

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CONSTITUTIONAL AND HUMAN RIGHTS DIVISION**

**CONSTITUTIONAL PETITION NO. E287 OF 2026**

**ROSALIA MUTINDI LELI.....PETITIONER/APPLICANT**

**VERSUS**

**COPTIC MISSION HOSPITAL.....RESPONDENT**

**RULING**

1. The Petitioner/ applicant ROSALIA MUTINDI LELI seeks, by her petition accompanied by a notice of motion, both dated 6<sup>th</sup> May, 2026, conservatory orders directing the respondent Coptic Mission Hospital to immediately and unconditionally discharge and release her from the said hospital where she was admitted on 2<sup>nd</sup> April 2026 on referral from Ruai Family Hospital for a procedure to be undertaken on her as she was undergoing treatment for cervical cancer but the procedure required could not be undertaken at the Ruai Family Hospital.
2. The petitioner is an employee of Embu County Government and she is on SHA as well as Britam Medical Insurance cover. She has paid part of the medical bill incurred at the Respondent Hospital amounting to Kshs 450,080 but there is still an outstanding bill of Kshs 1,299,945.

3. She claims that the respondent hospital has refused to discharge her from the hospital yet it is not administering any treatment on her, and that she is in a lot of pain yet the hospital is not giving her any painkillers to manage her dire condition. She further claims that she has tried to ask the hospital to discharge her to go and receive medication in an affordable hospital as she arranges to clear the outstanding bill but the Hospital has refused and that it continues to detain her, against her will.
4. The petitioner therefore seeks among other reliefs, declarations that her right to dignity, liberty and movement and to health care services have been violated and an order of mandamus compelling the Hospital to discharge and release her to enable her seek medical treatment elsewhere.
5. This court certified the application as urgent and directed the petitioner to serve the respondent who appeared through counsel this morning and sought time to file a response.
6. The petitioner's counsel sought for an interim conservatory order pending interpartes hearing on the ground that the petitioner's health is deteriorating and that she is in danger since she is not being treated at the respondent hospital but the hospital demands for settlement of the pending bill in full before she can be discharged.
7. The respondent's counsel opposed any interim orders submitting that the respondent ought to be heard fully after filing a response before any orders

can be granted. That in any event, the petitioner is a patient in hospital and is being attended to by competent health professionals who took an oath to treat all patients. That granting an interim order of release means the entire petition is determined summarily.

### **Analysis and Determination**

8. I have considered the brief submissions by parties' counsel on whether or not I should grant an interim mandatory conservatory order for discharge and release of the petitioner from the respondents' hospital pending interpartes hearing of the substantive motion dated 6<sup>th</sup> May, 2026. The petitioner seeks for an unconditional release from the respondent hospital.
9. I am conscious of the fact that a mandatory conservatory order as the one sought in these proceedings has some form of finality in it and therefore should only be granted in the interim, in *exceptional circumstances*. I am equally aware that the hospital having attended to the petitioner, would be entitled to all lawful charges incurred.
10. That said, this is a constitutional petition for enforcement of rights and rights enforcement, more often than not, cannot wait the alleged violator to continue violating or threatening to violate rights or to give consent for enforcement where it is alleged that the right is being violated or threatened with violation.

11. Superior courts in this country have pronounced themselves, not once or twice but severally, and consistently, that the right to personal liberty is one of the most fundamental human rights as it affects the vital elements of an individual's physical freedom.

12. Kenya is a signatory to international instruments which once ratified, form part of the law of Kenya under the Constitution. To this end, **Article 9** of the **Universal Declaration of Human Rights stipulates that: 'no one shall be subjected to arbitrary arrest, detention or exile'**. Similarly, **Article 9(1)** of the **International Covenant on Civil and Political Rights (ICCPR)** secures the right to liberty and security of the person in the following terms:

***"9. (1). Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."***

13. **Article 11** of the **ICCPR** further provides that: *"No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation."* The provisions of the **Article 2(5)** and **2(6)** of the Constitution incorporate into Kenyan Law these international instruments as was aptly stated in the case of ***Re Zipporah Wambui Mathara Milimani BC Cause No. 19 of 2010 (Unreported)***.

14. Courts have extensively dealt with the issue of detention arising out of failure to fulfil a contractual debt and it is therefore expected that the Hospitals who provide this very essential lifesaving services to all of us excluding no one, would be properly advised to avoid such scenario and litigation by patients in similar circumstances, thereby unnecessarily attracting expense and bad blood, that can be avoided.

15. Where issues of rights violation have been settled by courts, it is indeed, a waste of judicial time and resources to render decision after decision restating the same position since it cannot be expected that same facts under the same circumstances would attract different decisions by the same court.

16. I will therefore restate a few similar decisions rendered in respect of similar facts herein. Very recently, in a similar matter pitying the Nairobi Hospital, in petition 248 of 2026, this Court cited several decisions which I will reproduce here and reached a decision which I will reach shortly in this matter. In the case of **Ndegwa v Republic (1985) KLR 534**, decided long before the promulgation of the 2010 Constitution, the court observed that:

***“No rule of natural justice, no rule of statutory protection, no rule of evidence and no rule of common sense is to be sacrificed, violated or abandoned when it comes to protecting the liberty of the subject. He is the most sacrosanct individual in the system of our legal administration.”***

17. Post 2010, there have been a myriad of decisions on this subject of detaining patients and even bodies of dead persons by hospitals demanding full hospital bills accrued are settled. In **Sonia Kwamboka Rasugu v Sandalwood Hotel & Resort Limited T/A Paradise Beach Resort & Another [2013] KEHC 4134 (KLR)**, a case involving detention of the applicant for failure to pay a hotel bill, the High Court held that detaining a person for non-payment or failure to pay a contractual debt was a violation of **Article 29(a)** of the Constitution which provides that, ***“Every person has the right to freedom and security of the person, which includes the right not to be – (a) deprived of freedom arbitrarily or without just cause.”*** The court further held that such detention was a violation of the right to dignity contrary to **Article 28** of the Constitution.

18. In this case, there is no dispute that the petitioner was admitted in the respondent hospital on 2<sup>nd</sup> April 2026 for a medical procedure related to a preexisting health condition and she was referred for that special procedure which has been undertaken. She has paid part of the bill to the tune of Kshs 450,080 and the balance for the last one month is slightly over one million. She is an employee of Embu County Government, a public servant at that and part of her medical bills are covered by SHA and Britam Medical Insurance.

19. She claims that the respondent has refused to discharge her to enable her continue receiving urgent medical attention from an affordable hospital as

she continues to mobilize funds to settle the accrued bill, demanding that she must clear the outstanding bill first.

20. She claims that the hospital is not providing her with any treatment, not even painkillers which she needs to suppress the pain owing to her condition. Her advocates wrote to the hospital on 4<sup>th</sup> May 2026 demanding for her release to no avail.

21. The petitioner undertook to mobilize resources once discharged, to settle the outstanding bill but the hospital has declined to accept that undertaking.

22. Mrima J in **Maina v Registered Trustees of the Sisters of Mercy (Kenya) t/a the Mater Misericordiae Hospital (Constitutional Petition E020 of 2021) [2023] KEHC 22347 (KLR) (Constitutional and Human Rights) (21 September 2023) (Judgment)**, stated as follows regarding detention of patients by hospital for non-payment of accrued hospital bills:

*“70. In a nutshell, health institutions cannot detain patients on account of unpaid medical bills and expenses. Since the relationship between the institution and the patient is always contractual, then the contract ought to provide for lawful ways of debt recovery. The contracts may also provide for ways of taking care of the bills and expenses from escalating way above.*

*71. Detaining a patient, therefore, is not one of the ways of debt recovery. The act runs contra various rights and fundamental freedoms*

*provided in the Bill of Rights. They include Article 29 of the Constitution which provides that every person has the right to freedom and security of the person which includes the right not to be deprived of freedom arbitrarily or without just cause. There is also Article 39 which provides that every person has the right to freedom of movement. These constitutional provisions make it apparent that freedom and security of a person cannot be limited without a just cause. Furthermore, Article 28 provides that every person has inherent dignity and the right to have the dignity respected and protected.*

*72. Several decisions have been rendered buttressing the foregoing. They include *Sonia Kwamboka Rasugu v Sandalwood Hotel and Resort and another* [2013] eKLR, *MAO & another v Attorney General & 4 others* [2015] eKLR, *Tryphosa Jebet Koskey v Elgon View Hospital* [2016] eKLR, *Mary Nyang'anyi Nyaigero & Another v Karen Hospital Ltd & Another* [2016] eKLR, *Christine Kidha v Nairobi Women's Hospital* [2016] eKLR, *Veronica Nyangai v Nairobi West Hospital Ltd* [2017] eKLR among many others.*

*73. Detention is also condemned by international instruments which Kenya is a signatory. Article 2(6) of the Constitution recognizes general principles of international law and international treaties to which Kenya is a signatory as part of the Laws of Kenya. One of such*

*instruments is the International Convention on Civil and Political Rights, (ICCPR) wherein Article 9(1) thereof provides as follows: - Everyone has the right to liberty and security of person. No one shall be subject to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.*

*74. Internationally, the South African decision in Malachi v Cape Danle Academy International & another [2010] CCT 05/COZACC 13 attests to the above.*

*75. Having said as much on the unconstitutionality of health institutions detaining patients on account of unpaid medical bills and expenses, this Court reiterates the duty bestowed on every person (including entities) to defend the Constitution in Article 3. It is, therefore, a serious indictment for a person to disregard the provisions of the Constitution.”*

23. What emerges from the judicial pronouncements cited above is the centrality of the liberty of the person and the protection from illegal and false imprisonment as one of the fundamental rights and freedoms enshrined in the Bill of rights.

24. Thus, any form of detention not authorized by law that seeks to procure performance of contractual debt is a violation of the right to liberty. It is also an affront to human dignity to detain someone on account of a debt, absent

decree of a court, more so, detention without continuing treatment as alleged by the petitioner.

25. No doubt, Hospitals are entitled to settlement of their bills for treatment administered to patients, but that entitlement does not extend to the use of self-help mechanisms to enforce settlement of the bills by detaining patients who or whose families have given undertakings to settle the outstanding bills. The law does not condone the use of self-help mechanisms which are contrary to the law and which amount to violation of one's fundamental rights and freedoms.

29. In the English case of **Sunbolf v Alford (1838) 3 M & W 248, 150 ER 1135**, it was held that an inn keeper cannot detain the person of his guest in order to secure payment of his bill. The Court stated:

*“If an Innkeeper has a right to detain the person of his guest for non-payment of his bill, he has a right to detain him until the bill is paid, which may be life.... The proposition is monstrous. Again, if he has any right to detain the person, surely he is the judge in his own cause...”*

30. **Article 24(1)** of the Constitution is clear that a right or fundamental freedom in the Bill of rights is not to be limited except by law and only to the extent that such limitation is reasonable and justifiable in an open and democratic society. It cannot be a policy of the Hospital to detain patients after

discharge, or to refuse to discharge them until the accrued bill is settled. That policy is not constitutionally sound.

31. For all the foregoing reasons, this court is satisfied that this is one of those exceptional cases where a mandatory order compelling immediate discharge and release of the petitioner is warranted, having regard to the material placed before me.

32. Accordingly, I hereby order that the Respondent Coptic Mission Hospital shall, upon being served with this Order, immediately discharge and release the petitioner Rosalia Mutindi Leli from the respondent hospital and supply her with all her medical records for continuation of medical follow up care and treatment in any other hospital and that upon such discharge and before her departure, she will be required to make an undertaking in writing to pay to the respondent hospital, the lawfully accrued medical bill. That undertaking is sufficient to bind her to mobilize funds and settle the bill once she is out of the respondent hospital.

33. Parties to appear in court on 21/5/2026 for further directions.

**Dated, Signed and Delivered at Nairobi virtually this 11<sup>th</sup> Day of May, 2026**

**R.E. ABURILI**  
**JUDGE**