



HIGH COURT REAFFIRMS CONSTITUTIONAL PROHIBITION AGAINST DETENTION OF PATIENTS OVER UNPAID MEDICAL BILLS

Implications for Healthcare Providers, Hospital Governance, Healthcare
Financing and Medical Debt Recovery

Executive Summary

The High Court of Kenya has delivered a significant constitutional and healthcare law decision reaffirming that hospitals cannot lawfully detain patients over unpaid medical bills. In *Stephen Ndwaru Gicheru v The Nairobi Hospital & Another, Constitutional Petition No. E258 of 2026*, the Constitutional and Human Rights Division held that continued confinement of a medically discharged patient as leverage for payment of outstanding medical fees constituted an unconstitutional deprivation of liberty and a violation of the patient's dignity and freedom of movement under the Constitution of Kenya, 2010.

The Court emphasized that while healthcare institutions retain lawful rights to recover medical fees for services rendered, recovery must occur strictly through lawful contractual, statutory, and judicial mechanisms. Informal "self-help" debt enforcement practices that interfere with patient liberty expose healthcare institutions to significant legal, financial, operational, regulatory, governance, and reputational risk.

The decision is particularly important for hospitals, insurers, healthcare investors, hospital boards,

healthcare financiers, and compliance teams because it underscores the growing expectation that healthcare institutions operate within governance and patient rights frameworks aligned with constitutional principles, international human rights standards, and modern healthcare financing practices.

At a broader level, the judgment highlights increasing pressure within the healthcare sector arising from rising treatment costs, delayed insurance reimbursements, growing bad debt exposure, and weaknesses in patient financing and medical debt recovery structures. The ruling therefore serves not only as a constitutional pronouncement on patient rights but also as a reminder that healthcare institutions must strengthen their healthcare financing, credit management, insurance coordination, and lawful debt recovery systems.

Background

The petition arose after Mr. Stephen Ndwaru Gicheru underwent open-heart surgery at The Nairobi Hospital and was medically discharged on 27 March 2026. Despite the discharge, the hospital allegedly declined to release him due to an outstanding medical bill after the insurer failed to fully settle the claim.



According to the pleadings before the Court, the patient's family had already paid KES 1 million towards the outstanding bill and had provided undertakings to settle the remaining balance. Nevertheless, the patient remained confined within the hospital premises, resulting in continued accumulation of medical charges and denial of home-based post-operative recovery.

The Petitioner consequently instituted constitutional proceedings alleging violation of his rights under Articles 28, 29, 39 and 47 of the Constitution of Kenya, 2010.

The High Court subsequently issued a mandatory conservatory order directing the patient's immediate release together with all medical records necessary for continuation of treatment outside the hospital environment.

The Court's Constitutional and Legal Findings

In a strongly worded decision, the Court reaffirmed that detention of patients over unpaid medical bills violates constitutional protections relating to human dignity, liberty, and freedom of movement. The Court relied on Articles 28, 29 and 39 of the Constitution and further invoked international human rights instruments incorporated into Kenyan law under Articles 2(5) and 2(6) of the Constitution, including Article 11 of the International Covenant on Civil and Political Rights (ICCPR), which prohibits imprisonment merely because of inability to fulfil a contractual obligation.

The Court emphasized that the relationship between a healthcare institution and a patient is fundamentally contractual in nature and that hospitals, like all commercial creditors, must pursue lawful recovery processes rather than informal coercive mechanisms.

The Court expressly stated:

"Detaining a patient, therefore, is not one of the ways of debt recovery."

The Court further observed that while hospitals are entitled to payment for services rendered, such entitlement does not extend to unlawful detention or denial of discharge after medical clearance.

Importantly, the Court noted that the legal position is already well settled in Kenyan jurisprudence and relied on prior decisions including *Maina v Registered Trustees of the Sisters of Mercy (Kenya) t/a Mater Misericordiae Hospital [2023] KEHC 22347 (KLR)*, *Sonia Kwamboka Rasugu v Sandalwood Hotel & Resort Limited [2013] KEHC 4134 (KLR)*, and related authorities

condemning detention arising from civil and contractual liabilities.

The judgment therefore reinforces the broader constitutional principle that civil and contractual liabilities cannot justify arbitrary deprivation of liberty.

Broader Implications for Healthcare Institutions

The decision comes at a time when healthcare institutions are facing increasing operational and financial pressure arising from delayed insurance reimbursements, rising healthcare delivery costs, expanding bad debt portfolios, and liquidity constraints.

From a governance and enterprise risk management perspective, the judgment underscores the significant exposure associated with informal or constitutionally non-compliant debt recovery practices. Healthcare institutions that continue relying on detention or coercive recovery practices may face constitutional litigation, human rights claims, regulatory investigations, consumer protection exposure, reputational damage, and governance failures.

The ruling also reflects a growing judicial expectation that healthcare institutions operate within integrated governance and compliance frameworks aligned with constitutional standards, healthcare regulation, patient rights principles, and international healthcare governance practices.

In practical terms, the decision is likely to accelerate review of hospital admission procedures, discharge policies, insurance coordination systems, patient financing arrangements, and medical debt recovery frameworks.

Transitioning Toward Structured and Constitutionally Compliant Healthcare Recovery Frameworks

A notable aspect of the judgment is that while the Court condemned unlawful detention practices, it did not extinguish the right of hospitals to recover legitimate medical debts. Instead, the ruling reinforces the need for healthcare institutions to adopt legally enforceable, and commercially sustainable patient financing and recovery structures.

Globally, leading healthcare systems increasingly rely on integrated healthcare financing and revenue protection frameworks designed to balance patient access to care with institutional financial sustainability and regulatory compliance. Such systems are documentation-driven and rely on structured guarantees, security arrangements, insurance coordination mechanisms, and post-discharge payment frameworks rather than informal enforcement practices.

Healthcare institutions in Kenya are therefore likely to increasingly adopt more structured patient credit



and healthcare financing systems aligned with international healthcare governance and risk management standards.

Patient Financing, Guarantees and Security Structures
The judgment underscores the importance of strengthening admission and financial responsibility documentation at the outset of treatment. Healthcare institutions should ensure that admission agreements, insurance limitation disclosures, financial responsibility declarations, next-of-kin undertakings, co-payment acknowledgments, and structured post-discharge settlement arrangements are comprehensive, enforceable, and properly documented.

In addition, hospitals may lawfully require third-party guarantees and sponsor undertakings, particularly in high-value elective procedures, specialized treatment arrangements, or long-term admissions. Properly drafted guarantees create independent contractual obligations enforceable against guarantors without infringing constitutional rights or patient liberty.

Healthcare institutions may also consider more sophisticated security frameworks for substantial healthcare exposures. These may include equitable charges, letters of deposit of title documents, promissory notes, escrow arrangements, and other asset-backed financing structures.

Under Kenyan law, including the Land Act, 2012, deposit of title documents accompanied by intention to create security may constitute an enforceable equitable charge capable of supporting lawful recovery proceedings. Accordingly, hospitals may consider requiring deposit of original title documents together with letters acknowledging intention to create security and supporting repayment undertakings in appropriate high-value treatment arrangements.

Similarly, properly drafted promissory notes may provide an effective mechanism for evidencing indebtedness, structuring deferred payment obligations, and strengthening enforceability of post-discharge settlement arrangements.

However, these structures must be carefully implemented to ensure compliance with:

- The Land Act and applicable land registration requirements;
- Matrimonial property and spousal consent obligations where applicable;
- Consumer protection principles;
- Contractual fairness requirements; and
- Judicial enforcement procedures.

Importantly, any enforcement of guarantees, equitable charges, promissory notes, or other security structures must occur strictly through lawful judicial and statutory processes rather than administrative coercion or restrictions on patient liberty.

Insurance and Managed Care Governance

The dispute also highlights increasing risks arising from delayed or disputed insurance reimbursements. Healthcare institutions should therefore strengthen pre-authorisation systems, benefit verification procedures, claims escalation mechanisms, insurer engagement protocols, and managed care governance structures.

Hospitals may further consider implementing medical financing partnerships, direct insurer undertakings, structured risk-sharing arrangements, and credit insurance mechanisms designed to reduce exposure arising from insurer defaults or delayed reimbursements.

Given the increasing complexity of healthcare financing arrangements, institutions are also expected to maintain more sophisticated governance oversight over insurance coordination and healthcare receivables management.

Succession and Estate Recovery Rights

The judgment further highlights important succession and estate administration considerations. Under Kenyan succession law, unpaid medical bills ordinarily constitute liabilities of the deceased's estate and rank among creditor claims payable prior to distribution of estate assets.

Healthcare institutions therefore retain lawful recovery rights against estates through probate and succession proceedings. Personal representatives and administrators are generally obligated to settle lawful estate liabilities before distribution of assets to beneficiaries.

Hospitals should accordingly ensure proper preservation of treatment records, billing documentation, guarantees, acknowledgments, promissory notes, and security documentation in order to support creditor recovery rights in succession proceedings where necessary.

Governance and Compliance Considerations

In light of the decision, healthcare institutions should urgently undertake constitutional compliance reviews relating to discharge procedures, patient detention practices, debt recovery systems, insurance coordination frameworks, patient financing arrangements, and security documentation structures.

Boards and senior management teams should ensure alignment with:



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- The Constitution of Kenya, 2010;
- The Health Act, 2017;
- Consumer protection legislation;
- Patients' rights frameworks;
- Data protection obligations; and
- International healthcare governance and compliance standards.

Institutions should also strengthen staff training, escalation protocols, enterprise healthcare risk management systems, and governance oversight structures in order to reduce exposure to constitutional and regulatory risk.

Conclusion

The High Court's decision in *Stephen Ndwaru Gicheru v The Nairobi Hospital & Another* represents a significant reaffirmation of constitutional protections relating to liberty, dignity, and patient rights within Kenya's healthcare system.

At the same time, the judgment serves as an important reminder that healthcare institutions must strengthen their healthcare financing, patient credit management, insurance coordination, and debt recovery systems to

balance constitutional compliance with operational sustainability.

Healthcare providers that proactively strengthen governance frameworks, contractual documentation, security structures, insurance management systems, and lawful recovery mechanisms will be better positioned to mitigate financial exposure while preserving regulatory compliance, institutional reputation, and patient trust.

How CM Advocates LLP Can Assist

CM Advocates LLP provides integrated legal and regulatory advisory services across the healthcare sector, including healthcare regulation and compliance, hospital governance advisory, medical law and constitutional litigation, healthcare financing and recovery structures, drafting of guarantees, promissory notes, indemnities and security documentation, equitable charge structuring, insurance and managed care disputes, succession and estate-related creditor recovery, healthcare risk management frameworks, regulatory investigations, and data protection compliance.

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