**Muchoki v Attorney-General**

**Division:** High Court of Kenya at Nairobi

**Date of Judgment:** 9 November 2004

**Case Number:** 2733/96

**Before:** Visram J

**Sourced by:** I Lenaola

**Summarised by:** M Kibanga

*[1] Negligence – Hospital admitting a child patient – Patient disappearing from hospital and later*

*found dead – Death occurring outside the hospital – Whether hospital liable in negligence.*

*[2] Tort – Negligence – Patient disappearing from hospital and found dead – No particular employee of*

*hospital found negligent –* Res ipsa loquitur – *Whether hospital liable nonetheless – No rebuttal of*

*plaintiffs evidence.*

**Editor’s Summary**

The Plaintiff took his daughter, aged four, to Karatina District Hospital for treatment. Her mother left the girl in hospital at about 5:30pm the same day and when the mother came to see her daughter the following morning, she had disappeared. A search was mounted for the young girl and she was found dead by a river outside the hospital premises. The plaintiff sued the Attorney-General for general and special damages in negligence for the disappearance and the subsequent death of his daughter.

**Held** – Plaintiff having established that the child was left in the care of the hospital, it was encumbent upon the hospital to prove there was no negligence on its part. The circumstances of the case called for the application of the doctrine of *res ipsa loquitor.* Although no particular employee of the hospital could be said to have been negligent, the negligence was as a result of some kind of organisational failure; *Cassidy v Ministry of Health* [1951] 2 KB 343 applied. Liability was entered wholly against the defendant.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

***East Africa***

*Hassan v Nathan Mwangi Kamau Transporters and others* [1982-88] I KAR 946 – **F**

*Hussein and another v Charo and another* [1998] LLR 837 (CAK) – **F**

*Kenya Breweries Ltd v Saro* civil appeal number 144 of 1990 – **F**

*Nthenge v Tawfiq Bus Services Limited* High Court civil case 178 of 1997 – **F**

***United Kingdom***

*Cassidy v Ministry of Health* [1951] 2 KB 343 – **AP**