



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CONSTITUTIONAL & HUMAN RIGHTS DIVISION**

**PETITION NO. 428 OF 2018**

NETWORK FOR ADOLESCENTS AND YOUTH OF AFRICA.....1<sup>ST</sup> PETITIONER

JACKLINE MARY KARANJA.....2<sup>ND</sup> PETITIONER

**-VERSUS-**

THE ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT

THE CABINET SECRETARY.....2<sup>ND</sup> RESPONDENT

THE DIRECTOR OF MEDICAL SERVICES,

MINISTRY OF HEALTH.....3<sup>RD</sup> RESPONDENT

THE KENYA MEDICAL PRACTITIONERS AND

DENTISTS BOARD.....4<sup>TH</sup> RESPONDENT

THE KENYA FILM AND CLASSIFICATION BOARD.....5<sup>TH</sup> RESPONDENT

**-AND-**

KENYA CONFERENCE OF CATHOLIC

BISHOPS (KCCB).....1<sup>ST</sup> PROPOSED INTERESTED PARTY

KENYA CHRISTIAN PROFESSIONAL

FORUM (KCPF).....2<sup>ND</sup> PROPOSED INTERESTED PARTY

PEARLS AND TREASURES TRUST.....3<sup>RD</sup> PROPOSED INTERESTED PARTY

REPRODUCTIVE HEALTH NETWORK.....4<sup>TH</sup> PROPOSED INTERESTED PARTY

FEDERATION OF WOMEN LAWYERS

(FIDA-KENYA).....5<sup>TH</sup> PROPOSED INTERESTED PARTY

KENYA LEGAL & ETHICAL ISSUES NETWORK

ON HIV & AIDS (KELIN).....6<sup>TH</sup> PROPOSED INTERESTED PARTY

KENYA NATIONAL COMMISSION ON

**HUMAN RIGHTS (KNCHR).....7<sup>TH</sup> PROPOSED INTERESTED PARTY**

**KENYA CATHOLIC**

**DOCTORS ASSOCIATION.....8<sup>TH</sup> PROPOSED INTERESTED PARTY**

**-AND-**

**WOMEN'S LINK WORLDWIDE.....1<sup>ST</sup> INTENDED AMICUS CURIAE**

**CENTRE FOR THE STUDY**

**OF ADOLESCENCE.....2<sup>ND</sup> INTENDED AMICUS CURIAE**

### **RULING**

1. The Network for Adolescents and Youth of Africa is the 1<sup>st</sup> Petitioner and Jackline Mary Karanja is the 2<sup>nd</sup> Petitioner. The Attorney General; the Cabinet Secretary, Ministry of Health; the Director of Medical Services, Ministry of Health; the Kenya Medical Practitioners and Dentists Board; and the Kenya Film and Classification Board are the respective 1<sup>st</sup> to 5<sup>th</sup> respondents.

2. Eight parties have filed applications to join these proceedings as interested parties. Another two parties have applied to join the proceedings as amici curiae. The respective 1<sup>st</sup> to 8<sup>th</sup> proposed interested parties are Kenya Conference of Catholic Bishops (KCCB), Kenya Christian Professional Forum (KCPF), Pearls and Treasures (P&TT), Reproductive Health Network (RHN), Federation of Women Lawyers (FIDA-Kenya), Kenya Legal and Ethical Issues Network on HIV and AIDS (KELIN), Kenya National Commission on Human Rights (KNCHR) and the Kenya Catholic Doctors Association (KCDA). Women's Link Worldwide (WLW) is the 1<sup>st</sup> intended amicus curiae and the Centre for the Study of Adolescence (CSA) is the 2<sup>nd</sup> intended amicus curiae.

3. The petitioners are only opposed to the applications of four proposed interested parties namely the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 8<sup>th</sup> applicants. I was nevertheless urged by the advocates for the parties to conduct an assessment of all the applications and make a decision on their merit considering that the power to allow a party to join proceedings either as an interested party or an amicus curiae is a discretionary one.

4. The 1<sup>st</sup> proposed Interested Party, KCCB, vide the chamber summons dated 10<sup>th</sup> December, 2018, sought to be enjoined as an interested party in the proceedings on the grounds that it is an assembly of Catholic Bishops in Kenya which promotes human rights and fundamental freedoms of individuals in the society and a major stakeholder in the health sector providing close to 43% of healthcare services in Kenya.

5. They contend that Article 26(2) of the Constitution unequivocally provides that the life of a person begins at conception and they intend to advance the argument that an unborn child is entitled to the right to life, equal protection before the law, non-discrimination, and freedom from cruel, inhuman and degrading treatment.

6. Further, that women require objective and unbiased information regarding abortion procedures and fetal development and the goal of a medical practitioner should never be to take the life of the unborn but to preserve the life of both the mother and the child. It is also their contention that abortion is not permitted in Kenya, unless in the opinion of a trained health professional there is need for emergency treatment or the life or health of the mother is in danger and the 2<sup>nd</sup> Petitioner has not proved that her life is in danger or that there is need or emergency to warrant an abortion.

7. The 2<sup>nd</sup> proposed Interested Party, KCPF, through the notice of motion application dated 10<sup>th</sup> December, 2018 sought to be enjoined as an interested party on the ground that it advocates for protection of the family and the right to life.

8. Through its application dated 10<sup>th</sup> December, 2018 the 3<sup>rd</sup> proposed Interested Party, P & TT, sought to be enjoined as an interested party to the proceedings. The application is based on the ground that its primary mission is advocacy for protection and promotion of the right to life, campaigns for the consideration of the perspectives held by pro-life Kenyans and intervention in policy formulation and public debate on the issue of protection of the right to life.

9. The 4<sup>th</sup> proposed Interested Party, RHN, filed a notice of motion dated 20<sup>th</sup> December, 2018 seeking to be enjoined as an interested party. The application is premised on the grounds that the applicant works on promoting reproductive health rights of individuals by fusing expertise on law and medicine in the realization of fundamental human rights and well-being of the society. Further, that it is a network of health professionals in the private and public sector committed to reducing morbidity and mortality associated with unsafe abortions and post-partum haemorrhage in Kenya. It is the applicant's case that the orders sought in the petition have the potential of affecting the manner in which they carry out their mandate and programs in Kenya hence their interest in joining these proceedings.

10. FIDA-Kenya is the 5<sup>th</sup> proposed Interested Party and its application for joinder was made through the notice of motion dated 6<sup>th</sup> February, 2019. It sought to join the proceedings on the grounds that it is a premier women rights organization which was established in 1985 with its core agenda being to create a society that is free from all forms of discrimination against women in Kenya and has carved a niche for itself as a fearless defendant of women's rights at the national and international level. Further, that it is actively involved in safeguarding the reproductive health rights of women in Kenya by taking part in programs that ensure the constitutional right to health for girls and women.

11. It was the applicant's averment that it is currently involved in a survey project that seeks to understand the situation of safe vis-à-vis unsafe abortions in Kenya. FIDA-Kenya further stated that it is the Petitioner in **Nairobi High Court Constitutional Petition No 266 of 2015 FIDA-Kenya v Attorney General & others**, through which they are challenging the withdrawal of the standards and guidelines on post-abortion care.
12. Lastly, it was the applicant's averment that at the core of the petition are gender-specific issues touching on reproductive and maternal health which includes *inter alia* the lifesaving service of post-abortion care whose elements comprise of emergency treatment, family planning counselling and other reproductive health services and therefore the outcome of the petition is likely to have an impact, whether good or bad, on its operational mandate and goals.
13. The 6<sup>th</sup> proposed Interested Party, KELIN, through a notice of motion application dated 6<sup>th</sup> February, 2019 sought to be enjoined to the proceedings as an interested party on the grounds that it is an independent non-governmental organization that tackles the legal and ethical issues related to HIV and AIDS and promotes access to quality health care for all in Kenya.
14. The applicant stated that it has partnered with other stakeholders nationally, regionally and internationally to protect and promote health related human rights including sexual and reproductive health rights of women by providing *pro bono* legal services and support to sexual and reproductive health rights of women.
15. Further, that the applicant seeks to ensure that this court is fully apprised of the unintended consequences arising out of the implementation of the orders of the 4<sup>th</sup> Respondent that amounts to the violation of the right to health and in particular sexual and reproductive health as well as the right to emergency medical treatment solely on the basis of banning Marie Stopes from providing any form of abortion services.
16. It was KELIN's averment that if enjoined, they intend to develop their submissions to provide information on the right of all women to access quality health care from qualified post-abortion care providers as well as identify and manage post-abortion complications; recognition of post-abortion care under Articles 26(4) and 43(1)(a) and (2) and international public health and human rights standards that recognize post – abortion care as emergency medical treatment; and lastly examine the inherent risk to the right to health and well-being of society in general when post-abortion health care, access to medication and treatment is denied to those in need thereof.
17. The 7<sup>th</sup> proposed Interested Party, KNCHR, sought to join the proceedings through the notice of motion dated 8<sup>th</sup> February, 2019 on the grounds that it is a constitutional commission established under Article 59 of the Constitution with its chief mandate being to promote respect for human rights. It was their contention that the respondents' actions are a violation of a myriad of rights secured in the Constitution including the right to life under Article 26, right to the highest attainable standard of health including reproductive health care under Article 43(1)(a), and the right to equality and freedom from discrimination under Article 27. KNCHR therefore sought to be enjoined because the cause of action relates to and directly affects the rights and freedoms guaranteed in the Constitution of Kenya.
18. The 8<sup>th</sup> proposed Interested Party, KCDA, vide the notice of motion application dated 4<sup>th</sup> March, 2019 sought to be enjoined as an interested party in these proceedings on the ground that its core objective is to promote high professional standards of health in the practice of medicine and if enjoined they would offer medical opinion explaining Article 26(4) of the Constitution. Further, that being a body of highly qualified professional doctors it has a duty under the Hippocratic Oath to save life of the unborn child and its mother. In the association's view, the decision of the 4<sup>th</sup> Respondent that Marie Stopes ceases and desists from offering abortion services is sound since it is supported by the Bill of Rights.
19. Regarding the applications for joinder as amici curiae, the 1<sup>st</sup> intended amicus curiae, WLW, sought to be enjoined as an amicus curiae through its notice of motion application dated 11<sup>th</sup> February, 2019. The application is premised on the ground that the applicant is an international non-governmental organization that advocates for the advancement of the human rights for women and girls.
20. The applicant stated that it is also a global resource for judges, advocates and organizations committed to women and girls' rights. Further, that the applicant has presented various amicus briefs in regional courts such as the Inter-American Court of Human Rights and the European Court of Human Rights and has been accepted into national courts due to its expertise.
21. It is also the applicant's averment that it has published several papers on women and girls' rights to health and rights to freedom from discrimination and therefore has expertise in comparative law highly relevant to the instant petition in which complex legal issues such as the enforcement of the rights to health, life and access to information is involved. Lastly, the applicant stated that it seeks to provide information to this court on international, regional and comparative law on issues raised in the petition, if admitted as a friend of the court.
22. The 2<sup>nd</sup> intended amicus curiae, CSA, vide the notice of motion application dated 8<sup>th</sup> February, 2019 sought to be admitted as amicus curiae on the ground that it is a leading organization committed to the promotion of health and development of young people through research, technical assistance, advocacy and capacity building. Further, that it is engaged in comprehensive sexuality education debate and continues to lead initiatives aimed at galvanizing support internationally and locally to explore modalities of delivering age appropriate sexuality education to young people in and out of school.
23. The applicant averred that it has conducted extensive research around sexual and reproductive health and rights issues in relation to women and girls. The research includes family planning, unsafe abortion, maternal mortality, emergency conception, female genital cutting, sexual violence and access to educate. It would therefore like to participate in these proceedings as a friend of the court to share its experiences relevant to adolescents' access to sexual and reproductive health information and services.
24. In response, the petitioners filed a replying affidavit sworn by Victor Rasugu on 30<sup>th</sup> January, 2019 in opposition to the three applications by KCCB, KCPF and P&TT. During the hearing of the applications, counsel for the petitioners indicated that the said replying affidavit

would also act as a response to KCDA's application.

25. Mr. Rasugu deponed that the applications by the said applicants are an abuse of the court process because KCCB is, as averred by Anne Mbugua, a key partner to KCPF through which they espouse the same objectives and ideologies, while the founder of P&TT, one Agneta Aketch Aimba, confirmed on oath that she is a member of KCPF. Secondly, he deposed that the applicants had not demonstrated any interest in the matter before court and they have not availed any evidence to show that their entities are recognized in law to warrant the audience in the petition.

26. The petitioners further averred that the applications are premised on the applicants' religious objectives of campaigning for ideals held by Christian professionals, which include protection and promotion of the family life, while the petition challenge the administrative actions of the respondents based on how their respective actions have violated or threaten to violate the rights of the petitioners, and women and girls of reproductive age. It is their statement that the applicants have not shown an identifiable stake or the prejudice they will suffer if they are not made interested parties. Further, that the applicants have not demonstrated how their submissions or positions would be different from those of the respondents in the petition and the application.

27. Lastly, the petitioners averred that the petition is not about religious persuasions but about violation of fundamental rights and freedoms of the petitioners and the applicants' participation in **Petition No. 266 of 2015 Anne Kioko versus Marie Stopes Clinic** is not an automatic right to participate in these proceedings.

28. Mr. Nyiha appearing for KCCB filed written submissions dated 11<sup>th</sup> March, 2019. He submitted that before a party is joined as an interested party in a matter, three elements must be satisfied, that is an identifiable stake, legal interest and duty in the proceedings. To buttress this argument, counsel cited the case of **Kenya Medical Laboratory Technicians and Technologies Board & 6 others v Attorney General & 4 others [2017] eKLR** where Mativo, J reiterated these elements and added that a person is legally interested in the proceedings only if he can say that it may lead to a result that will affect him legally by curtailing his legal rights. Counsel further submitted that Article 26 of the Constitution guarantees a right to life and that right begins at conception. Counsel submitted that KCCB provides close to 43% of all health care services in Kenya and is therefore a major stakeholder in the health industry.

29. Urging the court to allow the application for joinder, counsel cited the case of **S. W. K. & 5 others v Medecins Sans Frontieres-France & 10 others [2016] eKLR** where Lenaola, J (as he then was) allowed the application for joinder holding that the decision to be rendered by the court on the petition could also affect the applicant's members. Counsel urged the court to note that in allowing the application therein, the learned Judge observed that a key consideration in such an application is the evaluation of the prejudice to be suffered if such an application is denied. The court was therefore urged to allow the application for joinder.

30. On his part, Mr. Kanjama appearing for KCPF filed written submissions dated 18<sup>th</sup> June, 2019. He submitted that Rule 7 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice Procedure Rules, 2013 (popularly referred to as the Mutunga Rules) donates power to this court to admit a person as an interested party in proceedings before it. He cited the case of **Kenya Medical Laboratory Technicians and Technologies Board & 6 others v Attorney General & 4 others** (supra) where the court considered an application for joinder and outlined the test for joinder as whether the interested party has an identifiable stake or a legal interest or duty in the proceedings. Counsel also cited the case of **Cyprian Andama v Director of Public Prosecutions & another [2018] eKLR**, where the court in dealing with a similar application held that the applicant having demonstrated that it is a duly registered organization whose main agenda is to promote the right of freedom of expression had a direct, identifiable and proximate interest in the case.

31. In order to prove that the applicant has an identifiable interest in this petition, counsel submitted that the KCPF's Dr. Wahome Ngare is an obstetrician-gynaecologist, and a member of the Kenya Obstetrical and Gynaecological Society as well as the Kenya Medical Association. Further, that the said doctor appeared as an expert witness in the related case of **Nairobi Constitutional Petition No. 266 of 2015, FIDA-Kenya & others v The Hon. Attorney General & others**, in which abortion and maternal healthcare was a subject of consideration. He further submitted that his specialty in maternal health and abortion would be of great input in the consideration of the issues raised in the instant petition. In conclusion, counsel submitted that KCPF has demonstrated that it has an identifiable stake in the matter namely the voicing, on behalf of the Christian community within the Republic of Kenya, the place of family and national values.

32. In response, Mr. Onyango appearing for the petitioners filed written submissions dated 2<sup>nd</sup> July, 2019. He submitted that Rule 7 of the *Mutunga Rules* donates power to this court to join any interested party and cited the decision of **Kariuki Muruatetu & another v Republic & 5 others [2016] eKLR** where the Supreme Court held that enjoinderment is not as a matter of right but is at the discretion of the court hence sufficient grounds have to be laid before court in order for the application to be allowed. Counsel submitted that the Supreme Court laid down the conditions to be met by an applicant as the setting out in the application the interest and stake the applicant has in the matter; the prejudice to be suffered by the intended Interested party in case of non-joinder; and lastly, a party must in its application, set out the case and/or submissions it intends to make before the court and demonstrate the relevance of those submissions. Further, that the party should also demonstrate that the submissions are not merely a replication of what the other parties will be making before the court.

33. In that regard, counsel submitted that the applicants have not demonstrated any stake or interest in the matters raised in the petition neither have they provided information about offering comprehensive abortion care in any health facilities run by them or associated with them. It was further his submission that the applicants have also not disclosed the interest that will be affected if they are not allowed to participate in the petition. He further submitted that the applicants have not brought forth any evidence that their submissions is different from the respondents' position.

34. Counsel for the petitioners was also of the view that the applications were an abuse of the court process and aimed at drawing the court into a discussion on religious values. He submitted that this court is not the appropriate forum for the applicants' agenda and propagation of their objects since they all have a common purpose, interest and objective. Accordingly, he contended that the issues raised in the applications are irrelevant to the petition and have no correlation with the matters canvassed in the petition and the application. In conclusion, he posited that the applicants have no automatic right to participate in the current proceedings and should not therefore be enjoined in these proceedings.

35. I have carefully considered the applications for joinder, the parties' rival affidavits and submissions and in my view, the issue for determination is whether each of the applicants has met the threshold for the joinder, whether as an interested party or amicus curiae.

36. The Mutunga Rules are very clear on the procedure to be adopted in an application for joinder. Rules 6 and 7 of those Rules provides as follows:-

**“6. The following procedure shall apply with respect to a friend of the court—**

**(a) The Court may allow any person with expertise in a particular issue which is before the Court to appear as a friend of the Court.**

**(b) Leave to appear as a friend of the Court may be granted to any person on application orally or in writing.**

**(c) The Court may on its own motion request a person with expertise to appear as a friend of the Court in proceedings before it.**

**7. (1) A person, with leave of the Court, may make an oral or written application to be joined as an interested party.**

**(2) A court may on its own motion join any interested party to the proceedings before it.”**

37. The Supreme Court in **Trusted Society of Human Rights Alliance v Mumo Matemo & 5 others [2014] eKLR** distinguished an amicus curiae from an interested party as follows:-

**“[17] Suffice it to say that while an interested party has a ‘stake/interest’ directly in the case, an amicus’s interest is its ‘fidelity’ to the law: that an informed decision is reached by the Court having taken into account all relevant laws, and entertained legal arguments and principles brought to light in the Courtroom.**

**[18] Consequently, an interested party is one who has a stake in the proceedings, though he or she was not party to the cause *ab initio*. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause. On the other hand, an amicus is only interested in the Court making a decision of professional integrity. An amicus has no interest in the decision being made either way, but seeks that it be legal, well informed, and in the interest of justice and the public expectation. As a ‘friend’ of the Court, his cause is to ensure that a legal and legitimate decision is achieved.”**

38. Further, Rule 2 of the Mutunga Rules defines an interested party as **“a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the Court, but is not a party to the proceedings or may not be directly involved in the litigation.”**

39. The law on interested parties was distilled by the Supreme Court in the case of **Francis Kariuki Muruatetu & another v Republic & 5 others [2016] eKLR** where the Court set out what should be considered before a court admits a proposed interested party as follows:-

**“[37] From the foregoing legal provisions, and from the case law, the following elements emerge as applicable where a party seeks to be enjoined in proceedings as an interested party:**

**One must move the Court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements:**

**i. The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.**

**ii. The prejudice to be suffered by the intended interested party in case of non-joinder, must also be demonstrated to the satisfaction of the Court. It must also be clearly outlined and not something remote.**

**iii. Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the Court, and demonstrate the relevance of those submissions. It should also demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.”**

40. From the cited law, it is clear that where a person seeks to be enjoined as an interested party, it is necessary to move the court by way of a formal application and whether or not the application will be allowed is a matter for the court's discretion. In order for the court to exercise discretion in favour of an applicant, the applicant must demonstrate that there are sufficient grounds for the grant of the orders sought. The applicant should through the pleadings clearly show the interest or stake it has in the matter and the prejudice to be suffered if the request for joinder is declined.

41. The intended interested party must when making its application set out the case and submissions it intends to present before the court. It must show that the submissions are not a mere replication of what the other parties will argue before the court and whereas the court maintains the discretion to admit interested parties, the overriding interest remains that of the principal parties in the litigation. This was the observation in the already cited case of **Trusted Society of Human Rights Alliance** when the Court held that:-

**“[24] A suit in Court is a ‘solemn’ process, “owned” solely by the parties. This is the reason why there are laws and Rules, under the Civil Procedure Code, regarding Parties to suits, and on who can be a party to a suit. A suit can be struck out if a wrong party is enjoined in it. Consequently, where a person not initially a party to a suit is enjoined as an interested party, this new party cannot be heard to seek to strike out the suit, on the grounds of defective pleadings.”**

42. I have considered the applications for joinder that are opposed by the petitioners. I have also considered the submissions filed by the parties. It is indeed correct that the applicants can be termed as pro-lifers. However, there is something more to the applications. The averment by KCCB is that the hospitals run by its members provide 43% of health care services in the country. The outcome of this petition will definitely affect the operations of the members of the applicant’s hospitals. For that reason alone it becomes apparent that they have an identifiable interest which will be affected by the judgement to be delivered in the petition.

43. As for KCPF, it is indicated that it is a partner of KCCB and Evangelical Alliance of Kenya. One of the members of KCPF is one Dr. Wahome Ngare who is an obstetrician-gynaecologist. The membership of the KCPF is also likely to be affected by the outcome of this petition. As pointed out by Mr. Kanjama in his oral submissions, the petitioners cannot be allowed to select the parties to join these proceedings depending on whether the said parties support or do not support their petition.

44. P&TT’s position is that it deals with the consequences of abortion. By virtue of what it does, it has an interest in the decision to be made in this case. The view brought by this applicant is unique in that it brings on board the negative effects of abortion. In the circumstances, its application for joinder has merit.

45. KCDA is an association of doctors. The decision in this case will affect the manner in which they ply their trade. They are entitled to bring their pro-life position to the court’s attention. From that perspective alone, they have earned their place on the table.

46. The unopposed applications of the other interested parties have also been highlighted in this ruling. Each one of them has shown their interest in this matter. Their pleadings confirm that they have identifiable interests in the petition. Further, I am of the view that they bring into this case expertise in different areas of medicine and law that will be relevant in ventilating the issues raised in the petition. In the circumstances, the application of each one of them to join these proceedings as interested party is allowed.

47. As for the applications for admission to the proceedings as amicus, I find the law in the case of **Katiba Institute v Judicial Service Commission & 8 others [2017] eKLR** where the Court of Appeal held that:-

**“Rule 6 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, (the Mutunga Rules) made under Article 22 of the Constitution provides for the procedure to be followed in respect of applications to join proceedings as amicus curiae. Rule 2 defines a friend of the court as “an independent and impartial expert on an issue which is the subject matter of the proceedings but is not party to the case and serves to benefit the court with their expertise.” It is therefore correct, as submitted by the appellant, that the requirements under the Constitution and under Mutunga Rules that a person seeking leave to appear, as amicus curiae in any particular case should meet are expertise, independence and impartiality. The grant or refusal of leave to be admitted as amicus curiae in any given case involves the exercise of judicial discretion.”**

48. Similarly, the Constitutional Court of South Africa in the case of **Children's Institute v Presiding Officer of the Children's Court, District of Krugersdorp and Others (CCT 69/12) [2012]** observed as follows with regard to the role an amicus curiae:-

**“...the role of a friend of the court can, therefore, be characterised as one that assists the courts in effectively promoting and protecting the rights enshrined in our Constitution.”**

49. All the parties before this court appreciate that the issues raised in this petition are of great public interest. The petition raises issues touching on the right to life and the right to high standards of healthcare. Ordinarily, the presence of the 3<sup>rd</sup> and 4<sup>th</sup> respondents in the matter would have served to assure the court of sufficient expertise in the matter. They, however, are principal parties in this matter and may be inclined to take a particular position on the issues raised in the petition. It will therefore cause no harm and it will indeed be of great assistance to the court and other parties if persons or bodies with expertise are brought on board.

50. I have considered the applications by WLW and CSA. Whereas being admitted as an amicus curiae or being a party in previous proceedings is not sufficient ground for admission as an amicus curiae in subsequent suits, I am persuaded that their participation in previous matters involving maternal and reproductive health is a demonstration that they possess expertise in those areas which could benefit this court. I have also considered the amicus brief of each of the applicants and I am satisfied that they are sufficiently neutral and meet the criteria for admission.

51. Each of the applicants has stated its area of expertise and ably demonstrated its expertise. The observation in the case of **Nubian Rights Forum & 2 others v The Hon. Attorney General & 15 others, Nairobi H.C. Consolidated Petitions No. 56, 58 & 59 of 2019 (Ruling No. 1)**, that an application for joinder as an amicus curiae **“should not arouse much ruckus, especially if the party making the application has a reputation for neutrality and is indeed an expert”** is apt in this matter. I therefore admit WLW and CSA as amici curiae in these proceedings.

52. Going forward, the parties will appear in these proceedings in the order in which they appear in this ruling. The issue of costs for all the applications for joinder shall abide the outcome of the petition.

**Dated, Signed and Delivered at Nairobi this 17<sup>th</sup> day of October, 2019**

**W. Korir,**

**Judge of the High Court**