



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI (MILIMANI LAW COURTS)

Petition 407 of 2012

ISAAC NGUGI.....PETITIONER

AND

THE NAIROBI HOSPITAL.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

THE MINISTER FOR MEDICAL SERVICES.....3RD RESPONDENT

RULING

1. The Chamber Summons coming up for hearing today is dated 14th September 2012 and it seeks an order that the cadaver of Elizabeth Mary Wamaitha Ngugi (the deceased) be released by the Nairobi Hospital.
2. It is not in dispute that the deceased was ailing, prior to her death and had been hospitalised for some time. It is also not in dispute that the hospital bill had accumulated to a sum of at least Kshs.6,728,077/= as at 21st June 2012.
3. I have read the various depositions filed by the parties and heard the various concerns raised by each party and in my view the death of a loved one is always a sensitive matter. In this case, I have to balance the rights of the petitioner to have his mother accorded a dignified burial within a reasonable time and the right of the hospital to expect payment of hospital bills which the petitioner had undertaken to settle.
4. Both parties agree that the deceased's property namely LR No. 330/354 is a suitable security for the bill that is due. The petitioner's advocate has also indicated that a sum of Kshs.2,000,000/= will be paid within the next four days to secure the release of the body of the deceased.
5. I have taken all these issues into account in fashioning appropriate relief as required by **Article 23** of the Constitution. In the circumstances, I now make the following order:

(1) A prohibitory order be and is hereby issued by this court in respect of LR No. 330/354 in the name of Elizabeth Mary Wamaitha Ngugi to secure the sum of Kshs.6,700,000/= due to the NAIROBI HOSPITAL and the said order shall take priority over any other encumbrances on the suit property and any dealings of the property shall be subject to the orders /directions of this

court.

- (2) The petitioners or any of his agents shall pay to the Nairobi Hospital a sum of Kshs.2,000,000/= within the next four days whereupon the Hospital shall release the body of Elizabeth Mary Wamaitha Ngugi to the petitioners or his appointed representatives.**
- (3) Either party shall have liberty to apply for further and other orders.**
- (4) The parties shall agree on the final sum due to the hospital within the next 21 days.**
- (5) There shall be a mention on 26th October 2012 for further orders, directions or record a settlement.**

DATED at NAIROBI this 20th day of September 2012.

D.S. MAJANJA

JUDGE

Mr N. Kibanya with him Mr Kamau instructed by Kibanya and Kamau Associates Advocates for the petitioner.

Mr K. Kimani instructed by Hamilton Harrison and Mathews for the 1st respondent.

Mr S. Wamotsa, Litigation Counsel, instructed by the State Law Office for the 2nd and 3rd respondent.