MEDICAL NEGLIGENCE IN GHANA – ANOTHER LOOK AT *ASANTEKRAMO*

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Summary

Asantekramo alias Kumah v. Attorney-General [1975] 1 GLR 319 is a medical negligence case that is reported in the Ghana Law Report. The case was heard before the High Court in Kumasi.

The basic facts of the case were that a female patient of the then Okomfo Anokye Hospital had an arm amputated following an operation for an ectopic pregnancy. A successful action for negligence was brought against the hospital. The article discusses the trial of this case and looks at some of the possible issues the hospital could have raised to defend itself. It comments on what appear to have been some fundamental errors made by the judge which appear to have gone unchallenged, which may have resulted in heavy damages awarded against the hospital. It comments on the need for doctors, other health workers and health institutions to defend themselves where appropriate, recognising however that not all cases are defensible.

Asantekramo, alias Kumah v. Attorney-General, a case decided by the High Court Kumasi in 1975 is well known amongst lawyers in Ghana. For doctors, it should be of great interest because it is one of the very few medical negligence cases which has been decided by Ghanaian courts and officially reported. Of course many cases have gone to the Medical and Dental Council, some to Commission for Human Rights and Administrative Justice (CHRAJ) and some have been looked at by other administrative and disciplinary bodies. Court cases are especially important because they establish legal precedent which is used to decide future cases. They thus help develop the law in the particular field.

The facts of *Asantekramo* are essentially that in 1967, a 19 year old woman was diagnosed as having a ruptured ectopic pregnancy in a private clinic in Kumasi and was referred to the then Okomfo Anokye Hospital (now the Komfo Anokye Teaching Hospital). The surgery was successful but the arm of the patient in which the intravenous line was set subsequently became gangrenous and infected and needed to be amputated. Eight years after the incident the courts gave judgment for the patient and awarded heavy damages against the hospital.

When a patient is injured in the course of clinical care, is it necessarily and automatically to be regarded as negligence on the part of the health care team? Obviously not - certain medical and surgical procedures carry certain known and inherent risks and even when performed under the best of conditions by the most experienced personnel, can still end up with complications. It is also clear that the state of the patient may also contribute to the risk of the procedure or treatment ending up with complications.

In the case of Hucks v Cole, an English case decided in 1968 but reported much later in (1993) 4 Med. L.R. 393, the court stated that

> *"...with the best will in the world, things do sometimes go amiss in surgical operations or medical treatment.....So a doctor is not to be held negligent simply because something goes wrong."*

In the case of *Asantekramo,* it would appear that failure of the hospital to adequately defend itself may have contributed to judgment being given against it. Of course this opinion is based solely on the reading of the case as reported in the Ghana Law Reports and there may have been other factors considered which were not mentioned which may have influenced the case ending the way it did. It would also appear that the judge made certain incorrect interpretations of the medical facts that led to his making the judgment he did and this may also be a result of the hospital failing to put up a good defence.

There is not enough time and space here to discuss all the problems in this case (and there are several of them) but there a few that are particularly worth noting.

One of the main issues in this case was how the bacteria which caused the infection managed to get into the lady's arm. The surgeon who did the amputation when explaining how the arm of the lady got infected said:

> *"... it is my opinion that the bacteria got into the body by the [only] possible route of entry, namely, through the needle or the drip set. If the needle is sterilized then it is not possible for the bacteria to get in through the needle but of course if the drip*

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itself is contaminated or its container is contaminated, then although the needle is sterilized the bacteria may nevertheless get into the body."

The judge, most likely based on this and other similar medical testimony said:

"Now the medical evidence is that the bacteria is foreign to the body and ***must [have] come from outside****"*

This was a crucial point because an important part of the patient's case was that the infection in her arm was from bacterial contamination of improperly sterilised equipment (referring to the needle and giving set). It however misses the point which every secondary school student knows that far from being foreign to the body, our bodies are actually teaming with bacteria. Not only that, but even the air we breathe and all the surfaces we come into contact with have their own population of bacteria. If an arm loses its blood supply, dies and becomes infected, it is a far cry to assume that the infection is from a contaminated needle or giving set. In the same way, if a piece of meat is left un refrigerated, it quickly begins to go bad, having been colonised by bacteria, not from a contaminated needle, but from bacteria from the environment, some of which may be within the meat itself. It is only heating or freezing that can prevent this from happening.

This point should have been made strongly in defence of the hospital. Yet when the doctor who did the surgery for the ectopic pregnancy, after having suggested a diagnosis of thrombophlebitis was asked how the bacteria got into the patient's arm he replied "That is a mystery" The judge, not surprisingly, was not impressed with this and decided that the doctor was not a credible witness.

Another point where I believe the judge got it wrong was when he made the statement

"…The circumstance further shows that prima facie something which went wrong ought not to have gone wrong if those in charge of the plaintiff had not been at some fault of a sort, ***for prima facie there ought not to be any reason why stomach pains should end up in amputation****"*

This is clearly a lack of appreciation of the pathology and one which the defence team of the hospital should have dealt with. It is true that the patient, (a 19 year old apprentice seamstress/housewife who already had 2 children, a 2 year old and a 7 month old and who was already pregnant again) said in her evidence that she came to the hospital with "stomach pains" but is also important to recognise, as every doctor knows, that a ruptured ectopic pregnancy has nothing to do with the "stomach". The bleeding may result in shock and when a person goes into shock, the first places to be affected are the limbs, starting from the fingers and toes. If a person is deeply in shock, limb tissues may be compromised. If this is followed by an IV line which a normal healthy person would have stood without any complications the trauma to the veins might result in further damage to the blood supply, thrombophlebitis, and further death of tissue. Dead tissue will usually become infected if given enough time, which is one reason why it may need to be amputated.

As evidence that the IV giving set was defective and possibly contaminated and negligently used, the evidence of the lady's husband was taken. The judge said:

"His further evidence is that ***as the apparatus was defective*** *the nurse asked him to endeavour to buy a rubber hose and dextrose at a store at Bantama to which she directed him. He did buy these things and tendered one in evidence but as they were not actually used their only relevance in my finding is to lend credence to his version of what took place before the nurses and to show in particular that his version that the nurses said the apparatus was defective is in all probability true; otherwise I do not see why he should incur on his own, the expense of buying dextrose and a rubber hose for the infusion apparatus".*

This is interesting. In 1967 when the incident happened, the cash and carry system was in place and it would probably not be unusual for a patient to be asked to go and buy a giving set. There are many reasons why a patient might be asked to buy a new giving set. Even if the nurses did tell the patient that there was something wrong with the previous giving set, it is difficult to see how the judge made a leap from this fact to conclude that the nurses were negligent. Unfortunately for Okomfo Anokye, the defendant hospital, did not present any of the nurses as witnesses. Unless a giving set has an obvious and visible defect (for example it is visibly dirty) or has passed its use by date, it would be difficult for a nurse to be able to detect a defect until it was actually used on a patient and it malfunctioned. So that even if the defect in the giving set was the cause of the patient losing her arm, it would be difficult to see how the health care staff could be blamed for using it and even if such a defect was proved to be the cause of the damage to the arm responsibility would lie at doorsteps of the manufacturer.

There were many inconsistencies in the patient's story as recounted in the case report, for example it is said that she:

"…also noticed that the blood from the blood infusion apparatus was not going well into her vein but was rather flowing onto the ground. She said

the blood from the apparatus was stagnant in her arm and in her opinion was thus causing the swelling and was overflowing by the point of the needle"

It is difficult to understand how blood was both "flowing onto the ground" and "stagnant in her arm". No one challenged these inconsistencies which might have been important in trying to establish exactly what went wrong and what the sequence of events was. It was clear from various statements by the judge that he was of the opinion that the initiating event was infection from a contaminated IV apparatus and this appears to be the foundation of the whole case of negligence against the hospital. It would have been much more likely however that the initiating event was compromise to blood flow resulting in necrosis and the infection was a secondary event.

I believe that as medical practitioners, when we are truly negligent, we must be sanctioned, but it is also important that medical personnel are not unduly "crucified" when things go wrong unless it can be proved that we have indeed been negligent. Because doctors work with human beings, when things go wrong, they manifest in harm being caused to human beings. The emotional drama, for example of a young child who has lost the fingers of a hand following an IV line is almost irresistible and when shown in a court room might sway even the most experienced judge. However if this child was rushed in deeply in shock and with severe anaemia, IV fluids were appropriately given, all drugs which were given through the IV line were indicated and correctly dosed and administered, yet despite this the fingers still turned gangrenous and required amputation, then one must be cautious about making a finding of negligence against the doctor especially when after the incident, appropriate steps were taken to save the hand. A judge should not conclude that just because the presenting complaint had nothing to do with the fingers, the loss of the fingers automatically raises a presumption of negligence.

It is sometimes expedient when a case of negligence is brought, that the healthcare team does not attempt to defend because sometimes indefensible acts of negligence do happen. Where, however, a case goes to court and there is a good defence then it should surely be raised as clearly and articulately as possible, under the guidance of a lawyer. Medical facts can be extremely technical and doctors must learn the skill of communicating complex medical facts in simple English that anyone can understand (a skill which can be mastered by making it a habit to explain to your patients what you are going to do for them...) The doctor who is not able to do this is likely to lose his case because there is, unfortunately, a certain hostility against medical personnel out there when it comes to medical negligence. It is much easier for everyone to identify with the patient who has suffered loss, because virtually everyone has been a patient before. It is much more difficult to feel sympathy for the doctor in court even if he has done everything professionally possible to save the patient's life.

It is also important for doctors to learn to correctly administer informed consent. If a patient is adequately informed about the likely and possible complications of a procedure, when one of such complications does occur it becomes so much easier to handle the situation than when the patient is taken completely unawares.

Lastly, it is worth noting that although the incidents leading to the case of *Asantekramo* occurred in 1967, it did not come to judgment till 1975, 8 years later. It is therefore important, as we all know, that we document accurately and keep our records well so that they are available to us should a problem arise.