



REPUBLIC OF KENYA



**Mutua v Mater Misericordiae Hospital (Civil Case E220 of 2025)
[2025] KEHC 13266 (KLR) (Civ) (23 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13266 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL
CIVIL CASE E220 OF 2025**

**NW SIFUNA, J
SEPTEMBER 23, 2025**

BETWEEN

MOSES MUTUA PLAINTIFF

AND

MATER MISERICORDIAE HOSPITAL DEFENDANT

RULING

1. This ruling is on the Plaintiffs' Application dated 19th August 2025. The Plaintiffs are sons of one Caroline Nthangu Tito. Who died on 2nd August 2025 while admitted and undergoing treatment at the Defendant's Hospital the Mater Misericordiae Hospital that is situated in Nairobi County. The Defendants are the trustees of an organization known as The Sisters Of Mercy (Kenya). Which trades as and manages the said hospital.
2. At the time of the deceased's unfortunate demise, the deceased had been hospitalized at the facility for several months. In the course of which hospitalization and treatment, she had accumulated a medical bill of Ksh 3,345,784/11. Which the hospital is claiming from her family.
3. For which bill the Defendants have detained and refused to release the deceased's body and continues to detain and retain it at the hospital's mortuary. The mortuary charges for the preservation of the said body is Ksh 2,000= per day; and which with the continued stay of the body at the said mortuary, continues to accumulate.
4. Vide their Plaint dated 19th August 2025, the Plaintiffs have now filed this suit. By it they are seeking the following reliefs:
 1. An injunction restraining the Defendant from continuing to detain the said body as security for payment of the said bill.



2. An order directing the Respondent by itself, its servants and/or agents to forthwith unconditionally release/deliver to the Applicants the remains/corpse of the late Caroline Nthangu Tito for burial
 3. A declaration that the Defendant's remedy is by enforcement through civil suit for recovery against the deceased's legal representatives.
 4. A declaration that it is contrary to public policy and health to detain a corpse of remains of the dead as security for payment of a debt, hospital bill and mortuary fees.
 5. Costs of the interests thereto to Court's rate.
5. Filed alongside the Plaint was the said Application (the mention dated 19th August 2025), by which the Plaintiffs have sought the following orders:
1. (Spent).
 2. Pending the inter partes hearing and determination of this Application, an order be granted, directing the Respondent by itself, its servants and/or agents to forthwith unconditionally release/deliver to the Applicants, the remains/corpse of the late Caroline Nthangu Tito for burial.
 3. Pending the hearing and determination of this suit, an order be granted, directing the Respondent by itself, its servants and/or agents to forthwith unconditionally release/deliver to the Applicants, the remains/corpse of the late Caroline Nthangu Tito for burial.
 4. Pending the hearing and determination of this Application, an injunctive order be granted, restraining the Respondent by itself, its servants and/or agents or otherwise from detaining or continuing with the detention of the remains/corpse of the late Caroline Nthangu Tito.
 5. Pending the hearing and determination of this suit, an injunctive order be granted, restraining the Respondent by itself, its servants and/or agents or otherwise detaining or continuing with the detention of the remains/corpse of the late Caroline Nthangu Tito.
 6. Costs of this Application be provided for.
6. The Application which was argued orally, and was brought under the provisions of and supported by the Supporting Affidavit of Moses Mutua was based on the grounds stated as follows:
1. That the 1st and 2nd Applicants herein are the biological sons of one Caroline Nthangu Tito (deceased) and one Tillers Mutua Mutyane (deceased) who passed away sometime in year 2023.
 2. That the 1st and 2nd Applicants are students at tertiary level, presently undertaking their higher education studies in College and are therefore without a stable source of income as they have been relying on their late mother for financial support.
 3. That the Applicants' late mother Caroline Nthangu Tito was admitted at the Mater Misericordiae Hospital on the 22nd May 2025, for treatment
 4. That after receiving treatment for two (2) months and twelve (12) days, the Applicant's late mother unfortunately passed away on the 2nd August 2025.
 5. That at the time of her demise, the Respondent presented a medical bill of Ksh 3,315,784/11 in respect of which the Respondent demanded clearance from the Applicants before it could release the remains of their late mother to them.



6. That Despite incessant pleas from the Applicants, who have sadly been left orphaned, for the release of their mother's body, the Respondent maintained that the release of the remains of their late mother would only grant upon full payment of the aforesaid pending bills.
7. That since the 2nd August 2025, the Respondent has detained the remains of the Applicants' late mother at their morgue as security for payment of the said debt.
8. That the continued detention of the deceased's body on account of the unsettled hospital bill continues to attract exorbitant mortuary charges at the rate of Ksh 2,000= per day, which as at 19th August 2025 had accumulated to Ksh 32,000=, thereby escalating the outstanding hospital bill to Ksh 3,345,784/11.
9. That despite the Applicants' earnest attempts to engage the Respondent with a view of amicably resolving the matter, no positive outcome has been achieved, thereby necessitating this Application for the unconditional release of their later mother's remains so that she may be accorded a proper and dignified burial.
10. That the continued detention of the remains of the late Caroline Nthangu Tito has no legal basis and it thus unlawful, against public policy, unconstitutional and violates the dignity of the deceased and the right of her family to accord her a decent burial.
11. That the Applicants herein being the deceased's children are entitled to custody, control and possession of their late mother's remains as opposed to the Respondent whose only interest is the outstanding hospital and mortuary bill.
12. That the Applicants are ready and willing to enter into reasonable arrangements with the Respondent regarding the outstanding bill but such arrangements cannot be practically undertaken while the body of tier deceased kin continues to be unlawfully withheld.
13. That the Respondent's contractual rights and claims, if any, can lawfully be pursued and enforced against the estate of the deceased through her duly appointed legal representatives in accordance with the law, and not by detaining the deceased's body.
14. That unless this Honourable Court intervenes, the Applicants together with the extended family shall continue to suffer irreparable harm, immense emotional distress and severe financial hardship occasioned by the escalating and accumulating mortuary charges.
15. That the Respondent does not stand to suffer any prejudice if the orders sought herein are granted as prayed.
16. That in the interest of justice and fairness that the instant Application is allowed as prayed.

Analysis and Determination

7. There is in Kenya, no law providing for a hospital's right of lien over patients or over their remains should they die while hospitalized or while undergoing treatment. This is an informal action that has become habit and gained so much ground, that it is almost becoming a practice, despite its lack of legal backing. It is also a practice that is oppressive, unconscionable, and repugnant to justice and morality. And despite superior courts having held that there is no property in a dead body. There being no property in a dead body, I hold that correspondingly, there cannot be a right of lien on it.
8. After a person has died, his or her body remains should be dealt with in accordance with the provisions of the *Public Health Act* (Cap 242 Laws of Kenya); and the protocols thereunder- one of which is that the body should be disposed.



9. Socially, the detention of bodies by mortuaries and hospitals, for debt claims, traumatize the bereaved families and disrespects the departed. It has in many instances been employed to blackmail, embarrass, traumatize and coerce bereaved families into submitting to the monetary demands by the hospitals.
10. I hold that debts related to treatment and mortuary charges are recoverable as civil debts and should be pursued as such, through demand and litigation if need be.
11. In the premises, this Court finds that the detention and continued detention of the remains of the late Caroline Nthangu Tito by the Mater Misericordiae Hospital, is wrongful and without any legal or lawful justification. Apart from the mortuary charges, the part of the bill related to treatment and medication, and which the Plaintiffs have not contested, should be pursued through civil means as an ordinary debt, and through the lawful methods of debt collection.
12. While courts are usually reluctant to grant mandatory injunctions at the interlocutory stage, they do so in exceptional circumstances and in the clearest cases. This is one such a case.

Final Orders

13. Consequently, the Application is hereby allowed in terms that a mandatory injunction is hereby granted, directing the Defendant to release forthwith to the Plaintiffs for burial, the body/remains of the late Caroline Nthangu Tito. That should be upon them paying the mortuary charges only. The rest of the bill, relating to hospitalization and treatment, be pursued as a civil debt.
14. As for the costs of this Application, each party shall bear its own costs.

DATED AND DELIVERED AT NAIROBI ON THIS 23RD DAY OF SEPTEMBER 2025.

PROF (DR) NIXON SIFUNA

JUDGE

