



**Athi River Shalom Community Hospital v Machuki & another (Suing as the Legal Representatives of the Estate of Everlyne Moraa-Deceased) (Civil Appeal E027 of 2020) [2025] KEHC 4272 (KLR) (27 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 4272 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
CIVIL APPEAL E027 OF 2020  
EN MAINA, J  
MARCH 27, 2025**

**BETWEEN**

**ATHI RIVER SHALOM COMMUNITY HOSPITAL ..... APPELLANT**

**AND**

**EDNA KEMUNTO MACHUKI ..... 1<sup>ST</sup> RESPONDENT**

**JAMES MACHUKI ..... 2<sup>ND</sup> RESPONDENT**

**SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF EVERLYNE MORAA-DECEASED**

*(Being an Appeal against the Judgement of the Honourable C.C. Oluoch (Chief Magistrate) Mavoko Law Courts in CMCC no. 1051 of 2016 delivered on 11/11/2020)*

**JUDGMENT**

1. The Respondent successfully sued the Appellant herein for compensation for fatal injuries sustained by Everlyne Moraa (deceased) which they attributed to negligence on the part of its employees.
2. Briefly, the Respondent's case was that the deceased was admitted to the Appellant's medical facility for child birth on 18<sup>th</sup> February, 2013. She underwent a caesarian section but she died on the same day.
3. According to PW1, following a complaint made to the Medical Practitioners and Dentists Board by the family of the deceased, an investigation was carried out and it was found that the deceased who had obstructed labour was poorly managed by the medical facility. He stated that the post-operative care of the patient was poor.
4. The deceased's sister (PW2) stated that she went to the hospital to see the deceased only to be taken to the mortuary where she found her body while the post mortem report conducted at the hospital revealed that the stitching done after the caesarian operation was poorly done and that the deceased



suffered internal bleeding. PW2 stated that the deceased was 26 years old at the time and was a prisons officer at Athi River Prison earning a basic salary of Kshs. 28,000/-. She also testified that the deceased left a young child who needed to be taken care of.

5. The Pathologist (PW3) testified that upon conducting a post mortem of the body, there were no external injuries but internally the deceased had a large clot on the right side of the uterus extending to the back of the abdominal cavity; there was a gaping wound on the lateral wall; the uterus was bulky meaning it had been carrying a pregnancy for 22 weeks. He formed an opinion that the cause of death was surgically related (post caesarian). In cross examination, he stated that there was blood oozing from the caesarian surgical wound and part of the wound was not stitched. He testified that the body was identified by James Gachuki and William Omollo and that there was a police officer present.
6. While conceding that the deceased was admitted to the facility in labour, the Appellant denied it was negligent and maintained that the deceased had obstructed labour and was taken to the caesarian section where the operation was successfully done. That the deceased later developed complications which included breathing difficulties and excessive sweating. DW1 a doctor at the facility, testified that their attempts to resuscitate the deceased were futile.
7. The Appellant disputed the findings in the post mortem report and stated that only one system was examined; that the respiratory system, cardiovascular system, digestive system, head, nervous system, spinal column and spinal code were not examined.
8. DW1 stated that the cause of hemoperitoneum was not qualified and the dimension of the vent was not indicated. She admitted to receiving a letter from the Medical Practitioners & Dentists Board dated 30<sup>th</sup> May, 2015 in regard to the complaint and stated that the Appellant provided the information needed. DW1 also conceded that the Board found the Appellant guilty of malfeasance and resolved that the Appellant settle the matter with the family of the deceased but no settlement was reached as the Appellant did not propose one.
9. After considering the evidence and submissions by both sides the trial Magistrate found it a fact that the Respondent had acted negligently and found it 100% liable and awarded the Respondents a sum of Kshs.1,911,488/- broken down as follows: -Pain and suffering - Kshs. 100,000.00Loss of expectation of life - Kshs. 100,000.00 andLoss of dependency - Kshs 1,711,488.00Special damages - NilCosts and interest.
10. Aggrieved by the Judgment, the Appellant lodged this appeal on grounds that: -
  - a. The learned magistrate erred in both facts and in law in finding that the Respondent has proved their case for negligence as against the Appellant's herein.
  - b. The learned magistrate erred in both facts and in law in finding that the pathologist was qualified to be an expert witness in a matter of obstetrics and gynaecology.
  - b. The learned magistrate erred in both facts and in law in admitting the ruling from the Medical Practitioner and Dentists board as evidence, notwithstanding that the witness of the said board could not demonstrate that indeed any inquiries into the matter was done by them.
  - b. The learned magistrate erred in both facts and in law in shifting the burden of proof to the Defendant/ Appellant by indicating that the Appellant ought to



have been called an expert witness to contradict the shoddy medical report by the pathologist.”

11. The appeal was canvassed by way of written submissions.

### **Submissions**

12. Learned Counsel for the Appellant submitted that the post mortem was a sham and cannot form the basis of any litigation; that the letter from the Medical Practitioners and Dentists Board did not give reasons for its finding that the patient was poorly managed; did not document the medical personnel that attended to the patient; how poor the post-operative care was and which documents were poorly kept in the patient’s file and hence that decision could also not be relied upon.
13. Counsel reiterated that the Appellant was not negligent and submitted that there was no proof that the caesarean section was conducted without reasonable care and contended that the deceased could have had a pre-existing condition that may have caused the blood clots to form in the abdomen. The Counsel placed reliance on the case of *Pope John Paul’s Hospital & Another v Baby Kasoso* [1974] EA 221.
14. On their part, learned Counsel for the Respondents raised four issues; first, that the Appellant had not demonstrated the alleged errors on the part of the lower court; secondly, that despite numerous requests and demands from the Medical Practitioners and Dentist’s Board, the Appellant intentionally refused to attend the sessions and the Board therefore had to give its ruling; thirdly, that Dr. Okemwa Minda, the pathologist was qualified to be an expert witness as he is a holder of a Bachelor of Medicine and Surgery and was based at the Kenyatta National Hospital when he conducted the post mortem in which Dr. Hellen Onyango and the obstetrician represented the Appellant and further that the post mortem report was complete and no evidence had been adduced to show otherwise. Counsel cited the case of *Stephen Kinini Wang’odu vs the Ark Limited* [2016] eKLR to support his submissions in regard to the burden of proof. Counsel also relied on the case of *Muriangi Kanura Jeremiah vs Stephen Unga Mwarbuia* (2025) eKLR, and submitted that the Appellant had a duty to adduce evidence to rebut that of the Respondents but did not do so.

### **Analysis and determination**

15. As the first appellate court, I have considered and re-evaluated the evidence that was adduced in the court below while keeping in mind that I did not see or hear the witnesses (see the case of *Sielle & another v Associated Motor Boat Co. Ltd & Others* [1968] [EA 123]. I have also considered the rival submissions of the learned counsel for the parties, the cases cited and the law.
16. From the evidence it is not in doubt that the deceased was admitted to the Appellant’s facility with obstructed labour. She underwent a successful caesarean section after which she developed complications which demonstrated in breathing problems and sweating. She died on the same day after all efforts to resuscitate her failed.
17. Evidence adduced by the Respondents proved that the complications were as a result of a botched operation to the extent that part of the surgical incision was not even stitched. The post mortem report and the findings of the Kenya Medical Practitioners and Dentists Board all point to negligence on the part of the Appellant. It is instructive that there was no appeal on the decision of the Board and hence the decision still stands.
18. The Appellant contends that it did not attend the post mortem yet it was done at their facility. Its omission to do so cannot be visited upon the Respondents. From the record, the Appellant did not



object to the production of the post mortem report nor the ruling by the Kenya Medical Practitioners and Dentist Board and has only raised issues pertaining to the same in the submissions which is too late in the day.

19. The Appellant has also raised the issue of whether a pathologist qualifies to be an expert in matters gynaecology and obstetrics. My finding on this issue is that so long as the witness was qualified to be a pathologist and he indeed was, that was sufficient as what he was investigating and what was in issue, was the cause of death but not matters gynaecology or obstetrics.
20. In the case of *Mutonyi v Republic* [1982] KLR 203, 21, Potter JA the Court of Appeal had this to say on the nature and application of expert evidence:-

“Expert evidence is evidence given by a person skilled and experienced in some professional or special sphere of knowledge of the conclusions he has reached on the basis of his knowledge, from facts reported to him or discovered by him by tests, measurements and the like.

Section 48 of the *Evidence Act* (Cap 80) provides that where, inter alia, the court has to form an opinion upon a point “of science, art, or as to identity or genuineness of handwriting or finger or other impressions”, opinions on that point are admissible if made by persons “specialist skilled” in such matters. In *Cross on Evidence* 5<sup>th</sup> edition at page 446, the following passage from the judgement of President Cooper in *Davie versus Edinburgh magistrates* (1933) SC 34,40, as scinting the functions of expert witnesses:

“Their duty is to furnish the judge or jury with the necessary scientific criteria for testing the accuracy of their conclusions, so as to enable the judge or jury to form their own independent judgement by the application of these criteria to the facts put in evidence.”

- a. So, an expert witness who hopes to carry weight in a court of law, must, before giving his expert opinion:
  1. Establish by evidence that he is specially skilled in his science or art.
  2. Instruct the court in the criteria of his science or art, so that the court may itself test the accuracy of his opinion and also form its own independent opinion by applying these criteria to the facts proved.
  3. Give evidence of the facts on which may be facts ascertained by him or facts reported to him by another witness.” See *Gitiche v Wanjui & another* (Civil Appeal E559 of 2022) [2024] KEHC 1118 (KLR).”

21. Like the trial court, this court finds no reasons to doubt the qualification of PW3 as none were placed before the court save for the assertion that he is not a gynaecology or obstetrics. Having conducted the post mortem he was best placed to testify in that regard. The results of his examination of the body of the deceased points to a caesarian operation gone bad and hence to negligence on the part of the Appellant’s employees/servants and/or agents. The Appellant did not adduce evidence of a contrary opinion and given that it never appealed the decision of the Medical Board it still stands. It was not enough for it to assert that was not the cause of the death; it was under a duty to adduce evidence to support its case so as to rebutt that of the Respondent. I am satisfied therefore, that the Respondents proved their case against the Appellant on a balance of probabilities and that liability was proved against it at 100%. This appeal is not merited.



22. The Appellant has not challenged the quantum of damages and as there is no cross-appeal the same is upheld save that the damages under the *Fatal Accidents Act* (for loss of expectation of life and for loss of dependency) shall be distributed between the child of the deceased Gift Machuki (80%) and mother Mary Bochere (if still alive) (20%) as the same do not by law extend to the benefit of a brother and sister. They are however entitled to a share of whatever goes to the estate being the damages for pain and suffering.
23. The appeal is otherwise dismissed with costs to the Respondents.

**JUDGMENT SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 27H DAY OF MARCH, 2025.**

**E. N. MAINA**

**JUDGE**

In the presence of:

Mr. Wangai for the Appellant

Mr. Barongo Ombasa for the Respondent

C/A: Wambua

