



FA (Suing on her own Behalf and as Mother and Next Friend of DM (A Minor) & 6 others v Attorney General & 2 others; Network of TB Champions in Kenya (Interested Party); Jaoko (Amicus Curiae) (Petition E008 of 2023) [2025] KEHC 2469 (KLR) (7 February 2025) (Judgment)

Neutral citation: [2025] KEHC 2469 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
PETITION E008 OF 2023
MS SHARIF, J
FEBRUARY 7, 2025**

BETWEEN

FA (SUING ON HER OWN BEHALF AND AS MOTHER AND NEXT FRIEND OF DM (A MINOR) 1ST PETITIONER
BK 2ND PETITIONER
CN 3RD PETITIONER
PATRICIA ASERO OCHIENG 4TH PETITIONER
AMBASSADOR FOR YOUTH & ADOLESCENTS REPRODUCTIVE HEALTH PROGRAM (AYARHEP) 5TH PETITIONER
KENYA LEGAL & ETHICAL ISSUES NETWORK ON HIV/AIDS (KELIN) 6TH PETITIONER
KATIBA INSTITUTE 7TH PETITIONER

AND

THE HONOURABLE ATTORNEY GENERAL 1ST RESPONDENT
CABINET SECRETARY FOR HEALTH 2ND RESPONDENT
KENYA MEDICAL SUPPLIES AUTHORITY 3RD RESPONDENT

AND

NETWORK OF TB CHAMPIONS IN KENYA INTERESTED PARTY

AND

PROFESSOR WALTER JAOKO AMICUS CURIAE



JUDGMENT

1. The 1st – 4th petitioners are women living and working for gain within the country in various sectors who are also living with HIV and in the case of the 1st and 2nd petitioners also have children who are similarly living with HIV.
2. The 5th petitioner is an adolescent and youth reproductive health rights organization whose main purpose is to mitigate the impact of HIV/AIDS, promote healthcare, reproductive health and human rights.
3. The 6th petitioner is a non-profit and non-governmental organisation registered under the NGOs Act working to protect and promote health related human rights in Kenya.
4. The 7th petitioner is a constitutional research, policy and litigation institute established to promote *the Constitution* of Kenya, 2010 and to develop a culture of constitutionalism in Kenya.
5. The 1st respondent is the principal legal advisor to the government and the individual authorized under Article 156 (4) (b) of *the Constitution* of Kenya to represent the National Government in proceedings to which it is a party.
6. The 2nd respondent is the Cabinet Secretary in charge of the Ministry of Health.
7. The 3rd respondent is a state corporation under the Ministry of Health established under the *Kenya Medical Supplies Authority Act*, 2013 whose functions are to procure, warehouse and distribute drugs and medical supplies for prescribed Public Health Programs, the national strategic stock reserve, prescribed essential health packages and National Referral hospitals within the confines of its budgetary provisions.
8. The Interested Party is a Non-Governmental Organization that advocates for the rights of persons and communities of persons infected with and affected by Tuberculosis within the Republic of Kenya.
9. The Amicus Curiae, Professor Walter Jaoko is a practicing medical doctor and a Professor of Medical Microbiology and Tropical Medicine at the University of Nairobi and a Director of Kenya AIDS Vaccine Initiative.
10. The petitioners filed the instant petition dated 21st September 2023 that was subsequently amended and filed on the 14th December 2023 seeking the following orders;
 - a. A declaration that the right to nutrition and health care for children living with HIV is immediate and not progressive under Article 53 of *the Constitution*.
 - b. A declaration that the failure of the 2nd respondent to make provision for the continuous and uninterrupted supply of ARVs and commodities for the management of HIV in health facilities is a violation of Articles 26, 27, 28, 43 (1) (a), 43 (2), 53 and 232 of *the Constitution* of Kenya.
 - c. A declaration that the respondent's failure to proactively provide information to the public, and the petitioners on the availability of essential ARVs is a violation of Article 35 of *the Constitution* and the right to health as guaranteed under Article 43 (1) (a) of *the Constitution*.



- d. An order that the 2nd respondent pays general damages to the 1st petitioner and her son, the 2nd and 3rd petitioners for the physical, psychological and mental distress suffered as a result of the violations of their constitutional rights.
- e. A declaration that the 2nd respondent has a constitutional obligation to ensure the accessibility, availability, acceptability and quality health services to PLHIV.
- f. An order of mandamus compelling the 2nd and 3rd respondents to publish and publicise within 30 days of this order, information broken down by county on:
 - i. The measures to be taken by the government to ensure that antiretroviral medication and essential commodities for the detection, testing and management of HIV are available for use for all persons who require and may require such medication and commodities.
 - ii. The availability of ARVs and viral load testing and availability of commodities for the treatment and/or management of HIV for persons living with HIV in all public health facilities in the country.
- g. An order requiring the 2nd respondent to make public the reforms undertaken at the 3rd respondent agency and its suitability to receive and distribute essential medicines.
- h. The 2nd respondent do, within 45 days of this judgement, and working together with the 4th – 7th petitioners as well as communities of persons living with HIV, as well as state agencies charged with ensuring access to essential medication, develop a long-term strategy to ensure the continuous and uninterrupted provision of ARVs and related HIV commodities in public health facilities, including in situations of emergencies.
- i. That the respondents within 30 days from the date of the order, and every thirty days thereafter file affidavits with the court detailing their progress in compliance with these orders.
- j. Costs of this petition.
- k. Any other just and expedient order the court may deem fit to make.

Petitioners' Case

11. The petitioners averred that since January 2021, PLHIV in Kenya experienced delays in accessing lifesaving HIV medicines and other treatment in public health facilities delays said to have been caused by a stalemate between the respondents on one hand and the United States Agency for International Development (USAID) on the other hand, that saw the donations of ARVs as well as essential commodities required for the detection of HIV stuck at the port of Mombasa for several weeks.
12. The petitioners averred that the aforementioned stalemate was occasioned by numerous instances of corruption and mismanagement at the 3rd respondent that have remained unaddressed by the 1st and 2nd respondent leading to mistrust by international agencies who are the main donors of medicine and essential commodities required by PLHIV.
13. The petitioners averred that as a result of the delay, public health facilities in various counties among them Kisumu, Nakuru, Makueni, Machakos and Nairobi experienced severe stock outs of the ARVs as well as essential commodities required for the detection and treatment of HIV and that in the few public health facilities where the drugs were available, they could only be dispensed in small quantities,



with PLHIV forced to take enough for only two weeks while prior to the stalemate the patients were given enough medicine for 3 – 6 months.

14. The petitioners further averred that in 2021, the 2nd respondent indicated that PLHIV could access drugs distributed by the Universal Corporation but ended up recalling the said drugs in November 2022 on grounds that they were contaminated at which time many PLHIV had already consumed the drugs.
15. It was the petitioners case that the aforementioned action by the 2nd respondent resulted in the interrupted treatment of PLHIV such as the 1st petitioner's son, as well as irregular courses of treatment that caused them to fall ill thus reversing the progress made in suppressing HIV replication.
16. The petitioners aver that by failing to ensure provision of ARVs and other essential commodities required by PLHIV, the 2nd and 3rd respondents failed in their mandate to respect, protect, promote and fulfil the right to the highest attainable standard of health enshrined in section 4 of the Public Health Act, the right to health services under Article 43 of the Constitution, the right to life under Article 25 of the Constitution, right to human dignity enshrined under Article 28 of the Constitution as well as their rights to equal protection, equal benefit of the law and freedom from non-discrimination.
17. The petitioners further averred that the failure by the respondents to proactively provide information as to the health facilities where they could access either essential medicines or attend for the purpose of management violated their right to access information.
18. The petitioners further relied on the expert evidence of Prof Willem Daniel Francois Venter, a specialist medical doctor working both as a clinician and researcher and who has extensive experience and expertise in HIV and infectious diseases.
19. Professor Venter in his affidavit sworn on 29th January 2024, explained the importance of the relevant medicines and commodities sought and missed by the 1st – 3rd petitioners, and their recognition as essential to HIV treatment and management in the 2018 and 2022 Treatment Guidelines.
20. Professor Venter further elaborated that treatment interruption in children and infants has severe short-term and long-term health consequences, risking persistent infections, developmental delay and treatment failure, as well as the development of resistance to first-line therapies and further that treatment interruptions in both adults and children also has adverse public health effects by making people with HIV more likely to transmit HIV and increasing the burden of drug-resistant HIV in the community.

3rd Respondent's Case

21. In response to the petition, the 3rd respondent filed a replying affidavit sworn on the 26th October 2023 by one Dr. Andrew Mulwa, its Chief Executive Officer.
22. Dr. Mulwa denied the contents of petition terming them as untrue and not supported by any evidence at all. He deposed that the 3rd respondent has never at any one moment completely run out of stock of medicines for distribution as and when the necessary requests are made.
23. Dr. Mulwa deposed that during the period of 2021 and 2022 the 3rd respondent had sufficient stocks of ARVs and related commodities that reagents for viral load testing for both HIV mothers and their children had been readily available at all Country Health Facilities unless there were issues at the County level for which it is a stranger.



24. It was further deposed that the stalemate between the respondents and USAID was not occasioned by the 3rd respondent but rather by circumstances beyond its control such as the fact that the shipment was not made to the Ministry of Health as is the norm and thus subject to taxation thus the government could not immediately grant tax waiver unless the documentation was regularized from the Country of origin.
25. Dr. Mulwa deposed that even during this period, the 3rd respondent had stock and recipients were collecting drugs in accordance with their clinical schedules and that subsequently the stalemate was resolved, shipment released and medicines sent to various health facilities across the Country.
26. It was deposed that it was incumbent on the petitioners to make a request under Article 35 of *the Constitution* to access information held by the state which they did not and neither have they presented any evidence of having made such request.
27. Dr. Mulwa deposed that the petitioners had failed to demonstrate how their constitutional rights had been infringed as they had failed to explain with precision their grievances against the 3rd respondents.
28. It was further deposed that the instant petition was speculative as reforms at the 3rd respondent had already begun with a new Board being put in place and the recommendations of the Auditor General being implemented.
29. Dr. Mulwa testified that the orders sought of mandamus were not capable of being granted as the same could only be issued through Judicial Review proceedings. He deposed that the petition ought to be dismissed as it lacked merit, was speculative and an abuse of court process.

Petitioners' Oral Testimony

30. In support of their case, the petitioners called four witnesses whose evidence is summarized below.
31. The 1st petitioner testified as PW1 adopting her affidavit sworn on 21st September 2023 as her evidence in chief. It was her testimony that she gave birth on 18.12.2016 and two years later the child started feeling sick and subsequently after testing for both the child and herself, she discovered that they were both positive for HIV and immediately they were placed on medication.
32. PW1 testified that in 2020 and 2021 when she went to the hospital at Liverpool Voluntary Counselling and Testing in Kisumu she was given medicine for the child that was difficult to administer as it did not dissolve in water and further it would cause the child to vomit when administered. She testified that she tried another drug but the same was not palatable to the child and subsequently she went to JOOTRH where despite the fact she was prescribed drugs on going to the chemist she found out that the said drugs were not in stock. She testified that ARVs were not available at the hospital pharmacy and due to the failure of administering the drugs to the child, it developed chest pains.
33. In cross-examination PW1 reiterated that she could not access ARVs at the hospitals and would often be told to return after some time to access the drugs. She admitted that she knew the work of the 3rd respondent was to distribute drugs though she did not know to who.
34. In re-examination PW1 testified that her child developed poor health as it was not getting medication on time. She testified that she was tested prior to being confirmed HIV positive and further that when she was put on ARVs she was advised on how to administer them.
35. PW2, the 2nd petitioner testified that she tested positive for HIV in 2002. She testified that she gave birth to her second child in 2020 and underwent regular viral load test until she gave birth. It was her



- testimony that at birth, there were no reagents for testing viral load and that she spent a year and a half (18 months) without taking the test during which time there were also lack of drugs for children.
36. PW2 testified that in August 2021 they started missing drugs and further could not do viral load tests. She testified during the course of the various treatments, she was informed by one of her doctors that there was a shortage of essential commodities, in this case filter paper, and as such they continued using the expired ones.
 37. In cross-examination PW2 testified that when she inquired why drugs were unavailable she was informed that the 3rd respondent was yet to supply the same. In re-examination she testified that she was informed that drugs were unavailable all over the country.
 38. The 3rd petitioner testified as PW3 testified that she was a mother living with HIV, that she gave birth to twins in 2021 and was supposed to do viral load testing while pregnant but could not do the same as there were no test kits, a situation which went on till after birth. She testified that she could similarly not access drugs to ward off infections from her children after birth specifically Septrin, and even when accessed, the said drug was not enough and was expensive causing her to stop administering the same to the twins. It was her testimony that on inquiry as to the unavailability of drugs she was informed that the drugs were stuck at the port.
 39. In cross-examination PW3 testified that she knew that the Ministry of Health and the 3rd respondent were to ensure that drugs are brought to the hospital though she admitted that she did not know the procedure of procurement.
 40. PW5, the executive director of the 5th petitioner testified that prior to the Covid pandemic many young people visited their offices to report that they were getting little provisions of ARVs prompting them to investigate whether the situation was confined to Nairobi or was nationwide.
 41. PW5 testified that they discovered that the issue was affecting persons outside their sphere of influence and that following engagements with various stakeholders including the president, they were informed that the situation would be arrested by 2022. She testified that currently all their members were receiving drugs but there was a shortage of preventative commodities such as condoms and viral load testing kits.
 42. In cross-examination PW5 testified that ideally at a facility, a requisition is made to the 3rd respondent after which a delivery is made.

3rd Respondent's Oral Testimony

43. Dr. Mulwa testified as DW1 reiterating the contents of his replying affidavit sworn on 26.1.2023. It was his testimony that demand for drugs is generated by the user from the County or health centers and that distribution as listed are generated at the Ministry and instructions given on where to distribute and the respective quantities.
44. It was his testimony that the 3rd respondent handles the LPO and invoice the counties and further that it does not deal with individuals but with counties, health facilities and the Ministry. Dr. Mulwa reiterated that the 3rd respondent distributes programmed items on behalf of the Ministry and Development Partners upon request.
45. Dr. Mulwa testified that due to covid, in 2021 – 2022 there were challenges in acquisition as the global supply chains were affected but that they ensured that there were supplies. It was his testimony that they had not received any specific request for information from the petitioners but that as a public institution they publicize information either through televised print media for public consumption.



46. It was his testimony that they could not held responsible for any violations on the part of the petitioners and that the 3rd respondent had been unnecessarily dragged into a case that was not within its mandate as it had been duly performing its mandate per requisition.
47. In cross-examination DW1 testified that HIV drugs were not essential drugs but programmed items. He reiterated that the 3rd respondent had sufficient drugs in the year 2021 – 2022. He further testified that a user facility must make a demand of the type of quantities of the items required. DW1 admitted that stock outs do happen in any supply system when there is a challenge in acquisition or where demand exceed acquisition. Dr. Mulwa testified that the 3rd respondent does not make policy decisions. He testified that the 3rd respondent has been undergoing system reforms as last year a whole board was dissolved due to integrity issues. It was his testimony that they had not provided stock status for 2020 -2021 but had shown that there were uninterrupted supplies.

Petitioners’ Submissions

48. It was submitted that there occurred stock outs of essential HIV medicines and commodities and that this was a national crisis that necessitated a response commensurate with the risks it posed to people’s lives.
49. The petitioners submitted that the evidence before Court demonstrated the causes and specificities of the State’s constitutional failures relative to the stock outs and that the violation of the rights of the Petitioners was the direct result of the failure, neglect and refusal by the 2nd and 3rd Respondents to perform their duties.
50. The petitioners further submitted that there have been numerous instances of corruption and mismanagement at the 3rd Respondent, all of which have gone unaddressed by the 2nd and 3rd Respondents as admitted by Dr. Mulwa in his testimony.
51. It was further submitted that the failure to ensure the consistent availability of essential medication and commodities resulted in the violation of rights, not just of the Petitioners, but for all persons living with HIV and it was therefore apparent that the 2nd Respondent violated its positive obligations to fulfil the rights of the Petitioners to health when it failed to have an implementation plan to procure and distribute ARVs or to procure these essential medicines and commodities.
52. The petitioners further submitted that both the 2nd and 3rd Respondents failed in their obligation when they failed to ensure the provision of ARVs, care and support to persons living with HIV, to proactively disclose to persons living with HIV the plans and safeguards in place to ensure continuous and uninterrupted access to ARVs and lab commodities. It was submitted that these inactions of the 2nd and 3rd Respondents violated Article 21(1) of *the Constitution* and Section 4 of the *Health Act* which outline the State obligations in realizing rights.
53. The petitioners submitted that the Respondents failed to demonstrate to the Court how, in any way, they had taken steps to achieve the realization of the right to health and further that they had failed to demonstrate any effective measures to protect the Petitioners’ rights.
54. It was further submitted that the respondents failed to demonstrate to this Court as required under Article 20(5) of *the Constitution*, that the State’s resources to fulfil the Petitioners’ rights were inadequate.
55. The petitioners submitted that the Court is bound by the Supreme Court’s decision in *Mitu-Bell Welfare Society v Kenya Airports Authority & 2 others*; Initiative for Strategic Litigation in Africa



- (Amicus Curiae) [2021] eKLR (“Mitu-Bell”) where the Supreme Court held that socio-economic rights under Article 43 accrue to every individual and are not dependent on progressive realisation.
56. It was further submitted that this Court had similarly recognised the failure to provide basic healthcare commodities in public facilities as a violation of the right to health in the case of JOO (also known as J M) v Attorney General & 6 others [2018] eKLR.
 57. The petitioners submitted that they had proved infringement of their right to life through their evidence and that of Professor Venter that demonstrated that the essential HIV medicines and commodities are lifesaving and life sustaining and interruptions in the supply of these medications and commodities puts their lives at risk and risks the lives and wellbeing of people vulnerable to infection.
 58. It was further submitted that the lack of essential HIV medications and commodities diminished the Petitioners’ dignity as human beings by exposing them to anxiety, illness, death and desperation and that the lack of ARVs and commodities continues to undermine the dignity of persons living with HIV.
 59. The petitioners submitted that while all persons living with HIV require regular and consistent viral load testing, the stock outs of essential medicines and commodities have had a disproportionate effect on breastfeeding women particularly the 1st to 3rd Petitioners who have economic constraints, faced obstacles in accessing essential HIV medications and commodities and while the medication is offered at no cost in public health facilities, its unavailability during stock outs forced the Petitioners to purchase it from private pharmacies at a cost they couldn’t afford.
 60. It was submitted that the suggestion that the Petitioners had the option to purchase the medication from private pharmacies when it became unavailable at public health facilities indirectly discriminates against them as it failed to acknowledge the economic constraints faced by the Petitioners, which hindered their ability to afford the medication from private pharmacies.
 61. The petitioners submitted that the 2nd and 3rd Respondents failed to proactively disclose information to the public and the 1st to 3rd Petitioners of the availability or lack thereof of the ARVs and this was a violation of the right of access to information under Article 35 of *the Constitution* and the right to health under Article 43 and further that that the 2nd and 3rd Respondents failed to give information to the communities of PLHIV on their enquiries into the plans and safeguards in place to ensure continuous and uninterrupted access to ARVs and laboratory commodities contrary to Section 10 of the *Health Act*.
 62. Reliance was placed on the case of Nairobi Law Monthly Company Limited v. Kenya Electricity Generating Company & 2 Others [2013] eKLR, where the High Court held at para 34 that the right of access to information under Article 35 (3) provides for the state’s duty to pro-actively disclose information in the public interest as well as to provide for open access to information held by the State for the public.
 63. It was submitted that the Respondents did not make a case that the infringement of their constitutional rights is justifiable under Article 24 of *the Constitution*.
 64. The petitioners submitted that they were thus entitled to the orders sought.
 65. They further submitted that considering the myriad and continuing violations that the 1st, 2nd and 3rd Petitioners suffered and continue to suffer the 1st Petitioner was entitled to general damages of Kshs. 7,000,000 while the 2nd and 3rd Petitioners ought to receive Kshs. 5,000,000.



1st & 2nd Respondents' Submissions

66. It was submitted that contrary to the petitioners' pleadings and submissions, the right to nutrition and health care for children living with HIV is progressive and not immediate as its provided in Article 43 of *the Constitution*. Reliance was placed on the Mitu Bell case supra where the court held that the term "progressive realization" was neither a stand-alone nor a technical phrase but simply referred to the gradual or phased out attainment of a goal which by its very nature could not be achieved on its own unless the state took certain supportive measures.
67. Reliance was also placed on the cases of Soobramoney v Minister of Health (Kwazulu-Natal) (CCT32/97) 1997] ZACC 17;1998 (1) SA 765 (CC); 1997 (12) BCLR 1696 (27 November 1997) where it was held that the obligations imposed on the state in regards to access to housing, health care, food, water and security are dependent upon the resources available for such purposes and that the corresponding rights themselves are limited by reason of the lack of resources, sentiments that were echoed in the cases of Health Equity and Policy Initiative (HEAPI) v Hon. Dr. Jane Ruth Aceng Oceru, Minister of Health & Attorney General of Uganda (Miscellaneous Cause 210 of 2018) 2024] UGHCCD 24 (16 January 2024) and that of Treatment Action Campaign and Others v Minister of Health and Others and the subsequent appeal to the Constitutional Court (Minister of Health & Others v Treatment Action Campaign and Others)[13, 40].
68. It was further submitted that the petitioners cannot claim that their rights have been violated without proving the same to court and as such the petition ought to fail.

3rd Respondent's Submissions

69. It is submitted that the violations being complained about by the petitioners ought not to be directed at it as its functions are clear but towards the 2nd respondent as acknowledged by the petitioners at page 86 and 87 of the petition.
70. The 3rd respondent further submits that the petition does not indicate the exact legal obligation violated and/or breached by it and therefore does not have a cause of action against it.
71. It was further submitted that the amicus brief as filed has taken a partisan position being that of the petitioners and has failed to address any issues not addressed by the parties so as to give guidance to the Court contrary to the guidelines set out by the Supreme Court in the case of Trusted Society of Human Rights Alliance v Mumo Matemu and 5 Others (2015) eKLR.
72. The 3rd respondent submitted that there is no specific relief that the petitioners are seeking against it thus have no cause of action against it as it is trite that a party is bound by its pleadings and that it's not in the business of courts to issue orders in vain or in a vacuum.
73. It is submitted that the petition as against the 3rd respondent is mute and has no merit.

Interested Party's Submissions

74. The interested party submitted that courts have found that access to medicines is an integral part of the right to health as was the case in PAO & 2 others v. Attorney General; Aids Law Project (Interested Party) [2012] eKLR and thus the stock out of TB drugs, commodities, cartridges and reagents points to the failure by the State to implement a comprehensive program to ensure that TB medication is always available to TB/HIV patients and demonstrates the State has failed to take appropriate measures to ensure protection of the right to health under article 43 (1)(a) of *the constitution*.



75. It was submitted that if the government can deem TB as so serious a disease that it isolates and punishes TB patients for failing to take medication and for mingling with the public without taking TB medication; it follows that the government must ensure that there is access to TB care and medication at all times and consequently, any person infected with TB ought to be able to access TB care and medication by reason of the minimum core obligation incurred by the State in terms of article 43 (1) (a) of *the Constitution*.
76. The interested party submitted that in order to justify non fulfilment of the minimum core obligation, a State is required to prove that it lacks adequate resources to do so, the respondents have not provided any evidence before this Court to show that the failure to provide TB medication as a minimum core obligation is due to lack of availability of resources.
77. It was submitted that even if the State does not take positive steps to implement the right to health due to constrained budgetary implications, at the very minimum, the right to health can be negatively protected from improper invasion as was held in the case of PAO & 2 others v. Attorney General; Aids Law Projects (Supra).
78. The interested party submitted that the State had initially established a pedestal where TB care and ARV medication was available to TB/HIV patients without disruption and as such TB/HIV patients also have a legitimate expectation that availability of the TB care and medication would continue uninterrupted thus the state bore an obligation to ensure that the access to TB /HIV care is not negatively affected. It was submitted that by allowing the standoff between USAID and the government of Kenya to occur for such a prolonged period that it caused stock outs on ARV and TB commodities and medications, the Respondents failed in negatively protecting the right to health from improper invasion.
79. It was submitted that the lack of reagents for HIV testing coupled with the lack of TB commodities for childhood testing specifically exposed children younger than 5 years to grave danger which was a direct infringement on their right to health care under article 53 (1) (c); and their right to life.
80. The interested party thus submitted in support of the petitioners' case that the right to health care for children is not pegged on progressive realization, but rather, ought to be immediate. Reliance was placed on the South African situation in *The Government of South Africa & others v. Irene Grootboom & others CCT 11/00 (2000)* where while discussing the State's responsibility to take reasonable measures to meet the right to housing, the Constitutional Court of South Africa stated at paragraph 44 that the State has to consider those whose needs are the most urgent and whose ability to enjoy all rights thereof is in peril thus the measures must respond to those most desperate in order to pass the test of reasonableness.
81. It was thus submitted that the Petitioners and the Interested party have established that there are stock outs of HIV and TB drugs and care commodities which stock outs have adversely affected the right of TB and HIV patients to health, life and dignity as protected under *the constitution* of Kenya. The Interested party submitted that the State has not shown that the derogation of the rights was pegged on lack of resource and as such the Court is duty bound to uphold and protect the rights enshrined in *the Constitution* by allowing the orders sought by the Petitioners.

Analysis & Determination

82. Having considered the pleadings before me, the testimonies made in court, the various authorities relied on by all parties, the input of the interested party and amicus curiae as well as their respective submissions. It is my view that the following issues arise for determination;



- a. The burden and standard of proof in constitutional petitions
- b. Whether the petitioners proved violation of their constitutional rights as pleaded.
- c. Whether the right to nutrition and health care for children living with HIV is immediate and not progressive under Article 53 of *the Constitution*
- d. Whether the 2nd respondent pays general damages to the 1st petitioner and her son, the 2nd and 3rd petitioners for the physical, psychological and mental distress suffered as a result of the violations of their constitutional rights.
- e. Whether the petitioners are entitled to the orders sought

The burden and standard of proof in constitutional petitions

83. The burden of proof is a legal doctrine which principally deals with the duty of a party or parties to adduce evidence in a matter in proof of a certain fact. The standard of proof relates to the evidential threshold required for a claim to be considered as having been proved.
84. The issue of the burden of proof has two facets. There are the legal burden of proof and the evidential burden of proof.
85. Sections 107(1), (2) and 109 of the *Evidence Act*, Cap. 80 of the Laws of Kenya deals with the burden of proof. It states as under: -

Sections 107(1) and (2):

1. Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
 2. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.
- and

Section 109:

Proof of particular fact

The burden of proof as to any particular fact lies on the person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

86. The foregoing provision brings out what is referred to as the legal burden of proof. That burden remains on the Petitioner throughout the case.
87. The legal burden of proof in constitutional Petitions is on the Petitioners, the Supreme Court in *Communications Commission of Kenya & 5 Others vs. Royal Media Services Limited & 5 Others* [2014] eKLR stated as follows: -

Although Article 22(1) of *the Constitution* gives every person the right to initiate proceedings claiming that a fundamental right or freedom has been denied, violated or infringed or threatened, a party invoking this Article has to show the rights said to be infringed, as well as the basis of his or her grievance. This principle emerges clearly from the High Court decision in *Anarita Karimi Njeru vs. Republic*, (1979) KLR 154: the necessity of a link between the



aggrieved party, the provisions of *the Constitution* alleged to have been contravened, and the manifestation of contravention or infringement. Such principle plays a positive role, as a foundation of conviction and good faith, in engaging the constitutional process of dispute settlement.

88. There is also the evidential burden of proof. This legal principle was discussed in Bungoma High Court Election Petition No. 2 of 2017 Suleiman Kasuti Murunga vs. IEBC & 2 Others (2018) eKLR as under:

The Petitioner on whom the legal burden of proof lies may or may not adduce sufficient and admissible evidence in proof of any of the allegations in the Petition. On one hand, if no sufficient evidence is adduced to the required standard, then the allegation(s) fail and it all ends there. On the other hand, if evidence is adduced to the satisfaction of the Court that an election ought to be impugned, then it becomes the burden of the Respondent(s) to adduce evidence rebutting the allegations and to demonstrate that the law was complied with and/or that the irregularities did not affect the result of the election. At that point the burden is said to shift to the Respondents. That is the evidential burden of proof.

The principle of 'evidential burden of proof' is hence anchored on the rebuttable presumption of validity of election results. That, until and unless a Petitioner discharges the evidential burden of proof an election is presumed valid. It is on that background that the Court in *Singh vs. Mota Singh & Another* (2008) 1 KLR 1 stated that an election is a matter of public importance not to be lightly set-aside and in the case of *Jeet Mohinder Singh vs. Harminder Singh Jassi*, AIR 2000 SC 258 the Supreme Court of India stated that 'the success of a candidate who has won at an election should not be lightly interfered with...Any person seeking such interference must strictly conform to the requirements of the law....'.

28. The Supreme Court in the 2017 majority judgment had the following to say on the evidential burden of proof in paragraphs 132 and 133 thereof as follows: -

(132) Though the legal and evidential burden of establishing the facts and contentions which will support a party's case is static and "remains constant through a trial with the plaintiff, however, "depending on the effectiveness with which he or she discharges this, the evidential burden keeps shifting and its position at any time is determined by answering the question as to who would lose if no further evidence were introduced.

(133) It follows therefore that once the Court is satisfied that the petitioner has adduced sufficient evidence to warrant impugning an election, if not controverted, then the evidentiary burden shifts to the respondent, in most cases the electoral body, to adduce evidence rebutting that assertion and demonstrating that there was compliance with the law or, if the ground is one of irregularities, that they did not affect the results of the election. In other words, while the petitioner bears an evidentiary burden to adduce 'factual' evidence to prove his/her allegations of breach, then the burden shifts and it behooves the respondent to adduce evidence to prove compliance with the law....

29. It therefore follows that the legal burden of proof is static and rests on the Petitioner throughout the trial. It is only the evidential burden of proof which



may shift to the Respondents depending on the nature and effect of evidence adduced by a Petitioner.

89. What about the standard of proof in constitutional petitions?
90. The Black's Law Dictionary, (9th Edition, 2009) at page 1535 defines 'the standard of proof' as the degree or level of proof demanded in a specific case in order for a party to succeed.
91. The Supreme Court in Presidential Petition No. 1 of 2017 Raila Amolo Odinga & another v Independent Electoral and Boundaries Commission & 2 others [2017] eKLR discussed the applicable standard of proof in election petitions. In that decision, the Apex Court declined the invitation to find that election petitions were just like the normal conventional Petitions and that the standard of proof ought to be that applicable in constitutional petitions which was 'on the balance of probabilities. The Court found that the applicable standard of proof electoral matters was the intermediate one, that is 'beyond balance of probabilities, but below proof beyond reasonable doubt'.
92. On my part, it is my view that the Petitioner bore the legal and evidential burden of proof unless the evidential burden of proof shifted to the Respondent.
93. The Court also settles that the applicable standard of proof in this matter, just like in any other Constitutional Petitions, shall be on a balance of probabilities.

Whether the Petitioners proved violation of their constitutional rights as pleaded

94. It is now a well-developed principle that in constitutional litigation, a party that alleges violation of his or her rights must plead with reasonable precision in regard to the manner in which there has been such alleged violation. This proposition was enunciated in the case of Anarita Karimi Njeru vs The Republic (1976-1980) KLR 1272 where the court stated: -

“Constitutional violations must be pleaded with a reasonable degree of precision.”

95. The Articles of *the Constitution* which entitles rights to the Petitioner must be precisely enumerated and the claim pleaded to demonstrate such violation with the violations being particularized in a precise manner. Furthermore, the manner in which the alleged violations were committed and to what extent must be shown by way of evidence based on the pleadings.
96. The Court of Appeal in Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2013] eKLR provided the standard of proof in Constitutional Petitions.
97. The Court of Appeal judges stated;-

“...The principle in Anarita Karimi Njeru (supra) that established the rule that requires reasonable precision in framing of issues in constitutional petitions is an extension of this principle. What Jessel, M.R said in 1876 in the case of Thorp v Holdsworth (1876) 3 Ch. D. 637 at 639 holds true today:

“The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules...was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to define issues, and thereby diminish expense and delay, especially as regards the amount of testimony required on either side at the hearing.”



The petition before the High Court referred to Articles 1, 2, 3, 4, 10, 19,20 and 73 of *the Constitution* in its title. However, the petition provided little or no particulars as to the allegations and the manner of the alleged infringements. For example, in paragraph 2 of the petition, the 1st respondent averred that the appointing organs ignored concerns touching on the integrity of the appellant. No particulars were enumerated. Further, paragraph 4 of the petition alleged that the Government of Kenya had overthrown *the Constitution*, again, without any particulars. At paragraph 5 of the amended petition, it was alleged that the respondents have no respect for the spirit of *the Constitution* and the rule of law, without any particulars.

We wish to reaffirm the principle holding on this question in *Anarita Karimi Njeru* (Supra). In view of this, we find that the petition before the High Court did not meet the threshold established in that case. At the very least, the 1st respondent should have seen the need to amend the petition so as to provide sufficient particulars to which the respondents could reply. Viewed thus, the petition fell short of the very substantive test to which the High Court made reference to. In view of the substantive nature of these shortcomings, it was not enough for the superior court below to lament that the petition before it was not the “epitome of precise, comprehensive, or elegant drafting,” without requiring remedy by the 1st respondent...”

98. Lenaola J. (as he was then) while referring to the *Anarita Karimi* and *Mumo Matemu* Cases in *Dr. Rev. Timothy Njoya vs The Hon. Attorney General and Kenya Review Authority HC Constitutional and Human Rights Division Petition No. 479 of 2013* stated: -

“The Petitioner cannot come to court to seek facts and information he intends to use to prove the very case that he is arguing before the court. He must also plead his case with some degree of precision and set out the manner in which *the Constitution* has been violated by whom and even state the Article of *the Constitution* that has been violated and the manner in which it has been violated.”

99. As earlier stated herein, the petitioners bore the burden of proof in establishing the violation of *the constitution* as pleaded in their petition.
100. The petitioners pleaded that by failing to ensure provision of ARVs and other essential commodities required by PLHIV, the 2nd and 3rd respondents breached their right to health services under Article 43 of *the Constitution*, the right to life under Article 25 of *the Constitution*, right to human dignity enshrined under Article 28 of *the Constitution* as well as their rights to equal protection, equal benefit of the law and freedom from non-discrimination.
101. It is not worthy that the 1st and 2nd respondents did not file any response to this petition save that their advocates participated in the hearing and duly cross examined the petitioners’ witnesses.
102. In response, the 3rd respondent’s case in summary was that the petitioners had failed to demonstrate how their constitutional rights had been infringed as they had failed to explain with precision their grievances against the 3rd respondents.
103. The evidence presented by the petitioners was thus in 2021 – 2022 there was a shortage in the supply of ARVs and other essential commodities used in the prevention of HIV/AIDS to PLHIV thus breaching the aforementioned articles of *the constitution*.



104. Dr. Mulwa who testified on behalf of the 3rd respondent led evidence to the effect that firstly the 3rd respondent's mandate was to procure, warehouse and distribute drugs and medical supplies for prescribed Public Health Packages and National Referral Hospitals. He testified that the 3rd respondent merely distributes drugs following orders from the counties, health facilities and other relevant institutions stating that it does not deal with individuals. Dr. Mulwa testified that there were supply challenges due to the covid pandemic but that at no point did the 3rd respondent run out of stock.
105. The functions of the 3rd respondent are set out in section 4 of the KEMSA [Act No. 28 of 2013](#) as follows;

Functions of the Authority

- (1) The functions of the Authority shall be to—
- (a) procure, warehouse and distribute drugs and medical supplies for prescribed public health programmes, the national strategic stock reserve, prescribed essential health packages and national referral hospitals;
 - (b) establish a network of storage, packaging and distribution facilities for the provision of drugs and medical supplies to health institutions;
 - (c) enter into partnership with or establish frameworks with county Governments for purposes of providing services in procurement, warehousing, distribution of drugs and medical supplies;
 - (d) collect information and provide regular reports to the national and county governments on the status and cost-effectiveness of procurement, the distribution and value of prescribed essential medical supplies delivered to health facilities, stock status and on any other aspects of supply system status and performance which may be required by stakeholders;
 - (e) support county governments to establish and maintain appropriate supply chain systems for drugs and medical supplies.
- (2) The Cabinet Secretary shall, in consultation with the Authority and the appropriate county government organs, determine the requirement of drugs and medical supplies in public health facilities.
- (3) A national or county public health facility shall, in the procurement and distribution of drugs and medical supplies, obtain all such drugs and medical supplies from the Authority subject to—
- (a) the drug being duly registered by the Board; and
 - (b) the drugs and medical supplies meet the standards of quality and are efficacious as authorized by the Board.
- (4) A person responsible for the procurement and distribution of drugs and medical supplies in a national or county public health facility and who contravenes provisions of this section, commits an offence and is liable on



conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding five years, or to both.

106. It is clear from the above section that the 3rd respondent's role is to procure, warehouse and subsequently to distribute medical supplies to the relevant national or county public health facility upon requisition from the medical facilities. No evidence was tendered to prove that specific requisitions made by Government Health facilities to the 3rd respondent were dishonoured on grounds of stock outs. In fact no records of stocking of the hospitals that the 1st to the 4th petitioners were said to have been attending were availed.
107. Further to the above, *the Constitution* is clear in the Fourth Schedule dealing with devolved functions provides that Health Policies are under the authority of the National Government while County Health Facilities and Pharmacies are under the authority of the County Governments.
108. It is thus discernible from the aforementioned that it is upon the relevant County Authorities to make adequate plans for the request of the relevant medical supplies from the 3rd respondent. The 2nd respondent on her part is charged with leading the formulation of Health Policy within the country.
109. In addition to the above, I note the petitioners' claims were that the shortages complained of occurred during the Covid period i.e. 2021 – 2022. Whereas the petitioners' case is premised on alleged failure by the respondents to guarantee uninterrupted supply of ARVs and attendant commodities, no evidence by way of comprehensive treatment notes and follow up medical evidence has been tendered before this court to prove that indeed the treatment and testing of viral loads of 1st to the 4th petitioners and their children was interrupted at any point in time due to stock outs of ARVs and the HIV commodities for instance the testing kits for infants and PLHIV.
110. This court takes judicial notice of the fact that in the wake of the pandemic in 2020, there were acute shortages and a lack of access to life saving medical supplies and equipment. Dr. Mulwa for the 3rd respondent testified and it was not controverted that despite the fact that there were supply challenges following the covid pandemic, the 3rd respondent never went out of stock.
111. Taking all the aforementioned into consideration, it is my view that the petitioners failed to prove that the 2nd and 3rd respondents infringed their right to health services under Article 43 of *the Constitution*, the right to life under Article 25 of *the Constitution*, right to human dignity enshrined under Article 28 of *the Constitution* as well as their rights to equal protection, equal benefit of the law and freedom from non-discrimination.
112. The petitioners further alleged that the failure by the respondents to proactively provide information as to the health facilities where they could access either essential medicines or attend for the purpose of management violated their right to access information.
113. In rebuttal, Dr. Mulwa for the 3rd respondent testified that that they had not received any specific request for information from the petitioners but that as a public institution they publicize information either through televised print media for public consumption.
114. Article 35 of *the Constitution* of Kenya provides for the right to access information. Article 35 of *the Constitution* provides that;
 - 1) Every citizen has the right of access to—
Information held by the State; and



Information held by another person and required for the exercise or protection of any right or fundamental freedom.

- 2) Every person has the right to the correction or deletion of untrue or misleading information that affects the person.
 - 3) The State shall publish and publicise any important information affecting the nation.
115. Article 35 of *the Constitution* has been operationalized by the *Access to Information Act*. Section 4 of the Act which is material to this petition provides for the procedure to access information. The section provides;
- 1) Subject to this Act and any other written law, every citizen has the right of access to information held by—
 - a) The State; and
 - b) Another person and where that information is required for the exercise or protection of any right or fundamental freedom.
 - 2) Subject to this Act, every citizen's right to access information is not affected by—
 - a) Any reason the person gives for seeking access; or
 - b) The public entity's belief as to what are the person's reasons for seeking access.
 - 3) Access to information held by a public entity or a private body shall be provided expeditiously at a reasonable cost.
 - 4) This Act shall be interpreted and applied on the basis of a duty to disclose and non-disclosure shall be permitted only in circumstances exempted under section 6.
 - 5) Nothing in this Act shall limit the requirement imposed under this Act or any other written law on a public entity or a private body to disclose information.
116. The intention in Article 35(1) was clearly to create two distinct situations with regard to the right of access to information: one in which the citizen was entitled as of right to information held by the State; the other in which a citizen could access information from another, a private person, for the exercise or promotion of another right or freedom.
117. Article 19 of the Universal Declaration of Human Rights (UDHR) adopted by the United Nations in 1948 provides that
- ‘Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.’
118. Similarly, Article 19 (2) of the International Covenant on Civil and Political Rights (ICCPR), adopted by the United Nations in 1966, provides that:
- ‘Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print in the form of art, or through any other media of his choice.’



119. Article 9 of the African Charter on Human and People’s Rights (The (Banjul Charter) states that:
‘Every individual shall have the right to receive information.’
120. These international instruments were ratified by Kenya and by virtue of Article 2(5) of *the Constitution*, general rules of international law and any treaties or conventions ratified by Kenya form part of the law of this country.
121. It is a principle of law that he who asserts must prove, and in this regard, Section 107(1) of the *Evidence Act* (Cap 80) provides that ‘Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist’.
122. The burden of proving the allegations lay squarely upon the Petitioners. The Petitioners have not tendered evidence in form of letters to show that they requested seeking the publication of the information sought.
123. The infringement of this Article was similarly not proven by the petitioners.
124. The upshot of the above is that I find that the petitioners failed to prove the violation of the articles of *the constitution* pleaded.

Whether the right to nutrition and health care for children living with HIV is immediate and not progressive under Article 53 of *the Constitution*

125. Article 53 of *the Constitution* provides;
53. Children
- 1) Every child has the right—
 - a) to a name and nationality from birth;
 - b) to free and compulsory basic education;
 - c) to basic nutrition, shelter and health care;
 - d) to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour;
 - e) to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not; and
 - f) not to be detained, except as a measure of last resort, and when detained, to be held—
 - i) for the shortest appropriate period of time; and
 - ii) separate from adults and in conditions that take account of the child’s sex and age.
 - (2) A child’s best interests are of paramount importance in every matter concerning the child.
126. Article 53 of *the Constitution* deals with Children’s right. The entire children’s rights legal regime (*the Constitution*, *Children Act* (repealed) and the African Charter on the Rights and Welfare of the



Child) all emphasizes the centrality of the best interest of the child. The best interest of the child is determined by the circumstances of the case as they specifically relate to the child. This comprises the principles that prime the child's right to survival, protection, participation, and development above other considerations and includes the rights contemplated under article 53 (1) of *the Constitution*. As such, the focus must be on the child and what is best for him/her.

127. In addition, there is no hierarchy in the children's rights provided for under *the Constitution*. In other words, all the rights provided under article 53 are in the child's best interest. The 'best interests' concept is further strengthened by being the 'paramount' consideration. This means that the best interests of the child are to be the determining factor when making a decision on the child.
128. Accordingly, one cannot declare one of the rights under Article 53 as immediate at the exclusion of others. It is my view that the rights under Article 53 are innate such as the right to life under Article 26, Right to Equality and Freedom under Article 27, Human Dignity under Article 28, Freedom and Security of the Person under Article 29, Slavery, servitude and forced labour under Article 30, Privacy under Article 31, Freedom of conscience, religion, belief and opinion under Article 32 and Freedom of expression under Article 33 and not to be realized such as those under Article 43 of *the Constitution* that may not be immediately realizable but can be progressively realised. The ICESCR requires countries to progressively realize certain aspects

Whether the 2nd respondent pays general damages to the 1st petitioner and her son, the 2nd and 3rd petitioners for the physical, psychological and mental distress suffered as a result of the violations of their constitutional rights.

129. The relevant principles applicable to award of damages for constitutional violations under *the Constitution* were also explained by the Privy Council in the case of *Siewchand Ramanoop vs The AG of T&T*, PC Appeal No 13 of 2004. It was held by Lord Nicholls at Paragraphs 18 & 19 that a monetary award for constitutional violations was not confined to an award of compensatory damages in the traditional sense as follows:

“When exercising this constitutional jurisdiction, the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under section 14 is discretionary and, moreover, the violation of the constitutional right will not always be co-terminous with the cause of action at law. An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches.”

130. The guiding principle to be gleaned from these decisions is that an award of general damages in constitutional petitions is discretionary and will depend on the circumstances of each case, and can indeed be granted as compensation for proven loss.
131. Article 23 (3) (e) of *the Constitution* empowers a court to make compensation in any action brought under Article 22.



132. In the case of *Gitobu Imanyara & 2 Others vs Attorney General* [2016] eKLR the Court of Appeal, upon undertaking comparative analysis of pronouncement from various jurisdictions, stated thus:

“Consistent with the above judicial experience and philosophy, it seems to us that the award of damages for constitutional violations of an individual's right by state or the government are reliefs under public law remedies within the discretion of a trial court, however, the court's discretion for award of damages in Constitutional violation cases though is limited by what is “appropriate and just” according to the facts and circumstances of a particular case. As stated above the primary purpose of a constitutional remedy is not compensatory or punitive but is to vindicate the rights violated and to prevent or deter any future infringements. The appropriate determination is an exercise in rationality and proportionality. In some cases, a declaration only will be appropriate to meet the justice of the case, being itself a powerful statement which can go a long way in effecting reparation of the breach, if not doing so altogether. In others, an award of reasonable damages may be called for in addition to the declaration. Public policy considerations is also important because it is not only the petitioner's interest, but the interests of society as a whole that ought as far as possible to be served when considering an appropriate remedy.”

133. Adopting this as the applicable guide, I proceed to assess whether the grant of damages to the petitioners herein is appropriate and just.

134. Looking at the circumstances of this case and the fact as I have already held hereinabove that the petitioners have failed to prove any violation of their rights, it is my view that the petitioners similarly do not merit award of general damages.

Whether the petitioners are entitled to the orders sought

135. On prayers (a) and (b), I have already held that this prayer is not available to the petitioners.

136. Prayers (c), (f) and (g) all relate to Access to Information under Article 35 of *the Constitution*. This court has already held that the petitioners failed to prove the respondents' violation of this right.

137. Prayer (d) on general damages is also not available to the petitioners.

138. As regards prayer (e), this court notes that Health is a devolved function under the Fourth Schedule of *the Constitution* with the Cabinet Secretary in charge tasked with the Ministry's general policy and strategic direction while the County Government being the devolved unit is charged with oversight over County Health Facilities and Pharmacies, yet the petitioners did not deem it fit to join the council of Governors in this petition. Accordingly, this prayer is not available to the petitioners.

139. Similarly, prayer (h) is also not available to the petitioners as this would involve this court breaching the doctrine of separation of powers by directing the 2nd Respondent who serves in a different arm of government on how to undertake her duties. Further, the court will be flouting *the constitution* by ignoring the principles of devolution.

140. Having failed to prove their case, the petitioners are also not entitled to grant of Prayer (i).

141. As regards costs of the petition sought under prayer (j) it is my view that this being a public interest case all parties should bear their own costs.

142. The upshot of all the above is that I find that this petition lacks merit and I proceed to dismiss it in its entirety.



DELIVERED, SIGNED AND DATED AT KISUMU THIS 7TH DAY OF FEBRUARY 2025

MWANAISHA S SHARIFF

JUDGE

In the presence of:

Miss Kinama holding brief for Ms Njogu for the 1st to the 6th Petitioners, also appearing with Ms Osinde Kirote for the 6th petitioner

Ms Oduru Holding brief for M r karisa for the 3rd Respodent

Walumme for the Interested party

Kyalo for the Amicus Curie

