

IN THE HIGH COURT OF THE REPUBLIC OF BOTSWANA

HELD AT GABORONE

CASE NO: MAHGB-000057-2014

In the matter between:

DICKSON TAPELA 1st Applicant

MBUSO PIYE 2nd Applicant

BOTSWANA NETWORK ON ETHICS, LAW AND HIV/AIDS 3rd Applicant

and

THE ATTORNEY GENERAL 1st Respondent

THE PERMANENT SECRETARY
MINISTRY OF HEALTH 2nd Respondent

THE PERMANENT SECRETARY
MINISTRY OF DEFENCE, JUSTICE AND SECURITY 3rd Respondent

PRESIDENT OF THE REPUBLIC OF BOTSWANA 4th Respondent



AMENDED DRAFT ORDER



Upon hearing attorney _____ for the Applicants and having read the papers filed of record, it is ordered that:

1. The decision of the second respondent (or anyone acting under his authority), to refuse to provide the first and second applicants with access to and/or enroll them on Highly Active Anti Retroviral Treatment (HAART) is set aside and declared invalid.
2. The refusal to provide HAART to the first and second applicants is unlawful and violates their constitutional rights, including:
 - 2.1. The right to life guaranteed by section 4;
 - 2.2. The right not to be subjected to inhumane and degrading treatment guaranteed by section 7; and
 - 2.3. The right to non discrimination guaranteed by section 3 and 15.
3. The refusal to provide HAART to the first and second applicants is in breach of the National Policy on HIV and AIDS ("the Policy"), and is unlawful.
4. The refusal to provide HAART to the first and second applicants is in breach of the duty, owed by the respondents to the first and second applicants and to similarly situated HIV positive foreign inmates, to provide basic health care service to prisoners.
5. Presidential Directive number Cab 5(b)/2004 is unconstitutional, unlawful and invalid to the extent that it denies of HIV-positive foreign inmates access to and/or enrolment on HAART.
6. The policy of denying HIV-positive foreign inmates access to HAART is unlawful and unconstitutional.
7. The second and third respondents shall provide the first and second applicants with HAART.

8. The second and third respondents shall provide HAART to all prisoners who are HIV-positive and who are not citizens of Botswana.
9. The Respondents shall bear costs of this application.

BY ORDER OF COURT

THE REGISTRAR