



The Center for Health, Human Rights and Development & Ors. v. The Executive Director, Mulago National Referral Hospital & Anr.

Civil Suit No. 212 of 2013

Country: Uganda

Region: Africa

Year: 2017

Court: The High Court of Uganda at Kampala

Health Topics: Child and adolescent health, Health care and health services, Health information, Hospitals, Sexual and reproductive health

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment, Right of access to information, Right to bodily integrity, Right to family life, Right to health

Facts

The 2nd and 3rd plaintiffs are husband and the wife. The 2nd plaintiff delivered two babies in the defendant hospital's general ward but was discharged with only one baby. The defendants state that one of the babies was stillborn. The 2nd and the 3rd plaintiffs filed a police report for the loss their baby and thereafter were handed over a body of a dead baby by the mortuary at the hospital.

The 2nd and 3rd plaintiff did not believe that it was the body of their baby and further DNA examination showed no biological connection between the 2nd and 3rd plaintiffs and the body that was given to them. The plaintiffs therefore filed this suit for the unlawful disappearance of their baby.

The issues framed were whether the acts of the defendants has violated the rights of the missing child under Article 34(1) of the Constitution (right to know and be cared by his/her parents); whether the acts of the defendants violated the right to access health information and right to health under Article 41(1), 8A and 45 of the Constitution; whether the acts of the defendants violated the plaintiffs' right to family life; whether the plaintiffs were subjected to cruel, inhuman, degrading treatment and psychological torture in violation of Article 24 and 44(a) of the Constitution.

Decision and Reasoning

The Court found that the defendants had violated the plaintiffs' right to access information under Article 4(1) of the Constitution and further the plaintiffs were inflicted with psychological torture, which is a violation of Article 24 and 44 of the Constitution, Article 7 of the ICCPR and Article 5 of the African Charter.

The Court stated that the fact that the hospital staff did not first inform about the second baby being born dead and thereafter handed them the body of a baby, which was not theirs points to the fact of systemic problem of handling dead bodies in the medical facilities in Uganda. The Court further stated that the plaintiffs did not get a change to see their baby and to carry on the last rites for their dead baby.

Decision Excerpts

“As an African couple, the 2nd and 3rd plaintiffs were denied the opportunity to carry out burial rituals for their child which in my view would have constituted a fundamental part of their healing process. These plaintiffs have been denied the opportunity have closure in regard to their second baby. By denying them the opportunity to bury their baby the Defendants compounded their pain and subjected them to more psychological torture. Clearly this violated their right to health and freedom from torture as enumerated in the legal instruments above.” (Para 53).

“This case also points to a bigger problem in the country. PW1 explained for the 9 months of her pregnancy, she only went for antenatal care once in the early stages and for the rest of the pregnancy she was in the village taking local herbs. PW1 did not even know that she was carrying two babies in the pregnancy. In the circumstances of this case, it is easy to infer that the reason PW1 has only one antenatal visit and did not know she had twins was because she could not afford the costs of accessing health care services. This

points to a violation of the obligations of Uganda enumerated above. In particular it points to a violation of the obligation to fulfill the right to health.â€• (Para 54)

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