

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

PETITION NO. E010 OF 2025

(CORAM: CHARLES KARIUKI – J)

IN THE MATTER OF ARTICLES 22 (1), 23, 25, 27(1), 28, 29 (f), 43 (1) (a), 43 (2), 47 (1), 47 (2), 51 (1), 51 (3) (a) and (b), 165 (3) (b) and (d) (ii) and 258 (1) OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF ALLEGED VIOLATION OF FUNDAMENTAL RIGHTS AND FREEDOMS

AND

IN THE MATTER OF SECTIONS 5 (1), 70A (1), (2), (3) AND (4) OF THE PRISONS ACT (CAP 90)

AND

IN THE MATTER OF SECTIONS 3 (1), (2), (3) AND (4), 5 (1), (2), AND 15 OF THE PERSONS DEPRIVED OF LIBERTY ACT, 2022

AND

IN THE MATTER OF INTERNATIONAL LAW PURSUANT TO ARTICLES 2 (5) AND 2 (6) OF THE CONSTITUTION OF KENYA, 2010

BETWEEN

BERNARD KORIR.....PETITIONER

AND

COMMISSIONER GENERAL OF PRISONS.....1ST RESPONDENT

KENYA PRISONS SERVICE.....2ND RESPONDENT

HONOURABLE ATTORNEY GENERAL3RD RESPONDENT

RULING

INTRODUCTION:

1. The Petitioner/Applicant filed petition along with the instant application on 1.8.2025 under certificate of urgency seeking orders.
 - a) **For Mandatory injunction, compelling the 1st Respondent to release to the Petition through his counsel, within seven (7) days of this order, all medical records and treatment files about the Petitioner's spinal condition held at Narok G.K main Prison, Naivasha Medium G.K Prison and Nairobi West G.K. Prison.**
 - b) **For the court to issue mandatory injunction, compelling the 1st and 2nd Respondent to facilitate within 14 days of this order, urgent surgical intervention for the Petitioner at Kenyatta National Hospital or another suitable medical facility, as recommended by medical specialists, at the Respondents' cost. And THAT costs of this Application be provided for.**
2. The application is supported by the grounds on the face of the motion and is and also by an affidavit sworn by the applicant of the even date. The Respondents filed a Replying Affidavit sworn by Esther Lochoto who is working at the 2nd Respondent as an Officer-In charge Narok main Prison. The above sets of pleadings and supporting documents contain parties' cases.
3. The court directed the parties to canvass application via submissions.
4. **PETITIONER/APPLICANT SUBMISSIONS.**
5. The applicant submits under the following issues.
 - **Whether this Honourable Court can issue a mandatory injunction compelling the 1st Respondent, pending the hearing of this petition,**

to release all medical records within seven days to facilitate a complete assessment of the Respondents' negligence.

- **Whether this Honourable Court can issue a mandatory injunction pending the hearing of this petition requiring the 1st and 2nd Respondents to arrange urgent surgical intervention within 14 days at Kenyatta National Hospital or another suitable facility, at their expense.**
- **And Cost of this Application.**

6. The Petitioners' Condition;

The Petitioner submits that he was in excellent physical condition before incarceration, as demonstrated by the carpentry certificate awarded to him by prison authorities. This evidence clearly underscores his overall health and fitness. He was convicted of manslaughter in 2018 and incurred a spinal injury while performing prison duties under the supervision of the 1st and 2nd Respondents. Medical reports verify nerve compression that necessitated urgent surgery.

7. The Petitioner suffers from intense pain, limited mobility, and struggles to perform even the simplest tasks. His visibly hunched posture further underscores the urgent need for intervention, highlighting the imminent risk of permanent disability.
8. Despite referrals to Nakuru Level 6 Hospital and Kenyatta National Hospital, the 1st and 2nd Respondents have only provided pain medication, some of which the Petitioner has had to source personally, exposing their gross neglect of duty.
9. **(I) Whether this Honorable Court can issue a mandatory injunction compelling the 1st Respondent, pending the hearing of this petition,**

to release all medical records within seven days to facilitate a complete assessment of the Respondents' negligence.

10. The Petitioner was in excellent physical condition before incarceration, as demonstrated by the carpentry certificate awarded to him by prison authorities and marked as "BK1" in his supporting affidavit. This evidence clearly underscores his overall health and fitness, providing a baseline against which the Respondents' negligence can be measured.
11. The Petitioner was convicted of manslaughter in 2018 and incurred a spinal injury while performing prison duties under the supervision of the 1st and 2nd Respondents. Medical reports verify nerve compression that necessitated urgent surgery. Despite referrals to Nakuru Level 6 Hospital and Kenyatta National Hospital, the 1st and 2nd Respondents have only provided pain medication, some of which the Petitioner has had to source personally, exposing their gross neglect of duty.
12. This failure constitutes a breach of the right to health under Article 43(1) (a) and (2), which is non-derogable and requires the State to ensure timely access to emergency medical treatment. The Respondents' inaction also violates Article 47(1) and (2), demanding prompt and fair administrative actions, as evidenced by their neglect of medical referrals since September 2024. Furthermore, Section 5(1) of the Prisons Act (Cap 90) and Sections 3(1), (2), (3), (4), 5(1), (2), and 15 of the Persons Deprived of Liberty Act, 2022, mandate adequate medical care and welfare for detainees, obligations the Respondents have flagrantly ignored. The medical record will enable this Honorable Court to make a complete assessment of the extent of negligence. This Court's jurisdiction under Articles 22(1), 165(3(b) and (d)(ii), and 258(1) empowers it to issue mandatory injunctions to enforce these rights, preventing further harm. Reliance is made on **MACHINA v. THE REPUBLIC OF MOLDOVA** and **VERA VERA v. ECUADOR**.

13. **(II) Whether this Honourable Court can issue a mandatory injunction pending the hearing of this petition requiring the 1st and 2nd Respondents to arrange urgent surgical intervention within 14 days at Kenyatta National Hospital or another suitable facility, at their expense.**
14. The Petitioner suffers from intense pain, limited mobility, and struggles to perform even the simplest tasks. His visibly hunched posture further underscores the urgent need for intervention, highlighting the imminent risk of permanent disability that could render him incapacitated upon release.
15. This condition breaches Article 29(f), prohibiting cruel, inhuman, or degrading treatment through denial of necessary medical care, as the Petitioner's prolonged suffering demonstrates. It also undermines Article 28, safeguarding inherent dignity, by leaving him unable to carry out basic bodily functions. Article 51(1) and (3) affirm that detainees retain all rights except those inherently limited by incarceration, reinforcing that health care must be provided promptly. The Respondents' failure infringes these, as well as the statutory duties under the Prisons Act and Persons Deprived of Liberty Act, 2022, to safeguard health and dignity.
16. In accordance with Articles 2(5) and (6), the United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), especially Rule 24, mandates prompt and adequate medical care equivalent to community standards—a benchmark the Respondents have failed to meet. The African Charter on Human and Peoples' Rights, under Articles 5 and 16, further binds the Respondents to address the Petitioner's medical needs without delay. Reliance made on **MACHINA v. THE REPUBLIC OF MOLDOVA, MCGLINCHEY AND OTHERS v. UNITED KINGDOM, and. VERA VERA v. ECUADOR.**

17. These precedents persuade this Court to grant the injunction, as the Respondents' inaction not only echoes these violations but also threatens the Petitioner's life quality, family support role, and societal reintegration, imposing a disproportionate burden that justice demands be lifted through State-funded surgery.
18. **(III) Costs of this Application;** Given the clear violations and the Respondents' unreasonable conduct, this Court should award costs to the Petitioner as a measure of just satisfaction and to deter future neglect.
19. Without costs, the Petitioner's pursuit of justice would be unduly burdened, further eroding the protections afforded to detainees.
20. (ii) breaches of constitutional and statutory obligations is reiterated along with a galaxy of international, regional and domestic legal frameworks relevant to the instant substance of the case. of the core importance cited provisions are on the right to health under article 43 is non-derogable, and the state's failure to provide timely medical care to people in custody constitutes a breach of constitutional guarantees. other local legal provisions are -article 28 article 29(f), article 47(1) and (2) article 51(1) and (3) affirm that individuals deprived of liberty retain all fundamental rights, emphasizing that only those rights are strictly limited by incarceration—such as the right to health are excepted. this reinforces the importance of respecting human dignity within detention settings and HIGHLIGHTS, the balance between confinement and fundamental freedoms. ALSO, articles 22(1), 23, 165(3(b)), and 258(1) to provide crucial relief in cases of fundamental rights violations. this includes granting mandatory injunctions and declarations that serve as vital remedies to uphold constitutional protection.
21. Section 5(1) of the prisons act (cap 90) imposes a duty on the 1st and 2nd respondents to provide adequate medical care for inmates.

22. Sections 3(1), (2), (3), (4), 5(1), (2), and 15 of the Persons Deprived of Liberty Act, 2022 reinforce the State's obligation to safeguard the health, welfare, and dignity of detainees.
23. In accordance with Articles 2(5) and 2(6) of the Constitution, we firmly invoke the United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), especially Rule 24, which mandates prompt and adequate medical care for prisoners - care that must be on par with what is accessible in the community. This is not just a requirement but a moral obligation to uphold the dignity and rights of those incarcerated.
24. The Supreme Court of India in the case **of L. MURUGANANTHAM vs. the STATE OF TAMIL NADU, ON 15 JULY 2025, at paragraph 19** of its ruling, touched on the Nelson Mandela Rules in part:

“At this juncture, it is pertinent to refer to United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The mechanism for informing the prisoners of their rights, standards of treatment in prisons and for them to make complaints and requests regarding their treatment in prisons, has been integral to the international standards for treatment of prisoners since 1955. It forms a part of the Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Prisoners....”

25. The African Charter on Human and Peoples' Rights explicitly mandates, under Article 5 (prohibition of inhuman treatment) and Article 16 (right to health), that the Respondents are legally bound to fulfil the Petitioner's medical needs. This clear obligation underscores the importance of ensuring access to healthcare as a fundamental human right.
26. Breach of Article 43(1(a) and (2): The Respondents' failure to facilitate surgery infringes the Petitioner's right to health. Breach of Article 29(f): The Petitioner's prolonged suffering amounts to inhuman and degrading

treatment. The Petitioner's failure to perform basic functions and the untreated medical conditions in detention significantly undermine human dignity, constituting a clear breach of Article 28.

27. The Respondents' persistent inaction despite multiple medical referrals clearly exemplifies unfairness and unreasonableness. This conduct not only undermines trust but also constitutes a breach of the fundamental requirement for fair administrative action.

28. The Respondents have egregiously failed to fulfil their legal obligation under Section 5(1) of the Prisons Act and Sections 3 and 5 of the Persons Deprived of Liberty Act, 2022, by neglecting to provide inmates with the essential medical care they need and deserve.

29. THE 1ST, 2ND AND 3RD RESPONDENTS: SUBMISSIONS

30. In opposing the Application, the Respondents filed a Replying Affidavit sworn by Esther Lochoto who is working at the 2nd Respondent as an Officer-In charge Narok main Prison.

31. The 1st and 2nd Respondents submit that according to the records they have at their custody, Petitioner/Applicant was duly convicted of the offence of murder contrary to section 203 as read together with section 204 of the Penal Code, Cap 63 of the Laws of Kenya, in Narok High Court Criminal Case Number 5 of 2017 and was sentenced to serve 12 years imprisonment on his own plea on 07/12/2017 at Narok UK Main Prison to serve his sentence.

32. It is the 1st and 2nd Respondent's case that according to the records at their custody, the Petitioner/Applicant was never subjected to any labour involving the transportation of bags of maize as alleged which led to the alleged injuries he sustained. It is their submissions that he was deployed as an inside cleaner, dispensary cleaner, industrial training, doing duties such as painting, welding, carpentry and other related training.

33. The 1st and 2nd Respondents further submit that while in lawful custody, the Petitioner/Applicant reported complaints of back pains, accompanied by severe lower backache. That it is in view of those complaints that the Petitioner/Applicant was taken to a Narok County Referral Hospital, where he was examined, treated and further referred for physiotherapy sessions at the same facility. It is the 1st and 2nd Respondent's further submissions that the Applicant/Petitioner herein subsequently underwent several physiotherapy sessions and consequently that on 19/08/2024 he was referred to Nakuru Provincial General Hospital for the purposes of undergoing MRI SCAN(Lumbosacral).
34. It is the 1st and 2nd Respondents' submissions that on 18/09/2024 the Applicant/Petitioner was transferred to Nairobi West Prison for purposes of facilitating his escort to Kenyatta National Hospital for an orthopedic review and possible surgical treatment. It is their further submission that on 19/09/2024, the Applicant/Petitioner was first admitted to Nairobi West Prison on transfer from Nakuru Main prison for medical attention at the Kenyatta National Hospital for treatment and was received in good order.
35. For easy access to medical attention, the 1st and 2nd Respondents submit and confirm that on 29/01/2025 at the Applicant/Petitioner's own request, he was transferred to Naivasha Medium Prison, a facility which is proximate to his home area, this is following his treatment at the Kenyatta National Hospital.
36. Further the 1st and 2nd Respondent's submissions that on 18/02/2025, the Applicant/Petitioner was transferred back to Nairobi West prison where he is, on various occasions medically attended to and still attending his treatment at the Kenyatta National Hospital.
37. The 1st and 2nd Respondents further submit that according to the information in their records, their prison facility has always taken care of

the Applicant/Petitioner when his health demands in terms of medical care. That records at their custody confirm that Petitioner/Applicant is supposed to attend a Lumbosacral MRI on 03/11/2025 at the Kenyatta National Hospital. Further, that the final decision on surgery will be carried out after the intended MRI and orthopedic review that is still pending as indicated by the Applicant/Petitioner himself.

38. It is the 1st and 2nd Respondents' submissions that records at the Narok, Naivasha, Nairobi West Prison facilities, confirm that Applicant/Petitioner has always received the best medical treatment at various prestigious Government Hospitals namely, Kenyatta National Hospital, Narok County referral Hospital, Nakuru County referral Hospital where other inmates or prisoners of his nature also receive medical treatment.

39. Records at the 1st and 2nd Respondent's custody reveals that upon completion of the treatment at Kenyatta National Hospital, on 29/01/2025 the Applicant/Petitioner's was transferred to Naivasha Medium Prison, a facility which is proximate to his home area on his own request.

40. It is the 1st and 2nd Respondents' submissions that the allegations that the Applicant/Petitioner was denied medication in one of the Government facilities, and that he procured some of the drugs by himself and that he was denied medicine prescribed for him for six months is not truthful since he has not demonstrated nor tendered any evidence to that effect.

41. The 1st and 2nd Respondents submit that the Applicant/Petitioner has at all material times been accorded adequate and reasonable medical care within the means and facilities available in compliance with the provisions of the Constitution of Kenya 2010, the Prisons Act (CAP 90) and all relevant regulations. Further, that the Applicant/Petitioner's has not demonstrated any of his constitutional rights which have been infringed to accord him the orders sought.

42. It is 1st and 2nd Respondents' submissions that the Applicant/Petitioner has brought this application in bad faith since he has not disclosed all material information which would have been helpful to this Honourable Court to reach a fair determination. The fact that he has not disclosed to this Honourable Court that the 2nd Respondent under the guidance of the 1st Respondent has always provided proper medical attention from the period he was admitted at the facility up to the point that there are other medical treatment pending and that he is to undergo a lumbosacral MRI on 03/11/2025 at Kenyatta National Hospital is to say the least being dishonest.

43. Non-disclosure of material facts was discussed in **Bahadurali Ebrahim Shamji v. Al Noor Jamal A 2 Others Civil Appeal No. 210 of 1997**. Respondents urges court to take Judicial Notice that the conviction term of the Applicant/Petitioner is coming to an end on 07/12/2025. That for the 3 months period remaining, the 1st and 2nd Respondent will still continue providing its role as it has always done. It is submitted that, he who seeks equity should come with clean hands. Therefore, it is prayed that the orders sought herein by the Applicant/Petitioner be rejected as they do not have merit and should not be granted. Further that the orders sought herein contravenes the general Provisions of the Constitution 2010.

44. **ISSUES ANALYSIS AND DETERMINATION**

45. After going through the pleadings and the submissions by the parties herein, I find the issues are whether orders sought are available and if the answer in negative what alternative remedy is available if any and costs? Health rights in Kenya are guaranteed by the Constitution's Bill of Rights, specifically Article 43(1)(a) guarantees every person the right to the highest attainable standard of health. It also states that every person has the right to emergency medical treatment. The state is obligated to take

legislative, policy, and other measures to progressively realize these rights.

46. The Health Act of 2017, Section 7, specifies the right to emergency medical treatment, including the requirement for healthcare providers to stabilize a patient or arrange for a referral if they cannot do so. In Kenya, the state's duty regarding the right to health involves respecting, protecting, and fulfilling the right to the highest attainable standard of health through legislative, policy, and other measures.
47. This includes ensuring the availability of quality health facilities, goods, and services, particularly to vulnerable groups, and ensuring health information is accessible. The duty is shared between the national government (policy, regulation) and county governments (service delivery). Article 21 refers to the state's duty regarding the right to health in different legal contexts, such as the Kenyan Constitution and the UN Convention on the Rights of Persons with Disabilities.
48. The Kenyan Constitution's Article 21 mandates that state organs and public officers must address the needs of vulnerable groups, including in matters of health. In the international human rights context, particularly concerning the rights of people with disabilities, Article 21 relates to ensuring informed consent for medical treatment and preventing forced interventions.
49. **State duty on health rights under Kenyan Law (Article 21)**
50. Vulnerable groups: State organs and public officers have a fundamental duty to address the needs of vulnerable groups, which includes ensuring they have access to health care. Health access:
51. County governments, in particular, have a duty to ensure all residents can enjoy the right to health regardless of their background. Health Act (2017): The Kenyan Health Act uses this principle of state duty to define specific requirements, such as the government's role in promoting the

rights of vulnerable groups in health matters and recognizing the role of regulatory bodies.

52. International context (UN Convention on the Rights of Persons with Disabilities)

53. Health access: County governments, in particular, have a duty to ensure all residents can enjoy the right to health regardless of their background. Health Act (2017):

54. **Remedies for health rights violations in Kenya include;** legal action for damages, compensation, and public apologies; court orders such as injunctions (stopping an action), mandamus (ordering an action), or declaratory judgments; and policy reforms through legal precedents. Individuals can also file complaints with the Kenya National Commission on Human Rights (KNCHR) or seek legal counsel to pursue these remedies.

55. **Article 22** of the Kenyan Constitution grants every person the right to institute court proceedings if they believe a right or fundamental freedom in the Bill of Rights has been violated, denied, or threatened. A "court mandate" is an order from a court, which can be issued because of a petition under Article 22. Courts have the authority to issue various remedies, but an Article 22 petition requires the petitioner to demonstrate a specific violation of rights and can be dismissed if the case is frivolous, based on personal gain, or misdirected. Article 22: Enforcement of the Bill of Rights.

56. **Who can petition:** Any person, someone acting on their behalf, a member of a group, or someone acting in the public interest. What can be petitioned: Claims that a right or fundamental freedom has been violated, denied, infringed, or is under threat.

57. **Requirement:** The petitioner must clearly and specifically plead their case with some degree of clarity and provide a factual basis for their apprehension.

58. **Article 23** of the Kenyan Constitution grants the High Court the authority to uphold and enforce the Bill of Rights and outlines the types of relief a court can grant in such proceedings. Parliament is also required to pass legislation to give this original jurisdiction to subordinate courts in appropriate cases. The remedies available include declarations of rights, injunctions, conservatory orders, compensation, and judicial review, as well as declaring a law invalid if it violates rights and isn't justified under Article 24.

59. Authority of the High Court:

60. The High Court has the jurisdiction to hear and determine applications for the redress of a denial, violation, infringement, or threat to a right or fundamental freedom in the Bill of Rights. Court's powers: In any proceedings concerning the Bill of Rights, a court can grant various forms of relief: including. A declaration of rights, an injunction, A conservatory order, an order for compensation, A declaration that a law is invalid if it violates rights and is not justified under Article 24 and an order of judicial review inter alia. The remedies in the menial are not exhaustive. Thus, judiciary is mandated to me innovative and creative in fashioning new remedies befitting the circumstances of the case.

61. In the Mitu-Bell case, the Supreme Court of Kenya ruled that structural interdicts are a valid and appropriate relief in human rights litigation, overturning the Court of Appeal's decision to the contrary. The Court held that while the Civil Procedure Rules mention that a court becomes functus officio (no longer having power) after delivering a judgment, this rule is subordinate to the Constitution, which allows courts to grant

creative and appropriate reliefs under Article 23(3) to enforce fundamental rights.

62. Structural interdicts are permissible: The Supreme Court affirmed the use of structural interdicts, which are supervisory orders through which courts monitor compliance with their judgments.

63. In Kenya, the burden of proof for a Bill of Rights violation generally lies with the petitioner or claimant who alleges the violation, requiring them to prove the existence of the infringement. The standard of proof is the "*balance of probabilities*," meaning the petitioner must demonstrate that it is more likely than not that the violation occurred. The Evidence Act is the governing legislation for these principles, specifically sections 107-109.

64. Burden of Proof

65. Who bears it: The person making the assertion or claim, which is typically the petitioner in a case alleging a violation of their rights. What it requires: The person bearing the burden must prove the existence of the facts that support their claim. How it works: If the petitioner fails to provide evidence for their claim, the court will not act in their favor.

66. **Standard of Proof; Standard:** "*Balance of probabilities*". What it means: The evidence presented must show that the alleged violation is more probable than not. Analogy: If the evidence is such that the court can say, "*We think it more probable than not*," the burden is discharged. If the probabilities are equal, the burden is not met.

67. **Key principles General rule:** The party that makes an allegation has the burden of proving it. Statutory basis: This is rooted in the Evidence Act (Cap 80), which outlines the burden of proof for different legal situations. Civil cases: The standard of proof in civil cases, which includes constitutional petitions, is the balance of probabilities.

68. The applicant seeks relief no 1 For Mandatory injunction, compelling the 1st Respondent to release to the Petitioner through his counsel, within seven (7) days of this order, all medical records and treatment files about the Petitioner's spinal condition held at Narok G.K main Prison, Naivasha Medium G.K Prison and Nairobi West G.K. Prison.
69. In the respondents' response I did not see any contestation that they do not intend to release whatever medical records and treatment files about the Petitioner's spinal condition held at Narok G.K main Prison, Naivasha Medium G.K Prison and Nairobi West G.K. Prison in their custody nor deny same being in their reach. In fact, elaboratively, the respondents narrate how they have taken applicants in a journey of all mentioned institutions in a bid to get him health services befitting his circumstances. If they have to maintain a set of the same documents, they can always make applicants duplicates for his record and user.
70. Thus, the prayer no one will be issued for compliance within agreed time frame and in disagreement court will set same time frame for compliance after parties' address on same.
71. The core relief which was intensely contested was no 2 that, a mandatory injunction, compelling the respondents no 1 and 2 to facilitate within 14 days of instant ruling and urgent surgical intervention for the petitioner/applicant at Kenyatta National Hospital or any other suitable medical facility, as recommended by medical specialists, at the Respondents' costs. Plus, costs
72. The respondent counsel submits that The Petitioner suffers from intense pain, limited mobility, and struggles to perform even the simplest tasks. His visibly hunched posture further underscores the urgent need for intervention, highlighting the imminent risk of permanent disability.
73. Despite referrals to Nakuru Level 6 Hospital and Kenyatta National Hospital, the 1st and 2nd Respondents have only provided pain

medication, some of which the Petitioner has had to source personally, exposing their gross neglect of duty. This Court's jurisdiction under Articles 22(1), 165(3(b) and (d)(ii), and 258(1) empowers it to issue mandatory injunctions to enforce these rights, preventing further harm. Breaches of Constitutional and Statutory Obligations is reiterated along with a galaxy of international, regional and domestic legal frameworks relevant to the instant substance of the case. Of the core importance cited provisions are on the right to health under Article 43 is non-derogable, and the State's failure to provide timely medical care to people in custody constitutes a breach of constitutional guarantees.

74. The respondent's response is that the Petitioner/Applicant reported complaints of back pains, accompanied by severe lower backache. That it is in view of those complaints that the Petitioner/Applicant was taken to a Narok County Referral Hospital, where he was examined, treated and further referred for physiotherapy sessions at the same facility. The Applicant/Petitioner herein subsequently underwent several physiotherapy sessions and consequently that on 19/08/2024 he was referred to Nakuru Provincial General Hospital for the purposes of undergoing MRI SCAN(Lumbosacral).
75. On the 18/09/2024 the Applicant/Petitioner was transferred to Nairobi West Prison for purposes of facilitating his escort to Kenyatta National Hospital for an orthopedic review and possible surgical treatment. On the 19/09/2024, the Applicant/Petitioner was first admitted to Nairobi West Prison on transfer from Nakuru Main prison for medical attention at the Kenyatta National Hospital for treatment and was received in good order.
76. For easy access to medical attention, on 29/01/2025 at the Applicant/Petitioner's own request, he was transferred to Naivasha medium prisons, a facility which is proximate to his home area, this is following his treatment at the Kenyatta National Hospital.

77. Further on 18/02/2025, the Applicant/Petitioner was transferred back to Nairobi West prison where he is, on various occasions medically attended to and still attending his treatment at the Kenyatta National Hospital.
78. According to the information in their records, their prison facility has always taken care of the Applicant/Petitioner when his health demands in terms of medical care. That records at their custody confirm that Petitioner/Applicant is supposed to attend a Lumbosacral MRI on 03/11/2025 at the Kenyatta National Hospital. Further, that the final decision on surgery will be carried out after the intended MRI and orthopedic review that is still pending as indicated by the Applicant/Petitioner himself.
79. On this second relief sought, the respondents have come out to be the candid position which the applicant failed to disclose nor deny if it was not so. The burden was and is on the applicant to demonstrate breach of respondents' duty on facilitating the surgical treatment and on balance of probability. The respondent via unrebutted evidence demonstrate that records are in their custody confirming that Petitioner/Applicant is supposed to attend a Lumbosacral MRI on 03/11/2025 at the Kenyatta National Hospital. Further, that the final decision on surgery will be carried out after the intended MRI and orthopedic review that is still pending as indicated by the Applicant/Petitioner himself. The question is whether this court can force the respondents' number 1 to fast track the process to be executed within 7 days in the relief sought? **Article 21**, subsection 1 of the Constitution of Kenya states that it is the fundamental duty of the State and every State organ to observe, respect, protect, promote, and fulfill the rights and fundamental freedoms in the Bill of Rights. This establishes a core obligation for the government and its institutions to uphold the constitutional rights of citizens. Duty of the State: The State and all State organs have a fundamental duty to actively

engage with the rights and freedoms outlined in the Bill of Rights. Scope of duty: This duty includes Observing: Adhering to the rights without infringing on them. Respecting: Acknowledging the existence and value of the rights. Protecting: Taking measures to prevent third parties from violating rights. Promoting: Creating an environment where rights can be fully enjoyed.

80. **Fulfilling:** Taking action to ensure that rights are realized, especially for socioeconomic rights. Article 21 of the Kenyan Constitution addresses the implementation of rights, stating that all state organs and public officers must observe, protect, promote, and fulfill them. It requires the state to take measures for the progressive realization of socio-economic rights (guaranteed under Article 43) and mandates a specific duty to address the needs of vulnerable groups like women, children, persons with disabilities, and marginalized communities. This includes taking legislative, policy, and other measures, such as setting standards, to achieve these goals. Under political question doctrine (matters explicitly assigned by the Constitution to Legislative or Executive branches lies within the political realm) separation of power theory i.e., courts should not intrude into the terrain of power allocated to the political branches of state, the court should restrain itself from intruding therein. The court cannot dictate on matter finance and policy to other branches of state because they are better suited to know what resources they have and means to execute the task like one at hand. However, the respondents having disclosed the fact that they are in the process of executing it as the date for review and confirmation as to whether surgical treatment will be done, the court can via structural interdicts supervise the implementation of the same by fixing date of report as to what respondents will have done by the date set for review. Thus, the court will issue an order compatible thus far.

81. As to costs, the same will abide with result of the petition;

Thus, court sues the orders:

- (i) For Mandatory injunction, compelling the 1st Respondent to release to the Petition through his counsel, within seven (14) days of this order, all medical records and treatment files about the Petitioner's spinal condition held at Narok G.K main Prison, Naivasha Medium G.K Prison and Nairobi West G.K. Prison.**
- (ii) The court issues a mandatory injunction, compelling the 1st and 2nd Respondent to facilitate within reasonable time after review if confirmed surgical treatment is necessary, there be urgent surgical intervention for the Petitioner at Kenyatta National Hospital or another suitable medical facility, as may be recommended by medical specialists, at the Respondents' cost.**
- (iii) THAT costs of this Application be in petition.**
- (iv) Mention to be fixed a week after review for report on the process.**

DATED AND DELIVERED AT NAROK VIA MICROSOFT TEAMS

THIS 17.10.2025

.....

CHARLES KARIUKI

JUDGE

