

Wednesday, June 17, 2015

The Center for Health Human Rights and Development & 4 others v. Nakaseke District Local Administration, Civil Suit No. 111 of 2012

Nature of the Case

The case was brought on behalf of a pregnant woman who died in a hospital while awaiting obstetric care. It considers whether the hospital failed to provide appropriate obstetric care and management, thereby violating her rights as well as those of her surviving children.

Summary

On May 5, 2011, Irene Nanteza arrived at Nakaseke Hospital with her husband. Although a nurse confirmed the signs of obstructed labor and called the doctor on duty, the doctor did not arrive until Nanteza had been in labor for about 8 hours. The patient died of a hemorrhage and ruptured uterus. Despite the hospital administrator's awareness of Nanteza's condition and the doctor's absence prior to her death, the Court noted that it was not shown that he made any effort to transfer her to another hospital.

The court held that Nanteza's human and maternal rights under Article 33(3) (on women's rights) and her children's rights under Article 34(1) (on children's right to "know and be cared for by their parents") of the Ugandan Constitution were violated. The doctor on duty had failed to abide by the Code of Conduct and Ethics for the Uganda Public Service by being absent from duty without permission from or notification of his supervisor. This absence led to a failure to provide the deceased with "the timely, immediate and emergency obstetric care that she needed to overcome the 'obstructed labour' condition she was in." Due to the Nakaseke District Local Government's responsibility to manage the hospital and its employees, under both the Local Government Act and Article 172(2)(g) of the Constitution, the court found the District Local Administration vicariously liable for the doctor's negligence. However, the court noted with concern the omission of the doctor and hospital administrator as parties, which denied the plaintiffs aggravated or exemplary damages. Nevertheless, the court found that Nanteza's husband and children could still seek to institute criminal proceedings against the doctor and administrator for neglect of duty. Finding that the Local District Council barely had adequate resources for its operations and management, the court declined to award punitive damages. However, it awarded a sum of 35 million Ugandan shillings (about 15,000 USD) in general damages. In so doing, the court considered the human rights violations, the "terrible agony" that Nanteza underwent, her husband and children's anguish, and the need to avoid "cripp[ing]" the district referral hospital's operations.

Enforcement of the Decision and Outcomes

The amount of general damages awarded in the case has not yet been paid. This may still take some time as the decision was only issued very recently. A judgment decree to effect the judgment has already been filed and the Nakaseke District Local Government is expected to serve the plaintiffs with the payment schedule in due time. In the case of non-payment of damages, the plaintiffs have the option of enforcing execution. It is to be noted that the Court has granted interest of 6% per annum on the award of general damages, from the date of judgment till payment on full.

Significance of the Case

This case establishes a precedent that Ugandans can sue health-workers for medical negligence and offers a mechanism to demand accountability from the government as to how it is investing in social and economic rights such as health. This is important given that sixteen Ugandan women die in child birth daily due to preventable causes [Uganda Demographic and Health Survey, 2007, p. 282] Many of these deaths could be avoided if the government prioritized health sector investments to ensure retention and motivation of health workers.

Furthermore, this decision also establishes a precedent that Ugandans can use human rights arguments to address medical negligence.

It is to be noted that the Ugandan Constitution does not provide for the right to health. By declaring that emergency obstetric care is justiciable under the Ugandan Constitution, the decision constitutes a significant step towards establishing the right to health in Uganda. This case is in keeping with certain current developments in Uganda relating to economic, social and cultural rights (ESCR) and the Ugandan Constitution. Consider that, on 29th May, 2015, the Initiative for Social and Economic Rights (ISER), a member of ESCR-Net's strategic litigation working group, led other organizations to appear before the Legal and Parliamentary Affairs Committee of the Ugandan Parliament. This group argued for the incorporation of all ESCRs in the Bill of Rights under the Constitution. Their effort was supported by several fellow members of ESCR-Net's Strategic Litigation Working Group including, the International Commission of Jurists, Amnesty International, Hakijaami, Center for Reproductive Rights, Legal Resources Centre and the Programme on Human Rights and the Global Economy. It may be hoped that through cases such as this one and also through civil society efforts, ESCR may be more fully realized in Uganda.

Groups Involved in the Case

The Center for Health, Human Rights and Development (CEHURD) took on this case pro bono as legal counsel for the family of the deceased Irene Nanteza.