



**Mwaniki v Kenyatta University Teaching, Referral & Research Hospital  
(KUTRRH) & 3 others (Petition E053 of 2025) [2025] KEHC 13798 (KLR)  
(Constitutional and Human Rights) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13798 (KLR)

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

**PETITION E053 OF 2025**

**EC MWITA, J**

**SEPTEMBER 30, 2025**

**BETWEEN**

**SUSAN WAIRIMU MWANIKI ..... PETITIONER**

**AND**

**KENYATTA UNIVERSITY TEACHING, REFERRAL & RESEARCH HOSPITAL  
(KUTRRH) ..... 1<sup>ST</sup> RESPONDENT**

**DR. DEBORAH MULONGO BARASA, CABINET SECRETARY FOR  
HEALTH ..... 2<sup>ND</sup> RESPONDENT**

**DR. PATRICK AMOTH DIRECTOR GENERAL FOR  
HEALTH ..... 3<sup>RD</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

**Petition**

1. On 19<sup>th</sup> October 2024 the petitioner was admitted at the 1<sup>st</sup> respondent hospital for treatment. After initial treatment, the 1<sup>st</sup> respondent informed the petitioner that it lacked capacity to continue with her treatment and discharged the petitioner on 29<sup>th</sup> November 2024 to receive further treatment at a hospital of her choice, options being Kenyatta National Hospital (KNH) or Mater Hospital.
2. The petitioner had by this time incurred a bill of Kshs. 623,034.98. She managed to pay Kshs 276, 960 leaving a balance of Kshs. 345, 525. The petitioner was however, detained at the 1<sup>st</sup> respondent hospital owing to the outstanding hospital bill.



3. The petitioner filed this petition against the respondents, claiming violation of her rights and fundamental freedoms. The petition was supported by an affidavit and supplementary affidavit both sworn by the petitioner. The petitioner stated that she had on different occasions made proposals on how to clear the hospital bill, including committing part of her monthly salary but the efforts were declined with the 1<sup>st</sup> respondent insisting on a collateral security in form of immovable property and continued to detain the petitioner despite being aware that the petitioner needed emergency and advanced medical treatment.
4. The petitioner asserted that her health continued to deteriorate and she risked losing her job as a result of the detention. She also continued to incur unnecessary bills. The petitioner maintained that she suffered embarrassment and ridicule which infringed her dignity and subjected her to financial and psychological trauma and torture.
5. The petitioner stated that she undertook to settle the hospital bill through equal instalments of Kshs. 15,000 payable on the 5<sup>th</sup> day of each month from 5<sup>th</sup> March 2025; that on 14<sup>th</sup> February 2025, she followed up with her employer but was informed that the same was not possible because of the statutory threshold for deductions and minimum net paid. She was also receiving a percentage of the salary due to the sick leave policy.
6. The petitioner maintained that her livelihood was adversely affected by having been in the 1<sup>st</sup> respondent's facility since 17<sup>th</sup> October 2024 and detained from 29<sup>th</sup> November 2024. To facilitate home assessment, she asserted that she provided the 1<sup>st</sup> respondent's social workers with her exact location of the estate she lived in, contact person and details of her next of kin that were already captured in the indoor case paper.
7. The petitioner asserted that the detention had violated her rights guaranteed under articles 28, 29(a), 39(1) and 43(1) of *the Constitution*. She sought the following relief:
  - a. A declaration that the continued detention and/or actions of the 1<sup>st</sup> respondent amount to an infringement of the petitioner's rights under articles 27, 28, 29, 39 and 43 of *the Constitution* of Kenya, 2010, is arbitrary, illegal and/or unconstitutional.
  - b. A mandatory injunction be and is hereby issued restraining the respondent from continuing or proceeding with the unlawful detention of the petitioner.
  - c. An order of mandamus does and is hereby issued compelling the 1<sup>st</sup> respondent to immediately and unconditionally release the petitioner and issue an appropriate referral letter.
  - d. A declaration that the bill/ balance of Kshs. 345,525 owed by the petitioner to the 1<sup>st</sup> respondent is a civil debt recoverable from the petitioner after her discharge and release from the 1<sup>st</sup> respondent within the confines of the law governing recovery of debts.
  - e. An order of mandamus does and is hereby issued compelling the 1<sup>st</sup> respondent to immediately and unconditionally waive and/or credit the bills incurred by the petitioner after 29<sup>th</sup> November 2024.
  - f. An order that the 1<sup>st</sup> -4<sup>th</sup> respondent pays general damages to the petitioner for the psychological and mental distress suffered as a result of the violations of her constitutional rights during her detention.
  - g. An order that the 1<sup>st</sup> -4<sup>th</sup> respondents pay punitive damages to the petitioner for unlawfully detaining her because she was unable to pay the balance of her medical bill.



- h. Any other relief the court may deem fit to grant in the interest of justice.
- i. Costs of the petition to be awarded to the petitioner.

### **1<sup>st</sup> respondent's response**

8. The respondent opposed the petition through a replying affidavit sworn by Lawrence Riungu. The 1<sup>st</sup> respondent admitted that the petitioner was admitted in its facility and later referred for specialized treatment in a hospital of her choice between KNH and Mater Hospital. The petitioner and her family however declined the suggestion and instead requested for a brain Magnetic Resonance Imaging (MRI) test which could not be done. ACT scan was however conducted and everything was normal.
9. The 1<sup>st</sup> respondent stated that after the petitioner was referred for specialized treatment, she was discharged on 29<sup>th</sup> November 2024. Prior to clearing a patient after being discharged, certain policies and procedures have to be followed and the patient's cooperation is necessary for seamless clearance, including settlement of pending bills. In the event one is unable to settle the bills in full the petitioner has to disclose necessary details for further consideration to enable the 1<sup>st</sup> respondent's relevant officials determine the issue settlement of the bill.
10. The 1<sup>st</sup> respondent asserted that the petitioner had an outstanding medical bill of Kshs. 345,525 at the time of discharge on 29<sup>th</sup> November 2024 and the 1<sup>st</sup> respondent's credit control policy required 100% clearance of the medical bill, and in the event a patient is unable to raise the entire sum, a payment of at least 75% of the outstanding amount is required and the remaining 25% is to be paid within 60 days from the date the discharge.
11. The policy further requires that if the patient cannot meet these conditions and in special cases, the patient may be released upon giving a duly executed letter of undertaking in addition to either an original title deed, original log book or a bank guarantee which are not in the patient's name.
12. There is a possibility of any pending amounts being waived, a decision to be made by the 1<sup>st</sup> respondent's Waiver Committee and approved by the Hospital Accounting Officer. The decision on waiver is arrived at after the Social Workers team conducts background checks on the patient to ascertain his/her social-economic status.
13. If the Waiver Committee waives any amount and the decision is approved, the amount is deducted from the patient's bill and where the whole amount is waived, a patient is discharged and fully cleared by the 1<sup>st</sup> respondent. At the point of the petitioner's discharge, the 1<sup>st</sup> respondent established that she was unwilling to settle the outstanding bill.
14. The 1<sup>st</sup> respondent maintained that though it made attempts through the credit control department to conduct an assessment meant to establish the socio-economic status of the petitioner for a settlement arrangement between the parties there was minimum cooperation from the petitioner. The petitioner was approached by the credit control team on many occasions to get the details required for the exercise but she declined thereby frustrating her clearance process. The 1<sup>st</sup> respondent's hands were tied in so far as making a determination on the petitioner's discharge was concerned.
15. The 1<sup>st</sup> respondent asserted that at all the time when the petitioner was in its facility, she continued receiving medical attention. Although the petitioner proposed a payment plan to commit part of her monthly salary to settle the outstanding bill, the proposal did not meet the requirements.
16. Regarding payment through salary the 1<sup>st</sup> respondent stated that, for the proposal to be accepted, the petitioner's employer had to give a commitment that deductions would be made through a check-off



system and promptly update the 1<sup>st</sup> respondent in the event of any changes regarding the petitioner's employment status but the petitioner failed to comply. The proposal to have the petitioner's payslip stand in as security was therefore no longer a viable option under those circumstances.

17. The 1<sup>st</sup> respondent maintained that the petitioner never approached its management regarding her financial situation for a determination to be made. However, following the Court's directions issued on 14<sup>th</sup> February 2025 guiding the petitioner to provide the requisite information to the 1<sup>st</sup> respondent, the same was provided and the 1<sup>st</sup> respondent's Social Workers visited the petitioner's premises (on 17<sup>th</sup> February 2025) and came up with a report which was under consideration by the Credit Control Department and the Waiver Committees.
18. The 1<sup>st</sup> respondent maintained that it is subject to annual audits to ascertain how public funds are utilised and therefore has to account for money spent and such assessment reports provide proof of waiver recommendations by the 1<sup>st</sup> respondent and utility of funds.

### **2<sup>nd</sup>-4<sup>th</sup> respondents' response**

19. The 2<sup>nd</sup>-4<sup>th</sup> respondents opposed the petition through grounds of opposition. They contended that the petition does not meet the test of a constitutional petition laid down in the decision in Anarita Karimi Njeru v Republic [1979] eKLR and emphasized in Mumo Matemu v Trusted Society of Human Rights Alliance & 5 others [2014] eKLR.
20. The 2<sup>nd</sup>-4<sup>th</sup> respondents asserted that the petition discloses no reasonable cause of action as against them on any substantive grounds. The matter at hand is a contractual issue between the petitioner and the 1<sup>st</sup> respondent hence they are wrongly joined in the petition.
21. The 2<sup>nd</sup>-4<sup>th</sup> respondents contended that the petitioner was unable to sufficiently prove the nature and manner in which they had violated her rights, infringed any provision of *the Constitution* or any other law. There is also no evidence to show that the dispute between the petitioner and the 1<sup>st</sup> respondent was brought to the attention of either the 2<sup>nd</sup> or the 3<sup>rd</sup> respondents or that they had knowledge of the same and refused to act, therefore article 43 cannot be invoked.

### **Submissions**

22. This petition was disposed of through written submissions with brief oral highlights

### **Petitioner's submissions**

23. Mr. Muimi, learned counsel for the petitioner submitted highlighting their written submissions, that although the petitioner was discharged on 29<sup>th</sup> November 2024, the 1<sup>st</sup> respondent continued detaining her due her inability to settle the hospital bill in violation her rights guaranteed under articles 27, 28, 29, 39 and 43 of *the Constitution*.
24. Learned counsel relied on the decisions in Sonia Kwamboka Rasugu v Sandalwood Hotel & Resort Limited T/A Paradise Beach Resort & Leon Muriithi Ndubai [2013] eKLR; Kinoru v Labib Hospital [2025] KEHC 209 (KLR); Tryphosa Jebet Kosgey v Elgon View Hospital [2016] KEHC 5178 (KLR) and M A O & another v Attorney General & 4 others [2015] eKLR, for the argument that it is unlawful and unconstitutional to detain a person in hospital to compel payment of a medical bill or any contractual debt.
25. Learned counsel argued that although the 1<sup>st</sup> respondent attempted to justify the detention, it failed to disclose that the petitioner had on different occasions made proposals on how to clear the bill,



including committing part of her monthly salary, all of which were declined as the 1<sup>st</sup> respondent insisted on immovable property thus, set unachievable standards.

26. Mr. Muimi submitted that pleadings were served on the 1<sup>st</sup> to 3<sup>rd</sup> respondents so was the demand letter (marked WSM-4) in the affidavit in support of the petition but, they neglected to act. The 4<sup>th</sup> respondent being the principal legal adviser to the 1<sup>st</sup> -3<sup>rd</sup> respondent, is therefore culpable for failure to offer legal advice.
27. Counsel submitted that at the time of hearing the petition (on 21<sup>st</sup> February 2025), the petitioner was still detained in the 1<sup>st</sup> respondent's facility due to the outstanding medical bill despite having been discharged on 29<sup>th</sup> November 2024. According to counsel, the petitioner had offered to pay part of her salary (Kshs. 15,000) towards settling the medical bill but the offer was declined.
28. Mr. Muimi submitted that the petitioner would still try to pay the outstanding bill even when she is out of hospital. Counsel relied on articles 21 (1) and 23 (3) of *the Constitution* and the decisions in *Kinoru v Labib Hospital* (supra); *Emmah Muthoni Njeri v Nairobi Women's Hospital* [2021] KEHC 8797 (KLR) and *Cecilia Karuru Ngayu v Barclays Bank of Kenya & another* [2016] eKLR to urge the court to grant the prayers in the petition and general damages of Kshs. 10, 000,000, punitive damages of Kshs. 5,000,000 and costs.

### **1<sup>st</sup> respondent's submissions**

- 29 Mr. Muthee, learned counsel for the 1<sup>st</sup> respondent submitted that there was no violation of the petitioner's rights and fundamental freedoms. According to counsel, the 1<sup>st</sup> respondent did not violate article 43 (1)(a) of *the Constitution*; provided requisite healthcare services within the available resources and did not commit deliberate act of denial, negligence, or omission that would result in the petitioner's alleged suffering. The petitioner did not demonstrate that she was denied access to healthcare services that were available or that the 1<sup>st</sup> respondent acted in bad faith.
30. Regarding the petitioner's right to freedom and liberty, counsel submitted that the 1<sup>st</sup> respondent discharged the petitioner for further treatment in another facility. However, both the petitioner and her family declined to proceed with the transfer as recommended. The family had since been out of reach; their whereabouts remained unknown and the contact phone number in the petitioner's records with the 1<sup>st</sup> respondent went unanswered.
31. Mr. Muthee submitted that the 1<sup>st</sup> respondent persuaded the petitioner to give her family's alternative contacts in vain. Even then, the 1<sup>st</sup> respondent continued to offer treatment in the interest of the petitioner's health and wellbeing. Counsel relied on the decision in *Omusundi & another v Superintendent of Nakuru Level Five Hospital & 2 others* [2022] KEHC 10535 (KLR).
32. Counsel reiterated that none of the petitioner's relatives presented themselves to settle the medical bill and secure her admission at KNH for further treatment. The petitioner had therefore not proved how her rights were violated.
33. Regarding the claim on violation of article 28, Mr. Muthee maintained that at all material times, the 1<sup>st</sup> respondent acted in accordance with the law, policy guidelines and professional standards and did not subject the petitioner to any treatment that could be construed as degrading or demeaning. According to learned counsel, the 1<sup>st</sup> respondent owed the petitioner a duty of care even after transfer/discharge. From the medical reports, the petitioner's health condition was compromised and following her discharge, she was meant to be transferred to KNH, and a family member needed to consent to that arrangement.



34. Mr. Muthee argued that failure to observe duty of care would expose the 1<sup>st</sup> respondent to malpractice and cited the decision in *Laxman Balkrishna Joshi v Trimbak Bapu Godbole* and another 1969 AIR 128; 1969 SCR (1) 206. Learned counsel submitted that the petitioner was not held in the hospital in violation of her fundamental rights and freedoms because she was still being treated pending her transfer to another facility. The petitioner was being given proper nutrition and diet to enable her recovery as well as proper management of her condition. She had doctors, nurses and other medical personnel and facilities at her disposal pending her admission to another facility.
35. Counsel asserted that the 1<sup>st</sup> respondent's patient clearance policy is neither illegal nor unjust. The 1<sup>st</sup> respondent had provided alternative means, including waiver committee process. However, the petitioner refused to cooperate with this process, thereby frustrating the 1<sup>st</sup> respondent's efforts to facilitate a lawful clearance.
36. Learned counsel argued that although it is in the best interest to discharge and release all patients regardless of their financial status, given the petitioner's circumstances and the need for her to only transfer to another health facility, it was apprehensive on the aftermath of her release. According to learned counsel, in dealing with the issue of referral of patients, health institutions are guided by the Kenya Health Sector Referral Strategy 2014-2018. Clause 3.3 which requires the client or the client's next of kin to be responsible for providing consent for referral. Clients or next of kin who decline to consent for a referral or transfer are required to sign a form indicating that they are acting against medical advice. Neither the petitioner nor her family executed any documents hence putting the 1<sup>st</sup> respondent at crossroads. It was thus, in the petitioner's best interest to retain her petitioner until the next of kin availed themselves. Counsel relied on the decision in *Isaac Ngugi v Nairobi Hospital & 3 others* [2013] KEHC 6023 (KLR).
37. Mr. Muthee submitted that the petitioner had an accumulated bill of Kshs. 390,000 as at 20<sup>th</sup> February 2025. Counsel relied on article 40 of *the Constitution* and section 3 of the Contracts Act for the position that in as much as the petitioner was entitled to liberty and freedom of movement, the 1<sup>st</sup> respondent was equally entitled to its right to property and the court is under a duty to balance both rights bearing in mind that articles 29 and 39 of *the Constitution* are not absolute and cannot (under article 24(1)(b)) be enjoyed at the expense of the fundamental rights and freedoms of others.
38. Learned counsel maintained that the 1<sup>st</sup> respondent being a public entity it was subject to annual audits to ascertain how public funds allocated to such entities are utilised. The 1<sup>st</sup> respondent is thus, under strict requirement to observe its policies and account for any money spent failure to which it will be subjected to penalties and lead to loss of trust by the public. Clearance of patients from the 1<sup>st</sup> respondent's facility without proper reports sets bad precedence. Counsel relied on the decision in *Ludindi Venant & another v Pandya Memorial Hospital* [1998] eKLR.

#### **2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents' submissions**

39. Miss Robi, learned counsel for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents submitted orally in opposition to the petition. Learned counsel argued that the petition is based on a contract between the petitioner and the 1<sup>st</sup> respondent. According to counsel, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents were not aware of the dispute and the allegation that they had failed to protect the petitioner's rights was not true. Moreover, the alleged letter was only copied to the 2<sup>nd</sup> and 3<sup>rd</sup> respondents and there was no evidence that the letter was delivered. Counsel urged that the petition against the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents be dismissed.



## Determination

40. I have considered the petition, responses and arguments made on behalf of the parties. I have also considered the decisions relied on. Two issues arise for determination. First, whether the petitioner's rights and fundamental freedoms were violated and, depending on the answer to this issue, what reliefs should the court grant.
41. As already stated, this petition was disposed of through affidavits and written submissions. Mr. Muimi who appeared for the petitioner adopted their documents filed namely; the petition, supporting affidavit with the annexures and the written submissions; briefly highlighted their written submissions and urged the court to allow the petition.
42. Mr. Muthee appearing for the 1<sup>st</sup> respondent, also adopted their documents; the replying affidavit and written submissions and also briefly highlighted their written submissions; urged the court to dismiss the petition and order the petitioner to pay the outstanding medical bill.
43. Mis Robi, learned counsel for the 2<sup>nd</sup> to 4<sup>th</sup> respondents submitted orally arguing that the petitioner did not demonstrate that the 2<sup>nd</sup> to 4<sup>th</sup> respondents had violated the petitioner's rights and urged the court to dismiss the petition.

## Violations of rights

44. The facts of this petition are largely undisputed. The petitioner was admitted to the 1<sup>st</sup> respondent's facility for treatment. It was later determined that she needed further and specialized treatment and a decision was made to transfer her to a hospital of her choice, either KNH or Mater Hospital and was therefore discharged on 29<sup>th</sup> November 2024 for that purpose. The hospital bill had by this time accumulated to Kshs. 623,034.98. The petitioner stated that Kshs 276, 960 had been paid leaving a balance of Kshs. 345, 525 but the 1<sup>st</sup> respondent declined to release her due to the outstanding medical bill balance.
45. The petitioner argued that she made every effort to agree on how to pay the outstanding medical bill including offering to pay by instalment through her salary but the 1<sup>st</sup> respondent declined demanding a collateral such as a title deed; logbook or other facility that was not in the petitioner's name, thus made it difficult for her to comply.
46. The 1<sup>st</sup> respondent on its part argued that the petitioner was discharged because of her need for specialised treatment in another health facility of her choice to continue with further treatment and not to go home. In dealing with the issue of referral of patients, health institutions are guided by the Kenya Health Sector Referral Strategy 2014-2018. Clause 3.3 requires the client or the client's next of kin be responsible for providing consent for referral. Clients or next of kin who decline to consent for a referral or transfer are required to sign a form indicating that they are acting against medical advice.
47. In the petitioner's case, neither the petitioner nor her family executed these documents putting the 1<sup>st</sup> respondent at crossroads. It was therefore in the petitioner's best interest to retain her until the next of kin availed themselves.
48. Regarding hospital bill, the 1<sup>st</sup> respondent argued that it tried its best but the petitioner did not cooperate. Her family members were unavailable and even though the petitioner had offered to pay through her salary, the 1<sup>st</sup> respondent's requirement that the salary be paid through checkoff system was not accepted. Further, the petitioner was only earning part of the salary due to her being on sick leave.



49. As it is, there are some disputed facts in this matter. Whereas the petitioner argued that she was ready to provide an alternative security towards settling the medical bill, the 1<sup>st</sup> respondent maintained that no security was offered and the salary would not meet the conditions such as payment through check off system.
50. 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 is threatened. When that is done, the court then exercises its jurisdiction under article 23(1) as read with article 165 to determine the application for redress of any denial, violation or infringement or threat to a right or fundamental freedom.
51. A petitioner who approaches the court under article 22(1) as read with articles 23(1) and 165(3), has to establish to the satisfaction of the court that his/her right and fundamental freedom has been infringed, denied or is threatened so that the court can respond appropriately and grant an appropriate relief as required by article 23(3) of *the Constitution*. The essence of such relief should be to ensure that rights enshrined in *the Constitution* are protected and enforced. (*Fose v Minister of safety and Security* [1997] ZACC 6.)
52. In this petition, the petitioner argued that although she was discharged on 29<sup>th</sup> November 2024, the 1<sup>st</sup> respondent declined to release her because of an outstanding medical bill. Even the petitioner's offer to pay the bill through her salary was declined. The petitioner argued, therefore, that the 1<sup>st</sup> respondent's act of detaining her violated various of her rights, including liberty and dignity.
53. The 1<sup>st</sup> respondent denied violating the petitioner's rights and fundamental freedoms, maintaining that the petitioner's promise to settle the bill could not materialise despite being given time and opportunity. It was due to the petitioner's inability to pay the bill or give suitable collateral security combined with the petitioner's medical condition that she could not leave the hospital.
54. That the petitioner was detained in the 1<sup>st</sup> respondent's facility is not in dispute. It is also not in dispute that the petitioner's admission and associated treatment led to accrual of a medical bill as at the time of discharge. This court however issued an order on 21<sup>st</sup> February 2025 directing the 1<sup>st</sup> respondent to release the petitioner immediately to be admitted in a hospital of her choice.
55. When the petitioner went to the 1<sup>st</sup> respondent's facility for admission and treatment, she was aware that she would have to pay for the medical services. That is, the petitioner would have to settle the medical bill on being discharged. Indeed, the petitioner paid some money but she could not settle the balance once she was discharged and for that reason, among others, the 1<sup>st</sup> respondent did not allow her to leave the facility.
56. The petitioner's admission at the respondent's facility and her treatment was a contractual engagement between the parties. The petitioner was to receive treatment for which she would pay. Indeed, the petitioner was attended to and according to the 1<sup>st</sup> respondent, which is not denied, it became necessary that the petitioner be transferred to another facility of her choice between KNH and Mater Hospital for specialised treatment. Meanwhile, a medical bill had been incurred which the petitioner could not settle. The petitioner argued that she was detained due to that medical bill but the 1<sup>st</sup> respondent maintained that it was not the only reason for not releasing the petitioner. According to the 1<sup>st</sup> respondent, none of the petitioner's relatives came forward to sign the consent required for purposes of referral to another medical facility.



57. I have perused the record and considered the arguments by parties. The petitioner does not deny that the bill was not settled. The petitioner's argument was that the 1<sup>st</sup> respondent declined to accept payment through her salary which she had offered to continue reducing the outstanding medical bill. The petitioner also argued that the 1<sup>st</sup> respondent demanded a collateral security which her family could not raise. This led to her detention thus, violating her rights and fundamental freedoms.
58. I have carefully gone through the petitioner's affidavits and those of the 1<sup>st</sup> respondent. The petitioner did not respond to the respondent's claim that she (petitioner) was not willing to have the amount from her salary deducted through check off system. I also note that none of the petitioner's relatives swore an affidavit to counter the 1<sup>st</sup> respondent's contention that they did not come forward to sign a consent for the petitioner's transfer to another facility and indicate which facility the petitioner was to be transferred to.
59. Regarding the offer of collateral as security, there were two positions. Whereas the petitioner argued that the offer to provide a collateral was declined, the 1<sup>st</sup> respondent's position was that the petitioner promised to pay Kshs. 15, 000 per month could not be possible since it would go below the statutory minimum and further, the petitioner was only earning a percentage of her salary as she was on sick leave.
60. The contestations notwithstanding notwithstanding, the real issue here, is whether there was violation of rights and fundamental freedoms. Violation of rights and fundamental freedoms is first, a question of fact and if facts are established, it then becomes a question of law that has to be proved to the satisfaction of the court. In this respect, there is no dispute that the petitioner was detained in the 1<sup>st</sup> respondent's facility. However, there was dispute as to whether it was because of failure to settle the medical bill or there were other factors. Both parties seem to agree that there was an issue to do with payment of medical bill whose attempt to resolve was not successful. The 1<sup>st</sup> respondent also raised the issue of lack of consent to transfer the petitioner to another facility and the choice of the facility.
61. This petition was disposed of through affidavits and written submissions without the benefit of cross examination. For that reason, it was not clear who between the petitioner and the 1<sup>st</sup> respondent was telling the truth regarding what the understanding was in relation to payment of the outstanding medical bill; provision of collateral security and necessary consent to have the petitioner transferred to a facility of her choice for further specialised management.
62. That said, this court must make it clear that no one should condone a patient's detention in hospital because of non-payment of hospital bill. Article 28 protects every person's inherent dignity and the right to have that dignity respected and protected. Similarly, article 29 protects the right to freedom and security of the person, including the right not to be deprived of this freedom arbitrarily or without a just cause. Article 29 further guaranteed every person's right to freedom of movement. These rights are protected by *the Constitution* and non-payment of accrued medical bill cannot be the just cause contemplated in article 29. This does not, however, discharge a party from meeting his or her obligations towards paying a medical bill accrued following his/her treatment.
63. On this issue, courts in this country have been clear with regard to hospitals detaining patients on account of non-payment of hospital bills. Courts have held that detaining a patient due to inability to pay a medical bill is unlawful, arbitrary and unconstitutional.
64. In *Gideon Kilundo & Daniel Kilundo Mwenga v Nairobi Women's Hospital* [2018] eKLR, this court declared continued detention of the 2<sup>nd</sup> petitioner (patient) unconstitutional and ordered his immediate release. In that case, the 1<sup>st</sup> petitioner, a brother to the patient, had signed an undertaking to



pay hospital bills on behalf of his brother's (the 2<sup>nd</sup> petitioner's) treatment. However, the patient (2<sup>nd</sup> petitioner) was detained after being discharged despite that undertaking.

65. 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 immediate release of the patient.
66. With regard to this petition, as the court has already stated, there seems to be a disagreement on what exactly happened. Whereas the petitioner argued that she tried to come to an understanding on how she would settle the medical bill, including offering to pay through part of her salary, the 1<sup>st</sup> respondent declined. The 1<sup>st</sup> respondent on its part contended that the petitioner and her family were not willing to offer a collateral security since the petitioner's salary could not be attached as it would go below the statutory limit. The relatives also failed to sign a consent for purposes of transferring the petitioner to another facility.
67. This petition having been disposed of through affidavits and written submissions without any cross examination, it was not possible to gauge who was telling the truth since what was deposed to in the affidavits remained but depositions. For instance, it was not clear if indeed the petitioner's family gave consent on the transfer and which hospital the petitioner was to be taken to and by who.
68. The petitioner did not demonstrate that the 1<sup>st</sup> respondent deliberately acted in the manner it did which would have been irrational. There is consensus between the parties that there was an attempt to have a mutual understanding on how to resolve the matter, including an offer to pay some money to be deducted from the petitioner's salary but there was no evidence that her employer had undertaken to do so. The petitioner did not show that she readily and willingly acted towards fulfilling the promise but the 1<sup>st</sup> respondent deliberately declined. In other words, the petitioner did not show that the 1<sup>st</sup> respondent failed to give her reasonable accommodation so that she could raise the money to settle the outstanding bill.
69. As this court stated in *Kiawa v Coptic Hospital (Petition E309 of 2024)* [2025] KEHC 8343 (KLR), it is always the duty of the patient and family to ensure that a medical bill is paid and should engage the medical facility concerned to be given a chance to come up with an alternative way of settling the bill instead of the patient being detained due to the outstanding bill. "Detaining the baby due to an outstanding medical bill was a violation of the baby's right to motherly nursing, care and protection at that infancy period."
70. In this petition, detaining the petitioner for non-payment of a medical bill violated the petitioners' right to freedom of movement. Although this was a contractual arrangement with each party understanding their obligations, the petitioner did not demonstrate that she made a concrete arrangement on how to settle the medical bill but the respondent refused to give her reasonable accommodation to settle the bill, but instead shut them out.
71. In the circumstances, while this court agrees that it was wrong for the 1<sup>st</sup> respondent to detain the petitioner, if detention it was, the court is unable to agree that the petitioner is entitled to damages given the circumstances of this case in which she also shares the blame which she cannot escape.
72. Regarding any amounts of the outstanding medical bill, that is an issue that falls elsewhere for determination. In short, that is an issue of a debt and accounts that should to be determined elsewhere



### **Conclusion**

73. Having considered the pleadings and arguments by parties as well as the decisions relied on, the conclusion the court comes to, is that the petitioner did not prove that the 1<sup>st</sup> respondent deliberately violated any of her rights and fundamental freedoms. It was wrong for the respondent to continue holding the petitioner after her discharge. However, the petitioner did not show that she had made arrangement for her transfer to another facility, which facility; that she a bed reserved for her and how she was to move to that facility. She could therefore not escape for her continued stay at the 1<sup>st</sup> respondent's facility. This court had to come in and order her release but she had to meet the cost of an ambulance to the hospital of her choice thus, obviate further violations.

### **Disposition**

74. Consequently, and for the above reasons, the petition is declined and dismissed. Each party will, however, bear their own costs.

**DATED AND DELIVERED AT NAIROBI THIS 30<sup>TH</sup> DAY OF SEPTEMBER 2025**

**E C MWITA**

**JUDGE**

