



**Kiawa v Coptic Hospital (Petition E309 of 2024) [2025] KEHC 8343 (KLR)
(Constitutional and Human Rights) (11 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8343 (KLR)

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

PETITION E309 OF 2024

EC MWITA, J

JUNE 11, 2025

BETWEEN

EVERLINE KATUNGE KIAWA PETITIONER

AND

COPTIC HOSPITAL RESPONDENT

JUDGMENT

Petitioner's case

1. The petitioner filed this petition dated 25th June 2024 against the respondent claiming violation of rights and fundamental freedoms. The petition was supported by an affidavit of the same day. Also filed on the same day, was a notice of Motion seeking conservatory order directing the respondent to release the baby (NNM) who had been detained at the respondent's facility. The petition was also supported by written submissions.
2. The facts giving rise to this litigation, were that on 20th April 2024, the petitioner was admitted at the respondent's medical facility for medical attention after experiencing pregnancy complications in her seven-month pregnancy. Since there was nationwide doctors' strike, only the respondent's facility was willing to admit on the condition that she had to raise a deposit of Kshs. 45,000, which she did after considerable distress.
3. The petitioner gave birth prematurely and the baby had to be taken to the incubator for care. The petitioner was later discharged but the baby remained in an incubator until 27th May 2024 when it was discharged. The petitioner was however discharged but MNM was discharged on 27th May 2024 after achieving the medically recommended weight of 2kg. however, the respondent declined to release the baby due to an outstanding medical bill. The baby remained in the respondent facility until 8th July 2024 when the court ordered that the baby be released.



4. The detention of the baby not only caused the bill to exponentially increase; but also forced the petitioner to commute daily to the hospital during the day to nurse the baby using a hired vehicle at a cost of Kshs. 69,000. The baby was eventually released on 8th July 2024 after the court issued an order directing the respondent to release the baby.
5. The petitioner stated that she and her family had tried and paid up to Kshs. 345, 172 when the bill stood at kshs. 981,472 by 27th May 2024 but the respondent maintained that the entire bill had to be paid before the baby could be released. Due to the detention of the baby, the bill had risen to more than Kshs. 1,000,000.
6. The petitioner blamed the respondent for refusing to accept payment through the petitioner's National Hospital Insurance Fund (NHIF) on grounds that the respondent did not accept the NHIF cover, thereby imposing undue financial burden on her. The petitioner also maintained that the respondent's financial record was inaccurate and did not reflect the full extent of payments so far made. The respondent further rejected any form of collateral or alternative payment arrangements.
7. The petitioner asserted that due to the baby's unlawful detention for 43 days she suffered acute stress disorder. The detention was also in violation of their rights and fundamental freedoms guaranteed under Articles 25(a), 27, 28, 29 (a), 39(1) and 43(1)(a) of *the Constitution*.
8. The petitioner relied on the decisions in *Sonia Kwamboka Rasugu v Sandalwood Hotel & Resort Limited T/A Paradise Beach Resort & Leon Muriithi Ndubai* [2013] eKLR and *Tryphosa Jebet Kosgey v Elgon View Hospital* [2016] eKLR to support the position that their rights and fundamental freedoms were violated.
9. The petitioner again argued that her parental rights and those of the baby guaranteed under article 53 (1) (d) and (e) of *the Constitution* were violated when the respondent refused to allowed the petitioner to stay in hospital overnight with the baby. Relying on the decision in *Jacqueline Okeyo Manani & 5 others v Attorney General & another* [2018] eKLR, the petitioner argued that the refusal to allow her stay overnight and declining to offset payments using the NHIF insurance, the respondent's action amounted to discrimination in violation of article 27 of *the Constitution*.
10. The petitioner maintained that the continued detention of the baby forced her to beg from relatives and friends in order to raise funds to enable her have the baby released further violating her right to dignity. The petitioner asserted that continued detention of the baby violated her rights guaranteed under articles 29(a) and 39 (1) of *the Constitution*.
11. The petitioner took the view, that owing to these violations, she is entitled to compensation both in general and exemplary damages. Reliance was placed on the decision in *Sonia Kwamboka Rasugu v Sandalwood Hotel & Resort Limited* (supra) to support a claim for general damages of Kshs.10,750,000. The petitioner again relied on the decision in *Obongo v Kisumu Municipal Council* [1971] EA 91 to support the position that she was entitled to exemplary damages.
12. Based on the above facts and arguments the petitioner sought the following declarations on violation of rights and fundamental freedoms and compensation.

Respondent's case

13. The respondent opposed the petition through a replying affidavit sworn by Stella Nyatichi (Ms. Nyatichi), the respondent's credit officer, and written submissions. Ms. Nyatichi stated that the petitioner was admitted on 21st April 2024, while the baby was discharged on 27th May 2024 and left hospital on 8th July 2024.



14. According to Ms. Nyatichi, on 30th May 2024, the petitioner and her relatives made a proposal that they would pay Kshs. 500,000 and deposit a title deed by 3rd June 2024. They also informed the respondent that they had planned a fundraising for 8th June 2024 which would enable them clear the balance by 10th June 2024. According to Ms. Nyatichi, the respondent accepted the proposal but the petitioner did not act as promised. Instead, the petitioner paid only Kshs. 70,000, claiming it was the only money they had. It was Ms. Nyatichi's position, that the baby was released from hospital following a court order but the respondent is still owed Kshs. 976,092.00.
15. In the brief written submissions, the respondent argued that the only outstanding issue between the parties was on payment of the outstanding hospital bill of Kshs. 976,092. The respondent maintained that it also has a right to property and the court is under an obligation to balance the rights of both parties bearing in mind that rights and fundamental freedoms in articles 29 and 39 of *the Constitution* are not absolute. It was further argued, that by virtue of article 24(1) (b) of *the Constitution*, the petitioner's rights cannot be enjoyed at the expense of the respondent's rights.
16. The respondent also contended that the petition did not meet the threshold of a constitutional petition in *Anarita Karimi Njeru v Republic [1979] eKLR*. The respondent urged the court to dismiss the petition with costs and order the petitioner to pay the outstanding medical bill.

Determination

17. Having considered the petition, and arguments by parties, two issues arise for determination. First, whether the petitioner's rights and fundamental freedoms were violated and, depending on the answer to this issue, whether the petitioner is entitled to compensation and if so, what is the quantum.
18. As already stated, the petition was disposed of through affidavits and written submissions. Mr. Tama who appeared for the petitioner adopted the documents filed namely; the petition, supporting affidavit with the annexures and the written submissions and urged the court to allow the petition with costs.
19. Mr. Makori, appearing for the respondent, also adopted their documents; the replying affidavit and written submissions. He urged the court to dismiss the petition and order the petitioner to pay the outstanding medical bill.

Violations

20. The facts of this petition are largely undisputed. The petitioner was admitted to the respondent's facility and paid a deposit. After delivery, the baby was taken to the incubator where it was until 27th May 2024 when it was discharged after gaining the required weight. However, due to the outstanding medical bill, the baby was not allowed to leave the hospital. The baby was only released on 8th July 2024 after the court order its release. The respondent stated that a medical bill of Kshs. 976,092 remained unpaid while the petitioner maintained that the respondent's record is not correct in so far as the outstanding bill is concerned.
21. The disputed facts were that according to the petitioner, she had been ready to pay the medical bill and offered a collateral but the respondent declined to accept not only her NHIF Card but also a collateral she had offered. The respondent on its part argued that although the petitioner and her family had promised to pay Kshs. 500,000 and offer a collateral, she did not follow through the promise, only paying Kshs. 70,000, instead.
22. It was on this basis that the petitioner argued that she was forced to travel to hospital every day to care for the baby and go home in the evening, putting her into unnecessary financial expenses and violated her rights and fundamental freedoms.



23. This petition is founded on a claim of violation of rights and fundamental freedoms guaranteed by *the Constitution*. In that regard, article 22(1) of *the Constitution* grants every person the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or threatened. The court then exercises its jurisdiction under Article 23(1) as read with Article 165, to hear and determine the application for redress of any denial, violation or infringement of or threat to the right or fundamental freedoms.
24. A petitioner who approaches the court under article 22(1) as read with articles 23(1) and 165(3), has to establish to the satisfaction of the court that his/her rights and fundamental freedoms have been infringed, denied or are threatened for the court to respond appropriately and grant appropriate relief as required by Article 23(3) of *the Constitution*. The essence of such relief is to ensure that the rights enshrined in *the Constitution* are protected and enforced. (*Fose v Minister of safety and Security* [1997] ZACC 6.)
25. In this petition, the petitioner argued that although the baby was discharged on 27th May 2024, the respondent declined to release the baby because of an outstanding medical bill. Even the petitioner's offer to deposit a collateral as security was declined. The baby was only released after a court order directing the respondent to release the baby following which the baby was released on 8th July 2024. The petitioner argued, therefore, that the respondent's act of detaining the baby violated various of her rights, including liberty and dignity.
26. The respondent denied violating the petitioner's rights and fundamental freedoms, maintaining that the petitioner's promise to settle the bill did not materialise despite being given time to do so, leaving a medical bill of Kshs. 976,092. It was due to the petitioner's inability to pay the bill or give suitable collateral security that the baby could not leave the hospital.
27. That the baby was detained in the respondent's facility is not in dispute. It is also not in dispute that the baby admission to the incubator and associated treatment led to accrual of a medical bill as at the time of discharge. The petitioner's grievance is in two folds. First, that the respondent's record was inaccurate and did not reflect the full extent of payments the petitioner had made. This implied that the respondent's medical bill record was not properly kept thus, the bill may not be correct.
28. Second, the petitioner argued that even though the baby was discharged on 27th May 2024, the respondent declined to allow the petitioner leave with the baby, leading to the baby's detention which was in violation of their rights and fundamental freedoms.
29. When the petitioner went to the respondent's facility for admission and treatment, she was aware that she would have to pay for the medical services rendered. That is, she would have to settle the medical bill on being discharged. Indeed, the petitioner paid a deposit and it was on that basis that she was admitted. However, the petitioner could not settle the bill once the baby was discharged and for that reason, the respondent did not allow the baby to leave the facility before settlement of the hospital bill.
30. The petitioner's admission at the respondent's facility and her treatment and that of the baby was a contractual arrangement between the parties. The petitioner and the baby would receive treatment for which the petitioner would pay. The petitioner and the baby were attended to and incurred a medical bill but she did not settle the bill and as a result, the respondent declined to allow the baby to leave the facility until the bill was settled, leading to this dispute.
31. I have perused the record and considered the arguments by parties. The petitioner does not deny that the bill was not settled. The petitioner's argument was that the respondent declined to accept payment through her NHIF insurance which would have covered some amount in the bill. The petitioner also argued that their offer of a collateral security as her family made alternative arrangement to settle the



- bill was declined by respondent. This led to the detention of the baby thus, violated her rights and fundamental freedoms.
32. I have carefully gone through the respondent's replying affidavit and written submissions. The respondent did not respond to the petitioner's claim that it (respondent) declined to accept payment through the NHIF insurance and proffer reason for the decline. If the petitioner was a registered NHIF contributor, she had a right to use the card unless the respondent was not registered under NHIF to offer health care services.
 33. Article 27 (1) of *the Constitution* guarantees every person's equality before the law and the right to equal protection and equal benefit of the law. Sub article (5) further states that a person shall not discriminate directly or indirectly against another person on any of the prohibited grounds in article 27(4).
 34. Even without an explanation from the respondent, the petitioner seemed to give an explanation why the respondent did not accept the NHIF card, stating that the hospital had indicated that it did not accept the coverage by NHIF.
 35. In that case, the petitioner did not demonstrate that the respondent unreasonably refused to accept use NHIF card. That is, the petitioner did not show that the respondent is registered with NHIF to offer the health services she sought but deliberately declined to accept her NHIF card, thus, discriminated against her. A claim of discrimination has to be demonstrated through evidence that the treatment accorded to the petitioner was a negative differential treatment to amount to prohibited discrimination. This was not the case here.
 36. Regarding the offer of collateral as security, there were two positions. Whereas the petitioner argued that the offer to provide a collateral was declined, the respondent's position was that the petitioner promised to pay Kshs. 500,000 and deposit a collateral as security by 3rd June 2024, and clear the balance by 10th June 2024. The respondent accepted the proposal but the petitioner did not act as promised. Instead, she only paid Kshs. 70,000, claiming that that was all they had.
 37. The real issue here, is whether there was violation of rights and fundamental freedoms. Violation of rights and fundamental freedoms is first, a question of fact and if facts are established, then it becomes a question of law that has to be proved to the satisfaction of the court. In this respect, there is no dispute that the baby was detained in the respondent's facility because of failure to settle the medical bill. Both parties seem to agree that there was an attempt to resolve the issue and agree on the modalities of settling the bill and have the baby released, but this was not to be.
 38. As already stated earlier, this petition was disposed of through affidavits and written submissions without the benefit of cross examination. For that reason, it was not clear who between the petitioner and the respondent was telling the truth regarding what the understanding was in relation to payment of the outstanding medical bill and provision of collateral security since parties took different positions.
 39. That said, it must be made clear that no one should condone a patient's detention in hospital because of non-payment of a hospital bill. Article 28 protects every person's inherent dignity and the right to have that dignity respected and protected. Similarly, article 29 protects the right to freedom and security of the person, including the right not to be deprived of this freedom arbitrarily or without a just cause. Article 29 also provides that every person has the right to freedom of movement. These rights are protected by *the Constitution* and non-payment of accrued medical bill cannot be the just cause contemplated in article 29. This does not, however, absolve a party from meeting his obligations towards paying a medical bill accrued following his/her treatment.



40. Courts in this country have been clear on the issue of hospitals detaining patients on account of non-payment of hospital bills. Courts have held that detaining a patient due to inability to pay a medical bill is unlawful, arbitrary and unconstitutional. In *Gideon Kilundo & Daniel Kilundo Mwenga v Nairobi Women's Hospital* [2018] eKLR, the court declared continued detention of the 2nd petitioner (patient) unconstitutional and ordered his immediate release. In that case, the 1st petitioner, a brother to the patient, had signed an undertaking to pay hospital bills on behalf of his brother's (the 2nd petitioner's) treatment. However, the patient (2nd petitioner) was detained after being discharged despite that undertaking.
41. In *MAO & another v Attorney General & 4 Others* [2015] eKLR, the court declared detention of the patient unconstitutional and a violation his rights and fundamental freedoms and ordered immediate release of the patient.
42. With regard to this petition, as the court has already stated, there seems to be a disagreement on what exactly happened. Whereas the petitioner argued that they tried to come to an understanding on how the bill could be settled, including offering a collateral to guarantee payment of the bill which the respondent declined, the respondent on its part contended that the petitioner and her family promised to pay Kshs. 500,000 by a given date and provide a collateral but they did not follow through this promise.
43. This petition was disposed of through affidavits and written submissions without any cross examination. What was deposed to in the affidavits remains but depositions. For instance, it is not clear if indeed the petitioner's family promised to pay Kshs. 500,000 and provide a collateral but failed to do so. On the other hand, the petitioner stated that the respondent declined their offer to provide a collateral as security.
44. The petitioner did not demonstrate that the respondent deliberately declined to accept the NHIF card which would have been irrational. There is consensus between the parties that there was an attempt to have a mutual understanding on how to resolve the matter, including an offer to pay some money and give a collateral to secure payment of the outstanding medical bill. The petitioner did not show that she readily and willingly acted towards fulfilling the promise but the respondent declined. In other words, the petitioner did not show that the respondent failed to give them reasonable accommodation so that she could raise the money to settle the bill.
45. The petitioner did not dispute the respondent's assertion that the petitioner and her family had agreed to pay Kshs. 500,000 and provide a collateral which they failed to do. Even where they failed to pay, the petitioner did not show that they tried to renegotiate the terms but the respondent declined. It was for the petitioner to demonstrate that there was good faith on their part to seek for an alternative means of settling the bill but were frustrated by the respondent to put blame at the respondent's door.
46. It is always the duty of the patient and family to ensure that a medical bill is paid and should engage the medical facility concerned to be given a chance to come up with an alternative way of settling the bill instead of the patient being detained due to the outstanding bill. Detaining the baby due to an outstanding medical bill was a violation of the baby's right to motherly nursing, care and protection at that infancy period.
47. The petitioner argued that the baby's detention forced her to commute every morning to the respondent facility to nurse the baby and travel back in the evening which put her into further financial strain and cost her Kshs. 69,000. A perusal of the petitioner's affidavits shows that although she stated that she had to hire a vehicle daily, which cost her that amount, annex EKK-4 attached to her affidavit is



a proforma invoice dated 25th June 2024 -cost of transport to and from Coptic Hospital. The document does not state the number of days. It is also not a receipt confirming that payment was made.

48. Although this was a contractual arrangement with each party understanding their obligations, the petitioner has not demonstrated that she made a concrete effort and arrangement on how to settle the medical bill even if they did not succeed in their planned fundraiser. The petitioner did not also demonstrate that the respondent refused to give them reasonable accommodation to settle the bill, but instead shut them out.
49. In the circumstances, while this court agrees that it was wrong for the respondent to detain the baby, it is unable to agree that the cost of commuting to and from the hospital, if any, was solely caused by the respondent. The petitioner cannot escape blame for not making concrete alternative arrangements on how to settle the hospital bill.
50. On whether any amounts in the bill are disputed; what the exact amount of the bill should be and whether this court should order the petitioner to settle the outstanding bill, the short answer is that this is an issue of a debt and accounts that should to be determined elsewhere.

Conclusion

51. Having considered the pleadings and arguments by parties as well as the decisions relied on, the conclusion the court comes to, is that the petitioner has not proved that the respondent violated any of her rights and fundamental freedoms. It was wrong for the respondent to continue holding the baby after discharge. However, the petitioner cannot also escape blame as she did not demonstrate that she made suitable alternative arrangements on how to clear the medical bill. The court had to come in and order release of the baby from hospital and obviate further violation of the baby's right mother's care and protection.

Disposition

52. The petition is declined and dismissed. Each party will however, bear their own costs.

DATED AND DELIVERED AT NAIROBI THIS 11TH DAY OF JUNE 2025

E C MWITA

JUDGE

