

<i>LM and Others v Government of the Republic of Namibia</i>	
Project code ¹	NAM
URL	https://namiblii.org/akn/na/judgment/nahc/2012/211/eng@2012-07-30
Citations	[2012] NAHC 211
Country	Namibia
Date of judgment	30 July 2012
Court	High Court
Location	Windhoek
Case type ²	Application
Result	First claim - successful Second claim - dismissed
Flynote ³	Human rights and fundamental freedoms - unlawful Sterilisation - doctrine of informed consent - the required consent must be given freely and voluntarily and should not have been induced by fear, fraud or force - such consent must also be clear and unequivocal - the lack of informed consent amounts to an assault.
Legislation and International Instruments ⁴	Legislation <ul style="list-style-type: none"> Articles 6,7,8, 10, 14, 25(3) and 25(4) of the Constitution of Namibia
Cases cited as authority ⁵	<ul style="list-style-type: none"> <i>Castel v De Greef</i> 1994 (4) SA 408 (C) <i>Rogers v Whitaker</i> (1993) 67 ALJR 47 <i>Lampert v Hefer NO</i> 1955 (2) SA 507 (A) <i>Louwrens v Oldwage</i> 2006 (2) SA 161 (SCA) <i>Santam Insurance Co. Ltd v Vorster</i> 1973 (4) SA 764 (A) <i>Mabaso v Felix</i> 1981 (3) SA 865 (A)
Facts ⁶	Three HIV positive women (plaintiffs) were unlawfully sterilized without their informed consent at State Hospitals. Despite the plaintiffs signing consent forms, it was discovered that informed consent was lacking. The plaintiffs, who were pregnant at the time, were asked to sign consent forms for sterilization during labour when they were in severe pain and unable to make informed decisions. The doctors and nurses on duty informed the plaintiffs that they would be sterilized without asking for their preferences or

¹ Project code is the combination of the three jurisdiction letters (KEN for Kenya, SAF for South Africa etc) and the unique case identification number for the index. E.g., a project code could be KEN1, SAF34, ZAM12).

² Whether Trial, Application or Appeal.

³ **Area of law** - topic - subtopic.

⁴ Legislation/ International instrument title and section numbers.

⁵ List of cases considered to be important precedent (case name and citation).

⁶ Brief facts about the case (max 150 words).

	<p>providing information about the effects and consequences of sterilization. They assumed that the plaintiffs had acquired the necessary knowledge about sterilization procedures from antenatal classes attended at the hospitals.</p>
Summary ⁷	<p>The court found that the plaintiffs' rights to life, liberty, human dignity, and the right to form a family were violated by the sterilization. The court emphasized that informed consent for sterilization must be obtained when the patient is rational, without pain, and has adequate time for consideration, discussion with their partner and relatives, and making a reasoned decision. It should not be made under the duress of extreme pain.</p> <p>The defense of <i>volenti non fit iniuria</i> ("no injury is committed against one who consents") was rejected by the court. The court held that written consent alone was insufficient, and the burden of proving informed consent rested with the defendant. The defendant failed to demonstrate that the plaintiffs were properly informed about the consequences of sterilization while in a rational state of mind and given sufficient time to consider the information.</p> <p>The court also held that the plaintiffs had to prove that the sterilization was a result of their HIV-positive status and infringed their right to equality and freedom from discrimination as protected by the Namibian Constitution.</p>
Decision/ Judgment ⁸	<p>The court found in favour of the plaintiffs regarding the first claim, as the defendant failed to prove that informed consent was obtained for the sterilization procedures.</p> <p>The court dismissed the second claim as the plaintiffs could not provide credible evidence linking the sterilization to their HIV-positive status.</p>
Basis of the decision ⁹	<p>The plaintiffs were asked to sign consent forms during the intense pain of labour, which the witness testified as highly undesirable. The pain experienced during labour can be so intense that it overwhelms the women, causing them to lose sense of reality and be solely focused on the pain.</p>
Reported by	Rada Stoilova

⁷ Summary of the determination of legal questions and/or grounds of appeal (between 150-250 words).

⁸ A brief summary of the ruling/judgment of the court (max 100 words).

⁹ A 1-2 sentence summary of the basis of the decision (i.e., which legal rules were relied on).

Date	16 June 2023
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