



CEHURD
social justice in health

MARKET WOMAN GETS JUSTICE AFTER SEVEN (7) YEARS

COURT HOLDS MULAGO HOSPITAL LIABLE FOR THE DISAPPEARANCE OF A NEWBORN



Kampala – Uganda. The High Court in Kampala has held Mulago Hospital liable for the loss of a baby delivered within its premises. The judgment followed a court case that was filed by Center for Health Human Rights and Development (CEHURD) and the mother of the lost baby, Ms. Nakayima Fatumah against the Executive Director of Mulago National Referral Hospital and Attorney General. The Civil Division of the High Court presided over by Hon. Mr. Justice Phillip Odoki, declared and ordered that the failure of Mulago Hospital to give Nakayima Fatumah her baby after birth and provide her with information concerning the whereabouts of her baby dead or alive, is a violation of her right to health. Court also ordered that Fatumah be paid a sum of UGX 50,000,000/- as compensation, given the terrible psychological torture she suffered which affected her mental wellbeing.

As a background, on 26th December 2015, Nakayima Fatumah went to Mulago National Referral Hospital with labor pains and was admitted in Ward 5C. The following morning, she was transferred to the theatre for an emergency caesarian section. She delivered by Caesarean operation. Upon gaining her consciousness, she asked for her baby but she was informed by a health worker that she gave birth to a baby boy who weighed 3.5 kgs, who died shortly after birth. When she asked for the body of the baby, she was informed that it could not be traced. The baby or its body has never been found.

Ms Nakayima then approached CEHURD for assistance and on 10th May 2016. CEHURD wrote to Mulago Hospital demanding accountability of the missing baby but no responses were given. This left CEHURD and the mother of the missing baby with no option but to seek legal redress in courts of law.

COURT RULING

Following a litigation journey of over 7 years, the High Court of Uganda through Hon Justice Phillip Odoki recognized and upheld the fundamental right to Health and ordered that;

- ◆ *The failure of Mulago National Referral Hospital to give Nakayima Fatumah her baby after birth and to provide her with information concerning the whereabouts of her baby, dead or alive, is a violation of her right to health recognized under Article 45 of the Constitution, Objectives XIV and XX of the National Objectives and Directive Principles of State Policy of the Constitution, and other International Human Rights Instruments.*
- ◆ *The Hospital is ordered to pay Nakayima Fatumah compensation of UGX 50,000,000/= (Uganda Shillings Fifty Million Shillings Only) considered the amount of phycological trauma that the officials of Mulago National Referral Hospital made her go through regarding the disappearance of her baby.*

In his judgement, Hon Justice Phillip Odoki emphasized that Ms Nakayima Fatumah suffered terrible psychological torture which affected her mental wellbeing and was a violation of her right to health because all her efforts to secure her baby after delivery, dead or alive were not successful. She was so restless, had to report to the Police for help and even went to the mortuary but all in vain.

This judgment is a landmark judgment and goes to the core of safety in public health facilities in Uganda. While this is not the first case of loss of babies in public health, his judgment provides an opportunity for the public health system in Uganda to rethink and invest in safety in public health facilities. This will save loss of public resources in potentially unnecessary compensations.

We call on government to put in place mechanisms that ensure effective tracing of new born babies from the point of delivery to the point of departure from health facility. The precedence set by this case implies that, public health facilities are accountable for any loss of a new born child in health facilities.

Health facilities across the country must be safe places for mothers to deliver and have their rightful babies

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