with a court by parties in a case outlining the specific issues in dispute. Preparing pleadings means putting your case into writing in a structured and legally acceptable format.

a) Collect Evidence

It is important to gather all the evidence to strengthen your case. Examples of evidence includes;

- Medical records, discharge summaries
- Witness statements as affidavits
- Photos/videos (if applicable)
- Communication with the hospital/officials via letters or emails
- Receipts of payments

b) Draft Pleadings

Depending on the type of case, different documents are filed before the court. Even without a lawyer, you can draft pleadings by following standard templates.

i. Determine the documents you need to draft depending on the forum chosen

Constitutional Petition at the High Court

Key Documents:

- Constitutional Petition and Supporting Affidavit
- Notice of Motion and Supporting Affidavit (if interim reliefs are sought, or on application for anonymity during the case)

- **Useful Tip:** Use the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 for formatting, timelines, and content guidance

- **Template: FORM A** - [The Constitution of Kenya \(Protection of Rights and Fundamental Freedoms\) Practice and Procedure Rules, 2013](#)

Filing in the Magistrate's Court

Key Documents:

- Complaint
- Verifying Affidavit
- Witness statements
- List of documents

- **Useful Tip:** Use the [Civil Procedure Rules, 2010](#) for guidance.

Filing in the HIV&AIDS Tribunal

Key Documents:

- Statement of Claim
- Affidavit in Support
- List of Documents
- List of Witnesses

- **Useful Tip:** Use the HIV and AIDS Prevention and Control Act and the Rules for guidance.

- **Template: Form HAT 2** - [HIV and AIDS Tribunal Rules, 2022](#)

Lodging a Complaint with KMPDC

Key Documents:

- Draft a complaint letter
- **Useful Tip:** Visit the [KMPDCU website](#) for an application for lodging a complaint form and procedure.

ii. Clearly describe the incident, the parties involved, how your rights were violated and the remedy/orders you seek.

c) Review & Finalize Pleadings

Carefully review all documents for typographical errors, dates, names, or factual inaccuracies once again.

Ensure all supporting documents for the Affidavits (annexures listed) are attached as numbered annexures referenced in the Affidavits.

Save the finalized documents in PDF format and **print 3 hard copies** (1 for court, 1 for service to the Respondent/s, 1 for your records).

d) Commissioner for Oaths

Present the **Affidavit(s) and Annexures** to a Commissioner for Oaths for stamping and for the annexures to be marked.

STEP 4: FILING



Filing is the official process of submitting your pleadings and documents to the court. This marks the start of your case and must follow specific rules, including filing deadlines, filing fees and other orders given once filed.

E-Filing Process

- **Create an account** on the e-filing portal if you haven't already.
- Upload the PDF pleadings as a **single combined file**.
- Pay the **court fee** via M-Pesa as directed on the portal. (**Filing costs: Petition- Kshs 6,125, Plaintiff- Kshs 2,000- 71,000 depending on suit Tribunal- Kshs 2,000- 71,000 depending on suit, KMPDCU- free**)
- The courts may offer filing fee waivers after filing a pauper brief detailing the inability to pay court fees.
- Download and save the **payment receipt** and **acknowledgment slip** after submission.
- A case number will be allocated to you e.g. **Petition No E050 of 2025**. Take note of this and include it in the hard copies that you have.
- You will be given orders by the Court on directions for service of the pleadings and a Mention date before the court for directions.

Service on Respondents

Serve the pleadings on Respondents **within 14 days of filing**.

Methods of Service:

- **Personal delivery is advised** to Respondent's registered office

(ensure a staff member signs/acknowledges receipt). Carry two copies. One for Respondent and the other to be signed and stamped for your records and as proof of service.

- **Electronic service:** You may also serve the pleadings to Respondent via email through their official email address especially if the personal delivery is not acknowledged in line with the Provisions of Order 5 Rule 22B of the Civil Procedure (Amendment) Rules, 2020 and Rule 13 of the Electronic Case Management Practice Directions 2020.

File Affidavit of Service

After service, prepare and swear an **Affidavit of Service** before a Commissioner for Oaths.

File the Affidavit of Service via the e-filing portal within **7 days of service**. By clicking: File Additional documents, then: General Documents and choose Affidavit of Service in the list of documents.

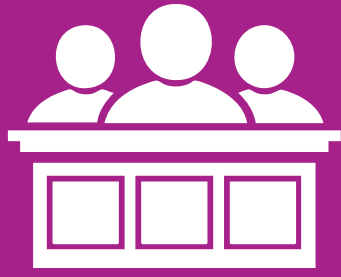
There will be two Affidavits of Service to be filed: For the Pleadings and Mention Notice.

Post-Filing Steps

Monitor your email and court portal for a **mention date**. The court will issue directions within 14–21 days.

Prepare for mention: by complying with the directions given by the Court and file a Mention Notice and Affidavit of Service for the Mention Notice.

STEP 5: **COURT** **ATTENDANCES**



Court attendances means showing up to court on the dates given whether for direction on the case or to ensure compliance by all parties, hearing or judgement. This is done virtually unless directed by the court to appear in open court especially for hearing of the case. Attendees must arrive on time, dress appropriately, and be respectful when addressing the magistrate or judge. Be prepared with your documents and the facts of the progress of the case. It is helpful to always take notes during court attendances so as to remember during the next court attendance.

- Attend Court during the allocated dates and follow the proceedings. The Court will normally begin with Mention dates to ensure compliance with the directions given by all parties. The links to the virtual court can be found in the judiciary cause list portal.
- The Respondent is expected to file a response to your pleadings and depending on what they state, you may file additional pleadings to add more evidence or oppose their statements.
- After close of pleadings, the Court will provide a date for hearing where you will testify before the court and get the chance to cross-examine the Respondent's witnesses.
- Following hearing, parties are given the chance to put in submissions on the matters before the Court within a Period of time. This will be followed by Mention dates to ensure compliance and a date for highlighting of submissions if the Court requires this.
- Finally, the Court will provide a judgement date for the matter.

STEP 6: APPEALS



Following the issuance of a judgement, follow up to receive a certified copy of the judgement. In case you want to appeal the decision, consider the main parts of the judgement being appealed and the reasons.

Forum	Appeal Provisions
KMPDC	Appeal to the High Court within 30 days from the date of the decision. File a Notice of Appeal to the Court and serve all parties involved.
HIV&AIDS Tribunal	Appeal to the High Court by Filing a Notice and Memorandum of Appeal within 14 days of the decision
Magistrate's Court	Appeal to the High Court within 14 days of the judgement by filing a Notice of Appeal. Institute the appeal within 30 days of filing the Notice of Appeal
High Court	Appeal to the Court of Appeal by filing a Notice of Appeal within 14 days of the judgement.

SPECIAL CONSIDERATIONS IN CHILDREN CASES



Children have a right to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labor under Article 53(1)(d). They are also entitled to access justice, however, given that they are minors, their guardians will be the ones to pursue justice for them as the guardian ad litem (to represent the best interest of a child). This is also applicable to persons of unsound mind.

This is provided in Order 32 Rule 3 of the Civil Procedure Rules.

To file a case on behalf of a minor, consider the following steps:

- The Court may appoint a proper person to be a *guardian ad litem* of a minor where the defendant is a minor.
- For cases undertaken by the minor, file an application for an order of appointment as guardian ad litem. The application is supported by a verifying affidavit showing the guardian has no interest in the matters of the suit adverse to that of the minor and he/she is fit to be appointed.

WHERE TO FIND FURTHER ASSISTANCE



There are other means of accessing support, especially given the availability of pro bono lawyers to support cases. Look into the resources below.

- **Court Registries** – the Judiciary portal will offer guidance.
- **Pro Bono Services** – Civil Society Organizations offering pro bono services/ legal advice.

Important Reminders:

Deadlines: Strictly adhere to timelines for filing, service and court attendance to avoid dismissal.

Record-Keeping: Maintain copies of all filed documents, receipts, and communication.

Should you encounter challenges or require clarification on any step, feel free to reach out to us. While our support is limited to drafting pleadings, we are happy to offer guidance on any procedural queries.

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