



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Petition 195 of 2011

**THE KENYA ASSOCIATION OF LIVESTOCK TECHNICIANS
(KALT).....PETITIONERS**

VERSUS

**HON. ATTORNEY GENERAL.....1ST
RESPONDENT**

**THE MINISTER FOR LIVESTOCK DEVELOPMENT.....2ND
RESPONDENT**

**MINISTER FOR FORESTRY AND WILDLIFE.....3RD
RESPONDENT**

**MINISTER FOR FISHERIES DEVELOPMENT.....4TH
RESPONDENT**

AND

**KENYA VETERINARY ASSOCIATION.....1ST
INTERESTED PARTY**

**KENYA ANIMAL SCIENTIST PRACTITIONERS ASSOCIATION (KASPA).....2ND
INTERESTED PARTY**

**DAIRY TRADERS ASSOCIATION.....3RD
INTERESTED PARTY**

**KENYA LIVESTOCK PRODUCERS ASSOCIATION.....4TH
INTERESTED PARTY**

**KENYA NATIONAL DAIRY PRODUCERS ORGANIZATION.....5TH
INTERESTED PARTY**

JUDGMENT

Introduction

1. This petition concerns the constitutionality of certain provisions of the ***Veterinary Surgeons and Veterinary Para-professionals Act, 2011 (Act No. 29 of 2011)*** (“the Act”). The Act became operational on 2nd December 2011 effectively replacing the ***Veterinary Surgeons Act, (Chapter 366 of the Laws of Kenya)***. According to its long title, the purpose of the 2011 Act is to ***“to make provision for the training, registration and licensing of veterinary surgeons and veterinary para-professionals; to provide for matters relating to animal health services and welfare, and for connected purposes.”***

2. The petitioner, the Kenya Association of Livestock Technicians (“KALT”) is a registered society that advances and promotes the welfare and interests of the veterinary technicians who are trained both in public colleges and approved private colleges. The petitioner’s members are in the business of treatment and management of both domesticated and non-domesticated animals.

The Petition

3. The Petition is dated 12th October 2011 and is supported by the affidavit of Samuel Kinungi Kihu, a trained veterinary technician. The petitioners seek the following reliefs:

- a) *A declaration that section 4(1)(d) is unconstitutional to the extent that it excludes private universities and institutions of learning from consideration for appointment to the Kenya Veterinary Board.*
- b) *A declaration that it is the Kenya Veterinary Board that has the sole technical and professional competence and mandate to regulate and sanction veterinary professionals, surgeons and para-professionals and therefore Part C in the second schedule ought to be expunged from the statute.*
- c) *A declaration that the effect of excluding veterinary paraprofessionals from practicing health management and treatment of animals under the Second Schedule is inconsistent with and contrary to the Constitution of Kenya and therefore null and void.*
- d) *An order directing each and all the Respondents not to constitute the Kenya Veterinary Board until the veterinary surgeons and Para-professionals Act, 2011 has been amended to permit consideration of Deans of Private Universities and other institutions of higher learning for appointment to the Board.*
- e) *An order for costs of the Petition to the Petitioners.*

The Act

4. In so far as is material to this petition, the Act regulates the practice of veterinary surgeons and para-professionals. **Section 3 of Part II** of the Act establishes the Kenya Veterinary Board (“the Board”) whose function and object is to exercise general supervision and control over veterinary surgeons and veterinary para-professionals.

5. The membership of the Board is varied and is set out in **section 4** of the Act as follows;

(1) The Board shall consist of-

(a) the Principal Secretary in the Ministry responsible for matters relating to livestock;

(b) the Principal Secretary in the Ministry responsible for finance;

(c) the Director of Veterinary Services, who shall be a registered veterinary surgeon under this Act;

(d) a Dean of the Faculty of Veterinary Medicine of a public university in Kenya, being a registered veterinary surgeon, or a member of the faculty, who is a registered veterinary surgeon, nominated by

him;

(e) one veterinary surgeon who is a principal of a veterinary para-professional training institute appointed by the Cabinet Secretary;

(f) four registered veterinary surgeons elected by registered veterinary surgeons and appointed by the Cabinet Secretary;

(g) three veterinary para-professionals appointed by the Cabinet Secretary after being elected by registered veterinary para-professionals;

(h) the chairperson of the Kenya Veterinary Association;

(i) one person appointed by the Cabinet Secretary to represent veterinary research institutions;

(j) one veterinary surgeon or veterinary paraprofessional nominated by the Director of the Kenya Wildlife Service and appointed by the Cabinet Secretary to represent the Wildlife sector;

(k) two persons, not being veterinary surgeons or veterinary para-professionals, appointed by the Cabinet Secretary from the animal resource industry.

(2) The members referred to in paragraphs (1) (a), (b) and (c) may, in writing, depute suitable persons to represent them at the meetings of the Board.

(3) No person shall be appointed to serve as a member of the Board if such person-

(a) is not permanently resident in Kenya;

(b) is not a citizen of Kenya; or

(c) has at any time been convicted of an offence and sentenced to imprisonment for a period of six months or more without the option of a fine.

(4) The chief executive officer appointed under section 12 shall be secretary to the Board.

(5) The first meeting of the Board shall be convened by the Cabinet Secretary, and the members shall at that meeting elect a chairperson and vice-chairperson from amongst their number.

6. The Act classifies the providers of veterinary services into two. Under **section 15** of the Act, a person is qualified to be registered as a veterinary surgeon if he -

(a) is a citizen of Kenya;

(b) holds a degree in veterinary medicine from a university recognized in Kenya, and has after such qualification served an internship of not less than twelve months under a veterinary surgeon with not less than five years' standing; and

(c) is a member of a registered professional association representing the interests of veterinary surgeons.

7. Veterinary practice is defined by reference to the performance of certain task as defined in section 14 of the Act as follows;

14. For the purposes of this Act, a person practices as a veterinary surgeon if such person engages in the—

(a) prevention of an infectious or organic disease or pathological condition;

(b) performance of a surgical operation on an animal;

(c) dispensing or administration of veterinary medicines on animals;

(d) giving of any treatment, advice, training, research, consultancy services, diagnosis or attendance and other related veterinary services;

(e) inspection of foods of animal origin for purposes of food safety;

(f) provision of animal welfare services.

8. **Section 17** of the Act provides for the qualification of a veterinary para-professional. A person shall be qualified for registration as a veterinary para-professional if the person—

(a) is a citizen of Kenya, and

(b) has either—

(i) has successfully completed a post-secondary school training course in animal health science lasting two years or more at an institution approved by the Board and has obtained a certificate, diploma or degree, and has thereafter served an internship of not less than twelve months under the supervision of a registered veterinary surgeon; or

(ii) is qualified in animal husbandry, range management or wildlife health and has undergone a course of not less than one year in animal health prescribed by the Board, and has served an internship of not less than twelve months under the supervision of a registered veterinary surgeon, and

(c) is a member of a registered association representing the interests of veterinary para-professionals.

9. In addition to the qualifications, **section 17(2)** specifies the nature of the services a veterinary para-professional may perform. It provides that, *“A person practises as a veterinary para-professional if he performs any of the functions set out in the Second Schedule in the manner specified therein: Provided that the Cabinet Secretary may, on the advice of the Board, from time to time and as the need arises, review the Second Schedule.”*

10. The **Second Schedule** sets out the functions to be performed by a para-professional. It provides as follows:

SERVICES TO BE OFFERED BY A VETERINARY PARA-PROFESSIONAL

A-SERVICES

The following may be performed by a Veterinary paraprofessional

1. Implementation of parasite control programmes in animals;

2. Meat inspection and other duties under the relevant legislation, if authorized therefor by the Director of Veterinary Services.

3. Delegated duties pertaining to regulated animal diseases, including the various eradication schemes.

4. Extension services (including training and education) to farmers and community members;

5. The collection, capturing and evaluation of data and the compiling of reports whilst assisting with epidemiological and research projects.
6. The collection of samples, including blood smears, impression smears, skin scrapings, and wool scrapings, and faecal samples (excluding the collection of samples by biopsy);
7. The examination and analysis of samples, including blood smears, skin and wool scrapings, urine analysis and faecal samples and elementary clinical chemistry;
8. Basic post mortem examinations and the collection and submission of samples;
9. Artificial insemination provided that the veterinary para- professional is registered as an inseminator with the Director of Veterinary Services.
10. Any other function which may be assigned pursuant to this Act.

B-Procedures

1. Closed castrations of cattle under 6 (six) months of age;
2. Closed castrations of sheep and goats under 3 (three) months of age;
3. Open castrations of pigs up to thirty days of age;
4. Dehorning of immature cattle, sheep and goats under 4 (four) months of age;
5. Tail docking of sheep under 2 months of age by using the open method;
6. Hoof trimming;
7. Under the responsibility or direction of a veterinary surgeon
 - (i) the lancing of abscesses;
 - (ii) the treatment of septic wounds; and
 - (iii) the administration of injections and medicines.
8. Any other function which may be assigned pursuant to this Act.

C- Execution of services

Notwithstanding the provisions of Parts A and B of this Schedule a veterinary Para-professional shall perform the services referred to in Part A only during the course of delegated responsibility—

- (a) as an employee of the Government; or
- (b) as an employee of a registered veterinary surgeon.

The Petitioner's Case

11. The petitioner is aggrieved by various provisions of the Act. First, the Petitioner takes issue with the absence of definition of term 'Minister' in the Act contending that the failure to define the 'minister' for purposes of appointment to the Kenya Veterinary Board ("the Board") which is the regulatory body established under **Part II** of the Act will lead to unprecedented chaos in the veterinary profession. According to the petitioner, there are at least four Ministries with a direct stake in it and the failure to

designate a particular Ministry is likely to create difficulties in setting standards and regulating the sector.

12. Second, the petitioner challenges provisions of **section 4(d)** of the Act on the grounds that the composition of the Board is imbalanced and that representatives of private universities are not eligible for consideration as members of the Board. Mr Were, counsel for the petitioner, argued that out of the seventeen slots available, private institutions only got three. According to petitioner this is discriminatory hence unconstitutional.

13. Third, the petitioner argues that the Act excludes the petitioners and their members from performing health services on animals without supervision of veterinary surgeons. It is the petitioner's case that veterinary para-professionals are expressly excluded from providing treatment of animals save for undertaking the menial procedures provided for in **Part A, B and C of the Second Schedule ("the Schedule")**. Mr Were contended that this reduced the petitioners to slaves as they could not freely perform their duties and they are properly trained.

14. Mr Were, counsel for the petitioner, submitted that the use of the prefix '*para*' in the '*para-professionals*' title connotes somebody trained to assist a professional or one who is not fully qualified. The applicants feel that the word discriminates against them and affects their dignity as professionals and consequently diminishes their standing contrary to **Article 28**.

15. It is the petitioner's argument that limiting areas of practice of the para-professionals is oppressive and high handed as it takes away the incentive for professional and academic development. Furthermore, the petitioners contended, the exclusion of the veterinary para-professionals from providing health care and treatment services to animals is not only oppressive to the them as practitioners but also to the ordinary farmers considering the much fewer number of available veterinary surgeons across the country as compared to the number of para-professionals.

16. The petitioner's case is supported by the 2nd, 3rd and 5th interested parties. The 2nd interested party is the Kenya Animal Scientist Practitioners Association (KASPA) and in essence it supports the petitioner's case and arguments through the supporting affidavit sworn by Chris Monda, its secretary on 12th March 2012 and written submissions dated 24th January 2011.

17. The Dairy Traders Association (DTA), the interested party, is an association registered in the year 2007 to among other things facilitate training to members, build capacity of its members and represent the views of small scale dairy farmers at national and international forums. DTA comprises about 5,000 dairy farmers and traders. It opposes the petition on the basis of the replying affidavit deponed on 12th March 2012 by John Wachira, its National Secretary.

18. It contends that the majority of livestock and dairy farmers in the country rely on veterinary para-professionals to provide animal health services to their animals as they are more readily available and more evenly distributed in all parts of the country than veterinary surgeons as the latter are concentrated in high production areas. It argues that according to the 2009 Kenya Population and Housing Census, the total population of cattle and other animal species stood at 99,303,381 as against 708 veterinary surgeons in the country. The DTA contends that the services set out in **Part A of the Schedule** are very basic and which can only be performed under supervision of the very few veterinary surgeons who are not evenly distributed around the country.

19. DTA avers that its members, who are mostly small scale dairy farmers, will be unable to provide animal services to their livestock making the provision of animal health services a preserve of the more successful large scale farmers hence discriminating against the small scale farmer. That the Act will thus render dairy farming economically unviable and hence kill the dairy farming industry in the country. DTA further submits that there was no public participation in the process leading up to the enactment of the Act and that its proposals were not factored in.

20. The 5th interested party, Kenya National Dairy Producers organization (KNDPO) filed joint written

submissions with the 3rd and 4th Interested Parties dated 26th March 2012. The 4th interested party, Kenya Livestock Producers Association, however elected to withdraw from the case. The parties submitted that **section 14 (a)** of the Act is offensive and oppressive in as far as it made prevention of an infectious and organic disease or pathological condition a preserve of the veterinary surgeons. **Section 14(b)** was similarly impugned on the ground that it was a blanket way of making dispensation and administration of veterinary medicines a preserve of the veterinary surgeons. They submitted that these provisions had the effect of preventing farmers from administering over the counter veterinary drugs like dewormers.

21. Mr Kiruki, counsel for the 3rd, 4th and 5th interested parties, argued vigorously that because of the limited number of veterinary surgeons across the country, their demand will be high and hence their services expensive to obtain as such the majority of small scale farmers will be imperiled. Counsel further argued that their members' will suffer discrimination prohibited by **Article 27** as they are mostly small scale dairy farmers who will be unable to provide quality health service to their livestock leading to low production. They argue that the provisions of the Act effectively discriminate against the poor.

Respondents' Case

22. In their written submissions filed on the 5th December 2011, the respondents argued that the petition fell short of the threshold for a constitutional application as it did not clearly set out the allegation as required by *Anarita Karimi Njeru v Attorney General [1979] KLR 154* and *Cyprian Kubai v Stanley Kanyonga Mwenda, Nairobi High Court Miscellaneous Application No. 612 of 2002 (Unreported)*.

23. The respondent's contention is that the petitioner's concern that there was likely to be conflict for the Act's failure to specify the responsible Minister/Cabinet secretary on veterinary matters will not materialize under the new constitutional dispensation as this was impossible owing to the restriction given to the number of Ministries under **Article 152(1)(d)**.

24. Mr Kaumba, counsel for the respondents, submitted that the rights guaranteed under the Constitution were not absolute but depended on the rights of others and by legitimate needs of the society and that indeed the Bill of Rights contemplated limitation under **Article 24**. He argued that discrimination is allowed if it could reasonably be justified in an open and democratic society. Counsel referred to several authorities; *R.M. v Attorney General (2008) 1 KLR (G & F) 574*, *John Kabui Mwai and Others v Kenya National Examination Council and Others Nairobi Petition No. 15 of 2011 (Unreported)* and *Federation of Women Lawyers (FIDA-K) and Others v Attorney General and Others Nairobi Petition No. 102 of 2011 (Unreported)*, to support the proposition that differential treatment was permitted in various instances where the rationale for such differentiation was justifiable. The respondents' contention was that the categorization of fields each level of the professions could handle was reasonable and justified given the different levels of education and training. Further, that the classification was in accordance with international standards and was necessary so as to protect the public good by ensuring that the public consumes safe and quality food.

25. The respondents denied that **section 4(d)** of the Act was discriminatory on account of the fact that it failed to include private universities as alleged by the petitioners. The justification being that there is only one public university; the University of Nairobi that offering veterinary medicine in Kenya. Counsel further submitted that private universities could still participate in other election avenues provided for under the Act.

26. After hearing the matter on the 30th July 2012, I directed that the 2nd and 3rd respondents file and serve all parties a further affidavit setting out the state of the animal health sector. In compliance with the direction, a further affidavit sworn by Barnabas Odhiambo, the executive officer of the Kenya Veterinary Board was filed on 31st August, 2012. He deponed that prior studies had pointed to deteriorating standards of various livestock products. He annexed a report published in the 2001 edition of the *Korean Journal of Veterinary Science* in which research findings confirmed contamination of an average 20% carcasses from various parts in Nairobi and another report published in the *Kenya Veterinary Journal* which established that 16% of the milk sampled had gross contamination with an assortment of veterinary

medicines. It was submitted that in order to address some of the challenges, the government through the Ministry of Livestock Development developed a **National Livestock Policy (Sessional Paper No. 2 of 2008)** which seeks to address some of the key challenges in the sector and as a result the **Veterinary Surgeons and Veterinary Para-professionals Act, 2011** was enacted.

27. The 1st interested party, the Kenya Veterinary Association (KVA) supported the respondents' stand through the replying affidavit of Dr Elizabeth Ouko, its Chairperson sworn on 22nd November 2012. The 1st interested party also filed written submissions dated the 9th December 2011 which supported the respondents' case.

28. KVA, through its advocate, Ms Mbaabu, contended that the categorization of services that could be offered and the requirement for supervision by veterinary surgeons under **Part A of the Schedule** was reasonable and justifiable based on the scope of the petitioner's members' level of technical training which was clearly set out in the Act. Counsel submitted that a similar practice obtained in other jurisdictions where para-professionals were allowed to offer any scope of veterinary practices under the direction and responsibility of a qualified veterinarian.

29. It was further submitted that the differentiation was reasonable owing to the different levels of technical training whereby paraprofessionals trained for two years at Certificate level and three year for Diploma level whilst full veterinary professional training requires a five Degree course at a university. Further, that the differentiation was aimed at protecting animals and their owners by being guaranteed professional care. Furthermore, they argued, various other professionals also had similar cadres based on different technical qualifications.

30. KVA further submitted that the Act adhered to the requirement of participation as required of under **Article 10** and that there was ample time for the petitioner prior to the enactment of the Act to participate fully on any matter that was reasonable and justifiable taking into account the requirements of the National Livestock policy and international standards.

Analysis and Determination

31. Let me first dispose of the respondents' contention that the petitioner does not set out with clarity the nature of the violation of the Bill of Rights as required by the case of **Anarita Karimi Njeru v Republic (Supra)**. It is the obligation of the Court to examine the pleadings in order to understand the petitioner's grievance in order to do justice. But the Court must also be alive to the fact that the respondents are entitled to receive a fair trial and the allegations against them must be clear and capable of being answered. If any authority were required for this proposition it is the case of **Trusted Society of Human Rights Alliance v Attorney General and Others Nairobi Petition No. 229 of 2012 (Unreported)**. The Court observed that, *"a person claiming constitutional infringement must give sufficient notice of the violation to allow her adversary to adequately prepare her case and to save the Court from embarrassment of adjudicating on issues that are not appropriately phrased as justiciable controversies. However, we are of the opinion that the proper test under the new Constitution is whether a Petition as stated raises issues which are so insubstantial and so attenuated that a Court of law properly directing itself to the issue cannot fashion an appropriate remedy due to the inability to concretely fathom the constitutional violation alleged. The test does not demand mathematical precision in drawing constitutional petitions. Neither does it demand talismanic formalism in identifying the specific constitutional provisions which are alleged to have been violated. The test is a substantive one and inquires whether the complaints against Respondents in a constitutional petition are fashioned in a way that gives proper notice to the Respondents about the nature of the claims being made so that they can adequately prepare their case."*

32. I agree and wholly adopt the learned judges' sentiments. In this matter, the issues raised by the petitioner, though not the hallmark of precision are nevertheless clear enough for this Court to exercise its judicial authority. The respondents have also not been prejudiced as they have fully responded to the allegations against them.

33. I have considered the pleadings and submissions by the parties and I think the principal constitutional grievance raised by the petitioners is that ***Veterinary Surgeons and Veterinary Para-professionals Act, 2011*** is discriminatory. They also argue that the legislation is an affront to their dignity. Some of the issues raised by the petitioners particularly as evidenced by the prayers do not really deal with the Constitution or the Bill of Rights but for the sake of completeness I shall deal with them.

34. The petitioners are aggrieved by various aspects of the Act which I shall consider. Prayers (a) and (d) of the petition which I have cited go to the heart of legislative authority. Parliament has the power to make law and establish bodies to carry out certain activities. In doing so, unless restrained by the Constitution, it has wide latitude to determine the composition of bodies and institutions it establishes. In this case, I do not think Parliament can be faulted for the manner in which the Kenya Veterinary Board is constituted. It contains a cross-section of bodies which are representative of the animal health sector. There is only one position reserved for the Dean of the Faculty of Veterinary Medicine of a public university in Kenya offering veterinary medicine and merely because the University of Nairobi is the only university offering degrees in veterinary sciences is not a reason to impugn the Act. It follows that prayer (d) cannot be granted as it would infringe on legislative authority and no reason has been advanced for the Court to intervene to stop the constitution of a statutory institution. I agree with counsel for the respondent that private universities could be represented through the other avenues provided by the Act.

35. As regards the claim that there would be confusion between which Ministers would deal with matters concerning the Act, I think the answer is to be found in **section 2** of the ***Interpretation and General Provisions Act, (Chapter 2 of the Laws of Kenya)*** which defines the term “**the Minister**” as ‘*the Minister for the time being responsible for the matter in question, or the President where executive authority for the matter in question is retained by him, or the Attorney-General where executive authority for the matter in question has been conferred on him.*’ In this case, there is no evidence that there is any confusion, threat or prejudice to the petitioner and its members or that there is no Minister for the time being handling matters concerning the Act. I also agree with Mr Kaumba that when the Constitutional provisions dealing with Cabinet Secretaries are brought into force, a cabinet secretary will be so designated by the President to deal with the matters concerning the Act.

36. The substantial arguments made by the petitioner and interested parties are that various provisions of the Act are oppressive and discriminatory as against their members hence unconstitutional. **Article 27** of the **Constitution** which deals with equality and freedom from discrimination provides as follows;

(1) Every person is equal before the Law and has the right to equal protection and equal benefit of the Law.

(2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.

(3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

(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.

(5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in Clause (4).

(6) To give full effect to the realisation of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.

(7) Any measure taken under Clause (6) shall adequately provide for any benefits to be on the basis of genuine need.

(8) In addition to the measures contemplated in Clause (6), the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.”

37. While **Article 27(1)** provides for equality, the same provision does not prohibit differentiation or classification based on different requirements. In the case of **R.M. v The Attorney General (Supra)**, the Court dealt with discrimination and stated that, “*We further hold that the principle of equality and nondiscrimination does not mean that all distinctions between people are illegal. Distinctions are legitimate and hence lawful if they satisfy the following:- (a) Pursue a legitimate aim such affirmative action to deal with factual inequalities; and (2) Are reasonable in the light of their legitimate aim.*”

38. Similarly in **John Kabui Mwai & 3 Others V Kenya National Examination Council & 2 Others, Nairobi Petition No. 15 of 2011 (Unreported)** the High Court (Gacheche, Dulu, Muchelule JJ) observed, “*Rightly or wrongly, and it is not for the courts to decide, the framers of the Constitution manifestly regarded as inadequate a blanket right to equal treatment, and their intention was to remedy the perceived societal inequalities thus recognising the necessity of corrective measures, namely those envisaged in article 27 (6), which were at the same time given the status of constitutional guarantee. It was out of the realization that unequal people cannot be treated equally. Comparisons between different groups are necessary to discern the differential effect of policy and to assist the court in properly characterizing and identifying the groups that are relevant to the particular Article 27 at hand. In R. V. Turpin [1989] 1 S.C.R 1296 at pp.1331 – 32, Wilson J. explained how this comparative analysis is linked to the examination of the large context. In her words:- “In determining whether there is discrimination on grounds relating to the personal characteristics of the individual or group, it is important to look not only at the impugned legislation which has created a distinction that violates the right to equality but also to the larger social, political and legal context*”

39. This inquiry involves a determination of whether the provisions of the Act differentiate categories of people qualified to practice veterinary medicine. The long title of the Act suggests that the Act provides its purpose as that of making provision for ‘*veterinary surgeons and veterinary para-professionals.*’ The differentiation is clear that persons are separated by their educational and technical education and qualification. This distinction between these two positions translates into distinct professional roles played by each professional in the area of animal health.

40. The next question is whether there is a rational connection between the legislative provision and its intended purpose. I am persuaded to adopt the dicta in **Prinsloo v van der Linde 1997 (3) SA 1012 (CC) para 25** where the Constitutional Court of South Africa stated, “*The purpose of this aspect of equality is to ensure that the state is bound to function in a rational manner. It should not regulate in an arbitrary manner or manifest ‘naked preference’ that serve no legitimate governmental purpose, for that would be inconsistent with the rule of law and fundamental premise of the constitutional State. The purpose of this aspect of equality is, therefore to ensure that the State is bound to function in a rational manner. This has been said to promote the need for governmental action to relate to a defensible vision of the public good, as well as to enhance the coherence and integrity of legislation* Accordingly, before it can be said that mere differentiation infringes section 8 it must be established that there is no rational relationship between the differentiation in question and government purpose preferred to violate it. In the absence of such rational relationship, the differentiation would infringe section 8.” (Adopted in the cases of **James Nyasora & Others v The Attorney General Nairobi Petition No. 298 of 2008 (Unreported)**, **Hassan Gutale & Another v Principal Registrar of Persons & Another (Supra)**, **John Njuguna Ngugi & Others v Laikipia Ranching Company Limited & Others Nairobi Petition No. 145 of 2009 (Unreported)**).

41. The Act defines who a ‘*para-professional*’ by reference to the qualification and the nature and kind of work done. But that term is not a new term, according to the glossary of terms to the **World Trade Organisation (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures (OIE Terrestrial Animal Health Code)**, a veterinary para-professional is, “*a person who is authorized by the veterinary statutory body to carry out certain designated tasks (dependent upon the category of veterinary para-professionals) in a territory, and delegated to them under the responsibility and*

direction of a veterinarian. The tasks for each category of veterinary para-professional should be defined by the veterinary statutory body depending on qualification and training and according to need.”

42. According to the respondents, this differentiation is grounded on the need to provide clear supervisory roles between the more qualified veterinary surgeon and the para-professional based on the level of education required under the Act. *The distinction between veterinary surgeons and para-professionals is properly grounded in the level of education and nature of work demanded by reason of the qualification and in my view this provides a rational or reasonable basis for the differentiation between the two classes of professionals. The Act is designed to achieve this end and I do not find that it contravenes Article 27.*

43. *The petitioner and interested party have argued that the reference to technicians as “para-professionals” is an affront to their dignity as such a title is degrading and demeaning. The right to dignity is protected under Article 28. As I have stated elsewhere in this decision, that term is not new and is indeed recognized internationally. I am not convinced that there is a violation of the right to dignity as to warrant this court to interfere. If remedy is required for this issue, and for the reasons I have stated above, I think recourse would lie elsewhere outside the walls of this Court.*

Conclusion and Disposition

46. Having heard the petitioners and interested parties, I think there are serious grievances raised by them in relation to the place and position of para-professionals and indeed how their services impact the livestock farmers. This is a matter that may require consideration by the policy making bodies. Such matters are not of the kind the Court can resolve absent a breach of the Constitution and the law. As Justice Lenaola remarked, the Courts cannot act as “regents” over what is done in Parliament because such an authority does not exist (See ***Mount Kenya Bottlers Limited & 3 others v Attorney General & 3 Others, Petition No. 72 of 2011 (Unreported) at Para. 37***).

47. In light of what I have stated and found, the petitioner’s case is hereby dismissed with no order as to costs.

DATED and DELIVERED at NAIROBI this 7th day of December 2012.

D.S. MAJANJA

JUDGE

Mr Were instructed by Odera Were and Company Advocates for the petitioner and 2nd interested party.

Mr Kaumba, Litigation Counsel, instructed by the State Law Office for the respondents

Mrs Mbaabu instructed by P. K. Mbaabu and Company Advocates for the 1st interested party.

Mr Kiruki instructed by Wambugu, Motende and Company Advocates for the 3rd, 4th and 5th Interested Parties.