

- Employ and retain skilled health personnel and birth attendants in rural and semi-urban areas;
- Train and retain health workers in emergency obstetric care;
- Develop community-led emergency transport systems to cushion the effect of delays in getting medical attention;
- Develop adaptive training curriculum for the education of women and girls on rights to reproductive health.

It is therefore important for advocates to continue to agitate for implementation of measures which will lead toward improved maternal health care, and toward elimination of preventable maternal deaths and ill-health in Africa.

Center for Health, Human Rights and Development and 4 Others v. Nakaseke District Local Administration
(2015), Civil Suit No. 111 of 2012
Uganda, High Court

COURT HOLDING

The deceased died as a result of complications during labour, due to neglect of duty of the doctor who was supposed to attend to her, so that she failed to receive the necessary management and care for the emergency condition she had developed. This was a violation of the constitutional rights of the deceased as well as the constitutional rights of the surviving children.

The defendant, which was the local authority and was responsible for management and operations of Nakaseke Hospital including provision of medical services, was vicariously responsible for the death of the deceased, and the violation of the human rights of the deceased and her surviving children.

Summary of Facts

The plaintiffs in the matter were the Center for Health, Human Rights and Development (CEHURD), the husband, and three daughters of Nanteza Irene (the deceased). They were suing the sole defendant, Nakaseke District Local Administration (Local Authority), the Local Government with oversight over Nakaseke District Hospital (Hospital). The deceased was brought to the Hospital to deliver a child when labour had started. The plaintiffs alleged that during labour, the deceased was diagnosed with a condition known as obstructed labour, making her unable to deliver her baby without the intervention of trained medical personnel. The only trained medical staff member who could manage the condition was a doctor who was supposed to be on duty during this time, but was absent. After some eight hours, the deceased developed complications and died as a result. The plaintiffs therefore claimed damages against the defendant, which had administrative responsibility over the Hospital. The basis of the plaintiffs' claim was that the health rights of the deceased were violated by the defendant, as well as the rights of the children she had left behind.

Issues

The issues before the Court were:

1. Whether the defendant violated the human and health rights of the deceased;
2. Whether the rights of the children she left behind were also violated by the defendant; and
3. Whether the defendant was liable, and if so whether damages should be awarded.

Court's Analysis

The Court examined the timeline of the alleged events from the time the deceased was said to have arrived at the hospital until the time of her demise. The Court found that the deceased was in labour for some eight hours before she succumbed to a ruptured uterus resulting in blood loss. During this time, the doctor on duty who could have provided the appropriate care that the deceased required did not attend to her.

The Court inquired into the particulars of the care that the deceased received. The Court found that the deceased was admitted to the hospital at 1:35pm on the day of her demise, and according to the state of her labour, she was expected to deliver by 5pm. However, a review of her condition before then by the nurse tending to her detected a condition of obstructed labour, an emergency condition which required intervention that only a trained doctor could provide. At 4:30 pm, the staff started to look for the doctor who was on duty, as the person trained to manage the condition of obstructed labour. Unfortunately, the doctor was nowhere to be found before the deceased suffered a ruptured uterus and died.

The Court did not accept the doctor's argument that he had been around the precincts of the hospital. It also rejected the doctor's attempt to justify his absence on other grounds. In fact, the Court referred to paragraph 4.3 of the Code of Conduct and Ethics for the Uganda Public Service which required that public officers seek and obtain permission from a supervisor to be absent from duty, and report any absence from duty to the supervisor or relevant staff. The Court found that the doctor absented himself without communicating his absence to the relevant staff. The Court therefore found that due to the flagrant neglect of duty by the doctor, the deceased did not receive the care and protection she was entitled to under the Constitution of the Republic of Uganda, 1995 (Constitution), especially provided under Article 33(3) which says that "The State shall protect women and their rights, taking into account their unique status and natural maternal functions in society."

The Court also referenced Article 34(1) of the Constitution, which protects the right of children to know and be cared for by their parents or other care-givers. The Court found that the surviving children were denied their mother's care and companionship which was an infringement of their rights. The Court therefore held that the constitutional rights of the deceased had been violated, as well as the constitutional rights of the surviving children and spouse.

The Court then turned to the issue of liability of the defendant. It referred to Section 30 of the Local Government Act, Cap 24 of the Laws of Uganda (LGA), which provides for the functions, powers, and services of a Local Government Council (Council.) It found that the functions of a Council included

provision of health and medical services. It also referred to Article 176(2)(g) of the Constitution which provides that:

The local government shall oversee the performance of persons employed by the Government to provide services in their areas and to monitor the provision of Government services or the implementation of projects in their areas.

The Court also found from testimony of the Local Authority that the defendant was responsible for the operations and management of the Hospital, including the provision of medical services. In fact, the Local Authority had been informed of the predicament of the deceased but failed to take action. The Court cited the principle that a defendant is vicariously liable for the negligent acts and omissions of its servants committed within the scope of the employee's employment. It referred to a decision of the High Court of Uganda in *Christopher Yiki Agatre v. Yumbe District Local Government* (HCCS No.22 of 2004) which applied this principle. The Court therefore held that the defendant was vicariously liable for the death of the deceased and her child, and the violation of the human rights of the deceased and her surviving children.

The Court went on to consider the issue of damages. The Court did not award punitive damages to the defendant because it considered the scarce resources of the Local Authority which are used to run its operations and are frequently in short supply. It however awarded general damages amounting to 35 million Uganda Shillings (equivalent to 10,000 USD).

Conclusion

The plaintiffs' claim succeeded.

Significance

This relatively short judgment appears to be a hybrid between a cause of action in negligence and an action based on violation of constitutionally guaranteed rights. In an action on negligence, the plaintiff is supposed to prove that he or she suffered injury which is attributed to the negligence of the defendant who owed a duty of care to the plaintiff. Actually, the Court could have probably disposed of the matter on this cause of action alone. Indeed, its most important finding was that the doctor on duty caused the death when he neglected the duty of care owed to the deceased. The Court however added that the neglect causing death was a violation of the human rights of the deceased as well as of her children. It referred to constitutional rights only minimally.

The Court's opinion was more focused on the issue of neglect than human rights. The Court said that "the human and maternal rights of the deceased and the rights of the children and surviving spouse, arising under the constitution were violated." It is not clear which provision related to the rights of the surviving spouse. Further, elsewhere in the judgment it uses the language "human and health rights" and "the right to basic medical care," but does not really elaborate on the content of the health rights or right to basic medical care. Overall, the Court was clearer on the neglect of duty causing death than on human rights. It may have been useful if the Court, or indeed counsel, had referred to the international and regional human rights framework and jurisprudence, which may have resulted in a clearer human rights discourse.

Uganda is a party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which issued the first decision from an international body on an individual maternal death, in the case of *Alyne da Silva Pimentel Teixeira v. Brazil* (Communication No. 17/2008 CEDAW/C/49/D/17/2008). In this case, the Committee on Elimination of Discrimination Against Women (CEDAW Committee) considered the case of a woman who had died of complications of pregnancy as a result of delays in being provided with appropriate care by the health system. The CEDAW Committee found that the state violated Article 12 on the right to health, and under Article 2(c) in relation to access to justice, amongst others. It made several recommendations to address the systemic factors leading to her death and discrimination in the health system, which would apply to the Ugandan context, including that the state:

- (a) Ensure women's right to safe motherhood and affordable access for all women to adequate emergency obstetric care, in accordance with General Recommendation No. 24 (1999) on women and health;
- (b) Provide adequate professional training for health workers, especially on women's reproductive health rights, including quality medical treatment during pregnancy and delivery, as well as timely emergency obstetric care;
- (c) Ensure access to effective remedies in cases where women's reproductive health rights have been violated and provide training for the judiciary and for law enforcement personnel;
- (d) Ensure that private health-care facilities comply with relevant national and international standards on reproductive health care; and
- (e) Ensure that adequate sanctions are imposed on health professionals who violate women's reproductive health rights.

This judgment is an important signal that preventable death of women during pregnancy, labour, and childbirth is a human rights issue. Unfortunately, the tragic demise of Nanteza Irene is not uncommon in Africa. Sub-Saharan Africa has some of the highest maternal death rates in the world. Institutional factors such as neglect of duty and delay of care can be contributing factors in these maternal deaths. Public interest court advocacy is therefore one means of bringing attention to such protracted issues concerning the public health system and to hold duty-bearers to account. Future court advocacy on this prevalent problem in Uganda and elsewhere should make use of existing regional and international jurisprudence to assist the courts in crafting useful judgments and effective remedies to advance the reproductive health and rights of women throughout Africa.