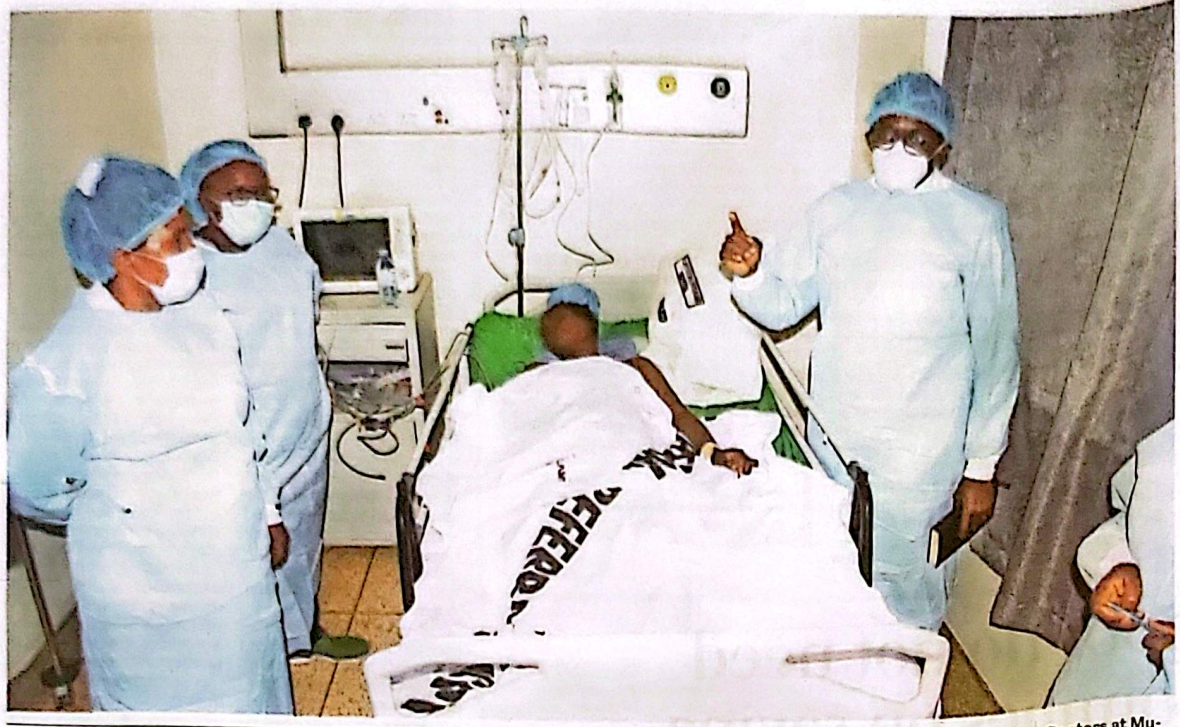
Medicine and the Law

About criminal liability for deaths associated with surgery



Doctors at Mulago hospital's organ transplant unit attend to a patient in November 2024. PHOTO/ FILE

On January 26, 1990, a jury convicted Dr John Adomako of gross negligence manslaughter by a majority of 11 to 1. Dr Adomako appealed his conviction. However, the appeal was dismissed, and his conviction was upheld by the House of Lords.

BY DR SYLVESTER ONZIVUA

In some jurisdictions, the United Kingdom inclusive, medical personnel who are deemed to have been responsible for the death of a patient may be charged in a criminal court with the offence of manslaughter by gross negligence.

On January 4, 1987, Alan Loveland, a 33-year-old man, underwent an eye operation for a detached retina. At 9.45am, anaesthesia and paralysis were induced by the intravenous administration of drugs and a breathing tube was inserted into the patient's airways to enable the patient to breathe with the aid of a mechanical ventilator. There was a changeover of anaesthetists, and Dr John Adomako, a locum anaesthetist, took over.

Around 35 minutes later, the supply of oxygen to the patient was interrupted when the breathing tube became disconnected from the ventilator, and this was neither noticed nor remedied by the anaesthetist. It was not until an alarm sounded on a blood pressure machine that the anaesthetist was alerted to a problem of some kind. Dr Adomako checked various pieces of equipment but failed to notice the disconnected oxygen tube, which had by now not been supplying oxygen for at least four and a half minutes. A period of hypoxia led to cardiac arrest at 11.14am, some 11 minutes after the tube became disconnected.

It was the eye surgeon who noticed that the tube was disconnected from the ventilator, and this was after resuscitation was commenced. Although the patient was successfully resuscitated, the prolonged period of oxygen deprivation caused cerebral hypoxia, leading to severe brain damage. Alan Loveland never regained consciousness and died six months later.

On January 26, 1990, a jury convicted Dr Adomako of gross negligence manslaughter by a majority of 11 to 1. Dr Adomako appealed his conviction, challenging the basis that a breach of duty should not have amounted to involuntary manslaughter. However, the appeal was dismissed, and his conviction was upheld by the House of Lords.

The House of Lords held that the ordinary common law principles of negligence had to be applied and that it needed to establish whether Dr Adomako's negligent conduct was so bad, in all circumstances, as to amount to a criminal act or omission. To the House of Lords, Dr Adomako was under a duty as a reasonable anaesthetist.

The House of Lords framed the requisites of gross negligence manslaughter, and these comprised the following four ingredients, which have now become known as the Adomako test. These four ingredients are: the existence of a duty of care which is owed to the patient, the breach of this duty by the accused, that the breach must have either caused or significantly contributed to the death and that the breach falls under the ordinary principles of gross negligence and, therefore, amounts to a crime.

Lord Mackay of Clashfern expanded on how the test for involuntary manslaughter was formulated. To him, the ordinary principles of law of negligence apply to ascertain whether or not the accused person had been in breach of a duty of care towards the victim who has died. If such a breach of duty is established, the next question is whether that breach of duty caused the death of the victim.

If so, the jury must go on to consider whether that breach of duty should be characterised as gross negligence and, therefore, a crime. This will depend on the seriousness of the breach of duty committed by the accused in all the circumstances in which the accused person was placed when it occurred. The jury was also to consider the extent to which the accused person's conduct departed from the proper standard of care incumbent, considering the risk of death to the patient, which risk should be judged as criminal.

The determination of the extent to which an accused person departed from the proper standard in negligence cases can be variable and inexact. In a criminal court, it must be established that there was the element of the guilty mind, where the accused person's liability depends on the amount of damage done and the degree of negligence. It is for the jury to examine the accused person's action or omission in order to determine whether the departure from the standard was sufficiently serious that it amounts to a criminal offence and would, therefore, amount to liability for manslaughter. In the case of Dr Adomako, the breach of duty was so serious that the conduct was considered to amount to criminal dereliction of care. At trial, expert witnesses described the care given by Dr Adomako as abysmal and a gross dereliction of care.

In yet another case, in the same jurisdiction, a consultant surgeon delayed operating on a patient who had a perforated gut. The patient died shortly after surgery, but the court attributed the death to the delay in carrying out the surgery. The surgeon was found guilty of causing death by gross negligence. It is, however, a challenge to successfully prosecute a medical doctor when such a law is not in place.

On October 14, 2010, a 34-year-old died in one of the local prestigious hospitals in Kampala during a routine operation to remove a solitary fibroid from her uterus using laparoscopic surgery. Two pathologists who carried out a post-mortem examination of the body of the patient found 500ml of blood in the stomach of the patient. The pathologists concluded that the patient had died due to a lack of oxygen when the tube to supply oxygen to her lungs was wrongly inserted into her oesophagus instead of her trachea. The proprietor of the hospital and the anaesthetist during the operation were charged before the Chief Magistrate's Buganda Road Court, with one count of causing death by a rash or negligent act.

The court defined the two ingredients of this offence, which the prosecution needed to prove beyond reasonable doubt, as follows;

a) That the accused did a rash or negligent act not amounting to manslaughter

b) A person's death was caused as a result of such an act

The State was, therefore, duty-bound to prove that the proprietor of the hospital and the anaesthetist, acting together, did a rash and negligent act that caused the death of the patient.

The court defined "rash" as doing something that may not be sensible without first thinking of the possible results. Synonyms of this are "impulsive" and "reckless". The court also defined "Negligent" as "failing to give enough care or attention, especially when this has serious results.

To be continued...

THE ADOMAKO TEST

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