



Bett & another v Recovery Trails Treatment Centre (Petition E001 of 2025) [2025] KEHC 5659 (KLR) (5 May 2025) (Ruling)

Neutral citation: [2025] KEHC 5659 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAHURURU
PETITION E001 OF 2025
LN MUTENDE, J
MAY 5, 2025**

BETWEEN

NELSON BETT 1ST PETITIONER

DOUGLAS BETT 2ND PETITIONER

AND

RECOVERY TRAILS TREATMENT CENTRE RESPONDENT

RULING

1. The Applicants herein filed a Notice of Motion dated 17th March, 2025, seeking orders thus;
 1. Spent.
 2. That this Honourable Court be pleased to issue an order directing the immediate, unconditional and unimpeded release of the 2nd Applicant from the unlawful detention at the Recovery Trails treatment Centre pending the hearing and determination of this application and Petition.
 3. That this Honourable Court be pleased to issue a conservatory order restraining the Respondents, their agents, servants, employees, or any other persons acting on their behalf from unlawfully detaining, threatening, or in any other manner interfering with the fundamental rights and freedoms of the 2nd Petitioner pending hearing and determination of this application and Petition.
 4. That costs of this application be provided for.
2. The application is premised on grounds that;



- a. The illegal and unconstitutional detention of the 2nd Petitioner by the Respondent, Recovery Trails Treatment Centre, is a violation of his fundamental rights and freedoms as protected by Articles 28, 29,39,47 and 50 of *the Constitution* of Kenya,2010.
 - b. The Respondent's action of detaining the 2nd Petitioner without his consent or lawful authority amount to unlawful deprivation of his freedom and dignity.
 - c. The fraudulent and extortionist demands made by the Respondent are not only illegal but also unconscionable and unjust.
 - d. The Respondent's actions constitute an infringement of the 2nd Applicant's right to freedom and security of the person, protection from cruel, inhuman, and degrading treatment, and the right to administrative action that is lawful, reasonable and procedurally fair.
 - e. That the recent court precedents have declared the illegal detention of patients as unconstitutional and therefore unlawful.
 - f. It is in the interest of justice and fairness that the Honourable Court intervenes and grants the relief sought.
 - g. A petition like this one should not be rendered moot because the court has the jurisdiction, power and duty to determine whether a right or fundamental freedom in the Bill of rights has been denied, violated, infringed or threatened under Article 165(b) of *the Constitution*.
3. The application is supported by an affidavit deposed by Nelson Bett, the 1st Applicant and father to the 2nd Applicant who avers that on the 24th day of October 2024, he admitted his son, the 2nd Applicant to the Respondent for treatment as he was suffering from addiction issues; Upon admission, the Respondent's representative, Madam Elizabeth, insisted that the 2nd Applicant undergoes a four(4) month treatment plan instead of the three (3) months he had initially proposed; She tore the initial admission form and prepared a new form compelling him to agree to a four (4) month treatment plan at a cost of Ksh. 35,000/- per month, making a total of Ksh. 140,000/- plus an additional Ksh.30,000/-
 4. That the 1st Petitioner was forced to pay a further Ksh.9500/-for retreat, Ksh. 1500/- for G-book and Ksh.680- for T-shirt, making the total Ksh. 181,980/-.
 5. That on 27/11/2024 he was informed by Madam Elizabeth that the 2nd Petitioner did not require any medication, a fact confirmed by the 2nd Petitioner. That notwithstanding he was presented with a bill of Ksh.57,880/- with a threat of increasing the bill to Ksh. 92,880/- if not settled before 01/03/2025. This was following an allegation that the 2nd Petitioner was put on very expensive drugs.
 6. That the continued detention of the 2nd Petitioner is illegal, unconstitutional, and, a violation of the fundamental rights under Articles 28,29,39,47, and 50 of *the Constitution* of Kenya,2010; detention of patients has since been declared unconstitutional and unless the court intervenes the 2nd Petitioner will continue to suffer mental anguish.
 7. The Respondent did not file a response.
 8. In submissions in support of the Notice of Motion, it is urged that the 2nd Applicant was admitted in hospital as a recovering addict. That upon completion of the intended rehabilitation period and despite requests for his release, the Respondent refused on grounds of an alleged outstanding balance.
 9. That conduct of the Respondent is a clear contravention of the law and *the constitution*. This is because Article 29(j) prohibits detention without a trial; Article 39(f) guarantees every person the right to freedom of movement; Article 47(1) entitles every person the right to freedom of movement; Article



28 guarantees inherent dignity and the right to have dignity respected and protected, and, that Article 50(1) guarantees the right to a fair hearing, which includes due process.

10. That the Respondent has not obtained any order to sanction him to detain the 2nd Petitioner, which detention amounts to false imprisonment, actionable both constitutionally and under common law. Reliance in this respect is placed on the case of *Gideon Kilundo & Daniel Kilundo Mwenga v Nairobi Women’s Hospital* [2018] KEHC 9455 (KLR) where the High Court stated that:

“From the wording of the undertaking that was made by 1st petitioner to settle the hospital bills, I do not find that there was any clause to the effect that failure to settle the bill will result in detention of the patient. What is evident, from the said undertaking, is that the two parties entered into a contractual relationship in which the petitioners have failed to fulfil their end of the bargain. Under those circumstances, the respondent is at liberty to pursue the petitioner for the debt within the confines of the law governing the recovery of debts. I am not convinced that an illegal detention of a patient is one of the avenues for the recovery of a debt within our legal system, because the question which will arise is for how long the hospital will be expected to hold the patient. My take is that this is a classic example of a scenario where two wrongs will not make a right. In as much as the respondent is aggrieved by the failure by the petitioners to settle their debt. I find holding the patient is not one of the acceptable avenues or the debt recovery. Perhaps the respondents should relook at its debt recovery policy and admission of patients so as to avoid outcomes such as the one before the court.”

11. And in *Kinoru v Labib Hospital* (Petition E512 of 2021) [2025] KEHC 209 (KLR) (Civ) (22 January 2025) (Judgment) where the High Court stated that:

“The Petitioner was held in the hospital set up where he had been treated before and healed. I presume therefore that the living conditions were not bad. In any case, there was no evidence that the living condition was deplorable. It is also fact that he had actually incurred the medical bill of which he was unable to pay.

40. Having regard to the foregoing, I grant the following reliefs:

- a. A declaration that the petitioner was unlawfully detained at the respondent’s hospital in violation of Articles 28, 29 (a) and 39 of *the Constitution*.
- b. The Petitioner is awarded eight hundred thousand shillings (Kshs. 800,000.00).
- c. Costs of this Petition....”

12. I have considered the application, the supporting affidavit and annexures thereto, together with submissions. To grant orders sought it behoves the Petitioners to demonstrate existence of an arguable case. In the case of *Centre for Rights Education & Awareness(CREAW)& Another v Speaker of the National Assembly & 2 Others* (2017) eKLR the Court held that;

“..A party who moves the court seeking conservatory orders must show to the satisfaction of the court that his or her rights are under threat of violation, are being violated or will be violated and that such violations, or threatened violation is likely to continue unless a conservatory order is granted. This is so because the purpose of granting a conservatory



order is to prevent the violation of rights and fundamental freedoms and preserve the subject matter pending the hearing and determination of a pending cause or petition.”

13. In *Kevin K. Mwiti & Others v Kenya School of Law & 2 others* [2015] KEHC 2294 (KLR). The High Court stated that:

“.. In the first issue for determination is whether the petitioner has established a prima facie case. A prima facie case, it has been held, is not a case which must succeed at the hearing of the main case. However, it is not a case which is frivolous. In other words, the petitioner has to show that he or she has a case which discloses arguable issues and in this case arguable constitutional issues. It has been held that in considering an application for conservatory orders, the court is not called upon to make any definite finding either of fact or law as that is the province of the court that will ultimately hear the petition. At this stage the applicant is only required to establish a prima facie case with a likelihood of success.”

14. The remedy sought herein is an equitable remedy that requires the Applicant to demonstrate that the Respondent should desist acting in a specific way as alleged; and, if the order sought is granted the subject matter will be preserved so as to be determined at the hearing of the petition. Although the application is unopposed, the Applicant is duty bound to demonstrate that considering principles of fairness and justice, damages would be insufficient to resolve the dispute in issue. I must therefore interrogate whether a prima facie exists?

15. A prima facie case was defined by the Court in *Mrao v First American Bank Ltd & 2 others* (2003) KLR 125 as follows:

“So what is prima facie case? I would say that in civil case it is a case in which on the material presented to the court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter”.

16. In *Board of Management of Uhuru Secondary School v. City County Director of Education & 2 Others* [2015] eKLR it was stated that:

“25. Foremost, the applicant ought to demonstrate a prima facie case with a likelihood of success and that in the absence of the conservatory orders he is likely to suffer prejudice....

26. It is in my view not enough to merely establish a prima facie case and show that it is potentially arguable. Potential arguability is not enough to justify a conservatory order but rather there must also be evident a likelihood of success. The prima facie case ought to be beyond a speculative basis....

28. Once the applicant has established to the court’s satisfaction a prima facie case with a likelihood of success the court is then to decide whether a grant or a denial of the conservatory relief will enhance the Constitutional values and objects of the specific right or freedom in the Bill of rights....

29. Thirdly, flowing from the first two principles, is whether if an interim Conservatory order is not granted, the petition or its substratum will be rendered nugatory. It is indeed the business of the court to ensure and secure



so far as possible that any transitional motions before the court do not render nugatory the ultimate end of justice....

30. The fourth principle which emerges from the various cases and is well captured by the Supreme Court of Kenya in the case of Gatirau Peter Munya –v- Dickson Mwenda Githinji & 2 Others [2014] eKLR is that the court must consider conservatory orders also in the face of the public interest dogma.
 31. Finally, the court is to exercise its discretion in deciding whether to grant or deny a conservatory order. The court must consequently consider all relevant material facts and avoid immaterial matters. The court will consider the applicants credentials, the prima facie correctness of the availed information, whether the grievances are genuine legitimate and deserving and finally whether the grievances and allegations are grave and serious or merely vague and reckless.”
17. The 2nd Applicant herein was taken to the Respondent, a substance recovery centre where an agreement was entered into. The 1st Applicant signed the agreement on the following terms:
- “ 1. I am responsible for the payment of Total fees of Ksh.140,000/-
 2. I hereby pay non-refundable fee deposit of Ksh.20,000/- on this 24/10/2024. NB-To pay 15,000 on 20/10/24.
 3. I anticipate to pay the final instalment of Ksh.120,000/- on or before January 2025.
 4. I will be ready to face any legal procedures against me in case of my failure to adhere to this agreement.
 5. I NOTE THAT the change of normal program to special program changes the payment charges. (Emphasis mine)
 6. I am ready and willing to support all other aspects of Douglas Treatment at Recovery Trails.....”
18. The agreement was duly signed. It is argued that the 2nd Applicant has been detained, an act that is unlawful and unconstitutional. I have considered authorities cited which are in respect of applicants who were hospitalised following physical illnesses and injuries sustained. They were taken to hospital and admitted as patients hence registered to receive medical treatment. Such a patient as rightly argued has rights grounded under *the constitution* including access to health care emergency treatment.
19. In contrast, the 2nd Applicant was taken to a substance addiction recovery centre which focusses on treatment and rehabilitation of substance use disorders that is not a government establishment, which focuses on medical detox, counselling and family behavioural therapies to support recovery (See documents attached).
20. It is apparent that this is not a constitutional issue but a contractual one. Following the agreement signed, each party had responsibilities to fulfil, obligations that are legally enforceable that arise from the specific terms of the contract. In case of breach, the other party should seek compensation by way of damages as the agreement entered into is governed by the law of contract. For reasons given, I find the Applicants having not advanced an arguable case requiring grant of conservatory orders.



21. In the result, I find the application having no merit hence it is hereby dismissed with no orders as to costs.

22. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 5TH DAY OF MAY, 2025.

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L.N. MUTENDE

JUDGE

