

# DETENTION AND ABUSE OF WOMEN SEEKING MATERNAL HEALTH SERVICES:

*Fundamental Rights Violation*



CENTER  
FOR  
REPRODUCTIVE  
RIGHTS

# HIGH COURT OF KENYA DECLARES DETENTION AND ABUSE OF WOMEN SEEKING MATERNAL HEALTH SERVICES A FUNDAMENTAL RIGHTS VIOLATION.

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*On September 17, 2015, the High Court of Kenya issued a groundbreaking judgment in the case of Millicent Awuor (Maimuna) & Margaret Anyoso Oliele v. Attorney General and others, Constitutional Petition No. 562 of 2012.*

This decision recognized that the detention and abuse of women who are unable to pay for maternity services at Kenyan public hospitals is arbitrary, unlawful, and in violation of Kenyan constitutional and international human rights standards. The Court declared that the Kenyan government must take all necessary steps to protect patients from detention in health care facilities. Furthermore, the government is required to develop clear guidelines and procedures for implementing the fee waiver system in all public hospitals, as lack of funding for maternal health services is a driving cause of the practice of detaining patients. The Court's decision underscores the importance of the government's obligation to respect, protect and fulfill women's and girls' rights to health, life, dignity, and freedom from cruel and inhuman treatment, particularly in the context of maternal health services.





# Introduction

The Center for Reproductive Rights filed this case on behalf of two petitioners who were admitted to Pumwani Maternity Hospital—Kenya’s largest public maternity hospital—to deliver their babies and were subsequently detained for their inability to pay the hospital fees. The first petitioner, Millicent Awuor (Maimuna), gave birth to a baby girl on September 20, 2010. When it was time to be discharged, Maimuna did not have the money to pay the hospital fees. Instead of releasing her pending payment, the hospital staff detained her at the hospital in an overcrowded ward for 24 days; the time it took for her family to gather the necessary funds to pay her bill. During this time, Maimuna gave her bed to her newborn daughter and slept on the floor next to a flooding toilet, causing her to contract pneumonia. During her detention, she did not receive post-natal care and was mistreated by the nurses. Furthermore, she was constantly worried about her other children, who were at home by themselves.

The second petitioner, Margaret Anyoso Oliele, was detained and abused twice at Pumwani while seeking delivery services during different pregnancies. During the first visit, she was supposed to be discharged five days after her Cesarean section, but was instead detained due to an inability to pay her bill in full. For more than a week, she was held at the hospital until her husband was finally able to pull together money to cover her delivery expenses.

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*Adding to the traumatic experience, she later discovered that a pair of scissors were left in her stomach during her Cesarean section, causing her to contract sepsis in addition to other serious medical complications. She had to undergo a subsequent surgery in order to remove the scissors and was required to stay an additional two months at the hospital.*

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During a subsequent pregnancy, Margaret arrived at the hospital bleeding, and although she was seen by a doctor, nurses informed her that they would not allocate a bed for her until other patients vacated the beds. Still bleeding, she was left sitting on a bench until her condition worsened to the point that she was rushed into surgery. After undergoing a Cesarean section, she was again detained because she was unable to pay the bill in full. During Margaret’s detention, hospital nurses refused to dress her surgery wounds and would not let her go outside, as they were concerned she would run away. After five days, she was finally released and had to go to a private clinic for treatment for her infected surgical wound.

The petition filed by the Center for Reproductive Rights before the High Court claimed that the arbitrary detention, abuse and mistreatment of women seeking maternal health care services and the lack of accountability mechanisms to address these abuses is in clear violation of the Constitution of Kenya and the international and regional human rights treaties that Kenya has ratified. The petition asserted that the detention of the petitioners was arbitrary, without just cause, contravened due process protections, and violated the petitioners’ rights to fundamental freedom, liberty and freedom from cruel and inhuman treatment. Further, it asserted that the abuse the petitioners experienced constituted discrimination on the basis of gender because only women require health care services for pregnancy and childbirth, and the rights violations have a disparate adverse effect on women’s health. The actions of the hospital staff also violated the petitioners’ rights to the highest attainable standard of health, life, dignity, and access to justice.







# Background Information<sup>1</sup>

Similar to Maimuna and Margaret, many Kenyan women and girls seeking reproductive health services endure serious human rights violations, including physical and verbal abuse and detention in health facilities for inability to pay the hospital fees. These systematic problems have persisted in part because of the lack of accountability within the health care system and the absence of transparent and effective oversight mechanisms. This is largely due to the fact that neither healthcare providers nor patients themselves appear to have an adequate understanding of patients' rights and protections.

Women seeking maternity health services in public health care facilities often receive little to no care during labor and are left to birth alone or with the assistance of another patient or an inexperienced trainee. They are commonly verbally and physically abused by hospital staff, including being beaten or slapped during labor. Women are also subjected to unhygienic and potentially dangerous conditions due to inadequate supplies of anesthesia, gloves, syringes, surgical blades, soap and disinfectant, and clean bed linens. Unreasonably painful and poorly performed post-delivery stitching, and stitching with inadequate or no anesthesia are also commonly reported.

Furthermore, Maimuna and Margaret's experiences are illustrative of the widespread practice of detaining indigent maternity patients who are unable

to meet the high costs of delivery until the hospital exacts payment from relatives or determines whether or not a patient qualifies for an exemption or waiver. Although the Kenyan government instituted a fee exemption and waiver system in public medical facilities for those who cannot afford to pay for the services, the system suffers from ineffective publicity and implementation of this practice. Both health care providers and patients lack adequate knowledge about the waiver and exemption programs, which undermines effective implementation of the system. As a result, patients are often arbitrarily charged for services which ought to be free.

Countless women and girls are detained and secluded in a separate ward where they are continuously monitored by hospital staff and guards in order to prevent them from leaving.

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*While in detention they are denied medical treatment, continue to be verbally abused by hospital staff, and are deprived of food. They are often forced to share beds that lack appropriate bedding with other detainees and their newborn infants or sleep on the floor. For some women, the detention forces them to leave their other children at home unsupervised for days.*

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Further compounding this violation of their rights, the women are often charged additional fees for each day they are detained in the hospital.

# The Court Findings

In its groundbreaking decision, the High Court recognized that the actions of the staff of Pumwani Maternity Hospital violated the petitioners' fundamental rights and ordered the government to take steps to prevent future detention, mistreatment, and abuse of women and girls seeking maternal health services.

## KEY FINDINGS OF THE COURT:

*Detention of the petitioners violated their liberty and freedom of movement.*

In analyzing whether the petitioners' rights to liberty and freedom of movement had been violated,<sup>2</sup> the Court examined the conditions under which the petitioners were held, including the fact that they had been prohibited from even stepping outside into the sunlight due to the alleged fear that they might escape without paying their bills.<sup>3</sup> The Court found that such detention amounted to an arbitrary deprivation of liberty and a violation of the right to freedom of movement and held that the detention of the petitioners for their inability to pay their medical bill was unlawful and unconstitutional.<sup>4</sup>

*The mistreatment of petitioners violated their right to health.*

In determining whether the petitioners' right to health was violated under the Kenyan Constitution,<sup>5</sup> the Court considered the entirety of Margaret's experience at Pumwani. From being denied emergency medical services, to being forced to sit on a bench in the hospital reception area while she was bleeding for a number of hours<sup>6</sup> the Court found that this delay was a "threat on her right to health, and indeed, her right to life."<sup>7</sup> It also found that requiring both petitioners to pay money before being admitted to the hospital and not informing them about the fee waiver system served as a barrier to their access to health care services and violated their right to health.<sup>8</sup>

*Detention and mistreatment of petitioners deprived them of their right to dignity.*

The Court, noting that human dignity is enshrined in the Constitution as a Kenyan national value, found that the petitioners' treatment at Pumwani fell short of the "acceptable standards of health care that would guarantee protection of the right to dignity."<sup>9</sup> The Court found that the treatment the petitioners received, including the deplorable conditions under which they were held during their detention, violated their inherent right to dignity, as the purpose of much of the treatment was "only to humiliate" and strip the petitioners of their self-worth.<sup>10</sup>

*Detention of petitioners violated their right to be free from cruel, inhuman, and degrading treatment.*

When determining whether the petitioners' right to be free from cruel, inhuman and degrading treatment had been violated, the Court considered both physical and mental cruelty,<sup>11</sup> the length of time each petitioner was detained, and the unsanitary conditions in which the women were confined.<sup>12</sup> The Court held that while the circumstances in which the petitioners were kept might not amount to torture, the treatment they were subjected to at the hands of Pumwani staff amounted to cruel, inhuman, and degrading treatment.<sup>13</sup> The Court further found that this treatment was



“compounded by the fact that they were forced to be away from their other children, for whom they solely provided.”<sup>14</sup>

*Detention of petitioners violated their right to be free from discrimination.*

In considering whether the petitioners were discriminated against, the Court affirmed the petitioners’ argument that “by failing to act on the practice of detention of women who are unable to pay their medical fees in respect of maternity services, the government discriminates against women as it is fully aware that it is only women who seek the services of institutions such as [Pumwani] to give birth.”<sup>15</sup> The Court agreed with the petitioners that “the lack of state provision or facilitation of access to affordable maternal health care, including delivery and post-natal care, is a facet of discrimination against women.”<sup>16</sup> The Court found that the petitioners were denied access to health care facilities because of their inability to pay.<sup>17</sup> Moreover, the Court stated that even when petitioners were “very grudgingly” treated by hospital staff, they were “denied basic provisions such as beds and bedding, and the food they were given was insufficient.”<sup>18</sup> Therefore, the Court held that the petitioners were clearly discriminated against on the basis of their gender and economic status.<sup>19</sup>





# Remedies

The Court declared that the detention was arbitrary and unlawful and that the conduct of staff of Pumwani Maternity Hospital constituted an unlawful and unreasonable infringement of the petitioners' fundamental rights and freedoms as set out in the Kenyan Constitution. The Court ordered the government of Kenya to take the necessary steps, which include enacting laws and policies to protect patients from arbitrary detention in health care facilities. It further issued a directive to the Kenyan government and Pumwani Maternity Hospital to develop clear guidelines and procedures for implementing the fee waiver system in all public hospitals and to take all necessary administrative, legislative, and policy measures to eradicate the practice of detaining patients who are unable to pay medical bills.<sup>20</sup>

The Court also ordered the county government of Nairobi, which has the responsibility of management and administration of Pumwani Maternity Hospital to pay the petitioners damages for the harm they suffered. The Court awarded Maimuna the sum of Kshs 1,500,000.00 (approx. USD14,500) and Margaret the sum of Kshs 500,000.00 (approx. USD 4,800).<sup>21</sup>

# Implementation

*On June 1, 2013, while this case was pending in Court, President Uhuru Kenyatta issued a directive abolishing all maternity service costs in Kenyan public hospitals.<sup>22</sup>*

This directive was intended to remove the impetus for detaining women who could not pay for maternity services. However, serious problems with implementation of this directive continue to prevent women from accessing quality maternal health services. According to an assessment conducted by the Kenya National Commission on Human Rights (KNCHR), hospital infrastructure and staffing cannot support the additional number of women who seek free maternal health care as a result of this declaration.<sup>23</sup> The government has failed to allocate sufficient additional resources to remedy the situation, and this has resulted in the suspension or interruption of free maternity services in some health care facilities.<sup>24</sup>

Following these complaints, the Kenyan government quickly moved to make repayments<sup>25</sup> and the Ministry of Health has stated that going forward, maternity care funding will be deposited directly into the bank accounts of individual health facilities.<sup>26</sup> Nevertheless, it remains essential that the government implement additional measures to ensure the sustainability of the directive so that public hospitals continue to grant free maternity care to Kenyan women. The government should also ensure that health care facilities are well equipped, both in terms of health care providers and supplies, so that they can fully implement the free maternity directive. Furthermore, health care providers and administrators should be trained on patients' rights to enable them to provide quality and respectful care.



# Endnotes

- <sup>1</sup> The information in this section is derived from the fact-finding report CENTER FOR REPRODUCTIVE RIGHTS, FAILURE TO DELIVER: VIOLATIONS OF WOMEN’S HUMAN RIGHTS IN KENYAN HEALTH FACILITIES (2007).
- <sup>2</sup> *In the Matter of Enforcement of the Bill of Rights Under Article 24 of the Constitution of the Republic of Kenya*, Petition No. 562 of 2012, at 39 (2015).
- <sup>3</sup> *Id.*
- <sup>4</sup> *Id.*
- <sup>5</sup> *Id.* at 63.
- <sup>6</sup> *Id.*
- <sup>7</sup> Millicent Awuor Omuya v. Attorney General and others, Constitutional Petition No. 562 of 2012, at 63.
- <sup>8</sup> *Id.* at 63, 65.
- <sup>9</sup> *Id.* at 28.
- <sup>10</sup> *Id.* at 49-50.
- <sup>11</sup> *Id.* at 43-44.
- <sup>12</sup> *Id.*
- <sup>13</sup> *Id.*
- <sup>14</sup> *Id.* at 46.
- <sup>15</sup> *Id.* at 70.
- <sup>16</sup> *Id.* at 73.
- <sup>17</sup> *Id.* at 72.
- <sup>18</sup> *Id.*
- <sup>19</sup> *Id.* at 72, 75.
- <sup>20</sup> *Id.* at 80-81.
- <sup>21</sup> *Id.*
- <sup>22</sup> *Ministry of Health implements free maternity services nationwide*, USAID, HEALTH POLICY PROJECT, *available at* [http://www.healthpolicyproject.com/ns/docs/MaternalNewbornHealthCare\\_Kenya\\_Oct2013.pdf](http://www.healthpolicyproject.com/ns/docs/MaternalNewbornHealthCare_Kenya_Oct2013.pdf).
- <sup>23</sup> See KENYA NATIONAL COMMISSION ON HUMAN RIGHTS, IMPLEMENTING FREE MATERNAL HEALTH CARE IN KENYA: CHALLENGES, STRATEGIES, AND RECOMMENDATIONS 6-7 (2013), *available at* <http://www.knchr.org/Portals/0/EcosocReports/Implementing%20Free%20Maternal%20Health%20Care%20in%20Kenya.pdf>.
- <sup>24</sup> Currently, only about 6% of Kenya’s budget is allocated to health, falling short from its commitment under the Abuja declaration to allocate 15% of its budget to health. Press Release, Federation of Women Lawyers Kenya, On the Increasingly Troubling Trend of Maternal Deaths in Kenya 1 (Jan. 20, 2014) *available at* <http://fidakenya.org/wp-content/uploads/2014/02/PRESS-STATEMENT-ON-THE-INCREASING-TRUUBLING-TREND-OF-MATERNAL-DEATHS-IN-KENYA-FINAL-1.pdf>; see also *Abuja Declaration on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases*, Abuja, Nigeria, Apr. 24-27, 2001, O.A.U. Doc OAU/SPS/ABUJA/3 (2001); Reuben Wanyama, *Kidero abolishes free maternity services in Nairobi County*, CITIZEN DIGITAL (Oct. 29, 2015), <http://citizentv.co.ke/news/kidero-abolishes-free-maternity-services-in-nairobi-county-104439/>; Olive Burrows, *Kenya: Health Ministry Quells Disquiet Over Free Maternity*, ALLAFRICA (Oct. 30, 2015), <http://allafrica.com/stories/201511051083.html> [hereinafter Burrows].
- <sup>25</sup> Burrows, *supra* note 24.
- <sup>26</sup> *Id.*



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