

The burden of proving medical negligence



In this particular case, the nurse acted negligently and without due regard to the life of her client. Lawyers say her conduct ought to be punished as a way of deterring her from repeating similar unprofessional conduct. The lawyers asked for Shs50m in damages.

BY SYLVESTER ONZIVUA

In 2018 a client, Irene, seeking family planning services, consulted a nurse who advised her to have an Intra-Uterine Contraceptive Device (IUD) inserted into her uterus as the best family planning method for her. However, in the process of having the device inserted, the nurse perforated Irene's uterus. The nurse and the organization, for which she worked, Marie Stopes, were dragged to the High Court Civil Division, for medical negligence.

Irene's lawyers submitted to court the nurse did not follow the normal practice any other medical person in her position would have followed; that she never followed the procedures required in order to safely insert an IUD. Irene, in her evidence, told court that she experienced a very sharp piecing pain when the nurse was inserting the device. She narrated that when she felt the said unbearable pain she begged the nurse, in vain, to stop the procedure and remove the IUD but the nurse rubbished her pleas.

An expert witness told court that when qualified medical personnel follow the right procedures, clients do not experience any pain when an IUD is inserted. The expert also told court that when the right procedures are not followed, then a client will experience a lot of pain when the uterus is perforated in the course of an IUD being inserted. This, to the lawyers, clearly showed that the nurse never followed the right procedure and was, therefore, negligent.

It was further submitted that an IUD is supposed to be inserted into the uterus and not in any other place, as admitted and confirmed by all the medical doctors who testified in the case. However, in the instant case, the nurse did not insert the IUD in the uterus but inserted the device negligently into the abdomen of the client when she perforated Irene's uterus. All the ultra-sound reports and X-rays tendered in court showed that the device was not in the uterus. To the lawyers, Irene, had on a balance of probabilities, proved that the nurse was negligent when inserting the IUD.

It was vital to prove that Irene suf-

fered as a result of the nurse's negligence. Irene, in her evidence, told court that she suffered severe unbearable abdominal pain and bleeding as a result of the actions of the nurse. She also told court that she was subjected to a painful manual examination in search of the IUD. Her uterus was perforated and her bladder damaged in the botched attempt to insert the device. She was subjected to a laparoscopic repair of the uterine defect and continuous bladder drainage for five days.

The lawyers submitted that Irene experienced a lot of pain and underwent several medical interventions and procedures that subjected her to pain, mental anguish, shock and suffering until she was advised to seek for advanced medical care. Following medical advice, Irene's husband had to look for money and she was flown to Germany where she underwent an emergency surgery to remove the IUD. Doc-

umentary evidence of the surgery was submitted in court and was not contested. To the lawyers the client would not have suffered but for the negligence of the nurse.

Marie Stopes admitted in court that the nurse who unsuccessfully attempted to insert the IUD into Irene's uterus was employed by them when the events complained of occurred. To the lawyers the nurse was in the course of her employment with Marie Stopes when she committed the said negligence. It, therefore, meant that all her actions and omissions in the course of her employment and performance of her duties were performed on behalf of Marie Stopes.

The lawyers submitted that any liability found against the nurse in this case should be attributed to her employer, that is, Marie Stopes. This, to the lawyers, meant that, since it had been proved on a balance of possibilities that

the nurse was negligent in discharging her duties towards the client, Marie Stopes should, therefore, be held vicariously liable for her actions.

The lawyers further submitted that the client was entitled to recover special, punitive and general damages for medical negligence, pain, trauma, mental anguish, shock and suffering, medical expenses, transport and accommodation expenses, interest and costs of the suit.

The settled position in law is that the award of general damages is at the discretion of court and as the law will presume to be the natural and probable consequence of the actions or omissions as proved in the case. A person who suffers damages due to the wrongful action of another person must be put in a position he or she should have been in had he or she not suffered the wrong.

It was not in doubt that the nurse owed Irene a duty of care to exercise such care as a reasonable medical person would exercise, which duty she breached when she negligently and recklessly inserted the IUD into Irene's uterus, perforating it and subjecting her to unbearable pain, suffering, mental anguish, several painful medical procedures and expenses.

Irene, in her witness statement, asked the honourable court to grant her general damages for all the suffering she went through as a result of the negligence of the nurse and she prayed for an award of the sum of Shs1bn as a fair and reasonable amount as compensation for what she was unfairly and unfortunately subjected to. This amount was never challenged by Marie Stopes or the nurse who occasioned her suffering. The lawyers quoted an amount of one billion, five hundred million that court had awarded in an earlier civil suit.

Receipts of expenses totaling to over Shs13 million and €7,000 were submitted to court. These were what Irene spent on medical treatment, transport, accommodation, food and feeding. The receipts were proof of the expenses incurred. According to the lawyers, these amounts arose directly as a consequence of the nurse's negligence and the pain and suffering Irene was subjected to. The lawyers asked the Honourable Court to award Irene these special damages to enable her recover the money she spent due to the negligence occasioned on her.

The lawyers also asked for punitive damages. The rationale behind punitive damages is not to enrich a complainant but to deter an accused person from repeating his or her action. In this particular case, the nurse acted negligently and without due regard to the life of her client. To the lawyers her conduct ought to be punished as a way of deterring her from repeating similar unprofessional conduct. The lawyers asked for fifty million as punitive damages.

The lawyers further asked for court to award an interest of 30% on general, special and punitive damages from the date of filing the suit until payment in full. The lawyers also prayed the Honourable Court to award the client costs of the suit as she had incurred legal costs in pursuing the case in court.

Judgment follows...

Proof of expenses



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