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29 JUL 2015

CONSTITUTIONAL AND HUMAN RIGHTS
DIVISION

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO.605 OF 2014

**IN THE MATTER OF THE ENFORCEMENT OF THE BILL OF RIGHTS UNDER
ARTICLE 22(1) OF THE CONSTITUTION OF KENYA (2010)**

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS
AND OF ARTICLES 19, 20, 21, 25, 26, 27, 28, 29, 31, 33, 35, 43, 45 AND 46 OF
THE CONSTITUTION OF KENYA**

BETWEEN

.....1ST PETITIONER

.....2ND PETITIONER

.....3RD PETITIONER

.....4TH PETITIONER

KENYA LEGAL & ETHICAL ISSUES

NETWORK ON HIV & AIDS (KELIN).....5TH PETITIONER

AFRICAN GENDER & MEDIA

INITIATIVE TRUST (GEM).....6TH PETITIONER

VERSUS

MEDICINS SANS FRONTIERES -FRANCE.....1ST RESPONDENT

RUHWANI MATERNITY HOSPITAL.....2ND RESPONDENT

WARIES STOPES INTERNATIONAL.....3RD RESPONDENT

COUNTY EXECUTIVE COMMITTEE

MEMBER INCHARGE OF HEALTH SERVICES

(NAIROBI COUNTY).....4TH RESPONDENT

CABINET SECRETARY MINISTRY OF HEALTH.....5TH RESPONDENT

AND

THE INTERNATIONAL COMMUNITY OF WOMEN

LIVING WITH HIV (ICW)PROPOSED INTERESTED PARTY /APPLICANT

NOTICE OF MOTION

(Pursuant to Article 20(3) (a), Article 22 of the Constitution of Kenya, Rule 2, 7(1) & 19 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 forenoon or as soon thereafter as the counsel for the Applicant may be heard on an Application for **ORDERS THAT:**

1. The International Community of Women Living with HIV (ICW), the Applicant herein, be granted leave to be enjoined as an Interested Party in this suit.
2. That upon the granting of prayer No. 1 above, the Honourable Court do give directions on how the intended interested party shall participate in further proceedings herein on such other or further directions as the court may deem fit to give.
3. There be no award of costs for or against the Interested Party.

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

1. **THAT** ICW is a global network run by and for women living with HIV with a membership of over 15,000, further, it is the only network of its kind globally, and represents the voices of women living with HIV in all their diversity.
2. **THAT** ICW operates and works in 120 countries through 10 regional networks of women living with HIV in the Asia Pacific, Caribbean, Central Africa, Eastern Africa, Eastern Europe and Central Asia, Latin America, the Middle East and North Africa (MENA), North America, Southern Africa, and West African regions and through the ICW Chapter of Young Women and Girls (CYWAG).

3. **THAT** ICW also operates through country networks such as ICW Kenya whose membership consists of Kenyan women living with HIV.
4. **THAT** ICW envisions a world where all women living with HIV live free of gender oppression, realizing and claiming their full rights including sexual, reproductive, legal, social, economic and health rights.
5. **THAT** ICW has been at the forefront of advocating against the practice of forced and coerced sterilization of women living with HIV and continues to mobilize and document the practice around the world.
6. **THAT** ICW takes the position that the sterilization of women living with HIV without informed consent or under coercion is a widespread form of institutionalized violence and a persistent practice of human rights violations, which is part of a systemic pattern of discrimination and violations of sexual and reproductive rights experienced globally by women living with HIV.
7. **THAT** ICW's compelling interest and stake in securing access to justice for all women living with HIV who have experienced human rights violations, including forced and coerced sterilization is based on its founding objectives and its core intervention areas.
8. **THAT** the outcome of this suit will have a significant impact on the lives of women living with HIV, not just in Kenya but around the world and could have a powerful effect on the efforts of women living with HIV in ICW's member networks around the world working to end the practice of forced and coerced sterilization including at the national, regional and global levels.
9. **THAT** ICW has a compelling interest in advancing jurisprudence that secures the human rights of women living with HIV.

10. **THAT** ICW has unique information to provide regarding the global phenomena of forced and coerced sterilization of women living with HIV based on experience garnered in the course of its work around the world for over 20 years that it has been in existence.

11. **THAT** ICW seeks to respectfully ensure that this Court is fully apprised of the pervasive and persistent nature of this violative practice, and of the stigma and discrimination experienced by women living with HIV for the purposes of providing a broader global context for the work of the court in assessing the claims in this lawsuit.

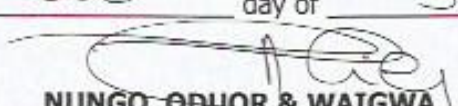
12. **THAT** if granted leave to join, ICW intends to develop its submission, subject to court direction, to provide information on:

- a. the experiences of women living with HIV around the world who have suffered forced and coerced sterilization;
- b. the lived experiences of stigma, discriminatory practices and human rights abuses arising from forced and coerced sterilization forming a pattern experienced by women living with HIV around the world;
- c. international public health and human rights standards, including the sexual and reproductive rights of women living with HIV and the right to be free from torture;
- d. the impacts of forced and coerced sterilization on the lives of women living with HIV.

13. **THAT** the perspective of the ICW is directly relevant and necessary to the issues arising in this suit to provide broader context for what is a global pattern of abuse and violations of the rights of women living with HIV in Kenya and around the world. It is therefore just, fair and in the interest of wholesome determination of issues in this suit, that the Applicant be granted leave to come on record as an Interested Party.

AND WHICH APPLICATION is supported by the annexed affidavit of **REBECCA MATHESON**, and on such other or further grounds, reasons and arguments as shall be adduced or advanced at the hearing hereof.

DATED at Nairobi this 28th day of July 2015


NUNGO, ODUOR & WAIGWA
ADVOCATES FOR THE APPLICANT

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ALLAN ACHESA MALECHE
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NETWORK ON HIV & AIDS (KELIN)
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NAIROBI

"If any person served does not appear at the time and place abovementioned such orders shall be made and proceedings taken as the court deems just and expedient"

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THE CONSTITUTION OF KENYA**

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- SWK.....1ST PETITIONER**
- PAK.....2ND PETITIONER**
- GWK.....3RD PETITIONER**
- AMM.....4TH PETITIONER**

KENYA LEGAL & ETHICAL ISSUES

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- MARIES STOPES INTERNATIONAL.....3RD RESPONDENT**

COUNTY EXECUTIVE COMMITTEE

MEMBER INCHARGE OF HEALTH SERVICES

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- CABINET SECRETARY MINISTRY OF HEALTH.....5TH RESPONDENT**

AND

THE INTERNATIONAL COMMUNITY OF WOMEN

- LIVING WITH HIV (ICW)PROPOSED INTERESTED PARTY /APPLICANT**

SUPPORTING AFFIDAVIT

I, **REBECCA MATHESON**, the Global Director of the International Community of Women Living with HIV (ICW), of Yaya Center, Wood Avenue, Machera Court, Komo Lane Ground Floor, P.O. Box 7228 - 00200 Nairobi, Kenya, do hereby make oath and state as follows:

1. **THAT** I am the Global Director of the Applicant organization herein, fully conversant with the facts of this case, duly authorized and hence competent to swear this affidavit on behalf of the Applicant organization.
2. **THAT** all the facts that I depose to herein relate to matters of factual information except otherwise stated, which I have personally acquired by reason of my position in the Applicant organization, prior employment and professional experience, and I verily believe the same to be true to the best of my knowledge.
3. **THAT** I am a woman living with HIV, and have been involved with the Applicant organization, the International Community of Women Living with HIV since 1994, first as an individual member, then in the leadership of the Asia Pacific Regional network of ICW (formerly known as WPN+) and as the appointed regional representative from Asia Pacific to the ICW International Steering Committee. Prior to my position as Global Director of ICW, in my professional capacity, I have worked at all levels of the HIV response from peer support to serving as the Executive Officer of Straight Arrows, which is an advocacy organization for people living with HIV in Australia.
4. **THAT** I serve on the UNAIDS Global Coalition on Women and AIDS, and on the World Health Organization 2015 ARV Consolidated Guidelines Core Group and I have published several articles on issues of concern for women living with HIV.

5. **THAT** ICW was established in 1992 by women living with HIV, as a response to the consistent silencing and marginalizing of the concerns of women living with HIV within the global response to HIV, and has been at the vanguard of ensuring that women living with HIV are at the center of responses to HIV since its inception. Further that ICW is also registered in Kenya as a Trust that is a non-profit making and a non-governmental global network of women living with HIV. Annexed hereto and marked "**RM 1**" is a copy of duly registered Trust Deed.
6. **THAT** ICW operates and works in 120 countries through 10 regional networks of women living with HIV in the Asia Pacific, Caribbean, Central Africa, Eastern Africa, Eastern Europe and Central Asia, Latin America, the Middle East and North Africa (MENA), North America, Southern Africa, and West African regions and through the ICW Chapter of Young Women and Girls (CYWAG). Further that the ICW network encompasses country networks such as ICW Kenya which is registered as a non-governmental organization and whose membership consists of Kenyan women living with HIV.
7. **THAT** ICW has a membership of over 15,000 women living with HIV and a global presence through which it represents the women living with HIV in its key focus areas including sexual and reproductive health and rights, violence against women and access to care treatment and support.
8. **THAT** ICW envisions a world where all women living with HIV live free of gender oppression, realizing and claiming their full rights including sexual, reproductive, legal, social, and economic and health rights.
9. **THAT** ICW's mission is to lead efforts towards securing and improving the quality of life for women living with HIV by mobilizing, organizing, advocating, mentoring and raising consciousness on the issues that directly impact the lives of women living with HIV.

10. **THAT** ICW's Global Office is located in Nairobi within the Republic of Kenya and is situated at Yaya Center, Wood Avenue, Machera Court, Komo Lane Ground Floor.

11. **THAT** ICW exists to lead efforts towards securing and improving the quality of life for women living with HIV and has the following key objectives:

- a. To define and advance the agenda of women living with HIV;
- b. To build a vibrant movement of empowered and informed women living with HIV;
- c. To raise visibility of women living with HIV at a local, regional and global level;
- d. To undertake strategic advocacy efforts geared towards improving and promoting lives of women living with HIV;
- e. To promote and ensure the realization of human rights through advocacy, research and movement building activities for women living with HIV;
- f. To build cooperative interactions, partnership alliance, networks and linkages geared towards improving the social status of women living with HIV;
- g. To increase engagement with and support for local and international networks of women living with HIV;
- h. To be a learning organization that develops knowledge and experience on human rights, feminisms, gender, HIV and sexual and reproductive rights of women living with HIV.

12. **THAT** ICW acts in the public interest on behalf of all women living with HIV and its members to advance their human rights, including but not limited to, the right of women living with HIV to:

- a. exercise their sexual and reproductive health rights including the right to have a family, to make autonomous decisions about whether or not to have children, control their fertility, choose their method of

contraception and make autonomous decisions about the number and spacing of children;

- b. exercise the right to the highest attainable standard of health;
- c. exercise equality and rights to non-discrimination and privacy; and,
- d. realize the right to be free from torture or cruel, inhuman or degrading treatment or punishment.

13. **THAT** I verily believe that all Kenyan women living with HIV including those that are members of the Applicant together with other members across the world, are vulnerable and stand threatened by the practice of forced and coerced sterilization.

14. **THAT** ICW has been at the forefront of advocating against the practice of forced and coerced sterilization of women living with HIV and continues to mobilize and document the practice around the world. ICW's work in this area includes;

- i. Research and publications on the lived experiences of women living with HIV including documentation of experiences of forced and coerced sterilization in Namibia in 2008, and ongoing efforts to document the practice in other countries where it has been reported. Annexed hereto and marked "**RM 2**" is a publication on forced and coerced sterilisation of HIV positive women in Namibia dated March 2009.
- ii. Qualitative research on the lived experiences of women living with HIV such as recent research commissioned by the World Health Organization on the perspectives of women living with HIV on Early Infant Diagnosis, titled *Early Infant Diagnosis: Understanding the Perceptions, Values and Preferences of Women living with HIV in Kenya, Namibia and Nigeria*.

- iii. Advocacy and Support with respect to court litigation such as Namibia Case No. SA 49/2012 between Government of Namibia Vs. LM & 2 others wherein the Namibian Supreme Court upheld the lower court's determination that women living with HIV had been forcibly sterilized in violation of their rights to informed consent.
- iv. General support, advocacy and mobilization against forced and coerced sterilization of women living with HIV the practice of which has been reported in over 30 countries around the world including countries hosting ICW country and regional networks.

Annexed hereto and marked "RM 3 & 4" is our strategic plan for the year 2014 – 2016 and 2014 Annual report documenting some of our related work and identifies key strategic objectives with respect to the subject.

15. **THAT** the Applicants work in relation to the Namibia case aforesaid was through Namibia Women's Health Network, which is a country member network of ICW Southern Africa, which is in turn one of ICW's regional member networks.
16. **THAT** I verily believe that this suit concerns a subject at the core of ICW's advocacy agenda and mission, namely to advance the human rights of women living with HIV and to end the practice of forced and coerced sterilization of women living with HIV.
17. **THAT** ICW has a compelling interest in advancing jurisprudence that secures the human rights of women living with HIV and ICW has unique information to provide regarding the global phenomena of forced and coerced sterilization of women living with HIV. As such ICW respectfully seeks to ensure that this Court is fully apprised of the pervasive and persistent nature of this violative practice to provide a broader global context for the work of the court in assessing the claims in this lawsuit.

18. **THAT** the outcome of this suit will have a significant impact on the lives of women living with HIV, not just in Kenya but around the world and could have a powerful effect on the efforts of women living with HIV in ICW's member networks around the world working to end the practice of forced and coerced sterilization including at the national, regional and global levels.
19. **THAT** ICW seeks to join this suit by virtue of its interest in securing the human rights of women living with HIV and ending the practice of forced and coerced sterilization of women living with HIV and advancing the jurisprudence on the issue of discrimination and the forced and coerced sterilization of women living with HIV.
20. **THAT** the ICW is the only global network of women living with HIV, and as such is uniquely situated to provide insight into the lived experiences of women living with HIV around the world. ICW has been at the forefront of exposing the practice of forced and coerced sterilization of women living with HIV and continues to mobilize and document the practice around the world, including within the Eastern African Region.
21. **THAT** ICW's global contribution, work and standing on the subject of rights of women living with HIV over the years, has earned it a voting seat at the International AIDS Conference Coordinating Committee and consultative status at the United Nations Economic and Social Council thus evidencing its expansive knowledge and expertise on the subject.
22. **THAT** if granted leave to join, ICW intends to develop its submission to provide information on the issues listed below, subject to the court's direction:
- e. the lived experiences of women living with HIV around the world who have suffered forced and coerced sterilization;

- f. the lived experiences of stigma, discriminatory practices and human rights abuses forming a pattern experienced by women living with HIV around the world;
- g. international public health and human rights standards, including the sexual and reproductive rights of women living with HIV and the right to be free from torture;
- h. the impacts of forced and coerced sterilization on the lives of women living with HIV.

23. **THAT** I verily believe that it is only just, fair and in the interest of wholesome determination of issues in this suit, that the Applicant be granted leave to come on record as an Interested Party.

24. **THAT** I swear this affidavit in support of the Applicant's application that the Applicant be joined as an Interested Party to these proceedings.

25. **THAT** what is deponed to herein is true to the best of my knowledge, information and belief.

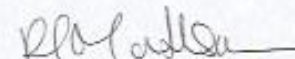
SWORN at Nairobi by the said
REBECCA MATHESON

This 28th day of July 2015

BEFORE ME

ERIC THEURI
Advocate & Commissioner
for Oaths
P. O. Box 50556-00200,
NAIROBI

COMMISSIONER FOR OATHS


DEPONENT

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