

THERE IS NO PROPERTY IN A DEAD BODY: WHEN A HOSPITAL WITHHOLDS AND REFUSES TO RELEASE A LOVED ONE'S BODY DUE TO OUTSTANDING MEDICAL BILLS.

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WHAT HAPPENS WHEN A HOSPITAL, WITHHOLDS A DECEASED'S PERSON'S BODY AND REFUSES TO RELEASE IT UNTIL THE IMMEDIATE FAMILY/NEXT OF KIN SETTLES ALL OUTSTANDING MEDICAL BILLS?

In [Migwa \(Suing as the Next of Kin of the Estate of the Late Erick Anjenjo Maurice Migwa\) v Cana Hospital Limited & another \[2026\] KEHC 8541 \(KLR\)](#), the Petitioner approached the court seeking relief from the continued detention of her late husband's body by a hospital and funeral home acting at the hospital's direction.

The deceased passed away on 18th March 2026 while receiving treatment at Cana Hospital and his body was transferred to Umash Funeral Home for preservation. However, the hospital issued a directive instructing that the funeral home should not release the remains until a medical bill of **KES 4,410,710** was fully settled. The family managed to raise only **KES. 360,000**.

The Petitioner filed a constitutional petition where she alleged various articles of the constitution including Article 28's guarantee of dignity, Article 25's protection from inhuman and degrading treatment and Article 29's shield against degrading conduct had been violated. Further she stated that the Hospital's conduct violated article 45's right to health as access to medical services cannot be conditioned on surrendering a loved one's remains as security. The petition further relied on the principle that **"a dead body is not property capable of being detailed as lien or security for a debt."** She argued that hospitals have lawful avenues for debt recovery, civil proceedings, negotiation, or structured payments but none of those authorised the coercive detention of a corpse.

In response the Hospital detailed the deceased's medical journey and how it had deployed extensive medical resources including HDU and ICU services in a sustained effort to preserve his life and he had accumulated a substantial medical bill. The hospital further stated how it had attempted to engage the family in good-faith negotiations and attempted to secure a structured payment plan to no avail.

Instead the family advocates issued a demand for the unconditional release of the body a position the hospital characterised as dismissive of its quest for security or a payment plan. Further no legally recognised personal representative had stepped forward, exposing the hospital to a real risk of suffering irrecoverable financial loss. The hospital urged the court to balance the competing interests by ordering a conditional release of the body.

In upholding the Petition, the court held that there is no ambiguity in our law since courts within the Kenyan Jurisdiction have repeatedly and consistently affirmed that where a patient dies while undergoing treatment, the hospital must release the body to the family for burial and therefore pursue any outstanding medical fees through the established civil recovery mechanisms. The law provides clear channels for such recovery, and none of them include the detention of corpses as collateral. When a hospital purports to hold the body as security for payment the action constitutes a direct assault on the constitutionally guaranteed rights of the deceased's family; rights to be treated with humanity and dignity under Articles 25(a) and 28 of the Constitution.

The court having found the withholding of the body as collateral unconstitutional, issued orders for its unconditional release without any security, undertaking or structured payment plan. Further all mortuary fees accruing as a result of Hospitals unlawful directive were not payable by the petitioner or the estate of the deceased directly.

The court further awarded the petitioner damages of Kenya Shillings One million and stated that the Hospital remained at liberty to pursue any outstanding medical fees through lawful civil recovery mechanisms, including but not limited to filing a civil claim or initiating citation proceedings once letters of administration are taken out.