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REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

PETITION NO. 1 OF 2016

HIGH COURT OF KENYA
ENVIRONMENT AND LAND DIVISION
MOMBASA
RECEIVED

IN THE MATTER OF THE ENFORCEMENT OF THE BILL OF RIGHTS UNDER ARTICLE 22(1) (2) (c), 23, 70, 162, 165 (3) (b) AND 258 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF AN ALLEGED CONTRAVENTION OF ARTICLES 2(1)(5)(6), 19(1),(2), (3), 20 (1), (2), 21(1), (3), (4), 26, 35(1), (3), 42, 43(a)(d), 69(1)(d), (f), (2) AND OF THE CONSTITUTION OF KENYA
BETWEEN

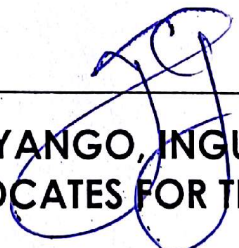
KELVIN MUSYOKA AND 9 OTHERS PETITION

AND

THE HONOURABLE ATTORNEY GENERAL AND 7 OTHERS..... RESPONDER

PETITION

Dated at Kisumu this 20th Day of February 2016


OLEL, ONYANGO, INGUTIAH & COMPANY
ADVOCATES FOR THE PETITIONERS

DRAWN & FILED BY:

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KISUMU.

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

PETITION NO. 1 OF 2016



IN THE MATTER OF THE ENFORCEMENT OF THE BILL OF RIGHTS UNDER ARTICLES 22(1) (2) (c), 23, 70, 162, 165 (3) (b) AND 258 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF AN ALLEGED CONTRAVENTION OF ARTICLES 2(1)(5)(6), 10 19(1),(2), (3), 20 (1), (2), 21(1), (3), (4), 26, 35(1), (3), 42, 43(a)(d), 69(1)(d), (f), (g), (2) AND OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF ARTICLE 12 (1), (2) (a) (b) OF THE INTERNATIONAL CONVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS (ICESCR)

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF ARTICLE 24 (2) OF THE CONVENTION ON THE RIGHT OF THE CHILD (CRC)

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF ARTICLE 4 OF THE BASEL CONVENTION ON THE CONTROL OF TRANSBOUNDARY MOVEMENT OF HAZARADOUS WASTE AND THEIR DISPOSAL

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF THE BASEL CONVENTION TECHNICAL GUIDELINES FOR THE ENVIRONMENTALLY SOUND MANAGEMENT OF WASTE LEAD-ACID BATTERIES

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF ARTICLES 16 AND 24 OF THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS (ACHPR)

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF ARTICLE 111 OF THE TREATY FOR THE ESTABLISHMENT OF THE EAST AFRICA COMMUNITY (EAC)

AND

IN THE MATTER OF SECTIONS 58 AND 68 OF THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION ACT CHAPTER 387 OF THE LAWS OF KENYA

AND

IN THE MATTER OF THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION (ENVIRONMENTAL IMPACT ASSESSMENT/ENVIRONMENTAL AUDIT) REGULATIONS OF 2003

AND

IN THE MATTER OF THE ENVIRONMENTAL MANAGEMENT AND CO-ORDINATION (WATER QUALITY) REGULATIONS OF 2006

AND

IN THE MATTER OF SECTIONS 24, 36 AND THE SECOND SCHEDULE OF THE PHYSICAL PLANNING ACT CHAPTER 286 OF THE LAWS OF KENYA

AND

IN THE MATTER OF THE PUBLIC HEALTH ACT CHAPTER 252 OF THE LAWS OF KENYA AND

IN THE MATTER OF SECTION 23 (2) (c) OF THE EXPORT PROCESSING ZONES ACT CHAPTER 517 OF THE LAWS OF KENYA

BETWEEN

KELVIN MUSYOKA (Minor suing through Mother and best friend
SCHOLASTICA KHALAYI SHIKANGA) 1ST PETITIONER
RENE AKINYI ODHIAMBO 2ND PETITIONER
WILLICENT ACHIENG AWAKA 3RD PETITIONER
ELIZABETH FRANCISCA MWAILU 4TH PETITIONER
ELIAS OCHIENG 5TH PETITIONER
JACKSON OSEYA 6TH PETITIONER
HAMISI MWAMERO 7TH PETITIONER
DANIEL OCHIENG OGOLA 8TH PETITIONER
MARGARET AKINYI 9TH PETITIONER
CENTER FOR JUSTICE, GOVERNANCE AND ENVIRONMENTAL ACTION 10TH PETITIONER
(Suing on their own behalf and on behalf of all the residents of Owino Uhuru Village in Mikindani, Changamwe Area Mombasa)

AND

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THE HONOURABLE ATTORNEY GENERAL 1ST RESPONDENT
THE CABINET SECRETARY MINISTRY OF ENVIRONMENT,
WATER AND NATURAL RESOURCES 2ND RESPONDENT
THE CABINET SECRETARY MINISTRY HEALTH 3RD RESPONDENT
NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY..... 4TH RESPONDENT
THE COUNTY GOVERNMENT OF MOMBASA 5TH RESPONDENT
THE EXPORT PROCESSING ZONES AUTHORITY 6TH RESPONDENT
METAL REFINERY (EPZ) LTD.....7TH RESPONDENT
PENGUIN PAPER AND BOOK COMPANY..... 8TH RESPONDENT

TO:
THE HONOURABLE JUDGE,
ENVIRONMENT AND LAND COURT,
MOMBASA.

PETITION

The Humble Petition of KELVIN MUSYOKA, IRENE AKINYI ODHIAMBO, MILLICENT ACHIENG AWAKA, ELIZABETH FRANCISCA MWAILU, ELIAS OCHIENG, JACKSON OSEYA, HAMISI MWAMERO, DANIEL OCHIENG OGOLA, MARGARET AKINYI **and the** CENTER FOR JUSTICE, GOVERNANCE AND ENVIRONMENTAL ACTION **whose address for the purpose of this Petition is c/o** M/s OLEL, ONYANGO, INGUTIAH & COMPANY ADVOCATES, WEDCO CENTER, SHOP UNIT II, BLOCK 'A' P.O. BOX 2876-40100 KISUMU, **states as follows:**

DESCRIPTION OF THE PETITIONERS

1. The first Petitioner is a minor Kenyan and resident of Owino Uhuru Village, Changamwe Division, Mikindani Area of Mombasa County who brings this action through his next of kin and mother named hereinabove.
2. The 2nd Petitioner is an adult female Kenyan of sound residing at Owino Uhuru Village, Changamwe Division, Mikindani Area of Mombasa County within the Republic of Kenya.
3. The 2nd Petitioner is an adult female Kenyan of sound residing at Owino Uhuru Village, Changamwe Division, Mikindani Area of Mombasa County within the Republic of Kenya.

pursuant to his obligation provided as under Article 156 and more specifically as the

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- i. The principal legal adviser to the Government of the Republic of Kenya
- ii. The State Officer constitutionally authorized and mandated to represent the Government in Court or in any other legal proceedings to which the government is a party. Service of Court process shall be affected through the Petitioners' Advocates offices.

12. The 2nd Respondent is the Cabinet Secretary in charge of the Ministry of Environment, Water and Natural Resources at the National Government which is the ministry responsible for formulating standards, policies and programmes aimed at improving, maintaining, protecting, conserving the country's rich natural resources including water, forestry, wildlife and the environment.

13. The 3rd Respondent is the cabinet secretary in charge of the Ministry of Health of the National Government of Kenya and whose key mandate is to create an enabling environment for a healthy citizenry, and to regulate and set standards and policy for health service delivery directives.

14. The 4th Respondent is a body corporate established under the provisions of the Environment Management and Co-ordination Act, no. 8 of 1999. The Authority's mandate is to exercise general supervision and co-ordination over all matters relating to the environment and to be the principal instrument of the Government of Kenya in the implementation of all policies relating to the environment.

15. The 5th Respondent is the County Government of Mombasa and is joined to this suit pursuant to the County Government Act 2012, and to its responsibilities, functions and powers under the said Act and part 2 of the fourth schedule of the constitution. It is also the successor in title to the defunct Municipal Council of Mombasa and assumes responsibilities, powers, functions and liabilities of the defunct local authority under the provisions of section 33 of the Sixth Schedule of the Constitution of Kenya, 2010.

16. The 6th Respondent is the Export Processing Zones Authority established as a body corporate with perpetual succession and a common seal under

section 3 of the Export Processing Zones Act, Chapter 517 of the Laws of Kenya. Per section 9 of Cap 517, the principal objectives of the authority are the development of all aspects of the export processing zones, the regulation and administration of all activities within the said zones and the protection of Government revenues and foreign currency earnings.

17. The 7th Respondent is a limited liability company incorporated in Kenya under the provisions of the Companies Act Cap 486 of the Laws of Kenya and was at all times relevant and material to this suit, licensed by the 6th Respondent herein to operate a lead acid battery recycling factory at Changamwe in Mombasa.

18. The 8th Respondent is a limited liability company incorporated in Kenya under the provisions of the Companies Act Chapter 486 of the Laws of Kenya and having its registered offices at Mombasa. At all times material to this suit, it was the landlord of the 7th Respondent and connived with the said 7th Respondent

Service of this petition upon all the Respondents shall be effected through the Petitioners' Advocates offices or their agents.

BRIEF FACTS OF THE CASE

19. The Petitioners are residents of Owino Uhuru Village, a low-income settlement area situate on plot number 148/V/MN in Mikindani, Changamwe Area of Mombasa County. The village sits on roughly 13.5 acres of land and is heavily populated (hereinafter referred to as "the village").

20. The village was set up in the 1930s and 40s and many of the older members of the village community have lived in the village for several decades.

21. Next to the village, approximately 50 metres away, is plot number 1707/SECT/V/MN/MIKINDANI/MOMBASA, which parcel of land belongs to the 8th Respondent herein.

22. In the year 2006, the 8th Respondent let out part of its said plot to the 7th Respondent to set up a lead acid batteries recycling factory. The 7th Respondent's activities included collecting used dry batteries, smelting at high temperatures of the lead-containing electrodes and lead carbon

compounds contained in the batteries. The resultant product would then be packaged and shipped for export.

23. The smelting process would produce a fluid like substance containing lead particulates and other impurities. Also produced was solid waste concentrated with lead particles. Finally, the smelting process also produced gaseous emissions, which were themselves heavily laden with lead particles.
24. Lead is a toxic metal whose widespread use has caused extensive environmental contamination and health problems in many parts of the world. It is a cumulative toxicant, which if introduced into the human body in large quantities, affects multiple body systems including the neurological, haematological, gastrointestinal, cardiovascular and renal systems.
25. Though lead is found at low levels in rocks and the earth's crust, the widespread occurrence of lead in the environment is largely due to human activities such as mining, smelting, refining and recycling of lead, use of leaded petrol, production of lead acid batteries, paints and many more industrial applications.
26. Particularly with respect to the recycling of lead acid batteries, lead particulates from battery acid can easily leak into the soil or enter the ground and surface water systems that are used for domestic purposes.
27. The Basel Convention has included the Used Lead Acid Batteries (ULABs) in its list of materials classified as "hazardous waste". This is due to the growing evidence of increase in blood lead levels attributable to the disposal of the used lead acid batteries and their components.
28. Lead can enter the human body by breathing it in as dust, vapour or a component of gas emissions. It can also be ingested with food, and to a lesser extent, by absorption through the skin. Absorption through the skin is particularly common among factory workers who do not use proper personal protective equipments (PPEs) while at work. Young children are particularly at risk of lead exposure because of typical hand-to-mouth behavior.
29. Lead (Pb) is an element and therefore does not breakdown when released into the atmosphere and neither is it broken down when

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ingested in the body. There is therefore no acceptable or tolerable levels of lead in the human body. Lead accumulates in every tissue of the body and affects almost all the body systems more so the Red Blood Cells (RBCs).

30. In 1991, the Centre for Disease Control (CDC) designated 10 µg/dl (micrograms per deciliter), as the maximum acceptable blood lead level. However, in a review of the latest scientific evidence, conducted in 2010, the Joint Food and Agriculture Organization of the United Nations (FAO)/World Health Organization (WHO) Expert Committee on food additives estimated that the previously established provisional tolerable weekly intake (PTWI) of 25 µg/kg body weight per week could no longer be considered health protective and withdrew it.
31. Adverse health effects have been noted in persons with Blood Lead Level (BLL) as low as 5 µg/dl. The effects of lead poisoning depend on the age and level of exposure of the person affected. Lead causes symptoms ranging from loss of neurological function to death depending on the extent and duration of exposure.
32. Other effects of Lead poisoning include brain damage, reduction in the blood's ability to carry oxygen, decreased blood production, male infertility, nerve damage and increased blood pressure.
33. In children the effects are even more severe and may include a stunted development of the nervous system, low IQ levels, skin depigmentation and death.
34. The 7th Respondent (hereinafter referred to as "MRL") began its factory operations in the year 2007. Its processes included, but were not limited to, purchasing old lead-acid batteries from waste battery dealers, breaking and separating their parts, cleaning them, feeding them in to the smelter, packaging them and exporting the finished product out of the country.
35. The 5th Respondent proceeded to issue a trading license to the 7th Respondent to construct and operate a factory dealing in highly toxic lead in complete abdication of its responsibilities as set out in Section 36 of the Physical Planning Act and Section 24 of the 2nd Schedule to the said Act.

36. The 6th Respondent granted to the 7th Respondent a license to operate as an EPZ company in clear violation of the provisions of section 23 of the Export Processing Zones Act which prohibits the licensing of any entity dealing in substances that can have a deleterious or adverse effect on the environment.
37. Shortly after MRL commenced operations, complaints began emerging from the village, the closest human settlement, that the factory was poisoning the environment through its poor management of its liquid, solid and gaseous waste.
38. In particular, the complaints centered on the fact that the incidence of disease, especially respiratory diseases had increased tremendously in the village since the factory began operations. Further, the dust and gases emitted from the factory settled on the roofs of the houses in the village and corroded the iron sheets at an alarming rate.
39. Owing to the persistent complaints of the Petitioners and the other community members, the Municipal Council of Mombasa (the council) ordered the factory closed in June 2008. However, the council soon had the factory reopened in July 2008 upon deeming that in their opinion the factory had substantially complied with all safety requirements.
40. The 3rd Respondent then moved in and had the factory closed on the 20th day of February 2009 ostensibly because it did not meet the required standards for public health and sanitation in that it lacked proper cloak rooms for the workmen, the workmen were not provided with PPEs, and that the factory did not pre-treat its waste.
41. In all this time, the petitioners had continued to campaign for the permanent closure of the factory and for concerned authorities to look closely at the environmental degradation wrought by the activities of the factory as well as the negative health impacts suffered by the Petitioners, but to no avail.
42. Eventually, the Public Complaints Committee (PCC) of the 4th Respondent took up the Petitioners' complaint and commenced investigations into the activities of MRL under PCC COMPLAINT NO. 96 of 2009. As part of its investigations, the PCC carried out public hearings as well as interviews with the relevant officers of MRL.

43. In findings and recommendations contained in a report compiled at the end of the exercise, the PCC made, inter alia, the following observations:
- a) MRL had been discharging effluent from its premises through a hole in its boundary wall and into a trench that runs through Owino Uhuru village and ended up in the Municipal drainage system.
 - b) Smoke from the factory is responsible for the corrosion of iron sheets on the roof of houses of the residents of the village.
 - c) The smoke from the factory is a major source of air pollution in the village and the subsequent reduction of air quality that has had adverse health effects on the residents of the village, including respiratory diseases.
 - d) The effluent discharged from the factory and allowed to flow openly through the village poses a significant health risk to those who may come in to contact with it since the same is contaminated with lead.
 - e) The lead dust produced from the factory operations would have a negative impact on the health of the workers therein.
 - f) The factory commenced operations in breach of the law particularly section 58 of the Environmental Management and Conservation Act (EMCA) since operations began in 2007 while the EIA license was issued in 2008.
44. Despite these damning findings, the factory was reopened shortly thereafter and before all the pollution concerns were adequately addressed. MRL continued to discharge toxic gases and liquids at the Petitioners' habitat, a fact that has caused them serious health complications.
45. In the months and years following the said PCC report, and in response to persistent complaints and pressure from the Petitioners, the factory would be closed intermittently by officers from the 3rd Respondents ministry, but the factory would be allowed to reopen after only a short while. The factory was eventually closed permanently in the year 2014.
46. Several studies have been conducted by the Government Chemist and other experts from the Ministry of Health to determine the level of lead contamination of the soil, dust on roofs and walls of the houses in the village, water bodies and the air. In all, the results of such studies have revealed consistently higher levels of lead contamination in areas around the factory, the village inclusive, than is safe for human habitation.

47. Additionally, tests have been conducted to determine the Blood Lead Levels of the Applicants, other members of the Owino Uhuru Community as well as relatives of former employees of MRL. All the results have revealed unacceptably high levels of lead poisoning, many reaching the levels considered as acute poisoning.

48. The 1st to the 9th Petitioners in particular, as well as several members of the Owino Uhuru community, are currently suffering various illnesses and ailments as a consequence of the lead poisoning. They require immediate medical intervention, the cost of which they cannot afford.

49. There have been at least 20 cases of death in the community directly attributable to lead poisoning.

JURISDICTION

50. The Honourable Court is established under Article 162 (2) (b) and has a similar status with the High Court thus having jurisdiction to hear and determine this Petition under Articles 23(1), 70 and 165 (3) (b) of the Constitution.

51. The Honourable Court as a State organ has a procedural duty to observe, respect and promote and fulfill the rights and fundamental freedoms in the Bill of Rights as provided for under Article 21(1) of the Constitution.

SPECIFIC VIOLATIONS UNDER THE CONSTITUTION

A. Permitting, authorization and licensing of the 7th Respondent's lead and lead alloys manufacturing plant without reasonable measures to prevent human and environmental harm violated the Petitioners' right to clean and healthy environment, right to highest attainable standard of health and right to clean and safe water in adequate sums.

52. The 2nd, 3rd, 4th, 5th and 6th Respondents are responsible for ensuring that Constitutional rights as well as national laws and standards on environment and human rights are effectively enforced and decisions and regulations complied with. By permitting, authorizing and licensing the 7th and 8th Respondents to operate with due disregard to the Petitioners right to clean and healthy environment, right to highest attainable standard of health and right to clean and safe water in adequate quantities the 2nd, 3rd, 4th and 5th Respondents actions constituted a breach to Article 21 (1) and (4), 42, 43 (1) (a) and (d) of the

Constitution and Articles 16 and 24 of the African Charter on Human and People's Rights, Article 111 of the Treaty establishing the East Africa Community, Article 12 (1) and (2) (a) and (b) of the International Covenant on Economic, Social and Cultural Rights, Article 24 (2) of the Convention on the Right of the Child, Article 4 (2) (c) of the Basel Convention on the Control of Trans-boundary Movement of Hazardous Waste and their Disposal and Basel Convention Technical Guidelines for Environmentally Sound Management of Waste Lead- Acid Batteries.

53. The 7th and 8th Respondents have a duty under Article 69 (2) to cooperate with State organs and other persons to protect and conserve the environment. The 7th Respondent's action of operating a lead and lead alloy manufacturing plant without taking any measure to protect the environment and human life and the 8th Respondent's action of allowing the 7th Respondent to operate within its premises and conniving with the 7th Respondent to influence licensing of the lead and lead alloy manufacturing plant contributed to the violation of the Petitioners rights to clean and healthy environment, right to highest attainable standard of health and rights to clean environment as provided for under the Constitution.

B. Systematic denial of access to information by the Respondents denied the Petitioners their right to participate in development decisions and right to information

54. Failure of the 2nd, 3rd, 4th, 5th, 6th, 7th and 8th Respondents to undertake comprehensive background check including comprehensive environmental and social impact assessments and provide the Petitioners with an opportunity to meaningful engage in the processes and access to information relating to potential risks associated with the 7th Respondent's activity contravened Article 35 (1) and (3) and 69 (1) d) and f) of the Constitution.

55. Further, the Respondents having been aware of the effects of excess exposure to lead failed to provide the Petitioners with information on the effects of exposure to hazardous materials and activities and how to prevent or mitigate the effects thereto. The actions violated the Petitioners right to information as provided for under Article 35 (1) and (3) of the Constitution and were further contrary to the provisions of Article 69 (1) d) and f) of the Constitution.

C. The failure to undertake appropriate monitoring and evaluation exercises toward protecting the Petitioners Constitutional rights

56. The 2nd, 3rd, 4th, 5th and 6th Respondents failure to monitor and enforce environmental, health and safety regulations and adequately protect the Petitioners from the effects of excess exposure to lead was contrary to Article 21 (1) of the Constitution where they are under obligation to observe, respect, protect, promote and fulfill the Petitioners rights to clean and healthy environment, right to health and right to clean and safe water.

D. The failure of Respondents to act upon complaints by the Petitioners and failure to act upon recommendations made on reparation and minimizing harm to the Petitioners exacerbated violations of the Petitioners rights to clean and healthy environment, health and clean and safe water.

57. The Respondents with full knowledge on the effects of excessive exposure to lead and having received reports on actual cases of negative effects of excessive exposure to lead to the Petitioners by the Petitioner and legal institutions failed to take any steps to address the violations contrary to the provisions of Article 69 (1) (g) of the Constitution.

58. The Respondents been aware of the effects of lead exposure to air, soil, water and human body failed to take any necessary steps to reduce the negative impact of lead to the Petitioners and their environment contrary to the provisions of Article 69 (1) (g) of the Constitution of Kenya.

59. The State and state organs are obligated under Article 21 to adopt positive measures of protection, including effective regulations as the case may be, in order to prevent infringement or further infringement of rights

60. The Respondents have acted in a manner that have denied, violated/infringed or threatened the Petitioners' Constitutionally guaranteed rights despite the Bill of Rights binding them.

CONSTITUTIONAL PROVISIONS RELIED UPON IN THIS PETITION

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61. The Constitution is the Supreme law of the Republic and binds all persons and state organs under **Article 2 (1)** and every person has a duty to respect, uphold and defend the Constitution under **Article 3 (1)**.
62. Under **Article 2 (5)** and **(6)** the general rules of international law shall form part of the laws of Kenya and any treaty or convention ratified by Kenya shall form part of the law of Kenya. Kenya has ratified Conventions and Treaties that deal with the environmental protection. Of particular significance in this Petition are Articles 16 and 24 of the African Charter on Human and People's Rights, Article 111 of the Treaty establishing the East Africa Community, Article 12 (1) and (2) (a) and (b) of the International Covenant on Economic, Social and Cultural Rights, Article 24 (2) of the Convention on the Right of the Child, Article 4 (2) (c) of the Basel Convention on the Control of Trans-boundary Movement of Hazardous Waste and their Disposal and Basel Convention Technical Guidelines for Environmentally Sound Management of Waste Lead- Acid Batteries.
63. The Constitution under **Article 10** mandates State organs, officers, public officers and all persons applying or interpreting the Constitution; enacts, applies or interprets any law or make or implements public policy decisions to abide by principles of governance including; social justice, inclusiveness, human rights and sustainable development.
64. The Bill of Rights are considered under **Article 19 (1)** and **(2)** as integral part of the country's democratic state and a framework for social justice, economic and cultural policies and the purpose for recognizing and protecting human rights is to preserve dignity of individuals.
65. The Bill or rights under **Article 20 (1)** applies to all law and binds all State organs and all persons.
66. The State and State organs have a fundamental duty to observe, respect, protect, promote and fulfill the rights and fundamental freedom under **Article 21 (1)** and the State under **Article 12 (4)** is mandated to enact and implement legislation to fulfill its international obligations in respect of human rights and fundamental freedoms.
67. **Article 22 (1)** permits every person to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened. In addition to a person acting in their own interest, **Article 22 (2)** allows for proceeding to be instituted by other persons including a person acting as a member of, or in the interest of, a group or class of persons or a person acting in the public interest. The court in applying a provision of the Bill of Right is required under **Article 20**

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(2) (b) among others to adopt the interpretation that most favors the enforcement of a right.

68. Every person has a right to clean and healthy environment under **Article 42** and the right includes protection of the environment for the benefit of the present and future generation.
69. Every person has a right to highest attainable standard of health and clean and safe water in adequate quantities under **Article 43 (1) (a) and (e)**.
70. The State is obligated to under **Article 69 (1) (d), (f) and (g)** to encourage public participation in the management, protection and conservation of the environment, establish systems of environmental impact assessment, environmental audit and monitoring of the environment and eliminate processes and activities that are likely to endanger the environment. Every person has a duty under **Article 69 (2)** to cooperate with State organs and other persons to protect and conserve the environment.
71. Any person who alleges that a right to clean and healthy environment recognized and protected by the Constitution has been, is being or is likely to be denied, violated, infringed or threatened, the person can apply to court for redress under **Article 70 (1)** the court under **Article 70 (2)** may give directions or make orders it considers appropriate including orders to prevent, stop or discontinue of any act or omission that is harmful to the environment, provide compensation to the victim of violation

REASONS WHEREFORE the Petitioners seek for the following reliefs;

- a. A declaration that the Petitioners right to clean and health environment guaranteed by Article 42 of the Constitution, Article 12 (2) (b) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 24 of the African Charter on Humans and People's Rights (ACHPR) have been contravened by the actions and omissions of the Respondents.
- b. A declaration that the Petitioners right to highest attainable standard of health and right to clean and safe water in adequate quantities as guaranteed by Article 43 (1) (a) and (d), Article 12 (1) and (2) (a) of the International Covenant of Economic, Social and Cultural Rights (ICESCR), Article 24 of the Convention on the Rights of the Child (CRC) and Article 16 of the African Charter on Humans

and People's Rights (ACHPR) have been violated by the actions and omissions of the Respondents. 16

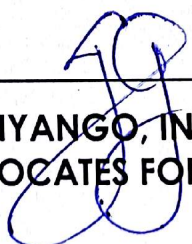
- c. A declaration that the Petitioners' right to life as guaranteed by the provisions of Article 26 of the constitution have been violated by the actions, inactions and omissions by the Respondents.
- d. A declaration that the systematic denial of access to information to the Petitioners by the Respondents about how exposure to lead would affect them and what precautionary measures to be taken violated the Petitioners' right to information as provide for under Article 35 (1) (a), (b) and 3.
- e. An order for compensation to the Petitioners for general damages against the Respondents for the damage to the Petitioners' health and environment, and to the loss of life.
- f. An order of mandamus be issued against the 2nd, 3rd, 4th and 5th Respondents directing them carry out a comprehensive participatory scientific study within 60 days from the date of the judgment at Owino Uhuru village to ascertain the levels of lead in water, soil, animals and human bodies of the residents including the Petitioners.
- g. A mandamus order be issued against the 2nd, 3rd, 4th, 5th, 6th, 7th and 8th Respondents directing them to within 90 days from the date of the judgment to implement the recommendations in a report prepared by a Lead Poisoning Investigation Team of the 3rd Respondent dated May 2015 and another by the Senate Standing Committee on Health dated the 17th day of March 2015 including adequately cleaning up and remediating contaminated water and soil in Owino Uhuru Village and offer adequate health services to

the residents including the Petitioners and animals affected by exposure to lead from the 7th Respondent's manufacturing plant.

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- h. An order of mandamus be issued against the 1st, 2nd and 4th Respondents directing them to develop and implement regulations adopted from international best practices with regards to lead and lead alloys manufacturing plants.
- i. An order of mandamus be issued against the 1st, 2nd and 4th Respondent directing them to develop a National Action Plan within 90 days from the date of the judgment towards operationalisation of the Basel Convention Technical Guidelines for Environmentally Sound Management of Waste Lead- Acid Batteries.
- j. An order of mandamus be issued directing the 4th , 5th and 6th Respondents to take steps towards ensuring that regulations dealing with licensing, setting up, operation, supervision of the activities as well as independent scientific monitoring of all entities dealing in hazardous materials are designed, enacted and implemented to provide effective deterrence against the threats to protected rights under the Constitution
- k. Any other or further relief the Court may deem fit to grant.

Dated at Kisumu this ... 20th ... Day of ... February ... 2016



OLEL, ONYANGO, INGUTIAH & COMPANY
ADVOCATES FOR THE PETITIONERS

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ADMINISTRATION BUILDING,
VIWANDA ROAD,
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