

CASE SUMMARY

**Independent Medico-Legal Unit & Joan Cherotich v Longisa
County Referral Hospital & 4 Others**

Constitutional Petition No. E002 of 2025, High Court at Bomet

1. What is the Case About?



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 1:30p.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 5:00p.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 Hospital. An autopsy conducted on 15th November 2024 confirmed that Diana died from asphyxiation due to anaphylaxis caused by insect bites.

The constitutional petition revolves around whether the death of the minor, Diana Chepng'eno, resulted from violations of her constitutional rights occasioned by the failure of Longisa County Referral Hospital and the County Government of Bomet to provide timely and adequate emergency medical treatment.

2. Why this case matters



This case raised important questions about the constitutional right to emergency medical treatment under Article 43(2) of the Constitution and the obligations of public health facilities and county governments when responding to medical emergencies.

Beyond the circumstances surrounding Diana's death, the case invited the Court to consider whether failures in emergency healthcare systems, including delays in treatment, referral processes, emergency preparedness and access to specialist care, can amount to violations of constitutional rights.

The case also highlighted the relationship between constitutional accountability and medical negligence, and the extent to which courts should scrutinize systemic failures in public healthcare delivery where serious injury or death occurs.

As one of the few constitutional petitions directly addressing emergency medical treatment as an immediate and non-derogable right, the case contributes to the growing body of jurisprudence on the right to health and the responsibilities of county governments in delivering emergency healthcare services.

3. Who were the parties?



Petitioners

1. Independent Medico-Legal Unit (IMLU)
2. Joan Cherotich, suing as the administrator of the estate of Diana Chepng'eno

Respondents

1. Longisa County Referral Hospital
2. The Medical Superintendent, Longisa County Referral Hospital
3. The County Government of Bomet
4. The County Secretary, Bomet County Government

Interested Party

1. Kenya Legal and Ethical Issues Network on HIV and AIDS (KELIN)

4. What did the Petitioners ask the Court to do?



The Petitioners asked the Court to:

- Declare that Diana's constitutional rights had been violated.
- Find that she had been denied emergency medical treatment.
- Find that she had been subjected to cruel, inhuman and degrading treatment.
- Find that her rights to life, health, dignity and the best interests of the child had been violated.
- Award damages for the violations suffered.
- Hold the County Government accountable for failures within the public healthcare system.

5. What were the Petitioners' arguments?



The Petitioners argued that Diana remained at Longisa County Referral Hospital for approximately seven hours without receiving the emergency treatment required by law. They argue that despite exhibiting symptoms of severe anaphylactic shock, she was merely monitored.

Furthermore;

- No doctor physically reviewed Diana during her admission.
- Critical interventions were not provided in time.
- The referral process was delayed and poorly handled.
- The family was asked to pay money before an ambulance could be released.
- Diana was eventually transported in a private vehicle without appropriate medical support.

According to the Petitioners, Diana ultimately died while being transported privately because the Respondents failed to provide emergency treatment as contemplated under Article 43(2) of the Constitution, Section 7 of the Health Act, the Ministry of Health's Emergency Medical Services Policy (2020) and the National Referral Guidelines (2014). The Petitioners submit that these omissions violated Diana's rights under Articles 26, 28, 43 and 53 of the Constitution, specifically her right to life, human dignity, the highest attainable standard of health, emergency medical treatment, and the best interests of the child.

Petitioners therefore urge the Court to find both the hospital and the County Government liable for systemic failures in emergency healthcare delivery, particularly the absence of functional ICU facilities, inadequate referral mechanisms, and the failure to maintain established emergency protocols.

6. What was KELIN's position?



KELIN supported the Petition and emphasized that the case raised broader questions about the State's obligations to provide accessible and effective emergency healthcare services as envisioned in Article 21 of the Constitution to respect, protect, promote and fulfil socio-economic rights.

KELIN argued that emergency treatment is not limited to administering medication. As provided for under Section 7 of the Health Act, this also includes:

- Prompt assessment and triage.
- Stabilization of patients.
- Timely referral where a facility lacks capacity.
- Functional ambulance and referral systems.
- Adequate emergency preparedness.

KELIN submitted that the case demonstrated wider systemic challenges within emergency healthcare services and urged the Court to issue structural orders requiring improvements to emergency response and referral systems in Bomet County. KELIN argued that systemic remedies are necessary to prevent future loss of life and to vindicate constitutional rights beyond the circumstances of the present case.

7. What was the Respondents' response?



The Respondents denied violating Diana's rights violations and maintain that Diana received prompt and appropriate medical attention from the moment she arrived at Longisa County Referral Hospital.

They argued that:

- Diana received medical attention upon arrival.
- Hospital staff continuously monitored her condition.
- Medication, including adrenaline, was administered.
- The severity of the bee sting reaction itself was the primary cause of death.
- The family chose to transfer Diana before treatment had been completed.
- No payments were demanded for ambulance fuel or referral services.

The Respondents also argued that the case was essentially one of medical negligence and had not been pleaded with sufficient precision as a constitutional petition.

8. What did the Court decide?



The High Court at Bomet dismissed the Petition.

The Court held that although the case raised important constitutional questions, the dispute ultimately depended on whether the Petitioners had proved medical negligence. The Court found that the Petitioners had not demonstrated that the healthcare providers breached their professional duty of care or that any alleged breach directly caused Diana's death.

The Court also observed that questions concerning diagnosis, treatment decisions and standards of medical care often require professional and expert assessment and may be more appropriately addressed through specialized medical and regulatory processes.

Having found that negligence was not proved, the Court declined to find that the Respondents had violated Diana's constitutional rights and dismissed the Petition in its entirety.

9. What is the impact of the court's decision?



There are several significant jurisprudential concerns arising from the Court's approach. The case raises important questions about how courts should approach cases involving the right to health and emergency medical treatment. However, the Court largely analysed the case through the framework of medical negligence rather than conducting a separate constitutional analysis of the State's obligations to provide emergency healthcare services.

As a result, the constitutional claims were treated as dependent on proof of negligence.

The judgment begs the question whether failures in public healthcare should be examined only as questions of professional negligence or whether they should also be assessed as constitutional accountability issues.

10. Key Takeaways



1. Narrowing of Constitutional Accountability in Healthcare

The decision may reduce systemic constitutional claims to ordinary negligence disputes, thereby limiting the scope of constitutional scrutiny of healthcare failures. The judgment risks treating constitutional rights violations as actionable only where negligence is proved, despite the distinct legal foundations of constitutional accountability and tort liability. This may undermine the independent enforcement of constitutional rights.

2. Potential Dilution of Article 43(2) Protections

Future claims alleging denial of emergency medical treatment may be required to satisfy the elements of negligence before a constitutional violation can be established. This approach may weaken the immediate and direct constitutional protection afforded by Article 43(2).

3. Reduced Focus on Systemic Healthcare Failures

The judgment places emphasis on the conduct of individual healthcare providers rather than broader institutional shortcomings. Issues such as inadequate infrastructure, staffing shortages, referral systems, and emergency preparedness may receive limited constitutional scrutiny.

4. Limitation of State Accountability

By focusing on negligence, the decision may reduce opportunities for courts to assess whether county governments and public institutions have fulfilled their constitutional obligations regarding healthcare delivery. Structural deficiencies within healthcare systems may therefore escape meaningful constitutional review.

5. Potential Effect on Public Interest Litigation

Public interest litigants may be discouraged from pursuing constitutional healthcare claims if such disputes are likely to be treated primarily as negligence actions. This may hinder the development of socio-economic rights jurisprudence in the healthcare sector.

6. Impact on Transformative Constitutionalism

The decision may be viewed as inconsistent with the transformative objectives of the Constitution of Kenya, 2010. By prioritizing private law concepts over systemic constitutional analysis, the judgment may limit judicial engagement with structural inequality and the State's positive obligations in realizing socio-economic rights.

11. Looking Forward



The issues raised in this case remain relevant beyond the outcome of the litigation. Effective emergency treatment depends not only on individual healthcare providers but also on functional referral systems, adequately equipped facilities, trained personnel, clear protocols and accessible ambulance services.

The case therefore provides an important opportunity for continued dialogue on strengthening emergency healthcare services and ensuring that constitutional guarantees relating to health and emergency treatment are meaningful in practice.