IN THE HIGH COURT OF TANZANIA

(DAR ES SALAAM SUB DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL CASE NO. 50 OF 2021

MAGRETH LEONARD MBAGA..... 1ST PLAINTIFF

WILLIAM DANIEL SICHONE..... 2ND PLAINTIFF

VERSUS

REGENCY MEDICAL CENTRE LTD..... DEFENDANT

JUDGMENT

Date of last Order: 23rd June, 2023

Date of Judgment: 21st July, 2023

E.E. KAKOLAKI, J.

On the 15th day of December, 2020, at about 08.00 hours one Daniel Siyame Sichone, a Government employee aged 58 years old (deceased), the husband and father to the 1st and 2nd plaintiffs respectively was received and attended at the defendant's emergency department by one Dr. Siraji Said Gugu and his medical team while in critical respiratory condition. After triage, the patient's condition was resuscitated after being introduced to oxygen mask and cannula for intravenous medication, vital signs or initial specimens were collected, whereby later on, it was established through chest x-ray that, he had severe pneumonia. As the patient had a standard NHIF card which

does not cover some of the investigation needed, the plaintiffs who were in company of the patient (deceased) were asked to deposit cash Tshs. 500,000/- to cover the medical treatment on that day and Tshs. 120,000- for Covid-19 test which was to be performed outside the hospital in which they did. It is however contended the medical service rendered to the patient was unsatisfactory as up to 3.00 pm no useful treatment was accorded to him. It is asserted further by the plaintiffs that, later on were informed by Dr. Gugu of the decision made for them to be required to deposit up to Tshs. 2,000,000/- per day so that their patient could be admitted in isolated room or else they transfer him to another hospital of their choice. Shocked with that information and unable to cover the said costs, it is claimed the plaintiffs asked for referral letter and ambulance car transfer services to Muhimbili National Hospital (MNH) as the only alternate and close medical facility to rescue their beloved life but the request was turned down as the patient had his oxygen mask and cannula removed before they were forced to use their private car to rush him to MNH. On reaching MNH and while at the emergency department undergoing treatments the plaintiffs' patient was declared no more, after which the burial permit (exh.PE1) was issued and deceased body was collected for burial process.

Later on both plaintiffs petitioned before the District Court of Ilala at Kinyerezi and granted with letters of administration of the estate of the late Daniel Siyame Sichone (exh. PE1) before they decided to institute the present suit against the defendant on tort of negligence which allegedly claimed their beloved life, for being provided with late and unsatisfactory medical services, demand of extra and unaffordable amount of money for provisions of services instead of rendering services first to save patient's life and denial of referral letter and ambulance transfer services to MNH. The duo are claiming to have suffered irreparable loss for losing their beloved one, sole bread earner who earned Tshs. 15,000,000 per month. They are thus praying for judgment and decree against the defendant on the following:

1. Payment of sum of Tshs. 360,000,000/= (Three Sixty Million Shillings) being the amount which the deceased was to earn for the remaining two years in his employment.
2. General damages at the tune of Tshs. 500,000,000/= (Five Hundred Million Shillings).
3. Cost of the suit.

4. Any other relief(s) that the Court may deem just and equitable to grant.

When served with plaint, the defendant denied to have acted negligently in attending the deceased, claiming that he was accorded with all necessary medical attention and service as per emergency protocols. That, after the triage the patient who was in critical respiratory condition was resuscitated and had oxygen mask 6 litres/minute and cannula introduced to him for intravenous medication (IV), vital signs or initial specimen for test collected and done including chest where he was diagnosed have features of viral pneumonia known as SARS-COV 2 globally named as COVID 19.

As the patient has severe typical pneumonia suspected be COVID 19 the global pandemic by the time and not covered by health insurance cover note for any extra costs, extra costs ranging from Tshs. 500,000 per day to be deducted when used was to be deposited by the plaintiffs which they did before the final assessment of the possible daily costs after consultation with the pharmacy and billing department which later one was established to range between Tshs. 500,000/- to Tshs. 2,000,000/= per day per patient depending on the condition of the patient.

On being informed of the possible total costs to be incurred per day so that the patient could be admitted, it is alleged the plaintiffs refused to accept any further payment the result of which demanded for their patient out of the defendant's medical facility and refund of their payments. It is contended by the defendant that, after refund of the paid Tshs. 500,000/= the plaintiffs refused to take up the advise to await for ambulance which is fitted with oxygen mask facility which was still in attendance of another patient, though the patient was stable, claiming that it could cause no harm to use their private transport to MNH which is 15 minutes' drive, if they had travelled all the way from Dodoma to the defendant's facility. So the defendant could not detain them instead released them as they left against the medical advice. The defendant therefore invited the Court to dismiss the suit for want of merit as the defendant committed no negligence.

After the pre-hearing conferences and mediation procedures were concluded, four issues were framed for determination by the Court, parties made their cases and finally final submission prepared and filed in Court. Throughout the trial, the plaintiffs were represented by Prof. Zakayo Lukumay and Ms. Lilian Apolynary, both learned advocates, while the

defendant enjoyed services of Ms. Hamisa Nkya learned counsel. The issues which this Court is called to determine go thus:

1. Whether the defendant hospital was negligent in taking care of the deceased.
2. If the first issue is in affirmative, whether death of the deceased was a result of the defendant's negligence.
3. If issue No. 2 is in answered in affirmative, whether the plaintiff suffered any loss as a result of that death.
4. What relief are the parties entitled to.

The principle in proof of civil cases is that, he who alleges must prove and the onus of so proving lies on the party who would lose the case if the alleged existing facts are not proved, as the standard of proof is on the balance of probabilities. The above principle is promulgated under the provisions of sections 110(1) and (2), 112 and 3(2) of the Evidence Act, [Cap. 06 R.E 2022], and well spelt in the cases of **Abdul Karim Haji Vs. Raymond Nchimbi Alois and Another**, Civil Appeal No. 99 of 2004, **Anthoni M. Masanga Vs. Penina (Mama Ngesi) and Another**, Civil Appeal No 118 of 2014 and **Berelia Karangirangi Vs. Asteria Nyalwambwa,** Civil Appeal No. 237 of 2017, (both CAT- unreported). Equally it is trite law that,

parties are bound by their pleadings the rationale being to bring the parties to an issue and not to take the other party by surprise. See the cases of **Charles Richard Kombe t/a Building Vs. Evarani Mtungi and 2 Others**, Civil Appeal No. 38 of 2012 and **Astepro Investment Co. Ltd Vs. Jawinga Company Limited**, Civil Appeal No. 8 of 2015 (both CAT-unreported). This Court will therefore be guided by the above principles in deciding this matter.

Further to that as this case hinges on tort of medical negligence, I find it opposite to revisit the law relating to proof of claims of that nature. It is settled law that, for tortious liability of negligence to be established four conditions have to be satisfied. **One** that, the defendant had duty of care towards the plaintiff, **second**, that duty was breached, **third**, the breach caused the plaintiff to suffer damages, **fourth**, the defendant had no contribution on the said negligence. See the cases of **Donoghue Vs. Stevenson** (1932), AC 562, **Said Sultani Ngalemwa Vs. Isack Boaz Ng'iwanishi and 4 Others**, Civil Case No. 42 of 2016, **Aziza Salumu Vs. Regency Medical Centre Ltd and Another**, Civil Case No. 03 of 2017 and **Jamila Mbaraka Gosi Vs. Grace Millanzi and 3 Others**, Civil Case No. 167 of 2020 (all HC-unreported)

The above conditions apply to medical negligence when medical professionals such as doctor, nurse, dentist, surgeon or any other in the field performs or omits doing the accepted medical care in particular environment as a result damages is occasioned to the defendant. See the cases of **Jonas Kiminda Vs. M/S Regency Medical Centre Ltd, Civil Case No. 214 of 2017** (HC-unreported) and **Aziza Salumu** (supra).

In this case therefore plaintiffs are duty bound to establish to the court's satisfaction that the above cited four conditions exist. And in discharging such noble duty three witnesses were paraded, Magreth Leonard Mmbaga (PW1) who also tendered in Court the deceased burial permit admitted as exhibit PE1, William Daniel Sichone (PW2) who tendered three exhibits, the letters of appointment as administrator of the estate of the late Daniel Siyame Schone (exh. PE2), receipt of advance payment of Tshs. 500,000/- at the defendant (exh. PE3) and the deceased salary slip (exh. PE4) and Prof. Harun Elmada Nyagori, from Jakaya Kikwete, Cardiac Institute who gave his expert opinion evidence. On the adversary, two witnesses were called to disprove plaintiffs' claim in which Dr. Goodhope Kisangare (DW1) tendered in court various investigation reports on Biochemistry,

Microbiology, Hematology and X-ray report all admitted as exhibit DE1 collectively and Dr. Siraji Said Gugu who testified as DW2.

In this judgment I am not prepared to reproduce the whole evidence as adduced by both parties as the same will be addressed and referred where necessary in the cause of determination of the framed issues in line with the submissions made which are both accorded the deserving weight. In so doing I wish to come out open and clear from the outset that, as the duty of care arises out of the relationship between the parties rather reference to specific act or damage, in this case there it is uncontroverted fact both from the pleadings and evidence adduced that, the defendant owed the deceased duty of care, as a patient received in the facility for medical services and attended. Hence the first condition is established as there was a client/patient and medical service provider relationship in which the defendant was duty bound to render services after being registered as a patient.

As regarding other conditions, it is now opportune to address and determine them through framed issues in which I am proposing to start with the first issue as to whether the defendant hospital was negligent in taking care of the deceased. In answer on this issue it was PW1's evidence that, upon

arriving at the defendant facility from Mpwapwa with her husband (deceased) in company with her son PW2, the patient was taken to the emergency department put under oxygen, injected with cannula for sample collect before the x-ray was taken and later on informed by Dr. Gugu (DW2) that the patient was asthmatic. This witness said they were asked to pay extra money Tshs. 500,000/= (exh. PE4) in which they complied with, but later on were required by the said Dr. Gugu to pay more amount of Tshs. 2,000,000 per day for their patient to be admitted in the ward the amount which they did not have and were not availed with space to discuss on how to raise it. It was her testimony she learnt that the patient was shunned away as even the nurse who was asked to collect blood specimen did not handle him tenderly.

PW1 went further to testify that, as they could not be able to raise that huge amount of money the already paid Tshs. 500,000/= was refunded to them before Dr. Gugu ordered the nurse to remove oxygen and cannula from the patient, before released to go to MNH where they were received at emergency department and resuscitation exercise done to the patient, in which after a while she was informed her husband had passed away. It was her evidence that, had the defendant referred the patient to another health

facility while on oxygen he would not have suffered lack of oxygen which was his immediate cause of death. She therefore concluded the defendant acted negligently the result of which her deceased death occurred.

When referred to exh. PE1 to establish cause of death, PW1 said could not read English language. She said they decided to sue the defendant as she acted negligently when denied them ambulance transfer services and removed the patient from oxygen the act which resulted him to suffer oxygen deficiency in the brain hence his death. She denied to have neglected or refused to heed to the advice to await for ambulance service as alleged by the defendant, as they are the ones who asked for that services but the same was denied.

When subjected to cross examination PW1 admitted that, the deceased had respiratory complication before but maintained that the condition had last for three days and not two weeks as alleged before he was transferred to the defendant's facility on 15/12/2020. And when questioned as to whether the hospital can be negligent and not its employees she said it can, though admitted that no staff was sued. She also denied that, the patient had pneumonia secondary to COVID 19 though admitted the patient to have been put on oxygen support which was later on removed before they left for

MNH after being denied ambulance service in which they were to pay Tshs. 100,000/= for the service. She insisted issue of referral letter would have served her husband's life. As to whether they reported Dr. Gugu's allaged negligence anywhere PW1 said they did not.

PW2 who was in company of PW1 gave similar account and corroborative evidence to that of PW1. It was his testimony that, as per exhibit PE1 his father's death resulted from Acute respiratory failure secondary to pneumonia 'kushindwa kupumua'. He said the defendant is responsible for the death as they terminated medical services while the patient was still under critical condition in contravention of regulations provided by the Ministry of Health (example National Client Service charter), by removing oxygen from him while knowing that he could not survive without it regardless of patient's financial capacity. According to him the act of oxygen removal in which he depended on, it is obvious he could not survive without, that is why he died.

When questioned as to who acted negligently and sued said it was Dr. Gugu (DW2) who acted negligently but decided to sue the defendant and not that officer nor refer him to medical practitioners Ethics Committee that can declare the officer acted negligently. As to whether he had tendered the

referred medical regulations and client charter said he didn't as the same can be accessed from the websites.

Last prosecution witness on this issue was PW3 as an expert in pulmonary and cardiologist who gave a detailed account of how a medical officer should handle a patient including attendance of a team of paramedics, physician or surgeon present depending on the case, put to oxygen and monitored 24/7 hours, collection of specimen for test and chest x-ray done. He said after examination the results are to be shared to the patient or relatives and plan for treatment. According to him when the patient with pulmonary complication is referred to another super special hospital upon patient's request or lack of medical facilities to treat him has to be issued with referral letter and ambulance with paramedics team including a doctor, nurse and driver who are to ensure that, the patient continue to receive oxygen up to the referral hospital. He said it is not allowed for patient in such critical condition to move outside the medical facility without authorization of the hospital authority as if the relatives insist have to sign a consent form as if the patient is removed from oxygen in five (5) seconds will get the condition called lung fibrosis which will lead to death.

When referred to Exh. PE 1 and asked to answer defence question on cause of death he said it was due to *Acute Respiratory Failure* which can be resulted from negligence or not depending on the patient's case. He testified there is nowhere it is written in exh. PE1 the cause of death is negligence and that he knew not the deceased. On further cross examination he stated, as super specialist in pulmonary complications he has mandate to give testimony anywhere concerning his profession and the nature of patient's complication. As to the specific deceased at discussion he said, he could not specifically render opinion regarding him in this case.

As alluded to above DW1 and DW2 testified in favour of the defendant. On his side DW1 though not attended the deceases as the defendant employee (doctor) who was on duty at HDU department, relying on the medical investigation reports admitted as exhibit DE1 collectively and information from defendant's system to testify on what happened to the deceased person and the services rendered to him in which DW2 gave a detailed account, thus, I see no need to reproduce his evidence. It was DW2's testimony that, on the 15/12/2020 the deceased was received at the emergency department and he attended him. He told the Court on how triage and resuscitation of the patient was conducted when he was put on oxygen and had initial

investigation samples collected, intravenous medication infused through cannula and chest x-ray done. He said after investigation reports were out, it was established the patient (deceased) had severe pneumonia that might have been caused by COVID 19 as the test for the said COVID 19 was to be conducted at extra costs for not being covered by HHIF standard services package. It is this witness who told the Court that, following that result a treatment plan was discussed between him, consultant physician, pharmacist and the billing department where it was established that the patient needed to pay extra and in advance Tshs. 2,000,000/= for coverage of 5 days medications in which costs could range from Tshs. 500,000/= to Tshs. 2,000,000/= apart from advance payment of Tshs. 500,000/= already paid, since there was extra expenses such as PEP equipment and other medications not covered by NHIF for patient with pandemic disease.

According to DW2, the decision for payment of extra amount of Tshs. 2,000,000/= when communicated to the plaintiffs were not ready to cover it, as the 2nd plaintiff requested for refund of Tshs. 500,000/= paid earlier on before he was informed that the patient could be referred to MNH. He said at that time the defendant's ambulance was to be secured after payment but the plaintiffs were not able to pay for it, thus he was forced to ask them

to sign the *'Leave Against Medical Advise'* (LAMA) but they refused to sign it. Following that refusal they were assisted to board the patient in their private motor vehicle before the oxygen and cannula were removed from the deceased.

During cross examination and when referred to paragraph 2.2.1 of the National Client Service Charter for Health Facilities and asked whether it was violated, DW2 said yes they violated it. And when questioned whether he is specialized in pneumonia, he said he is not but as a general practitioner does not mean he could not treat the deceased. As to the importance of oxygen in the body he said it gives energy. And in respect of this case he said the patient was on oxygen at all time. On the existence of Code of Ethics to doctors this witness said he is quite aware of the same, as it requires provision of service to the patient and stabilize him first before the medical bill is raised against him. When question further whether he tendered in Court referral letter, he said since the patient was not read to follow the procedure he did not keep it nor the LAMA as the same remained in draft. And on why oxygen was removed from the patient, he said it was because the patient refused to continue with treatment.

Submitting on this ground Prof. Lukumay is of the view that, DW2's conduct of discontinued oxygen supply to patient of severe pneumonia and deny him of ambulance car transfer services to MNH amounted to medical professional negligence for medical practitioner as he knew or ought to know that such discontinuation would claim patient's life. Ms. Nkya is of the opposite view in that, the defendant cannot be held liable for negligence for two reasons, **one**, the employee whom the blames are shouldered on is not party to this case and **second**, that it is the plaintiffs who declined services of the defendant towards the deceased something which absolved her duty of care to the deceased.

Having taken considerable time to internalize the fighting submission by both counsel in light of the evidence tendered by both parties and bearing in mind the fact that, the degree of proof of negligence in civil liability is not higher as compared to that obtained in criminal cases as stated case of **Riddell Vs. Reid** (1943) AC 1 (HL) when cited in the case of **Jamila Mbaraka Gosi** (supra), it is now opportune for this Court to deliberate whether the defendant medically acted negligently as claimed. The test here in my opinion would be the standard that would have been employed by an ordinary skilled man exercising and professing to have special skill in that

field such as medicine in our case. In the case of **Bolam Vs. Friern Hospital Management Committee** (1957) 1 WLR 582, which I highly find to be persuasive, Lord McNair J, was of the same opinion when observed that:

> *"Where you get 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 the top of Clapham omnibus, because he has not got this special skill.* ***The test is he standard of the ordinary skilled man exercising and professing to have that special skill****… A man need not possess the highest expert skill,* ***it is well established law that it is sufficient of him to exercise the ordinary skill of an ordinary competent man exercising that particular art****. (Emphasis supplied).*

From the above legal stance it is evident to me in the present case the defendant through her employee (DW2) who professed ordinary expertise in medical profession with qualification of MD would have exercised ordinary skills of a competent doctor in handling the patient with severe pneumonia condition. I have taken into consideration PW1 and PW2's evidence to this Court, the testimony which I have no reason to doubt that, after being informed of the extra costs of Tshs. 2,000,000/= which they could not afford

to pay were asked to transfer their patient to another hospital of their choice is which MNH was the only alternative and close facility but the patient was not only denied of referral letter but also ambulance car service for his transfer to MNH before he had oxygen supply terminated and cannula removed under instruction of DW2. I have as well considered expert opinion by PW3 while full aware of the settled position of this Court that, expert's opinion is not binding to the Court as his duty is to provide the court with necessary information for it to form its own independent judgement on the facts proven in evidence. See the case of **R Vs. Kerstin Cameron** (2003) TLR 84. It was PW3's evidence whose expert opinion was not controveted by DW1 and DW2 that, once the patient who is depending solely on oxygen is removed from its supply the likelihood is that he will suffer from oxygen deficiency and lose his life. And that, patient of pulmonary condition could not be referred to another specialized hospital without a team of paramedics unless consent is obtained from the patient or the hospital is incapable of providing the required medical care. All evidence measured I am pursuaded that, under the circumstances of this case where the deceased was under oxygen supply from the time when he was received by the defendant staff (DW2) at emergency department up to the time when it was discontinued

soon before moving to MNH, it was expected of DW2 who professed to have possessed and exercised ordinary medical skills in handling the deceased (Daniel Siyame Sichone) to know or to have known that discontinuation of that oxygen supply to that patient would pose a high risk on his life, leave alone denial of issue of referral letter and ambulance car transfer services to MNH for allegedly want of payment of its costs. It is no doubt and I am convinced that, any reasonable medical officer possessing ordinary medical skills would not have so acted or taken that risk. As DW2 acted outside of the precincts of what he was expected of, I hold it was wrong for him to order removal of oxygen supply and cannula from the patient (deceased) and deny him the referral letter and ambulance car services for his to transfer to MNH, hence not only conducted himself unprofessionally but also acted negligently.

The above findings aside, I disagree with Ms. Nkya's submission supposedly based on defendant's averments in paragraph 20 of the WSD that, it is the plaintiffs who declined services for leaving the defendant's premises against the medical advice to await for ambulance to take the deceased to MNH. It is trite law that, parties are bound by their pleadings and the rationale behind being to bring parties to an issue and not to take the other party by surprise.

See the cases of **Charles Richard Kombe t/a Building Vs. Evarani Mtungi and 2 Others**, Civil Appeal No. 38 of 2012 and **Astepro Investment Co. Ltd Vs. Jawinga Company Limited**, Civil Appeal No. 8 of 2015 (both CAT-unreported). While the defendant is recorded to have deposed in her WSD that, the plaintiff declined to heed to the medical advice to await for the ambulance car for transfer of the patient to MNH, her officer (DW2) who attended the patient when cross examined gave a contrary story in that, the patient was denied of the ambulance car services for failure to pay for its costs. Therefore it is not true that the plaintiffs were offered with ambulance car services and refuted as Ms. would want this Court to believe.

I also disassociate myself with Ms. Nkya's proposition that, since Dr. Gugu who is alleged to have acted negligently was not sued, then an action cannot be maintained against the defendant, as the position of this Court is settled on that aspect that, once it is established that an injury is occasioned by the hospital staff to the party then the hospital becomes vicarious liable as it is unnecessary for the plaintiff to sue such staff. See the case of **Theodora Aphaxad A Minor S/T Next Friend Vs. The Medical Officer I/C Nkinga Hospital** [1992] TLR 235, where it was held thus:

> *"…if a person is admitted as a patient by a hospital, and is, in medical treatment occasioned injury through the negligence of some member of staff, it unnecessary for him to pick upon any identifiable particular employee for suing purposes, the said Hospital is vicariously liable…"*

In view of the above discussion I am satisfied and DW2's negligent acts rendered the defendant vicariously liable hence a finding that, the first issue is answered in affirmative, as the defendant hospital was negligent in taking care of the deceased while at her facvility.

Next for determination is the second issue as to whether deceased's death resulted from defendant's negligence. As alluded to above, it is a rule of thumb that, he who alleges must prove and the onus lies on him as he stands to lose the case if the alleged facts or claims are not proved. See the cases of **Abdul Karim Haji** (supra), **Anthoni M. Masanga** (supra) and **Berelia Karangirangi** (supra). In this case the plaintiffs apart from their oral evidence relied on exhibit PE1 and expert opinion of PW3 to establish their claim that, it is the defendant's negligent act which claimed their beloved's life.

It was PW1 and PW2's evidence that, after they were forced to leave the defendant's premises at about 17.00 hours to MNH using their private

transport, the patient (deceased) was received at MNH emergency department and underwent treatment before PW1 was informed one hour later around 18.00 hours that her husband was no more. It is not in dispute that, as per the burial permit the indicated cause of death is **Acute Respiratory Failure secondary to Pneumonia**, which as per PW3's evidence when cross examined, could be caused by negligence or other cause depending on the patient's case. It is also this witness who when questioned further said on the deceased's case he could not tell exactly whether his death resulted from negligence or not, no doubt the reason being that he never attended him. The Court was not exposed to any evidence proving that there was nexus between deceased's death and defendant's negligence. Plaintiffs were expected to bring evidence from the persons (paramedics) who attended the deceased at the MNH emergency department and so as to establish to the Court's satisfaction as to what kind of medical services was rendered to the deceased when received there before he succumbed to death and that, had it not been for defendant's negligence for termination of oxygen supply and denial of ambulance car service the deceased life would not have been lost, but they failed to so do. That evidence or any medical expert report in my view would have shade

some light to the Court's doubt as to what exactly led to deceased death when received at MNH emergence department as the deceased body was never examined and the report issued to establish in details his cause of death, apparent for none established reasons. The burial permit exhibit PE1 relied on by the plaintiffs which provides summary of cause of death without more in the absence of any postmortem examination of deceased body conducted and the report issue, I hold it is insufficient evidence to warrant this Court conclude that, it is defendant's negligence at her facility which extended to result into deceased death as there are possibilities of other factors that could as well lead the deceased into such acute respiratory failure secondary to pneumonia as rightly opined by PW3.

In view of the above I am convinced that, there is no cogent evidence supplied by the plaintiffs to prove to the Court's satisfaction that, it was defendant's negligence that claimed deceased life, hence the second issue is found in negative.

As to the third and fourth issues, there is no doubt that deceased's death caused loss to the plaintiffs for being a husband and father respectivelu as well as a bread earner. However, the sad news it that, there is no proof that his death resulted from defendant's negligence to entitle them with any relief

as prayed. It is on those premises though sympathizing with what befell the deceased family including the deceased and basing on the adduced evidence I am inclined to hold that, the plaintiffs' claims were not proved to the required standard. Consequently the suit is hereby dismissed for want of merit.

Given the nature of the claim and the parties involved I order each party to bear its own costs.

Order accordingly.

DATED at Dar es Salaam this 21st day of July, 2023.

E. E. KAKOLAKI

JUDGE

21/07/2023.

The Judgment has been delivered at Dar es Salaam today 21st day of July, 2023 in the presence of Prof. Zakayo Lukumay, advocate for the plaintiffs, 2nd plaintiff in person and Mr. Oscar Msaki, Court clerk and in the absence of the defendant.

Right of Appeal explained.

E. E. KAKOLAKI
JUDGE
21/07/2023.