

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

MISCELLANEOUS CAUSE NO 185 of 2022

1. Center for Health, Human Rights, and Development (CEHURD)
2. Mugerwa Raymond (suing through the next of friend Sentengo Robert)
3. Sentengo Robert..... Applicants

Versus

1. Jaro Hospital Limited
2. Odongo James.....Respondents

Before: Hon Dr Justice Douglas Karekona Singiza

RULING

1 Introduction

The way medical emergencies are managed provide a good indicator on the nature and quality of medical services in each country. That Uganda’s health sector has demonstrated a considerable amount of resilience is in no doubt. Even with evidence of success in the control of and preventions of diseases such as HIV/AIDS, COVID-19 and malaria, Uganda’s disease burden remains a serious challenge. The participation of the private sector in the provision of health services was never conceived as a ‘competitor’ with the state but rather as a ‘partner’ in a strained public health sector. Initially, the understanding by many people was that medical services in private hospitals were for free, just like any

other public good. It is now agreed that a patient who defaults to pay his or her medical bills commits an actionable wrong for which recovery is permitted under the laid down procedures. This ruling examines legality of hospital detentions of patients that fail to pay their medical bills against the backdrop of the symbiotic role of the state and the private sector in the provision of health services in the country.

2 Background

The applicants brought this motion under the provisions of Articles 50 (1) and (2) of the Constitution and sections 1, 2, 3 &4(1) (a) & (b) of the Human Rights (Enforcement) Act, 2019 and section 98 of the Civil Procedure Act Cap 71.

The motion seeks declarations and orders that: the respondent's act of detaining the second applicant pending payment of the outstanding medical bills subjected the child to cruel and inhuman and degrading treatment as well as a violation to his right to health and freedom from cruel and degrading treatment under the currently constitutional and legal frameworks. Further that the respondent's act of detaining a child- the second applicant, pending payment of the outstanding medical bills amounted to the violation of the child's right to liberty under the currently constitutional and legal frameworks. The motion papers also seek a declaration that the respondents health facility was not an authorized place of detention under the law, an order to immediately release the 2nd applicant from detention, an award of general damages to the 2nd applicants for the violation of the constitutionally guaranteed rights, and for each party to bear their own costs.

The motion is supported by the affidavits two witness whose depositions highlight the following facts:

The 2nd applicant was involved in a car accident along Kyaliwajala road and taken by good Samaritans to the respondents' health facility where he was admitted for emergency treatment on the 23rd July 2022. Then 3rd applicant, father to the 2nd applicant, sought for a referral to a public health facility given the critical condition of the patient at the time. It was turned down. The 2nd applicant was successfully operated by the respondents and billed UGX 4,423,000= on the 6th of August 2022. The applicant with the support of the good Samaritans raised a portion of the medical bills amounting to UGX 1,500,000= but the respondents insisted on full payment. As a result, the respondent detained the 2nd applicant at their health facility hence this motion.

3 Assessment of the parties' averments

The motion relies on the affidavit of Mr. Sentongo Robert and Ms. Fatia Kiyange. The motion on also opposed by the affidavit of Dr James Odongo. In the paragraphs below, I assess their averments.

Mr. Sentongo is employed as a *boda boda*¹ rider and is the father of the 2nd respondent. He leads evidence on the age of the child, confirms the facts relating to his child's accident and how he was rushed to the Ggwatiro Hospital where an abdominal scan was taken and a referral to the respondents' hospital made. When Mr. Sentongo got the news of his son's admission, he rushed to the respondents' health facility and sought to transfer his son to a public hospital.

¹ The term *boda boda* has been extensive discussed elsewhere. Singiza (2019) describes the term with reference to the motorcycle 'taxis' that are used in many towns in Uganda as a means of transport. It derives its name from cross-border illicit trade between Kenya and Uganda where the smugglers use workers known as 'Border Porters' as their secret conduits. The Luhyas, one of Kenya's ethnic groups, mispronounced the word 'porter' as *boda* instead.

Given the emergency condition of his son, the respondent advised for an emergency operation. Mr. Ssentongo indicates that his son walked by himself into the theatre and that the operation was successful. Because of the anticipated huge medical bill, the Mr. Sentongo asked for a referral to a public hospital which again the respondents turned down. Indeed, his fears came to pass when a bill of UGX 4,423,000= was presented to him. He managed to raise only UGX 1,500,000= which he had mobilized from good Samaritans.

Mr. Sentongo informs the court that at the scheduled date for his child's discharge, instead the 2nd applicant was locked up in a secluded room where he was denied medical care, food and other necessities of life. In fact, Mr. Sentongo took it upon himself to prepare and deliver food for the duration of the 2nd applicant's detention. He then contends that he no longer has any source of income, suggesting that he is too poor to afford the medical bills of the 2nd applicant, yet the bills continue to accumulate.

Apparently, the 3rd applicant has other children under his care and their wellbeing is also compromised by his trauma caused by the continuous detention of his son. Mr. Sentongo undertakes to clear all the outstanding bills if given a favorable payment plan but maintains that the respondents' continuous detention is infringes on the constitutional rights of the 2nd applicant which the respondents must uphold.

Fatia Kiyange's affidavit speaks to her experience as a public health practitioner of 20 years focusing on health human rights and social justice and good governance. Fatia highlights her works in providing legal assistance and research to key stakeholders in the areas of social justice. She believes in the protection of human rights, rights of patients under the existing frameworks and guideline.

Fatia Kiyange informs the court that she receives a lot of complaints from patients on CEHURD toll freelines dedicated to violations of health rights. She says complaints dealing with detention of patients because of nonpayment of bills are commonly recorded. She then referred to the present complaint the subject of the motion.

After repeating the contents of the Sentongo's affidavit, she gives an account of previous warnings from the Medical Dental and Practitioners Council (UMDPC) on detention of patients and emphasizes that the respondents are subject to the regulation of the UMDPC.

Relying on the guidelines on the World Health Organization (WHO) and the constitutional framework, she maintains that the decision by the respondents to detain the 2nd applicant on account of failure to pay his medical bills was unconstitutional and amounted to cruel, degrading, or human treatment to warrant the grant of the orders sought for.

The respondents' reply as revealed from the affidavit of Dr James Odongo is dismissive because not only is the motion ridiculous and untrue, but it also has no valid grounds and therefore should be dismissal with costs. The reasons for the above averments are discernable from his affidavit summarized in the paragraphs below:

1. That the deponent was called by Dr Oriada of Ggwaatiro hospital with information that the 3rd applicant and another person called Lugolobi Aisha, and the latter's juvenile son (who was driving the car which caused the accident in which the 2nd applicant was injured) asking for the cost of the surgery.

2. Dr James Odongo personally spoke to the 3rd applicant and Lugolobi Aisha on phone who both later agreed to prepare the 2nd applicant for surgery.
3. Later, Lugolobi Aisha came in the company of the 2nd applicant, a traffic officer, the victim in the vehicle that had caused accident, a health worker attached to Ggwaatiro hospital and one Ms. Kibirige Grace (the alleged good Samaritan).
4. The 3rd applicant came shortly afterwards and identified himself as the father of the 2nd applicant.
5. The 2nd applicant then gave consent to treat his son at the Jaro health facility.
6. As a policy of the hospital, in addition to the consent and commitment, every patient must deposit at least a third of the surgery fees before going to the theatre.
7. When he came out of the theatre, he was told by his staff that Lugolobi Aisha, Ms. Kibirige Grace and the traffic officer had run away.
8. All this time, the 3rd applicant continued to assure the respondents that the owner of the car that had caused the accident had offered to pay UGX 1,500,000=
9. The medical bills accumulated until the 2nd applicant was discharged (after the intervention of the deputy registrar of the court) with the same false promises that the bills would be paid.
10. Dr James Odongo later established that the 3rd applicant had received the sum of UGX 1,000,000= from the Excel Insurance Company on the 26th August 2022.
11. He denied detaining the 2nd applicant explaining that the accusation had the potential to tarnish reputation of the hospital and maintained that upon 'forced discharge', after the direction of the deputy registrar of the court, the 2nd applicant had an accumulated bill of 4,908,000=

In his affidavit in rejoinder, Mr. Sentongo denied the fact that after the accident, he had come to the hospital with the lady whose under-age son had caused an accident. He admits however that he had received UGX 1,000,000= from a certain insurance company. That said he has since deposited UGX 1,000,000= to the respondents. The rest of the information in rejoinder is a reiteration his earlier affidavit. Fatia's affidavit in rejoinder takes the firm view that since the respondents have not rebutted the evidence in the motion, then the prayers thereunder should be granted.

3.1 Issues for determination

Both parties put forward 3 issues for determination by this court except that the questions as framed are cast differently for obvious reasons. The applicants' issues are as follows: (1) whether the detention of the 2nd applicant (sic) amounted to a violation of his rights to personal liberty under article 23 of the Constitution? (2) whether the detention of the 2nd applicant amounted to the violation of his right to freedom from cruel, inhuman, and degrading treatment under articles 24 & 44 (a) of the Constitution? and (3) what remedies are available to the parties? On their part, the respondents put forward the following issues for determination: (1) whether the 2nd applicant was detained by the respondents? (2) If so, whether the detention of the 2nd applicant was illegal and a violation of his constitutional rights? and (3) what remedies are available to the parties?

In my view from the motion papers and the supportive affidavits and the replies thereto, two issues emerge for determination:

- 1. Whether a hospital can lawfully detain a patient who has defaulted to clear the bills?*
- 2. Whether the declarations sought can be granted by this court?*

4 Constitutional framework on illegal detentions: an overview

The framework on detention of persons is grounded on personal liberty as a constitutional imperative under article 23 of the Constitution. The Constitution posits citizens' right to personal liberties as a 'hands off right'. This right finds its most expression under the broader protective umbrella of the freedom charter that is found in chapter 4 of the Constitution. Personal liberty is a constitutional right has the following key elements:

- a) It's a hands-off right given its negative construction.
- b) The enjoyment of the right to liberty has specific exceptions such as an order of a criminal or a civil court;
- c) It may be limited cases of suspicion of a commission of an offence or on account of public health considerations such as control of infectious diseases;
- d) The right to liberty may be limited for welfare considerations of children; and
- e) Public safety mental health considerations in cases of a persons of unsound mind.

Thus, 'constitutionally speaking', a citizen's individually right to liberty may be limited in three broad ways: first by operation of a court order, two for the purposes of prevention of the commission of offences, three because of public health considerations and four for the safety and educational needs of a child. Thus, based on the above constitutional imperatives, the Parliament enacted different laws to deal with circumstances when the right to liberty may be limited.²

² See section 15 of the Criminal Procedure Code Act cap 11 which provides for arrest and detention without warrant of persons on cognizable offences or where there is reasonable suspicion; section 2 of the Trial on Indictment Act Cap 23 on the sentencing powers of the

4.1 The approach of the courts

The courts in Uganda are strongly protective of the right to liberty in sufficient terms. Thus, in *Ochawa v Attorney General* Civil Suit No 410 of 2012, the view of the court was that for a claim of unlawful detention to be established, three elements must be proved:

1. willfulness of the detention;
2. the detention must have been without the consent of the persons detained;
and
3. the detention must be unlawful.

In *Nakazibwe v Attorney General* Miscellaneous Cause No 295 of 2018, the court rationalizes the absolute condemnation of unjustified detention of person grounded on the constitutional imperative of liberty. Thus, a detention can become illegal if it is in an unauthorized and ungazetted place. The court further explains that where a person has been arrested and detained in unauthorized and ungazetted place on suspicion of commission of an offence, such a detained person must be produced before a court of law within 48 hours. The approach of the courts in protective the above right is persons not difficult to decipher. However, it is generally understood that the right to liberty is intrinsically connected to the right to life without which a human being withers away.³

High Court; sections 19 &20 of the Public Health Act Cap 281 where persons may be detained to control the spread of communicable or infectious diseases; and section 39 of the Mental Health Act cap 846 which provides for involuntary treatment of persons with mental health problems. See also section 37 of the Children Act Cap 59 on emergency protection of the child in safe custody.

³ See generally R Quieiroz 'Individual liberty and the importance of the concept of the people' *Palgrave Commun* 4,99 (2018).

4.2 Hospital detention of patients: a policy and legal dilemma

The recognition that the right to liberty is limited with in certain specific confines such as public law and order, public safety and public health considerations is all clear now. What is in doubt is whether a patient may be detained by a private hospital on account of failure to pay his or her medical bills. This case, therefore, brings to the fore two competing rights: the right to liberty on one hand and the right to private property within the private health facilities on the other. If a patient goes to a private hospital and is treated, can he or she walk away on account that his or her right to liberty overrides hospital's right to private property? There are, indeed, circumstances when a patient in peril has no other option available to him or her as was the case in the dispute before me.

There is a dearth of court decisions in Uganda on hospital detentions of patients. This is the reason the 1st applicant called on the court to consider the expert opinions expressed in some newspaper stories, the world Health Organization (WHO) guidelines and Kenyan high court decisions on the hospital detention decisions. In the paragraphs below I review the literature and the comparative decisions from other jurisdictions on hospital detention of patients who fail to pay hospital bills.

I must state from the beginning that this court was not impressed by the quality of submissions presented to the court by the applicant other than the throwaway documents and newspaper clips that were presented to this court. It would have been better if some research on hospital detentions in Uganda were included together with the financing relationship between the government of Uganda and private hospitals. I suppose I will have to 'dig deep' into those areas to extract the relevant information for the purposes of clarity.

The applicants rely on the World Health Organisation (WHO) policy guide to make a case against hospital detentions.⁴ As understood by this court, the WHO policy guide is that no person should be detained in a hospital against their will for nonpayment of bills and other fees. The argument is that such detentions are in violation of international human rights laws and the framework on inclusive health coverage objectives.

The WHO policy guidelines acknowledge the imperfect nature of the legal framework dealing health systems and the gaps in the health financing systems world over but explains that there are legal options to end the illegal practice. Thus, the guidelines suggests that prohibition of the hospital detention, the domestication of the international legal framework in national laws, committing to the Universal Health Coverage (UHC) objectives in national laws, ensuring proper implementation and enforcement mechanisms and the establishment of information and reporting mechanism.

The guidelines also highlight short-term interventions to address the phenomenon of what the authors call ‘uncompensated care’ at the level of health care providers such as funds mobilization, the establishment of a special fund to finance-high-cost Medicare, reconsideration of the existing ‘user fee exemptions’, and the need to adjust the enrollment conditions for the existing insurance schemes. The guidelines also suggest the long-term interventions that aim at the total ban of hospital detentions altogether.

⁴ See Clake D, Kelin A, Mathauer I & Pavisa A ‘Ending hospital detention for nonpayment of bills: Legal and health financing policy options’ *Geneva: World Health Organization 2020*.

4.3 Legal status of the guidelines on hospital detention of patients

The guidelines refer to articles (9) (1) and 11 of the International Covenant on Civil and Political Rights (ICCPR) which prohibits ‘arbitrary arrest or detention’ with a further specific prohibition of detentions of persons on grounds of failure to fulfil a contractual obligation. Based on the above provisions, the authors of the guidelines argue that nobody should therefore be detained by a creditor or the state on the account of failure to pay a debt.⁵ In The Philippine, specific legislation was enacted for this purpose. There is as well a drafted Kenyan bill that proposes to deal with ban on hospital detentions are cited.⁶

I have argued before and I will restate the same arguments here that such guidelines in international law are merely advisory and therefore take the nature of the soft law. Lest we forget, international law can generally be divided into two parts: ‘hard’ law and ‘soft’ law.⁷ The focus in this ruling is on international ‘soft’ law as expressed in the WHO guidelines.

International ‘soft’ law refers to standards that emanate from declarations, diplomatic conferences and the resolutions of international organisations. The intention of these instruments is to serve as guidelines for the conduct of states; on their own, however, they do not enjoy the position and status of law.⁸

According to Romero, “[s]oft law” ... refers to sets of standards, principles or guidelines, and codes of conduct which may be useful for governments to

⁵ Ibid section 3.1.

⁶ Ibid section 3.2.

⁷ Brownlie (1998). Brownlie I *Principles of Public International Law* (1998) Cambridge: Cambridge University Press.

⁸ Dugard J *International Law: A South African Perspective* (2007) Cape Town: Juta pp 38-9..

incorporate into their national law, coupled with a plan or agenda of action'.⁹ For Craik, '[w]hile there is no generally accepted definition of soft law, its essential characteristic is that ... soft law does not create formally binding obligations'.¹⁰ Dugard argues that with the passage of time such declarations, or 'soft' international law, may be turned into customary international law.¹¹

For a start, I must state there is no legal provision for the detention of patients who fail to pay their medical bills in Uganda. There is, however, an elaborate framework that deals with the detention of civil debtors in our law books.¹²

Stories are awash in our media where patients and dead people's bodies are 'detained' in hospitals because their relatives did not pay the medical bills well in time.¹³ If courts elsewhere have made an inroad in condemning hospital detention of patients who fail to pay their medical bills, then this court should be ready consider such decisions as a movement towards the consolidation of the WHO 'soft law' on hospital detentions of patients. It is maintained that such a

⁹ Romero 2005: Romero F 'Legal challenges of globalization' (2005) 15 *Indiana International and Comparative Law Review* 501 at 532.

¹⁰ Craik A 'Recalcitrant reality and chosen ideals: the public function of dispute settlement in international environmental law' (1998) 10 *Georgian International Environmental Law Review* 551 at 573.

¹¹ Dugard 2007: 38-9.

¹² See section 40 of the Civil Procedure Act Cap 71. See also Under Order XXI Rule 37 which provides:

'a person who is to be arrested shall be given a show-cause notice to appear before the court and give reasons as to why he should not be committed to the civil prison in execution of the decree.'

¹³ The Daily Monitor 'It is criminal for hospitals to detain patients over unpaid medical bills' available on <https://www.monitor.co.ug/uganda/oped/commentary/it-is-criminal-for-hospitals-to-detain-patients-over-unpaid-medical-bills-3463542>, available on July 07/2021.

movement cannot be definitively considered as ‘hard law’ on hospital detention but merely of a persuasive value. In the paragraphs below I review first, the approach of the Kenyan courts on the subject.

4.4 Jurisprudence from Kenya

In the Kenyan case of *Gideon Kilundo and Another* Lady Justice Wilfrida Okwany ruled that it is a violation of patients’ rights when hospitals refuse to release them over accrued medical bills.¹⁴

The facts in brief are as follows: Gideon Kilundo caused the admission of the patient to the Nairobi Women hospital with the full knowledge that the respondent was a private hospital where he would be required to settle the hospital bills. The hospital treated the patient until full recovery. Gideon Kilundo then failed to honor his promise to pay the bill and his patient was detained hence the petition. The court noted that there were many other public hospitals within Nairobi City including the biggest referral hospital in East and Central Africa, where Gideon’s patient could have admitted and treated cheaply. He chose the respondents hospital but defaulted to pay the bills upon discharge without offering any plausible explanation.

The approach of the court was to first highlight the primacy of the contractual obligations between the patient and the hospital. The court emphasized that hospitals should always pursue other lawful debt recovery means other than detaining patients. The court explains the options that were available to the hospital to pursue the patient

‘for the debt within the confines of the law governing the recovery of debts. I am not convinced that an illegal detention of a patient is one of the avenues for the

¹⁴ *Gideon Kilundo and Another v the Nairobi Women Hospital* Petition No 242/2028.

recovery of a debt within our legal system, because the question which will arise is for how long the hospital will be expected to hold the patient...this is a classic example of a scenario where two wrongs will not make a right. In as much as the respondent is aggrieved by the failure by the petitioners to settle their debt. I find holding the patient is not one of the acceptable avenues or the debt recovery. Perhaps the respondents should relook at its debt recovery policy and admission of patients so as to avoid outcomes such as the one before the court.¹⁵

5 Decision of the court

The reliefs sought that have already been summarized in the opening parts of the ruling are generally declaratory in nature. The applicants had also sought for further remedies but somewhat abandoned the prayers dealing with damages. I propose to discuss those reliefs that are declaratory in nature first and then deal with those in damages last. Even if the prayers for damages were abandoned, no formal documents indicating so were ever filed in the court. I will therefore be compelled to briefly deal with those prayers too.

Declarations are usually statements of the court establishing rights the subject of violations. Declaratory reliefs concern with parties in each application, but they may also concern with those that are *in rem*. Before a court of law can consider the grant of a declaratory relief, an aggrieved persons must demonstrate a clear legal right. Thus, in the words of Lord Dunedini,

[t]he granting of a mere declaration is a matter of discretion, and that that discretion ought to be shown in granting such declaration "sparingly" "with great care and jealousy" and "with extreme caution." The question must be a real and not a theoretical question; the person raising it must have a real interest to raise it; he

¹⁵ *Gideon Kilundo and Another cited above*

must be able to secure a proper contradictor, that is to say, some one presently existing who has a true interest to oppose the declaration sought.¹⁶

While the grant of declaratory relief is permissible under Order 2 rule 9 of Civil Procedure Rules¹⁷ there is always a caution: for before granting any declaratory reliefs, the court need to consider that it is enjoined with the power do so.¹⁸

Uganda's constitutional protection of individual liberty and freedom was earlier stated. Further, the international guidance on hospital detention of patients has been given. I have also considered the decision of the Kenyan high court surrounding the debate on detention of patients by hospitals. In the remaining part of the ruling, I opt to first give the gist of the complaint as understood by the court.

It very easy to understand the complaint in the motion papers: Mr. Sentogo, a person of humble means was informed that his son (Mr. Mugerwa Raymond) was involved in an accident. His son had initially been admitted at Ggwatiro Hospital but was later transferred to Jaro Hospital because of his worrying condition. A lifesaving operation on his son was undertaken only for Mr. Sentongo to default on the undertaking to pay the medical bills. Incensed by his conduct, Jaro hospital decided to detain his son, hence this petition challenging the detention illegal and

¹⁶ *Russian Commercial and Industrial Bank v British Bank for Foreign Trade Ltd* (1921) 2AC438 pp 448.

¹⁷ Order 2 rule 9 of the CPR provides

“No suit shall be open to objection on the ground that a merely declaratory judgment or order is sought by the suit, and the court may make binding declarations of right whether any consequential relief is or could be claimed or not”.

¹⁸ *Dyson v Attorney-General* [1911] 1 KB 410.

an award of damages and costs. During the hearing, the prayers for damages were abandoned after the learned deputy registrar of this court intervened and had the patient released. That aside, I am certain that the question before me is not a theoretical one but rather one that is concerned with the detention of the defaulting patient in the hospital after treatment.

I need to start by applauding the medical team of Jaro hospital who saved the life of the young boy. From the evidence on the record, there is no doubt that more serious consequences could have resulted had Jaro hospital declined to treat Mr. Mugerwa's condition as a medical emergency. The irony is that with all the medical interventions made by Jaro hospitals Mr. Sentongo had the audacity to tell lies about the events leading to the treatment of his son and the post operation discussions that took place between him and the hospital management.

I was particularly concerned that Mr. Sentongo had the audacity to hide the identity of the persons responsible for his son's accident. Further, Mr. Sentengo hid the fact that he had probably been paid by the insurance company linked to the car that had in fact caused the accident. I fail to understand how a person whose child had been saved by Jaro hospital, could so blatantly lie to the court by denying how his son had been brought to the very hospital that had saved his son's life. There is evidence that Sentogo accompanied the group of persons that had brought his son to Jaro Hospital and had in fact made an undertaking to clear the hospital bills. The evidence that he in fact signed the consent forms before the operation is so clear and glaring.

Courts of law should strongly frown at people like Ssentogo for expressing the kind of an ingratitude so deep to the medical profession that their behavior could easily undermine the entire health sector. The fact that Ssentogo chose to have his son operated in a private hospital in Kampala when one of our biggest referral

hospitals was probably a few kilometers away cannot be ignored. Just like the decision in the Kenyan that I have cited above, this court equally condemns the behavior of patients who

‘walk into private hospitals for treatment and expect to walk out without paying a single cent under the guise of the constitutional protection of liberty and freedom of movement.’¹⁹

That said, Jaro hospital must be prepared to accept that Ssentongo’s claim must succeed, given the prayers he seeks and the constitutional command on liberty as a right.

In coming to the conclusions that this application must succeed, the two sides of the debate play out, depending on the side one chooses to stand. Firstly, the owners of private hospitals may argue that once a court condemns the recourse to detain patients who refuse or fail to clear their medical bills, these hospitals could run out of business. A wrecked private hospital business ultimately poses a negative impact on our country’s strained health sector. Private hospitals could in future fear to admit patients in peril if the plan by the patient’s attendant is to refuse to pay the medical bills after recovery. Either way, there is a legal and policy hazard depending on how one looks at the complaint that must be resolved by this court.

That said, the constitutional right to liberty in Uganda can only be limited under the limited but unequivocal exceptions stated above. The framework on the liberty together with the imperative international human rights framework on individual freedoms point to the inclination that hospitals should never detain patients who fail to clear their medical bills at all. This is largely because private hospitals have a host of other remedies available to them for debt recovery than

¹⁹ *Gideon Kilundo and Another cited above.*

detaining patients. I hold this view because the detention of patients is not one of the legitimate modes of debt recovery in Uganda.

If this court were to allow the practice of hospitals detaining patients who fail to pay their medical bills to go on unchecked, many hospitals could choose to incarcerate their clients in the basements of their premises until medical bills are cleared. This would easily pass on as a greenlight for hospitals to establish private prison cells as a debt recovery method, a phenomenon that is so antithetical to the rule of law. It is hereby declared that the detention of Mugerwa in Jaro hospital was illegal and unlawful.

On the available evidence, I decline to grant the declaration that concerns with the allegation on the cruel, inhuman, and degrading treatment as well as a violation to Mr. Mugerwa Raymonds' right to health. I hold this view because I find no evidence that Jaro hospital inflicted any psychological or physical harm on Mr. Mugerwa. On the country, Jaro hospital lifesaving operation averted what could have turned out to be an undesirable medical consequence. This brings me the next set of reliefs sought.

5.1 Further orders

This court makes the following further orders:

- 1) Since the deputy registrar of this court had administratively ordered for the release of Mr. Mugerwa Raymond from the hospital detention, I find no reason to make a declaration dealing with his release.
- 2) This court would have made further declarations on whether it is necessary for the central government to adopt certain measures that may in future avert this rather illegal practice in cases of medical emergency treatment such as
 - a) uncompensated care;

- b) funds mobilization for private health care providers (in cases of budget shortfalls);
- c) the creation of specific funds to cover the high cost of treatment;
- d) user fees exemption mechanisms; and
- e) changing the enrollment conditions of the existing insurance schemes.

These areas are pertinent in ensuring that private health providers have a good working relationship with the state to progressively move towards UHC in Uganda. Indeed, such an approach is in line with the national objective promises on minimum social justice needs.²⁰ Unfortunately, I cannot make those declarations because there is no evidence on which to act.

- 3) Given the lifesaving nature of the operation that Jaro hospital made on Mr. Mugerwa Raymond, I will not consider it necessary to award any damages to the applicants.
- 4) Each party to meet their own costs.

Dated at Kampala this 15th day of February 2023.

Douglas Karekona Singiza

Acting Judge

²⁰ The National objective and directive principles of the state policy (NODPSP) No 15 of the Constitution is intended to grant every citizen an opportunity to enjoy social justice and economic development through the provision of health services among other things.