

COMMUNIQUE

INDEPENDENT MEDICO-LEGAL UNIT & JOAN CHEROTICH VS LONGISA COUNTY REFERRAL HOSPITAL & 4 OTHERS PETITION E002 OF 2025

INTRODUCTION

On 21st February 2025, the Petitioners filed a constitutional petition before the High Court of Kenya in Bomet. The Petition is against Longisa County Referral Hospital, the Medical Superintendent Longisa County Referral Hospital, the County Government of Bomet and the County Secretary of Bomet County Government. The Kenya Legal and Ethical Issues Network on HIV & AIDS (KELIN) participates in this Petition as the 1st Interested Party.

THE ISSUE

On 9th November 2024, Diana Chepngeno, a child from Murany village in Bomet County, was stung by bees and taken to Longisa County Referral Hospital around 1:30 p.m. Despite the critical nature of her condition, she was only seen at 3:00 p.m. with no meaningful medical intervention provided. When her mother arrived at 5:00 p.m., Diana was in severe pain, but pleas for pain relief were ignored by hospital staff. As her condition deteriorated by 8:30 p.m., the family sought a referral, but hospital staff demanded Kshs 5,000 for fuel and Kshs 50,000 for the referral to Tenwek Hospital. Unable to raise the required money, the family hired a private car without any medical support, referral note, or first aid from the hospital. Diana began vomiting blood en route and was declared dead upon arrival at Tenwek. An autopsy on 15th November 2024 confirmed she died from asphyxiation due to anaphylaxis caused by insect bites.

CONSTITUTIONAL VIOLATIONS

These events have given rise to the following Constitutional violation:

- a. Right to the Highest Attainable Standard of Health (Article 43(1)(a)):** Failure to provide timely emergency treatment to Diana Chepng'eno upon arrival at Longisa County Referral Hospital at 1.30p.m. She was not attended to until 3.00 p.m. and even then, no meaningful medical intervention was conducted until 8.30p.m.
- b. Right to Emergency Treatment (Article 43(2)):** Conditional access to referral and ambulance services despite it being an emergency case. The hospital staff demanded Kshs 5,000 for fuel for the ambulance and Kshs 50,000 for referral to Tenwek Hospital, which was unlawful. Failure to conduct proper referral of the patient. The hospital released the minor without administering first aid, giving appropriate referral documentation or accompanying with a nurse or medic during referral.
- c. Freedom from torture and other cruel, inhuman or degrading treatment (Article 29(d) and (f)):** Failure to alleviate the pain and suffering of Diana despite her crying and writhing in pain. She was not provided any painkillers or appropriate treatment while at the hospital for 7 hours.
- d. Right to Life (Article 26(1) and (3)):** the neglect by the Respondents led to the preventable death of Diana who was denied treatment, medication and referral when requested.

- e. **Right to Dignity (Article 28):** The manner in which the 2nd Petitioner was treated alongside the minor was below the standard of human dignity. The Hospital staff did not attend to the child who was in so much pain and refused to accord the patient any painkillers or referral when requested.
- f. **Right of every child to be protected from abuse, neglect, harm, inhuman treatment and for the child's best interest to be of paramount importance (Article 53(1)(d) and (2)):** Diana's best interest was not considered throughout the time she was at Longisa County Referral Hospital.

REMEDIES SOUGHT

The Petitioners seek the following remedies from the Court:

- A declaration that the 1st to 4th Respondents violated the Petitioners' right to be treated with dignity, right to life, right to the highest attainable standard of health, which includes the right to health care services, a right not to be denied emergency medical treatment, to have their best interests considered of paramount importance in every matter concerning her as guaranteed under Articles 28, 26, 43(1)(a), 43(2) and 53(2) of the Constitution of Kenya.
- A declaration that the denial of emergency medical treatment by the Respondents by leaving the deceased in pain for about 7 hours amounts to torture, cruel and inhumane treatment contrary to Articles 29(d), 29(f) and 53(1)(d) of the Constitution of Kenya and Article 2(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- A declaration that the failure to communicate or provide treatment for a period of about 7 hours is an affront to fair administrative action as provided under Article 47(1) of the Constitution of Kenya.
- An order for general and aggravated, including exemplary damages for breach of the petitioner's constitutional rights.
- Interests on the sums awarded at Court rates from the date the course of action arose.
- The costs of the Petition be borne by the Respondents.
- Any further orders as it may deem fit to further the ends of justice.

For more information:

Email: litigation@kelinkenya.org
Tel: +254 790 111 578