

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

CIVIL CASE NO. 21 OF 2016

ANITA KAVEVA MARO (*Also known as ANITHA
MARO KAVEVA, ANITA KAVEVA, ANITA MARO
and ANITA MWAMGIGA KAVEVA*) ----- **PLAINTIFF**

VERSUS

MUHIMBILI NATIONAL HOSPITAL ----- **DEFENDANT**

JUDGMENT

MUTUNGI, J.

The plaintiff herein dully represented by Mr. Evold Mushi, learned Advocate has filed claims against the defendant for payment of Tsh. 742,020,000/= as specific damages, payment of Tsh. 1,500,000,000/= as general damages, a declaration that the defendant was negligent in its dealings with plaintiff and costs of the suit for the defendant's negligent conduct which culminated in the plaintiff's loss of her employment.

It is the plaintiff's story that up to 30th June, 2015, she had been an employee of the Tanzania Bureau of Standards (TBS) working as Finance and Administration Manager on permanent and pensionable terms. The plaintiff further, narrated that from around September, 2014 she had been attending at the defendant's clinics and department for different health problems. During the whole period the plaintiff's medical insurer, (AAR) had been paying all the medical costs to the defendant. In the course of the plaintiff's attendance at the defendant's medical facilities the defendant's staff dully signed sick sheets and she would forward them to her employer for purposes of being issued with excuse duties.

The problem started after one of the defendant's staff one Dr. Jude Tarimo who attended her in October, 2014 at the defendant Emergency Department did prepare a discharge summary explaining that she was discharged from the said department on 28/10/2014. She took the said report to her employer, the employer inquired for another report and this time around the defendant issued a report that she had

never been treated at Muhimbili and the alleged doctor had not treated her. It had now turned to be a forgery case.

She was then summoned to appear before the disciplinary committee. Thereafter the defendant wrote a third letter stating that she had indeed been treated at Muhimbili and the said doctor exists except the procedure followed to issue the report was unprocedural. The only explanation was that she had colluded with the said doctor. The sick sheets were admitted and marked Exhibit "P1", the doctor's summary discharge report was admitted as Exhibit "P2", the letter written by Dr. Jude Tarimo was admitted as Exhibit "P3", the clinical notes and sick sheets were admitted as Exhibit "P5". The controversial letter was admitted as Exhibit "P7".

Before the disciplinary committee, DW2 (Elinezar Msuya) appeared and asked to verify the letter that was before the committee. In the end the disciplinary committee on the basis of the witness from the defendant and the defendant's letter she was terminated from employment. The defendant had conducted that indeed she had a file at the said hospital and the discharge summary was written by a doctor who was not a specialist hence the letter was issued contrary to the

hospital's procedure (Exhibit "P8") and the disciplinary charge sheet admitted as Exhibit "P9". The termination letter was admitted and marked Exhibit "P11". The termination was based on two reasons (a) dishonesty or breach of trust by maliciously submitting forged documents from the hospital and (b) absence from work due to the ED's allegedly forged.

The plaintiff lamented that the defendant had a duty to exercise great professionalism while writing their letters to her employer. As a result of the termination she was seen as a hopeless character yet the defendant's Executive Director had ended up confirming that she had been receiving medical treatment at the said medical facilities, namely the Emergency Medicine Antiretroviral Treatment Clinics and Physiotherapy Units. She also suffered loss of salaries which in fact was a good salary able to sustain her. She also suffered emotional distress and psychological torture on account of forging documents which were prepared by the defendant's employee. She was professionally damaged and her reputation tarnished.

She further contended that she was discontented and appeared before the CMA on the complaint that she was unlawfully terminated. She was ultimately cleared but the employer appealed and the High Court upheld the CMA's decision. She was re-called by her employer and paid salary allowances to a tune of 140,000,000/=. All that she is claiming is general damages arising out of the injury she suffered after the defendant's negligence to a tune of Tsh. 1.5 billion. As a patient it was not possible to know the defendant's internal procedures, all that she needed from the defendant was treatment.

The plaintiff's witness (PW2 – EMMANUEL MWANJELA TUBABOLE) a driver employed by TBS alledged, he remembers on 28/09/2015 the Managing Director had convened a meeting with the employees. He reminded them that they should be diligent in their duties and broke the sad news that the plaintiff had been terminated for declaring forged medical documents. This came as a shock considering she held a high post and was highly qualified.

On the other side of the coin, Mr. Daffar, learned Advocate led DW1 in evidence (MIKIDADI JULIUS MDETE) who explained as a Human Resource Manager was aware that the plaintiff had been terminated by her employer. She complained at the CMA and was re-enstated and fully paid all her claims which included allowances, general damages, salaries and leave totaling Tsh. 350,000,000/=.

Whereas DW2 (ENEZER SOLOMON MSUYA) working with the defendant in the legal department averred that TBS had requested for the plaintiff's medical report as per Exhibit "D1". They responded that they were still tracing her file. On 13/03/2015 they got yet another letter from the principal secretary from the Ministry of Health (Exhibit "D3"). This time around they replied that the doctor who had treated the plaintiff was not authorized to issue the plaintiff's medical report (Exhibit "D4"). On 11/06/2015 they were summoned to attend a disciplinary committee meeting and one Abdallah Kiwanga did represent the defendant.

On 16/06/2015 DW2 attended on behalf of the defendant and informed the committee that the letters or reports that they had received were in contravention of the internal

hospital procedures. The TBS wanted further information and they issued them a letter of 26/06/2015. The defendant did take stern measures against (Dr. Jude Tarimo) the doctor who attended the plaintiff and was asked to provide explanations as per letter admitted as Exhibit "D7". The doctor did give a detailed explanation as per letter admitted as Exhibit "D8". The doctor was in the end punished and given a warning letter as per Exhibit "D9".

In conclusion DW2 stated that, what they availed to TBS is the information they had explaining that the patient had no such diseases and the author of the discharge document was an unauthorized doctor (Medical Officer grade II) and not a specialist, this being a referral hospital.

At the end of the hearing, it was only the plaintiff who filed final written submissions. What then are the issues in this matter: -

- (1) Whether, the defendant had a duty of care to the plaintiff in providing correct and proper information to the plaintiff's employer.*

- (2) *If the first issue is in the affirmative whether the defendant breached that duty.*
- (3) *Whether such breach caused damage to the plaintiff.*
- (4) *Whether the plaintiff is entitled to damages based on the breach.*
- (5) *To which reliefs are the parties entitled to.*

Before answering the framed issues, it is imperative to give the definition of the term “*duty of care*”. This is the legal obligation imposed on an individual requiring that they exercise a reasonable standard of care while performing any acts that could foreseeably harm others.

In the case of **ALDERSON BLYTH V. BIRMINGHAM WATER WORKS CO. [1856] II EX 784**. The same mean;

“an omission to do something which a reasonable man would do, or doing something which a prudent and reasonable man would not do”.

In the case of **ROE V. MINISTRY OF HEALTH [1954] 2 WLR LORD DENING** had the following to say;

“the hospital authorities are responsible for the whole of their staffs, not only for nurses and doctors but also for the anaethelists and the surgeons. It does not matter whether they are permanent or temporary residents or visiting, whole time or part time. The hospital authorities are responsible for all of them. In other words, hospitals are responsible for all these whose charge the patients are, or patient is wherein hospital, the doctor engaged, has between him and the patient, established the doctor and patient relationship by accepting him/her for treatment purposes, the said doctor has a duty of care, and has to exercise the same with skillful attendance”.

Considering the above the same would go to the information given by such doctor to the patient's employer. This would answer the first issue, that the defendant had a duty of care to the plaintiff hence was to provide correct information. The defendant was to take responsibility to the effect that the doctors maintain great professionalism.

To the second issue as to whether the defendant breached that duty, this can only be answered by the sequence of events. On 04 February, 2015 the defendant confirmed that the plaintiff was receiving medical treatment in its various departments and clinics. On 08/05/2015 the defendant's Executive Director denied the fact that, the plaintiff was admitted at its emergency departments and all documents submitted by the plaintiff to her employer were false and the patient's file was non – existant. On 26/06/2015 the defendant invalidated all the documents prepared and signed by the defendant's medical staff submitted by the plaintiff and denied the said doctor was its employee.

After the plaintiff had been charged and convicted, the defendant accepted that such doctor did exists. It is obvious such contradictory medical reports issued by the defendant whose employee had a patient and doctor relationship was a breach of duty of care. The defendant had to take a lot of care in whatever information was to be provided for out of the said institution.

The third issue is not hard to find. The facts speak for themselves. The plaintiff was seen in the eyes of her employer untrust worthy and one who is full of forgeries. She was hence terminated. She definitely had to suffer loss of employment, salaries and other consequential effects like mental stress and loss of reputation. She is entitled to damages based on the defendant's negligence. She had no way or reason of knowing the defendant's internal procedures. The defendant had a duty to give correct information through its employee.

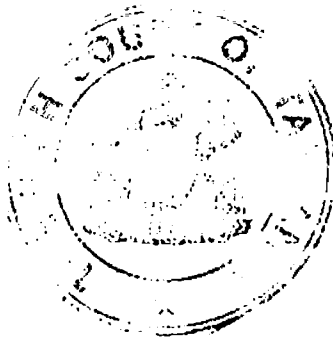
Having found that the plaintiff is liable to damages, those will be general damages since she admits, had already been paid all her dues by the employer but what is still in dispute is the injury she suffered from the defendant's acts. The fourth issue will hence be answered to that extent.

Lastly, the plaintiff has prayed for 1,500,000,000/= being general damages.

In the case of **MIS. FISHCORP LTD V. ILALA MUNICIPAL COUNCIL** (Commercial Case No. 16 of 2016), it is stated: -

"General damages are never quantified, they are paid at the discretion of the court and, on that score it is the court which decides which amount".

The court is highly persuaded by the above authority. The case of **TANZANIA CHINA FRIENDSHIP TEXTILE CO. LTD V. OUR LADY OF USAMBARA SISTERS [2006] TLR 70** has a similar holding. The plaintiff is hence to be granted a reasonable compensation which I find Tsh. 50,000,000/= will meet the justice of the case. The suit is accordingly granted with costs.

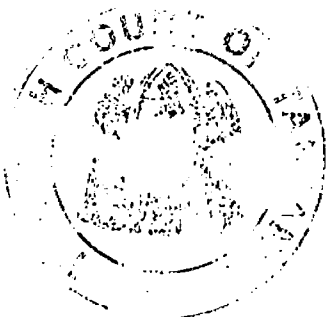



B. R. MUTUNGI

JUDGE

20/10/2019

Read this day of 30/10/2019 in the presence of Miss. Linda Mafuru for the plaintiff and Mohamed Muya for the defendant.




B. R. MUTUNGI

JUDGE

20/10/2019

Right of appeal explained.



B. R. MUTUNGI^{J.}

JUDGE

20/10/2019