



REPUBLIC OF KENYA

IN THE HIGH COURT OF AT NAIROB

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. E293 OF 2021

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES
25, 28, 29 & 39 OF THE CONSTITUTION**

AND

IN THE MATTER OF ARTICLES 13 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

BETWEEN

FELISTUS NZISA KIOKO.....PETITIONER

VERSUS

MEDIHEAL HOSPITAL (PARKLANDS) LIMITED.....RESPONDENT

RULING

APPLICATION

1. The Applicant/Petitioner through a Notice of Motion dated 27th July 2021 seek the following orders;-

a. Spent.

b. Spent.

c. That a mandatory injunction do issue directing he Respondent to unconditionally release the Petitioner from Mediheal Hospital, Parklands pending hearing and determination of this Petition.

d. That costs of the application be provided for.

2. The Application is supported by an Affidavit of Felistus Nzisa Kioko, the Petitioner /Applicant and on several grounds set out, on the face of the application.

3. The Petitioner / Applicant was working at Quiver Lounge along Thika Road as a Waiter between April 2021 and 2nd July 2021, whereby she was shot in the stomach by one of the revellers and was rushed to Mediheal Hospital, Parklands, the Respondent herein.

4. The Petitioner was admitted at the Respondent's facility on 3rd July 2021 until 15th July 2021 when she was discharged, but could not be released due to non-payment in full of the medical bill that stood at Kshs.1,110,774 out of which she was able to pay Kshs.210,000/-.

5. It is Petitioner's case that she is currently illegally detained by the Respondent pending settlement of the outstanding debt. The Petitioner's counsel meanwhile issued a demand letter to the Respondent seeking immediate release of the Petitioner vide a letter dated 26th July 2021 from the unlawful detention but was surprised when the Respondent treated this matter casually and referred the issue to debt collector.

6. The debt collector vide a letter dated 26th July 2021 admitted that the Petitioner, being a patient at the Respondent's hospital had been discharged but the facility was still detaining her.

RESPONDENT'S RESPONSE

7. The Respondent is opposed to the application and relies on Replying Affidavit by Erick Musoka Musonye, the Credit and Debit Officer of the Respondent, sworn on 30th July 2021.

8. It is noted that the Respondent Counsel urges the application is premature as the Petitioner has not been discharged and is still undergoing treatment. It is further stated that there is no Medical Summary Discharge Note duly issued by the hospital and in absence, whereby it is urged that the Petitioner remains a patient at the hospital and is continuing to be provided with medical care as a patient.

9. The Respondent further contended that on 15th July, 2021, the Respondent released a provisional medical bill to the Applicant for settlement as treatment continues. The Bill is marked as annexure FNK-1 to the Applicant's Supporting Affidavit sworn on 27th July 2021. It is noted that out of the Bill, the Applicant has only raised Two Hundred and Ten Thousand (Kshs.210,000/=). It is further averred that the Applicant has refused to settle the Bill or to give any form of security even as the Respondent Hospital continues to commit resources, at its own expense, to its own detriment, to treat the patient in compliance with its duty to ensure the right to life of the Applicant is protected and in response to the Hippocratic oath whose consequence is that you cannot just discard a patient because of lack of money.

10. The Respondent additionally contended that on ground of refusal to pay, the Respondent Hospital appointed a debt collector to follow up to ensure payment of the provisional medical bill. This was done to enable the Respondent Hospital to concentrate on its core mandate of providing medical attention to the Applicant and other patients to avoid its staff from being bogged down with debt issues.

ANALYSIS AND DETERMINATION

11. I have carefully considered the application, grounds of opposition, and counsel rival submissions and from the aforesaid the issue for consideration in this application is one thus:-

a. Whether the Petitioner/Applicant has met the threshold for granting of the orders sought.

12. It is trite that for conservatory orders to be granted in an constitutional Petition the Applicant is required to demonstrate a prima facie case with likelihood of success and that unless the Court grants such orders there is real danger that the Applicant will be prejudiced by refusal to grant the orders.

13. The Applicant/Petitioner aver that she was discharged from the hospital on 15th July 2021 but was not released as she could not settle the bill, that was outstanding thus forced her counsel to issue demand letter dated 26th July 2021 demanding her immediate release from the unlawful detention. The Respondent referred the issue thereto to a Debt Collector, who wrote a letter to Petitioner's Counsel "FNK2" and under (a) and (b) in the letter stated:-

a. Your client/patient was admitted to facility on 3rd July, 2021 whereby she received treatment and accumulated a bill totalling to KES 1,110,774/= (Kenya Shillings One Million One Hundred and Ten Thousand Seven Hundred and Seventy Four only) by 15th July, 2021 thereafter she was discharged. Upon discharge your client's family or relative made an oral promise to settle the medical bill which had accrued to the Hospital by then, but failed or refused or neglected or avoided – to – do so. The delay for her release after the discharge was occasioned by their false promise or failed to pay the outstanding medical bill.

b. Our client communicated to your client/patient and her family members on the terms of securing her immediate release but the patient's relatives or family refused or evaded.

14. From the Petitioner's affidavit and Respondent's Debt Collector's letter dated 26th July 2021, I find that there is no denial of the Petitioner/Applicant was discharged and that is contrary to Respondent's Counsel submissions, which are clearly contradicted by the Debt Collector's letter under paragraph (a) and (b) talking about discharge of the Petitioner/Applicant.

15. The Applicant/Petitioner has demonstrated that she has a prima facie case with likelihood of such as regards violation or threat of her fundamental rights as provided under the Bill of Rights.

16. I find that under **Article 23(3)(a) – (f)** in any proceedings brought under **Article 22** a Court may grant appropriate relief.

Article 23 of the Constitution provides:-

"23. (1) The High Court has jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.

(2)

(3) In any proceedings brought under Article 22, a court may grant appropriate relief, including—

a) a declaration of rights

b) an injunction;

c) a conservatory order;

d) a declaration of invalidity of any law that denies, violates, infringes, or threatens a right or fundamental freedom in the Bill of Rights and is not justified under Article 24;

e) an order for compensation; and

f) an order of judicial review.”

17. From the aforesaid I may satisfied that he Petitioner/Applicant has demonstrated that she has a prima facie case with likelihood of success. I find as the Petitioners Bill of Rights have been shown to be under threat or likely to have been violated and is under threat of being violated following her discharge from the hospital but continues to be detained on basis of unpaid medical bill I find the order sought ought to be granted as declining to do so would result to Petitioner's/Applicant's rights being violated and/or prejudiced.

18. *The upshot is that the application succeeds and I proceed to grant the following orders:-*

a. A mandatory injunction be and is HEREBY issued directing the Respondent to unconditionally release the Petitioner from Mediheal Hospital, Parklands, pending hearing and determination of the Petition herein.

b. Costs of the application to abide the outcome of the Petition.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 5TH DAY OF AUGUST, 2021.

.....

J. A. MAKAU

JUDGE OF THE HIGH COURT OF KENYA