

CHALLENGING MULAGO HOSPITAL ON NEWBORN CARE AND MANAGEMENT

This is a simplified version of the brief on the groundbreaking Mulago case¹ in which Jennifer Musiimenta and her husband Michael Mubangizi – together with Center for Health, Human Rights and Development (CEHURD) – took Mulago National Referral Hospital to court after the mysterious disappearance of the couple's baby in the hospital shortly after birth. The objective of this simplified brief is to explain the case and implications of the Court's judgment in a way that can be understood by all stakeholders.

CONTEXT

Mulago Hospital is the main and oldest national referral hospital and one which serves patients from across the country as well as from neighboring countries. Being a government health facility, the hospital is open to all persons but is mainly frequented by low income earners. It also serves a few persons who are willing and able to pay in its private wing, where services are apparently better. Yet, being the main national referral hospital, Mulago also receives complicated cases referred by other public and private health facilities from all over the country. The hospital's staffing level is estimated at 89%, according to the 2016/17 *Annual Health Sector Performance Report*.

One of the busiest units in the hospital is the labor ward. In 2015, the New Vision newspaper reported that Mulago Hospital had the busiest labor suite in the world, with an average of 80-100 births per day, of which between 20-25 were delivered by caesarean section. According to the New Vision, in 2010 the hospital had

1 Civil case No. 212 of 2013 in the High Court of Uganda: Center for Health, Human Rights and Development and Others versus Executive Director Mulago Hospital and Others.



31,201 births; in 2011, it had 33,331; in 2012, it had 33,231; while in 2013 it had 31,400.

However, official figures from the 2015/16 Annual Health Sector Performance Report show a much lower figure for the financial year, during which deliveries at the hospital were estimated at 11,455. This could be attributed to the fact that the hospital was partially closed for major renovations, including the construction of a new 450-bed specialized Maternal and Neonatal Hospital within Mulago Hospital Complex. The completion of the renovations should therefore, improve maternal and child health care services.

FACTS OF THE CASE

Ms Jennifer Musiimenta went to Mulago Hospital with labor pains on 14th March 2012 and delivered a set of twins on the same day but one of the babies mysteriously disappeared. The Hospital informed her and her husband that the second baby was born dead but could not produce the dead body. Eventually, on 17th March 2012, the Hospital gave the couple a dead body of a baby, which the couple rejected because it was of a baby who had just died. Later, DNA examination confirmed that the body was not of their ba

by. The couple were aggrieved that their

baby had disappeared in the hospital and they were denied information relating to their baby.

The couple and CEHURD therefore took Mulago to Court for the unlawful disappearance of their baby, demanding that the hospital surrenders their baby – dead or alive. In addition, they sought several declarations and orders from court. The case was heard by Lady Justice Lydia Mugambe Ssali of the High Court, who delivered her judgment on 24th January 2017.

SUMMARY OF THE ISSUES PUT TO COURT AND DECISIONS MADE

The issues presented to Court for decision consisted of violations of the Constitutional rights of Ms Musiimenta, her husband and their child (the subject of the case), as summarized in the table below.

ISSUE	DECISION OF COURT	EXPLANATION OF COURT
Violation of the rights of the baby	There was no violation of the rights of the baby	The second baby was born dead, and as such, the death of the baby cannot be blamed on negligence of the hospital staff that handled the delivery.
Violation of the right to access health information	The hospital staff violated the right of the couple to information by failing to give them information regarding their baby	The couple were entitled to free and easy access to know all about their baby (even when the baby was dead) but this was not done.
Violation of the right to health	There was a violation of the right to health	The staff who attended to Musiimenta were over-loaded with work, which hampered their efficiency.
Violation of the right to family	There was no violation of the right to family	The second baby was born dead
Violation of freedom from torture, inhuman and degrading treatment	<ul style="list-style-type: none"> • There was a violation of freedom from torture • There was no violation of freedom from inhuman and degrading treatment 	The couple suffered psychological torture due to failure to be availed the body of their baby to have a decent burial for it.
Remedies: Damages of Ushs 300 million	Court awarded the couple Ushs 85 million in damages	<ul style="list-style-type: none"> • Ushs 300m was “manifestly too high” in the circumstances of this case where not all issues framed were resolved in the couple’s favor. • In deciding on the damages, the Judge considered the fact that the couple suffered psychological torture due to failure to be availed the body of their baby; failure to have a decent burial for their baby; and the violation of their rights to health and to information.

The Judge also concluded that the “case also points to a systemic problem concerning respect and handling of the dead generally and babies in particular while in medical facilities in Uganda”.

According to the Judge, “All these instances when put in context point to the bigger problem at the National Referral Hospital and paint a bleak picture; they demonstrate the psychological torture that parents and relatives endure when they go to Mulago Hospital for delivery of their babies”. It is this conclusion relating to the systemic nature of the problem that informed the orders the Judge issued in the judgment.

ORDERS OF THE COURT

Besides making determining the issues that were agreed by the parties to the case, the Judge issued orders that were not part of the requests that complainants made to Court. The orders were consequential and arose from the Judge’s conclusion that violations against Ms Musiimenta and her husband seemed widespread and arose from a systemic problem in Mulago Hospital as far as the handling of newborns – dead or alive – is concerned. The Judge therefore issued the following orders in the judgment to address the systemic problems that she said cause parents and relatives to endure psychological torture when they go to the national referral hospital to deliver their babies:

- 1) The Police must conclusively investigate the disappearance of the baby and file a report on it in Court within 6 months from the date of the judgment, at the latest.
- 2) Ms. Mariam Mandida, the midwife who handled the baby at birth, must be held to account for the movement of the baby from her care.
- 3) Mulago Hospital shall take steps to ensure and/or enhance the respect, movement and safety of babies, dead or alive, in the hospital.

- 4) For 2 years from the date of the judgment, the Executive Director of Mulago Hospital shall make written reports, every 4 months, regarding the steps or measures taken in enhancing the respect, movement and safety of babies, and submit them to CEHURD.

- 5) CEHURD shall have free access to Mulago Hospital and continuously oversee the implementation of the measures in order No.3 above and make counter reports on their effectiveness or otherwise within 2 months from the date of receipt of the hospital’s reports.

- 6) CEHURD shall ensure that Ms Musiimenta and her husband access psychosocialcare and counseling services as part of their healing.

Mulago Hospital shall pay for any attendant costs in this regard.

- 7) Ms Musiimenta and Mr Mubangizi are awarded Ushs 85 million as general damages for the psychological torture, violation of their rights to health and access to information resulting from the disappearance of their baby at Mulago Hospital.

IMPLICATIONS OF THE COURT ORDERS AND DECLARATIONS

The main actors in the orders issued by Court include Police, Mulago Hospital, the Attorney General (on behalf of Government), and CEHURD. It should be noted that Court left the door open to more orders, especially with respect to the order regarding the handling of babies in the Hospital. This means that Court could issue additional orders in that respect if it deems it fit and could in deed be approached by any of the parties to the case with such a request.

PARTY	IMPLICATIONS
Police	<p>Court ordered Police to conclusively investigate the disappearance of the baby and report back to Court within 6 months. Police has the mandate of investigating crimes as part of its broad responsibility of preventing and detecting crime. The order implies that Police is expected to investigate the circumstances under which the baby/body disappeared, the persons involved in its disappearance, and find out its whereabouts.</p> <p>In its investigations, Police is also expected to determine whether any offences requiring prosecution were committed. This is related to the second order, which requires the midwife to be held to account for the movement of the baby from her care. Police is expected to determine whether there were acts on the part of the midwife that constitute an offence for which she could be prosecuted.</p>
Mulago Hospital	<p>Several orders were directed at Mulago Hospital, the first defendant in the case. The order that requires the midwife to be held to account, is relevant to the Hospital as well.</p> <p>While Police was ordered to undertake criminal investigations, the Hospital is expected to carry out simultaneous administrative and disciplinary inquiries into the conduct of its staff Ms Mandida with respect to how she handled the newborn or its body and determine if flouted any procedural guidelines applicable in the hospital and her profession.</p>

Disciplinary action should be undertaken depending on the findings of the inquiry, putting in mind that the midwife is entitled to the right to a fair hearing. The entire process should be documented and a report submitted to Court and to CEHURD.

The Hospital was ordered to put in place or to enhance the procedures for handling the movement and safety of babies. This order seeks to close the gaps that resulted into the case, so that violations of this nature do not occur at Hospital in future. It is not clear from the judgment what the current procedures for handling newborn babies (alive or dead) at the Hospital are. What is clear from the judgment is that whatever procedures are in place, they are either ineffective or not being adhered to.

The proper approach in compliance with this Court order is, in the first place, for the Hospital to elaborate the existing procedures, review them and find areas of improvement. Otherwise, if the problem is with implementation, the Hospital should still show how it intends to address the implementation challenges. In all cases, the Hospital should indicate clear time-lines.

The orders require the Hospital to report every 4 months on the progress of improving the handling of babies born in the Hospital, and to give CEHURD free access to the hospital to assess such progress. Court expects that over the 2-year period, the progress – overseen by CEHURD – should be sufficient to solve the Hospital’s systemic challenges in handling children born alive or dead in the Hospital.

Another order requires Mulago Hospital to meet the cost associated with the provision of counselling and psychosocial care to Ms Musiimenta and her husband. The order clearly states that the services shall be sourced by CEHURD and should be accessed by Ms Musiimenta and her husband until the service provider is satisfied that the couple no longer need it. This Court order calls for CEHURD and Mulago Hospital to work out the modalities of these services.

Court further ordered Mulago Hospital to pay Ushs 85 million in general damages to Ms Musiimenta and her husband.

Attorney General	<p>The Attorney General is the Chief Legal Advisor to Government; is responsible for ensuring that all Government agencies comply with the law; and by default appears in almost all Court cases involving Government. This mandate derives from Article 119(3) of the Constitution. In this respect, with relation to this case, the Attorney General was both a party as a defendant, and as legal counsel to Mulago Hospital by virtue of the fact that the Hospital is a Government facility. As such, the Attorney General has the responsibility to ensure that Mulago Hospital complies with all the orders of the Court. In broader terms, the Attorney General has the obligation to ensure that violations of the kind in Musiimenta's case do not recur.</p>
CEHURD	<p>Court ordered CEHURD to receive written reports regarding the Hospital's progress in improving safety in handling of babies delivered in the facility; assessing the progress of the Hospital in that regard and to report to Court accordingly; and as already explained, to ensure Ms Musiimenta and her husband access psychosocial support and counselling. To effectively comply with these orders, CEHURD needs to work with experts in maternal and newborn health and care, since it appears it will, in this case, be acting on behalf of Court in implementing some of the orders.</p>

CONCLUSION

The Mulago case demonstrates that even lay people such as Ms Musiimenta and her husband Mr Mubangizi can successfully claim their rights through litigation. The challenge however is that not many actors are inclined and willing to pursue the line of public interest litigation. This is a call to non-governmental actors to take interest in public interest litigation as an advocacy strategy and enforcement tool for human rights. It is important to note that this case only highlights a localized case of violations of reproductive and other health rights, and that more work is needed to address current challenges. The issues raised by the Courts should be considered broadly referring to all public facilities in Uganda.



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