**Pope John’s Hospital and another v Kasozi**

**Division:** Court of Appeal at Kampala

**Date of judgment:** 26 April 1974

**Case Number:** 56/1973 (72/74)

**Before:** Sir William Duffus P, Law Ag V-P and Mustafa JA

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**Appeal from:** High Court of Uganda – Wambuzi, C.J

*[1] Negligence – Res ipsa loquitur – Not applicable where all facts are known.*

*[2] Negligence – Res ipsa loquitur – Surgeon – Whether applicable to error or misjudgement in difficult*

*operation.*

**Editor’s Summary**

The appellants had been sued in the High Court by the respondent for negligence arising out of the delivery by the second appellant of a child by forceps and of the alleged failure of the first appellant hospital properly to treat the child’s eye injury which resulted from the delivery. The High Court found the doctor negligent in not checking the position of the forceps or applying them properly, and that the principle of res ipsa loquitur applied. The hospital was found negligent in not referring the child to an eye-specialist in time.

On appeal.

**Held –**

(i) where evidence has established what happened the doctrine of res ipsa loquitur cannot apply;

( ii) res ipsa loquitur cannot apply to a mistake or error of judgment of a surgeon during a difficult operation;

(iii) on the facts it had not been shown that the doctor was negligent;

(iv) the injury to the eye was caused by the operation and not by any failure to refer the child to an eye specialist.

Appeal allowed.

**Cases referred to Judgment:**

(1) *Mahon v. Osborne*, [1939] 2 K.B. 14; [1939] 1 All E.R. 535.

(2) *Cassidy v. Ministry of Health*, [1951] 2 K.B. 343; [1951] 1 All E.R. 574.

(3) *Roe v. Ministry of Health*, [1954] 2 Q.B. 66; [1954] 2 All E.R. 131.

(4) *Nevill v. Cooper*, [1958] E.A. 594.

(5) *Cooper v. Nevill*, [1961] E.A. 63.

(6) *Hucks v. Cole* (1968), 118 New L.J. 46