

Liyawo v Chilemba

Judgment

Court:	High Court of Malawi
Registry:	Civil Division
Bench:	Honourable Justice Msosa
Cause Number:	Civil Cause Number: 1436/1995 ([2002-2003] MLR 164 (HC))
Date of Judgment:	July 02, 2002
Bar:	Phoya, Counsel for the Plaintiff Kanyuka (Mrs), Counsel for the Defendant

The plaintiff claims for damages for pain and suffering and special damages in the sum of K8 045 85 for injury, loss and damages occasioned to him by the negligence of the defendant.

The defendant is a medical practitioner who carries on his practice in the City of Blantyre. He was the plaintiff's family doctor from 1990 or 1991 when the incident that is the subject matter of the present proceedings occurred.

The plaintiff testified that on 25 April, 1995 he went to the defendant's surgery for treatment because he had fever and a swelling in his groin. The defendant as part of the treatment gave him drugs called doxycycline and advised him to have bed rest for 48 hours. He went back to consult his doctor on 29 April, 1995 as he was still feeling sick and had developed swellings on his body.

He said that the doctor advised him to continue taking the doxycycline drugs. He, again, went back to the defendant's surgery the following day. He was not able to see the doctor because the surgery was closed as it was a Saturday. On Monday, 2 May, he went to Dr Gombwa's surgery since his condition was worsening and he had also developed sores in his mouth. Dr Gombwa, after listening to his complaint told him that his condition was a reaction to doxycycline as he is allergic to tetracycline. The doctor said that as he was allergic to tetracycline, it was not surprising that he was reacting to doxycycline which is in the same class as tetracycline.

The plaintiff said that the defendant was aware that he was allergic to tetracycline because in 1993/94 he had reacted to tetracycline after the defendant had treated him with that drug. He had developed sores on his lips. He said that the doctor wrote that information in his file using a red ink and since that time the defendant had never prescribed tetracycline to him.

The plaintiff was admitted at Dr Gombwa's hospital from 2 May, 1995 to 5 May, 1995. He was suffering from swellings which were burns like wounds. He felt a lot of pain and had difficulties in eating. He was again admitted at the same hospital

from 12-22 May. On the two admissions, his hospital bill came to K8 045 85. In cross-examination, the plaintiff admitted that he went to see the defendant on 24 April and not on 25 April as he had previously said during examination in chief. He said that, however he got the off duty letter on 25 April.

The second witness for the plaintiff was Emelsia Edric Liyawo, his wife. She said that the defendant was their family doctor from 1990 to 1995. She also said that the plaintiff is allergic to tetracycline. She knew about this allergy in 1993/94 because every time the plaintiff took tetracycline he developed sores in his mouth and on his lips. She said that the defendant was aware about this allergy because she saw the endorsement that the defendant had made in their file, that the plaintiff was allergic to tetracycline. She said that she saw the endorsement when she was taking the file from the defendant to the nursing sister. She further said that it was possible for one to see what was in the file if one called for it. She said that, on two occasions, she had an opportunity to read what was in their file.

The third witness for the plaintiff was Dr Gombwa who testified that he has been practicing medicine for over 23 years. He said that sometime in May, 1995 he treated Mr Liyawo who was suffering from inflamed ribs, mouth and his whole body was covered with weeping blisters especially in the mouth and the groin. After listening to what the plaintiff told him, he formed an opinion that that condition was caused by drug reaction, especially after being told that the plaintiff was allergic to tetracycline. It was his opinion that the plaintiff's condition was a reaction to Doxycycline which was in the same group as tetracycline. He admitted the plaintiff in his hospital for treatment. He treated

the plaintiff with drugs to stop the reaction, high fever, low blood pressure and to heal the weeping sores. After three days the plaintiff improved and was discharged from the hospital. A week later he was re-admitted because the weeping blisters all over his body had worsened. He stayed in hospital for ten days. As part of the treatment, the plaintiff was stopped from continuing taking the doxycycline drugs.

The defendant gave evidence. He said that he is a medical general practitioner and has a surgery in Blantyre. He has been practicing medicine for 32 years. The plaintiff was his patient for 5–6 years. On 24 April, 1995, the plaintiff came to see him because he had a swelling in his groin and fever. He treated him by prescribing drugs called doxycycline for the swelling and halifan for malaria. He was of the opinion that the swelling was more serious than the other ailments the plaintiff had complained of.

The defendant said that four days later the plaintiff came to see him again complaining that he had reacted to the doxycycline. The defendant advised him to stop taking the drug, he also told him that he should have reminded him not to give him doxycycline as he was allergic to tetracycline. He said that it was the duty of the plaintiff to remind him about the allergy. The defendant looked sick, his skin had darkened. He prescribed Lidaprin drugs for him and Vitamin C and other drugs to enhance his defensive system. These drugs were prescribed on a Medical Aid Scheme of Malawi (“MASM”) special form so that the plaintiff could obtain them from a pharmacy.

The defendant denied to have told the plaintiff that he was allergic to tetracycline. He said it was the plaintiff who told him that he was allergic to tetracycline, and he made note of this fact in his file. This was done in 1989 on the plaintiff's first consultation. He emphasised the fact that it was the duty of the plaintiff to remind him about his allergy because he had many patients who came to him for consultation and treatment. He said it is difficult for him to remember everything he is told by his patients because he attends to many patients everyday. It was his evidence that the condition the plaintiff was suffering from could cause a reaction like the one he had because both the swelling in the groin and the flue were a virus which were capable of causing such a reaction.

He said that the files at his surgery are handled by a receptionist who brings a patient's file to him whenever the patient comes to see him for consultation. After seeing the patient, the file is returned to the receptionist, whilst the patient is given a prescription to take either to the dispensing nurse or pharmacy.

The defendant denied that he was negligent in the way he treated the plaintiff. He said, ordinarily doxycycline is effective for 12 hours, so that if the plaintiff had stopped taking the drug, it would have been out of his system after 12 hours. The usual prescription is 1 tablet per 12 hours, but in severe cases the patient is prescribed 2 tablets per 12 hours. In the case of the plaintiff he prescribed 2 tablets per 12 hours because he was of the opinion that the plaintiff was suffering from a sexually transmitted disease which was a serious condition.

The second witness for the defence was Mrs Kuyewawa. She was employed by the defendant as a receptionist. She had been working for the defendant for over 10 years. She testified that it was part of her duties to open a file whenever a new patient came to the defendant's surgery for consultation. She said that when opening files she uses red ink for MASM and company files and black ink for patients who pay cash after treatment. She is the one who opened the plaintiff's file in 1989. The plaintiff was a member of MASM.

She narrated the procedure that is followed when a patient comes to the defendant's surgery for consultation. She said that she takes the file to the doctor and after consultation the file remains with the doctor until she collects it after the doctor has attended to the patient. It was her evidence that the file is never handed to the patient and that she had never given the plaintiff's file to him or his wife.

The other witness for the defendant was Mrs Migochi who was working for the defendant as a nurse. She had been working as such for over 10 years. Her evidence regarding the opening and handling of files at the surgery was similar to that of Mrs Kuyewawa. She said that, after consulting the doctor, the patient is given a prescription to take to the nursing sister or the pharmacy. She said that none of the patients has access to his/her file.

Most of the facts of the present case are not in dispute. The plaintiff stated that it was the defendant who told him that he was allergic to tetracycline. The plaintiff, on his part, testified that it was the defendant who advised him that he was

allergic to tetracycline and this was after the doctor had treated him with tetracycline on at least two occasions. The defendant said that he had never treated the plaintiff with tetracycline. The evidence of the defendant came mainly from the plaintiff's medical file which was a record of all the consultations the plaintiff had with him. It is also clear that it was on 24 April that the plaintiff consulted the defendant and not 25 as alleged by him. The plaintiff produced a document dated 25 April showing that he was given off duty for 48 hours. The doctor states that the document was given to the plaintiff's wife who had asked for it because she was not feeling alright as she had taken Fansidar tablets. Surprisingly, this document is about treatment for an upper respiratory tract infection and it was written by the defendant on 25 April, 1995. The date and the disease mentioned in the document do not tally with the disease the plaintiff was suffering from and the date he was treated by the defendant. I would, in the circumstance, not attach any weight to it.

The main issue is whether the condition of the plaintiff, that is the swellings on his body and the sores in his mouth were caused by the medication given to him by the defendant and whether the defendant was negligent or not.

The plaintiff states that after taking the medication he reacted to the drug. Dr Gombwa, the doctor who attended to him after the said reaction, stated that he was of the opinion that the condition of the plaintiff was a reaction to the doxycycline drugs he took. The defendant, in his defence said that the condition could have occurred as a result of the virus infection the plaintiff was suffering from. The defendant was of the opinion that the plaintiff had virus infection because of the swelling in his groin and he suspected that it was a sexually

transmitted disease.

The evidence shows that the plaintiff was allergic to tetracycline and that doxycycline is in the same group as tetracycline. The doctor was aware of this condition as he had made an endorsement of this fact in the file which contained all the medical history of the plaintiff and members of his family from the time he started attending to him. I am satisfied, on the evidence before me, that the plaintiff's condition was a reaction to the doxycycline drugs he had taken.

The law of negligence is very clear as far as professional negligence in the case of a doctor is concerned. The doctor owes a duty of care to his patient. The standard of care that is expected of him was expressed by McNair J. In *Bolam v Friern Hospital Management Committee* [1958] 1 WLR 582 at 587 as follows:

"I myself would prefer to put it in this way, that he is not guilty of negligence if he has acted in accordance with a practice accepted as proper by responsible body of medical men skilled in that particular art."

The patient in the present case had brought the fact of his being allergic to tetracycline to the defendant's attention. The defendant admitted that he was aware of this fact. I am of the view if the doctor had prescribed tetracycline to the plaintiff, the plaintiff would have likely reminded him about his allergy. According to the evidence of the defendant, doxycycline was a new drug at the time it was prescribed to the plaintiff. The plaintiff did not know that it was in the same group as tetracycline. I am of the view that the fact of the allergy of the

plaintiff should have been noted by the defendant in such a way that every time the plaintiff consulted him, he would have been aware that the plaintiff is allergic to tetracycline. This is the duty the defendant owed to the plaintiff in this particular case. The defendant was in breach of this duty. This failure was nothing else but negligence.

I, consequently, find that the defendant was negligent and that the injuries the plaintiff suffered were a direct consequence of that negligence.

I, therefore, enter judgment for the plaintiff for general damages; and special damages in the sum of K8 045 85. The assessment of general damages will be done by the Registrar of the High Court.

The defendant is condemned in the costs of these proceedings.