

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
CIVIL CASE NO. E024 OF 2025

GRACE

MWANGI.....PLAINTIFF/APPLICANT

VERSUS

MARYHELP OF THE SICK

**HOSPITAL.....DEFENDANT/RESPONDEN
T**

R U L I N G

Brief facts

1. The application dated 3rd November 2025 seeks for orders of injunction restraining the defendant/respondent, whether by itself, its agents, or servants, from continuing to detain the body of the deceased.
2. In opposition to the application, the respondent filed a Replying Affidavit dated 10th November 2025.

The Applicant's Case.

3. The applicant avers that the respondent is unlawfully detaining the body of her mother, the late Virginia Wanjiku Mwangi from 15th October 2025 as lien for an alleged debt

in the sum of Kshs. 749,789/-. The applicant states that the continued detention of the body is illegal, oppressive and contrary to the Public Health Act and public policy in Kenya, which demands that bodies be buried promptly after one dies. The applicant further states that the body continues to accrue unnecessary and punitive mortuary charges at the defendant's mortuary thus compounding her loss.

The Respondent's Case.

4. The respondent states that on 7th September 2025, the applicant's mother Virginia Wanjiku Mwangi was presented and admitted at their facility in the general ward under inpatient no. 42231/25 under the care of private consultants' as a referral from Thika Level 5 Hospital. On 8th September 2025, with the consent of the applicant, the patient was transferred to the High Dependency Unit (HDU) where she stayed until 16th September 2025. At the HDU, she received all the necessary treatment as per the consultants' instructions in line with her condition.

5. The respondent states that they gave a concession on the HDU admission fee deposit of Kshs. 50,000/- and allowed the applicant to pay Kshs. 20,000/- and she consented to top up and clear the bill upon the discharge of the patient. The patient was transferred back to the ward but on 15th October 2025, she unfortunately succumbed to her illness and her body was transferred to the hospital morgue. During the patient's stay at the hospital, the patient

accumulated a cash bill of Kshs. 621,289/- as of 7th November 2025 including mortuary bills. The respondent further states that throughout the entire hospital stay, the credit office continued to update and follow up with the family of the deceased on the accruing hospital bill and the family expressed verbal commitment to clear the bill upon discharge.

6. The respondent states that on 16th October 2025, the applicant was furnished with the interim bill to facilitate the clearance of the same but only paid Kshs. 30,000/- on 27th October 2025 and requested for a meeting with the management, which was granted. The respondent further states that they requested the family to raise and pay at least Kshs. 250,000/- meant to cater partially for drugs and doctor's fees and the balance to be settled later as per what would be agreed upon in writing by both parties. The family was advised to do a formal application letter stating clearly their plea for consideration by their management highlighting how much time they needed for resource mobilization towards clearing the bill.
7. The respondent avers that they reached out to the applicant on 4th November 2025 seeking an update and the applicant informed them that they did some collections but they were to agree on the dates for a major harambee. The applicant further agreed that as a family they would present the application and the amount that had been fundraised on 6th November 2025 however

neither the applicant or any family member presented themselves to pay the bill.

8. The respondent argues that despite their efforts to resolve the dispute before the court amicably, the applicant and the rest of the family have been uncooperative and evasive in a clear attempt at avoiding their financial obligations. The respondent further argues that they offered medical services to the deceased and they have the right to demand payment for the services rendered.

9. Parties put in written submissions.

The Plaintiff/Applicant's Submissions.

10. The applicant relies on **Rules 3 and 4 of the Public Health (Public Mortuaries) Rules, 1991** and submits that the respondent has held the deceased in their facility for almost one month, which is unlawful as the Public Health Act does not confer any right upon hospitals or medical institutions to withhold bodies of deceased persons as security for unpaid debts. The applicant further submits that the respondent's actions are oppressive, inhumane and contrary to public policy as it subjecting her and her family to unnecessary emotional distress and trauma.

11. Relying on the cases of **Mutua vs Mater Misericordia Hospital (Civil Case E220 of 2025) KEHC 13266 (KLR); Mary Nyanganyi Nyaigero & Another vs Karen Hospital Limited & Another [2016] KEHC 6882**

(KLR); Omari vs Kenyatta University, Teaching Referral and Research Hospital & Another (Petition E198 of 2025) [2025] KEHC 4809 (KLR) and Ludindi Venant & Another vs Pandya Memorial Hospital (1998) eKLR, the applicant argues that there is no property in a dead body and therefore it cannot be security for a debt.

The Defendant's/Respondent's Submissions

12. The respondent relies on **Article 27(1) of the Constitution** and the case of **Okorodudu vs Aga Khan University Hospital [2025] KEHC 13710 (KLR)** and submits that the court ought to ensure the ends of justice of both parties herein are met and protected and the applicant's rights ought not to be enjoyed at the expense of their rights.

The Law

Whether the applicant has merit.

13. The applicant has sought for an interlocutory injunction however the said order is essentially an order for a mandatory injunction to compel the respondent to release the body of the deceased. The principles to be considered before granting a mandatory injunction are well settled in the case of **Locabail International Finance Ltd vs Agroexpot & Others (1986) 1 A.KER 901** where the Court of Appeal held:-

A mandatory injunction ought not to be granted on an interlocutory application in the absence of special circumstances and then only in clear cases either where the court thought that the matter ought to be decided at once or where the injunction was directed at a simple and summary act which could be easily remedied or where the defendant had attempted to steal a match on the plaintiff. Moreover, before granting a mandatory injunction the court had to feel a high degree of assurance that at the trial it would appear that the injunction had rightly been granted, that being a different and higher standard than was required for a prohibitory injunction.

14. From the record, the applicant does not dispute the debt owing to the respondent in respect of medical expenses incurred by the admission of her mother, the deceased herein. The deceased was admitted at the respondent's facility on 7th September 2025 and unfortunately succumbed to her injuries on 15th October 2025. As of 27th October 2025, the respondent states that the hospital bill was Kshs. 627,789/- and the applicant's family had managed to pay Kshs. 50,500/-. The same has not been disputed by the applicant. The respondent has averred in their affidavit that they are holding the deceased's body as collateral to compel the applicant or her family to settle the debt before the body can be released. The respondent has further averred that they are entitled to be paid expenses incurred by the deceased and that

although they have been amicable in settling the matter with the applicant, the applicant has been uncooperative and evasive.

15. It is trite law that a dead body has no property value and hence it cannot be used as collateral to secure a debt. In **R vs Fox (1841) 2QB 246** cited with approval in **Mary Nyang'anyi Nyaigero & Another vs Karen Hospital Limited & Another [2016] KEHC 6882 (KLR)** it was held:-

A creditor is not entitled to retain the dead body of his debtor as a security for his debt.

16. Similarly in **Omari vs Kenyatta University, Teaching Referral and Research Hospital & Another (Petition E198 of 2025) [2025] KEHC 4809 (KLR) (Constitutional and Human Rights) (23 April 2025) (Ruling)** the court held:-

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 the respondents pursuit of any other legal remedies that may be available including the payment of the outstanding bill arising from the deceased's hospitalization.

17. It is evident that the dispute between the parties concerning a dead body presents the existence of special circumstances. As the body of the deceased does not provide any asset value, it would be inhumane to allow the respondent to continue holding the deceased's body as lien until the hospital bill is paid. It is further not in dispute that there is a hospital bill pending and which ought to be settled by the applicant and her family. The hospital bill is a civil debt which can be lawfully recovered by following the civil process. This court is mindful that it ought to balance the applicant's interests of having the body released to her and the respondent's interest of having a right to demand lawful dues. Unfortunately in the instant matter no letters of administration have been taken in respect of the deceased's estate. However, from the record, the family of the applicant had conducted a harambee.

18. This court makes the following orders: -

1. That the body of the late Virginia Wanjiku Mwangi be released unconditionally to the applicant herein.
2. The defendant is at liberty to file a suit against the applicant for recovery of the debt owed to it.

19. It is noted that the prayers in this application and those in the petition are similar. For this reason, the petition has no substance for this court to determine and it is therefore taken as concluded in this ruling.

20. Each party shall meet their own costs of this petition.

21. It is hereby so ordered.

***RULING DELIVERED VIRTUALLY, DATED AND SIGNED
AT THIKA THIS 11TH DAY OF DECEMBER 2025.***

**F. MUCHEMI
JUDGE**