



TEST CASE SUMMARY

WLSA (FOR VALERIE CHIBAYA VS MINISTER OF HEALTH AND CHILD CARE N.O HC 7296/2020

1. In 2020, client (Valerie Chibaya) instituted legal proceedings against the Minister of Health and Child Care for:

- Damages for pain and suffering in the sum of ZWL\$800 000.00
- Loss of amenities of life ZWL\$100 000.00
- Contumelia ZWL\$300 000.00
- Compensation for violation of her Constitutional rights in terms of sections 51,53,56, 57 and 56 of the Constitution in the sum of ZWL\$281 757.63

2. Brief Background of facts

- On the 17th of June 2020, Ms. Chibaya who was pregnant, visited Sally Mugabe Central Hospital after experiencing abdominal pains and vaginal discharge.
- She paid her consultation fee and was referred to casualty department. No vital measurements such as temperature, blood pressure and sugar levels were recorded. No card was given to her. No physical examination of her stomach and vagina was conducted.
- At the maternity ward where she was later referred to, she was ordered to obtain an Ultrasound Scan. The Radiology center at the Hospital was closed at that time. Client had to go back home.
- On 18th of June 2020, client experienced the breaking of her waters and labour pains. Client still could not get assistance at the Radiology center as her request was not endorsed urgent.
- Client later made arrangements to have the scan done at Pagomo Hospital. The result of the scan showed that the fetus had no pulse. While she was there, she noticed the limb of the baby protruding hence she was referred back to Harare Hospital.
- Upon getting to the hospital, she was forced to walk whilst in pain and under traumatic conditions of a baby dangling from her vagina. No wheelchairs were available. The stretchers that were available were soiled.
- Client was later attended by a doctor after her husband had begged the doctor to help them

3. In response to Client's allegations and claim, the Defendant denied being negligent, denied violating client's constitutional rights and blamed client for delaying in having the Ultrasound Scan done.

- Defendant however confirmed that no card was given to client, and no vitals had been recorded.

Court's Ruling

- Damages for pain and suffering/general damages were awarded in the sum of ZWL\$800 000.00.
- Damages for loss of amenities of life awarded in the sum of ZWL\$100 000.00
- Claim for contumelia damages was dismissed. The court's reasoning was that there was no intention by the health officials to humiliate the Plaintiff but rather the health officials were just negligent in the manner they handled client's case.
- The claim for constitutional damages was dismissed. Court however indicated that the Constitutional issues that arose in the matter could be pursued with in the right Court.
- Defendant was ordered to make the payment within 60 days of granting of the order.

6. The court's order is quite progressive as it expands on the meaning and application of the Constitutional rights enshrined in sections 76.

