



REPUBLIC OF KENYA

IN THE HIV AND AIDS TRIBUNAL AT NAIROBI

HAT CASE NO.002 OF 2015

WA.....CLAIMANT

VERSUS

GURUNANAK RAMGARHIA SIKH HOSPITAL.....1ST RESPONDENT

THE ADMINISTRATION GURUNANAK

RAMGARHIA SIKHHOSPITAL.....2ND RESPONDENT

KULWINDER S.SIHRA.....3RD RESPONDENT

KAMALJEET S.SIHRA.....4TH RESPONDENT

JUDGMENT

A. COMPLAINT

1. This is a complaint filed by the Claimant by way of an amended statement of claim dated 27th April 2015. The Claimant asserts that he was employed by the 3rd and 4th Respondent as a housekeeper but was later reassigned to the position of a domestic servant. The Claimant worked for the 3rd and 4th Respondents until 23rd November 2011 when they forced him into early retirement.

2. The Claimant avers that on 30th November 2011, he was recalled back to work on the condition that he goes for medical check up to establish the cause of his deteriorating health. Pursuant to the 3rd and 4th respondent's wishes, he went to the 1st Respondent hospital where he was subjected to a number of tests including HIV and TB test, after which he was taken through post-test counselling session for HIV and thereafter informed that he was HIV positive. The Claimant states that he never disclosed his status to his employers.

3. On 5th January 2017, he was summoned by the 3rd and 4th Respondents at which point his HIV status was publicly revealed by his employers in the presence of his colleagues and some other people following which his employment was terminated on grounds of his HIV sero status. He argues that at this point, he had not revealed his HIV status to the 3rd and 4th Respondents and that they only became aware of his status through a disclosure by the 1st and 2nd Respondents.

4. He states that after the foregoing termination, he took three confirmatory HIV tests at Kangemi HTC City Council Hospital, the Ministry of health at NASCOP testing Centre and finally at Baraka Medical which tests revealed that he was HIV negative. He therefore accuses the 1st and 2nd Respondent of misdiagnosis, negligence and infringement on his right to privacy and confidentiality through the release of his medical information to the 3rd and 4th Respondents.

5. Due to the foregoing, the claimant now prays for:

- a) General damages;
- b) A declaration that his rights to human dignity and privacy have been infringed upon thus an order for compensation;
- c) A declaration that the Claimant was forced by the 3rd and 4th respondent into writing and issuing the retirement letter;
- d) A declaration for constructive or unfair termination and an order for compensation equivalent to 12 months' salary and any other statutory payments and benefits;

- e) Exemplary damages;
- f) Cost of the suit;
- g) Interest; and
- h) Any other relief as the court may deem fit to award.

B. RESPONSE

6. The 1st and 2nd Respondents filed a joint statement of response dated 9th March 2015 in which they aver that the Claimant attended their clinic on 1st December 2015, where he was subjected to a number of tests including a HIV tests. They carried out a pre-counselling test before testing the Claimant for HIV. They asserted that after conducting the aforesaid HIV test, a post- test counselling was done after and the Claimant was subsequently informed of his HIV status.

7. The 1st and 2nd Respondents disputed the Claimant's HIV test results obtained from Kangemi HTC City Council Hospital, Baraka Medical Clinic and Ministry of Health

(NASCOP/NLTP). The 1st and 2nd Respondent argued that all result slips obtained by the Claimant from the foregoing medical facilities were signed by unqualified persons and their authenticity could therefore not be verified.

8. The 1st and 2nd Respondents further aver that on two different occasions, they invited the Claimant for a repeat of the HIV test with the choice of giving the specimen to a 3rd leading independent laboratory in Kenya for testing at their own cost but the Claimant failed and or refused to honour these invitations.

9. The 1st and 2nd Respondents therefore denied allegations of misdiagnosis and negligence in conducting the HIV tests and or using faulty and defective test kits, breach of duty of care in disclosing the Claimants HIV results to the 3rd and 4th Respondents and causing the Claimant psychological anguish and distress.

10. On 5th July 2016, the 3rd and 4th Respondents filed a joint statement of response through their advocates Nungo Oduor & Waigua Advocates. The 3rd and 4th Respondents assert that the Claimant was indeed their employee and had worked for them since January 2007 as a care take before being reassigned to the position of a domestic worker.

11. The 3rd and 4th Respondents aver that in the year 2011, they noticed that the Claimant would absent himself from work on a regularly basis. Upon inquiry, the Claimant revealed that he was experiencing severe headache and fatigue for which he was being treated at a Medical Centre near his home. Soon after disclosing his health concerns, the Claimant voluntarily submitted a letter of resignation dated 23rd November 2011 citing challenges performing his duties owing to his ill health.

12. The 3rd and 4th Respondents state that even after the Claimant's resignation they offered the Claimant an opportunity to continue working and further referred him to the 1st Respondent hospital for further treatment. They contend that the Claimant failed to respond to his treatment hence the reason why they referred him back to the Hospital for further checkup.

13. They maintained that in all instances when the claimant visited the 1st Respondent Hospital they never asked for details regarding the Claimant's medical treatment and they only came to know about the Claimant's HIV status when this Claim was filed before this Tribunal.

14. The 3rd and 4th Respondent also insisted that the Claimant left the employment willingly and the same was due to his poor health and inability to perform his duties as required and that his employment was not terminated on account of his HIV *sero* status as alleged by the Claimant.

C. EVIDENCE

15. The Claimant testified that he was the 3rd and 4th Respondents employee. In 2010, the 3rd and 4th Respondent sacked one of their employees and added him extra duties owing to the reduction in the number of employees. This prompted him to request for extra pay and an assistant. He stated that the 3rd and 4th Respondents declined his request and instead told him to resume work or resign.

16. He also testified that he resigned vide a letter dated 4th November 2011, however, a few weeks later, he got a call from the 3rd and 4th Respondents requesting him to resume work on the condition that he goes for medical check-up at the 1st Respondent Hospital.

17. He went to Guru Nanak Hospital and they ran a number of tests including a HIV test at the 3rd and 4th Respondent's expense, after which he was offered post HIV test counselling. He stated that he was told that the HIV test results were not confidential. He specified that the 3rd and 4th Respondents passed by the 1st Respondent Hospital to collect his results. After picking his results, the 3rd and 4th Respondents told him not to go back to work on account of his HIV status.

18. The Claimant said that he reported the termination of his employment to the Labour Officer at the Ministry for Labour and then took a copy of the complaint to the 3rd and 4th Respondents. It is at this point that the 3rd Respondent revealed his HIV status in front of the 3rd and

4th Respondents' relatives and other workers.

19. The Claimant testified that he did a confirmatory test at Kangemi Hospital which test turned out to be HIV negative. Similarly, the Claimant stated that he did subsequent confirmatory HIV test at Ministry of Health (NASCO) and further at Baraka Medical and the tests were still negative.

20. On cross examination by the 1st and 2nd Respondents' advocates, the Claimant stated that he went to the 1st Respondent hospital only because he was sent there by the 3rd and 4th Respondent. He reaffirmed that only post counselling was conducted at the 1st Respondent Hospital. He alleged that he was never given a date for retesting and or further examination and that he was shown the letters inviting him for a retest during the hearing and that was the first time he saw them.

21. He testified that the 3rd Respondent paid his medical bills but he was not certain as to the nature of the relationship between the 3rd and 4th Respondent, and the 1st and 2nd Respondent. He also attested that he was not given his HIV test results immediately, and that he picked up the results at a later date.

22. On cross examination by the 3rd and 4th respondents' advocate, Claimant stated that he was not aware of the reason why the other employees did not complain about the work load. He remembers sending a message to the 3rd Respondent but he said he could not remember the contents of the message. He reaffirmed that the 3rd and 4th Respondents forced him into writing the resignation letter and that the letter stated that he was resigning because of his HIV positive status.

23. The Claimant further testified that the discussions regarding his HIV sero status were held in the presence of the 3rd Respondent's family hence the reason why he could not produce a witness to testify in respect of this allegation.

24. The Claimant further stated that his case at the Labour office differed from the current claim before the Tribunal hence the reason why his HIV status was not raised in the dispute before the Labour Office. He also clarified that he sought assistance from KELIN way before the Labour matter was filed before the Labour Officer.

25. On re-examination, the Claimant testified that KELIN filed the complaint at KMPDB on his behalf and KELIN therefore the one to follow up on the matter before the Board. He said KELIN informed him that his case had been thrown out because he did not attend the proceedings. He insisted that he only wrote the Resignation letter pursuant to the 3rd Respondent's instructions.

26. He also stated that while in the counselling room, he asked for the results to be made confidential but he was asked to pay 4,500/- for that to happen. The counsellor then left the room to ascertain whether his HIV test results were out but when the Counsellor came back, he was told the 3rd and 4th Respondents already knew about his HIV status.

27. The 2nd Witness, Dr. Tom Washington Owino testified on behalf of the 1st and 2nd Respondents. He affirmed that he was a medical officer at the 1st Respondent Hospital. He stated that after testing the Claimant, he failed to turn up for follow up tests at the Hospital. Even so, the Claimant's HIV test results were never disseminated to any third party.

28. The 3rd Witness was the 3rd Respondent. He stated that the 4th Respondent was his brother and further acknowledged that the Claimant was his employee. He stated that the Claimant was not ill but was occasionally restless and tired, and would therefore absent himself from work regularly. Out of concern, he advised the Claimant to see a doctor. He said that the Claimant saw a local doctor for a while but was not getting well. The Claimant therefore requested to go see a herbalist at his rural home but still, his health did not improve.

29. The 3rd Respondent testified that it is at this juncture that he told the Claimant to seek medical treatment at the 1st Respondent Hospital. He stated that all his employees sought medical treatment at the said hospital and he would pay the medical bills through his Company. It is for this reason that his mobile number appeared on the Claimant's medical sheet. The 3rd Respondent maintained that he never followed up on the Claimant's treatment after he sought treatment from the 1st Respondent Hospital.

30. On cross examination, the 3rd Respondent insisted that he had no knowledge of the claimant's HIV status up until the institution of the Claim before this Tribunal and that he never colluded with the 1st and 2nd Respondent to divulge the Claimant's medical report.

31. On re-examination, the 3rd Respondent averred that the invoices from the hospital would be sent to his accountant and that by the time the invoice was issued the Claimant had already indicated his willingness to leave employment. The 3rd Respondent therefore denied terminating the Claimant at all or terminating him on account of his HIV status.

32. Parties filed their written submissions. The Claimant filed his submissions on 7th July 2017 in which he maintained that the 1st and 2nd Respondents were negligent in misdiagnosing him. The Claimant argued that the 1st and 2nd Respondents owed him a duty of care, which crystallized the moment they agreed to run various tests on him with a view to determine his ailment. He argues that this duty of care was breached by the 1st and 2nd Respondents. To support this contention, the Claimant relied on article 19(2) which provides for the recognition and protection of his human rights and preservation of his dignity and promotion of social justice and 43(1) (a) on the right to highest attainable standard of health which includes right to health care services to every person. He further relied on case of **Blyth v Birmingham Co. (1856) 11 Exch. 781.784 and Herman Nyangala Tsuma v Kenya Hospital Association T/A the Nairobi Hospital and 2 others.**

33. The claimant also submitted that the confirmatory tests from Kenya Medical Research Institute dated 20th July 2017 was conclusive proof that the 1st Respondent's officers were negligent in carrying out the initial HIV test that found the Claimant to be HIV positive.

34. The Claimant further claimed that the Respondents violated his rights to privacy and confidentiality. The Claimant stated that the mere fact that there was special relationship between the 1st and 2nd respondents, and the 3rd and 4th respondents was enough for the 3rd and 4th Respondents to issue instructions to the 1st and 2nd Respondents to carry out such instruction as against the normal practice of the Hospital. The Claimant insisted that the 2nd Respondent's officers communicated his results to the 3rd and 4th respondent without his express consent thus breaching his right to confidentiality and privacy as guaranteed under article 31 of the Constitution of Kenya, section 18 and 22 of the HIV Prevention Act, 2006, the Geneva Declaration 1978, Internal Code of Medical Ethics of 1949 and the Declaration of the Helsinki on Human Experimentation 1964.

35. It was the Claimant's submission that he was discriminated upon on the basis of his HIV status. The Claimant argued that the events and timings leading to his dismissal are suspect and point to a collusion between the Respondents. He says that he did not personally divulge the results of his HIV test to the 3rd and 4th Respondent. The Claimant relied on article 19(2) on his rights to preservation of human dignity and social justice; article 28 on protection and respect for human dignity; article 27(5) on the right not to be discriminated upon on the basis of health status, section 31 of HAPCA on the right not to be denied access to any employment for which one is qualified; the Employment Act of Kenya Section 5(3) on the right not to be discriminated upon on the basis of HIV status; Section 7 of the same Act placing the burden of proving non-discrimination on the Employer. The Claimant also relied on the case of **VMK V Catholic university of Eastern Africa No. 1161 of 2010 and MX of Bombay Indian Inhabitant M/S Zy and Another AIR 1997.**

36. The Claimant further stated that he suffered harm occasioned by the actions of the Respondents and he was therefore entitled to the reliefs sought. Claimant alleged that his life took a turn after being wrongly diagnosed and as a result, he was dismissed from work. He relied on the case of **John Patrick Machira v Wangethi Mwangi and Nation Newspaper Ltd HCCC. No 1709 of 1996** and **VMK V CUEA in which the Court awarded Kshs. 5,000,000/=.**

37. The 2nd and 3rd Respondent filed their written submissions on 25th August 2017 in which they identified three issues for determination by this Tribunal, that is, whether the 1st and 2nd Respondent were negligent in misdiagnosing the Claimant; whether the Claimant's right to confidentiality was breached by the 1st and 2nd Respondents; and whether the Claimant is entitled to the prayers sought.

38. In respect of the first issue, the Claimant submitted that there was no breach of any duty owed to the Claimant. The 1st and 2nd Respondent submitted that the tests done were not conclusive as they only conducted rapid screening tests and not definitive or confirmatory tests in line with the Ministry of Health standards. To this effect, they were not negligent. They argued that they did not fall short of the standard of reasonable care. In order for the claim of negligence to stand, the Claimant was required to prove **that the duty alleged to have been breached was a usual and normal practice, the health worker did not adopt the practice and that the health worker adopted a practice that no professional or ordinarily skilled person would have taken.**

39. Regarding the second issue, the 1st and 2nd Respondent submitted that there was no breach of confidentiality as alleged by the Claimant. The 1st and 2nd Respondents were of the view that the Claimant did not demonstrate how the 1st and 2nd Respondents breached his right to privacy under article 31 of the Constitution. They claimed that they abided by the industry standards of pre-testing and post-testing procedures for HIV/AIDS.

40. The 1st and 2nd Respondents further submitted that the Tribunal had no power to deal with breaches of fundamental rights and freedoms under the constitution. It could only deal with those complaints specifically provided for under the HAPCA. To support this contention, the 1st and 2nd Respondents relied on the case of **Royal Media Services v Attorney General and 6 others [2015] e KLR** in which the Honourable Court held as follows:

“in the absence of legislation enacted by parliament to give subordinate courts original jurisdiction to hear and determines matters of denial, violation and infringement of rights or fundamental freedom in the bill of rights, subordinate courts and tribunals, including the 2nd Respondent do not have jurisdiction to hear and determine a matter arising from the bill of rights.”

The 1st and 2nd Respondents therefore submitted that the Claimant's claim for breach of privacy should not be entertained by the Honourable Tribunal.

41. Finally, the 1st and 2nd Respondents claimed that the Claimant was not entitled to the prayers sought as no duty was breached and the mere fact that something went wrong is not by itself any evidence of negligence and the same should not be used to impute negligence on the 1st and 2nd respondent.

42. The 3rd and 4th Respondent submitted on the following issues;

a) Whether the Claimant's rights to privacy had been infringed

The 3rd and 4th respondents submitted that the Claimant did not provide any evidence to support his allegation that his medical status was disclosed without his consent. They termed the Claimant's arguments as mere theories and conjectures. They argued that the Claimant could not state with certainty that the 3rd Respondent had visited the hospital for purposes of collecting his medical information. They submitted that this allegation had not been pleaded in the Claimant's witness statement or amended statement of claim and the same was a mere afterthought.

The 3rd and 4th Respondents argued that all industrial standards relating to pre-testing and post-testing were adhered to and no information relating to the Claimant was divulged to the 3rd and 4th Respondents.

They further argued that no proof was tendered by the Claimant to support the contention that information was divulged through the 3rd and 4th Respondents contacts contained in his medical card and laboratory report. They stated that the registration form and patient card were maintained for administrative purposes only. They indicated that the only purpose of having the 3rd and 4th Respondents contacts was to confirm whether the patient presented was indeed their employee to avoid fictitious claims. They further argued that the relationship between the 1st and 2nd Respondent, and the 3rd and 4th Respondent was strictly for business purposes. Further, they maintained that all invoices were directly dealt with and processed by the 1st and 2nd Respondents company accountant and that they did not have sight of the documents.

b) Whether the Claimant was unlawfully terminated on the basis of his HIV sero status.

The 3rd and 4th Respondents submitted that the Claimant created the circumstances under which another employee left the 3rd and 4th respondents employee. Even so, work was equally distributed among all remaining employees. The Claimant had a long history of illness and was not responding to treatment. When he realized that he would be unable to perform his duties efficiently, he voluntarily made a decision to resign from his employment.

Despite this fact, the Claimant accommodated him and allowed him to continue working while urging him to obtain proper medical treatment from the 1st Respondent. They relied on the case of **E.M.A v World Neighbours & Another** in which the Court observed that although the Claimant's evidence raised suspicion that she may have been dismissed from employment on grounds of her HIV status, the evidence did not demonstrate that it was the sole reason for the termination. The 3rd and 4th Respondent's likened this to the current situation in which they argued that the Claimant had frequently been absent from work and was unable to perform his tasks diligently. They further submitted that the fact that the Claimant failed to raise the issue of his termination on account of his HIV sero status before the Labour Officer clearly meant that this allegation was an afterthought.

c) Whether the Claimant was entitled to reliefs as prayed

The 3rd and 4th Respondents contended that the Claimants had failed to prove that his personal information was disclosed to the 3rd and 4th Respondents. To that end, his right to human dignity and privacy was not infringed. His employment could not have been terminated on account of his HIV status since the 3rd and 4th Respondents only became aware of his HIV status upon the filing of the Claim before this Tribunal. He was therefore not entitled to the damages sought.

D. ISSUES FOR DETERMINATION

43. From the pleadings, witness statements and the evidence adduced and submissions made by the parties, the issues that emerge for consideration by this Tribunal may be summarized as hereunder:

- i. Whether the 1st and 2nd Respondents were negligent in misdiagnosing the Claimant;
- ii. Whether the Claimant's right to privacy and/or confidentiality was violated by the Respondents;
- iii. Whether the Claimant was discriminated against on the basis of her HIV status; and
- iv. Whether the Claimant suffered loss and damages for which he is entitled to an award of damages.

E. DETERMINATION

44. We have carefully studied each of the above issues and the submissions made thereon by the parties and hereby address the said issues as hereunder:

i. Whether the 1st and 2nd Respondents were negligent in misdiagnosing the Claimant

45. In paragraph 15 of the statement of Claim, the claimant alleged that the 1st Defendant negligently diagnosed him as being HIV positive yet subsequent tests, including the confirmatory test which was ordered by this Tribunal established that he was HIV negative. Particulars of negligence were outlined. The Claimant therefore prayed for general damages.

46. In their written submissions, the Claimant relied on the following authorities to prove that they were entitled to damages for negligent diagnosis:

- a) Blyth v Birmingham Co(1856) 11EXch 781.784
- b) Jimmy Paul Semenge V Agha Khan Health Service, Kenya T/A Agha Khan Hospital & 2 others (2006) e KLR
- c) Herman Nyagala Tsuma v Kenya Hospital Association T/A Nairobi Hospital & 2 others (2001) e KLR
- d) The Administrator, Agha Khan Platinum Jubilee Hospital v Muunyambu Civil Appeal No. 18 of 1983.
- e) Apollo Insurance Co. Ltd v Flava Rodrigues & Compay Advocates Nairobi HCCC no 31 of 2002.

47. Before considering whether the Claimant had a lawful claim against the 1st and 2nd Respondent founded on the allegations of negligent misdiagnosis, we found it prudent to consider the questions of this Tribunal's jurisdiction to determine the issues. Even though none of the parties challenged this Tribunal's jurisdiction to determine the issue, we are of the considered view that this Tribunal had no power to deal with the matter which falls outside its jurisdiction, whether there is a jurisdictional challenge or not.

48. In our view, this Tribunal is mandated to hear and determine disputes relating to alleged violation of the provisions of HIV and AIDs prevention and Control Act (HAPCA). HAPCA does not contain any provision that specifically deals with misdiagnosis in the context of HIV & AIDS. Accordingly we are unable to locate any specific provision of the HAPCA which could have been violated by the alleged negligent misdiagnosis. For this reason, we are of the view that any cause of action founded on negligence could be dealt with by the ordinary courts.

49. Accordingly, we decline to determine the question whether the 1st and 2nd respondents were guilty of the alleged negligent misdiagnosis. There was no allegation to the effect that the testing was compulsory or that there was no consent to the testing. The only allegation made but which was not proved was that there was no pre-test counselling. However, on this issue, it was only the Claimant's word against that of Dr. Washington Auma. In these circumstances, we had no option but to hold that the Claimant failed to prove his case to the required standard.

ii. Whether the Claimant's Right to confidentiality and privacy was infringed by the Respondents

50. The Claimant further argued that his right to privacy and confidentiality had been infringed. He relied on the provisions of Article 31 of the Constitution and sections 18, 22 and 23 of the HAPCA alongside the following:

- a) The code of professional conduct and discipline;
- b) The Geneva Declaration 1978;
- c) The Internet Code of Medical Ethics; and
- d) The Helsinki Declaration on Human Experimentation.

51. Reliance was also placed on several cases including *W v Edgell*, *David Kyera v Aghakhan Hospital*(2014) e KLR, *KPAWU V James Finlay Ltd* (2013) e KLR, *Simon Mumo Mutinda V Inspector General of National Police Service & 4 Others* (Petition no. 38 of 2014 And *Hague v. Williams* (37 N.J. 328).

52. Evidence was led to show that there was a very close friendship between the 1st and 2nd Respondents on the one hand and the 3rd and 4th Respondents on the other hand which facilitated indiscriminate sharing of medical information concerning the 3rd and 4th Respondent's employees as between them. It was alleged that this is what made it possible for the 3rd and 4th Respondents to access information concerning the claimant's HIV status. The 3rd and 4th Respondents on the other hand denied any allegation to the effect that the 1st and 2nd Respondents revealed to them any information concerning the HIV status of the claimant. In fact they maintained that they did not know the claimant's HIV status until this matter was filed.

53. However, a perusal of the medical records shared between the 1st and 2nd Respondents and the 3rd and 4th Respondents contained information from which a third party could reasonably infer the claimants HIV status. The document appearing on pages 1-21 of the bundle of documents annexed to the claimants witness statement filed on 23rd June 2016 revealed the claimant's HIV status to anyone who cared to read them. The admission made by Dr. Auma during his testimony before the tribunal to the effect that such documents were routinely given to the 3rd and 4th Respondents finance department for payment purposes confirmed beyond doubt that the claimant's right under Sections 22 and 23 of HAPCA were violated.

54. We therefore find the 1st and 2nd Respondents guilty of violating the aforesaid sections of HAPCA and award him Kshs. 1,200,000 by way of damages.

55. We have considered the submissions made by the 1st and 2nd respondents in their written submissions to the effect that this tribunal lacks jurisdiction to redress violation of fundamental rights because the legislation contemplated by Article 23(2) of the constitution has not been enacted (in accordance with the decision of Lady Justice Mumbi Ngugi in *ROYAL MEDIA SERVICES LTD V. THE AG & 6 OTHERS* (2015) eKLR) and in deference to those submissions and the said decision abstained from making any determination with regards to the alleged violation of Article 31 of the constitution.

iii. Whether the claimant was discriminated against

56. With regards to the allegations to the effect that the claimant was terminated on account of his HIV status, we have reviewed the evidence adduced by the claimant as well as the 3rd and 4th Respondents and concluded that the claimant's allegations were not proved.

57. In our view the 3rd and 4th Respondents could not have been so keen to terminate the claimant's employment to the point of forcing him to write a resignation letter only to re-employ him back. Although the right to non-discrimination for persons living with HIV is very well protected by law, the claimant bore the onus of proving in what way he was discriminated against.

58. We find the authorities of *VMK V. Catholic University* and *MX of Bombay Indian Inhabitants vs. ZY & Another* (AR 1997 Bom 1997) which were cited by the claimants unhelpful.

59. Accordingly we find that the claimant failed to prove his case with regards to the allegations of discrimination.

CONCLUSION

In conclusion we find and hold as follows:

(a) That this tribunal has no jurisdiction to determine the question whether the 1st and 2nd Respondents are liable in damages for the alleged negligent misdiagnosis.

(b) The claimant’s right under Section 22 and 23 of HAPCA were violated by the 1st and 2nd Respondents by the manner in which they shared with the 3rd and 4th Respondents sensitive medical records bearing the claimant’s confidential medical information (containing his HIV status) without taking reasonable precaution to protect the confidentiality of the same. Accordingly the claimant is awarded Kshs. 1,200,000/- in damages.

(c) Accordingly, the Claimant is awarded Kshs.800,000/- for non-compliance with the set standards and Kshs.1,200,000/= for breach of the Claimant’s right to confidentiality and privacy.

(d) The claimant failed to prove his case based on the allegations of discrimination to the required standard.

(e) The Claimant is awarded costs.

Orders accordingly

DATED AT NAIROBI this 29th day of September, 2017.

JOTHAM OKOME ARWA (CHAIRMAN) _____

VIOLET AWORI (VICE CHAIRPERSON) _____

DR. CHARLES MARINGO (MEMBER) _____

NELSON OTUOMA (MEMBER) _____

HELENE NAMISI (MEMBER) _____

WAMBUI KIEREINI (MEMBER) _____