



## Georgina Ahamefule v. Imperial Medical Centre

Suit No. ID/16272000

**Country:** Nigeria

**Region:** Africa

**Year:** 2012

**Court:** High Court of Lagos State

**Health Topics:** Health care and health services, HIV/AIDS, Infectious diseases, Informed consent, Medical malpractice, Sexual and reproductive health

**Human Rights:** Freedom from discrimination, Right to health

### Facts

The Plaintiff was a nurse at a medical centre. Defendants were the medical centre and a doctor at the centre. While employed at the medical centre, the Plaintiff became pregnant and developed a skin disorder. She sought medical attention and the Defendant doctor performed several diagnostic tests. Neither the nature nor the outcome of the tests was disclosed to the Plaintiff; rather, she was asked to take a two-week medical leave and was referred to a hospital for further testing.

At the hospital, blood samples were taken from both the Plaintiff and her husband; the nature of the tests was not disclosed. On a subsequent visit to the hospital, the Plaintiff was informed that she had tested positive for HIV, and her husband had tested negative. The Plaintiff was afforded neither pre-test nor post-test counselling services.

The Plaintiff confronted the Defendant doctor and asked why she was not informed of his testing results prior to being referred to the hospital. The Defendant doctor reacted to the Plaintiff with hostility and requested that she collect a letter from the secretary. The letter informed the Plaintiff that she had been terminated from her position at the medical centre. The Plaintiff claimed that she did not receive compensation due to her following her termination.

The Plaintiff further claimed that the emotional and psychological trauma she suffered as a result of the Defendants' actions contributed to a sudden miscarriage that she subsequently suffered. She claimed the Defendants denied her access to medical care at the medical centre and refused to perform the requisite cleaning operation following the miscarriage because of her HIV status.

The Defendants claimed the Plaintiff was lawfully terminated based on humanitarian grounds, for reasons of public safety.

The Plaintiff claimed her termination violated section 42(1)(a) and (2) of the Constitution of Nigeria, and article 2 of the African Charter on Human and Peoples' Rights (the Charter). The Plaintiff also noted that section 11(1) and (2) of the Protection of Persons Living with HIV/AIDS Law of Lagos State guarantees employment to people living with HIV, and that section 14(1) of that law provides that any person discriminated against on the basis of HIV can sue in a court of competent jurisdiction.

The Plaintiff also claimed that the Government of Nigeria was required to ensure that its citizens were not denied access to medical care pursuant to the right to health in article 16 of the Charter and article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

### Decision and Reasoning

The Court held that when an employer gives a reason for terminating an employee, it must justify the reason. In this case, the onus was on the Defendants to prove that the Plaintiff's state of health posed a danger to the medical centre's staff and patients, as well as the public at large, as claimed by the Defendants. The Court held that the Defendant failed to show how the Plaintiff, an auxiliary nurse who did not participate in delivery procedures or operations involving the handling of blood or sharp objects, posed such a danger. The Court held that the Plaintiff's termination was based on malice, done in bad faith and wrongful.

Without providing further explanation, the Court declared that the Defendants engaged in battery as they

conducted an HIV test without her informed consent, negligence for not providing pre-test and post-test counselling services, a violation of the right to health for denying the Plaintiff medical care on grounds of her HIV positive status.

The Court ordered the Defendants to pay the Plaintiff 5 million naira for her wrongful termination, and 2 million naira for unlawfully testing her for HIV without her informed consent, and for the Defendants' negligence.

### **Decision Excerpts**

"It is my humble observation that the Defendants have not in any way able to show how the Claimant who is an auxiliary Nurse and does not participate in the delivery of pregnant women and carried out operation which has to do with handling of blood and sharp objects such as needles, knives and other, serve as a risk to the staff and patients of the hospital"

"I hereby declare as follows: ... (iv) A declaration that the Defendant's action in denying the Plaintiff medical care on grounds of her HIV positive status constitutes a flagrant violation of the right to health guaranteed under article 16 of the African Charter on Human and Peoples' Rights (Ratification and enforcement) Act Cap. 10 Laws of the Federation of Nigeria and article 12 of the International Covenant on Economic, Social and cultural Rights (ratified by Nigeria in 1993)"

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