



Medicine, the Law & You

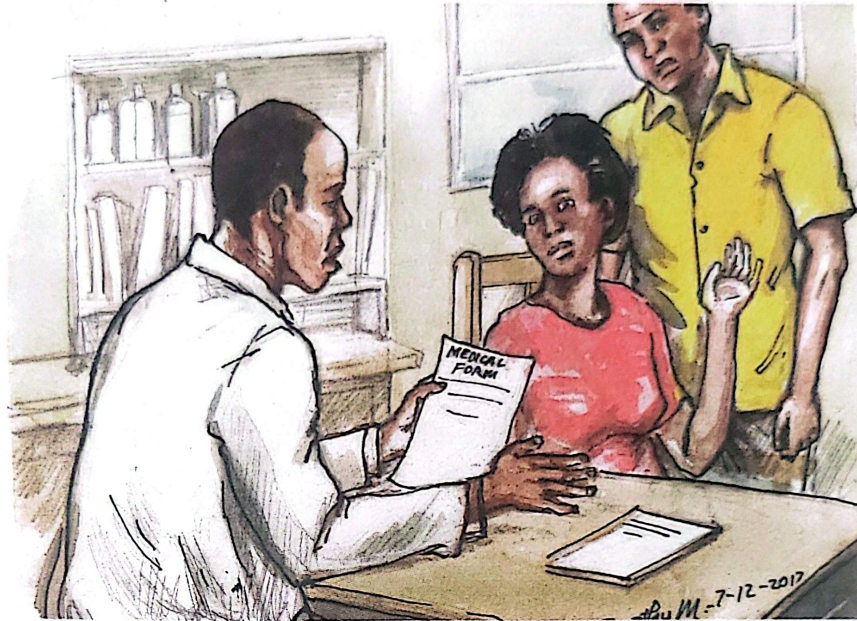
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APPENDICITIS OPERATION.
A patient checked into hospital in need of a seemingly simple operation, however she never woke up. Her relatives sued the hospital. The court was to determine if the health workers were negligent.

On September 10, 2015, a 51-year-old mother of five underwent a surgical operation to remove her appendix, but never recovered from the surgery; the surgeon confessed that the patient had suffered a severe brain damage at the beginning of the operation when the anaesthetist had challenges in inserting in her trachea the tube to administer anaesthesia and oxygen during the operation. The patient was in a vegetative state during and after the operation and was declared dead two days after the operation. The registered trustees of the hospital were sued for medical negligence but their lawyers put up a spirited fight.

The patient was relative of one of the hospital administrators. The patient had been examined by a doctor in the hospital two days prior to the surgery and the doctor recommended that the patient be admitted in the private ward. The patient, however, failed to report to the ward

Were doctors careless?



as directed. The patient came for the surgery directly from the relative's home in the hospital staff quarters. The defence told court that the patient's death was due to a natural turn of events caused by her own negligence and refusal to take medical advice.

This death could not be attributed to the negligence of the medical team who were so highly skilled and well trained in their various practices. To the defence team, the death of the patient was due to multiple complications that could only have been established by a postmortem examination. None was carried out. The relatives of the patient did not also bother to request for a postmortem. One of the witnesses during cross-examination told court that a post-

mortem examination must be done in all cases especially when the cause of death cannot be ascertained. And in this case, a postmortem should have been done in view of the fact that the patient absconded from the hospital and was therefore not professionally managed prior to the operation.

Finding exact cause of death

The complainants in the case relied on the certificate of death issued by the hospital and an audit carried out by the doctors in the hospital. The defence contested the findings in the death certificate. The death certificate was issued based on clinical diagnosis and stated that the death of the patient was caused by heart and lung failure as a result of brain death. The brain death was attrib-

uted to lack of oxygen which occurred during the difficult intubation. The lawyers pointed out that the patient spent two days on the ward after the operation and intervening factors needed to be ruled out as the cause of death by way of a postmortem or third party expert opinion.

The defence lawyers also told court that the audit of the patient's death carried out by the hospital was not professionally conducted and they therefore questioned its legality and integrity. The hospital audit report was based on what transpired in the theatre and did not include what happened before the operation and on the ward the two days following the operation. The lawyers cited conflict of interest on part of the team that audited this death. Some of the

members of the audit team were also part of the surgical team that carried out or intervened in the surgery and could, therefore, not have been said to be objective. The audit did not consider or mention that the patient was not on the ward when she was admitted and how this could have impacted on the operation.

Another line of defence was that complications are part and parcel of every surgery and that every medical procedure is not without its risks. Indeed one witness told court that complications that arise during surgery include heart failure, respiratory failure and failure to insert the tube for oxygen and anaesthesia.

Error of judgement

In law, it is well established that a doctor cannot be found negligent merely because, in a matter of opinion, he made an error of judgment. When there are two responsible schools of thought about management of a clinical situation, the court could do no greater disservice to the community or advancement of medical science than to place the hallmark of legality upon one form of treatment. To the defence lawyers what happened in theatre was an error of judgment not amounting to medical negligence. The lawyers told court that when the surgical team realised that the patient was not receiving adequate oxygen during the operation and the patient's heart had stopped, they adopted the best medical practice and started resuscitating her which is the expected medical practice under such circumstances.

The defence team also pointed out that the dangers of the surgery were elaborately explained to the patient and the patient voluntarily gave consent to the operation and the evidence of this was the consent form that was duly signed by the patient.

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