THE SENATE
Directorate of Committee Services

INTERNAL MEMO

THE SENATE RECEIVED 30 MAR 2021 CLERK'S OFFICE

Hon. Speaker
You may kindly approve for tabling

THE SENATE RECEIVED 29 MAR 2021 DEPUTY CLERK 30/03/21

TO: **The Speaker of the Senate**

THRO': **Clerk of the Senate**

THRO': **Deputy Clerk (EG)**

Forwarded and recommended for approval for processing.

EG

29.03.2021

THRO': **Director, Committee Services**-*recommended & forwarded for tabling*;

29/03/21

Approved
30/3/2024

FROM: **Research Officer 1**

DATE: **29TH MARCH, 2021**

SUBJECT: REPORT ON THE ALLEGED NEGLIGENCE OF THE LATE (PROF.) KEN WALIBORA PRIOR TO HIS DEATH AT THE KENYATTA NATIONAL HOSPITAL

.....

Reference is made to the above subject matter.

Kindly find attached for tabling, the Report of the Standing Committee on Health report on the alleged negligence of the Late Ken Walibora prior to his death at Kenyatta National Hospital.

Kindly note that this report was adopted by the previous Committee. However, before tabling, the Committee was reconstituted and the membership of the Committee changed. The Committee is due for consideration by the Committee for approval for tabling.

The purpose of this memo is to seek your approval for the tabling of the report.

DR. CHRISTINE SAGINI

REPUBLIC OF KENYA

PARLIAMENT OF KENYA

THE SENATE

TWELFTH PARLIAMENT

THIRD SESSION

THE STANDING COMMITTEE ON HEALTH

(2) Rt. Hon. Speaker

You may kindly approve for tabling.

EG 30/03/21

(1) DC. EG

Recommended & Forwarded for Tabling

29/03/21

REPORT ON THE ALLEGED NEGLIGENCE OF THE LATE PROF. KEN WALIBORA PRIOR TO HIS DEATH AT THE KENYATTA NATIONAL HOSPITAL

PAPERS LAID	
DATE	30/3/2021
TABLED BY	Sen. Olekina on behalf of
COMMITTEE	Chairperson, Standing Committee
CLERK AT THE TABLE	on Health.

Thuo Mariga

Clerk's Chambers,

First Floor,

Parliament Buildings,

NAIROBI.

MAY, 2020

PREFACE

Mr. Speaker Sir,

The Senate Standing Committee on Health is established under standing order 218(3) of the Senate Standing Orders and is mandated to, "*to consider all matters relating to medical services, public health and sanitation.*"

Committee Membership

The Membership of the Committee is composed of the following:

1. Sen. (Dr.) Michael Malinga Mbito - Chairperson
2. Sen. (Dr.) Ali Abdullahi Ibrahim - Vice-Chairperson
3. Sen. Beth Mugo
4. Sen. Nderitu John Kinyua
5. Sen. Iman Falhada Dekow
6. Sen. Okong'o Omogeni
7. Sen. Naomi Shinyonga
8. Sen. Petronilla Were Lokorio
9. Sen. Fred Outa

Mr. Speaker,

Following media reports of the death of the Late Prof. Ken Walibora at Kenyatta National Hospital on 10th April, 2020 owing to alleged negligence, the Standing Committee on Health invited the management of Kenyatta National Hospital to a meeting aimed at clarifying the circumstances surrounding the Late Professors' death. In addition, the Committee held a consultative meeting with Mzalendo Trust, a civil society organisation that has previously conducted studies on alleged negligence of accident victims at public hospitals in Kenya.

The Committee's findings, observations and recommendations arising from these meetings are contained in this report.

Mr. Speaker Sir,

The Standing Committee on Health sincerely condoles with the family, friends and wider Kenyan community on the death of one of our most illustrious and accomplished sons. The Committee also stands with the family and friends of all the victims of road traffic accidents and violence who have lost their lives so far.

Mr. Speaker,

The Committee wishes to thank the Offices of the Speaker and Clerk of the Senate for their support during the process of considering this matter.

Mr. Speaker Sir,

It is now my pleasant duty and privilege to present this report of the Standing Committee on Health, for consideration and approval by the House pursuant to Standing Order No. 226(2) of the Senate Standing Orders.

Signed.....

8th June, 2020

Date.....

SEN. MBITO MICHAEL MALING'A, MP

CHAIRPERSON, STANDING COMMITTEE ON HEALTH

ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON HEALTH OF THE SENATE

We, the undersigned Members of the Standing Committee on Health of the Senate, do hereby append our signatures to adopt the Report-

1. Sen. (Dr.) Michael Malinga Mbito	Chairperson	....
2. Sen. (Dr.) Ali Abdullahi Ibrahim	Vice-Chairperson	... ...
3. Sen. Beth Mugo	Member	...
4. Sen. Nderitu John Kinyua	Member	.....
5. Sen. Iman Falhada Dekow	Member	.....
6. Sen. Okong'o Omogeni	Member	....
7. Sen. Naomi Shinyonga	Member	.....
8. Sen. Petronilla Were Lokorio	Member	....
9. Sen. Fred Outa	Member	... .

ABBREVIATIONS

CEO	-	Chief Executive Officer
KNH	-	Kenyatta National Hospital

CHAPTER ONE

INTRODUCTION

1. Background

The Late Prof. Ken Walibora met his death at the Kenyatta National Hospital (KNH) on 10th April, 2020 following a hit-and-run road traffic accident on Landhies Road. According to media reports, the deceased is said to have been hit by a bus as he attempted to escape an attack by street children.

Following the accident, he was taken to Kenyatta National Hospital where he was admitted at 9.53 a.m. as an 'Unknown African Male' at the Accident and Emergency (A&E) Department. Laboratory investigations were conducted on him and appropriate medication started. Unfortunately, despite attempts to resuscitate and stabilise him, the Late Prof. Ken Walibora succumbed to his injuries at 1.10 am on 11th April, 2020.

The Late Prof. Ken Walibora was a master of Kiswahili and an accomplished author of several books. He has left an indelible mark in the Kenyan literary scene.

2. Mandate of the Senate Standing Committee on Health

The Senate Standing Committee on Health is established under standing order 218(3) of the Senate Standing Orders and is mandated to, "*to consider all matters relating to medical services, public health and sanitation.*"

3. Committee Membership

The Membership of the Committee is composed of the following:

1. Sen. (Dr.) Michael Malinga Mbito - Chairperson
2. Sen. (Dr.) Ali Abdullahi Ibrahim - Vice-Chairperson
3. Sen. Beth Mugo

4. Sen. Nderitu John Kinyua
5. Sen. Iman Falhada Dekow
6. Sen. Okong'o Omogeni
7. Sen. Naomi Shinyonga
8. Sen. Petronilla Were Lokorio
9. Sen. Fred Outa

4. Committee Investigations on the Alleged Negligence of the Late Prof. Ken Walibora Prior to his Death at the Kenyatta National Hospital (KNH)

Following media reports of the alleged negligence of the Late Prof. Ken Walibora prior to his death at the Kenyatta National Hospital, the Standing Committee on Health invited the management of Kenyatta National Hospital to a meeting aimed at clarifying the circumstances that surrounded the Late Professors' death, including:

a) Details of how and when he was brought to Kenyatta National Hospital;
b) What time he was attended to; and,
c) What emergency interventions were undertaken on his behalf prior to his death.

In addition to meeting with the management of Kenyatta National Hospital, the Committee held a consultative meeting with Mzalendo Trust, a civil society organisation that has previously conducted studies on alleged negligence of accident victims at public hospitals in Kenya.

The Committee's findings, observations and recommendations arising from these meetings are contained in this report.

CHAPTER TWO

COMMITTEE PROCEEDINGS

1. Meeting with Kenyatta National Hospital (KNH)

The Committee met with representatives of Kenyatta National Hospital led by the CEO, Dr. Evanson Kamuri, on 27th April, 2020.

Key highlights of the submissions made by Dr. Kamuri are provided below:

1. KNH has a 70 ICU-bed capacity, the largest of its kind in the East Africa region.
2. On the day of the Late Prof. Ken Walibora's admission, capacity at the hospital was not overstretched owing to reduced patient demand arising from the COVID-19 outbreak situation.
3. The patient was brought in as an Unknown African Man to the KNH Accident and Emergency department by ambulance on 10th April 2020 at 9:53 am.
4. He was triaged and categorized as a critical patient. At the time of his admission, he was breathing spontaneously. As an immediate intervention, he was started on analgesics and intravenous fluids. A cervical neck collar was also fixed.
5. Subsequently, he was transferred to resuscitation room B where he was put on oxygen via a non rebreather mask. Resuscitation room B is a six-bed critical care unit in the A & E department that has full ICU-functionality. It is frequently used to manage critical care patients when there is an overflow.
6. On admission to the resuscitation room, he was still breathing spontaneously although he had serious multiple injuries including severe head injury.
7. He was reviewed by a medical officer at 10.10am during which he was observed to have several bouts of fits/convulsions depicting severe head injury. He was also noted to have multiple injuries to the right upper limb.
8. Laboratory investigations were requested for and appropriate medication was started.

9. However, all attempts to move him to the radiology department for CT-scan and X-ray investigations were futile as he would start desaturating and decompensating upon being moved.
10. At 4pm, the patients' condition changed necessitating intubation on mechanical ventilation. Subsequently, he was put on continuous cardiac monitoring and ventilatory support while still in the resuscitation room.
11. At 8pm, his condition changed and emergency resuscitation was done successfully with the patient returning to spontaneous circulation.
12. However, at 12:10am, he went into cardiac arrest and resuscitation was once again conducted. Unfortunately, after 30 minutes of active resuscitation the patient was noted not to have any spontaneous cardiopulmonary activity. He was certified dead at 1:10am.
13. Relatives who came to the hospital in search of him three days later were unable to recognise him owing to the severity of his injuries. On 15th April 2020, he was fingerprinted and identified as Kennedy Wafula Waliaula.
14. A post-mortem carried out on 17th April 2020 concluded that the patient died of severe head injury secondary to blunt trauma to the head.

Copies of the written submissions of KNH are herein attached as Annex 1.

2. Meeting with Mzalendo Trust

The Committee met with the Executive Director of Mzalendo Trust, Ms. Catherine Gaita, on 27th April, 2020. Mzalendo Trust, a civil society organisation, has previously conducted studies on alleged negligence of accident victims at public hospitals in Kenya.

Key highlights of the presentation by Ms. Catherine Gaita are provided below:

1. The provision of Emergency Health Care is guided by various constitutional and legal provisions including: Article 43 of the Constitution; the Kenya Health Policy (2014-2030); the Kenya National Patients Rights Charter, 2013; section 7 of the Health Act, 2017; and, the World Health Assembly (WHA) Resolution on Emergency Care Systems for Universal Health Coverage which provides for timely care for the acutely ill and injured.
2. Historically, negligence of accident victims in Kenyan Hospitals has been rampant as demonstrated by the 2015 case of the Late Alex Madaga who lost his life after spending 18 hours in an ambulance without medical attention. His case led to a civil action on emergency care, the production of a film, *#18Hours,* a court case against Coptic Hospital and a public inquiry by the Kenya Medical Practitioners and Dentists Board.
3. A study conducted by Mzalendo Trust in conjunction with other civil society organisations found that:
    a) Most accident victims die from lack of emergency health care rather than from their injuries;
    b) Public hospitals are not fully equipped to deal with emergency care;
    c) Most triage attendants in public hospitals are not medics and lack the requisite training;
    d) Inability to raise deposits has reduced access of emergency treatment services for patients e.g. in the case of the Late Alex Madaga, he was unable to access treatment at a private hospital because he was unable to raise the KSHs. 200,000.00 required;
    e) Limited access to ICU beds in public health facilities.

4. Accident victims with private insurance, but who lack their identification documents do not receive timely transfers to alternative private health facilities.
5. Based on the foregoing, the organisation recommended the following interventions:
    a) Further investigations into the case of suspected negligence of the Late Ken Walibora at KNH;
    b) Adequate funding and equipping of public hospitals for the provision of emergency health care and ICU services;
    c) Conduct an assessment of ambulance and referral services in County Hospitals to verify that counties have adequate personnel, medicines and equipment to provide emergency services;
    d) Conduct a public emergency awareness education campaign aimed at equipping members of the public on the proper handling of accident victims as first-responders;
    e) Mandate the equipping of all public vehicles with first aid kits, and provide first aid training to members of the crew; and,
    f) Act urgently to ensure the operationalisation of Health Act, 2017 and the Emergency Health Policy, 2019.

Copies of the written submission of Mzalendo Trust are herein attached as Annex 2.

CHAPTER THREE

COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

1. Committee Observations

Based on the submissions made, the Committee made the following observations:

1. The Late Prof. Ken Walibora received the necessary life-saving medical emergency interventions following his admission at the Kenyatta National Hospital;
2. He accessed intensive care services at the critical care unit of the A&E department in Kenyatta National Hospital;
3. He was admitted as an Unknown African Male and remained unidentified up to at least three days after his death owing to lack of identification documents. As with accident victims with private insurance, but who lack their identification documents, had his identity been known, he may have received a timely transfer to alternative private health facilities.
4. While the alleged negligence of the Late Prof. Ken Walibora at Kenyatta National Hospital could not be proved, many victims of road traffic accidents and violence die from lack of receiving timely life-saving medical interventions and appropriate emergency health care;
5. The delayed operationalisation of the Health Act, 2017 and the Emergency Health Policy, 2019 are a key limitation in the provision of emergency treatment.
6. There is a need for a legislative framework to operationalise the provisions of Article 43 (2) of the Constitution and section 7 of the Health Act, 2017 which provide for the emergency treatment services;
7. For the majority of victims of road traffic accidents and violence, public hospitals are the first port of call. As such, there is a need to ensure that all public hospitals are adequately resourced and equipped in order to enable them deal with emergencies;
8. The referral health system in counties is under-resourced and ill-equipped: While most counties have acquired ambulances, they still lack adequate personnel, resources and

equipment to provide effective emergency services. As such, there is a need to strengthen emergency referral and ICU services in county health facilities for purposes of improving access, as well as easing pressure at the Kenyatta National Hospital; and,

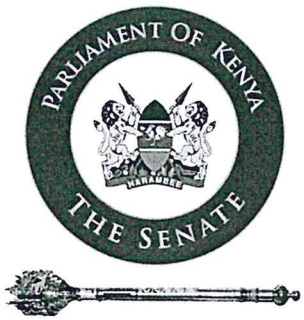
9. Weak pre-hospital care and poor handling of accident and violence victims prior to hospital admission is a key factor affecting the survival of severely-injured victims.

2. Committee Recommendations

Based on the foregoing, the Committee recommends:

1. That the Senate intervene to provide a conditional grant to counties for purposes of strengthening the provision of emergency and critical care services;
2. That mechanism is sought to link civil registration services to emergency health services for purposes of facilitating prompt identification of unknown accident victims.
3. That the Office of the Auditor-General conduct a performance audit of the provision of ambulance, emergency and ICU services in the counties pursuant to Section 36(1) of the Public Audit Act, 2015 and report back to the House within a period of six (6) months;
4. That the Ministry of Health expedite the full operationalisation of the Health Act 2017, and the Emergency Health Policy 2019 and report back to the House within a period of three (3) months.
5. That the Ministry of Transport and other stakeholders in the transport sector act to enforce the requirement that all public service vehicles are fitted with First Aid kits. Further, that the crew manning all public transport vehicles receive basic first aid training.
6. That the Ministry of Health act to roll-out a public awareness campaign on the proper handling of emergency victims by members of the public as they are often the first responders.

TWELFTH PARLIAMENT | FOURTH SESSION



MINUTES OF THE SITTING OF THE SENATE STANDING COMMITTEE ON HEALTH, HELD ONLINE ON THE ZOOM MEETING PLATFORM, ON MONDAY, 27TH APRIL, 2020, AT 2.00 P.M.

PRESENT

1. Sen. Mbito Michael Maling'a, MP - Chairperson
2. Sen. (Dr.) Ali Abdullahi Ibrahim, MP - Vice Chairperson
3. Sen. Mugo Beth Wambui, MP - Member
4. Sen. Nderitu John Kinyua, MP - Member
5. Sen. Iman Falhada Dekow, MP - Member
6. Sen. Erick Okong'o Mogeni, SC, MP - Member
7. Sen. Lokorio Petronila Were, MP - Member
8. Sen. Masitsa Naomi Shiyonga, MP - Member
9. Sen. Outa Frederic Otieno, MP - Member

IN ATTENDANCE

A. Kenyatta National Hospital

1. Dr. E. Kamuri - CEO, KNH
2. Dr. Irene Inwani - Director, Clinical Services
3. Mr. Carylus Odiango - Director, Corporate Services
4. Dr. Kennedy Ondede - Deputy Director, Surgical Services
5. Dr. Rose Nyabanda - Deputy Director, Diagnostic Services
6. Mr. Calvin Nyachoti - Deputy Director, Corporation Secretary

7. Mrs. Rose Njoroge - Deputy Director, Supply Chain
8. Dr. Rhoda Kalondu - Accident and Emergency

B. Mzalendo Trust

1. Ms. Caroline Gaita - Executive Director, Mzalendo Trust

SECRETARIAT

1. Dr. Christine Sagini - Research Officer
2. Ms. Farhiya Ali - Sergeant-at-Arms
3. Ms. Sombe Toona - Legal Counsel
4. Mr. Frank Mutulu - Media Officer
5. Ms. Fatuma Ali - Audio Oficer

MIN. NO. SCH/15/04/2020 PRELIMINARIES

The Chairperson, Sen.(Dr.) Michael Mbito, MP called the meeting to order at 2. 05 pm and commenced the meeting with a word of prayer.

MIN. NO. SCH/15/04/2020 ADOPTION OF THE AGENDA

The Committee adopted the agenda of the Sitting, as set out below, having been proposed by Sen. Falhada Dekow, MP, and seconded by the Vice Chairperson, Sen. (Dr.) Ali Abdullahi, MP: -

1. Preliminaries
    a) *Prayer*
    b) *Adoption of the Agenda*

2. Committee Brief on the circumstances leading to the death of the Late Prof. Ken Walibora at Kenyatta National Hospital on 10th April, 2020.
3. Meeting with the Dr. E. Kamuri, CEO, KNH on the alleged negligence of the Late Prof. Ken Walibora at Kenyatta National Hospital prior to his death.
4. Brief from Mzalendo Trust on Past Experiences with Alleged Negligence of Patients in Kenyan Hospitals.
5. Any Other Business.
6. Date of the Next Meeting.
7. Adjournment.

MIN. NO. SCH/15/04/2020COMMITTEE BRIEF ON THE CIRCUMSTANCES THAT LED TO THE DEATH OF THE LATE PROF. KEN WALIBORA AT KENYATTA NATIONAL HOSPITAL (KNH)

The Committee was taken through a brief based on the media reports on the circumstances surrounding the Late Prof. Ken Walibora's death. Following deliberations, the Committee resolved to rely on the submissions by KNH as the media reports could not be authenticated.

MIN. NO. SCH/16/04/2020PRESENTATION BY DR. E. KAMURI, CEO, KNH, ON THE ALLEGED NEGLIGENCE OF THE LATE PROF. KEN WALIBORA AT KNH PRIOR TO HIS DEATH

The Chair invited Dr. E. Kamuri, CEO, KNH to take the Committee through the circumstances that led to the death of the Late Prof. Ken Walibora at KNH on 10th April, 2020.

Key highlights of the presentation by the CEO are provided below:

1. KNH has a 70 ICU-bed capacity

2. On the day of the Late Prof. Ken Walibora's admission, capacity at the hospital was not overstretched owing to reduced patient demand arising from the COVID-19 outbreak situation.
3. The patient was brought in as an Unknown African Man to the KNH Accident and Emergency department by ambulance on 10th April 2020 at 9:53 am.
4. He was triaged and categorized as a critical patient. At the time of his admission, he was breathing spontaneously.
5. As an immediate intervention, he was started on analgesics and intravenous fluids. A cervical neck collar was also fixed.
6. Subsequently, he was transferred to resuscitation room B where he was put on oxygen via a non rebreather mask. Resuscitation room B is a six-bed critical care unit in the A & E department that has full ICU-functionality. It is frequently used to manage critical care patients when there is an overflow.
7. On admission to the resuscitation room, the patient was breathing spontaneously although he had serious multiple injuries including severe head injury.
8. He was reviewed by a medical officer at 10.10am during which he was observed to have several bouts of fits/convulsions depicting severe head injury. He was also noted to have multiple injuries to the right upper limb.
9. Laboratory investigations were requested for and appropriate medication was started.
10. However, all attempts to move him to the radiology department for CT-scan and X-ray investigations were futile as the patient would start desaturating and decompensating upon movement.
11. At 4pm, the patients' condition changed necessitating intubation on mechanical ventilation.
12. Subsequently, he was put on continuous cardiac monitoring and ventilatory support while still in the resuscitation room.
13. At 8pm, his condition changed and emergency resuscitation was done successfully with the patient returning to spontaneous circulation.

14. However, at 12:10am, he went into cardiac arrest and resuscitation was once again conducted. Unfortunately, after 30 minutes of active resuscitation the patient was noted not to have any spontaneous cardiopulmonary activity. He was certified dead at 1:10am.
15. Relatives who came to the hospital in search of him three days later were unable to recognise him owing to the severity of his injuries. On 15th April 2020, he was fingerprinted and identified as Kennedy Wafula Waliaula.
16. A post-mortem carried out on 17th April 2020 concluded that the patient died of severe head injury secondary to blunt trauma to the head.

Highlights of the plenary session with the Committee are summarised below:

1. There is a need to strengthen pre-hospital care and stabilisation of patients before they get to the hospital since poor handling of accident victims is a key factor affecting the survival of severely-injured victims; and,
2. There's a need for the strengthening of emergency referral and ICU services in county health facilities.

The CEO also shared a confidential written medical report for the Committee's information.

MIN. NO. SCH/17/04/2020BRIEF FROM MZALENDO TRUST ON PAST EXPERIENCES WITH ALLEGED NEGLIGENCE OF PATIENTS IN KENYAN HOSPITALS

The Chair invited Ms. Catherine Gaita, Executive Director, Mzalendo Trust, to take the Committee through a brief on past experiences with alleged negligence of patients in Kenyan Hospitals.

Key highlights of the presentation by the Executive Director of Mzalendo Trust are provided below:

1. The provision of Emergency Health Care is guided by the following constitutional and legal provisions:
    a) Article 43 of the Constitution which guarantees every person to the highest attainable standard of health; and grants that no person shall be denied emergency medical treatment;
    b) The Kenya Health Policy (2014-2030) whose definition of emergency services comprises pre-hospital emergency care; protection of vulnerable groups against the impacts of disaster or emergency; hospital emergency care; psychosocial support for emergency victims; and ambulance/referral services;
    c) The Kenya National Patients Rights Charter, 2013 which provides for the right to receive emergency treatment at any health facility irrespective of a patient's ability to pay;
    d) Section 7 of the Health Act, 2017 which grants every person the right to emergency medical treatment, and which prescribes a penalty of a fine not exceeding KShs. 3 million shillings for any medical institution that fails to provide emergency medical treatment; and,
    e) The World Health Assembly (WHA) Resolution on Emergency Care Systems for Universal Health Coverage which provides for timely care for the acutely ill and injured.
2. Historically, negligence of accident victims in Kenyan Hospitals has been rampant as demonstrated by the 2015 case of the Late Alex Madaga who lost his life after spending 18 hours in an ambulance without medical attention. His case led to a civil action on emergency care, the production of a film, *#18Hours,* a court case against Coptic Hospital and a public inquiry by the Kenya Medical Practitioners and Dentists Board.
3. A study conducted by Mzalendo Trust in conjunction with other civil society organisations found that:

a) Most accident victims die from lack of emergency health care rather than from their injuries;
b) Public hospitals are not fully equipped to deal with emergency care;
c) Most triage attendants in public hospitals are not medics and lack the requisite training;
d) Inability to raise deposits has reduced access of emergency treatment services for patients e.g. in the case of the Late Alex Madaga, he was unable to access treatment at a private hospital because he was unable to raise the KSHs. 200,000.00 required;
e) Limited access to ICU beds in public health facilities.

4. Accident victims with private insurance, but who lack their identification documents are not transferred to alternative private health facilities.
5. Based on the foregoing, the organisation recommended the following interventions:
    a) Further investigations into the case of suspected negligence of the Late Ken Walibora at KNH;
    b) Adequate funding and equipping of public hospitals for the provision of emergency health care and ICU services;
    c) Conduct an assessment of ambulance and referral services in County Hospitals to verify that counties have adequate personnel, medicines and equipment to provide emergency services;
    d) Conduct a public emergency awareness education campaign aimed at equipping members of the public on the proper handling of accident victims as first-responders;
    e) Mandate the equipping of all public vehicles with first aid kits, and provide first aid training to members of the crew; and,
    f) Act urgently to ensure the operationalisation of Health Act, 2017 and the Emergency Health Policy, 2019.

MIN. NO. SCH/18/04/2020 **ADJOURNMENT**

There being no other business, the Chairperson adjourned the meeting at 4. 45pm. The next meeting will be on notice.

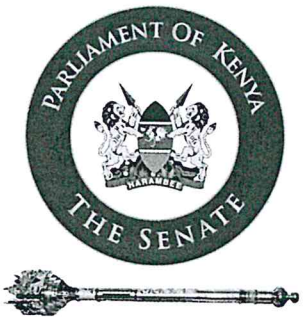
SIGNED: .....

(CHAIRPERSON)

11/05/2020

DATE: .....

TWELFTH PARLIAMENT | FOURTH SESSION



MINUTES OF THE SITTING OF THE SENATE STANDING COMMITTEE ON HEALTH, HELD ONLINE ON THE ZOOM MEETING PLATFORM, ON MONDAY, 8th JUNE, 2020, AT 2.30 P.M.

PRESENT

1. Sen. Mbito Michael Maling'a, MP - Chairperson
2. Sen. Mugo Beth Wambui, MP - Member
3. Sen. Erick Okong'o Mogeni, SC, MP - Member
4. Sen. Nderitu John Kinyua, MP - Member
5. Sen. Outa Frederic Otieno, MP - Member
6. Sen. Lokorio Petronila Were, MP - Member
7. Sen. Masitsa Naomi Shiyonga, MP - Member

APOLOGIES

1. Sen. (Dr.) Ali Abdullahi Ibrahim, MP - Vice Chairperson
2. Sen. Iman Falhada Dekow, MP - Member

SECRETARIAT

1. Dr. Christine Sagini - Research Officer
2. Ms. Farhiya Ali - Sergeant-at-Arms
3. Ms. Sombe Toona - Legal Counsel
4. Mr. Frank Mutulu - Media Officer
5. Ms. Fatuma Ali - Audio Oficer

MIN. NO. SCH/067/06/2020 PRELIMINARIES

The Chairperson, Sen.(SC) Okongo Omogeni, MP called the meeting to order at 10.10 am and commenced the meeting with a word of prayer.

MIN. NO. SCH/068/06/2020 ADOPTION OF THE AGENDA

The Committee adopted the agenda of the sitting, as set out below, having been proposed by Sen. Lokorio Were and seconded by Sen. Naomi Shiyonga, MP:

1. Preliminaries
    a) *Prayer*
    b) *Adoption of the Agenda*
2. Confirmation of the Minutes for the meetings held on 5th, 11th, 15th, 18th, 20th and 21st May, 2020.
3. Consideration of the Report on the Alleged Negligence of the Late Ken Walibora at Kenyatta National Hospital.
4. Any other business
    - Media Update
    - Legal Update
5. Date of the Next Meeting.
6. Adjournment.

MIN. NO. SCH/069/06/2020 CONFIRMATION OF MINUTES

The Minutes of the Sitting held on 5th May, 2020 (at 10.00 pm) were confirmed as a true record of the Committee's deliberations having been proposed by Sen. Beth Mugo, MP and confirmed by Sen. Petronilla Lokorio Were, MP.

The Minutes of the Sitting held on 11th May, 2020 (at 10.00 am) were confirmed as a true record of the Committee's deliberations having been proposed by Sen. Okongo Omogeni, MP and confirmed by Sen. Naomi Shiyonga, MP.

The Minutes of the Sitting held on 15th May, 2020 (at 10.00 am) were confirmed as a true record of the Committee's deliberations having been proposed by Sen. Petronilla Lokorio Were, MP and confirmed by Sen. Fred Outa, MP.

The Minutes of the Sitting held on 18th May, 2020 (at 10.00 am) were confirmed as a true record of the Committee's deliberations having been proposed by Sen. Naomi Shiyonga, MP and confirmed by Sen. Petronilla Lokorio Were, MP.

The Minutes of the Sitting held on 20th May, 2020 (at 10.00 am) were confirmed as a true record of the Committee's deliberations having been proposed by Sen. Beth Mugo, MP and confirmed by Sen. Fred Outa, MP.

The Minutes of the Sitting held on 20th May, 2020 (at 2.00 pm) were confirmed as a true record of the Committee's deliberations having been proposed by Sen. Okongo Omogeni, MP and confirmed by Sen. Petronilla Lokorio Were, MP.

The Minutes of the Sitting held on 21st May, 2020 (at 10.00 am) were confirmed as a true record of the Committee's deliberations having been proposed by Sen. Petronilla Lokorio Were, MP and confirmed by Sen. Beth Mugo, MP.

On request by the secretariat, confirmation of the Minutes of the Sittings held on 27th May, 2020 and 28th May, 2020 were deferred to the next meeting.

MIN.NO.SCH/070/06/2020 MATTERS ARISING

The Committee noted as follows:

1. *Under Min.No.SCH/036/05/2020 (Sitting held on 18th May, 2020):* The Committee was yet to receive formal communication from the Ministry of Health regarding the status of EACC investigations on the Special Portable Clinics.

2. *Under Min.No.SCH/041/05/2020 (Sitting held on 20th May, 2020 at 10.00 am):* The Committee was yet to receive copies of the price list of all products supplied by KEMSA as well as copies of the audit reports by Dahlberg, USAID and others. The Chair instructed the secretariat to follow up with KEMSA on the same and to prepare correspondence accordingly.

3. *Under Min.No.SCH/046/05/2020 (Sitting held on 20th May, 2020 at 2.00 pm):* The Committee was yet to receive copies of the NHIF Reforms Taskforce report and the NHIF quarterly reports. The Chair instructed the secretariat to follow up with NHIF on the same and to prepare correspondence accordingly.

MIN.NO.SCH/071/06/2020 CONSIDERATION OF THE REPORT ON THE ALLEGED NEGLIGENCE OF THE LATE PROF. KEN WALIBORA PRIOR TO HIS DEATH AT THE KENYATTA NATIONAL HOSPITAL (KNH)

The Report on the Alleged Negligence of the Late Prof. Ken Walibora prior to his death at the Kenyatta National Hospital was adopted having been proposed by Sen. Petronilla Were and seconded by Sen. Okongo Omogeni, MP. .

MIN.NO.SCH/072/06/2020 CONSIDERATION OF THE REPORT ON THE SCALING UP OF THE UNIVERSAL HEALTH CARE (UHC) PROGRAM TO THE 47 COUNTY GOVERNMENTS.

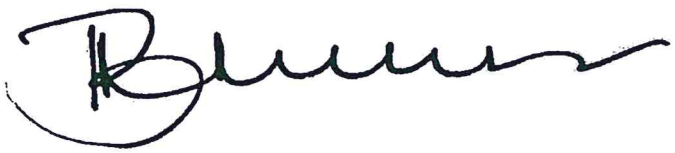
The Report on the scaling-up of the Universal Health Care (UHC) program to the 47 County Governments was deferred in order to allow the secretariat to prepare a legal analysis of the Intergovernmental Participation Agreements (IPAs) and integrate their findings into the draft report.

MIN. NO. SCH/073/06/2020 ANY OTHER BUSINESS

1. The Chair, Sen. (Dr.) Michael Mbito instructed the secretariat to schedule two physical meetings for the consideration of the Community Health Services Bill, 2020 public participation matrix on Thursday, 11th May, 2020 and Friday, 12th May, 2020. The secretariat was additionally instructed to make the necessary arrangements to enable Sen. Beth Mugo participate in the meeting remotely.
2. Sen. Beth Mugo, MP informed the Committee that she had prepared a statement concerning the death of a patient, due to alleged negligence, by the MP Shah Hospital, Nairobi for tabling at the Senate Sitting scheduled for Tuesday, 9th June, 2020 at 2.00 pm.

MIN. NO. SCH/074/06/2020 ADJOURNMENT

There being no other business the meeting was adjourned at 3.35 pm.



SIGNED: .....

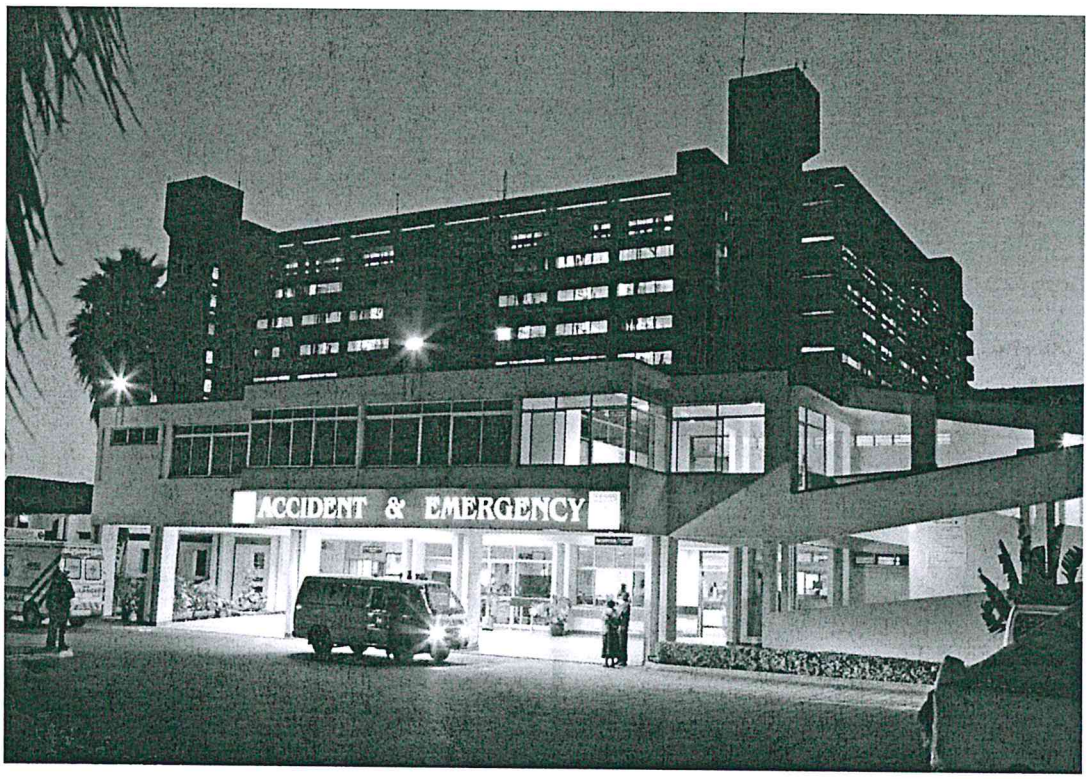
(CHAIRPERSON)

08/06/2020

DATE: .....

Kenyatta National Hospital

REPORT ALLEGED NEGLIGENCE OF THE LATE PROF. KEN WALIBORA PRIOR TO HIS DEATH AT THE KENYATTA NATIONAL HOSPITAL



27th April 2020

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1. KENYATTA NATIONAL HOSPITAL

1.1. About KNH

Kenyatta National Hospital (KNH) was established in 1901 with a capacity of 40 beds. The Hospital operated as a department of the Ministry of Health until 1987 when its status changed to a State Corporation through Legal Notice No. 109 of 6th April 1987. Over the years, KNH has grown to its present capacity of 2,000 beds and attends to an annual average of 70,000 inpatients and 600,000 outpatients.

The Hospital has 50 wards and 24 operating theatres as well as 24 consultant clinics. As a referral hospital, KNH offers specialized quality health care to patients from all over the Nation, East and Central Africa Region. These services include open heart surgery, neurosurgery, orthopaedic surgery, reconstructive surgery, burns management, critical care services, reproductive and child health services including neonatal care, ophthalmology, oncology, palliative care and renal services (including kidney transplantation), among others.

The Hospital provides training facilities for the University of Nairobi (College of Health Sciences) and the Kenya Medical Training College (KMTC). The institution also works closely with the Kenya Medical Research Institute (KEMRI), Government Chemist, National Radiation Protection Board, National Public Health Laboratories Services (NPHLS), National AIDS and STIs Control Programme (NASCOP), National AIDS Control Council (NACC), National Blood Transfusion Services (NBTS) and African Medical and Research Foundation (AMREF), among others.

The Hospital mandate is to:

i) Receive patients on referral from other hospitals or institutions within or outside Kenya for specialized health care;
ii) Provide facilities for medical education for the University of Nairobi Medical School, and for research either directly or through other co-operating health institutions;
iii) Provide facilities for education and training in nursing and other health and allied professions; and
iv) Participate as a national referral hospital in national health planning.

1.2

VISION

A world class patient centered specialized care Hospital.

STRATEGIC DESTINATION

A multi-speciality centre of excellence offering services that meet international certification standards.

MISSION

To optimize patient experiences through innovative evidence based specialized healthcare, facilitate training, research and participate in national health Policy formulation.

MOTTO

We listen, We care

CORE VALUES

- Accountability
- Equity and Equality
- Professionalism & Integrity
- Safety
- Teamwork and Team Spirit

1.3 INVITATION TO SENATE STANDING COMMITTEE ON HEALTH

The Standing Committee on Health is established under standing order 218(3) of the Standing Orders of the Senate and is mandated to consider all matters relating to medical services, public health and sanitation.

At its Sitting held on Thursday, 23rd April, 2020, the Committee considered reports of alleged negligence of the Late Prof. Ken Walibora prior to his death at the Kenyatta National Hospital on 10th April, 2020 and resolved to invite you to a meeting of the Committee to clarify the circumstances surrounding his death as follows:

1. Details of how and when he was brought to Kenyatta National Hospital;
2. What time he was attended to; and
3. What emergency interventions were undertaken on his behalf prior to his death.

The purpose of this letter is to invite you to appear before the Committee on Monday, 27th April, 2020 at 10.00 am to clarify on the aforementioned issues. The meeting will be held on the Zoom online meeting platform and a secure link will be shared with your office ahead of the meeting. We request that any information be submitted by email via csenate@parliament.go.ke .

1.4 KNH REPORTS

1.4.1 Executive Summary

a. Patient was brought as an Unknown African Man to the KNH Accident and Emergency department by emergency medical technicians on 10th April 2020 at 9:53am.

b. He was triaged/categorized as a critical patient and analgesics, intravenous fluids and cervical neck collar fixed. He was transferred to resuscitation room B (RRB) where he was put on oxygen via a non-rebreather mask. Resuscitation room B is a six-bed critical care unit in A&E department.

c. Patient was breathing spontaneously although he had serious multiple injuries.

d. He was reviewed by the medical officer at 10.10am during which he was observed to have several bouts of fits/ convulsions depicting severe head injury. He was also noted to have multiple injuries to the right upper limb.

e. Laboratory and radiological investigations were requested for and appropriate medication was started.

f. Laboratory investigations were done as requested.

g. However, all attempts to move him to radiology department were futile due to desaturation and decompensation.

h. At 4pm, his condition changed necessitating intubation on mechanical ventilation.

i. Patient was on continuous cardiac monitoring and ventilatory support while in the department.

j. At 8pm, patient changed condition again and resuscitation was successfully done with return to spontaneous circulation.

k. At 12:10am, he went into cardiac arrest and resuscitation commenced. Unfortunately, after 30 minutes of active resuscitation the patient was noted not to have any cardiopulmonary activity.

l. Patient was certified dead at 1:10am.

m. On 15th April 2020, he was finger printed and identified as Kennedy Wafula Waliaulaa.

n. Post-mortem carried out on 17th April 2020 concluded that the patient died of severe head injury secondary to blunt trauma to the head.

1.4.2.Statement of Management Kennedy Wafula Waliaulaa

Patient name: Kennedy Wafula Waliaulaa

Current age: Adult

Gender: Male

DOA: 10/4/2020 at 9:53am

DOD: 11/4/2020 at 1:10am

The above-named patient was brought to A&E department on 10/4/2020 at 9:53am by emergency medical services ambulance. He was brought in as an Unknown African Man (UAM 99). The patient was a victim of hit and run within Nairobi CBD and as a result he had suffered multiple injuries (polytrauma) and there was no other history available.

His vital signs were taken and categorized as a critical patient at 9:53am and transferred to resuscitation room B (RRB), a 6 bed critical care unit within A&E where he was managed as a polytrauma patient. Appropriate medications were administered and diagnostic investigations initiated as per the protocol.

During the afternoon, the patient was noted to deteriorate with fluctuating blood pressure and oxygen saturations on attempt to move him. Monitoring, ventilatory and circulatory support continued.

At 12:30am, the patient suddenly changed condition (cardio-pulmonary arrest) and resuscitation was done without successfully achieving return to spontaneous circulation. At 1:10am, the patient was certified dead.

We are saddened by the loss of Prof Waliaulaa and condole with the family, friends and the wider Kenyan community.

1.4.3.Medical Report For Kennedy Wafula Waliaulaa

On 10th April 2020, an adult male patient (UAM) was brought to KNH Accident and Emergency department by emergency medical service ambulance. He was a victim of hit and run within Nairobi CBD and as had suffered multiple injuries (polytrauma) and there was no other history available.

Patient was observed, triaged/categorized as a critical patient at 9:53am. Vital signs were as follows: Respiratory rate- 17 breaths/min, Blood pressure 126/95mmhg, Heart rate 60 beats/ minute, SPO2 93% , RBS 4.6 mmol/L and Temperature of 36.6*C. Intravenous analgesics (1gm paracetamol), intravenous normal saline infusion and a cervical neck collar was fixed at the triage area. He was transferred to resuscitation room B (RRB) where he was put on oxygen via non-rebreather mask

Patient was reviewed by the medical officer at 10:10am.He was noted to have two convulsions/fits during the examination and 1gm of intravenous epanutin was given as a loading dose.

On examination: the patient was very sick looking on oxygen via non-rebreather mask, not pale, not jaundiced, not cyanosed and not dehydrated. ABCDE survey approach was used in assessing the patient:

A - Airway: Patient had bloody secretions from oral cavity secondary to lost dentition. Suctioning was done. The C-spine was not protected during the transfer process to the hospital.
B - Breathing: Respiratory rate 17 breaths/min. SPO2= 93%. Chest was moving symmetrically. Transmitted breath sounds heard.
C - Circulation: Blood pressure 126/95mmhg. Pulse rate= 60 breaths/ min. Patient was noted to have bleeding from the right

upper limb secondary to laceration. Pressure dressing was applied and hemostasis achieved.

D - Disability: GCS= 11/15. Pupils bilaterally equally reacting to light.

A-Exposure: Patient was noted to have:

a. An abrasion on the right temporal area approximately 3 by 3 cm.
b. Right supraorbital scalp swelling 2 by 3 cm.
c. Mandibular swelling.
d. Lost dentition (upper and lower incisors).
e. Three Puncture wounds on the dorsal aspect of the elbow approximately 2 cm each.
f. Laceration on the palmar aspect of the right hand approximately 6cm, tendons exposed.

Secondary survey was done:

Abdominal examination: abdomen was not distended. Moving with respiration and not tender on palpation. Bowel sounds were present.

An impression of Polytrauma secondary to road traffic accident (RTA) was made. Laboratory and radiological investigations were requested and booked. Analgesics, tetanus toxoid injection and antibiotics were administered.

At 11:40am, the primary nurse observed another convulsion. Vital signs: BP 100/60mmhg, PR- 60b/min, SPO2 96% and GCS was noted to be 10/15. Patient was still on IV epanutin infusion.

The patient was noted to be hemodynamically unstable at 12:30 pm with a BP of 94/50mmhg, pulse rate of 64 b/min, SPO2 89, RBS 4.0mmol/L. The patient was not stable to be wheeled to

radiology department for trauma series. Cardiorespiratory support continued.

At 4pm, the patient's condition changed, he was noted to be desaturating (low oxygen levels despite being on oxygen) and decompensating. He was noted to have bradycardia of 32 b/min, BP was 97/48 mmhg, RR 9b/min and GCS was 7/15. Resuscitation was done. He was intubated and put on mechanical ventilatory support SIMV mode.

His condition was unstable throughout his stay in the department and he could not be moved to radiology department for CT-scan to be done. At 8pm, he was noted to be desaturating and resuscitation was done successfully with return to spontaneous circulation. His vital signs were: BP 50/30mmhg, PR 40 b/min, SPO2 100% and GCS was noted to be 4T/15. Patient was still unstable to be moved to radiology department.

At 12:10am, he went into cardiac arrest and resuscitation was commenced. After 30 minutes of active CPR, he was noted to not to have any cardiopulmonary activity and was certified dead at 1:10am.

On 15th April 2020, he was finger printed and identified as Kennedy Wafula Waliaulaa.

Post-mortem carried out on 17th April 2020 concluded that the patient died of severe head injury secondary to blunt trauma to the head.

DR. EVANSON KAMURI
CHIEF EXECUTIVE OFFICER

Presentation to the Senate Standing Committee on Health

Monday, 27th April, 2020.

1. **Constitutional and Legal Framework on Emergency Health Care.**
2. Constitution of Kenya

Article 43:

(1) Every person has the right--

(a) to the highest attainable standard of health, which includes the right to health care services, including reproductive health care;
(b) to accessible and adequate housing, and to reasonable standards of sanitation;
(c) to be free from hunger, and to have adequate food of acceptable quality;
(d)to clean and safe water in adequate quantities;
(e)to social security; and
(f) to education.

(2) A person shall not be denied emergency medical treatment.

3. Kenya Health Policy: 2014-2030

Defines emergency treatment as Healthcare services necessary to prevent and manage the damaging health effects due to an emergency situation. It involves services across all aspects of healthcare services and includes first aid treatment of ambulatory patients and those with minor injuries; public health information on emergency treatment, prevention, and control; and administrative support, including maintenance of vital records and providing for a conduit of emergency health funds across government.

Provides that emergency services will comprise of:

a) Pre-hospital emergency care

b) Protection of vulnerable groups against the impacts of a disaster or emergency

c) Hospital emergency care and psychosocial support for victims

d) Ambulance services for referral services.

Accessed at: http://publications.universalhealth2030.org/uploads/kenya_health_policy_2014_to_2030.pdf

4. Kenya National Patients' Rights Charter, 2013

Article 2 provides for the **right to receive emergency treatment in any health facility,** irrespective of the patient's ability to pay.

Accessed at: http://medicalboard.co.ke/resources/PATIENTS_CHARTER_2013.pdf

5. Health Act, 2017

Defines emergency treatment as necessary immediate health care that must be administered to prevent death or worsening of a medical situation.

Section 7 of the Health Act provides:

(1) Every person has the right to emergency medical treatment.

(2) For the purposes of this section, emergency medical treatment shall include

- pre-hospital care;

-stabilizing the health status of the individual;

or arranging for referral in cases where the health provider of first call does not have facilities or capability to stabilize the health status of the victim.

Offence: (3) Any medical institution that fails to provide emergency medical treatment while having ability to do so commits an offence and is liable upon conviction to a fine not exceeding **three million shillings**.

6. Resolution on Emergency care systems for universal health coverage

The World Health Assembly passed a resolution aimed at helping countries to ensure timely care for the acutely ill and injured.

Accessed at: https://apps.who.int/gb/ebwha/pdf_files/WHA72/A72_R16-en.pdf

2. Negligence of accident victims: history repeats itself in the Ken Walibora incident.

Background

In 2015, Alex Mandaga died after spending 18 Hours in an ambulance without medical attention. He had been moved from one hospital to another. His death led to citizen led action on emergency care, including the production of the film #18 Hours, a court case against Coptic Hospital and a public inquiry by the Kenya Medical Practitioners & Dentist Board (KMPDU) against all the hospitals involved.

Working with other CSOs in advocacy around emergency health care, this is what we found:

1. Most accident victims die from lack of emergency health care than from the injuries themselves.
2. Public hospitals are not fully equipped to deal with emergency health care. The Triages attendants are not always full trained on the same.

3. In the case of Alex, inability to raise a deposit meant that he could not receive treatment in a private hospital.
4. ICU beds in public facility remain a challenge. Where available, they are taken up by patients suffering from terminal illnesses and who would instead benefit from palliative care instead.

In respect to the Kenyatta National Hospital on the Alex Madaga case, The Kenya Medical Practitioners' & Dentist Board in the Preliminary Inquiry Committee Case No. 40 of 2015 found, found that:

"The patient was brought to KNH in an ambulance while in critical conditionand was later taken back to the referring facility. The same patient was returned the following day and there is no evidence that the issue was escalated to higher Authorities in an effort to seek intervention or assistance. KNH, being a National Referral Hospital, should have made an effort to escalate the issue to other Authorities, including the Ministry of Health."

"There is no evidence to show that the Hospital undertook all requisite steps to refer the patient to another facility that could have helped under the circumstances of the case. (Ruling PIC No. 40 of 2015, page 15)"

"The Committee further finds that the said Hospital allowed a critically ill patient to be returned to the referring Hospital for oxygen instead to taking appropriate steps to intervene more so under the circumstances of the case."

On 10th April 2020, Mr. Ken Walibora, a renowned author died at Kenyatta National Hospitals following an alleged road accident. From the media account of his death, the late Ken spent an estimated 14 Hours at the hospital emergency centre. While he needed intensive care, the 27 ICU beds (22 in ICU Centre and 5 in Emergency Care) were not available. He therefore died without having received the necessary treatment.

From the above analysis, it is clear that the five years since Alex's death, emergency health care provision remains a challenge. The following similarities in how the two cases were handled can be observed:

1. Both spent extremely long hours waiting for treatment. In Ken's case, it never came. For Alex, it came a little too late;
2. The much needed ICU Beds were not available. The two patients died waiting for availability of the bed.
3. Despite having private medical insurance, the same could not help Ken in the absence of his identification documents.
4. No evidence that the issue – lack of ICU bed was escalated upwards. Was an alternative treatment centre sought? While the Health Act provides penalties of institutions that do not provide emergency health care to victims, the fact that there is no individual culpability means the situation remains. Did the nurses or doctors seek alternative facilities for the patient? Given that private hospitals are now expected to provide such care despite the costs, did they approach neighboring hospitals? Individual in charge should take responsibility.

Our Recommendations

In view of the above, we make the following recommendations to the Senate Standing Committee on Health for their consideration:

i. **Funding:** Public hospitals are still underfunded and under-equipped to deal with emergency health care and especially the provision of ICU beds. This aspect has come to the core as the Nation deals with the crisis brought about by Covid-19.

ii. **Need to Assess Preparedness of Public Hospitals:** The response raises questions about the preparedness of the hospital and probably other public hospitals to deal with any emergencies that may arise out of the Covid-19 crisis; While many of the County County Governments have invested in ambulances, there is need to ascertain whether these are fully equipped – both personnel, medicines and necessary equipment. We observed that despite health being a devolved function, most patients still have to be brought to the main referral hospitals, exerting pressure on already stretched system. Could the Senate imply upon County Governments to ensure that they have fully equipped Accident and Emergency Centres?

iii. **Public Emergency Awareness Education:** We notice that First Responders play a critical role in handling accident victims – from the initial handling to identifying the next of kin. A public awareness campaign on this is needed.

iv. **First Aid Kits in Public Transport** – in both case, the deceased were victims of road accidents. What happened to the requirement that all public vehicles have First Aid Kits. Are the crew trained on first aid, despite having the kit? There is need for the Ministry of Transport together with stakeholders in the transport sector to enforce these requirements.

v. **Vulnerability to Emergencies:** As Ken's accident and recent high profile road accidents have shown, the first call is a public hospital in the event of an accident, even where private medical health care exists. Accordingly, the need to ensure adequate preparedness for public hospitals to deal with such emergencies cannot be gain said.

vi. **Operationalization of the Health Act 2017 and Emergency Health Policy, 2019:** The operationalization of the provisions of emergency health care as provided in the document should be prioritized.

Caroline Gaita.

Executive Director, Mzalendo Trust.