

MN 10/7/2015

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CONSTITUTIONAL AND HUMAN RIGHTS
DIVISION

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
IN THE CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
CONSTITUTIONAL PETITION NO 250 OF 2015

**IN THE MATTER OF ARTICLES 19, 20, 21, 22, 258 AND 259(1) OF THE
CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL
RIGHTS AND FREEDOMS UNDER ARTICLES 10 (1) (a), (b), (c) & (2) (a),
(b), 20, 21, 24, 27, 28, 29(1), 31 and (b), 43(1) (a) 46 (c), 47(2) AND
53(2) OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF THE CONSTITUTION OF KENYA (SUPERVISORY
JURISDICTION AND PROTECTION OF FUNDAMENTAL RIGHTS AND
FREEDOMS OF THE INDIVIDUAL) HIGH COURT PRACTICE RULES, 2006**

BETWEEN

**KENYA LEGAL AND ETHICAL ISSUES NETWORK
ON HIV & AIDS (KELIN)1ST PETITIONER/APPLICANT
CHILDREN OF GOD RELIEF INSTITUTE
(NYUMBANI).....2ND PETITIONER/APPLICANT
JAMES NJENGA KAMAU.....3RD PETITIONER/APPLICANT
MILLICENT KIPSANG.....4TH PETITIONER/APPLICANT**

AND

**CABINET SECRETARY, MINISTRY OF HEALTH.....1ST RESPONDENT
THE NATIONAL AIDS CONTROL COUNCIL2ND RESPONDENT
CABINET SECRETARY, MINISTRY OF EDUCATION,
SCIENCE AND TECHNOLOGY.....3RD RESPONDENT
CABINET SECRETARY, MINISTRY OF INTERIOR AND
CO-ORDINATION OF NATIONAL GOVERNMENT.....4TH RESPONDENT
THE ATTORNEY GENERAL.....5TH RESPONDENT**

AND

17/6/2015
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ANAND GROVER.....APPLICANT

NOTICE OF MOTION

(Under Article 20(3) (a), Article 22(3)(e) of the Constitution of Kenya, Rule 6 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 and All Other Enabling Provisions of the Law)

TAKE NOTICE, that this Honorable Court shall be moved on the..... day of..... 2015 at 9:00 O'clock in the morning or soon thereafter as counsel for the Applicant may be heard for Orders that;

1. Anand Grover, the Applicant, be granted leave to appear as an Amicus Curiae or friend of the Court in this suit.
2. That upon the granting of prayer No. 1 above, the Honourable Court do give directions on how the intended *amicus curiae* shall participate in further proceedings herein on such other or further directions as the court may deem fit to give.
3. That there be no award of costs for or against the Amicus Curiae.

WHICH APPLICATION is based on the **GROUND**S:

1. **THAT** Anand Grover is a leading human rights lawyer and has been involved in issues related to law, human rights and HIV/AIDS for over three decades.
2. **THAT** Mr Grover served as the United Nations Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health ("**Special Rapporteur on Health**") from August 2008-July 2014.

3. **THAT** in his capacity as the Special Rapporteur on Health, Mr Grover was obliged to fulfil certain tasks in accordance with his mandate including, *inter alia*:-

- To gather, request, receive and exchange information from all relevant sources, including governments, intergovernmental and non-governmental organizations, on the realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, as well as policies designed to achieve the health-related Millennium Development Goals;
- To develop a regular dialogue and discuss possible areas of cooperation with all relevant actors, including governments, relevant United Nations bodies, specialized agencies and programmes, in particular the World Health Organization and the Joint United Nations Programme on HIV/AIDS, as well as non-governmental organizations and international financial institutions;
- To report on the status, throughout the world, of the realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and on developments relating to this right, including on laws, policies and good practices most beneficial to its enjoyment and obstacles encountered *domestically and internationally* to its implementation;
- To make recommendations on appropriate measures to promote and protect the realization of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, with a view to supporting States' efforts to enhance public health.

4. **THAT** Mr Grover has an extensive history of engaging in efforts to use law to ensure an effective response to the HIV epidemic in India and internationally, including addressing the relevance of confidentiality and disclosure of an individual's HIV status on effectively addressing the HIV epidemic.

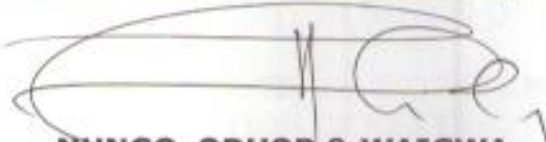
5. **THAT** Mr Grover was a member of the of the drafting group of the International Guidelines on Human Rights & HIV/AIDS promulgated by the Office of the United Nations High Commissioner for Human Rights and the Joint United Nations Programme on HIV/AIDS; a member of the National Advisory Board on HIV and AIDS set up by the Prime Minister of India; a national advisory board member on the International AIDS Vaccine Initiative, a member of the World Care Council, a member of the International Council of AIDS Service Organizations; a member of the UNAIDS Reference Group on HIV and Human Rights and a member of the Core Group of NGO representatives of the National Human Rights Commission of India. He currently serves as a member of the *Global Commission on Drug Policy*, the *Lancet-University of Oslo Panel on Global Governance of Health* and the *Equitable Access Initiative*.
6. **THAT** Mr. Grover has handled hundreds of HIV-oriented legal cases in India, including cases on issues relevant to this petition.
7. **THAT** Mr Grover seeks to respectfully ensure that this Court is fully appraised of the international perspectives relating to these issues, including international and regional legal standards, policies and recommendations regarding disclosure and confidentiality of an individual's HIV status and the most effective means of increasing HIV treatment among the population.
8. **THAT** if granted leave to intervene, Mr Grover expects that he will develop his submission along the following lines subject to court's directions :
 - a. international and regional public health, human rights and legal standards relevant national law and to this suit;
 - b. comparative legal standards relevant to national law and to this suit;and

- c. evidence-based recommendations for ensuring access to, and uptake of, HIV prevention, treatment and care services, including for pregnant women and children living with HIV.

9. **THAT** if granted leave to appear as a friend of the court, the intervention of the Mr Grover will focus on the international, regional and comparative perspective (including international standards, policies and recommendations aforementioned) and will not engage in the facts or merits of the respective cases of the Petitioners, Respondents or any other parties to this suit.
10. **THAT** Mr Grover will not take any factual position regarding the proceedings herein and the outcome thereof.
11. **THAT** the perspective of Mr Grover is directly relevant, and his expertise would greatly assist the Court in reaching a more informed decision and to expeditiously adjudicate the matter herein.
12. **THAT** Mr Grover has previously been admitted as Amicus Curiae in the High Court of Kenya in *Patricia Ochieng Asero and Others v Attorney General, High Court Petition No. 409 of 2009*, in recognition of his particular expertise regarding HIV and access to medicines.
13. **THAT** given the urgent nature of the matter, Mr Grover undertakes to file his written submissions within 14 days of admission as Amicus Curiae.
14. **THAT** the Applicant understands his duty to be and to remain impartial and independent in his conduct as a friend of the court in these proceedings.
15. **THAT** based on the Applicant's expertise, it is in the interest of justice that the Application herein be allowed.

WHICH APPLICATION IS FURTHER BASED on the annexed affidavit of **ANAND GROVER**, Annex A1, and on such other or further grounds, reasons and/or arguments as may be adduced or advanced at the hearing hereof.

DATED at Nairobi this 8th day of July 2015


NUNGO, ODUOR & WAIGWA
ADVOCATES FOR THE APPLICANT

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