



Kingola & 3 others (Suing as the Legal Representatives of the Estate Of Rhoda Ndunge Kingola - Deceased) v Chief Executive Officer, Mater Misericordiae Hospital & another; Commission on Administrative Justice (Interested Party) (Miscellaneous Constitutional Petition E024 of 2025) [2025] KEHC 9887 (KLR) (Constitutional and Human Rights) (8 July 2025) (Ruling)

Neutral citation: [2025] KEHC 9887 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
MISCELLANEOUS CONSTITUTIONAL PETITION E024 OF 2025**

**EC MWITA, J
JULY 8, 2025**

BETWEEN

**RUTH MUSYEWA KINGOLA 1ST APPLICANT
STEVEN VOTH 2ND APPLICANT
TABITHA MWIKALI KINGOLA 3RD APPLICANT
ESTHER KENDA KINGOLA 4TH APPLICANT
SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF RHODA
NDUNGE KINGOLA - DECEASED**

AND

**CHIEF EXECUTIVE OFFICER, MATER MISERICORDIAE
HOSPITAL 1ST RESPONDENT
THE REGISTERED TRUSTEES OF THE SISTERS OF MERCY (KENYA) T/A
MATER MISERICORDIAE HOSPITAL 2ND RESPONDENT**

AND

COMMISSION ON ADMINISTRATIVE JUSTICE INTERESTED PARTY

RULING

1. This a ruling on motion applicant dated 13th June 2025 by the applicants brought under several articles of *the Constitution*; and rules 13 and 19 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013,(Mutunga Rules), seeking in the main,



an order directing the 1st and 2nd respondents to preserve, in their original and unadulterated format, all those pieces of information sought in the applicants' complaint addressed to the interested party as contained in the letter dated 8th May 2025 copied to the 1st and 2nd respondents.

2. The application is premised on the grounds on its face and the supporting affidavit. According to the applicants the deceased, was admitted to the 2nd respondent facility for maternity service where she had attended pre-natal clinics with no alarming symptoms. The deceased visited the facility on several occasions when her term was due but she was asked to return on other dates.
3. On 10th October 2024, the deceased went to the 2nd respondent facility and was admitted. The 2nd respondent's staff induced the deceased to labour. However, the deceased suffered a "brutish, sudden and drastic death" under very mysterious circumstances. The child also suffered neurological damage.
4. The applicants state that after their attempt to access information from the respondents including, among others, a prenatal clinic book the deceased had on the material day; relevant CCTV footage on the events surrounding the sudden and inexplicable demise of the deceased failed, they lodged a complaint with the interested party by letter dated 8th May 2025 under the [Access to Information Act](#).
5. The applicants state that since the complaint is still under review, they have information that the respondents intend to destroy evidence contained in the information sought, including but not limited to the CCTV footage sought so as to defeat the ends of justice. According to the applicants, there is well-founded apprehension that unless this court issues a conservatory order for preservation of the information being sought pending the processing of the complaint by the interested party, the respondents will destroy the information rendering the ongoing legal and administrative process nugatory.
6. Although this application was served, the respondents and interested party did not file responses or attend court. The application proceeded in their absence.
7. I have considered this application and perused the supporting documents. The applicants moved this court by way of miscellaneous application, seeking a conservatory order to preserve information which is in possession of the respondents, the CEO and the Hospital, which they fear may be destroyed.
8. The application is said to have been brought under rules 13 and 19 of the Mutunga Rules. Rule 13 states that a petition filed under certificate of urgency may be place before a judge for appropriate orders or directions. Rule 19 provides that a formal application under these rules shall be by notice of motion and may be supported by an affidavit.
9. The applicants did not, however, make reference to rule 10 of the Mutunga Rules which provides that an application under rule 4 shall be made by way of a petition. Rule 4 is on contravention of rights and fundamental freedoms and provides:

Where any right or fundamental freedom provided for in [the Constitution](#) is allegedly denied, violated or infringed or threatened, a person so affected or likely to be affected, may make an application to the High Court in accordance with these rules.

10. Rule 4 is plain that this court should be moved by way of a petition. Even rule 13 the applicants have cited makes reference to a petition filed under urgency while rule 19 refers to an application to be made by way of notice of motion. The application referred to in rule 19 must be an application filed within the petition.
11. The essence of rule 10 is that the jurisdiction of the court is invoked the moment a petition is filed before it in accordance with article 22 of [the Constitution](#) and the rules. It is only after that, does the



court in exercise of the jurisdiction conferred on it by article 23 (1) as read with article 165, deal with the matter and determine whether “any right or fundamental freedom provided for in the Constitution is allegedly denied, violated or infringed or threatened.”

12. Article 165(3) confers on this court jurisdiction to determine the question whether (b) a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed or is threatened (d) (i) to hear the question of interpretation of the constitution, including whether any law is inconsistent with it and (ii) whether anything said to have been done under the authority of the Constitution is inconsistent with, or in contravention of, the Constitution.
13. It is therefore clear from the constitutional text, that jurisdiction of this court is specific and in exercising its jurisdiction, the court must be moved by way of a petition and asked to determine specific questions respecting violation, threat to violate or infringe rights and fundamental freedoms in the Bill of Rights, interpret the constitution, including whether a law is inconsistent with the Constitution and whether anything said to have been done under the authority of the Constitution is inconsistent with, or in contravention of, the Constitution.
14. The applicants have not brought a petition before this court. In other words, they have not petitioned the court to determine any question respecting any right or fundamental freedom in the Bill of Right that has been denied, violated or infringed or is threatened. The applicants have not pointed out the source of jurisdiction of this court to deal with miscellaneous applications that do not raise questions falling within the confines of article 165(3) (b) (d)(i) and (ii) of the Constitution.
15. In the circumstances, it is the finding of this court, that the applicants have not properly binvoked the jurisdiction of this court and the court cannot deal with matters that do not fall within its jurisdictional remit under article 23 as read with article 165(b)(d)(i) and(ii).
16. Consequently, and for the above reasons, the application is struck out with no order as to costs.

DATED AND DELIVERED AT NAIROBI THIS 8TH DAY OF JULY 2025

E C MWITA

JUDGE

