



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**LLN v Pumwani Maternity Hospital (Petition E344 of 2023) [2025] KEHC 11881 (KLR)
(Constitutional and Human Rights) (13 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 11881 (KLR)

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

PETITION E344 OF 2023

LN MUGAMBI, J

AUGUST 13, 2025

BETWEEN

LLN PETITIONER

AND

PUMWANI MATERNITY HOSPITAL RESPONDENT

JUDGMENT

1. The Petition dated 30th August 2023 is supported by the Petitioner's affidavit in support of even date. The gist of this Petition is the violation of constitutional rights of the Petitioner for the alleged manner the Respondent handled the Petitioner during her labour and child delivery leading to the death of her baby and removal of her uterus.
2. The Petitioner thus seeks the following relief against the Respondent:
 - i. An order for general damages for physical and emotional trauma.
 - ii. A declaration that the Petitioner's mishandling at the Respondent's facility was mistreatment and violation of the Petitioner's right to dignity, right to free from cruel, inhuman and degrading treatment contrary to Article 28 of *the Constitution*.
 - iii. A declaration that the removal of the Petitioner's uterus was due to gross negligence and poor quality of obstetric care by the Respondent, and the same was a risk to the Petitioner's right to life and health as provided under Article 21(1) and 43(1) of *the Constitution*.
 - iv. A declaration that the deliberate neglect of the Petitioner by the doctors and nurses at the Respondent's facility was in violation of Article 43(1)(a) of *the Constitution* which guarantees the Petitioner the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care.



- v. A declaration that the Respondent violated the Petitioner's rights under Article 29(j) of *the Constitution* which provides that the every person has the right to freedom and security of the person which includes the right not to be treated or punished in a cruel, inhuman and degrading manner.
- vi. An order for compensation directed against the Respondent to compensate the Petitioner for violation of her fundamental rights and freedoms for a sum of Kenya Shillings Twenty Million (Kshs. 20 million) and or as this Court may assess and grant.
- vii. A formal apology to the Petitioner from the Respondent.
- viii. An order for interest to be applicable to the amount as shall be granted by court on prayers (VII) above at Court rates from the date of filing the complaint until payment in full.
- ix. An order that the Respondent shall bear the costs of this Petition.
- x. Any other relief that this Court may deem just, fit and appropriate to grant in favour of the Petitioner.

Petitioner's Case

3. The Petitioner a resident of Mukuru kwa Ruben depones that on 19th October 2019 at around 7:00 am, accompanied by her husband, they visited the Respondent (Pumwani Maternity Hospital). The Petitioner was expectant and was experiencing severe pain.
4. On arrival at the hospital, the Respondent's nurses indicated that she would have immediately go to the theatre.
5. She was reviewed severally by the nurses after which they left her in pain without offering her any help despite her critical condition.
6. At around 3:00 pm her water broke and no attention was given to her by the nurses and doctors present. It was not until 9:00 pm when she was taken to the theatre.
7. The next day the attending nurse informed her that their baby had passed on during the delivery. Further, that the doctors had decided to remove her uterus. She was shown the deceased infant and the removed uterus; all were kept in a basin beneath her bed.
8. On 26th May 2021, the Petitioner lodged a complaint with the Kenya Medical Practitioners and Dentists Council. The Council's Disciplinary and Ethics Committee heard her case and examined her as well as the Respondent's witnesses. In its Ruling dated 28th September 2022, the Council determined that:
 - i. The Respondent owed a duty of care to the Petitioner herein. That duty of care includes, to be qualified professionals, due diligence, proper diagnosis, proper care, making an informed decision as to the best treatment to be administered, obtaining consent from the patient and family in cases of carrying out surgery and other risky treatment, exercise knowledge, skill, and caution in administering treatment, and advise and give instructions to the patient post-surgery treatment.
 - ii. The standard of care owed to the patient is laid out in established International, Regional, Country standards and guidelines. The doctor must observe universally accepted standards, guidelines and protocols.



- iii. A hospital is responsible for all those in whose charge the patient is placed, and the Respondent can be held liable for the acts of its personnel.
 - iv. The prioritization of the patient was improper and the delay to take the patient to theatre before the deterioration was a gap in management of the patient. The hospital did not put in place any mitigation to deal with the alleged backlog and for which a timely referral would have saved the baby's life and the trauma caused to the Petitioner.
 - v. There was no noted escalation of the patient's case despite her being planned for emergency caesarean section. Instead, the patient waited for 11 hours.
 - vi. For a patient to be deemed to have given consent, three ingredients must be met. Firstly, the consent must be voluntary, secondly, consent must be informed and lastly, the patient must have capacity to consent. A consent form does not automatically prove that the details in it were actually discussed with the patient to their satisfaction.
 - vii. There was failure on the part of the hospital to adequately inform the patient of the procedures and details of the consent form. Obtaining informed consent entails explaining the nature, purpose, possible consequences, risks involved, benefits and alternative methods of treatment to a patient who has capacity to understand.
 - viii. The Petitioner did not give informed consent for the treatment provided at the Respondent hospital.
 - ix. The Respondent was ordered to initiate mediation with the complainant with a view of compensating the Petitioner and thereafter update the chair of Kenya Medical Practitioners and Dentists Council within 120 days of the ruling.
9. The Petitioner avers that since the Ruling was issued, the Respondent has never approached her to discuss the fulfilment of those directions. To follow up on the matter, the Petitioner wrote to the Respondent on 6th October 2022 and 6th January 2023. Both letters did not receive any response.
 10. Distressed by the Respondent's conduct, the Petitioner wrote to the Kenya Medical Practitioners and Dentists Council yet again on 30th January 2023 and 22nd February 2023 informing them of the same. The Petitioner informs that to date, the Respondent has never bothered to reach out to her with any proposal of settlement despite her efforts to conclude the matter.
 11. The Petitioner states that the Respondent's actions have caused her great suffering and trauma, a plain indication of the Respondent's callous and irresponsible conduct. This has further caused her mental torture as she bears permanent wounds owing to the treatment she received at the Respondent's hands.
 12. She avers that worse of all is the mental anguish of being denied the right to ever conceive again and have a family due to the Respondent's reputation of neglect, negligence and arrogance towards its patients which she is a victim. She avers that this has stripped her of her dignity as a woman and outright violation of her constitutional rights necessitating institution of this suit.

Respondent's Case

13. The Respondent's response and submissions are not in the Court file and Court Online Platform (CTS). The Petitioner indicated that the same were never filed.



Petitioner's Submissions

14. The Petitioner through Bundi and Company Advocates filed submissions dated 18th February 2025 which summarized the issues for determination as: whether the Petitioner has proved that the Respondent was negligent and what would be the quantum of damages, if any, if the answer to (a) above is in the affirmative.
15. Counsel submitted in the first issue that it was evident from the Kenya Medical Practitioners and Dentists Council finding that the Respondent had neglected to fulfill its obligations to the Petitioner. This determination was made after the Council had heard all the parties and evidence adduced. Counsel asserted that as a result of the Respondent's actions the Petitioner in the end suffered permanent damage due to its negligence and dereliction of the duty of care.
16. Counsel further argued that the Respondent had overlooked the established standards and practices of maternal care in Kenya which can be found in the Standards for Maternal Healthcare in Kenya 2002 published by Ministry of Health and the National Guidelines for Quality Obstetrics and Perinatal Care. Basically, these standards direct that during a prolonged labour a healthcare provider is required to adhere to a number of guidelines which was not done during the Petitioner's 11 hour labour.
17. Reliance was placed in JMA (Suing through BOA as Next Friend) & another v Registered Trustees of the Sisters of Mercy (Kenya) t/a Mater Misericordiae Hospital [2023] KEHC 17556 (KLR) where it was held that:

“As regards the duty of care owed by a medical person to a patient, Halsbury's Law of England, Vol. 26 at page 17 states thus; “A person who holds himself as ready to give medical advice or treatment impliedly undertakes that he is possessed of skill and knowledge for that purpose. Such a person, whether he is a registered medical practitioner or not, who is consulted by a patient, owes him certain duties namely, a duty of care in deciding whether to undertake the case, a duty of care in deciding what treatment and a duty of care in his administration of that treatment.”
18. Counsel submitted that in view of this, it was evident that the Petitioner was entitled to the relief sought. Counsel stressed that it was also clear that the Petitioner had not only lost their unborn child but also her uterus. This as averred had caused her to suffer tremendously and violated of her constitutional rights. Despite this Counsel reiterated that the Respondent had maintained it's resolute in complying with the Ruling issued by the Kenya Medical Practitioners and Dentists Council and also to compensate her.
19. Counsel as such emphasized that the Petitioner was entitled to general damages. Relying on a comparable case JMA (supra) Counsel submitted that the Court had awarded the Petitioner Ksh.9, 000, 000 in general damages. In this case owing to the severe damage caused to the Petitioner, Counsel submitted that the Petitioner was entitled to general damages of Ksh.20, 000, 000.

Analysis and Determination

20. It is my humble view that the issues that arise for determination in this matter are:
 - i. Whether the Petitioner's rights under Articles 21(1), 28, 29(j) and 43(1) of *the Constitution* were violated by the Respondent.
 - ii. Whether the Petitioner is entitled to the relief sought.



Whether the Petitioner’s rights under Articles 21(1), 28, 29(j) and 43(1) of *the Constitution* were violated by the Respondent

21. In the instant case, it is not contested that as a result of negligent handling of the Petitioner at the Respondent’s Hospital, the Petitioner on 19th October, 2019; the Petitioner who was expectant lost her baby and also had uterus removed making it impossible to conceive and bear any child ever. The negligence was confirmed by the Kenya Medical Practitioners and Dentists Council ruling of 26th May, 2021 delivered after a hearing by the Disciplinary and the Ethics Committee. The Respondent was found to have among others failed in prioritization of the patient due to delay in taking the Petitioner in the theatre which could have saved the baby’s life and the trauma caused to the Petitioner. It was also the finding of there was no noted escalation of the patient’s case despite her emergency caesarean section whereby the patient was made to wait for 11 hours. The Petitioner corroborated these findings through the affidavit in support of the Petition.
22. Article 43 (1) of *the Constitution* grants every person the right
- a. to the highest attainable standard of health, which includes the right to health care services, including reproductive health care.
23. Further, Article 43 (2) provides that a person shall not be denied emergency medical treatment.
24. It is the finding of this Court that to neglect offering emergency treatment for 11 hours to a patient whose assessment had showed that she needed immediate attention violated her right to the highest attainable standard of health care in contravention of Article 43 (1) and also her right to emergency medical treatment under Article 43 (2) while at the hands of the Respondent. Further, the fact of losing not only her new born baby but also the ability to conceive again as a woman following removal of her uterus all due to the negligence of Respondent’s Officers violated her right to receive the highest standards of reproductive health care.
25. Given the obvious failure by the Respondent to provide the Petitioner with the highest standards of medical care, the negligent action by the Respondent ruined the Petitioner’s ability to have children let alone losing the child thus inflicting deep psychological trauma which was in violation of Article 29 (d) of *the Constitution*. The social stigma she will endure for the inability to bear a child yet it was her desire together with her husband robbed the dignity and joy of motherhood which I find to be a violation of Article 28 of *the Constitution*. At paragraph 16 of the supporting affidavit sworn on 30th August, 2023; the Petitioner swore as follows:

“That I have been mentally tortured, shunned, socially embarrassed and treated with discord after horrifying ordeal at the hands of the respondent. I am still bearing the permanent wounds which are a stark reminder of the unforgettable gruesome experience with the respondent...”

26. As was held in JMA (Suing through BOA as Next Friend) & another (supra);

“21.In the case of Jimmy Paul Semenye v Aga Khan Hospital & 2 Others [2006] eKLR cited by the Plaintiffs, the court stated thus:

“There exists a duty of care between the patient and the doctor, hospital or health provider. Once this relationship has been established, the doctor has the following duty; -



- a. Possess the medical knowledge required of a reasonably competent medical practitioner engaged in the same specialty;
- b. Possess the skills required of a reasonable competent health care practitioner engaged in the same specialty;
- c. Exercise the care in the application of the knowledge and skill to be expected of a reasonably competent health care practitioner in the same specialty; and
- d. Use the medical judgment in the exercise of that care required of a reasonably competent practitioner in the same medical or health care specialty.

When a physician or other medical staff member does not treat a patient with the proper amount of quality care, resulting in serious injury or death they commit medical negligence...”

27. Given the affidavit evidence of the presented by the Petitioner on the inferior quality of health care offered to her and which is further corroborated by the annexed ruling by the Kenya Medical Practitioners and Dentist Council of 28th September, 2022; which evidence is not controverted by the Respondent in any way; I am satisfied that the Petitioner has proved that the Respondent did not only neglect to give her the highest standards of health care as envisaged in Article 43 (1) of *the Constitution* but also, delaying her treatment for eleven hours given her condition amounted to denial of emergency medical treatment in violation of Article 43 (2) of *the Constitution*.

Whether the Petitioner is entitled to the relief sought.

28. The equity maxim that ‘Equity will not suffer a wrong to be without a remedy’ to be relevant in this case.’ If a right is violated, it must be enforced by providing an appropriate remedy. This therefore takes me to the next issue, what would be the most appropriate remedy in the circumstances of this case?
29. The Court of Appeal addressing the nature of a constitutional relief in *Gitobu Imanyara & 2 others vs Attorney General*[2016] KECA 557 (KLR) explained as follows:

“...the South African Case of *Dendy v University of Witwatersrand, Johannesburg & Others* - [2006] 1 LRC 291 where the Constitutional Court of South Africa held that:

“...The primary purpose of a constitutional remedy was to vindicate guaranteed rights and prevent or deter future infringements. In this context an award of damages was a secondary remedy to be made in only the most appropriate cases.

“...The primary object of constitutional relief was not compensatory but to vindicate the fundamental rights infringement and to deter their future infringement. The test was not what would alleviate the hurt which plaintiff contended for but what was appropriate relief required to protect the rights that had been infringed. Public policy considerations also played a significant role. It was not only the plaintiff’s interest, but the interests of society as a whole that ought as far as possible to be served when considering an appropriate remedy.”



30. Further, the Court of Appeal in *Peter Ndegwa Kiai t/a Pema Wines & Spirits v Attorney General & 2 others* [2021] KECA 328 (KLR) noted as follows with reference to an award of compensation:

“15. The relevant principles applicable to award of damages for constitutional violations under *the Constitution* were also explained by the Privy Council in the case of *Siewchand Ramanoop vs The AG of T&T*, PC Appeal No 13 of 2004. It was held by Lord Nicholls at Paragraphs 18 & 19 that a monetary award for constitutional violations was not confined to an award of compensatory damages in the traditional sense as follows:

“When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under section 14 is discretionary and, moreover, the violation of the constitutional right will not always be co-terminous with the cause of action at law.

An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches.”

31. In the LAW case (*supra*), the stated:

“244. As is the case in constitutional petitions, there are arrays of available remedies. what a court endeavours to do upon confirming of any infringement is to grant an appropriate remedy. Even in instances where a party fails to ask for a specific relief, a court, depending on the nature of the matter ought to craft an appropriate relief...”

32. In the instant case, the Petitioner prayed for grant of a number of reliefs. The Court having regard to its findings above grants the following reliefs:

- a. A DECLARATION is hereby issued that the mishandling and deliberate neglect of the Petitioner by the doctors and nurses at the Respondent’s facility that thereafter led to the death of the Petitioner’s baby and unwarranted negligent removal of the Petitioner’s uterus violated Article 43 (1) (a) of *the Constitution* that guaranteed the Petitioner the highest standards of healthcare, the right to inherent human dignity under Article 28 and the Right from being subjected to psychological or mental torture under Article 29 (d) of *the Constitution*.
- b. An order of compensation to the tune of Kshs.7,500,000/- (Seven Million Five Hundred Thousand Shillings only).



c. Costs of this Petition

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13TH DAY OF AUGUST, 2025.

.....

L N MUGAMBI

JUDGE

