



**Medicine,
the Law
& You**

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LEGAL CAUSE OF DEATH.

The cause of death is often deeper than what is seen on the surface thus investigations must be made thoroughly.

In establishing the medical cause of death, a medical doctor is required to state the cause and mechanism of death. The cause of death, in medicine, is defined as the initial disease or injury responsible for a death. The mechanism of death is how that disease or injury led to death. A simple and straight forward example is how death may occur following a malaria infection.

Beyond what the eye sees

The malaria parasite attacks the red blood cells causing them to burst. This causes anaemia (lack of blood). The loss of blood strains the heart, causing it to fail. In such a case, the cause of death is the malaria infection but the mechanisms of death are the anaemia and subsequent heart failure. A blow on the head may lead to bleeding within the cranial cavity with a resultant increase in the pressure within the cranial cavity. This is known as increased intra-cranial

Who takes the blame?



pressure whose effects can then directly result into death. In such a case, the medical cause of death is blunt force trauma to the head and the mechanism of death will be the increased intra-cranial pressure.

Establishing the legal responsibility for a death, however, goes beyond simply determining the medical cause of death. The law considers the concept of causation which is defined as the causal relationship between conduct and the result; causation providing the means of connecting conducts with the resulting effect, typically an injury.

In law the more predictable the outcome, the greater the likelihood that the accused caused the injury intentionally. Causation in law means that there is a natural flow to the

events, that a reasonable person in the same situation would have foreseen the consequences as likely to occur and that the injury was a direct result of the breach of duty.

In a recently decided case, a patient was operated on 8 September, 2015 and died two days later, on 10 September.

The law of causation

One of the legal arguments presented in this case was there was a significant degree of remoteness between the operation and the death and that other significant factors may have contributed to the death, which were not ruled out by a post-mortem examination.

The function of the law of causation in this case was to establish if indeed

the death was the result of actions and omissions during the surgery or if there were independent factors other than the acts and/or omissions during surgery that led to the death. The crucial question in this case was whether death would not have occurred but for the actions and omissions during surgery. The method in law for establishing responsibility is the "but-for" test which poses the question, "But for this particular action or omission, would the harm, injury or death have occurred?"

In law, if at the time of death the effects of the original act or omission are still an operating and substantial cause, then death can properly be said to be the result of the act or omission, even if some other cause of death is still operating. If however

it can be said that the original act or omission is merely the setting in which another cause operates, it can be said that the death did not result from that act or omission. If the second factor is so overwhelming as to make the original act or omission merely part of history, then the law will conclude that death did not flow from the initial act or omission.

In this particular case, court observed that the patient had suffered brain death due to prolonged lack of oxygen following improper insertion of the tube to deliver oxygen to the patient at the beginning of the operation. Two witnesses confirmed to court that the patient was brain dead even before she was taken off the operating table in theatre.

What the court discovered

She remained in this irreversible state for the next two days until her death. To court the patient became brain death as a result of negligent acts during the surgery. To the judge that there could be some other intervening cause remained a remote, fanciful but not in any way a probable possibility. In light of the evidence before court there certainly was no evidence of a supervening cause of such a nature as was capable of breaking the chain of causation.

Court was therefore satisfied that the family of the deceased had proved to the required standard that negligence during the surgical operation was an operating and substantial cause of the deceased's death. To court, even if some other cause of death could also have been operating, which had not been proved anyway, the patient's death could only be attributed to the negligent acts and omissions during the surgery. Court awarded the family of the deceased Shs90bn and costs of the suit instead of the Shs1Bn the family prayed for.

to be continued...

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