

**IN THE HIGH COURT OF TANZANIA**  
**(DAR ES SALAAM DISTRICT REGISTRY)**

**DAR ES SALAAM**

**CIVIL CASE NO. 205 OF 2018**

**PETER TABU MASSAWE t/a KAGERA PHARMACY ----- PLAINTIFF**

**VERSUS**

**PHARMACY COUNCIL -----1<sup>ST</sup> DEFENDANT**

**ATTORNEY GENERAL -----2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

*19<sup>th</sup> May, & 30<sup>th</sup> June, 2023*

**MWANGA, J.**

That plaintiff, **PETER TABU MASSAWE t/a KAGERA PHARMACY** operated a pharmacy shop at Magomeni Kagera within the Municipality of Kinondoni in the name and style of Kagera Pharmacy. It was around 2011 when he applied for pharmacy licence permit from the Tanzania food and Drugs Authority (TFDA). As a matter of procedures and good practice, the 1<sup>st</sup> Defendant sent his officers to inspect the working premises and, upon

satisfaction of the premise's conditions, Registration certificate was issued to the plaintiff on 28<sup>th</sup> March, 2011.

On the same date, that is 28<sup>th</sup> March, 2011 the plaintiff was issued with business permit No. P573-2010/11 after he had paid fees which was subject to renewal in every financial year before expiry on 31<sup>st</sup> June, every year. To say the least, the permit was issued after fully compliance with the mandatory requirements for the establishment and operation of a pharmacy business. As expected of the plaintiff, he commenced the business as sole proprietor company and later on 23<sup>rd</sup> February, 2012 he converted it into a firm.

On or about the 3<sup>rd</sup> December, 2012 the 1<sup>st</sup> defendant inspectors visited the plaintiff's shop for regular inspections where they met plaintiff's pharmacist. The inspection revealed that; there was no a DDA-BOX prescription register, no valid Permit and there was a display of prescription drugs over the counter. As a result, the plaintiff was directed to close the business-shop up until the deficiencies are corrected.

In an attempt to rescue his business, the plaintiff paid the requisite fees for renewal of business permit. Other conditions stipulated by inspectors were not complied with. Consequently, the shop remained so closed.

It is under the aforesaid facts the plaintiff claimed that an order to close the pharmacy shop by the 1<sup>st</sup> defendant was prompted by: -

- i. the abuse of the discretionary powers by randomly and unlawfully and without any reasonable cause shutting down the plaintiff's business;
- i. acting maliciously and calculated to injure plaintiffs' business as the closure of the pharmacy severely had caused serious financial loss and colossal damaging to his good will in the business community and the entire public at large;
- ii. deciding to close the pharmacy despite the glaring proof that plaintiff had already paid the requisite fees and all relevant penalties;
- iii. the fact that things alleged to be missing were not there due to the negligence of the pharmacist who was the 1<sup>st</sup> defendant's own officer as he was trained and registered by the defendant himself;
- iv. the 1<sup>st</sup> defendant's pharmacist who deliberately and or by omission did not properly and accordingly advise the plaintiff that the said DDABOX was of paramount important;

- v. the fact that absence of business permit was not due to the plaintiff's negligence as the duty of the plaintiff is to pay fees and the duty of preparing and issuing the permit is that of the defendant himself;
- vi. the defendant's duty to make sure that whenever a pharmacy owner pays fees then both the receipt and permit are issued together or simultaneously so that to avoid unfairly victimisation to clients like the plaintiff and other people of his kind; and
- vii. the closure of the plaintiff's pharmacy that not only prevented the plaintiff from earning his daily income and profit arising from the daily sales but also caused several losses to the plaintiff by virtue of fees directly paid to the defendant, as well as monthly rentals paid to the landlord as well as other levies charged by the respective municipal authorities.

In view of the above, the plaintiff claimed further that unlawful closure of the said pharmacy has caused him severe mental anguish, his family and the entire working staff as they all lost their daily income and means

of survival; and as a result, he had failed completely to maintain his family and pay for his children school fees plus other upkeeps.

It was on the basis of the aforesaid sufferings that caused the plaintiff to filed this suit in Civil Case No. 205 of 2018 on the 22<sup>nd</sup> of November, 2018 against the 1<sup>st</sup> defendant, Pharmacy Council and the Attorney General as the 2<sup>nd</sup> Defendant claiming for judgment and decree as follows: -

- i. a declaratory order that defendant's action was unlawful and illegal;
- ii. a declaratory order that defendant acted *ultra vires* and did abuse his discretionary powers;
- iii. a perpetual declaration restraining defendant from harassing, and or closing plaintiff's pharmacy without due process;
- iv. the defendant be ordered to pay the plaintiff shillings 378,000,000/=;
- v. payment of Tshs. 1,712,500/= being refund for the fees and permit paid for the business;
- vi. Refund of Tshs. 15,000,000/= being rentals for the entire period;
- vii. payment of general damages to be assessed by the honorable court;
- viii. interest on the decretal sum at 20% from 3<sup>rd</sup> December, 2012 up to the date of judgment;

- ix. interest on the decretal sum at court rate from date of judgment till full final payment;
- x. costs of this suit be provided; and
- xi. any other order this court deems right and equitable to issue.

The point for consideration with my findings are as follows: -

- i. Whether there was any legal obligation imposed by any parties*
- ii. Whether there was any breach of statutory duties by either party.*
- iii. What reliefs are the parties entitled to.*

When the matter came up for hearing the defendants were represented by Mr. Paulo Makanja, Senior State Attorney and Mr. Erigh Rumisha, also learned State Attorney. The plaintiff appeared in person as he decided to drop out his advocate who had previously represented him.

During the hearing, the plaintiff presented his case in person and the defendants presented a total of three witnesses. Upon closure of defendants' case, parties presented their final submissions which shall not be reproduced here, but only be used and applied where necessary.

The plaintiff testified that; he applied and given a business permit to operate a pharmacy business on 28<sup>th</sup> March 2011. That, the business was

conducted up until 3<sup>rd</sup> December, 2012 where he was ordered to stop the operation. He produced exhibit PE 8 which was an inspection form where he was directed to close the business for not fulfilling certain conditions as detailed in the said exhibit, the assertions which were not disputed by the 1<sup>st</sup> defendant who stated that on the material date, that is, 3<sup>rd</sup> December, 2012 her officials (DW1-Abubakary Ally and DW2- Ms. Emily Mwakibolwa) in discharging their lawful duty provided for under Section 52(1) of the Pharmacy Act, No.1 of 2011 Cap. 311, conducted inspections at various places in Kinondoni District in Magomeni area including the plaintiff's pharmacy shop. During the inspections they found out that the premise was not in compliance with the sound requirements of the governing rules for failure of the plaintiff to meet renewal of registration requirements, lack of DDA-Box and prescription register and displaying of prescription drugs over the counter. In his submission, the learned State Attorneys made reference to exhibit PE 8 which was the inspection form which pointed out the mentioned above three shortfalls. On the basis of such findings, the plaintiff through his pharmacist who was present in the shop was directed to close the shop for purposes of rectifying the shortfalls before resuming operations.

Admittedly, the plaintiff's submitted that his business could only be opened upon fulfilling the stated shortfalls. However, he also admitted that he only paid the permit fees. In his submission, the learned State Attorneys made reference to the testimonies of the plaintiff who tendered his letter dated 5<sup>th</sup> December, 2012 directed to the 1<sup>st</sup> defendant in Exhibit PE9, acknowledging and admitting the fact that there were anomalies which were detected by the 1<sup>st</sup> Defendant in his capacity as a regulator. At page 2 of the said letter, it reads: -

***"Baada ya ukaguzi wangu niligundua kwamba vitu vyangu vilikua sawa isipokuwa Business Permit no 573-2010/11, registration Certificate of Premises, kibali cha dawa part II vilivyoisha muda wake havikuwepo. Nilimpigia simu msaidizi wangu aliekuwepo wakati wa ukaguzi na kumuuliza, na alinijibu kwamba vimechukuliwa na wakaguzi hao. Baada ya hapo nilifunga duka na kuondoka." (Emphasis is added)".***

On the other limb of submission, the plaintiff contended that despite the fact that he paid permit fees and penalties thereof, the 1<sup>st</sup> respondent did not allow him to open his business. The plaintiff produced payment receipts for permits as exhibit PE 7 and PE 12. In his testimonies, the plaintiff stated that after the payments of permit fees it was the duty of the



1<sup>st</sup> defendant pursuant to Section 36(2) of the Pharmacy Act, 2011 to either issue the permit or not with reasons, the thing which was not done. It was the plaintiff submission that, since he was given a business license to operate pharmacy business on 4<sup>th</sup> March, 2011 the inspection conducted thereafter whatever the shortfalls may be revealed later could not be the basis of closing his business. Additionally, the plaintiff contended that, the respondents have failed to show the laws which empowered them to close his business.

On their part, the learned State Attorneys for the defendants contended that it was a gross misconception of the interpretation of regulatory directives envisaged in the inspection form which is Exhibit PE 8 tendered in court. According to them, the renewal of pharmacy business permit is not automatic obtainable by paying requisite fees and penalties thereto. Instead, there are other conditions which the applicant was directed to fulfil before issuance of the permit. According to them, the other important conditions were availability of DDA box, prescription register and ensuring none display of prescription drugs over the counter which is the requirement of the Pharmacy Act, No. 1 of 2011 [Cap 311].

The evidence of DW1 were to the effect that DDA box is an important tool in a pharmacy business because it is a safe place where sensitive and dangerous drugs are kept. To him, DDA box must always be kept under key and lock in order to avoid the risk of being abused by people with addiction. Also, the witness told the court that the controlled drugs which are normally kept in the DDA box are susceptible to be stolen by drug addicts and misapplication as a result might be into obsession, health problems and even can cause death. Likewise, DW1 told the court that some medicines are supposed to be kept in store and not displayed over the counter and pharmaceutical personnel can only dispense them if and only if there are clear directions of written prescription by a physician or medical doctor. The witness testified further that, the effect of displaying such medicines over the counter is that they can be erroneously and unintentionally be sold without prescription. As held by him, displaying medicines of this category may lead to its irrational use which may cause drug resistance, prolongation illness, increase of cost for treatment and or death of a patient. Both DW1, and DW3 testified that, the plaintiff had an available remedy by simply rectifying the shortfalls identified in exhibit PE 8; otherwise, the directives were justifiably issued.

During cross examination, DW2 was asked if there was any way for the Plaintiff could proceed with his pharmacy business and his reply was, yes, but only if he had complied with the directives issued to him and which are pursuant to the Pharmacy Act, No. 1 of 2011 [Cap. 311] and its regulations. DW3 was Ms. Mildred Kinyawa. She was former Registrar of Pharmacy Council at the time when the Plaintiff business premises was inspected and closed. This witness testified that, on 3<sup>rd</sup> December, 2012 she directed her officers, DW1 and DW2 to conduct the aforesaid inspections. According to her, the Plaintiff was found transacting pharmacy business while having the shortfalls indicated at exhibit PE 8 and that those irregularities were communicated to the plaintiff's company through that exhibit. It was her evidence that, the Plaintiff was given an opportunity to comply with legal requirements for business continuity again and again but he failed to comply with the requirements. Hence, justifying the 1<sup>st</sup> Defendant to deny renewal of permit to the Plaintiff company for 2012 which was the last application made by the Plaintiff's Company. It was also her testimonies that, there was nothing in writing which was brought to her attention as a Registrar to prove that the plaintiff complied with the directives of the Council.

The learned State Attorneys submitted that in lieu of the above violations, the 1<sup>st</sup> Defendant as a regulator was justified to deny business permit to the Plaintiff company as, by so doing, the 1<sup>st</sup> defendant, Pharmacy Council was discharging one of its major duties of protecting the interests of general public. The learned State Attorneys also contended further that, the business of selling human medicines is not a business like any other because of the naked truth that every medicine is a poison, thus safe keep is of paramount importance. It was, therefore, submitted that, Sections 34(2), (3)(b) and 36(3) of the Pharmacy Act, No.1 of 2011 [Cap. 311] read together with Regulations 18(2), 35(2), (4) and 36(2) of the Pharmacy (Pharmacy Practice) Regulations, 2011 G.No.301 of 2012 clearly mandates the 1<sup>st</sup> defendant to prescribe standards in which the pharmacy business aspirants must adhere and abide to in order to be allowed to transact the same, the rationale being to ensure service providers achieve definite therapeutic outcomes for the health and quality of life of clients as provided for under section 4(b) and (c) of the governing law.

Alongside those testimonies, the plaintiff admitted that pursuant to Section 37(5) (a) & (b) (i) &(ii) of the Pharmacy Act, the business was liable be closed if the conditions attached to the permit have been violated.

However, it was his contention that the same ought to be done by lodging complaints to the Registrar about the violation and the persons whom the permit has been cancelled or suspended shall have the opportunity to appeal, the procedures which were not followed. The plaintiff continued stating that, he wrote to the 1<sup>st</sup> defendant two letters i.e letters dated 5<sup>th</sup> December, 2012 and 9<sup>th</sup> December, 2012 seeking the open of his business but the same were ignored. The letters were admitted in Court as exhibit PE 6 and PE9. The respondents through the learned State Attorneys submitted that, the agreement between the plaintiff and his pharmacist which was tendered as exhibit PE 6 were prepared by the 1<sup>st</sup> defendant. Thus, the defendants did not object to the tendering and admission of exhibit PE 6 by the plaintiff in his capacity as managing director of the plaintiff company for the first reason that the document categorically sets out obligations as well as rights of parties to the agreement. It was the defendants' contentions that, the defendants are strangers in the said exhibit and thus, cannot bear blame if a party to it failed to execute his duties properly. The learned State Attorneys submitted further that, the pharmacist whose name appear in the exhibit was at the disposal of the plaintiff and so he ought to have been listed and called him as a plaintiff

witness. That step would have shed light to this honourable court regarding the averment by the plaintiff that the pharmacist is real an official of the 1<sup>st</sup> defendant or not. Further to that, Defendants would have an opportunity to cross examine him as to who was his employer and whether he was accountable to the 1<sup>st</sup> defendant in his activities as per contract PE 6. Therefore, the learned State Attorneys invited the Court to give no weight to the allegations levelled to the 1<sup>st</sup> defendant by the plaintiff with regard to the position of the pharmacist in discharging his duties.

I have seriously considered the evidence on record and fully applied my mind to the submissions of the plaintiff and learned State Attorneys. I have also fully considered the authorities availed to me in the submission for which I am grateful.

Before dealing with issues at hand, let me stress some important rules regarding civil matters. **First**, he who alleges must proof. The Law of Evidence Act provides under Section 110 (1) that: -

***"Whoever desires any court to give judgment as to legal liability dependent on the existence of facts which he asserts must prove that those facts exist."***

As per the provision above, the plaintiff had a duty to prove that the alleged liability of the defendants to compensate him was true. **Second** that the proof is on balance of probabilities. In the case of **Godfrey Sayi Versus Anna Siame as Legal Representative of the late Mary Mndolwa**, Civil Appeal No. 114 of 2012 (unreported) the court had this to say: -

*"It is similarly common knowledge that in civil proceedings, the party with legal burden also bears the evidential burden and the standard in each case is on a balance of probability."*

The court also quoted the Indian case of **Narayan Ganesh Dastane Versus Sucheta Nayaran Dastane** (1975) AIR(SC) 1534 where the Supreme Court explained proof on a preponderance or balance of probabilities to mean that: -

*"The normal rule which governs civil proceedings is that a fact can be said to be established if it is proved by a preponderance of probabilities. This is for the reason that ...a fact is said to be proved when the court either believes it to exist or considers its existence so probable that a prudent man ought to act upon the supposition that it exists. A prudent man faced*

*with conflicting probabilities concerning a fact situation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favor of the existence of the particular fact. As a prudent man so the court applies this test for finding whether a fact in issue can be said to be proved. The first step in this process is to fix the probabilities, the second to weigh them, though the two may often intermingle. The impossible is weeded out at the first stage, the improbable at the second. Within the wide range of probabilities, the court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies."*

**Third,** those parties are bound by their pleadings. In the case of **The Registered Trustees of Roman Catholic Archdiocese of Dar es Salaam Versus Sophia Kamani**, Civil Appeal No. 158 of 2015 the court held that:

*"...it is trite principle of law that parties are bound by their pleadings. In civil litigation, it is through pleadings where parties established their cases they intended to prove. So, it is the duty of the parties to establish their case to clearly and categorically establish their cases before adjudication. In that*



***context therefore, pleadings are road map so to say to any given civil litigation which should show the destination the parties to the case intended to reach"***

On top of that, in the case of **Makoni J.B Wassanga and Joshua Mwakambo & Another** [1987] TLR 88 the court had this to say: -

***"In general, and this I think elementary, a party is bound by his pleadings and can only succeed according to what he has averred in his plaint and in evidence, he is not permitted to set up a new case"***

After having highlighted the positions of the law above, let me now turn to the issues at hand.

In the first issue, both parties agreed that there was legal obligation imposed by them. That, around 2011 the plaintiff applied for pharmacy licence permit from the 1<sup>st</sup> defendant who inspected the working premises where the plaintiff was issued with registration certificate on 28<sup>th</sup> March, 2011. He was also issued with a business permit No. P573-2010/11 after the he had paid business permit fees.

The business permit issued above was subjected to renewal in every financial year before expiry on 31<sup>st</sup> June, every year. Exhibit PE4 was the registration certificate of premises and business permit. According to the

certificate, the plaintiff had a duty to conduct business of selling pharmaceutical products in conformity with the requirements of the Tanzania Food, Drugs and Cosmetics Act, 2003 or any other written law related to the premises registration at all times, failure of which the certificate shall be suspended or revoked. In that regard, the business permit issued to the plaintiff on 28<sup>th</sup> March, 2011 expired on 30<sup>th</sup> June, 2011.

As it was submitted by the learned State Attorneys, the business permit was subject to renewal at every financial year before expiry on 31<sup>st</sup> June, every year. So, much as the 1<sup>st</sup> defendant had the duty to issue permit license to the plaintiff after he had fulfilled the required conditions, reciprocally the plaintiff ought to apply for renewal of business permit before 30<sup>th</sup> June of each year and pay the prescribed annual fee as per The Pharmacy (Fees and Charges) Regulations, GN No. 299 of 2012.

Inferencing to exhibit PE8, the inspection was conducted on 3<sup>rd</sup> December, 2012 and that was the date the pharmacy shop was closed. Therefore, it is no doubt true that from 31<sup>st</sup> June, 2011 to 3<sup>rd</sup> December, 2012 the plaintiff conducted business without a valid permit. The inspection which was conducted by DW1 and DW2 under the supervision of

DW3 clearly point out shortfalls on the business premise of the plaintiff that, (i) there was display of prescription drugs over the counter (ii) there was no valid permit and (iii) there was no DDA box and prescription register. That being the case, the inspection team directed the plaintiff to close the shop and rectify the defects before resuming the operations. Here, it is also clearly that the directions of the inspectors to rectify the shortfalls were not complied with. DW3 testified that had the shortfalls rectified the business would have been left to operate. However, she neither received any letter from the plaintiff informing her that the errors had been rectified. The plaintiff himself admitted the fact that, none of the setout conditions by the inspectors were met. He only emphasized that since he paid the permit fees and penalties thereof his business ought to be left to operate.

In view of the above, I am inclined to hold that the plaintiff did not discharge his duty of upkeeping the permit alive and fulfilling other conditions as set out by the 1<sup>st</sup> defendant. As correctly submitted by the learned State Attorneys, the payment of receipts alone does not constitute the permit as required under Section 21(3) of the Tanzania Food, Drugs and Cosmetic Act, 2003. The payment receipts is only an evidence of

payment of the requires fees but, it is not, by itself a permit. *The ESSENTIAL LAW DICTIONARY* by Amy Hackney Blackwell defined the word "permit" to mean: -

***"Authorization or consent to something or to allow an official document authorizing someone to do something".***

In light of these facts, I agree with the learned State Attorneys' submission that the payment of permit fees for renewal of pharmacy business permit alone is not automatically obtainable by paying requisite fees and penalties thereto, as long as there were other conditions to be fulfilled and in fact were not . Though, the plaintiff was arguing that failure to meet the other stipulated conditions did not justify the closure of the business as there was no law which justified the closure of his business. In response, the learned State Attorneys cited the provision of Sections 34(2), (3)(b) and 36(3) of the Pharmacy Act, No.1 of 2011 [Cap. 311] read together with regulations 18(2), 35(2), (4) and 36(2) of the Pharmacy (Pharmacy Practice) Regulations, 2011 G.No.301 of 2012. Those sections clearly give mandates to the 1<sup>st</sup> defendant to prescribe standards in which the pharmacy business aspirants must adhere and abide to in order to be allowed to transact the same, the rationale being to ensure service

providers achieve definite therapeutic outcomes for the health and quality of life of clients as provided for under section 4(b) and (c) of the governing law. In that regard, the requirements of renewal of business permit, availability of DDA box and prescription register and the prohibition to display prescription drugs over the counter in a pharmacy shop one of the legal requirements pursuant to the law. Section 36 of the Pharmacy Act, reads: -

*"36-(1) A person shall not sell, dispense or supply medicinal products unless he has obtained **a permit** issued under this Act.*

*(2)N/A*

*(3) The Council **shall not issue a permit** to sell medicines and related medical supplies under this section unless the Council is satisfied-*

*(a) That the premises in respect of which the application relates shall be stored, meets the prescribed standards;*

*(b) That the equipment are available for storing the medicines and related medical supplies;*

*(c) With the suitability of the equipment and facilities which are used for distributing the medicines and related medical supplies; and*

*(d) With the arrangements made or to be made for securing the safe keeping, and the maintenance of adequate records in respect of medicines and related medical supplies stored in or distributed from those premises. (Emphasis is mine)*

Above all, there are also regulations made under the Act to wit; regulations 18(2), 35(2), (4) and 36(2) of the Pharmacy (Pharmacy Practice) Regulations, 2011 G.No.301 of 2012. The provisions require the premises register under the Pharmacy Act to comply with the **good practice and registration guidelines** of business of a pharmacist. So, the conduct of inspection is regularly done to ensure the medicines are stored and meets the prescribed standards, the equipment is available for storing the medicines and related medical supplies, the suitability of the equipment and facilities which are used for distributing the medicines and related medical supplies; and for securing the safe keeping, and the maintenance of adequate records in respect of medicines and related medical supplies stored in or distributed from those premises.

It would therefore proper to state that, the plaintiff cannot be heard to say that there no laws which required him not to display prescription drugs over the counter, to run business without license, and to ensure

availability of DDA box and prescription register. It should further be noted that, payments of required permit fees by the plaintiff were not enough to dispense with other requirements.

As to the second issue, there was clearly breach of statutory duty by the plaintiff which cannot be held to benefit him out of his own wrongs. He conducted the business of selling medicines without permit from 31<sup>st</sup> June, 2011 to 3<sup>rd</sup> December, 2012. After inspection, he was directed to rectify the defects but for the reasons best known to him he ignored the directives. According to him, it was the pharmacist who was responsible to ensure availability of the missing items, so it was not right for him to be held responsible. However, he forget that he was the one who entered into contract with the pharmacist, so rights and obligations, so to say were between them and not the 1<sup>st</sup> defendant. In that regard, the plaintiff's assertion is wrong.

According to section 4 of the Pharmacy Act, the 1<sup>st</sup> defendant duty is to regulate and control the profession of pharmacists and to uphold and safeguard the acceptable standards of pharmacy practice in both public and private sectors. The role of pharmacist or superintendent was to supervise the business of the plaintiff in accordance to the terms of the

contract and to the requirements of pharmacy council. In fact, if there was any loss suffered by the plaintiff because of misconduct of the pharmacist for not being advised accordingly, then pharmacist was the one responsible for such loss and not the 1<sup>st</sup> defendant, who the misconduct was never reported to her.

The 3<sup>rd</sup> issue was whether the plaintiff is entitled to any reliefs. As it can be seen from the prayers enlisted in the plaint, the plaintiff asked this court to grant declaratory orders, specific and general damages, interest refund, and costs of the suit. For the plaintiff to succeeds on such prayers he must prove the same before the court of law. The law under Section 110 of the Evidence Act provides that, whosoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove those facts exist. That was also the position of the law in the case of **Abdul- Karim Haji Versus Raymond Nchimbi Alois and Joseph Sita Joseph** (2006) TLR 419 where the court held that: -

***"...It is an elementary principle that he who alleges is the one responsible to prove his allegations".***



As I have pointed out earlier, the suit of the plaintiff is not maintainable as it lacks any legal basis against the defendants. What can be inferred from the evidence adduced by both parties are that directives for closure of the pharmacy shop issued by the 1<sup>st</sup> defendant to the plaintiff was geared towards fulfilling one of their sacred legal duties aimed at protecting health of the general public. In fact, there was no valid explanation offered by the plaintiff as to why he did not fulfill the stipulated conditions and left them to rest.

In the upshot, the defendants are not to be blamed for the loss suffered (if any) except for the plaintiff himself on his failure to act diligently in discharging his legal duty. As the suit not maintainable, it is, therefore, dismissed in its entirety. In consideration of the nature of the claims between parties, I order no costs.

Order accordingly.

Right of Appeal fully explained.



**H. R. MWANGA**

**JUDGE**

**30/06/2023**

**COURT:** Judgement delivered in the presence of Mr. Paulo Makanja Senior State Attorney, and the Plaintiff in person.



**H. R. MWANGA**

**JUDGE**

**30/06/2023**