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LEGAL NEWS

12 April 2024



High Court Clears Hospital and Doctor (Gynecologist) of Professional Negligence

The High Court of Tanzania at Dar es Salaam (the Court), on 4 February 2024, ruled by clearing a hospital and a doctor (gynecologist) of professional negligence in Civil Case No. 89 of 2019. In this case, the Court provides important insights on how professional negligence can be established against a doctor and the determining factors for such a claim to be substantiated.

Background of the Case

The Plaintiff went to the hospital (the First Defendant) for a medical checkup in July 2018 for the purpose of undergoing a normal cervical cancer screening which the Plaintiff alleged to be her routine after every 3 years. After registration, the Plaintiff was advised to see a doctor, gynecologist (the Second Defendant), about her medical issue. It is said that the Second Defendant advised the Plaintiff to take fertility test and investigation before taking her cervical cancer test.

After the examination and tests, the Plaintiff was diagnosed with hormonal imbalance for which medicine was prescribed. The Plaintiff was advised to return to the hospital for another test to check the fallopian tubes and subsequently she was subjected to an operation. After the operation, the Plaintiff fell ill and returned to the hospital for further observation. On her return, the Plaintiff was prescribed with Malaria. Consequently, a dose for the same was given, which she claims was negligently administered to her, instead of checking the cause for her abdominal pain and fever.

Later on, the Plaintiff went to Muhimbili National Hospital following her worsened condition. At Muhimbili, the Plaintiff was immediately admitted at the Intensive Care Unit (ICU) as she had high fever coupled with pus discharge from the incisions. She was diagnosed with peritonitis with septicemia and anemia, and there was done an immediate re-laparotomy, intra-operatively. As a result, the Plaintiff was found with pus collection of about 500ml in her pelvis. Subsequently, adhesiolysis procedure was carried out and super cervical hysterectomy with right ovary preservation, mobilization of sigmoid colon followed by segmental resection of the 10cm non-viable sigmoid colon, and then end to end anastomosis was done.

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ECRA Attorneys is a modern and full-fledged law firm based in Dar es Salaam, Tanzania. It is comprised of qualified legal hulks with professional experience of more than a decade in a range of areas of their expertise.

ECRA Attorneys offers professional services in various areas of the law ranging from Taxation (both tax litigation and tax advisory); Corporate; Employment; Immigration; Intellectual property; Litigation, Arbitration and Regulatory; Engineering, Procurement and Construction (EPCs-related Services); Banking and Project Finance, Real Estate; Capital Market and Securities; Oil and Gas, Mining Law; Competition Law; Telecommunications and ICT Law; Payment Systems Law; Insurance Law and International Trade Law and Financing.

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The Plaintiff alleges that the negligence of the Defendants caused her serious and irretrievable mischief, loss of womb; and she could no longer conceive and give birth. As a result, the Plaintiff issued a demand notice to the Defendants claiming specific and general damages. Later, the Plaintiff filed a suit before the Court claiming damages and the declaration that the Defendants acted negligently and without proper medical care in treating her.

Arguments Raised by Parties

The Plaintiff argued that the Defendants acted negligently and caused her serious and irretrievable mischief with loss of womb; and she can no longer conceive and give birth. The Plaintiff claimed against the Defendants the following: (i) a compensation of TZS 800M as specific damages, TZS 800M as punitive damages, and TZS 700M as general damages; (ii) a declaration that the Defendants acted negligently and without proper medical care in treating her; (iii) interests on the decretal sum at the rate of 7% per annum from the date of judgment till payment in full; (iv) costs of the suit to be borne by the Defendants; and (v) any other reliefs the Court deemed fit and just to grant.

On the other hand, the Defendants argued that the Plaintiff readily agreed and consented to the advice given professionally by the doctor, and she signed the necessary forms. Further, the Defendants argued that the Plaintiff consented to all the diagnostic procedures done onto her, and after the laparoscopy, it was revealed that there were some complications which necessitated the laparotomy procedures. The Defendants insisted that all the procedures were conducted professionally without negligence.

Determination of Issues and Decision of the Court

For the Court to determine the case, two issues were raised, namely: (i) whether the Defendants acted negligently in treating the Plaintiff; and (ii) to what reliefs are the parties entitled.

The Court held that the Defendants had a duty of care towards the Plaintiff, therefore, what followed was to be established if that duty was breached. In its determination, the Court was guided by the precedent in the case of ***Bolam vs Friern Hospital Management Committee (1957) IWLR 582, Lord McNair***. In the said case, it was observed that where there is a situation which involves the use of some special skills or competence, then the test as to whether there has been negligence or not is not the test of the man on top of Clapham omnibus, because

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he has not got this special skill. The test is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not possess the highest expert skills. It is a well-established law that it is sufficient of him to exercise the ordinary skills of an ordinary competent man exercising that art.

The Court observed that for the Second Defendant to be held responsible for medical malpractice, the Plaintiff had a duty to prove that the doctor did not abide by the applicable standard of care, which is the treatment that a reasonable practitioner working in the same specialty would provide when faced with a similar situation. However, the Plaintiff did not prove that negligence with an expert witness. Additionally, the Court highlighted that a reasonable man entering a profession which requires a particular level of learning to be called a professional of that branch impliedly assures the person dealing with him that the skill which he professes to possess will be exercised with reasonable degree of care and caution. He does not assure his client of the results.

In that regard, the Court observed that a physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on. The only assurance which such a professional can give or can be understood to have given by implication is that he is possessed of the requisite skill in that branch of profession which he is practicing and while undertaking the performance of the task entrusted to him, he would be exercising his skill with reasonable competence.

Based on the foregoing, the Plaintiff had a duty to prove that the Second Defendant was not possessed of medical skills to carry out the clinical tests of HSG, Laparoscopy and Laparotomy, or that although the Second Defendant has the required skills, he did not exercise such skills with reasonable competence. The Plaintiff failed to discharge the burden of proof. As a result, the Court concluded that there is no proof adduced by the Plaintiff to prove breach on the part of the Defendants to amount to professional negligence. Therefore, since the Plaintiff failed to prove her claims on the balance of probabilities, the suit was dismissed with costs.

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Copy of the Judgment of the Court can be accessed by [clicking here](#)

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