



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mairura v Moi Teaching and Referral Hospital & 2 others (Civil Suit 83 of 2012) [2022] KEHC 12264 (KLR) (27 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 12264 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CIVIL SUIT 83 OF 2012  
EKO OGOLA, J  
JULY 27, 2022**

**BETWEEN**

**CLIVE MAIRURA ..... PLAINTIFF**

**AND**

**MOI TEACHING AND REFERRAL HOSPITAL ..... 1<sup>ST</sup> RESPONDENT**

**MOI UNIVERSITY ..... 2<sup>ND</sup> RESPONDENT**

**UNIVERSITY OF ELDORET ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. By a motion dated March 16, 2022, the applicant seeks the following orders: -
  - 1) That this Honourable court makes a determination on who is liable to honour the outstanding Hospital bill of Kshs. 3,267,758/= incurred by the Plaintiff's son, who was a student of Moi University, Chepkoilel Campus.
  - 2) That an order for joinder of Moi University be granted for it to defend a claim of Kshs. 3,267,758/= being an outstanding Hospital bill incurred by the Plaintiff's son, who was a student of Moi University, Chepkoilel Campus.
  - 3) That an order for joinder of University of Eldoret be granted for it to defend a claim of Kshs. 3,267,758/= being an outstanding Hospital bill incurred by the Plaintiff's son, who was a student of Moi University, Chepkoilel Campus.
  - 4) That in the alternative, an order be granted compelling the University of Eldoret to pay the outstanding hospital bill of Kshs. 3,267,758/=.
  - 5) That in the alternative, leave be granted for the Applicant to amend its defence and counter-claim on account of liability on the part of Moi University and University of Eldoret.



- 6) That costs be in the cause.
2. The application is premised on the grounds on the face thereof and the supporting affidavit of Thomas Ngetich sworn on 1 March 7, 2022.

### **Applicant's Case**

3. The applicant's case is that in the year 2013, Chepkoilel University College was awarded a Charter and as result became to be known as the University of Eldoret. That following the award of Charter, the University of Eldoret retained all the rights, assets and liabilities that were previously under Chepkoilel University College.
4. The applicant deposed that on October 4, 2008 the Plaintiff's son Ekens Okemwa Mairura was at its facility after suffering a head on collision with another player while playing ruby for Moi University. That the said student was a student at Moi University Chepkoilel Campus pursuing a Degree in Wildlife Management.
5. The applicant maintains that on January 16, 2009, Moi University made an unequivocal written commitment to settle the patient's medical bills and directed that the bill be sent to its finance officer for settlement.
6. The applicant further deposed that the patient was treated and made tremendous improvement leading to his discharge on May 10, 2012. That up to the point of his discharged, the patient had incurred a total bill of Kshs. 10,192,869.00 and that invoices amounting to Kshs. 4,059,567.00 had been settled by Moi University.
7. The applicant contends that in a new turn of events Moi University vide a letter dated March 17, 2011 withdrew its commitment to honour any subsequent bills and directed that the same be sent to the patient's parents. That subsequently, the plaintiff declined to honour the invoices sent to and instead directed that the same were to be paid by Moi University. That in light of the foregoing the Plaintiff herein filed a Constitutional petition alleging the violation of the patient's right to health. The same was dismissed.
8. The applicant further deposed that on July 12, 2019 this instant suit and Miscellaneous Application No. 39 of 2012 were consolidated and referred to Court-Annexed Mediation. The mediation was partially successful and resulted in payment of Kshs. 2,886,544.00 by the University of Eldoret through Moi University. According to the applicant the handing over report of the assets and liabilities between Moi University and the University of Eldoret that was tabled during the mediation sessions indicated that the University of Eldoret had taken over the liability of the outstanding medical bill of Kshs. 2,886,544/= owed to the hospital as at September 30, 2011 for the treatment of the patient.
9. The applicant further contends that since Kshs. 2,886,544/= was paid to the hospital, none of the two universities is committed to settling the outstanding bill of Kshs. 3,267,758/=
10. According to the applicant the report of the Special Audit Assignment on the Handing Over/Taking Over of Chepkoilel College from Moi University indicates that the liability of the medical bill incurred by the patient lies with the University of Eldoret. The applicant further deposed that the report acknowledges that Moi University acted in the best interest and welfare of the patient by covering his medical expenses and further recommended that the University of Eldoret foots the unpaid bills and any other subsequent bills that was to be incurred by the student before discharge as part of the liabilities to be taken over as per the Presidential Legal Order No. 4. The Applicant further deposed that vide the letter dated February 25, 2014 the former Principal Secretary, Ministry of Education, Science



and Technology wrote to the then Vice Chancellor of Moi University directing him to take actions on the recommendations of the report but no action has been taken to settle the subsequent bills,

11. The applicant contends that unless the two universities are enjoined to these proceedings then it stands to lose Kshs. 3,267,758/=.

### **The 1<sup>st</sup> Respondent's Case**

12. The 1<sup>st</sup> respondent opposed the application and relied on the Replying Affidavit sworn on April 25, 2022 by Petrolina C. Chepkwony. The 1<sup>st</sup> respondent's case is that the claim by the applicant is barred by the Limitation of Action's Act. The 2<sup>nd</sup> defendant further deposed that this application has been brought in bad faith as the orders sought herein are meant to defeat the ongoing proceeding in Eldoret Misc Application No. 39 of 2012. The 2<sup>nd</sup> defendant further contends that issues sought to be addressed in the instant suit are issues that have already been deliberated upon in the aforementioned suit. The 1<sup>st</sup> respondent further maintains that the applicant herein has been a very active participant in the said proceedings.
13. The 1<sup>st</sup> respondent further deposed during the mediation hearings that it is on record that the applicant had indicated its willingness to forego the entire amount of Kshs. 3,267,758/=.
14. The 1<sup>st</sup> respondent opposes the application for joinder and proposes that Court consolidates the two matters in order to make a final determination on the issues therein.
15. The 1<sup>st</sup> respondent's case is that although the plaintiff's son Ekens Mairura was a student of Chepkoilel University College a constituent College of Moi University at the time. Chepkoilel University College overtime became a fully fledged university, separate and distinct by operation of law from Moi University. The 1<sup>st</sup> respondent contends in view of the foregoing, the claim for payment of medical bills for the plaintiff's son became the business of the University of Eldoret.
16. The 1<sup>st</sup> respondent maintains that the applicant has so far received Kshs. 6,926,111/= being Kshs. 4,054,567/= paid by it and Kshs. 2,866,544/= paid during the mediation sessions by University of Eldoret.

### **The 2<sup>nd</sup> Respondent's Case**

17. The 2<sup>nd</sup> respondent opposed the present application and relied on the Replying Affidavit by Prof. Wilson Ng'etich, the Deputy Vice Chancellor, University of Eldoret sworn on April 1, 2022.
18. The 2<sup>nd</sup> respondent contends that the cause of action herein arose before it came into existence and as such there was no contractual capacity to engage on its part. The 2<sup>nd</sup> respondent further contends that the applicant cannot therefore assign any contractual liability to it as there is no basis for the same.
19. The 2<sup>nd</sup> respondent contends that the cause of action arose on October 4, 2008 and at the time it was not in existence and only came into existence as a corporate entity upon being granted a Charter on February 11, 2013. The 2<sup>nd</sup> respondent maintains that it is not possible to assign obligations under contract from the original contracting party to a third party.
20. The application was canvassed by way of written submissions.

### **Determination**

21. I have considered the application, parties' respective responses thereto, the submissions filed by the parties as well as the authorities relied on. The only issue for determination is whether the orders sought



can be issued? It is clear that for a just and proper determination of issues at hand, Moi University and University of Eldoret should be joined to these proceedings. Accordingly prayer 2 and 3 of the motion are allowed. Prayer No.5 for leave to amend the defence and counter-claim is also allowed. Prayer Nos. 1 and 4 will be determined in a viva voce hearing of the suit.

22. Parties to bear own costs of the application.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 27<sup>TH</sup> OF JULY 2022.**

**E. K. OGOLA**

**JUDGE**

