



Removing legal barriers to treatment: Legal training on health and human rights

Wednesday, 29 June 2016

Workshop 1 (13:00-14:30): **Discrimination against people living with HIV and informed consent**

Case study 1

Participant presenter: Nelson Wanyonyi Osiemo (Senior Litigation Advocate)

Jurisdiction: Kenya

Background information:

The client's employers secured for her a medical cover. When this medical cover was issued, the client was HIV negative. The employer therefore chose a cover that does not include people with living with or affected by HIV virus as by then she was negative.

Two years down the line, when the client visited Nairobi hospital and Kenyatta National Hospital for treatment, she was informed that she was HIV positive and on this basis the insurance declined to pay for her treatment.

The insurance communicated this to her employers, who paid for the bill but dismissed her from employment without terminal benefit claiming her dues were used to offset the hospital bills.

Legal issue:

The client now wants to sue both the hospitals and the insurance company. She claims that the hospital took a blood test from her but never informed her for what purpose it was going to be used for. Complains that the hospital proceeded to do an HIV test without her informed consent then shared the result with the insurance company. The insurance company in furtherance to violating her rights shared the information with her employer.

The client was treated in two hospitals and she's not sure which hospital leaked her status to the insurance as the insurance refused to settle both bills.

What then is the meaning of one to be compelled to do an HIV test? What are the limits to this test?