



REPUBLIC OF KENYA



**Njuguna v Nairobi Hospital (Constitutional Petition E003 of 2024)  
[2024] KEHC 11314 (KLR) (17 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11314 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CONSTITUTIONAL PETITION E003 OF 2024  
GL NZIOKA, J  
SEPTEMBER 17, 2024**

**BETWEEN**

**MARY WANJIKU NJUGUNA ..... PETITIONER**

**AND**

**THE NAIROBI HOSPITAL ..... RESPONDENT**

**RULING**

1. The petitioner filed the subject application herein dated, 4<sup>th</sup> June 2024, brought under the provisions of; Article 22, 23, 24, 25, 28, 29(a) & (b), 39(1), 50, 43, 475(sic) & 159 of the Constitution of Kenya 2010 and all enabling provisions of the law seeking for the following orders: -
  - a. Spent
  - b. That, pending the hearing and determination of this application/petition the honourable court be pleased to issue a mandatory order compelling the respondent to release the petitioner's father namely Simon Njuguna Wambugu from the Nairobi Hospital where he is unlawfully detained for non-payment of medical bill.
  - c. That, pending the hearing and determination of this application/petition the honourable court be pleased to issue order of stay of the decision of the Nairobi Hospital Management to detain the petitioners father for non-payment of the hospital medical bill.
  - d. That, pending the hearing and determination of this application/petition an order of injunction be pleased to restrain the Nairobi Hospital Management from continuing to hold the petitioners father Simon Njuguna Wambugu for alleged non-payment of hospital bill.
  - e. That the cost of this application be borne by the respondent in any event.
2. The application is supported by the grounds thereto and the affidavit of the even date sworn by the petitioner, the daughter of Simon Njuguna Wambugu who is the subject of the application.



3. She avers that, her father was admitted at the Nairobi Hospital on 2<sup>nd</sup> May 2024 and was discharged on 25<sup>th</sup> May 2024, at which time, the total hospital bill was Kshs. 3,770,420.
4. That, as of 1<sup>st</sup> June 2024, a total of Kshs. 815,000 had been paid towards the hospital bill, but the respondent refused to release the subject and continued to unlawfully detain him. Subsequently, the subject's family offered three title deeds being; Nyandarua/ol/3303/awagwai Ol Awagwai/3303, Ruiru Kiu Block 4/1767 and Ruiru Kiu Block 4/1698 as security, however the respondent turned them down.
5. Further, the subject has a medical insurance cover from General Insurance which will pay some part of the bill, however the respondent has refused to disclose how much the insurer will pay.
6. The petitioner avers that, once the subject is released from the hospital, the family will make arrangements to pay the balance of the bill within thirty (30) days.
7. That, the continued detention of the subject denies him his human dignity and freedom of movement and is inhumane, illegal and unreasonable and has greatly impacted his health and prays the court comes to his rescue.
8. The court gave the parties an opportunity to negotiate the matter pursuant to the provisions of Article 159(2)(c) of the *Constitution* which encourages alternative dispute resolution. However, the parties were unable reach an agreement and therefore court directed the respondent to file its response to the application. The respondent never responded to the application.
9. The application was disposed of vide written submissions. The petitioner in submissions dated 18<sup>th</sup> July 2024 reiterated her averments in the affidavit and argued that, detention of patients is not a method of debt collection.
10. That, in the case of *Gideon Kilundo & Daniel Mwenga v Nairobi Women's Hospital* (2018) eKLR the High Court faced with similar facts stated that, the undertaking to pay the hospital bill was a contractual relationship and the petitioner having failed to fulfil it the respondent was at liberty to pursue the petitioner within the law governing recovery of debts.
11. The High court further stated that, the detention of a patient was not an acceptable avenue of debt recovery, and declared the continued detention of the petitioner unlawful and arbitrary and issued an order of mandamus for the release of the petitioner.
12. However, the respondent in submissions dated 23<sup>rd</sup> July 2024, stated that, the petitioner's father was admitted after signing the respondent's admissions form which among other provisions provides an undertaking to ensure payment of the medical bill ensuing from any treatment received. That, the respondent received part payment of the admission fee and proceeded to carry out emergency treatment on the petitioner's father in order to save his life.
13. Further, until he was eventually discharged on 11<sup>th</sup> June 2024, the petitioner's father was afforded the best medical care using advanced technology in an atmosphere of trust, safety and comfort in accordance with Article 43(1)(a) on the right health care service, Article 46(1) and (3) on consumer rights to services of a reasonable quality and protection of their health, and the legal framework for health including the *Public Health Act* Cap 242 and the *Health Act* No. 21 of 2017.
14. The respondent stated that, the hospital bill was determined to be Kshs. 3,940,504 out of which the petitioner paid Kshs. 1,015,000 while the subject's insurance company undertook to pay Kshs. 1,447,980 leaving a balance of Kshs. 1,477,524 that remains unsettled. That the respondent was understanding and requested for security but the petitioner has never provided the same. Further, the



- respondent never acted in bad faith considering it had the option of demanding the petitioner's father be transferred to another hospital.
15. The respondent argued that, the petitioners acted fraudulently and in bad faith by accessing quality medical care and attention and only disclosed that they were unable to settle the bill after the petitioner's father was discharge. This was despite the respondent incurring substantial costs for the services offered.
  16. The respondent further submitted that, the rights and freedoms of a person in Kenya do not exist in isolation. That, Article 24(1)(d) of the Constitution provides that the rights and freedoms of an individual should not prejudice the rights and freedoms of others. That, the respondent being a business and corporate individual has proprietary rights over the medical fees under Article 40(1) and (2)(e) of the Constitution and is entitled to compensation under Article 23(3) of the Constitution .
  17. Furthermore, the respondent did not infringed on the constitutional rights of the petitioner's father as the respondent's actions were justified under Article 29 of the Constitution in light of the fact that the hospital bill was uncontested. Additionally, the respondent was only seeking security as collateral for the balance of the hospital bill.
  18. The respondent relied on the case of; Ludidi Venant & another v Pandya Memorial Hospital [1998] eKLR where the High Court issued a mandatory injunction to release a deceased body conditional on the plaintiffs therein filing in court an undertaking to pay the hospital's bill.
  19. Further, in the case of; Gideon Kilundo & Daniel Mwenga v Nairobi Women's Hospital (2018) eKLR the High Court stated that, it does not augur well for the dispensation of justice for a person to go to a private hospital for treatment and expect not to pay a single cent under the guise of constitutional protection of liberty and freedom of movement.
  20. The respondent prayed that, the court order the payment of the outstanding bill of Kshs. 1,477,524 plus any amount accrued and incidentals and ruling, or in the alternative, the court orders for the deposit of security of the title deeds as collateral and the petitioner be give sixty (60) days to settle the outstanding medical bills as at the time of the ruling.
  21. After considering the subject matter herein in light of the materials placed before the court I note that, there is no dispute that, the petitioner received medical services from the respondent. That the petitioner agreed an undertaking to indemnify the respondent for services rendered.
  22. Pursuant to the aforesaid, the petitioner cannot alleged that, his detention is unlawful per se when the liability that has arisen for him to discharge remains unsettled.
  23. However, there is no provision as has been well argued for the mode of execution which the respondent has deployed to recover the sum owing. In my considered opinion, the relationship between the parties is contractual. The remedies available are those known in law for breach of contract. The subject remedies entail inter alia filing a civil suit for recovery of the sum owed or enforcing any security provided to cushion the service provider in case of default, but not detention of the petitioner.
  24. The saving grace herein is that, the petitioner has made some substantial payment towards settling of the sum owed and is willing to provide security in the form of title deeds referred herein. The respondent too is willing to release the petitioner on condition that he deposits security in terms of title deeds initially ordered to be held as collateral and fix the time limit of sixty (60) days to settle the outstanding bill.



25. I note that, though the afore proposal has been made in the submissions, the petitioner has not opposed the same. Furthermore, the petitioner avers vide the affidavit sworn by Mary Wanjiku Njuguna at paragraph 12 that, the petitioner has offered three (3) properties as security.
26. Pursuant to the aforesaid, I order that:
- a. All the three title deeds be availed to the respondent together with valuation reports within seven (7) days of the date of this order.
  - b. Once the same is done, the copies thereof and the valuation reports be filed in court within the seven (7) days.
  - c. The matter to revert back to court for final orders.
27. It is so ordered.

**DATED DELIVERED AND SIGNED THIS 17<sup>TH</sup> DAY OF SEPTEMBER 2024.**

**GRACE L. NZIOKA**

**JUDGE**

In the presence of:

Mr. Muthanwa for the petitioner.

Mr. Onguka for the respondent

Mr. Komen Court Assistant

