



**Frederick v Kenya Coptic Hospital (Petition E335 of 2024) [2024] KEHC 8933 (KLR)
(Constitutional and Human Rights) (19 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8933 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
PETITION E335 OF 2024
LN MUGAMBI, J
JULY 19, 2024**

BETWEEN

RENZ WILLIAM FREDERICK PETITIONER

AND

KENYA COPTIC HOSPITAL RESPONDENT

RULING

1. By notice of motion application dated 11th July, 2024 filed under certificate of urgency and supported by the affidavit of Renz William Frederick sworn on even date; the Petitioner/Applicant sought the following orders:
 - i. Spent
 - ii. That pending the hearing and determination of this application, the Honourable Court be and hereby be pleased to issue a conservatory order restraining the respondent, its servants, agents, proxies and/or employees from continuing to detain the petitioner Renz William Frederick Within The Premises of Kenya Coptic Hospital or any other place.
 - iii. That pending the interpartes hearing and determination of this application, this honourable occur be pleased to issue an order for immediate release of Renz William Frederick from unlawful detention by the respondent, Kenya Coptic Hospital.
 - iv. That pending the hearing and determination of this petition, this honourable court be and hereby pleased to issue conservatory order restraining the respondent, its servants, agents, proxies and/or employees from continuing to detain the petitioner, Renza William Frederick within the premises of Kenya Coptic Hospital or any other place.
 - v. That costs of the application be provided for.



vi. That the court be pleased to grant any other order if may deem fit and expedient to grant.

Petitioner/Applicant's Case

2. The petitioner swore that he sought medical services at the respondent's facility on 5th November, 2023 but owing to some complications in the procedure, he could not leave the hospital immediately upon which he was admitted under admission No. 117337 without a formal contract or consultation.
3. He stated that the hospital policy was not availed to him and no formal contract was entered into with him concerning the said admission. As a result of process, his improper admission, the NHIF medical cover could not be used to clear his medical bill as he was not properly/formally admitted as at the date indicated in the respondent's invoice dated 7th June, 2024.
4. The petitioner stated that through his Advocate he requested the respondent to forward his admission form on 18th June, 2024 but none was provided. He stated that when he was required to undergo a dialysis, the hospital would admit and discharge him on the scheduled date, enable NHIF cover part of the costs.
5. He deponed that the Hospital Invoice No. COP1046119 of 7th June, 2024 had fraudulently omitted to include the amounts paid by NHIF of Ksh.76,000/- per approval granted on 29th November, 2023 in anticipation of dialysis. Further two subsequent payment of Ksh.9,500/- were made on 15th and 21st December, 2023 respectively.
6. The petitioner averred that he was declared medically fit for discharge on 9th January, 2024 by Dr. Moturi who had been attending to him but despite this, he was not released from the hospital allegedly because of an outstanding amount of Ksh.2,084,560/- as at that time. The petitioner/applicant further averred that the respondent continues to levy unlawful, unreasonable and unjustified charges with the bill standing at Ksh.3,494,465.50 as at 6th June, 2024. That every day that passes, the respondent has been charging between Ksh.7,500 – 12,000/- daily.
7. That the petitioner states that he has now developed a medical complication on his right foot which is characterized by painful swelling around the ankle and has been persisting since April to date. The respondent has neglected to examine him despite numerous requests or even allow him to seek alternative treatment elsewhere.
8. That continued detention has subjected him to physical and mental torture and caused him significant loss of livelihood and revenue. That due to continued detention he has been unable to renew his work permit No. 10240444 thereby worsening his financial and professional hardship.
9. That he has tried severally to seek a settlement with the respondent by giving proposals but the respondent has rejected them insisting on getting paid a lump sum payment. That on 11th June, 2024, he wrote through his Advocate proposing a payment plan but the respondent out rightly rejected the plan and subjected him to undue duress and indignity.
10. That efforts to get his medical documents through a letter dated 18th June, 2024 by his advocate did not succeed as the respondent rejected the request. That despite writing a demand letter for his release in which he offered and proposed to settle the outstanding bill and also surrender his passport as security, the respondent equally rejected this suggestion.
11. He deponed that the continued conduct by the respondent has exposed him considerable physical, emotional and financial distress that has exacerbated his already precarious situation. That the



continued detention is a violation of his rights and fundamental freedoms under Article 28, 29 and 39 of the Constitution as it is pegged on unsettled pecuniary obligation.

Respondent's Case

12. The respondent, through his Chief Executive Officer, George Salib swore a replying affidavit on 16th July, 2024 in answer to the allegations made by the petitioner.
13. He stated that on admission, the petitioner did not present proof of NHIF and being a foreigner no one could assume he is a resident and contributor and that the only time NHIF appeared was during his dialysis.
14. The respondent stated that the 1st time the petitioner was discharged was on 10th November, 2023, by Dr. Sakr, but he remained in hospital under the care of Dr. Moturi until 16th January, 2024.
15. The respondent denies that the petitioner was detained at the hospital. He stated that petitioner and his kin have received numerous communication, letters and even visits from the inpatient account staff requiring them to clear the hospital bill but have remained silent or abusive in many instances.
16. That when the respondent exhausted all efforts it wrote to the Embassy seeking intervention to get him out of hospital but all was in vain.
17. That the challenge to validity of the hospital bill is baseless as all the physiotherapy sessions are documented.
18. The respondent contended that it would be against public policy for the court to release the petitioner without making payment since the hospital needs the funds to treat other patients.
19. That the petitioner is a foreigner with no known abode in Kenya and does not want to pay his medical bill, and that he is before court with dirty hands hence is not entitled to orders sought.

Petitioner's rejoinder

20. In a brief rejoinder, through a supplementary affidavit sworn by the petitioner/applicant on 16th July, 2024, the petitioner disputed the respondents assertion that he has not been detained terming the position taken by the respondent as misleading. He also denied that the respondent served him with the demand letter annexed to the affidavit or that the respdoent approached the Embassy.

Petitioner's Submissions

21. The petitioner's advocate filed written submissions dated 16th July, 2024 in which counsel identified three (3) issues for determination:
 - a. Whether continued detention of the petitioner by the Respondent constituted violation of Constitutional Rights.
 - b. Whether the orders amount to unlawful and unfair administrative action.
 - c. Whether the petitioner is entitled to reliefs sought.
22. On the first issue, counsel cited Article 28 of the Constitution of the right to human dignity and argued that continued detention and neglecting the petitioner's medical needs while in hospital constitutes inhuman and degrading treatment. He relied on the case of Francis Kariuki Muruatetu & another v Republic (2017) eKLR that affirmed the right to human dignity by observing that any action that



undermines or degrades human dignity is unconstitutional and cannot be countenanced under any circumstances.

23. Further, the petitioner relied on the case of *Sonia Kwamboka Rasugu v Sandalwood Hotel & Resort Limited T/A Paradise Beach Resort & Leon Muriithi Ndubai* [2013] eKLR where the court held that:

“Any form of detention not sanctioned by law that seeks to procure performance of contractual debt is a violation of right to liberty. It is also an affront to human dignity to detain someone on account of debt that cannot be enforced against them.”

24. Further the case of *Emmah Muthoni Njeri v Nairobi Women’s Hospital* where it was held that detaining a patient for unpaid medical bill is a violation of a patient’s liberty and human dignity.

Respondent’s submissions

25. The respondent’s stand is that the petition raises no constitutional issue as it is a case of a petitioner who has fraudulently obtained services of the respondent that he refuses to pay for and that he has not even put that any evidence of forceful detention.

26. That the respondent needs funds hence the petitioner should just pay for his medical bill. The respondent contended that this is a matter that the petitioner can/could ventilate through other judicial means, not as a constitutional petition.

27. The respondent further submitted that petitioner is a foreigner and the respondent is apprehensive that he might leave the jurisdiction and default to pay hence the petitioner must deposit/furnish security to ensure he does not defeat the ends of justice.

28. The respondent submitted that the respondent is a Mission Hospital and Doctors who have attended to the petitioner have presented the bills which the hospital has in turn presented to the petitioner for payment hence the petitioner should provide a proper payment plan, otherwise the respondent will be exposed to suits from third parties. He stated:

“the respondent is a Mission Hospital that is helping many sick people and it should not be crippled by foreigners who desire to avoid paying due bills”

Analysis and Determination

29. There is only one issue for determination in this application:

Whether or not the court should grant a conservatory order pending the hearing and determination of the petition.

30. The constitutional basis for issuance of conservatory order is both anchored in the text of the *Constitution* and the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013*.

31. the *Constitution* provides that in proceedings brought under Article 22; which are proceedings claiming a right or fundamental freedom has been violated, infringed or is threatened; part of the orders that the court may grant is a conservatory order under Article 23(3) (c).

32. Rule 23 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013* states:

“Conservatory or interim orders)”



1. Despite any provision to the contrary, a Judge before whom a petition under Rule 4 is presented shall hear and determine an application for conservatory or interim orders.”
33. As to what is the substance of a conservatory order; the case of *Invesco Assurance Co. v MN (Minor suing thro’ next friend and Mother)* (2016) eKLR provides an insight. The court explained:

“A conservatory order is a judicial remedy granted by court by way of undertaking that no action of any kind is taken to preserve the subject until the motion of the suit is heard. It is an order of status quo for preservation of the subject matter.”
34. In the case of *Centre for Right Education and Awareness (CREW) and Another v Speaker of the National Assembly* (2017) eKLR, the court held that:

“A party who moves to the court seeking conservatory orders must show to the satisfaction of the court that his/her rights are under threat of violation, are being violated or will be violated and that that the violation or threatened violation is likely to continue unless a conservatory order is granted. This is because the purpose of conservatory order is to prevent violation of rights and fundamental freedom and preserve subject matter pending the hearing and determination of a pending case or petition.”
35. In granting conservatory orders, certain principles have been developed through case law. They include:
 - i. There must be a demonstration of a serious question for determination touching on applicant’s rights and fundamental freedoms that are alleged to be are under threat of violation, are being violated or will be violated.
 - ii. That if the conservatory order is not granted, the petition or substratum will be rendered nugatory.
 - iii. The need to consider public interest in granting or not granting the conservatory order.

(See the Supreme Court case of *Gatirau Munya v Dickson Kitbinji & 2 Others* (2014) eKLR, *Wilson Kaberia Nkunja v The Magistrate & Judges Vetting Board & Others* High Court (2016) eKLR.
36. Turning now to the present application, despite denial by the respondent, it is crystal clear that what is in contention is an outstanding medical bill that, that petitioner has accumulated from services rendered at the respondent’s facility and which the respondent insists must be paid before the petitioner is released from the hospital. This can be gleaned from the reading of both the respondent’s replying affidavit and submissions of counsel for the respondent which corroborate the petitioner’s assertion.
37. That state of affairs raises a fundamental constitutional question, which is whether the respondent can detain the petitioner in hospital to enforce payment of a contractual debt in the light of Articles 28, 29 and 39 of the *Constitution*. In the case of *Sonia Kwamboka Kasugu v Sandalwood Hotel and Resort & Others* (*Supra*), it was ruled that detaining someone for non-payment of contractual debt violated Article 28 and 29(a) of the *Constitution*.
38. Considering that the reason for detention of the petitioner by the respondent is to enforce payment of an accumulated medical bill, a failure to issue a conservatory order at this stage could potentially prejudice the rights and fundamental freedoms of the petitioner which form the substratum of the



petition. It is, therefore, necessary that pending the hearing and determination of the petition, his rights and fundamental freedoms be preserved.

39. In any case, balancing the two competing constitutional values, rights to dignity and liberty vis-a-vis, the right to property i.e. payment of outstanding sum owed to respondent the court finds that payment can be remedied even at a later date with interest whereas violation of dignity and liberty may not be easy to quantify.
40. Nevertheless, I cannot overlook the respondent's apprehension of possible difficulties it may encounter in recovering the accumulated amount considering the petitioner is a foreigner who may leave jurisdiction upon discharge.
41. The discharge of the petitioner pending the hearing of the petition and should not in any way hinder the respondent and petitioner from discussing the settlement of this debt or stop the respondent from instituting legal action seeking to enforce payment of outstanding sum.
42. I note that the petitioner had voluntarily offered to surrender his passport to the hospital as a condition of his release.
43. The upshot of the above is that the court finds the threshold of conservatory order has been met. I thus grant orders as follows: -
 - a. That a conservatory order be and is hereby issued restraining the respondent, its servant, agents, proxies and/or employees from continuing to detain the petitioner Renz William Frederick within the premises of Kenya Coptic Hospital or any other place.
 - b. The petitioner shall however with immediate effect surrender his passport to the Deputy Registrar of this Court to hold for the duration of this Petition or until further orders of the Court to assure the Court and the Respondent he would remain within the Court's jurisdiction or can only leave the jurisdiction with the permission of the Court and with notice to the Respondent.
 - c. Costs shall be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MILIMANI THIS 19TH DAY OF JULY, 2024.

L N MUGAMBI
JUDGE

