



**Okorodudu v Aga Khan University Hospital (Miscellaneous Petition E047 of 2025)  
[2025] KEHC 13710 (KLR) (Constitutional and Human Rights) (3 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13710 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CONSTITUTIONAL AND HUMAN RIGHTS  
MISCELLANEOUS PETITION E047 OF 2025**

**LN MUGAMBI, J**

**OCTOBER 3, 2025**

**BETWEEN**

**BIBEMI OKORODUDU ..... PETITIONER**

**AND**

**AGA KHAN UNIVERSITY HOSPITAL ..... RESPONDENT**

**RULING**

1. By Notice of Motion application dated 26<sup>th</sup> September, 2025 the applicant/petitioner Bidemi Okorodudu seeks a Number of orders but the overriding one is for this court to grant an order directing the respondent to release the body of his late father, Air Vice Marshal Terry O. Okorodudu (Ret) whose body the petitioner alleges has been unlawfully withheld by the respondent to enforce payment of the outstanding hospital bill. The Petitioner also wants the OCS, Parklands Police Station to provide the necessary police assistance for the implementation of the orders.
2. Considering the nature and the urgency of the instant application, this court on 29<sup>th</sup> September, 2025 gave directions that responses be filed by close of business on 1<sup>st</sup> October, 2025 and for the Counsels to appear before the Court on 2<sup>nd</sup> October, 2025 for a brief oral hearing.
3. In compliance with those directions, a response was filed by the Respondent and both M/s Koech representing the petitioner and Mr. Menezes for the respondent appeared before the Court as directed.

**Petitioner/Applicant's Case**

4. The Application by the petitioner was supported by his affidavit sworn on 25<sup>th</sup> September, 2025.



5. The petitioner commences by deponing thus:
  - “ 1. I am the son of the Late Air Vice Marshall Terry O. Okorodudu (Ret) herein “the deceased and I am competent to swear this affidavit”.
  2. The High Court in HCF Pt A E750 of 2025 issued me with letters of Administration on 17<sup>th</sup> September, 2025 and I am duly authorized to swear this affidavit on behalf of the Estate of the deceased. A copy of the court order is on page I of the exhibit marked “BOI” herein marked “the exhibit”.
6. The petitioner then states that the deceased Air Vice Marshall Terry O. Okorodudu (Ret) was admitted to the Respondent’s medical facility – Aga Khan University Hospital, on 25<sup>th</sup> July, 2025. He subsequently died on 9<sup>th</sup> September, 2025 while under the respondent’s care. That the respondent presented the petitioner’s family with a medical bill of Kshs.9,865,785/-. The family, however disputes the same hospital bill.
7. The Petitioner averred that the Estate of the deceased has requested for the release of the body but the Respondent has refused to release it. The petitioner cited the demand letter annexed to the affidavit in support of this fact.
8. The petitioner disclosed that he is a Nigerian Citizen. He also describes himself as a Citizen of United States of America in the petition. That his deceased father was a distinguished service man in the Nigeria Air force and arrangements are being made by the Nigeria Military to accord him State-Burial at the Air Force Cemetery hence it is necessary that the body be released.
9. The petitioner states that continued withholding of the body of the deceased by the Respondent is undignified, mentally and emotionally hurting the deceased family as well as a violation of the culture and religion which requires the dead be given dignified and prompt burial.
10. He further contends that detention of the body as security for enforcing payment of a debt is unlawful and a violation of the dignity of the deceased, the freedom of religion, culture, belief and public policy.
11. He averred that the respondent has adequate avenues which it can use to recover any debt owed to it instead of denying the family the right to a timely and dignified burial of a loved one.

### **Respondent’s Case**

12. The response was filed by Jackson Owuor, who is Respondent’s Patient Services Business Manager through the replying affidavit sworn on 30<sup>th</sup> September, 2025 in opposition to the application.
13. He stated that on 24<sup>th</sup> July, 2025, the applicant’s father was presented to the respondent by the Petitioner/Applicant. That it is the Petitioner/ Applicant who filled the request and consent form for treatment (annexed and marked JAI).
14. Further, the Petitioner/Applicant filled ‘a guarantee of payment form’ dated 25<sup>th</sup> July, 2025 “JA2”.
15. He stated that the deceased was an elderly patient whose treatment necessitated a multi-disciplinary team of specialist doctors in the fields of Cardiology, nephrology critical care, hematology gastro ontology, cardio thoracic surgery, intervening radiology, pain management and nursing care due to the different conditions he had presented with at the Hospital and which he specifically set out in paragraph 1, sub-paragraph c, (i) – (iv) of his affidavit.



16. The deponent annexed the medical reports “JA4” and “JA5” as proof of the management and care that was accorded to the deceased by the Respondent.
17. The respondent deponed that 15<sup>th</sup> August, 2025, the Petitioner/Applicant insisted, (against the advice of the Respondent), that the deceased be transferred from the Coronary Care Unit (CCU) to the Private ward despite the high cost and he committed that he would ensure the account balance was going to remain below Kshs.1,000,000/-
18. The respondent acknowledged that a misunderstanding arose between the Petitioner/Applicant and the respondent Clinical Team following a surgical procedure conducted on the deceased that did not go as anticipated. That the possibility of such potential risk occurring had been explained prior to the signing of the consent by the Petitioner/Applicant.
19. That it is after this incident that the Petitioner/Applicant began disputing the medical bill. That in a meeting held between the deponent and Petitioner/Applicant on 6<sup>th</sup> September, 2025 to discuss the medical bill; the Petitioner/Applicant questioned its accuracy and insisted that the bill would only be paid after adjustments were done.
20. On 9<sup>th</sup> September, 2025, the petitioner/applicant father passed on. The deponent swore that there are attendant risks in the management of patients and it not the practice that if a risk manifests, the health care provider should not be paid for services rendered.
21. The respondent stated that the petitioner/applicant refused to pay the medical bill alleging negligence as an excuse to collect the deceased’s body without paying for the health care services and these risks paralyzing hospital operations which could deny other needy patients’ treatment and care.
22. That on 25<sup>th</sup> July, 2025, the petitioner/applicant duly executed a guarantee of payment for the healthcare services to be offered to his father and thus the filing of this petition and application is an attempt to run away from his responsibility under that guarantee. The hospital bill as at now stands at Kshs.8,000,738.93 per annexure “JA9”.

### **Submissions**

23. In her brief oral submissions before this court, counsel for the petitioner Miss Koech cited two authorities; namely: *Moses Mutua v Mater Misericordiae Hospital E220 of 2025 (2025) KEHC 13266 (KLR)* and the case of *Ludidndi Venant & Anor v Pandya Memorial Hospital (1998) eKLR*. Counsel submitted that the only issue before this Court is whether a body can be held as security for demanding the payment of a hospital bill.
24. Answering in the negative, she maintained that because all what the Respondent was insisting was payment on the basis of a guarantee for the payment that was allegedly executed by the Petitioner/Applicant, all it that it needed to do is to move to the appropriate court and seek to enforce that guarantee but not to detain the body.
25. She submitted that the fact that the Petitioner/Applicant is a Nigerian should be not be cited as a bar to pursuing the civil remedies under the law because Kenya and Nigeria have reciprocal treatment arrangement for enforcement of judicial decisions.
26. Mr. Menezes for the Respondent submitted that there is no evidence that the Petitioner presented to show that the hospital has declined to release the body of the deceased.
27. He pointed out that, the respondent has all along been ready and willing to discuss this matter. He contended that on 23<sup>rd</sup> September, 2025, the respondent even dispatched a letter to the petitioner/



applicant seeking to discuss how the outstanding bill should be settled but the petitioner instead came to court where he has misrepresented that the respondent is detaining the body of his father.

28. He submitted that to date, the petitioner has not bothered to provide any security for payment of the outstanding bill. He argued being a Nigerian Citizen and without any form of security being provided the respondent will be faced with enforcement challenges if the Petitioner were to leave jurisdiction insisting that no reciprocal arrangement exists between Kenya and Nigeria as contended by the Petitioner's counsel.
29. He argued that there is no reciprocal acknowledgment between Kenya and Nigeria and thus the Petitioner should be compelled to provide a fair security as failure to do so will be a violation of the respondent's right to protection of property provided for under Article 40 of *the Constitution*.

### **Analysis and Determination**

30. Having regard to the Pleadings and the submissions herein, this Court finds that there is only two issues for determination; namely:
  - a. Whether or not the body of the deceased can be withheld by the respondent as means of enforcing the payment of hospital bill
  - b) Considering the totality of the facts and circumstances of this case, the appropriate order to make to ensure that the ends of justice for both parties are met in this matter.

### **Whether or not the body of the deceased can be withheld by the respondent as means of enforcing payment of hospital bill.**

31. The question need not be belaboured. Courts in this country have consistently held that this is legally impermissible hence unlawful.
32. In the case of *Ludindi Venant & Anor V Pandya Hospital (1998) eKLR* the Court disapproved this practice by hospitals by rendering itself as follows:

“... with utmost respect to the hospital, that on any view it would be equally repugnant to public policy to sanction the use of dead bodies as objects in the game of Commercial ping-pong. Dead bodies are for interment or cremation or other disposal without delay unless there is a dispute on where to dispose of them or who should do it. The dead ought to “Rest In Peace” while those who are left alive struggle with the realities of life such as payment of debts. In this particular case there is no dispute as to who should bury the deceased or where he should be buried. The dispute is on a debt for medical services solicited for by someone who is still alive, not the deceased, and there are legal ways of binding such person to pay the debt owed. The dead body of the deceased ought not be part of that equation. For it is trite law that there is no property in a dead body. It cannot be offered or held as security for payment of a debt. It cannot be auctioned if there is a default. It cannot be used to earn rental income in a cold-room. In sum, here is no legal basis for detaining it, and it would be callous and sadistic to hold otherwise...”

33. In a similar matter that this Court has previously handled, *Omari v Kenyatta University, Teaching & Referral Hospital, Petition E198 of 2025 (2025) KEHC 4809 KLR*; this Court pronounced itself as follows:

“A dead body is not a merchantable product and other than causing psychological distress to the family and being a health hazard, the Respondents stand to gain nothing from its



continued detention. Further, the release of the body of the deceased will not extinguish respondents' pursuit of any other legal remedies that may be available including the payment of the outstanding bill arising from deceased's hospitalization."

34. It goes without saying therefore that the Respondent is not legally justified to continue holding the body of the deceased as a means of enforcing payment of the outstanding medical bill.
35. That said, it imperative that I must also address the lingering question of recovery of the outstanding medical bill incurred in view of the special circumstances of this case. The amount in question is by all means a colossal sum. It runs into millions; the Respondent put the figure at Kshs. 8,000, 738.93. The Petitioner alleged the amount is Kshs. 9, 865, 785/- but added that it is disputed.
36. It is however not dispute that that the deceased father was admitted for medical care at the Respondent's medical facility where he received medical care and although the total amount charged for the service may be disputed; the bottom line is that costs were incurred even though the parties may not at the moment be in agreement as to what the accuracy of the bill.
37. Further, according to the Respondent, the Petitioner is the one who signed for and committed to clear the medical cost in respect of the said treatment. That he equally signed the guarantee for payment form.
38. It is also a fact that the Petitioner has also obtained letters of administration of his deceased father as disclosed in his affidavit. This binds him legally to assume responsibility over any debts incurred by the deceased father's estate.
39. It is also necessary to consider the apprehension by Respondent that the Petitioner/Applicant is a Nigerian Citizen who could possibly leave the jurisdiction of the Court thereby frustrating the efforts by the Respondent to recover the amounts that may be found due and owing even if the Respondent were to resort to civil recovery remedies due to limitations of extra-territorial jurisdiction.
40. Faced with this scenario, what should the Court do to ensure ends of justice of the two parties are met or protected? Even as the Petitioner insists on the right to have the body of the deceased released, the respondent too deserves the protection of this Court in ensuring that its rights to demand lawful dues are protected.
41. In *Gideon Kilundo & Daniel Mwenga v Nairobi Women's Hospital* (2018) eKLR the Court commenting on the difficult presented in a similar manner by a Petitioner who had incurred a huge hospital bill but wanted the to Court stop his continued detention in hospital stated as follows by way of obiter dictum:

"... In this case, the court is undeniably faced with 2 competing interests, which are the 2<sup>nd</sup> petitioner's right under Article 29 and 39 of *the Constitution* which are clear on the person's liberty and freedom of movement and Article 40 on the respondent right to property. My take is that in as much as the 2<sup>nd</sup> petitioner is entitled to his liberty and freedom of movement the respondent is equally entitled to its right to property and under these circumstances, the court is under a duty to balance both rights so as to dispense justice for both parties but at the same time bearing in mind the fact the rights and freedoms under 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 freedoms of others. Article 24(1) of *the Constitution* stipulates as follows: "A right of fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into



account all relevant factors, including-The need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and ...”In the instant case, the 1<sup>st</sup> petitioner admitted the 2<sup>nd</sup> petitioner to the respondent’s hospital with the full knowledge that the respondent is a private hospital where he will be required to settle the hospital bills. The respondent performed its part of the bargaining by treating the 2<sup>nd</sup> petitioner until he attained full recovery..... While it is true that the relationship between the petitioners and the respondent was a contractual one for which the respondent should pursue other lawful means of recovering the debt other than detaining their former patient, this court is of the view that it does not augur well for the dispensation of justice for persons to walk into private hospitals for treatment and expect to walk out without paying a single cent under the guise of the constitutional protection of liberty and freedom of movement...”

42. In the Ludindi case (supra) despite the Court condemning the practice of detaining dead bodies, it nevertheless ordered the plaintiffs provide an undertaking in damages limited to Kshs.600,000/= pending the hearing and determination of that suit.
43. This Court therefore has a duty to balance between the dignity vis-à-vis the right to property taking into account the special circumstances of this case. Even as I make orders for the immediate release of the body for burial, I must remain mindful of the practicality of recovering what has been incurred given the unique circumstances of this case.
44. Consequently, this Court makes the following orders:
  - a. That pending the hearing and determination of this Petition, the body of the deceased Air Vice Marshal Terry O. Okorududu (Ret) be immediately released to facilitate its burial and final rights.
  - b. The Petitioner Applicant shall immediately surrender his two passports i.e. the United States of American Passport and Nigeria Passport to the Deputy Registrar of this Court and to remain within the jurisdiction of this Honourable Court pending judicial of the determination of the dispute as to the payment of outstanding medical bill incurred on treatment of his deceased father. Alternatively, to deposit the sum of Kshs. 8,000,000/- in this Court pending judicial determination or settlement of the dispute over the outstanding medical bill. Accordingly, The Directorate of Immigration, under the State Department of Immigration and Citizen Services, Ministry of Interior and National Administration shall be served with this order to enforce compliance and shall not allow the petitioner to leave the jurisdiction of this court unless ordered/authorized by court.
  - c. Costs shall be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 3<sup>RD</sup> DAY OF OCTOBER, 2025.**

.....

**L N MUGAMBI**

**JUDGE**

