



When a nurse maliciously injected a child

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On April 17, 2019, a police nurse attended to a two-year-old, who had been brought to the police clinic for treatment as she was unwell. It was suspected the child had a malaria infection but the laboratory results indicated that she did not have malaria parasites in her blood. Other investigations showed that the child had an upper respiratory infection. When the nurse was alone with the child and out of the mother's view, the nurse jabbed the child on the left shoulder, which caused her to scream and also bleed from that site. The nurse quickly threw away the needle and syringe, arousing a lot of suspicion. The nurse offered no explanation as to why the child was injected on the left arm, what

injection was given to the child and why the needle and syringe were hurriedly thrown away.

The child's mother reported the matter to the police and the nurse was compelled to take an HIV test as it was feared that the nurse had injected the child with HIV infected blood. The results of the HIV test showed that the nurse was not infected with the virus.

However, on medical advice by the officer-in-charge of the health unit, the child was started on Post Exposure Prophylaxis (PEP) to prevent risk of any HIV infection. It was reported that the child reacted to the treatment, and experienced hair loss on the scalp, as well as swelling of the abdomen.

The nurse was charged and prosecuted for assault occasioning actual bodily harm but was convicted by the Chief Magistrate of the lesser offence of common assault. On September 13, 2019, the nurse was sentenced to pay a fine of Shs2 million, or in default, to serve one year imprisonment. The nurse was also ordered to pay compensation of Shs2 million to the mother of the child. The nurse made both payments.

However, on July 7, 2020, the mother instituted a civil suit against the nurse and the Attorney General. She rested her cause of action on the tort of negligence and battery, seeking general damages and compensation for unlawful injury and body pain. She told court that the nurse injected her child with unknown substances that caused her injury. She contended that this amounted to medical negligence and battery, which caused the child and her parents' mental suffering. The Attorney General was included in the suit on the basis of the doctrine of vicarious liability for the actions of the nurse.

She asked for special damages of Shs2.5 million, as expenses incurred on treatment and welfare of the child at various health facilities, as well as punitive damages of Shs50 million and interest on court awards and costs of

the suit. The Attorney and the nurse denied the claims.

The Attorney General contended in the alternative that the Office of the Attorney General was not liable for the acts of the nurse, who acted maliciously and should be held personally liable. It was also argued that the mother of the child was not entitled to any damages since the nurse had already paid her Shs2 million as directed by the Chief Magistrate at the conclusion of the criminal case.

The nurse insisted that the mother had no cause of action, having been fully compensated. To the nurse, the suit amounted to double jeopardy and was bad in law.

The Attorney General and the nurse prayed for the dismissal of the case with costs.

To court, the gist of the case was whether the action of the nurse of injecting the child in the arm and with an unknown substance amounted to assault, and or battery, and whether this amounted to medical or professional negligence. Court was also duty-bound to determine whether the Attorney General should be held liable for the actions of the nurse and what remedies were available to the parties.

One of the definitions of battery, in law, is the intentional and unlawful action of physically touching of another person's body to which that person has not consented. It may also be defined as touching of another person's body in a violent, angry, rude or insolent manner against his or her will, however slightly. The action may be directly or indirectly. For example, a person who throws a mineral bottle at another with hostile intent or pulls a chair from beneath another, commits battery, albeit indirectly as such acts need not involve actual touching of the person's body. There must be hostile intent, however, to constitute the tort of battery. The act must also be harmful or offensive. There are a wide variety of actions that may con-

stitute battery and these vary from a push to a violent blow or even touching clothes. Battery is both a crime requiring punitive action and a tort requiring compensation.

Court noted that the tort of battery is one of the forms of tort of trespass to person, the other forms of tort of trespass being assault, false imprisonment and malicious prosecution. In this particular case, assault was not part of the specific actions complained of and was, therefore, not part of the issues to be decided on.

Court, nevertheless, noted that the tort of assault in a civil case is an attempt or threat to apply force to another person, whereby that person is put in fear of violence. It consists of putting the other person in a state of apprehension. However as a crime, assault is differently treated under the Penal Code.

Assault in law is an intentional act that causes another to reasonably fear or to be apprehensive of imminent unlawful physical harm or offensive contact, with or without actual physical contact. It is both a crime and a tort, meaning it can lead to criminal charges like common assault, assault with a weapon and aggravated assault. There are various degrees of assault and these vary by jurisdiction but include common assault, assault occasioning actual bodily harm, assault occasioning grievous bodily harm and aggravated assault.

Common assault is occasioned when there is a minor threat or unwanted touching with no serious injury. However, when there is more than trifling injury, such as that which produces minor hurt or pain, then this is assault occasioning actual bodily harm. When the assault results in serious physical harm, this is assault occasioning grievous bodily harm or wounding. Aggravated assault involves factors like use of a weapon or targeting specific victims.

To be continued

Assault defined

Shaking a fist at someone and saying "I will punch you" is an assault. Threatening to punch someone and then actually punching that person is both an assault and battery. Pointing a gun at someone without actually firing it is considered an assault.