



**Waika v Vimak Dental Centre Limited (Constitutional Petition E260 of 2020)  
[2022] KEHC 13219 (KLR) (Constitutional and Human Rights) (30 September 2022) (Judgment)**

Neutral citation: [2022] KEHC 13219 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS  
CONSTITUTIONAL PETITION E260 OF 2020**

**AC MRIMA, J**

**SEPTEMBER 30, 2022**

**BETWEEN**

**RODGERS WAIKA ..... PETITIONER**

**AND**

**VIMAK DENTAL CENTRE LIMITED ..... RESPONDENT**

**JUDGMENT**

1. The petition subject of this judgment was instituted as a result of the refusal by the respondent herein to avail the petitioner's medical treatment notes.
2. Through a replying affidavit sworn by one Caroline Njeri on behalf of the respondent, it was deposed in paragraph 8 of the said affidavit, that the respondent was not prepared to avail the medical records for the petitioner as they were the property of the respondent.
3. The respondent instead posited that had the petitioner requested for a medical report then the respondent would have availed such at the rates as determined by the Kenya Medical Practitioners and Dentist Board.
4. Be that as may, when the matter came up in court for highlighting of submissions, Counsel for the respondent Miss Wangui, indicated to the court that the respondent was willing to avail the medical treatment notes sought by the petitioner at the rates as determined by the Kenya Medical Practitioners and Dentist Board.
5. The offer made by the respondent through Counsel came at the tail-end of the proceedings. Had the respondent done so earlier, it would have, not only saved on the limited judicial time, but also on costs.



6. Having said so, this court must point out that under article 35(1)(b) of the Constitution and the provisions of the Access to Information Act, No 31 of 2016, the respondent, unless it demonstrated to the contrary, was obligated to avail the medical records.
7. A comprehensive discussion on the article 35 rights and the limitations thereof were made in Nairobi High Court Constitutional Petition No 412 of 2019 Paragon Electronics Limited versus Njeri Kariuki. The decision was rendered in March 2021.
8. Having offered to avail records as sought, albeit late in the day, it can only be deduced that the respondent did not have any plausible reason to, in the first instance, decline the request.
9. Without much ado, this court finds that respondent, in refusing to avail the petitioner's medical records without any holding ground, violated the petitioner's right of access to information guaranteed in article 35(1)(b) of the Constitution.
10. As costs follow the event, so shall it be in this matter.
11. As I come to the end of this judgment, I must profusely apologize for its late delivery. The delay was mainly occasioned by the number of election-related matters which were filed in the Constitutional and Human Rights Division from December 2021. From their nature and given that the country was heading to a general election, the said matters had priority over the rest, hence, the delay.
12. In the end, the petition is hereby determined in the following manner: -
  - a. A declaration hereby issue that the failure by the respondent to provide the information sought by the petitioner is a violation of the petitioner's right of access to information guaranteed in article 35(1)(b) of the Constitution.
  - b. An order of mandamus hereby issue directing the respondent to forthwith avail the petitioner's medical records or certified copies thereof at the respondent's cost.
  - c. The costs of the petition to be borne by the respondent.

**DELIVERED, DATED AND SIGNED AT KITALE THIS 30<sup>TH</sup> DAY OF SEPTEMBER, 2022**

**A. C. MRIMA**

**JUDGE**

Judgment virtually delivered in the presence of:

Mr. Ayieko, Counsel for the Petitioner.

Miss. Wangui, Counsel for the Respondent.

Kirong/Benard – Court Assistants.

Judgment – Nairobi High Court Constitutional Petition No. E260 of 2020 Page 3 of 3

