



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mutua v Westlands Specialist Hospital (Civil Case E010 of 2025)  
[2025] KEHC 17568 (KLR) (27 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17568 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
CIVIL CASE E010 OF 2025  
TM MATHEKA, J  
NOVEMBER 27, 2025**

**BETWEEN**

**ALEX NZIVO MUTUA ..... PLAINTIFF**

**AND**

**WESTLANDS SPECIALIST HOSPITAL ..... RESPONDENT**

**RULING**

**Introduction**

1. What is before me is the application dated 11/11/2025 brought under certificate of urgency under Sections 1A, 1B & 3A of the *Civil Procedure Act*, Order 40 Rule 1 & Order 51 Rule 1 of the Civil Procedure Rules 2010 and all other enabling provisions of the law. It seeks the following orders;
  - a. Spent.
  - b. That pending the hearing and determination of this application, the honorable court be pleased to grant a mandatory injunction directing the Respondent whether by itself, servants and/or agents to forthwith unconditionally release and or deliver to the Applicant, the remains, corpse of the late Kanini Mwikali for burial and interment.
  - c. That pending the hearing and determination of this suit, the honorable court be pleased to grant a mandatory injunction directing the Respondent whether by itself, servants and/or agents to forthwith unconditionally release and or deliver to the Applicant, the remains, corpse of the late Kanini Mwikali for burial and interment.
  - d. Costs of the application.



## The Application

2. The application is supported by the grounds on its face and the affidavit sworn by the applicant the same day. He deponed that he is the husband of Kanini Mwikali (deceased) who was admitted at Westlands Specialist Hospital on 11/05/2025 where she was treated until her unfortunate demise on 09/06/2025. By then the hospital bill had accumulated but he managed to raise kshs 740,000/= which he paid and left an outstanding sum of kshs 3,100,000/=. He has attached a bundle of receipts and outstanding bill as exhibit ANM-1. That, despite a show of good faith on his part and several meetings with the Respondent's management and a letter of demand from his advocate, the Respondent has refused to release the body for burial and h continues to incur mortuary charges of kshs 1,000/= per day which have accumulated to kshs 150,000/= as at the time of the application.
3. He depones that he is a domestic worker engaged in menial jobs for subsistence.

## The Response

4. The application is opposed through the Replying Affidavit of Ruth Muema sworn on 17/11/2025 the Respondent's manager. It is her position that That the Applicant's averments are utter falsehoods, blatant unsubstantiated and baseless allegations meant to sway the mind of the court from true accounts. That, the Applicant has approached the court with unclean hands as he has never engaged the Respondent in any discussion on how he wants to clear the pending bill or even offer a payment plan.
5. She confirms that the Applicant's wife was admitted at the Critical Care Unit (ICU) on 11/05/2025 and was discharged on 09/06/2025 when she died having incurred a bill of kshs 3,865,607.04 of which the Applicant only settled kshs 740,000/= (less than 20% of the Bill) leaving a balance of kshs 3,100,000/= An invoice MK-1is attached. This despite the applicant's commitment as the next of kin during the admission to pay the bill and promise to make regular and progressive payments of the outstanding bill. That the applicant was asked to transfer the patient to a public facility as the bill was accumulating but the Applicant pleaded with the hospital to continue treating her as the family was in the process of disposing some land to settle the bill and it was on this basis that the hospital continued to treat the patient up to 09/06/2025 when she died. That, the hospital just needs the Applicant, in good faith, to come up with a repayment plan but he refused to do so.
6. That the Applicant has refused to sign a payment agreement thus leaving the hospital in a very vulnerable position. That, the hospital has always been willing to release the burial permit and body but the Applicant is acting in bad faith and taking advantage of the hospital. That, the hospital does not know the Applicant and is worried that, in the absence of a commitment agreement, the bill will never be settled. That, the hospital policy is that patients with huge bills should sign a payment agreement and provide security that indeed they will pay the bill within an agreed period. That, the patient was treated using hospital resources and attended to by doctors and nurses who need to be paid.
7. She deponed that on 07/10/2025, the hospital held a meeting with the Applicant and he was updated on status the bill. That, he asked for a discount and promised to settle the bill by 13/10/2025. A copy of the minutes is exhibited as RK 2. That, the hospital discounted kshs 1,000,000/= with the hope that the bill would be cleared as promised. That, unless this court balances the rights of the Applicant and Respondent, the latter stands to be prejudiced and to go under liquidation.
8. She deponed that the court should take judicial notice of several public hospitals within Nairobi city where the Applicant could have admitted the patient for treatment at a cheaper cost but he opted for a private hospital only for him to decline paying the bill. She urged the court to find that the application is lacking in merit and to dismiss it with costs.



9. The application was canvassed through written and oral submissions.
10. It was submitted that the Applicant seeks a mandatory injunction at an interlocutory stage and reliance was placed on Kenya Breweries Ltd & Anor -vs- Washington O. Okeyo (2002) KECA 284 (KLR) where the Court of Appeal stated;

“The test whether to grant a mandatory injunction or not is correctly stated in vol. 24 Halsbury Laws of England 4<sup>th</sup> Edn. Para 948 which reads;

‘A mandatory injunction can be granted at an interlocutory application as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks it ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempted to steal a march on the plaintiff.... a mandatory injunction will be granted on an interlocutory application.’

11. It was submitted that this is a special case with existence of special circumstances to warrant granting of mandatory injunction at an interlocutory stage. That the position of the law is that there is no property in a dead body hence a medical facility cannot withhold a body to arm-twist the deceased’s relatives to pay accumulated hospital bills. Reliance was placed on Mutua -vs- Mater Misericordiae Hospital (2025) KEHC 13266 where the court held;

“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 a 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.....while court 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 case.”

12. Further reliance was placed on Ludindi Venant & Anor -vs- Pandya Hospital [1998] eKLR where the court rendered 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...”



13. Consequently, it was submitted that the mandatory injunction should be granted so that the Applicant can proceed to bury the deceased whose body has been withheld for over 5 months now.
14. I have considered the application, the rival affidavits and the submissions by counsel, the issue for determination is; whether this court should issue a mandatory injunction compelling the Respondent to, unconditionally, release the remains of the late Kanini Mwikali to the applicant for burial.
15. Ms. Mueni for the respondent reiterated the contents of the Replying affidavit. She cited Article 24(1) (d) of *the Constitution* and urged the court to balance the rights of the applicant and those of the respondent hospital. That what they needed from the applicant was some form of security that the bill would be settled.
16. That the applicant had not demonstrated any special circumstances to warrant the mandatory order of release of the body as the respondent had a right to property . she relied on Emma Muthoni Njeri & Nairobi Women’s Hospital ( no citation), Gideon Kilundo vs Daniel Kilundo Mwenda vs NBI Women Hospital for the proposition that the applicant had an obligation to pay the medical bills and the estate had an obligation to settle the bill and urged the court to compel the applicant to give a settlement plan with security.
17. In rejoinder Mr. Mutuku submitted that Emma Muthoni was about a patient who was treated and not a person who had died. That the only issue was whether the respondent had a right to hold the body of the deceased, that his client was willing to pay the bill.

### **Analysis & Determination**

18. An injunction is a discretionary remedy which is granted on the basis of evidence and sound legal principles (Njenga -vs- Njenga (1991) KLR 401). The Applicant is seeking a mandatory injunction and it is trite that such an injunction is only granted in clear cases which ought to be decided at once or cases with existence of special circumstances.
19. In this case, the Respondent retains the remains of the late Kanini Mwikali who died at the facility on 09/06/2025, which means that the body has been lying at the morgue for 5 months. The reason for holding on to the body is non-payment of a bill of kshs 3,100,000/= which was incurred by the deceased in the course of treatment.
20. I would say it is trite that there is no property in a dead body. There is no right of lien by medical facilities on such dead bodies. In addition to the cases cited by the Applicant, there is the case of Omari -vs- Kenyatta University, Teaching & Referral Hospital, Petition E198 of 2025 (2025) KEHC 4809 KLR where the 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.”
21. It appears to me that the parties herein appear to carry the mistaken view that release of the body to the applicant for burial would extinguish the appellant’s obligation to pay the bill and the Respondent’s right to recover it through available legal avenues.
22. Clearly this is not the position. Each continues to bear their obligation and their respective right.



23. Faced with a similar situation in *Okorodudu -vs- Aga Khan University Hospital* (Miscellaneous Petition E047 of 2025) [2025] KEHC 13710 (KLR) (Constitutional and Human Rights) (3 October 2025) (Ruling), the court stated as follows;

“ 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.

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.”

24. Further, the learned judge gave orders to safeguard the interests of the hospital as follows;

“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.”

25. In the case of *Ludindi Venant & Anor* (supra), the court condemned the practice of detaining dead bodies but still ordered the plaintiffs provide an undertaking in damages limited to Kshs.600,000/= pending the hearing and determination of that suit.

26. It appears to me that the balance here is to have the applicant commit to pay the bill and the respondent releases the body. The outstanding bill in this case has not been disputed.

27. The following orders issue;

That pending the hearing and determination of this suit, a mandatory injunction be and is hereby issued directing the Respondent whether by itself, servants and/or agents to forthwith release the body of the late Kanini Mwikali for burial and interment upon the payment of half the mortuary fees incurred to date.

The debts related to the treatment and the mortuary fees amount to civil debts that are recoverable through civil litigation in this case , they are not disputed.

The applicant having presented as the next of kin and the person responsible for his wife’s hospital bills be and is hereby directed to present to the hospital a written commitment to settle the hospital bill found to be payable.

Orders accordingly.



Each party to bear its own costs.

**Dated, signed and delivered virtually this 27<sup>th</sup> November 2025**

**Mumbua T Matheka**

**Judge**

CA Chrispol

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