



**IN THE HIGH COURT OF SWAZILAND  
JUDGMENT**

**Civil Case No. 2321/09**

In the matter between

**NCAMSILE EUNICE TSELA**

**PLAINTIFF**

And

**PYSCHIATRIC CENTRE ALSO KNOWN AS  
MENTAL HEALTH CENTRE  
ATTORNEY GENERAL**

**1<sup>ST</sup> DEFENDANT**

**2<sup>ND</sup> DEFENDANT**

**Neutral citation**                      **Ncamsile Eunice Tsela vs Psychiatric Centre also known as Mental Health Centre and Another (2321/09) [2014] SZHC 81, 10 April (2014)**

**Coram:**                                      **Ota J.**

**Heard:**                                        **18 March 2014**

**Delivered:**                                **10 April 2014**

**Summary:**                                **Civil procedure: negligence; principles thereof; standard of care required of medical practitioners considered held: staff of 1<sup>st</sup> Defendant were negligent in administering an injection in the Plaintiff's artery which caused her severed vascular**

**injury, leading to gangrene and consequent amputation of her right arm.**

## **JUDGMENT**

### **OTA J.**

[1] In this case, the Plaintiff sued the Defendants jointly and severally for damages in the sum of E1,690,922=00 (One Million, six Hundred and Ninety Thousand, Nine Hundred and Twenty Two Emalangen).

[2] The claim is predicated on an alleged negligence of the staff of the 1<sup>st</sup> Defendant, who were acting within the cause and scope of their employment, who are alleged to have administered an injection in the Plaintiff's artery which caused her severe vascular injury, leading to gangrene and consequent amputation of the Plaintiff's right arm.

[3] In para 4 of the minutes of the pre-trial conference which held on 27 April 2010, the parties stated as follows:-

**“4. The parties are also is agreement that the court has to first determine whether the cause of the damage to the Plaintiff was the negligence of the First Defendant and thereafter, if the court finds on the affirmative, proceed to deal with the quantum of damages”**

[4] The enquiry before me is the first stage on the negligence and liability of the 1<sup>st</sup> Defendant as agreed by the parties.

[5] It is pertinent for me to discuss at the outset the concept of negligence for a better understanding of my reasoning and conclusions reached.

[6] In my decision in the case of **Aliki Enterprises (Proprietary) Limited v Punky Mhlongo and Another, Civil Case No. 1983/10, para [38]**, I captured this concept in the following words:-

**‘[38] The concept of negligence is that a person is blamed for an attitude or conduct of carelessness, thoughtlessness or imprudence because, by giving insufficient attention to his actions he failed to adhere to the standard of care legally required of him. The judicially accepted criterion in establishing whether a person has acted carelessly and thus negligent, is the objective standard of the reasonable person, the bonus paterfamilias’.**

[7] The test for negligence generally, and as it relates to medical practitioners in particular, was authoritatively elucidated by learned counsel for the Plaintiff, Mr Dlamini, in para 10 of the Plaintiff’s heads of argument as follows:-

**“10.1 In Shabbier Carrim v The Premier of the Gauteng Province and Another, Unreported Case No: 04/12338 (Witwatersrand Local Division) per PA Meyer J. at page 5-6 the test for negligence was stated as follows:-**

**‘(11) The test for negligence was thus formulated in Kruger v Coetzee 1966 (2) SA 428 (a) at page 430;**

For the purposes of liability culpa arises if

- (a) A diligens paterfamilias in the position of the defendant – would foresee the reasonable possibility of his conduct.
    - (i) injuring another in his person or property and causing him patrimonial loss:
    - (ii) would take reasonable step to guard against such occurrence, and
  - (b) the defendant failed to take such steps’
- (12) Once the kind of harm, albeit not the degree or extent thereof, is reasonably foreseeable, all harm of the same kind must be compensated see *Botes v Van Deventer* 1966 (3) SA 182 (A) at pp 190-191.
- (13) In *Van Wyk v Lewis* 1924 AD 438 at page 444, Innes CJ said the following about the applicable test for determining whether a medical practitioner was negligent in the performance of his or her duties;

‘It was pointed out by this court, in that “a medical practitioner is not expected to bring to bear upon the case entrusted to him the highest possible degree of professional skill, but he is bound to employ reasonable skill and care. And in deciding what is reasonable the court will have regard to the general level of skill and diligence possessed and exercised at the time by the members of the branch of the profession to which the practitioner belongs. The evidence of qualified surgeons or physicians is of the greatest assistance in estimating that general level.’

- (14) On the question of the meaning of reasonable care and skill Wessels J.A also in *Van Wyk v Lewis* (Supra) said the following at page 457;

‘You can only expect of surgeons in South Africa that degree of skill and that degree of care which is generally to be found in surgeons practicing in this country.

And at page 461-462;

We cannot determine in the abstract whether a surgeon has or has not exhibited reasonable skill and care. We must place

ourselves as nearly as possible in the exact position in which the surgeon found himself when he conducted the particular operation and we must then determine from all the circumstances whether he acted with reasonable care or negligently. Did he act as an average surgeon placed in similar circumstances would have acted, or did he manifestly fall short of the skill, care and judgment of the average surgeon in similar circumstances? If he falls short he is negligent”.

[8] The question here is, were the employees of the 1<sup>st</sup> Defendant negligent in administering the injection to the Plaintiff?

[9] In support of this issue, the Plaintiff alleged the following facts in her particulars of claim.

**“(5) On or about the 27<sup>th</sup> November 2007, in Manzini, First Defendant’s members of staff who were acting within the cause and scope of their employment, administered two injections, one on Plaintiff’s right hand and the other one on the posteria. The injection on the right arm was administered into an artery. As a result Plaintiff was hospitalized for a period of 5 weeks.**

**(6) The act of injecting Plaintiff in the artery was negligent and wrong such that the Plaintiff suffered severe vascular injury.**

**(7) As a result of the aforesaid negligent act by First Defendant, considerable injury was done to Plaintiff’s arm in that she suffered severe arterial vascular injury as a direct result of the injection or consequent compartment syndrome to cause loss of ischemia (loss of blood supply) to the tissues of the forearm leading to gangrene (death of tissue). When gangrene was established amputation of the dead tissues up to the level of viability was inevitable”**

[10] In their plea the Defendants met the foregoing allegations of fact as follows:-

**“3. AD PARAGRAPH 5 THEREOF**

**Defendants deny only that the injection on the right arm was administered into an artery and put the Plaintiff to strict proof thereof.**

**3.1 Defendants aver that it is standard practice that an injection be administered into a vein and not into an artery.**

**3.2 Defendants further aver that their staff members are qualified medical personnel who administer injections on a regular basis without there being complaints of negligence as such they could not have deviated from their laid down practice.**

**4. AD PARAGRAPH 6 THEREOF**

**Defendants deny the entire contents of this paragraph and the Plaintiff is put to strict proof thereof.**

**4.1 Defendants aver that the injection was administered into the Plaintiff’s vein in accordance with the standards that are displayed in any legally recognized medical facility.**

**5. AD PARAGRAPH 7 THEREOF**

**Defendants deny the entire contents of this paragraph and put the Plaintiff to strict proof thereof.**

**5.2 Defendants reiterate that the injection was administered into the Plaintiff’s vein as procedurally required and that Plaintiff could not therefore have suffered the injury that is alleged.**

**5.2 Defendants aver that the alleged severe arterial vascular injury, if indeed there was any, may have been a result of complications in surgery which are not attributable to human error”.**

[11] In proof of her case the Plaintiff testified and called two other witnesses, namely, PW1 Martha Mthengwa Tsela who is her mother and PW2 Dr M Jere an orthopaedic surgeon based at the Mbabane Clinic.

[12] The Plaintiff's case in sum is that on 27 November 2007, the Plaintiff was praying and speaking in tongues and was suspected by her relatives to be mentally disturbed. PW1, her mother and her Uncle, with the help of some police officers, conveyed the Plaintiff to the Manzini Psychiatric Hospital.

[13] At the hospital two injections were administered to the Plaintiff by a nurse. One in her right arm and the other in her buttocks. Plaintiff and PW1 told the court that the Plaintiff's right hand was normal when they arrived at the hospital and prior to the injection. They also told the court that before the nurse administered the injection on Plaintiff's right arm, she made a comment as to whether she would be able to find a vein. This notwithstanding, the nurse proceeded to administer the injection.

[14] It was further the Plaintiff's evidence that she started feeling pains continuously in the arm after the injection was administered. She complained to the nurse who bandaged the arm and hung the bandage round her neck to support it. The nurses also gave her some panado to ease the pain but this did not help. On 2 December 2007 her right forearm was swollen and the finger tips were discoloring. She was taken to the Mbabane

Government Hospital but did not get any assistance as the x-ray machine was dysfunctional.

[15] On 3 December 2007, she was taken to the Raleigh Fitkin Memorial Hospital (RFM), where her arm was x-rayed and put in cast. The pain however became excruciating and the cast was removed the following day by which time most of the arm was black. The doctors recommended that the arm should be amputated which was eventually done.

[16] Subsequently, the Plaintiff was attend to on 13 June 2008, by PW2 Dr Jere, who prepared the Medico – Legal Report (exhibit A) based on the history given to him by the Plaintiff. Dr Jere stated at page 5 of exhibit A, that a physical examination revealed loss of the right arm below the right elbow with 7cm – elbow stump. And on page 7 he concluded as follows:-

**“It can be deduced from the history and outcome of this phenomenon that Ncamsile E.Tsela suffered severe arterial vascular injury as direct result of the injection or consequent compartment syndrome to cause loss of ischemia (loss of blood supply to the tissues of the forearm leading to gangrene (death of tissues)”.**

[17] The Defence called only one witness DW1, Dr Violet Mwanjali a psychiatrist based at the National Psychiatric Hospital. She testified on the



Plaintiff's case history and also offered her professional opinion. I will come to her evidence in a moment.

[18] Suffice it to say that from the totality of the evidence led, it is clear that when the Plaintiff was taken to the Mental Health Centre, she had no physical injuries on her right arm. In her evidence under cross-examination she categorically stated that she had no injury and did not feel sore or pain in her hand. The fact that she had no physical injury was confirmed by her mother PW2. The evidence of PW2 is that though the Plaintiff was violently praying for people she did not have any injury when she was taken to hospital. The assistance of the police was called in because of Plaintiff's unnatural behavior which led her relatives to suspect mental disorder warranting the intervention of the police.

[19] This piece of evidence was confirmed by Plaintiff's medical report from the National Psychiatric Hospital wherein in para 2 it is stated:-

**“Ncamsile Tsela was admitted at the National Psychiatric Referral hospital on 29<sup>th</sup> November 2007. According to her case notes and the report written by the Psychiatrist at that time, Dr Walter Mangezi, Ncamsile was violent towards relatives, laughing to herself inappropriately praying for people continuously. She also presented with restlessness, irrelevancy, disturbed sleeping pattern, poor appetite and destructive behavior. A diagnosis of mental disorder was concluded, which was precipitated by the death of her husband at the time”.**

[20] There is no evidence whatsoever from the medical report to show that the Plaintiff's right hand was swollen or wounded as at the material time she was admitted at the Psychiatric Hospital on 29 November 2007. The only sort of injury noted in the medical report was that observed by Dr Berhanu Beyer at the RFM on 3 December 2007, which was an abrasion wound on the left forearm also with bruise at the same level.

[21] PW2 Doctor Jere who is a qualified orthopaedic surgeon and registered as such to practice in Swaziland since 1995, and who in my view has adequate experience in this field of endeavour, testified that in his opinion the gangrene must have been caused by the injection of the Plaintiff into an artery which caused severe arterial vascular injury or consequent compartment syndrome that caused loss of blood supply.

[22] Dr Jere told the court that in normal circumstances, a person can suffer a little pain after an injection has been administered, however, such pain should not continue long after the injection has been given, as in the case of the Plaintiff.

[23] The doctor testified that consequent compartment syndrome shows that there may have been excessive swelling of tissues usually in the lower or upper limb which so much increases swelling of the tissue that it obliterates blood supply to the tissue leading to tissue death.

[24] Dr Jere further stated that this would have been caused by the injection, especially in view of the fact that the history of the case which was narrated to him by the Plaintiff shows that she did not have any injury on her right arm when she was taken to the hospital.

[25] It was further the doctor's evidence that there are different types of injections. There is the intra muscular injection given into the muscle. There is the supercutaneous injection given into the tissue just below the skin between the skin and the muscle. There is intravenous injection, selectively given into the vein and in very rare occasions there is intra-arterial injection given into the artery. This is given in selected circumstances and is usually given by doctors.

[26] It was further Dr Jere's evidence that if a patient comes to the hospital with a swollen arm, the proper procedure would be for the nurses to consult the

doctors to ascertain the nature of the swelling before any injections are administered. That it would not be advisable to proceed to administer an injection into a swollen arm because it would make it difficult to identify the structure that the drug should be administered into. It would be unreasonable to inject into an already swollen hand, if the reason for the swelling is not ascertained, because the injection could very well aggravate the condition.

[27] On the other hand, DW1, Dr Mwanjali, testified that whilst Dr Jere's opinion may be correct it fails to address the issue of blunt trauma. She stated that there are two main types of injuries, namely, perforated injury, whereby a wound is visible and blood comes out. There is also blunt injury where an injury is not visible and there is no blood coming out. She further testified that blunt injury is common among violent patients, for example, when such patients strike furniture with their body parts.

[28] She concluded that whilst it is possible, as per Doctor Jere's opinion, that the gangrene may have developed as a result of the injection into an artery, the possibility of the Plaintiff having sustained blunt injury, which in turn could have led to gangrene cannot be ruled out regard being had to her violent and destructive behavior.

[29] It is my considered view that Dr Mwanjali's evidence on the possibility of blunt trauma being the cause of Plaintiff's injury is highly speculative. There is no evidence in support of this proposition.

[30] The mere fact that Plaintiff's case notes show that she was also given some pain relieving drugs is not proof of any injury in her right arm when she was injected. Nor does the mere fact that she was opined to be violent and destructive in behavior translate to such injury.

[31] There is no evidence to the effect that the Plaintiff was destroying furniture or assaulting people prior to this incident. In fact, the Plaintiff herself categorically denied this fact under cross-examination.

[32] Similarly, Dr Mwanjali's evidence to the effect that the 10 mg of diazepam which is equivalent to 2mls of diazepam which was injected into the Plaintiff's right arm, even if injected into the artery, was so insignificant or so small that it could not have caused any damage, is clearly unsustainable. I say this in the light of the established fact of the case that the gangrene developed after the Plaintiff was injected with the said diazepam and that the

Plaintiff had not sustained any injury on her right hand prior to being given the injection.

[33] It seems to me that the mere fact that the 1<sup>st</sup> Defendant's staff chose the right arm to give the injection, points to the fact that there was nothing wrong with that arm. If the hand was already swollen then why proceed to give the diazepam in that hand instead of the left hand or intra muscular in the buttocks or orally. I have hereinbefore recounted Dr Jere's uncontroverted evidence on the dangers of injection being administered in a swollen hand and the necessary precautions that must be taken if the need arises. In my view, the defence that the Plaintiff's right arm was already swollen prior to the injection, just doesn't add up.

[34] The more probable scenario in the circumstances of this case, is to my mind, as opined by Dr Jere that the gangrene must have been caused by the injection of the Plaintiff into an artery which caused severe arterial vascular injury or consequent compartment syndrome that caused loss of blood supply.

[35] If we go with the medical evidence of Dr Jere that it was the injection which was wrongly given that caused the gangrene, the next enquiry will be, is there any evidence of negligence on the part of the 1<sup>st</sup> Defendant? I ask this question because if the 1<sup>st</sup> Defendant acted with due care and diligence and error occurred due to circumstances beyond their control, can it be said that they were negligent?

[36] I do not think so. I say this because it is not enough to show that the injury resulted from the actions of the 1<sup>st</sup> Defendant. The evidence must also show that the action of the 1<sup>st</sup> Defendant was negligent.

[37] The burden is on the 1<sup>st</sup> Defendant to show that they acted with due care and diligence taking all precautionary measures according to the prescribed minimum standard of practice of the medical profession, in administering the injection.

[38] Even though the Defendants sought to distance themselves from any negligence in their plea by contending that 1<sup>st</sup> Defendant's staff members are qualified medical personnel who administer injections on a regular basis without there being any complaints of negligence and that the injection was

administered into the vein and not the artery as per standard procedure, they have however failed to call any evidence in proof of these material allegations of fact.

[39] None of the nursing staff members of 1<sup>st</sup> Defendant who attended to the Plaintiff at the material time the injection was administered was called to court to demonstrate the degree of care, skill and precaution employed by them when administering the injection. The defendants should have led evidence on this issue. This is more so in the face of the uncontroverted fact that prior to administering the injection, the attending nurse commented that she was doubtful if she could find a vein. This comment, coupled with the established evidence that the Plaintiff was violent at that material time, made it imperative, that the 1<sup>st</sup> Defendant should demonstrate the degree of care, skill and caution exhibited by their staff members in administering the injection. The Defendants' plea contains material facts which can only be proved by evidence. The plea is not evidence and cannot be treated as such.

[40] As the case lies, there is no evidence led by the 1<sup>st</sup> Defendant in proof of the fact that they employed the requisite care, skill and precaution expected of members of the nursing profession in administering the injection.



[41] The medical evidence by Dr Mwanjali does not qualify as such. It merely tells us what may have caused the injury but does not explain what was done during the treatment.

[42] In the absence of any evidence to the contrary, I come to the inexorable conclusion, that the 1<sup>st</sup> Defendant's staff members failed to employ the requisite care and skill required of the members of the medical profession in administering the injection into the Plaintiff's arm.

[43] **CONCLUSION**

I find that the staff of the 1<sup>st</sup> Defendant were negligent in administering the injection into the Plaintiff's artery, which caused her severe vascular injury leading to gangrene and the consequent amputation of her right arm. The Defendants are thus liable for the injury occasioned to the Plaintiff.

**DELIVERED IN OPEN COURT IN MBABANE ON THIS  
THE ..... DAY OF .....2014**

**OTA J.  
JUDGE OF THE HIGH COURT**

**For the Plaintiff:**

**M.S. Dlamini**

**For the Defendants:**

**S. Khuluse  
(Crown Counsel)**