



## Daniel Ng'etich v. Attorney General

Petition No. 329 of 2014 [2016] eKLR

**Country:** Kenya

**Region:** Africa

**Year:** 2016

**Court:** High Court of Kenya, Constitutional and Human Rights Division

**Health Topics:** Health care and health services, Hospitals, Infectious diseases, Prisons, Public safety

**Human Rights:** Freedom from discrimination, Freedom of movement and residence, Right to liberty and security of person

### Facts

The Public Health Officer in the Nandi Central District arrested the petitioners- Daniel Ng'etich and Patrick Kipng'etich Kirui stating that they had failed to take the prescribed TB Medications. Under Section 27 of the Public Health Act, a magistrate could order the isolation and detention of a person who has been exposed to an infection. This order could be passed only pursuant to a certificate signed by the Medical Officer. The Magistrate ordered the confinement of the petitioners for eight months or till they had been treated completely. They remained in isolation in a prison for 46 days.

The petitioners stated that their confinement violated their rights under the Constitution of Kenya. The Petitioners further stated that their treatment failed to meet requirements under the UN Economic and Social Council Siracusa Principles as their detention was a punishment rather than a disease prevention or treatment.

### Decision and Reasoning

The Court held that the detention of the petitioners in the penal institute was not justified and in contravention of the Public Health Act. The Court stated that although isolation of TB patients could be justified, confinement in a prison would not meet the purpose of the isolation, which should be directed at containing the disease and treating the patients. Hence, the Court held that the petitioners' rights of liberty and freedom of movement had been violated.

The Court further directed the Government to develop a policy on confinement of TB or other infectious diseases patients under the Public Health Act.

### Decision Excerpts

It seems to me that the state, having failed to adequately address the needs of the health sector, and confronted with rising cases of TB, has taken the easy option: arrest those who default and lock them away, and keep them away from the law abiding society. Unfortunately, given the state of prisons in Kenya, which are known to be overcrowded and lacking in basic facilities, that does not help in the treatment of the TB patients confined, or in stopping the spread of TB. Not only is such action not sanctioned by the Public Health Act, it is also patently counter-productive. (Para 67)

The petitioners have alleged violation of their constitutional rights under Article 28, 29, and 39 of the Constitution, whose provisions I have set out elsewhere in this judgment. I have found that while isolation and detention is permissible in the interests of public health where a person infected with TB poses a threat to public health, the detention of the petitioners was not in accordance with the Public Health Act, or international guidelines and principles regarding isolation of patients with TB. I am also of the view that the acts of the respondent could not achieve the intended purposes, given the conditions of Kenyan prisons. (Para 68)