

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

**HCT-00-CV-CS-0435-2002**

**NAJIB SEMAMBO**    **..... PLAINTIFF**

**(Suing through a next friend Sergeant  
Moses Wasswa)**

**VERSUS**

- |   |              |                          |
|---|--------------|--------------------------|
| <p><b>1. REGISTERED TRUSTEES OF KLA<br/>ARCHDIOCESE</b></p> <p><b>2. THE BOARD OF GOVERNORS RUBAGA<br/>HOSPITAL</b></p> <p><b>3. THE MEDICAL SUPERINTENDENT<br/>RUBAGA HOSPITAL</b></p> | <p>.....</p> | <p><b>DEFENDANTS</b></p> |
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**BEFORE: HON. JUSTICE STEPHEN MUSOTA**

**JUDGMENT**

The plaintiff Najib Semambo, suing through a next friend Sergeant Moses Waswa brought this claim against the defendant for general damages for professional negligence and costs of the suit. The plaintiff’s cause of action arose as follows:

1. On or about 30<sup>th</sup> June 1999, the plaintiff was admitted in the defendants’ hospital suffering from measles and pneumonia.

2. The plaintiff stayed under admission for some time and during his treatment it was recommended that he be put on intravenous fluids.
3. A nurse from the defendants' hospital came and put the plaintiff on drip and asked the plaintiff's mother to watch and call the nurse when the bottle was nearly empty.
4. Shortly afterwards the plaintiff's right hand on which the drip was fixed started swelling.
5. The plaintiff's mother called the nurse on duty and showed her the plaintiff's swollen hand and the nurse assured her it was normal.
6. The plaintiff continued on drip for 2 to 3 days and his hand became more and more swollen but the defendants' employees failed and/or neglected to do anything about it in spite of appeals for the plaintiff's mother.
7. That as a result of the defendants' agents failure to pay attention, the plaintiff's hand was damaged.
8. Subsequently, the plaintiff's hand started drying from the tips of the fingers up to the wrist and it was eventually amputated.
9. The plaintiff alleges that the hand was amputated due to the negligence of the defendants' employees and that the defendant is vicariously liable.

Particulars of negligence were listed by the plaintiff as:

- (a) Failure to pay attention to the plaintiff's concern when the hand started swelling.

- (b) Failure to release tourniquet in time to prevent oedema and subsequent gangrene.
- (c) Failure to provide disease free equipment so as not to infect the plaintiff during treatment.
- (d) Allowing unqualified personnel to administer intravenous drugs and/or fluids into the plaintiff.
- (e) Failure to act with professional knowledge to prevent unnecessary danger to the plaintiff's hand.

In their written statement of defence, the defendant denied all the claims by the plaintiff. They also denied all particulars of negligence as particularized.

At the hearing of the suit the following issues were framed for court's determination.

- (i) Whether the defendants' employees were negligent.
- (ii) If so, whether the plaintiff suffered any injury or loss as a result of the negligence of the defendants' employees.
- (iii) Whether the plaintiff is to the remedies sought.

On issue (i) Mr. Musisi Learned Counsel for the plaintiff submitted that according to ***Winfield and Jolowicz on Tort 12<sup>th</sup> Edition***, negligence as a tort is a breach of the legal duty to take care which results in damage, undesired by the defendant towards the plaintiff. That the ingredients of negligence are;

- (a) A legal duty on the defendant towards the plaintiff to exercise care in such conduct of the defendant as falls within the scope of the duty.

(b) Breach of that duty.

(c) Consequential damages to the plaintiff.

While making reference to the evidence adduced at the trial learned counsel for the plaintiff submitted further that the medical personnel who attended to the plaintiff owed him a duty of care to ensure that drugs were administered to him in a professional way.

That going by the evidence of PW1 and in cross-examination of DW1 and DW2, the medical personnel who attended to the plaintiff in the first three days were in breach of their duty of care to him and were negligent for they administered the intravenous drug wrongly into the plaintiff's hand which caused the fluids to tissue. That they failed to heed to the call of the plaintiff's parents that the hand on which the drugs were administered had swollen and instead responded rudely when they were asked for help. Further that they delayed in rectifying the problem which caused the eventual amputation of the plaintiff's hand at the wrist.

Learned counsel for the plaintiff further submitted that from the evidence adduced on record together with the documents tendered in court it showed that when the plaintiff's hand got swollen with the tissueing intravenous drugs, the nurse on duty was warned by the plaintiff's parents and she did not help but only castigated the parents and told them that she knew what she was doing and that if they knew better they should not have come to hospital.

Learned counsel argued that while it was a usual and normal practice for medical personnel to administer drugs intravenously, it was not normal practice to leave the fluids to tissue and to let the problem to escalate after the plaintiff's parents had warned the hospital staff of such danger.

In reply Mr. Edwin Busuulwa learned counsel for the defendant submitted that PW1 was not the only witness in hospital in the morning and evenings and a greater part of his testimony is information from his wife and therefore hearsay. He submitted that the law is that for negligence to arise there must have been a breach of duty and that breach of duty must have been the direct or approximate cause of loss, injury or damage.

Learned counsel for the defence further contended that the breach of duty is one equal to the level of a reasonable and competent health worker. That to show a deviation from duty, one must prove that it was a usual and normal practice and that the health worker instead adopted a practice that no professional or ordinary skilled person would have taken. Learned counsel further submitted that it is well established that what is expected of a medical practitioner is the general level of skill and diligence possessed and exercised at the time by the members of the branch of the profession to which he or she belongs.

Mr. Busuulwa further submitted that the plaintiff pleaded in paragraphs 10 and 11 of the plaint that the mother called the nurse on duty and showed her the plaintiff's swollen hand but the nurse assured her that it was normal. PW1 testified that it took 24 hours for the defendants to react to the swelling. Learned counsel argued that this evidence was contradicted by the Clinical notes especially P.3 and 60.

Finally, Mr. Busuulwa submitted that the plaintiff was reviewed on the first day of admission by Dr. Lubuulwa but no swelling was seen or even reported by the mother attending to the plaintiff. That the plaintiff was reviewed on the 2<sup>nd</sup> day by Dr. Were but still no swelling was observed or even reported. Learned counsel contended that the swelling was instead seen by the Doctors mentioned above on the 2<sup>nd</sup> day of July 1999 and was immediately managed.

Regarding issue I of negligence the same must be particularly pleaded and strictly proved.

In the case of *Donoghue v Stevenson [1932] AC 502*, to make up a case for negligence, three ingredients must exist as follows:-

1. The defendant owed a duty of care to the plaintiff.
2. There was breach of that duty by the defendant; and,
3. The plaintiff suffered injury as a result of the breach.

The negligence talked about in this case relates to medical specialists. It was held in *Lt. Colonel Christopher Kiyingi Bossa & 2 Others Vs Attorney General & 3 others HCCS No.189 of 2008*, that:

*“Whilst there may not be hard and fast rules laid down to guide medical specialists in each and every case where one is confronted with complications, a high degree of alertness, sense of proportion, prudence and balanced consideration of all facts and circumstances surrounding the case is the best guide on how to act and pursue the best course of action in a particular case, and to deal with certainty and peculiar or specific problem at hand. Under such circumstances, sometimes far from being favorable, time is of essence if lives are to be saved.”*

Whereas the plaintiff alleges that the defendants were negligent, the defendants deny the accusation and contended that they did their best to save the plaintiff and were never negligent at all. From the evidence on record, it is undisputed that the plaintiff was admitted to Rubaga Hospital with severe measles and broncho pneumonia.

Upon diagnosis, treatment was commenced on him as shown in Exhibit D1.

PW1 Wasswa Moses father to the plaintiff testified that he filed this suit on behalf of Najib Semambo in 2002 and by the time, the plaintiff's hand had been amputated. PW1 alleged that the amputation was caused by negligence.

PW1 further testified that on 30<sup>th</sup> June 1999, the plaintiff was taken to Rubaga Hospital where he was admitted at around midday suffering from measles and he was put on drip until the evening. Then he noticed that the arm was swelling and he informed the nurse on duty about it but the nurse told him that she knew what she was doing and should not be disturbed. That the drip stayed the whole night and was removed the following day at 2.00p.m.

On the other hand DW1 stated in cross-examination that the hand started swelling on 2<sup>nd</sup> July 1999. Exhibit D1 indicates that it was on 30<sup>th</sup> June 1999 when the plaintiff was admitted. He was attended to by Dr. Lubuulwa and reviewed by Dr. Were on 1<sup>st</sup> July. There was no mention of the swollen hand in the medical reports. It was not until 2<sup>nd</sup> July 1999 as per Exhibit D1 that the swelling was noticed.

When I reviewed the evidence for the plaintiff, I noticed that the testimony of the plaintiff PW1 was heavily based on what his wife, the plaintiff's mother told him.

PW1 testified that the hospital superintendent admitted that the incident was due to the negligence of the nurses, however the plaintiff did not call the Hospital Superintendent to prove to court the alleged admission of negligence. It was also the plaintiff's case that the drugs were administered from the wrong side of the hand. However DW1 testified to the contrary that a drip can be administered from any side or any part of the body as long as the veins can be seen.

The plaintiff further alleged that the swelling began immediately when the drip was administered. However from the clinical notes, the swelling was noticed later and on the day it was noticed, raising of the hand to rectify the problem was done contrary to the claim that the plaintiff was not attended to and a nurse was allocated to the plaintiff contrary to what the plaintiff testified.

Having analyzed the evidence and submissions by respective counsel, I agree with the submissions of learned counsel for the defendant that the plaintiff was properly managed and hence no negligent acts on the part of the defendant has been proved. His survival is attributed to the timely action taken by the defendant to save his life.

Medicine being a specialized field, to attribute negligence on medical personnel has to be done carefully and with caution. The case of *Sarah Watsemwa Goseltine Vs Attorney General HCCS No. 675 of 2006* relied upon by learned counsel for the plaintiff is very instructive. In that case it was held inter alia that:

*“The principles regarding medical negligence are well settled. A doctor can be held guilty of medical negligence only when he falls short of the standard of reasonable medical care. A doctor cannot be found negligent merely because in a matter of opinion he made an error of judgment. It is also well settled that when there are genuinely two responsible schools of thought about management of a clinical situation, the court could do no greater dis-service to the community or advancement of medical science than to place the hallmark of legality upon one form of treatment.....*

*For negligence to arise there must have been a breach of duty. Breach of duty must have been the direct or proximate cause of the loss, injury or damage. By proximate is meant a cause which in a natural and continuous sequence, unbroken by any intervening event, produces injury and without which injury would not have occurred. The breach of duty is*



*one equal to the level of a reasonable and competent health worker. To show deviation from duty, one must prove that;*

- 1. It was a usual and normal practice.*
- 2. That a health worker has not adopted that practice.*
- 3. That the health worker instead adopted a practice that no professional or ordinary skilled person would have taken.*

In the instant case, it has not been proved that the medical workers who attended to the plaintiff fell short of the standard of reasonable medical care. It is not the duty of this court to unequivocally pronounce itself in support of one method of treatment yet professionals have several options from which to chose the type of treatment to be given to a patient. No breach of duty or deviation has been proved by the plaintiff to warrant penalizing the defendant.

**Issue No. 2:**

Having found that the defendant was not negligent, there is no way this court can conclude that the plaintiff suffered injury due to the negligence of the defendant. It was an agreed fact that the plaintiff was admitted and treated in the defendant hospital between 39<sup>th</sup> June and 9<sup>th</sup> November 1999. His right hand was amputated. Although the plaintiff's hand had no problem at the time of admission it later developed gangrene which led to its amputation.

According to learned counsel for the plaintiff's submissions the plaintiff was put on intravenous drugs administered through the right hand. The drugs tissueed leading to amputation of the hand. That the plaintiff had no gangrene at the time of admission.

However, DW1 Dr. Turyabahika a Consultant Surgeon at Rubaga Hospital Surgery Section testified that he received Semambo in his section after he had spent 2 weeks in Hospital. He read the clinical notes in respect of the patient and found out that, the patient was on treatment for severe measles. Besides the measles, he had dry gangrene of the right hand involving tips of all the five fingers of the right hand. DW1 told court that there are many causes of gangrene the first of which is complication of measles and the second is a drip which has tissue without being attended to for four to five days because the hand has no alternative blood supply. The third cause is the drugs administered during treatment for measles complicated with insufficiency of Oxygen. However DW1 clarified that one can develop gangrene with or without a drip with measles which is a result of blood vessels closing up due to injection. There are also situations when drug induced gangrene may occur which react and constrict vessels.

DW1 explained that what caused the tissue was the escape of fluids from the vessel and that gangrene caused death of the tissue. That when there is tissue you do not take out the canular but you stop the fluid for four hours because if the fluid is not stopped the swelling will worsen and patient can throw away the drip which could have caused bleeding. That tissue can happen when someone has a canular in the vein and accidentally it moves out of the vein into the muscles due to movement of the patient. That this only causes pain and nothing else and no danger is caused by fluids.

According to DW1, what caused the gangrene to the plaintiff was pneumonia leading to less oxygen in the blood and the tissue of fingers. That there was no negligence and that when the fluids got to the tissue they get absorbed and the swelling will disappear.

DW1 further testified that most times the fluid in the tissue would not affect the flow of oxygen to the tissue yet gangrene is caused by lack of oxygen. Finally DW1 testified that it is difficult to pinpoint the actual cause of the gangrene because the patient had several common causes of the same such as measles, pneumonia and vomiting.

Therefore in light of the above evidence, much as the plaintiff's hand was amputated I am unable to fault the defendants. The independent expert witness was very clear on what indeed could have caused the gangrene. The plaintiff had adequate treatment. Not enough oxygen and blood causes death. What caused the gangrene was pneumonia leading to less oxygen in the blood and the tissue of the fingers. The child/plaintiff had no enough water due to diarrhea and vomiting. These conditions made the situation worse.

After carefully considering the evidence on both sides, I do not agree with learned counsel for the plaintiff's submission that the tissing was the cause of the gangrene. The plaintiff was attended to and precautionary measures were taken when the hand had started swelling. When tissing happens the fluids are absorbed. The fluids can only be dangerous if the drip is unattended to for 3 to 4 days. This was not the case here.

Therefore, the amputation of the plaintiff's hand was not due to negligence and the said measure and procedure was taken in the best interest of the patient. The injury caused was timely and necessary in the circumstances.

**Issue No. 3:**

Having found both issues 1 and 2 in the negative, it follows that the plaintiff is not entitled to the remedies sought.

Consequently I will order that this suit be and is hereby dismissed. The plaintiff to pay  $\frac{1}{3}$  of the costs to the defendant in view of the circumstances of this case and the situation of the plaintiff.

I so order.

**Stephen Musota**

**J U D G E**

**20.04.2016.**

**20.04.2016 – 11.25a.m.:-**

Christine Mary Nabbanja for the defendant.

None for the plaintiff.

Milton for Clerk.

Judgment read and delivered in the presence of Counsel for the defendant but in the absence of the defendant and or his counsel.

**Ajji Alex Mackay**

**DEPUTY REGISTRAR/CIVIL DIVISION**

**20.04.2016.**

**Note:**

John Musisi Counsel for plaintiff arrives at the reading and delivery of the Judgment.

**Ajji Alex Mackay**

**DEPUTY REGISTRAR/CIVIL DIVISION**

**20.04.2016.**