

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**CONSTITUTIONAL PETITION NO.....OF 2021**

**IN THE MATTER OF ARTICLES 2, 3,19,20,22,23,25, 26, 27, 28, ,47,50, 53, 258,259 AND  
260 OF THE 2010 CONSTITUTION OF KENYA.**

**AND**

**IN THE MATTER OF THE MAINTENANCE OF AN EXPECTANT WOMAN AS AN  
INTEGRAL PART OF THE PROTECTION OF THE RIGHT TO LIFE OF AN UNBORN CHILD.**

**AND**

**BETWEEN**

**IRENE NASWA MUTAKI .....PETITIONER/APPLICANT**

**VERSUS**

**HON. KENNETH MAKELO LUSAKA .....RESPONDENT**

**CERTIFICATE OF URGENCY**

**WE, DANSTAN OMARI, SHADRACK WAMBUI and LITTY KATHURIMA** Advocates of the High Court of Kenya, practicing as such with the firm of **MUSYOKI MOGAKA & CO ADVOCATES, UGANDA HSE, 4<sup>TH</sup> FLOOR, SUITE NO.19, KENYATTA AVENUE, P.O.BOX 57180- 00200, NAIROBI** within the Republic of Kenya do hereby certify that this matter is **EXTREMELY URGENT** and apt for hearing on priority basis for the following grounds;

1. **THAT** the parties herein have been having a jolly intimate affair punctuated with several instances of unprotected carnal knowledge since the year 2018 up until about two months ago (May 2021) when they disagreed strongly after the Applicant herein disclosed to the Respondent that as a consequence of their unprotected sexual encounters, she had conceived a child.
2. **THAT** the cause of their disagreement was exacerbated by the Respondent's insistence on the Applicant to terminate the pregnancy, a proposal that the applicant declined to accede to and now she is three months pregnant and counting since she discovered that she was expectant of the Respondent's child

as she has not been intimate with any other man other than the Respondent, a fact that can be confirmed through a prenatal Deoxyribonucleic Acid paternity test.



3. **THAT** the Respondent despite being a man of means, has refused, neglected and/or ignored to take care of the Applicant's Pre-natal Clinics necessary to ensure the wellbeing of the un-born child perhaps in the hope of stressing the Applicant and causing a miscarriage of their unborn child.
4. **THAT** the Applicant has been going through Pregnancy complications that potentially threaten the life of their unborn child if unmitigated and largely because she is unable to financially meet the cost of the hospitals that guarantee expectant women the highest standard of health commensurate to the class and statute of the Respondent.
5. **THAT** the Respondent defiant and brazen refusal to accept responsibility and assist the Applicant to access esteemed hospitals capable of giving her highest standard of prenatal care threaten the life of their unborn child and is therefore in sharp contravention with the Constitutional safeguards of life which begins at conception.
6. **THAT** the Respondent's neglect of her responsibilities as the father of their unborn child yet he is a national figure whose wealth and riches is public knowledge is contumelious, deliberate and an affront to the unborn child's fundamental right to be born a live and healthy as the Applicant's risks suffering serious high blood pressure resulting to a condition known as preeclampsia, premature birth and causing low birth weight in infants.
7. **THAT** the Respondent has consistently rejected his association with the Applicant's pregnancy despite his full knowledge that they have been having unprotected carnal knowledge together for years now instead of subjecting himself to a scientific examination in order to put his doubts to flight.

8. **THAT** the conduct and behavior of the Respondent of failing to maintain the Applicant and their unborn child by failing to meet the cost of the Applicant's prenatal care is inimical to the protection of the future of the Republic of Kenya and the Constitution which observes at its preamble that the Constitution is adopted and enacted for ourselves and the future generation(s).
9. **THAT** the Applicant being unemployed and the pregnancy being a high-risk one, and of a child that would possibly rise to the position of the Speaker of the Senate, the position its father has risen in the governance of the Republic of Kenya, or even higher in the leadership of this Country, her maintenance needs are of national importance and priority by all standards.
10. **THAT** unless this matter is disposed and determined on a priority basis and ex-parte orders granted on the principle of the best interest of the un-born child, irreparable damage and prejudice will be occasioned on the un-born child and or its mother the Applicant yet the cause of the pregnancy in question is a well to do individual that runs the risk of improperly mentoring young men to be irresponsible men and fathers.
11. **THAT** it is fair and just that the matter is disposed on an urgent basis and orders granted to enable the children grow up comfortably

Dated at **NAIROBI** this.....16<sup>th</sup>.....Day.....June..... **2021**

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**MUSYOKI MOGAKA & COMPANY ADVOCATES**

**ADVOCATES FOR THE APPLICANT**

**DRAWN & FILED BY:**

MUSYOKI MOGAKA & CO. ADVOCATES,  
UGANDA HOUSE, 4<sup>TH</sup> FLOOR, SUITE19,  
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**TO BE SERVED UPON:**

**HON. KENNETH MAKELO LUSAKA**

TEL: 0722 314 959

**NAIROBI**

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**  
**CONSTITUTIONAL PETITION NO.....OF 2021**

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260 OF THE 2010 CONSTITUTION OF KENYA.

AND

IN THE MATTER OF THE MAINTENANCE OF AN EXPECTANT WOMAN AS AN  
INTEGRAL PART OF THE PROTECTION OF THE RIGHT TO LIFE OF AN UNBORN CHILD.

BETWEEN

IRENE NASWA MUTAKI .....PETITIONER/APPLICANT

VERSUS

HON. KENNETH MAKELO LUSAKA .....RESPONDENT

**NOTICE OF MOTION**

*(Under articles 22, 23, 26,27, 47, 50(1), 165 and 258 of the constitution of Kenya, Rule  
4,13,19 and 23, Constitutions of Kenya (Protection of Rights and Fundamental  
Freedom) Practice and Procedure Rule of 2013 and all other enabling provisions of the  
law)*

**TAKE NOTICE** that this Court shall be moved on\_\_\_\_\_ day of \_\_\_\_\_2021  
at 9.00 O'clock in the forenoon or so soon thereafter when the Petitioner shall move the  
Court for orders **THAT**:

1. This Application and the Petition filed herewith be certified as urgent and apt for hearing on a priority basis.
2. **THAT** in the interim and pending the hearing and determination of this Application, this Honourable Court be and is hereby pleased to issue a conservatory order temporarily directing the Respondent herein **HON. KENNETH MAKELO LUSAKA** to cater for the Petitioners'/Applicants' Pre-Natal and other expenses relating to the un-born child.

3. **THAT** in the interim and pending the hearing and determination of this Application and or suit, this Honourable Court be pleased to order and/or direct the Respondent herein **HON. KENNETH MAKELO LUSAKA** to make a monthly maintenance of kshs.200,000 to the Applicant herein **IRENE NASWA MUTAKI** to meet the direct or indirect needs of their unborn child.
4. **THAT** in the interim and pending the hearing and determination of this Application, the Respondent be and is hereby ordered to include the Applicant herein in his Medical Scheme to safeguard the welfare of the un-born.
5. **THAT** in the interim and pending the hearing and determination of this Petition, this Honourable Court be and is hereby pleased to direct the Respondent to cater for the Applicants' Pre-Natal expenses and other expenses relating to the un-born child.
6. **THAT** in the interim and pending the hearing and determination of this Petition, the Respondent be and is hereby ordered to include the Applicant herein in his Medical Scheme to safeguard the welfare of the un-born.
7. **THAT ALTERNATIVELY** and without prejudice to Prayer 3 above pending the hearing and determination of this Petition, the Respondent be and is hereby ordered to support the un-born child by making a Lump-sum Payment of **Twenty-Five Million Shillings (Kshs. 25,000,000/-)** or any other reasonable amount in the circumstance which should meet the direct and/or indirect needs of their unborn child and after its birth.
8. Costs be provided for.
9. Any other order that this Honourable Court may deem fit and just in the circumstances.

**WHICH APPLICATION** is based on the following grounds;

- a. **THAT** the parties herein have been having a jolly intimate affair punctuated with

several instances of unprotected carnal knowledge since the year 2018 up until about two months ago (May 2021) when they disagreed strongly after the Applicant herein disclosed to the Respondent that as a consequence of their unprotected sexual encounters, she had conceived a child.

- b. THAT** the cause of their disagreement was exacerbated by the Respondent's insistence on the Applicant to terminate the pregnancy, a proposal that the applicant declined to accede to and now she is three months pregnant and counting since she discovered that she was expectant of the Respondent's child as she has not been intimate with any other man other than the Respondent, a fact that can be confirmed through a prenatal Deoxyribonucleic Acid paternity test.
- c. THAT** the Respondent despite being a man of means, has refused, neglected and/or ignored to take care of the Applicant's Pre-natal Clinics necessary to ensure the wellbeing of the un-born child perhaps in the hope of stressing the Applicant and causing a miscarriage of their unborn child.
- d. THAT** the Applicant has been going through Pregnancy complications that potentially threaten the life of their unborn child if unmitigated and largely because she is unable to financially meet the cost of the hospitals that guarantee expectant women the highest standard of health commensurate to the class and statute of the Respondent.
- e. THAT** the Respondent defiant and brazen refusal to accept responsibility and assist the Applicant to access esteemed hospitals capable of giving her highest standard of prenatal care threaten the life of their unborn child and is therefore is in sharp contravention with the Constitutional safeguards of life which begins at conception.
- f. THAT** the Respondent's neglect of her responsibilities as the father of their unborn child yet he is a national figure whose wealth and riches is public knowledge is contumelious, deliberate and an affront to the unborn child's fundamental right to be born a live and healthy as the Applicant's risks suffering serious high blood pressure resulting to a condition known as preeclampsia, premature birth and

causing low birth weight in infants.

- g. THAT** the Respondent has consistently rejected his association with the Applicant's pregnancy despite his full knowledge that they have been having unprotected carnal knowledge together for years now instead of subjecting himself to a scientific examination in order to put his doubts to flight.
- h. THAT** the conduct and behavior of the Respondent of failing to maintain the Applicant and their unborn child by failing to meet the cost of the Applicant's prenatal care is inimical to the protection of the future of the Republic of Kenya and the Constitution which observes at its preamble that the Constitution is adopted and enacted for ourselves and the future generation(s).
- i. THAT** the Applicant being unemployed and the pregnancy being a high-risk one, and of a child that would possibly rise to the position of the Speaker of the Senate, the position its father has risen in the governance of the Republic of Kenya, or even higher in the leadership of this Country, her maintenance needs are of national importance and priority by all standards.
- j. THAT** unless this matter is disposed and determined on a priority basis and ex-parte orders granted on the principle of the best interest of the un-born child, irreparable damage and prejudice will be occasioned on the un-born child and or its mother the Applicant yet the cause of the pregnancy in question is a well to do individual that runs the risk of improperly mentoring young men to be irresponsible men and fathers.
- k. THAT** it is fair and just that the matter is disposed on an urgent basis and orders granted to enable the children grow up comfortably

Dated at **NAIROBI** this.....Day..... **2021**

.....



**MUSYOKI MOGAKA & COMPANY ADVOCATES**

**ADVOCATES FOR THE APPLICANT**

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**BETWEEN**

**IRENE NASWA MUTAKI .....PETITIONER/APPLICANT**

**VERSUS**

**HON. KENNETH MAKELO LUSAKA .....RESPONDENT**

**SUPPORTING AFFIDAVIT**

I, **IRENE NASWA MUTAKI**, of care of Post Office Box **57180-00200** Nairobi do hereby make oath and state as follows:

1. **THAT** I am a female adult of sound mind, the Petitioner/Applicant herein and well versed with the issues raised herein and thus competent to swear this affidavit.
  
2. **THAT** the Respondent and I have been having a jolly intimate affair punctuated with several instances of unprotected carnal knowledge since the year 2018 when we met up until about two months ago (May 2021).
  
3. **THAT** on/about **1<sup>st</sup> April 2021**, I met with the Respondent at his house in Nairobi and had unprotected carnal knowledge at the insistence of the Respondent and

discovered soon thereafter that I was expectant of his child.

4. **THAT** sometime in the month of May 2021, the Respondent and I disagreed strongly after I disclosed to the Respondent that as a consequence of our unprotected sex unprotected sexual encounters, I had conceived the Respondent's child.
5. **THAT** the cause of our disagreement was exacerbated by the Respondent's insistence that I terminate the pregnancy, a proposal that I vehemently declined to accede to and now I am three months pregnant and counting since I discovered that I was expectant of the Respondent's child as I have not been intimate with any other man other than the Respondent, a fact that can be confirmed through a prenatal Deoxyribonucleic Acid paternity test.
6. **THAT** ever since I broke the '*goodnews*' to the Respondent that we were going to have a child as a symbol of our love and care for each other, at least for the duration we have been intimate, I have faced negativity, rudeness, and disregard from the Respondent.
7. **THAT** the Respondent despite being a man of means, has refused, neglected and/or ignored to take care of my Pre-natal Clinics necessary to ensure the wellbeing of the un-born child perhaps to punish me and in the hope of stressing me and causing a miscarriage of our unborn child.
8. **THAT** I have been going through Pregnancy complications that potentially threaten the life of our unborn child if unmitigated and largely because I am unable to financially meet the cost of the hospitals that guarantee expectant women the highest standard of health commensurate to the class and statute of the Respondent.
9. **THAT** my Pregnancy complications threatening miscarriage of my un-born child have thus far made me incur a lot of finances all in an attempt to ensure its safety without the help of and at the irritation of the Respondent. (*Annexed*)

*herein & marked INM1 is a copy of the medical documents)*

10. **THAT** I have been advised by my advocates on record, **Mr. Danstan Omari, Mr. Shadrack Wambui and Miss Litty Kathurima** that the Respondent's defiant and brazen refusal to accept responsibility and assist me to access esteemed hospitals capable of giving me highest standard of prenatal care threaten the life of our honourable unborn child and is therefore in sharp contravention with the Constitutional safeguards of life as a fundamental right that begins at conception.
11. **THAT** I am aware that the Respondent's neglect of her responsibilities as the father of our unborn child yet he is a national figure whose wealth and riches is public knowledge is contumelious, deliberate and an affront to the unborn child's fundamental right to be born alive and healthy as I risk suffering serious high blood pressure resulting to a condition known as preeclampsia, premature birth and causing low birth weight in our expected infant.
12. **THAT** the Respondent has consistently rejected his association with my pregnancy despite his full knowledge that we have been having unprotected carnal knowledge together for years now instead of subjecting himself to a scientific examination in order to put his doubts to flight.
13. **THAT** the conduct and behavior of the Respondent of risking my life at child birth, failing to maintain me and their unborn child by failing to meet the cost of the Applicant's prenatal care is inimical to the protection of the future of the Republic of Kenya and the Constitution which observes at its preamble that the Constitution is adopted and enacted for ourselves and the future generation(s).
14. **THAT** I am unemployed and the pregnancy being a high-risk one, and of a child that would possibly rise to the position of the Speaker of the Senate as its father or even higher in the leadership of this Country, her maintenance needs are of national importance and priority by all standards.

**15. THAT** unless this matter is disposed and determined on a priority basis and ex-parte orders granted on the principle of the best interest of the un-born child, irreparable damage and prejudice will be occasioned on the un-born child and or its mother the Applicant yet the cause of the pregnancy in question is a well to do individual that runs the risk of improperly mentoring young men to be irresponsible men and fathers.

**16. THAT** I approached the Respondent to at least include me in his medical Cover to cater for the clinics and the pregnancy generally, however, he became rude and degraded me by indicating that he never buys houses and cars for women he only takes care for his children, which was an irony since all I wanted is for him to take care of his un-born child.

**17. THAT** the Respondent does not want anything to do with the pregnancy despite knowing he is the one responsible and he has incessantly showed no interest by failing to address the issue on how the un-born child and its mother will be cared for, protected and/ safeguarded or even giving emotional and/or financial support.

**18. THAT** being unemployed at the moment and the pregnancy being a high-risk one, my maintenance needs are way high and I have been struggling to meet them without any assistance whatsoever from the Respondent.

**19. THAT** the Respondent is the Current Speaker of the Senate in the Republic of Kenya who lives a high-end life and is not willing to offer his child the same kind of life which is a clear discrimination on the un-born child which is further against its constitutional rights.

**20. THAT** the Respondent whose term in office is almost coming to an end, ought to be compelled to make a lump sum payment of maintenance fees of the un-born child and other orders I have sought to cater for all its expenses to avoid further neglect and/or deprivation.

**21. THAT** it would serve the best interest of the minor to allow the application in the manner prayed herein as I have been advised by my Advocates on record, which advice I verily believe to be true that **Article 26 (2 & 3) of the Constitution of Kenya 2010** states as under:

***26 (2) the life of a person begins at conception.***

***26 (3) A person shall not deprive of life intentionally, except to the extent authorized by this constitution or other written law.***

**22. THAT** since the life of a person begins at conception, the un-born child herein has rights as enshrined in the 2010 Constitution of Kenya which ought to be safeguarded.

**23. THAT** I am further advised by my Advocates on record, , which advice I verily believe to be true that **Section 23 (1) of the Children Act 2001** provides that;  
***“In this Act, “parental responsibility” means all the duties, rights, powers, responsibilities and authority which by law a parent of a child has in relation to the child and the child’s property in a manner consistent with the evolving capacities of the child.”***

**24. THAT** therefore, the Respondent has responsibility over the un-born child which responsibility he has to take up to ensure its welfare is safeguarded before birth up until the minor is born and matures to the age of majority.

**25. THAT** I therefore pray that this Honorable Court compels the Respondent to contribute towards safe guarding the welfare of the un-born child by providing medical care and maintenance for its welfare.

**26. THAT** I pray that this Honorable Court awards me the prayers prayed for so that the un-born child will not be prejudiced by the Respondent’s ignorance, refusal and/or negligence of taking his parental responsibilities.

**27. THAT** I am advised by my advocates on record that it is proper in the circumstances for me to approach this court in the manner I have opted in order

to safeguard and protect the best interest of the un-born child herein.

**28.THAT** it would serve the best interest of the un-born child to allow the Application in the manner prayed herein.

**29.THAT** I pray that this Honourable Court exercises its powers bestowed upon it under Article 165 (2) and does find that the Respondent ought to provide and safeguard the constitutional rights of the un-born child.

**30.THAT** I pray that this Honourable Court be guided by the provisions of Article 47 of the Constitution of Kenya, 2010 on Fair Administrative Action and does grant me the prayers prayed for herein.

**REPUBLIC OF KENYA**

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**BETWEEN**

**IRENE NASWA MUTAKI .....PETITIONER/APPLICANT**

**VERSUS**

**HON. KENNETH MAKELO LUSAKA .....RESPONDENT**

**TO:**

**THE HIGH COURT OF KENYA AT NAIROBI**

**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**MILIMANI LAW COURTS.**

**THE HUMBLE PETITION OF IRENE NASWA MUTAKI, WHOSE ADDRESS OF SERVICE  
FOR PURPOSE OF THIS SUIT SHALL BE CARE OF: MUSYOKI MOGAKA & COMPANY  
ADVOCATES, UGANDA HOUSE, 4<sup>TH</sup> FLOOR, SUITE NO. 19 P.O. BOX 57180-00100**

## NAIROBI IS AS FOLLOWS:

### THE PARTIES

1. The Petitioner is a female adult of sound mind. His address of service for purpose of this suit shall be care of: ***MUSYOKI MOGAKA & COMPANY ADVOCATES, UGANDA HOUSE, 4<sup>TH</sup> FLOOR, SUITE NO. 19 P.O. BOX 57180-00100 NAIROBI.***
2. The Respondent is a male adult of sound mind residing in Nairobi County within the Republic of Kenya and works for gain as the Speaker of the Senate (***Service of process herein shall be effected upon the Respondent through the Petitioner's Advocates office.***)

### LEGAL FOUNDATION OF THE PETITION

3. **Article 2** emphasizes the Supremacy of this Constitution. It observes that the Constitution is the supreme law of the Republic and binds all persons and all State organs at both levels of government. (2) No person may claim or exercise State authority except as authorized under this Constitution.
4. **Article 3** obligates every person to come to the Defence of the Constitution (1) Every person has an obligation to respect, uphold and defend this Constitution.
5. **Article 10** obliges the Respondents herein to observe the national values and principles of governance as provided in the Constitution. The national values and principles of governance include inter alia the rule of law, human dignity, inclusiveness, human rights, good governance, social justice and participation of the people.
6. **Article 19(2)** observes that the purpose of recognizing and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings.
7. **Article 20** observes that the Bill of Rights applies to all law and binds all State



Organs and all persons. It further observes that every person is entitled to enjoy the rights and fundamental freedoms in the bill of rights to the greatest extent consistent with the nature of the right or fundamental freedom.

8. **Article 22** empowers everyone with the right 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.
9. **Article 23** empowers the court to grant appropriate reliefs including an order of compensation.
10. **Article 26** provides that the life of a person begins at conception.
11. **Article 27** provides that every person is equal before the law and has the right to equal protection and equal benefit of the law.
12. **Article 28** Every person has inherent dignity and the right to have that dignity respected and protected.
13. **Article 47** provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
14. **Article 48** provides that every person has the Right to access justice.
15. **Article 50(1)** provides Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.
16. **Article 53** provides for the rights of a child.
17. **Article 258(1)** provides that every person has the right to institute court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention.

18. Article 259(1) provides that This Constitution shall be interpreted in a manner that—(a) promotes its purposes, values and principles;

(b) advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights;

(c) Permits the development of the law; and

(d) Contributes to good governance.

19. Article 260, which stipulates on the context on interpretation.

### **FACTUAL BASIS OF THE PETITION**

21. **THAT** the facts of the Petition are as captured in the Petitioner's Supporting Affidavit and which have been briefly recaptured as under.

22. **THAT** the parties herein have been having a jolly intimate affair punctuated with several instances of unprotected carnal knowledge since the year 2018 up until about two months ago (May 2021) when they disagreed strongly after the Applicant herein disclosed to the Respondent that as a consequence of their unprotected sexual encounters, she had conceived a child.

23. **THAT** the cause of their disagreement was exacerbated by the Respondent's insistence on the Applicant to terminate the pregnancy, a proposal that the applicant declined to accede to and now she is three months pregnant and counting since she discovered that she was expectant of the Respondent's child as she has not been intimate with any other man other than the Respondent, a fact that can be confirmed through a prenatal Deoxyribonucleic Acid paternity test.

24. **THAT** the Respondent despite being a man of means, has refused, neglected and/or ignored to take care of the Applicant's Pre-natal Clinics necessary to ensure the wellbeing of the un-born child perhaps in the hope of stressing the Applicant

and causing a miscarriage of their unborn child.

25. **THAT** the Applicant has been going through Pregnancy complications that potentially threaten the life of their unborn child if unmitigated and largely because she is unable to financially meet the cost of the hospitals that guarantee expectant women the highest standard of health commensurate to the class and statute of the Respondent.
26. **THAT** the Respondent defiant and brazen refusal to accept responsibility and assist the Applicant to access esteemed hospitals capable of giving her highest standard of prenatal care threaten the life of their unborn child and is therefore in sharp contravention with the Constitutional safeguards of life which begins at conception.
27. **THAT** the Respondent's neglect of her responsibilities as the father of their unborn child yet he is a national figure whose wealth and riches is public knowledge is contumelious, deliberate and an affront to the unborn child's fundamental right to be born alive and healthy as the Applicant's risks suffering serious high blood pressure resulting to a condition known as preeclampsia, premature birth and causing low birth weight in infants.
28. **THAT** the Respondent has consistently rejected his association with the Applicant's pregnancy despite his full knowledge that they have been having unprotected carnal knowledge together for years now instead of subjecting himself to a scientific examination in order to put his doubts to flight.
29. **THAT** the conduct and behavior of the Respondent of failing to maintain the Applicant and their unborn child by failing to meet the cost of the Applicant's prenatal care is inimical to the protection of the future of the Republic of Kenya and the Constitution which observes at its preamble that the Constitution is adopted and enacted for ourselves and the future generation(s).

30. **THAT** the Applicant being unemployed and the pregnancy being a high-risk one, and of a child that would possibly rise to the position of the Speaker of the Senate, the position its father has risen in the governance of the Republic of Kenya, or even higher in the leadership of this Country, her maintenance needs are of national importance and priority by all standards.
31. **THAT** unless this matter is disposed and determined on a priority basis and ex-parte orders granted on the principle of the best interest of the un-born child, irreparable damage and prejudice will be occasioned on the un-born child and or its mother the Applicant yet the cause of the pregnancy in question is a well to do individual that runs the risk of improperly mentoring young men to be irresponsible men and fathers.

#### **THREATENED VIOLATIONS OF THE CONSTITUTION**

32. The Parties herein have previously been in an intimate affair and or involved in unprotected carnal knowledge.
33. That as a consequence of the Petitioner's and the Respondent's intimate affair, the Petitioner has since conceived a child that then requires of her to have frequent hospital visits for prenatal care.
34. That the prenatal care clinic for the unborn child is essential to the protection of the life of the Petitioner's unborn child but due to the employment status of the Petitioner and the neglect of the Respondent, the Petitioner is unable to religiously attend all the prenatal care to guarantee that the unborn child will be born alive and healthy.
35. That the Respondent being the father of the unborn child in question has refused to take up his responsibility, to support the Petitioner by providing for her and the needs of the minor.
36. That the Respondent's neglect of the needs of the Petitioner and their unborn child

potentially threatens the life of the unborn child as guaranteed under Article 26 of the Constitution as it exposes the Petitioner to complications and the unborn child to possible risk of death due to the Respondent's neglect and callousness.

**REASONS WHEREOF THE PETITIONER HUMBLY PRAYS FOR ORDERS THAT:**

- a. A declaration that the maintenance of an expectant woman is an integral part of the protection of the right to life of an unborn child.
- b. A declaration that pursuant to Article 26 of the Constitution, life of a person begins at conception and thus the Respondent as a father of an unborn child is under a constitutional obligation to provide for the unborn child and that the lack of provision or maintenance of the expectant Petitioner is a threat to the life of the Petitioner and that of the unborn child and thus amounts to a violation of Article 26 of the Constitution.
- c. A declaration do hereby issue that pursuant to Article 26(2) of the Constitution, the Respondent herein **HON. KENNETH MAKELO LUSAKA** is Constitutionally bound and obligated as the father of the unborn child, conceived by himself and the Petitioner, to take reasonable steps and precautions towards safeguarding, protecting and providing for the needs of his unborn child through the maintenance of the Petitioner herein **IRENE NASWA MUTAKI**.
- d. An order does hereby issue directing the Respondent herein **HON. KENNETH MAKELO LUSAKA** to take reasonable steps towards ensuring the protection and provision of the unborn child between the Respondent and the Petitioner by inter alia taking a medical cover in favour of the Petitioner herein and giving her a monthly maintenance of **kshs.200,000**.
- e. **ALTERNATIVELY** and without prejudice to Prayer d above an order does hereby issue directing the Respondent herein **HON. KENNETH MAKELO LUSAKA** to support the un-born child by making a Lump-sum Payment of **Twenty-Five Million Shillings (Kshs. 25,000,000/-)** or any other reasonable amount in the circumstance which should meet the direct and/or indirect needs of their unborn

child and after its birth.

- f. An order does issue directing the Respondent **HON. KENNETH MAKELO LUSAKA** to compensate the Petitioner for the threat to her right and/or that of her unborn child to life at a standard to be directed by the Honourable Court.
- g. An order Any other order that this Honourable court deems fit and just in the circumstances.
- h. Costs of this Petition and interest be provided by the Respondent at the court's rate.

Dated at **NAIROBI** this.....Day..... **2021**

.....  
**MUSYOKI MOGAKA & COMPANY ADVOCATES**  
**ADVOCATES FOR THE PETITIONER**

**DRAWN & FILED BY:**

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**TO BE SERVED UPON:**

**HON. KENNETH MAKELO LUSAKA**  
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**NAIROBI**