



Aura v Cabinet Secretary, Ministry of Health & 11 others; Kenya Medical Practitioners & Dentist Council & another (Interested Parties) (Constitutional Petition E473 of 2023) [2024] KEHC 8436 (KLR) (Constitutional and Human Rights) (12 July 2024) (Ruling)

Neutral citation: [2024] KEHC 8436 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CONSTITUTIONAL AND HUMAN RIGHTS

CONSTITUTIONAL PETITION E473 OF 2023

A MABEYA, RK LIMO & FG MUGAMBI, JJ

JULY 12, 2024

IN THE MATTER OF ARTICLES 165 (3) (B) & (D),
258(1) (A) & (C) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF
VARIOUS ARTICLES OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE SOCIAL HEALTH INSURANCE ACT

AND

IN THE MATTER OF THE DIGITAL HEALTH ACT

AND

IN THE MATTER OF THE PRIMARY HEALTH CARE ACT

AND

IN THE MATTER OF THE HEALTH ACT

BETWEEN

JOSEPH ENOCK AURA PETITIONER

AND

CABINET SECRETARY, MINISTRY OF HEALTH 1ST RESPONDENT

**CABINET SECRETARY, MINISTRY OF INFORMATION, COMMUNICATION
& DIGITAL ECONOMY IN KENYA 2ND RESPONDENT**

SOCIAL HEALTH AUTHORITY 3RD RESPONDENT



COMMISSION ON REVENUE ALLOCATION	4 TH RESPONDENT
NATIONAL ASSEMBLY OF KENYA	5 TH RESPONDENT
THE SENATE	6 TH RESPONDENT
COUNCIL OF GOVERNORS	7 TH RESPONDENT
THE ATTORNEY-GENERAL	8 TH RESPONDENT
OFFICE OF THE DATA PROTECTION COMMISSIONER ...	9 TH RESPONDENT
CLINICAL OFFICERS COUNCIL OF KENYA	10 TH RESPONDENT
HEALTH RECORDS & INFORMATION MANAGERS	11 TH RESPONDENT
ATTORNEY-GENERAL	12 TH RESPONDENT

AND

KENYA MEDICAL PRACTITIONERS & DENTIST COUNCIL INTERESTED PARTY

KENYA MEDICAL ASSOCIATION INTERESTED PARTY

RULING

1. We have considered the application for stay of the suspension of the impugned Acts. We have also considered the submissions in opposition by the petitioner.
2. We appreciate the concerns raised by the respondents with the order for suspension. We have also appreciated that the suspension may create a lacuna on matters health in this country even as parties seek to comply with our judgment. It is for that reason that we are inclined to allow a temporary stay of the suspension for 45 days as requested.
3. However, the stay granted shall not affect the suspension of sections 26 (5) and 27 (4) of SHIA in light of our finding on their unconstitutionality.

It is so ordered.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 12TH DAY OF JULY, 2024.

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ALFRED MABEYA

JUDGE

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ROBERT LIMO

JUDGE

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DR. FREDA MUGAMBI

JUDGE

