



Munyi (Suing as Next Friend of CMM (Minor) & another v Minet Kenya Insurance Brokers Limited & another (Petition E481 of 2022) [2024] KEHC 15811 (KLR) (Constitutional and Human Rights) (9 December 2024) (Judgment)

Neutral citation: [2024] KEHC 15811 (KLR)

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

PETITION E481 OF 2022

EC MWITA, J

DECEMBER 9, 2024

BETWEEN

BERNARD MURIUKI MUNYI (SUING AS NEXT FRIEND OF CMM (MINOR) 1ST PETITIONER

CHRISTINE NJERI 2ND PETITIONER

AND

MINET KENYA INSURANCE BROKERS LIMITED 1ST RESPONDENT

KENYATTA NATIONAL HOSPITAL 2ND RESPONDENT

JUDGMENT

1. The petitioners are parents of CMM, a minor. They filed this petition against the respondents, claiming violation of their rights and fundamental freedoms. The 1st petitioner has a medical cover under the Teachers Service Commission (TSC) medical scheme which is operated and administered by the 1st respondent on behalf of TSC and its employees. The petition is supported by affidavits and written submissions.
2. The petitioners' case is that on 21st March 2022, CMM fell ill and was taken to Bliss Medical Centre for treatment. The petitioners later took CMM to Nairobi West Hospital on the 1st respondent's advice where he was admitted on 22nd March 2022 and incurred a bill of Kshs. 394, 560 which the 1st respondent settled through the 1st petitioner's inpatient medical cover. On 6th April, 2022 CMM was taken to Kenyatta National Hospital (the 2nd respondent) at the petitioners' request and admitted until 9th May 2022 when he was discharged again incurring a further medical bill of Kshs. 651, 959.40 as at that date.



3. The petitioners' other child had also been hospitalised at Chiromo Lane Hospital incurring a bill of Kshs. 714, 815. The 1st respondent settled Kshs. 355,440 through the 1st petitioner's inpatient medical cover leaving a balance of Kshs. 359,375.
4. The petitioners state that they were later shocked to learn that they had unpaid hospital bills despite the 1st respondent having approved CMM's treatment at the 2nd respondent facility. The petitioners assert that upon informing the 1st respondent of the pending bills, the 1st respondent told them that they were working on the bill but did not inform them that medical cover limit had been exhausted, only to inform them much later that they had exhausted the cover limit. The petitioners contend this severely affected them because they had not planned for such an eventuality.
5. The petitioners state that their inability to settle the hospital bill with the 2nd respondent led to the detention of CMM together with the 2nd petitioner from 9th May 2022 after being discharged. The 2nd petitioner left the facility 30th August 2022 after she was assaulted by the 2nd respondent's staff on 29th August 2022. This forced them to employ a caregiver for CMM at a cost of Kshs. 8,000 per month. The hospital bill had also risen to Kshs. 1,166,423.40 by 24th August 2022 due to continued detention. The petitioners' effort to raise funds to offset the hospital bill did not succeed and a nursing officer's offer stand as their guarantor was rejected by the 2nd respondent
6. the petitioners' effort to get assistance from other institutions and organisations did not also succeed. Even the attempt by the Head of Public Service to intervene by asking the Cabinet Secretary, Ministry of Health that the Ministry consider paying the medical bill and the subsequent letter from the CS Health to the 2nd respondent's Chief Executive Officer (CEO) asking them to consider releasing CMM and the 2nd petitioner on ex gratia basis to avoid further accumulation of the bill bore no fruits.
7. The petitioners eventually approached TSC requesting it to deduct Kshs. 2000 per month from the 1st petitioner's salary and remit the money to the 2nd respondent, but argue that the 2nd respondent failed to have this actualised.
8. The petitioners state that CMM's detention caused them anguish and trauma; the 1st petitioner experienced destabilization at his place of work due to absence from school following up on the matter and the 2nd petitioner was forced to close business thereby losing income.
9. The petitioners also state that CMM was denied further treatment due to the detention; they became a laughing stock among family, friends, patients and staff who viewed them as irresponsible parents and as a result, they suffered immense physical, psychological and emotional pain. They assert that the respondents' actions violated their rights guaranteed under articles 28, 29(1)(a), 35(1)(b), 39, 43(1)(a) and 53(1),(3) and 46(1) of *the constitution* and seek declarations of violations of these rights and orders for compensation in general and exemplary damages.
10. The petitioners rely on the decision in Nairobi Law Monthly Company Limited v Kenya Electricity Generating Company & 2 others [2013] eKLR on the right of access to information and *Elfstrom v New York Life Ins. Co.*, 67 Cal. 2d 503, 63 Cal. Rptr. 35, 432 P. 2d 731 (Cal. 1967), that the real insurer-insured relationship was between them and the 1st respondent and that TSC was only an agent of the 1st respondent.
11. On the violation of their right to liberty, freedom of movement, health, dignity and health of the child, the petitioners rely on *Tryphosa Jebet Kosgey v Elgon view Hospital* [2016] eKLR; *M A O & another v Attorney General & 4 others* [2015] eKLR ; *Christine Kidha v Nairobi Women's Hospital* [2016] eKLR.



12. The petitioners again rely on article 43 (1) (a) of *the constitution*, article 16 of the African Charter on Human and People’s Rights and the decision in P A O & 2 others v Attorney General; Aids Law Project (Interested Party) [2012] eKLR that their detention in hospital limited access to other hospitals.
13. The petitioners also cite the decision in CKN & another v Nairobi South Hospital [2022] KEHC 16497 (KLR) and Emmah Muthoni Njeri v Nairobi Women’s Hospital [2021] eKLR to argue that they have no obligation to pay any expenses that may have been incurred due to the unlawful detention by the 2nd respondent.
14. The petitioners pray on behalf of CMM for Kshs. 30,000,000 against the 1st respondent and a similar amount of Kshs. 30,000,000 against the 2nd respondent. They urge for Kshs. 5,000,000 each against the 1st respondent and Kshs. 5,000,000 each against the 2nd respondent.
15. The petitioners further pray for special damages of Kshs. 651,959.40 against the 1st respondent and Kshs. 16,000 against the respondents jointly and severally. They also pray for costs of the petition.

1st respondent’s case

16. The 1st respondent has opposed the petition through a replying affidavit sworn on 21st March 2023 by Edwin Kegode and written submissions. The 1st respondent admits that the 1st petitioner is covered under the TSC medical scheme. In the scheme, each member and his/ her family has an annual cover of Kshs. 900,000 made up of an inpatient limit of Kshs. 750,000 and group excess of loss of 150,000. The 1st respondent only administers the medical scheme on behalf of TSC but has no authority to adjust the cover limits.
17. The 1st respondent states that it was notified that CMM needed medical attention and advised that he be taken to Nairobi West Hospital where he was admitted. However, the 1st petitioner on his own, requested that CMM be transferred to the 2nd respondent facility for a second opinion and to be treated by a doctor of their choice. The bill at from Nairobi West Hospital was Kshs. 394, 560 which it (1st respondent) settled using the 1st petitioner’s inpatient cover and not Kshs. 442,916.79 as the petitioners allege.
18. The petitioners’ other child had also been treated at Chiromo Lane Hospital incurring bill of Kshs. 714, 815. The 1st respondent settled Kshs. 505,440 through the 1st petitioner’s medical cover. The 1st respondent contends that the admission of the other child from 9th April 2022 to the date of discharge on 5th May 2022 took up the remaining inpatient benefit of the 1st petitioner and hence CMM’s bill could not be covered.
19. The 1st respondent asserts that the cost of CMM’s treatment was subject to the 1st petitioner’s cover limit and the 1st petitioner as the employee covered under the scheme was aware of the cover limit and any grievances concerning the medical cover could only be raised with the TSC.
20. The 1st respondent denies the 1st petitioner’s claim that he sought information about his cover but it was not given. On the contrary, the 1st respondent informed the petitioner that it was guided by the contract and guidelines on the administration of the medical scheme based on the members’ annual cover limit. The 1st petitioner was also informed that the inpatient allocation had been exhausted.
21. The 1st respondent argues, therefore, that any psychological, emotional pain, inconvenience and any loss the petitioners may have suffered could only be raised with TSC. The 1st respondent maintains that the petitioners have not demonstrated that it has violated any their rights or the constitutional provisions and how.



22. The 1st respondent relies on the decisions in *Bernard Murage v Fineserve Africa Limited & 3 others* [2015] eKLR and *Anarita Karimi Njeru v Republic* [1979] eKLR. The 1st respondent again relies on *Roshanara Ebrahim v Ashleys Kenya Limited & 3 others* [2016] eKLR to argue that the substratum of the petition is based on a contract between parties and their obligations.

2nd respondent's case

23. The 2nd respondent has also opposed this petition through a replying affidavit sworn by Hamina Mwua and written submissions. The 2nd respondent states that the 1st petitioner chose to have CMM admitted at its private wing (KPCC) on the understanding that the bill would be settled either by cash or through his insurance medical cover. CMM admitted at the private on 6th April 2022 as a referral case from Nairobi West Hospital with complaints of persistent fever, difficulty in breathing, recurrent regurgitation, delayed milestones among others.
24. MCC was diagnosed with sepsis, recurrent aspiration, ectopic right kidney and global development delay and was put on appropriate treatment without asking for deposit. CMM was discharged on 9th May 2022 to continue with medical reviews every two weeks with a renal doctor and neurologists on appointment.
25. The petitioners were periodically updated about the bills and the nature of treatment CMM was getting. The 1st petitioner was also advised to make arrangements with the 1st respondent on clearing the bills. In the meantime, CMM continued to receive timely medical healthcare services. The 2nd respondent was not privy to the discussions between the petitioners and the 1st respondent regarding the clearance of the bill and denies detaining CMM at the facility.
26. On learning of the petitioners' predicament with the 1st respondent, the 2nd respondent promptly advised them to seek alternative accommodation; give a collateral or sign an understanding that the bill would be cleared even as they sorted out the issue with the 1st respondent, but the petitioners neither gave a collateral nor signed an undertaking.
27. The 2nd respondent even advised the petitioners to apply to its Social Works Department for consideration in case they were vulnerable and destitute but they did not apply. The 2nd respondent maintains that it was surprised that this petition had been filed alleging detention of both CMM and the 2nd petitioner.
28. The 2nd respondent further contends that on becoming aware of the 1st petitioner's employer and his predicament with the 1st respondent, through letter dated 27th October 2022, the 2nd respondent's CEO wrote to the 1st petitioner's employer asking them to deduct one third of the 1st petitioner's salary to go towards settling the outstanding bill. As a result, Kshs. 6,000 was being deducted from the 1st petitioner's salary towards settling the hospital bill which was Kshs. 1, 294, 453.40 at the time of discharge.
29. The 2nd respondent denies violating the petitioners' rights. The 2nd respondent argues that the petitioners have not pleaded with reasonable degree of precision how the alleged constitutional provisions were violated. Reliance is placed on the decision in *Anarita Karimi Njeru v Republic* (supra)
30. The 2nd respondent again argues that it played a facilitative role; updated the petitioners on the accrued bill and offered the petitioners alternative solutions, including attachment of the 1st petitioner's salary towards payment of the bill. A medical bill of Kshs. 1,294,453 remains unpaid



31. According to the 2nd respondent, the court is faced with two competing interests, the petitioners' rights under articles 29 and 39 of *the constitution* and its rights under article 40 of *the constitution*. The 2nd respondent maintains that the petitioners had the liberty to use a cheaper hospital but chose to have CMM admitted at its private wing only to decline to pay the bill on being discharged. The 2nd respondent relies on the decision in *Gideon Kilundo & Daniel Kilungo Mwenda v Nairobi Women's Hospital* [2018] eKLR.
32. The 2nd respondent takes the view, that it cannot be blamed for the petitioners' predicament because it offered the petitioners alternative solutions which they failed to explore. Discharge of a patient is a process that should not be equated to detention. It depends on both sides to actualize.

Determination

33. Upon considering the pleadings and arguments by parties, the issues that arise for determination are, whether the petitioner's rights and fundamental freedoms were violated and depending on the answer to this issue, whether they should be compensated and the level of quantum.

Violations

34. The facts of this petition are largely undisputed. On 21st March 2022, CMM was taken to Bliss Medical Centre for treatment. The petitioners were advised to take him to Nairobi West Hospital which they did on the following day, 22nd March 2022 and CMM was admitted. A bill of Kshs. 394, 560 was incurred by the time of discharge which the 1st respondent settled through the 1st petitioner's inpatient medical cover.
35. On 6th April, 2022 CMM was transferred to the 2nd respondent facility and admitted for further treatment and management until 9th May 2022 when he was discharged, incurring a further bill of Kshs. 651, 959.40. Meanwhile, the petitioners had another child, (D M), who had also been Attended at Chiromo Lane Hospital again incurring another bill of Kshs. 714, 815. The 1st respondent settled Kshs. 305,440 through the 1st petitioner's inpatient medical cover.
36. The petitioners argue that when the 1st respondent was informed of the pending bill, they were informed that the 1st respondent was working on the bill. They were later shocked to learn that they had an outstanding hospital bill with the 2nd respondent yet the 1st respondent had approved CMM's treatment at the 2nd respondent facility without informing them that their inpatient medical cover limit had been exhausted. This, the petitioners contend, affected them because they had not planned for such an eventuality. They were humiliated in the eyes of the public, friends and patients as a family that was incapable of discharging its obligations, all because of the 1st respondent's failures.
37. The petitioners further argue that due the inability to settle the bill, CMM and the 2nd petitioner were detained from 9th May 2022 after discharge. The 2nd petitioner left the facility on 30th August 2022 after she was assaulted by 2nd respondent's staff. This forced them to employ a caregiver for CMM. The hospital bill had also risen to Kshs. 1,166,423.40 by 24th August 2022 and a nursing officer's offer to stand as their guarantor was declined.
38. The 1st respondent's position is that the 1st petitioner is covered under the TSC medical scheme in which a family is entitled to Kshs. 900,000 comprising of an inpatient limit of Kshs. 750,000 and group excess of loss of 150,000. The 1st respondent only administers the medical scheme on behalf of TSC and has no authority to adjust any of the cover limits.



39. The 1st respondent maintains that it advised the 1st petitioner to take CMM to Nairobi West Hospital and settled a bill of Kshs. 394, 560. However, the 1st petitioner opted to have CMM transferred to the 2nd respondent facility for a second opinion and to be treated by a doctor of their choice.
40. The petitioners' other child was treated at Chiromo Lane Hospital, incurring a bill of Kshs. 714, 815. The 1st respondent paid Kshs. 505,440 out of the 1st petitioner's inpatient medical cover. The 1st respondent contends, therefore, that the 1st petitioner's inpatient cover having been exhausted, they had to cover the remaining bill since the cost of treatment was subject to the 1st petitioner's cover limit which was not a blanket cover. The 1st petitioner was also aware of the limit of his cover and any grievances concerning the cover; psychological or emotional pain the petitioners may have suffered can only be raised with the TSC.
41. This petition is founded on a claim of violation of rights and fundamental freedoms guaranteed by *the constitution*. 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 right or fundamental freedoms.
42. In this respect, a petitioner has to establish to the satisfaction of the court that his rights and or fundamental freedoms have been infringed, denied or threatened for the court to respond appropriately and grant appropriate relief as required by article 23(3). The essence of such relief must be to ensure that the rights enshrined in *the constitution* are protected and enforced. (*Fose v Minister of safety and Security 1997 (3) SA 786 (CC)*).
43. As against the 1st respondent, the petitioners' grievance is that due to its failure to inform them that the medical cover limit had been exhausted, they were unable to pay the 2nd respondent's bill despite the 1st respondent's promise that it was working on the bill.
44. The 1st petitioner enjoys a medical cover provided by his employer TSC to its employees. The medical scheme is administered by the 1st respondent. According to the 1st respondent, the 1st petitioner's inpatient cover limit is Kshs. 750,000 inclusive of his family. CMM was first admitted at Nairobi West Hospital with the knowledge and advise of the 1st respondent where a bill of Kshs. 394,560 was incurred and which the 1st respondent settled through the 1st petitioner's inpatient cover. CMM was then transferred to and admitted at the 2nd respondent facility on the petitioners' request, incurring another bill of Kshs. 651, 959.40 and which according to the petitioners had risen to Kshs. 1,166,423.40 by 24th August 2022.
45. The petitioners' other child had also been treated at Chiromo Lane Hospital where a bill of Kshs. 714,815 was incurred. The 1st respondent settled Kshs. 505,440 through the 1st petitioner's inpatient cover leaving the balance unpaid. The petitioners blame the 1st respondent for not giving them information regarding the extent of the cover limit remaining and as a result they exhausted the cover limit leaving them with outstanding hospital bills.
46. The 1st petitioner is the one who is covered under the employer's medical scheme managed and administered by the 1st respondent. He knows or ought to know the limit of his inpatient cover. The 1st petitioner was aware of the bills incurred at both Nairobi West Hospital and Chiromo Lane Hospital. From those bills he was in a position to know how much was left in his inpatient cover and whether the amount would have been sufficient to meet further hospital bills.



47. In this respect and with this information, it is difficult to agree with the petitioners that the 1st respondent did not give them information regarding the cover limit and as a result, they were left with outstanding bills to their embarrassment. The 1st respondent only manages the medical scheme on behalf of TSC and its employees. It is bound by the terms of the covered for each employee and members of his/her family. The 1st respondent has no mandate to do anything outside its mandate, including authorising payment beyond the member's cover limit.
48. The petitioners argue that they needed information on the exhaustion of the cover limit in good time in order to protect their rights under articles 28, 29, 39, 43 and 53 of *the constitution*. Failure to get this information, they argue, resulted in the 2nd respondent violating their rights by detaining CMM and the 2nd petitioner over the unpaid bill.
49. Article 35 of *the constitution* provides that 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 or fundamental freedom.
50. The right of access to information is exercisable on request by the person seeking information. Provisions of the *Access to Information Act* give guidelines on how the information should be sought. (See sections 8 and 9). Information about the cover was not being held by the State or State organ but by a private entity. In that respect, the petitioners had to show, one; that they sought that information in writing and, second; that the information was required for the exercise or protection of a right or fundamental freedom.
51. The petitioners have not demonstrated how they sought the information but the information was not given, leading to the violation of their rights. As already stated, the 1st petitioner must be aware of the information they wanted being the total amount of the inpatient cover, how much had been utilised at Nairobi West Hospital and Chiromo Lane Hospital and how much the balance was, if any. This was a matter of arithmetics that the petitioners could easily ascertain by adding the amount already spent at Nairobi West Hospital and Chiromo Lane Hospital since they did not dispute the fact that the cover was utilised to settle medical bills at both Nairobi West Hospital and Chiromo Lane Hospital. The 1st respondent could only confirm the figures if they needed such confirmation.
52. In this respect, this court is unable to agree with the petitioners that the 1st respondent violated any of their rights and fundamental freedoms as alleged. The 1st respondent is an agent whose mandate is limited to administering the medical scheme which it must do in accordance with the terms of its engagement.

Violations by the 2nd respondent

53. Regarding the 2nd respondent, the petitioners argue that CMM was discharged on 22nd April 2022 but the 2nd respondent declined to release him and the 2nd petitioner for non-payment of the medical bill and directed the ward manager not to release them until the bill was settled. CMM was only released on 31st October 2022.
54. To these concerns, the 2nd respondent has countered that the petitioners were regularly updated on the status of the bill, they were informed of the amount of the bill and were given time to settle the issue with the 1st respondent. When the 2nd respondent became aware of the petitioners' predicament with the 1st respondent, the 2nd respondent suggested that they give a collateral and sign an undertaking on the payment of the bill but the petitioners did not. The 2nd respondent also suggested to the 1st



- petitioner that TSC could deduct part of his salary to pay the hospital bill. The 2nd respondent denied detaining CMM and the 2nd petitioner.
55. The petitioners had CMM admitted at the 2nd respondent facility for some time and the bill significantly accumulated as at the time of discharge (9th May 2022). The petitioners were unable to pay the bill which meant CMM could not leave the hospital. The petitioners have argued that the 2nd respondent detained both CMM and the 2nd petitioner thereby violating various of their rights, including liberty, freedom of movement and dignity.
 56. That CMM was admitted to the 2nd respondent's facility is not in dispute. It is also not in dispute that CMM was treated and incurred a bill at the hospital by the time of discharge. The petitioners' grievance is that they were not updated of the bill and thereafter were not allowed to leave the facility upon discharge leading to detention of CMM which was in violation of their rights and fundamental freedoms.
 57. When the petitioners took CMM to the 2nd respondent's facility for admission and treatment, they were aware that they would have to pay for the services rendered and received. They were also aware that they would have to settle the bill on CMM being discharged. However, the petitioners could not settle the bill once CMM was discharged and the 2nd respondent could not allow CMM to leave the facility without settlement of the hospital bill.
 58. The admission and treatment of CMM at the 2nd respondent's facility was a contractual arrangement between the parties on the one hand and the 2nd respondent on the other. One, that CMM would receive treatment and two, that the petitioners would pay for the treatment. CMM having been treated and incurred a bill, the petitioners did not pay for that treatment. The 2nd respondent declined to allow CMM to leave the facility before the bill had been settled or arrangement made on how to settle the bill, leading to this dispute.
 59. I have considered the arguments by parties and read the record. The petitioners' argument that the 2nd respondent did not regularly update them regarding the bill cannot be believed. This is because information regarding the hospital bill could easily be obtained from the 2nd respondent's accounts section. The petitioners have not demonstrated that they tried to get this information regarding the bill but could not or were unable.
 60. Regarding detention of CMM, the petitioners' argument is that the 2nd respondent declined to let CMM go on being discharged unless the hospital bill had been settled. No one should condone a patient's detention in hospital because the hospital bill has not been cleared. Article 28 protects every person's inherent dignity and the right to have that dignity respected and protected, Article 29 also protects the right to freedom and security of the person, including the right not to be deprived of his freedom arbitrarily or without a just cause, while article 39 provides that every person has the right to freedom of movement.
 61. The issue of patients being detained in hospital on account of non-payment of hospital bills is not new in this country. Courts have held that detaining a patient due to his inability to pay a medical bill is unlawful arbitrary and unconstitutional. For instance, in *Gideon Kilundo & Daniel Kilundo Mwenga v Nairobi Women's Hospital* [2018] eKLR, the court declared continued detention of the 2nd petitioner unconstitutional and ordered his immediate release. In that case, the 1st petitioner had signed an undertaking to pay hospital bills on behalf of the 2nd petitioner's treatment but the 2nd petitioner was detained after being discharged despite that undertaking.



62. 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 release of the patient.
63. With regard to this petition, there seems to be a disagreement on what exactly happened. Whereas the petitioners argue that they tried to come to an understanding on how the bill could be settled, including an offer by a nursing officer to guarantee payment of the bill, the 2nd respondent declined. The 2nd respondent on its part contends that it gave the petitioner alternatives such as placing a collateral and or signing an undertaking to settle the bill later but the petitioners did not take any of the options.
64. 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 a nursing officer had offered to guarantee payment of the bill in order to shift blame to the 2nd respondent that it decline to accept the offer which would have been irrational.
65. The record shows that the court (Thande J) gave parties an opportunity to resolve the matter but they did not. Finally, on 31st October 2022 the court ordered that CMM be released. The court also ordered TSC to deduct Kshs. 6,000 monthly from the 1st petitioner's salary towards the undisputed amount in the bill.
66. This being a contractual arrangement, parties had an understanding that the 2nd respondent would treat CMM and the petitioners would meet the cost of that treatment. The petitioners have not demonstrated that they made concrete arrangements on how to settle the bill but were frustrated by the 2nd respondent. If that had been demonstrated, this court's response would have been different.
67. In the circumstances, I agree that It was wrong for the 2nd respondent to continue holding CMM even after discharge but the petitioners cannot also escape the blame for not making alternative arrangements on how to settle the hospital bill. On whether any amounts are disputed, and what the exact amount of the bill should be, this court is unable to determine the issue as this is an issue of a debt to be determined elsewhere.

Conclusion

68. Having considered the pleadings and arguments by parties as well as the decisions relied on, the conclusion I come to, is that the petitioners have not proved that the 1st respondent violated any of their rights and fundamental freedoms. Regarding the 2nd respondent, it was wrong for the 2nd respondent to continue holding the minor after discharge. However, the petitioner cannot also escape blame as they have not demonstrated that they made alternative arrangements on how to clear the bill until the court ordered TSC to deduct part of the 1st petitioners' salary towards payment of the bill.
69. Consequently, the petition is declined and dismissed. Each party will however, bear their own costs.

DATED AND DELIVERED AT NAIROBI THIS 9TH DAY OF DECEMBER 2024

E C MWITA

JUDGE

