



**Machayo v Sober Homes Rehabilitation Centre (Petition E036 of 2025)
[2025] KEHC 8855 (KLR) (Constitutional and Human Rights) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8855 (KLR)

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

PETITION E036 OF 2025

AB MWAMUYE, J

JUNE 19, 2025

**IN THE MATTER OF ALLEGED CONTRAVENTION OF THE PETITIONER'S
FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES
25,29,31,35,43,40,46 AND 47 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF THE PETITIONER'S
FUNDAMENTAL RIGHTS IN SECTION 5(1), 8 & 10 OF THE HEALTH ACT, 2017**

AND

**IN THE MATTER OF ALLEGED CONTRAVENTION OF THE PETITIONER'S
FUNDAMENTAL RIGHTS IN SECTION 2 & 9 OF THE MENTAL HEALTH ACT**

AND

**IN THE MATTER OF SECTIONS 4(1), (2), 5 & 6
OF THE ACCESS TO INFORMATION ACT, 2016**

AND

IN THE MATTER OF ARTICLES 22, 23, 165(3)(B) & 258 OF THE CONSTITUTION OF KENYA

**AND IN THE MATTER OF SECTIONS 4(1), (3), 5 AND 6
(1) OF THE FAIR ADMINISTRATIVE ACTION ACT, 2015**

AND

**IN THE MATTER OF SECTIONS 25,26,28,29,30,32,34,36,40,44,45
AND 46 OF THE DATA PROTECTION ACT, 2019**

BETWEEN

PATRICK MUTTA MACHAYO PETITIONER

AND



JUDGMENT

1. The Petitioner approached this court vide a Petition dated 20th January, 2025 that was later amended on 4th March 2025 seeking the following orders:
 - a. A declaration that the Respondent's actions and omissions violated the Petitioner's fundamental rights under Articles 28, 29(d), 31, 35, 36, 43(1)(a), 47, 46, and 40 of the Constitution of Kenya, 2010.
 - b. An Order compelling Sober Homes Rehabilitation Centre, the Respondent to release the Petitioner's complete medical records for the period between 25th July 2023 and 9th October 2024 including:
 - i. All clinical notes and diagnosis;
 - ii. Treatment plans and medication lists;
 - iii. Psychological evaluations and therapy session notes;
 - iv. Records of requests and representations made during his admission;
 - v. Progress notes;
 - vi. SOAP notes;
 - vii. Soft notes – including but not limited to therapy notes by Mr. Muchiri for the 34 sessions, psychiatric notes by Dr. Antony detailing detox treatment and medication, as well as documentation on dietary plans, physical therapy, spiritual therapy, vocational rehabilitation, and all other aspects of the treatment and support the Petitioner received.
 - viii. Admission and discharge summaries;
 - ix. Any communications with family members or guardians; and
 - x. Financial data on payments made, receipts produced, costs incurred and all money received with respect to the stay at the respondent's facility.
 - xi. An order compelling Sober Homes Rehabilitation Centre, the Respondent, to refund all the monies paid to the Respondent by the Petitioner during the 14 months that he was involuntarily admitted in the Respondent's facility.
 - c. An Order for compensation for the psychological, emotional and financial harm suffered by the Petitioner due to the Respondent's actions. The Petitioner submits that he is entitled to compensation under Article 23(3)(e) of the Constitution. He also relies on the decision in Kajiado High Court Constitutional Petition No. 14 of 2017 (formerly Nairobi High Court Petition No. 533 of 2016) Mohamed Feisal & 19 others v Henry Kandie, Chief Inspector of Police, OCS Ongata Rongai Police Station & 7 others.
 - d. Costs of the Petition and any further reliefs this Honourable Court may deem just and equitable.



- e. Any other relief or further orders, writs and directions the court considers appropriate and just to grant for the purpose of the enforcement of the Petitioner's fundamental rights and freedoms.
2. The Petition was accompanied by a Notice of Motion Application dated 20th January 2025 and an Affidavit in support of even date sworn by Patrick Muita Machayo which was later amended on 4th March 2025 on the grounds that he was admitted to the Respondent's facility, Sober Homes Rehabilitation and Treatment Centre located in Olulua, Ngong, for treatment on 25th July 2023 and discharged on 9th October 2024.
3. The Petitioner states that he was admitted in the Respondent's facility after they collided with his sister to kidnap and detain him in the facility incommunicado for 14 months.
4. He further states that the Respondent's lacked the specialized capacity required to effectively treat PTSD in a US Army Veteran as it is distinct and often more complex requiring trauma focused therapy since in the absence of trained professionals with expertise in military trauma rendered the Respondent unequipped to conduct any treatment on the Petitioner.
5. The Petitioner avers that during his admission to the facility he experienced reckless and unprofessional medical care, he did not receive any treatment for his PTSD, he was denied access to medical records, he was denied communication with his family including his child living with disability, he was exposed to unsafe and unsuitable conditions that did not meet the standards required of a rehabilitation centre, he was denied an opportunity to seek medical treatment for his back, he was subjected to poor diet in the facility that did not take into account his diabetic condition and finally that there was unauthorized withdrawal of funds from his Mpesa account without his consent.
6. He further avers that he was denied an opportunity to contact the US Embassy despite making several requests and also that during the entire period of his involuntary admission, the Respondent collected his confidential information and shared the same with his sister and third parties without his consent. He states that he was also denied an opportunity to consult legal counsel.
7. The Petitioner further states that upon his discharge from the facility, he requested for medical records from the Respondent to review his treatment but his request was denied.
8. He avers that his advocates on record proceeded to issue a demand letter dated 30th October 2024 requesting the release of medical reports and a further demand letter requesting for certified copies together with soft progress prepared by the therapist during the period of admission however, the Respondent failed and neglected to avail the same.
9. The Petitioner contends that the Respondent's failure to provide quality services and maintain proper facilities, the unauthorized withdrawal of his funds, the Respondent's action of taking his photographs and disclosing his confidential health information to third parties and the substandard services and overcharging all amounted to contravention of his constitutional rights.
10. In opposition and in response to the Petition, the Respondent filed a Replying Affidavit dated 6th February 2025 and sworn by Isaac Njuguna Ng'ang'a, the Director of the Respondent's Institution averred that indeed he received a call from the Petitioner's sister pleading with him to admit the Petitioner to the Respondent's facilities since he had been kicked out of the previous rehabilitation centre known as Canopy of Hope Counseling and Treatment Centre.



11. He further avers that he agreed to admit the Petitioner to the Respondent's facilities and went together with one Dr. Anthony and another staff member to pick him up from where he was residing but found the Petitioner living in very bad conditions.
12. The Respondent argues that the Petitioner was not kidnapped from his premises but agreed to be admitted willingly with his consent despite some resistance at first.
13. According to the Respondent, there would be no treatment records if the doctor failed to take any notes during consultation since some sessions were just for observation of the Petitioner and in addition to that the Petitioner already had a treatment plan for PTSD from the previous treatment centre thus the Respondent's issue was purely to deal with his alcohol and drug abuse as he continued with PTSD treatment.
14. He further argued that the Petitioner neither asked for his records nor sought communication with his family members during his admission to the Respondent's Facility and only requested for a discharge summary during his discharge which was given to him.
15. The Respondent avers that the withdrawal of funds from the Respondent's Mpesa account has nothing to do with the Respondent as the funds were withdrawn by his mother's caretaker, one Tabitha Muthoni whom the Petitioner had willingly given his pin number to but upon mediation by the Respondent, the lady willingly refunded the amount to the Petitioner.
16. The Respondent equally avers that at no point during his admission was the Petitioner denied medical treatment and only presented with pre-diabetic symptoms during his admission where the family arranged for special diet for the Petitioner and also work out sessions which the Petitioner blatantly failed to attend.
17. The Respondents state that they have no reason whatsoever to deny the applicant his medical records and have always acted in good faith by complying with the Petitioner's request including promptly processing and releasing all records in line with its legal and ethical obligations and also sending certified copies of his medical records to his advocate's email dated 11th November, 2024.
18. The Respondent further states that having complied with all demands, there would be irreparable harm caused to them as what was sought has been provided. They equally state that the Petition is based on false information thus this Honourable Court ought to dismiss it with costs.
19. The Petitioner filed a further affidavit in response dated 10th April 2025 sworn by Patrick Muita Machayo who reiterated contents of his Amended Petition, his supporting Affidavit and the affidavit in support of the Amended petition. He avers that he was kidnapped and taken to the Respondent's facility without his consent but with his sister's consent who is neither his next of kin or his guardian.
20. The Petitioner contends that he wasn't kicked out of Canopy of Hope Counselling and Treatment Centre but had been admitted voluntarily for a 9-day program and due to the excellent services offered to him, he requested for an extension of 8 months.
21. The Petitioner further avers that he did not require copies of his records until one week prior to his discharge where he to be supplied with complete medical records but was only supplied with a discharge summary. He also states that he was discriminated upon since the Respondent appeared to have a completely different set of rules that were only applicable to his especially on use of telephones, laptops and the internet.
22. He contends that the medical records availed by the Respondent are incomplete and they are yet to provide the medical records and notes from the psychiatrist Dr. Anthony, who oversaw his detox



program for three weeks following his admission but have only provided soft notes for 24 sessions out of the minimum 34 sessions he had with one Muchiri.

23. The petition was canvassed by way of written submissions, and in compliance both parties except filed and served their submissions.

Petitioner's Submissions

24. In his written submissions dated 11th April 2025, the Petitioner analyzed a single issue being; whether the Petitioner is entitled to the Orders sought in the Amended Petition.
25. The Petitioner submits that the following rights were violated and infringed by the Respondent including but not limited to his right to Information, his right to privacy, his right to health, his freedom from security of persons, his right to Human dignity, his right to fair administrative action, consumer rights and his right to property.
26. The Petitioner relied on the case of *Okiya Omtatah Okoiti v Communication Authority of Kenya & Others* (Constitutional Petition 53 of 2017) [2018] KEHC 7513 (KLR) where the Court held that the right to privacy is a fundamental right that is central to the protection of human dignity and forms the basis of any democratic society. The court provided further that individuals should have control over his or her personal affairs relatively free from unwanted intrusions. The Petitioner equally relied on the case of *Coalition for Reform and Democracy (CORD) & 2 others v Republic of Kenya & 10 others* [2015] eKLR where the Court quoted B Rossler in his Book, the Value of Privacy on whether there is need for privacy. Reliance was also placed on *Li Wen Jie & 2 others v Cabinet Secretary, Interior and Coordination of the National Government & 3 others* [2017] eKLR on the right to be given reasons for any person who has been or is likely to be adversely affected by administrative action.
27. The Petitioner urged this Court to release the Petitioner's medical records as the continued withholding of information has prevented the Petitioner from taking appropriate medical, legal and financial actions. According to the Petitioner it is also fair and just that the Respondent reimburses the total amount of US\$ 10,477.49 withdrawn from the Petitioner's account for rehabilitation services and pursue their claim for settlement against the Petitioner's sister since she is the one who unlawfully instructed them to involuntarily admit the Petitioner. He further sought for compensation and relied on the case of *Patrick Alouis Macharia Maina & 3 others v Shoprite Checkers Kenya Limited* [2021] eKLR and the case of *LAW & 2 Others v Marura Maternity & Nursing Home & 3 Others; International Community of Women Living with HIV (ICW) (Interested Party); Secretariat of the Joint United Nations Programme on HIV/AIDS & 2 Others (Amicus Curiae)* [2022] KEHC 17132 (KLR) where the Court awarded the Petitioners Kes. 3,000,000.00 for breach of their constitutional rights.

Respondent's Submissions

28. The Respondent filed its written submissions dated 25th April 2025 where it submitted that upon demand of the medical records by the Petitioner, the Respondent promptly supplied the documents in their possession to him. They went further to state that the reason why there is no direct documentation of detoxification of the Petitioner is due to the fact that the Petitioner had refused to go through the detox process and only did 3 weeks later after realizing he needed the detox to help with his recovery.
29. According to the Respondent, the process of detoxification works best when done immediately after admission and is the first step of a treatment plan as recommended by NACADA. Due to the fact that detoxification was done three weeks later due to the Petitioner's refusal, a time lapse that allows for



- withdrawal of drug substances to occur naturally, there was nothing much to report as the detox was rendered less effective at this stage and that is the reason why it was only mentioned in the Doctor's notes during assessment sessions.
30. On payment for the Respondent's services, the Respondent submits that it could not submit the receipts of payment to the Petitioner as the Respondent was of the impression that the Petitioner's sister was the financier of his stay and only became aware that the finances were coming from the Petitioner after filing of the Amended Petition.
 31. The Respondent argues that having provided all gathered information during the Petitioner's admission as requested, the Petitioner's rights have not been violated and the Respondent has continued to act in good faith and is willing to comply throughout the process of providing the Petitioner with his medical records.
 32. The Respondent submits that it only discussed financial matters with the Petitioner's sister and at no point did it discuss any crucial medical information with third parties and the confiscation of the Petitioner's phone was due to legitimate and vital reason for the smooth sailing of his treatment without undue impediments from outside the facility.
 33. They relied on Section 30(1) of the Data Protection Act that the collection of the Petitioner's health data and medical history was for Medical diagnosis, treatment and care of the Petitioner's alcohol and drug substance abuse, on protection of the Petitioner's vital interests which in this case are his mental and health interests and finally on fulfilling contractual obligations related to the provision of rehabilitation services.
 34. The Respondent further submits that it is trite law that in health care settings especially involving mental health, consent can be implied or substituted by the next of kin or medical necessity under certain circumstances. According to the Respondent, since the Petitioner was highly intoxicated, during the initial pick-up, the Respondent's intervention was reliant on implied consent through the authority of his next of kin known to them, his sister.
 35. The Respondent states that following the allegation of no treatment plan of the Petitioner's PTSD, the Respondent has produced sufficient evidence that it tackled his PTSD issue according to the soap notes since that was the underlying issue leading to the Petitioner's chronic substance abuse. Reliance was placed on the case of Josephine Wangui Murithii v Attorney General and 3 others [2012] eKLR where the court held that in certain health emergencies, decisions could be made on behalf of a patient in cases where delay could cause harm. The respondent equally relied on the case of S.W.K v M.S.M [2015] eKLR and on Francis Peter Maina v Director of Medical Services & 2 others [2019] eKLR.
 36. The Respondent contends that under the doctrine of enrichment, the Petitioner cannot claim a refund after substantial services therefore the Petitioner's remedy if any lies against his sister who authorized payment on the Respondent who acted on instructions and provided services with utmost good faith given concerns of the Petitioner's well-being.
 37. On whether the Petitioner is entitled to compensation, the Respondent argues that an award is supposed to compensate for infringement of right and not to enrich the Petitioner. Reliance was placed on the case of Gitobu Manyara & 2 Others v Attorney General [2016] eKLR, Mumo Matemu v Trusted Society of Human Rights Alliance [2013] eKLR, Catherine Njiru v Attorney General & Another [2014] eKLR and Republic v Kenya National Examination Council ex parte Laban Awuor [2012] eKLR.



Analysis And Determination

38. This court has considered the Petition, the affidavits both in support and in opposition, the evidence on record and the written submissions for the parties through their respective advocates. The issue for determination is whether the Respondent violated the Petitioner's rights to privacy and to information.
39. It is common ground that the Petitioner has the right to privacy with regard to his medical information and this court has to determine whether the Respondent disclosed medical information to third parties without the knowledge or consent of the Petitioner.
40. The Petitioner's claim is founded on Article 31 of *the Constitution* which provides that:
31. Every person has the right to privacy which includes the right not to have –
- a. their person, home or property searched
 - b. their possession seized;
 - c. information relating to their family or private affairs unnecessarily required or revealed; or
 - d. the privacy of their communications infringed.
41. The Petition is equally founded on Article 35 of *the Constitution* on access to information which provides:
- 35.
- (1) Every citizen has the right of access to-
 - (a) information held by the State; and
 - (b) information held by another person and required for the exercise or protection of any right fundamental freedom;
 - (2) Every person has the right to the correction or deletion of untrue or misleading information that affects the person.
 - (3) The State shall publish and publicise any important information affecting the nation.
42. *The Constitution* does not define the term privacy to what the right to privacy entails. However, violation of right to privacy involves the unwelcome intrusion on someone's personal privacy or disclosure of information about a person without their consent.
43. While it is important to protect the privacy of an individual either from unlawful searches and seizures, or from unlawful disclosure of private information, together with the right to access information are not one of the rights that cannot, under Article 25, be limited. They are thus not absolute rights and are subject to limitations as set out under Article 24 of *the Constitution* which provides as follows:
1. . A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and only be the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including-
 - a. The nature of the right or fundamental freedom;



- b. The importance of the purpose of the limitation;
- c. The nature and the extent of the limitation;
- d. The need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and
- e. The relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.

44. This Court has on occasion considered the implication of the right to privacy and the circumstances under which it can be deemed to have been violated. In the case of *Kenya Plantation and Agricultural Workers Union vs James Finlay (K) Limited* (2013) eKLR the Court held as follows:

“This issue is of particular concern to the court because under Sub-Article 31(c) of *the Constitution*, every person has the right to privacy which includes the right not to have information relating to their family or private affairs unnecessarily required or revealed. In the opinion of the court, such right includes the right to have information such as official records, photographs, correspondence, diaries and medical records kept private and confidential. It is the further opinion of the Court that in the instant case, the respondent in discharge of the duty to uphold medical professional ethics of its medical staff as prescribed in the Rules is obligated to take positive steps to prevent intrusions into the privacy of its hospital’s patients.”

45. The issue of privacy in relation to disclosure of medical information was also considered in the case of *JLN and 2 Others vs Director of Children Services and 4 others* Petition No. 78 of 2014. In that case, the Petitioners contended that the Respondent Hospital had violated their right to privacy guaranteed under Article 31 by unnecessarily and without just cause disclosing confidential medical information to a third party. The court held as follows:

“...The right to privacy is not absolute. Implicit in the protection accorded is that information relating to family and private matters must not be unnecessarily revealed. Indeed, counsel for the Petitioner submitted that there are instances where the right to privacy in respect of the patient/client relationship may be abridged. He cited the case of *W v Edgell*[1990] 1ALL ER 835 where Lord Gingham set out the principles under which a doctor may disclose the information held in confidence. The principles were as follows:

- i. A real and serious risk of danger to the public must be shown for the exception to apply.
- ii. Disclosure must be to a person who has legitimate interest to receive the information.
- iii. Disclosure must be confined to that which is strictly necessary (not necessarily all the details) ...”

46. The Medical Practitioners and Dentists Board (Disciplinary Proceedings) (Procedure) Rules under the Medical Practitioners and Dentist Act Cap 253 Laws of Kenya prohibit abuse of professional confidence and provide at rule 8 that:

“Abuse of professional confidence: -



A practitioner or an institution shall not disclose to a third party information which has been obtained in confidence from a patient or the patient's guardian, where applicable. The petitioner or institution shall safeguard the confidential information obtained in the course of practice, teaching, research or other professional duties subject only to such exceptions as are applicable. The following are possible exceptions:

- i. The patient or his/her lawyer may give valid consent;
- ii. The information may be required by law or through a Court order;
- iii. Public interest may persuade a Practitioner that his/her duty to the community overrides the one of the patient;
- iv. Information may be given to a relative or appropriate person if in his/her opinion it is undesirable on medical grounds to seek the patient's consent; and
- v. In the interest of research and medical education, information may be divulged, but at all times the patient's name shall not be revealed. A practitioner shall always be prepared to justify his/her action whenever he/she discloses confidential information. Whenever possible except in the public interest, the practitioner should keep secret the identity of the patient."

47. Applying these principles to the facts of the present case, it is conceded by the Respondent that it is under duty not to divulge the Petitioner's medical information to third parties. Even though the Petitioner alleges that his information was released to his sister, the hospital denies the claim stating that the Petitioner's sister who was acting as his guardian and who pleaded for the Petitioner's admission to the respondent's facility was only furnished with the medical bills and nothing else.
48. The Respondent also avers that on the day some of the members of the Respondent's facility went to pick up the Petitioner for his admission at the Rehabilitation centre, they took photographs of his premises for their own records. The Petitioner contends that the taking of photographs was a violation of his right to privacy.
49. According to the evidence on record, on the discharge summary dated 5th October, 2024 it indicates that the reason for his admission was because he was in a heavily intoxicated state after being discharged from Canopy of Hope Rehabilitation Centre where he had spent eight (8) months. It further states that the patient's next of kin requested that he remains in rehab to allow his mother, who was suffering from dementia, time to time to e alone with the house help. They also indicate that the admission was involuntary.
50. It is trite law that he who alleges must prove. The burden of proof lies on the Petitioners to prove that the Respondents violated his constitutional rights to privacy and information.
51. Section 107 of the *Evidence Act* provides that:
 1. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
52. The threshold to be met is well settled in law. A Petitioner approaching the court in a Constitutional Petition must plead his/her case with precision. The provisions of *the Constitution* alleged to have been



violated must be specifically specified. The requirements are well set out in the case of Anarita Karimi Njeru v Republic [1979] KLR, where the court observed as follows:

“...if a person is seeking redress from the High Court on a matter which involves a reference to *the Constitution*, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provision said to be infringed, and the manner in which they are alleged to be infringed...”

53. The Petitioner in the instant case has made allegations that his right to privacy was violated by the Respondent after taking photographs of his premises without his consent. The Respondent has indicated that the photographs were taken for their own records to ascertain that indeed the Petitioner was involved in alcohol and substance abuse and that is the reason why he was taken into the Respondent’s facility. The photographs were merely for records purposes for the rehabilitation facility and were in no way distributed to third parties without consent.
54. In my view, the reasons for taking the photographs by the Respondent’s employees was to record the reasons why the Petitioner needed to be admitted to the rehabilitation facility. From the photographic evidence attached, there were alcohol cans all over the floor and the place looked dirty and messy and it seems that the Petitioner was staying in dire living conditions thus the intervention of his sister. There was no sufficient evidence from the Petitioner to indicate how his right to privacy was violated by taking of photographs for records purposes therefore the reasons given by the Respondent are justified.
55. The Petitioner equally made allegations that his right to privacy was infringed upon due to the fact that the Respondent released his medical reports and other critical information to his sister without his consent. It is however prudent to note that the Petitioner does not precisely state which confidential information was released to his sister and to other third parties.
56. The Petitioner makes allegations that the Respondent admitted to be in communication with his sister regarding his well-being and that, according to him, was a violation of his right since allegedly the Respondent might have revealed medical information to the Petitioner’s sister. Notably, there isn’t an ounce of evidence not even an affidavit from his sister or on any of the employees of the facility to support his claim.
57. I am guided by the Court of Appeal case of Mumo Matemu v Trusted Society of Human Rights Alliance [2013] eKLR where the Court of Appeal observed as follows on the issue of pleading a constitutional petition with precision:

(41) We cannot but emphasize the importance of precise claims in due process, substantive justice, and the exercise of jurisdiction by a court. In essence, due process, substantive justice and the exercise of jurisdiction are a function of precise legal and factual claims. However, we also note that precision is not coterminous with exactitude. Restated, although precision must remain a requirement as it is important, it demands neither formulaic prescription of the factual claims nor formalistic utterance of the constitutional provisions alleged to have been violated. We speak particularly knowing that the whole function of pleadings, hearings, submissions and the judicial decision is to define issues in litigation and adjudication, and to demand exactitude ex ante is to miss the point.

...The whole object of pleadings is to bring the parties to an issue, and the meaning of the rules... was to prevent the issue being enlarged, which would prevent either party from knowing when the cause came on for trial, what the real point to be discussed and decided was. In fact, the whole meaning of the system is to narrow the parties to define issues, and thereby diminish



expense and delay, especially as regards the amount of testimony required on either side at the hearing...”

58. As guided above, a constitutional petition should be precise and backed up with sufficient evidence which in this case there were none. The Petitioner merely brought up his dissatisfaction with the Respondent’s services which, ironically, were never raised during his stay in the facility. The Respondent states that the only information that was shared with the Petitioner’s sister was as regards the medical bills from his stay in the facility which were settled as the Petitioner focused on recovery. The medical bills were forwarded to the sister since the Respondent seemed to believe that she was the next of kin to the Petitioner therefore the one competent to take care of the bills.
59. The mere request by a third party is not, in my view sufficient. One of the principles justifying disclosure by a doctor without the patient’s consent espoused in *W vs Edgell* (supra) is that disclosure must be to a person who has legitimate interest to receive the information. The Petitioner’s sister, has legitimate interest in receiving, requesting for disclosure of information.
60. I find that there was no confidential medical information that was released to the Petitioner’s sister apart from the bill for his care, being one of the exceptions outlined in rule 8 (iv) of the Medical Practitioners and Dentists Board (Disciplinary Proceedings) (Procedure) Rules under the Medical Practitioners and Dentist Act Cap 253 Laws of Kenya which provides that information may be given to a relative or appropriate person if in his/her opinion it is undesirable on medical grounds to seek the patient’s consent. Since the Petitioner was undergoing rehabilitation for drugs and substance abuse, his relative being his sister herein, is allowed to received his medical bills even without is consent.
61. For the reasons above, I find that the Respondent did not breach the Petitioner’s right to privacy and was not in violation of doctor/ patient confidentiality.
62. The Petitioner’s other contention is also that he sought for copies of his certified records during his stay at the Respondent’s facility but never received any response from the Respondent prompting him to file this Petition.
63. The intention in Article 35(1) was clearly to create two distinct situations with regard to the right of access to information: one in which the citizens were entitled as of right to information held by the State; the other in which a citizen could access information rom another, a private person, for the exercise or promotion of another right or freedom.
64. I reiterate that it is a principle of law that he who asserts must prove, and in this regard, Section 107 (1) of the *Evidence Act* (Cap 80) provides that “whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. “
65. The burden of proving the allegations lay squarely upon the Petitioner. The Petitioner has tendered evidence in form of a demand letter from his advocate on record dated 30th October, 2024 demanding for immediate release of his certified medical records.
66. The Respondent on the other hand avers that his manager stamped and signed the Petitioner’s medical documents and later sent the same to the Petitioner via email. The documents on record attached as the Respondent’s evidence have been commissioned by the firm known as M.A Kasera & Company Advocates but do not have any indication that they were certified as true copies of the original which might have been an oversight on the Respondent’s part.
67. It is my belief that in the Respondent’s Replying Affidavit sworn by Isaac Njuguna Ng’ang’a dated 6th February, 2025 when they make reference to having the documents signed and stamped was in reference to the documents being commissioned and not being certified. The Petitioner has equally



attached the Medical records from the Respondent's facility as part of his evidence to show that indeed the documents were released to the Petitioner despite them not being certified.

68. The Respondent further averred in the Replying Affidavit offered an explanation on the missing documents they are not in possession of the alleged 10 sessions as alleged by the Petitioner and that they submit the 25 SOAP notes are an accurate depiction of the number of sessions held between the Petitioner and his Psychiatrist. They also stated that there is no direct documentation of the detoxification process and therefore no records to release. According to the Respondents they complied with Section 5 of the [Access to Information Act](#) and released all the medical records in their possession as per his request.
69. It is clear from the above that the Respondent complied with the Petitioner's request by releasing to him his medical records which also forms part of his evidence in the present Petition. This court cannot compel a party to provide documents which it says it does not have or longer has.
70. I therefore find that the Respondent did not breach the Petitioner's right of access to information for they have given sufficient reasons as to why they cannot release other medical documents sought by the Petitioner simply because they are no longer in their possession. I will however issue an order that the medical records be certified as true copies of the original and the same be forwarded to the Petitioner within 14 days.
71. On the question whether, in the circumstances of this case, the Petitioner is entitled to a remedy in damages against the Respondent, as observed above, the reason for the release of the information was for a legitimate reason. The sister, who is the next of kin in this case, required to settle the medical bills accrued by the Petitioner and therefore the same information had to be released. The Petitioner has not proved on any other confidential information that was released to third parties. Had the sister made the request herself, or applied for the release of the medical records, it is possible that the court while balancing the interests of the Petitioner and those of the Respondent, would have directed the disclosure of the information.
72. I am therefore not satisfied that the release of the information to the Petitioner's sister, resulted to any loss or violation occasioned to the Petitioner or that damages are a result of such disclosure merited. For these reasons, I decline to make an award for damages.
73. Accordingly, I find that the Petition dated 20th January, 2025 and the Amended Petition dated 4th March, 2025 lacks merit and is hereby dismissed; save that an order be and is hereby issued that the medical records be certified as true copies of the original and the same be forwarded to the Petitioner by the Respondent within 14 days from the date hereof.
74. In the circumstances, it is fit, just and proper that each party to bear their own costs.
It is so ordered. File closed accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 19TH DAY OF JUNE 2025.

BAHATI MWAMUYE

JUDGE

In the presence of: -

Counsel for the Petitioner -Ms. Musyoki h/b Dr. Benjamin Musau

Counsel for the Respondent – Ms. Njoki Wanjiru

Court Assistant – Ms. Neema

