

# Mrs L. Mtileni v Registered Trustees of Blantyre Adventist Hospital

## Summary

<b>Court:</b>	High Court of Malawi
<b>Registry:</b>	Civil Division
<b>Bench:</b>	Honourable Justice Potani
<b>Cause Number:</b>	Civil Cause Number: 1831/2001 ([2006] MLR 309 (HC))
<b>Date of Judgment:</b>	April 25, 2006
<b>Bar:</b>	Plaintiff unrepresented Mr Nkhono for the Defendants

The Plaintiff, Mrs Grace Mtileni, brought an action on behalf of the estate of her deceased child and on her own behalf against the Defendants, the Registered Trustees of Blantyre Adventist Hospital, claiming for damages for her baby's loss of expectation of life and damages for pain and suffering and loss of amenities and conjugal rights in relation to personal injuries she suffered allegedly due to the negligence of defendants' servants. In her evidence the Plaintiff she stated that the Defendants' nurse mistakenly administered saline solution instead of

doctor's prescribed glucose to her premature new-born, leading to his death and the Defendant failed to provide her with proper post-natal care, which she claimed led to her developing puerperal sepsis. In defence, the Defendants claimed the child's death was due to extreme prematurity and an infection, not the saline solution and further with regard to the Plaintiff's post-natal care, it was asserted that the D and C procedure was not necessary under her circumstances.

In determining the evidence in this matter, the Court was faced with a question as to whether evidence to be considered must be restricted to the matters pleaded by the parties. In regards to this, the court while noting that as a general rule, the evidence adduced at trial must be restricted to matters pleaded, it stated that the rule should not be constructed pedantically, hence, evidence that which is not direct to the matters pleaded would still be admissible if it is merely a variation, modification or development of what has been pleaded or alleged and not a radical or fundamental departure from matters pleaded.

The Court proceeded to determine whether the Defendants were liable in negligence for the death of the Plaintiff's child and for the infection the Plaintiff suffered. In response to the questions the court stated that before liability for negligence can be established, three conditions must be met: a duty of care must be owed by the defendant to the plaintiff; the defendant must have breached that duty; and the plaintiff must have suffered damage as a result of the breach. While stressing that the burden of proving causation rests on the Plaintiff and the court stated that a causal link cannot be inferred from the

established breach of duty alone where there are two competing causes for the damage. The court went further to hold that, while it found that the Defendants breached their duty by giving the baby the erroneous solution, the Plaintiff failed to prove that this caused his death by accepting expert evidence that prematurity and infection were more likely factors. Furthermore, despite establishing the Defendant's duty to the Plaintiff, the Court found no evidence of breach of such duty regarding in regards to post-natal care or a link between the care and her infection. Since the plaintiff failed to establish a breach of duty regarding her own care, the question of causation for her injury did not arise. The matter was dismissed with costs to the Defendants.