

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

CIVIL CASE No. 150 OF 2015

HOST AND ANE DISPENSARY

ASSOCIATES COMPANY LIMITED.....PLAINTIFF

Versus

KINONDONI MUNICIPAL COUNCIL.....DEFENDANT

JUDGMENT

18th June – 22nd September, 2020

J. A. DE - MELLO J:

The Plaintiff herein, prays for Judgment and, Decree against the Defendant as follows;

- i. A Declaration that, the closure of the plaintiff's business by the defendant was unlawful and was done without proper authorization.**
- ii. An Order for the Defendant to pay the Plaintiff TShs. 200,000,000/= being compensation for loss and undue disturbance caused by the unlawful and, deliberate acts against the Plaintiff.**
- iii. An Order for the Defendant to pay the Plaintiff TShs. 181,324,000/= being the compensation for the drugs, medical equipment's, and medical consumables which were detained by the defendant.**

- iv. **An order for the Defendant to pay the Plaintiff the sum of 500,000/= TShs. per day as loss of income which the Plaintiff was earning from the business from when the cause of action arose up to the date of the judgment.**
- v. **Payment of the interest in (iv) above the commercial rate of 22% per annum from the date of the judgment until final payment.**
- vi. **Payment of interest on the decretal sum at the court rate of 12% per annum from the date of the judgment until final payment.**
- vii. **Payment of General Damages assessed by the court.**
- viii. **Cost of this suit.**

Written Statement of Defence had been accompanied with a **Notice of Preliminary Objection on Point of Law**, which was disposed on the 22nd June, 2018 in favour of the Plaintiff. **Froldius Mutungi** fended for the Plaintiff whereas **Nipael Ezekiel**, appeared for the Defendant. Four witnesses namely; **Godfery Nsikilo as PW1, Christina Mabiti as PW2, Focus Byamungu as PW3, and Allan Kimambo as, PW4** were lined up to condense the Plaintiff's case which attracted four exhibits namely;

1. Exhibit 1...
2. Exhibit 2 Letter of complaint for closure of the dispensary from the Plaintiffs
3. Exhibit 3, the DMO Letter for closure of the dispensary
4. Exhibit P4 the Photographs.

The Defence had only one witness the Medical Doctor one **DW1 Gwinini**. In his testimony **PW1**, allegedly from **Maswa Medical School** with

experience since 1998, had on the 2/4/2009 while on duty attending to patients heard some arguments between a nurse and unknown person. Approaching the reception he met five (5) people one being the landlord, one introducing himself as Ward Executive Officer (WEO), two others as Policemen, informing them to have come to close the premises following expiry of tenure. I pleaded with them to contact the boss but to no avail as they rounded up four nurses as they left. **PW2 Christina Mabiti**, with teaching background claimed to have been on duty on that particular day and stationed at the reception leading patients to doctors of what transpired as she too was taken forcefully to Police station. On arrival they were forced to record their statements on allegations of conducting illegal abortions. They were detained for three days, she recalls. **PW3**, allegedly a physician who studied from **Mafinga Clinical Officers Training College**, with twenty years of experience and a board director too of the Plaintiff's but also in-charge of the finance and development, that it came to his knowledge what transpired in that fateful day as he wasn't around. For him it was more of the loss incurred as a result of that, closure considering the loan secured for establishing and running the dispensary. Lastly, was **PW4 Allan Kimambo**, and the owner presumably that, he received calls from his people and, hurriedly heard to the scene only to confirm it locked. What he did next was to approach several official within the local government to include **District Executive Director**, and the District Medical Officer, officially registering a complaint letter which was admitted and marked **exhibit P2** but, ended up handed over two letters, one for closure and another for inspection conducted by DMO office, tendered and admitted as as **exhibit P3**. Photographs showing how the

eviction and closure was conducted was admitted and marked **exhibit P4**. At this juncture the Plaintiff's case was closed which the Court found the Defence with a case to answer.

DW1 Gwinini, the Medical Officer who was central in the issue, but having served on different capacity for fourteen (14) claimed to be knowledgeable of the Plaintiff registration but with allegations of mal-practises for non compliance with regulations and illegal abortions. For one to qualify operations, there must be a Medical Doctor, a nurse, Labaratory Technician, Assistant Lab Technician with a certificate, enough space, a descent reception. On inspection the dispensary lacked observation room for both female and male, incinerator and it was admitting patient contrary to licence. That with all these shortfalls, he is the one who issued a letter on behalf of **RMO Beatrice** together with the order to close business, which translated into retrieving the license. He was of a firm view that the inspection was legally conducted and impromptu to establish unprofessional conduct, praying for dismissal of the suit with costs.

On the **7th day of February 2019**, the Court framed the following issues;

- I. Whether the Defendant closed the plaintiff's business or dispensary**
- II. If the first issue is affirmative whether such closure was legally justified.**
- III. To what Reliefs are the Parties entitled to?**

The allegation and, confession by both the Plaintiff as well as **DWI** for the Defendant, confirms the closure and hence answering the first issue in affirmative. Exhibit P3 issued from DED and, signed by DW1 corroborates

the same, with reference, **FC/K/30 VOL.11/107**, dated the **23/04/2009** Titledi;

"YAH: ILANI YA KUFUNGA/KUSITISHA HUDUMA ZA ZAHANATI YA ANNE ILIYOPO MBEZI KWA MSUGURI"

In answering the second issue as to the legality or otherwise of the closure, **DW1's** admission for inspection and allegation of mal-practices as depicted on the **P3 exhibit ref. FC/K/30 VOL.11/107**, dated on **23/04/2009**, outlining missing basic requirement for a dispensary to run, but worse even qualified personnel. **PW1, PW3** from the looks of are mere clinical officers, with no the requisite credentials that, a dispensary demands. **Section 27** of the **Private hospitals (Regulation) Act, Cap. 151** provides for impromptu inspection and, search all in the spirit of protecting patients health. Form that section it empowers registrar of private hospitals, an assistant registrar of private hospitals, a medical officer or any public officer authorized by the minister in writing to conduct inspection and search to ascertain if the medical treatment is being rendered in accordance with the provision of the act and, regulations made under it. **Section 27(2)** of the **Private hospitals (Regulation) Act, Cap 151** provides for authorized officer to conduct search or to gain entrance without warrant. In accordance with **Rule 2 of Private Hospitals (Standard Guidelines for Health Facilities) Regulations, G.N. No. 233 of 1997** defines "**Dispensary**" to include a health facility which offers health services on outpatients basis and may include maternal, child health and laboratory services; "**health facility**" includes a maternity or nursing home, a dental clinic or laboratory, dispensary, health center, hospital or medical clinic, where health services are provided; and

term "**hospital**" to mean a health facility which offers services to both outpatients and in patients and includes maternal and child health services. Thus using of words Dispensary, healthy facility or hospital may be used interchangeably. These guidelines are mandatory and, not discretionary. **Rule 3(1) of Private Hospitals (Standard Guidelines for Health Facilities) Regulations, G.N. No. 233 of 1997** stipulates that;

"No person shall establish, manage, operate or cause to be managed or operated a health facility unless the facility complies with the relevant standards guidelines set out in the Schedule to these Regulations".

PW1 claimed to be the in charge of the Plaintiff's dispensary, but a clinical officer, as opposed to **Rule 3 (3)** of the **Schedule of Private Hospitals (Standard Guidelines for Health Facilities) Regulations, G.N. No. 233 of 1997** which provides for the supervisor of the dispensary to be an **Assistant Medical Officer 1**. **Rule 1.7** provides for incinerator for waste management, while **Rule 1.10** of the cited Schedule above, provides for proper records of patients and other health information, with a requirement to produce reports on disease morbidity and mortality promptly as required by the Ministry of Health through the District Medical Officer. **Rule 1.11** provides for drugs allowed at that level of the health facility, but in our case the defendant was found chloroquine which has been prohibited.

The impromptu inspection by **DW1** and, his team was in accordance with **Rule 1.15** of the schedule of **Private Hospitals (Standard Guidelines**


for Health Facilities) Regulations, G.N. No. 233 of 1997, stating that;

“Health facility will be allowed to operate after the premises have been inspected by the District Medical Officer, an application has been approved by the Private Hospitals Advisory Board and a Certificate of Registration issued by the Registrar of Private Hospitals. This registration shall be renewed annually”.

Record also has it that, the license had expired and some of the requirement not fulfilled, justifying the closure by the Authority. This therefore answers the second issue affirmative. Based on the above the issue of reliefs by the Plaintiff and, supported by photographs under **exhibit P4** none of the government vehicles as alleged are seen around neither was any equipment removed nor confiscated, as alleged. Other than closure, the rest of the equipment were intact, possibly by the Plaintiff himself, considering eviction by the landlord and, not part of this suit. The defendant is not concern about the equipment’s and, what there duty was limited to closure the dispensary as opposed to suspension of the license. I find no relief is entitled to the Plaintiff as no proof has been adduced to verify the claim. It therefore goes without say that the Plaintiff’s claims is unfounded and hence baseless as I dismiss this suit with costs.

I order.



 Recoverable Signature

X *J. A. De-Mello*

Signed by: J.A. DE-MELLO

JUDGE

22nd September, 2020