

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ELDORET**  
**PETITION NO. 3 OF 2010**

**IN THE MATTER OF ENFORCEMENT OF THE BILL OF  
RIGHT UNDER SECTION 22(1) OF THE CONSTITUTION OF  
THE REPUBLIC OF KENYA**

**AND**

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF  
SECTION 51(1) 47(1), 39(1) and 24(1) OF THE  
CONSTITUTION OF THE REPUBLIC OF KENYA**

**AND**

**IN THE MATTER OF THE PUBLIC HEALTH ACT, CHAPTER  
242 OF THE LAWS OF KENYA**

**BETWEEN**

**DANIEL NGE'TICH ..... 1<sup>ST</sup> PETITIONER**

**PATRICK KING'ETICH KIRUI ..... 2<sup>ND</sup> PETITIONER**

**AND**

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

**THE PRINCIPAL MAGISTRATE'S  
COURT AT KAPSABET ..... 2<sup>ND</sup> RESPONDENT**

**PUBLIC HEALTH OFFICER NANDI CENTRAL DISTRICT  
TUBERCULOSIS**

**DEFAULTER TRACING COORDINATOR . 3<sup>RD</sup> RESPONDENT**

**AND**

**KENYA LEGAL & ETHICAL ISSUES  
NETWORK ON HIV & AIDS (KELIN) ..... APPLICANT**

**R U L I N G**

The Petitioners allege contravention of sections 51(1), 47(1), 39(1) and 24(1) of the constitution of the Republic of Kenya. They were ordered detained at the G.K. Prison Kapsabet for a period of eight months by an order of the Hon. Principal Magistrate Kapsabet upon an application by the Nandi Central District Tuberculosis Defaulter Tracing Coordinator. The contraventions they allege are limitation of their rights to movement, reasonable administrative action and that their detention is a continuing act in further contravention of their fundamental rights. They pray for declarations that whatever law they may have been confined pursuant to is in contravention of the constitution and therefore invalid.

The state was representing the Public Health Officer and did not oppose the petition.

I have perused the petition and the affidavits. It is, in my view, that the G.K. Prison was the worst of choices to confine the petitioners and the period of eight months is unreasonably long seeing that it was not backed by any medical opinion.

Why were the petitioners not confined in a medical facility?

Why a prison? What is their crime? I find that the action taken was unconstitutional and not even in compliance with the Public Health Act that it was purportedly grounded on. Consequently I order that the petitioners be released forthwith from confinement at G.K. Prison Kapsabet to their respective homes from where they will continue their treatment under the supervision of the Public Health officer Nandi Central District Tuberculosis Defaulter Tracing Coordinator.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 30<sup>TH</sup>  
DAY OF SEPTMBER, 2010.**

  
**P.M. MWILU**  
**JUDGE**

In the presence of;

Mr. Gumbo Advocate for Omwanza for the Petitioners

Mr. Kabaka Counsel for the Respondents

Andrew Omwenga – Court Clerk.

  
**P.M. MWILU**  
**JUDGE**