**Wishaminya v Kenyatta National Hospital Board**

[2004] 2 EA 351 (HCK)

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

**Date of Judgment:** 12 March 2004

**Case Number:** 512/99

**Before:** Lenaola J

**Sourced by:** LawAfrica

**Summarised by:** M Kibanga

*[1] Damages – Computation of damages.*

*[2] Negligence – Medical negligence – Deceased injured in road traffic accident – Deceased dying unattended in defendant’s hospital – Whether defendant’s negligence cause of death.*

*[3] Tort – Negligence – Medical negligence – Deceased involved in a road traffic accident – Deceased taken to the defendant’s hospital – Deceased not attended for 10 hours – Deceased dying unattended –*

*Whether defendant negligent.*

**Editor’s Summary**

The deceased was involved in a road traffic accident on 2 August 1998 and 4:00pm. Good Samaritans took him to Kenyatta National Hospital, owned and operate by the defendant, where he was immediately taken to casualty department.

The plaintiff (the deceased’s father) found out about the accident at about 8:00pm and went to the hospital where he found the deceased unattended but able to talk. The plaintiff took the deceased for X-rays which showed he had fractures of the leg and arm. The plaintiff later took the deceased to ward 6 and the attending doctor in dictated there was nothing he could do as a surgeon was not available. The deceased died at 2:15 unattended.

The plaintiff sued claiming general and special damages in negligence for the deceased’s death.

The defendant filed a defence denying the allegations in the plaint but called no witness in its defence.

**Held** – A hospital is expected by its very nature to take all reasonable steps to ensure that a patient receives emergency care. No reasonable care was given to the deceased by the defendant. The defendant breached its duty of care to the deceased and was therefore guilty of negligence.

Had there been proper management of the fractures suffered by the deceased, the deceased would probably have survived. The defendant’s negligence was the cause of his death.

The plaintiff was awarded KShs 8 855 500-00 special and general damages plus costs of the suit.

**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***

*Aga Khan Platinum Jubilee Hospital v Munyambu* [1983] LLR 104 (CAK) – **F**

***United Kingdom***

*Birkenhead in Rees v Darlington Memorial Hospital* NHS Trust [2003] UKHL 52 – **C**

*Bolitho v City and Hacknery Health Authority* [1998] AC 232 – **C**

*Kuwait Airways Corporation v Iraqi Airways Company* number 4 and 5 [2002] UKHL – **C**

*Lord Clyde in Hunter v Harley* [1955] SC 200 – **C**