**IN THE HIGH COURT OF TANZANIA**

**(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**CIVIL CASE NO. 129 OF 2021**

**LIGHTNESS MRUMA..... PLAINTIFF**

**VERSUS**

**SBC TANZANIA LIMITED..... DEFENDANT**

# JUDGMENT

*28th July & 4th August, 2023*

**MWANGA, J.**

The plaintiff instituted this suit against the defendant claiming, among other thing, compensation of Tanzania Shillings Two Billion (TZS 2,000,000,000/=) for damages suffered due to the defendant's negligence in manufacturing, packaging, supplying, and selling of soft drinks, namely Mirinda Fruity.

The plaintiff alleges that on the 8th day of August 2019, while coming from wedding teachings at the Archdiocese of Roman Catholic Church within Dodoma Region went to the shop and ordered a bottle labeled Mirinda Fruity.

The shop owner served her with a Mirinda Fruity opaque bottle, and Plaintiff drank the contents. A decomposed substance floated out after the plaintiff swallowed the last content from the bottle. Immediately after that, she felt stomachache and vomited; consequently, she was rushed to the hospital through police station form PF3 exhibit P1. The medical examination revealed that the plaintiff suffered internal damages from the build-up of hydroxide and chemical contents.

The plaintiff insisted that the chemical contents consumed had caused severe side effects, which caused excessive vomiting and abdominal pain and, consequently, mental anguish torture. Because of that, the defendant failed to take reasonable care not to inflict damages on the plaintiff in use, as she carelessly manufactured, bottled, and supplied a Mirinda Fruity drink containing a decomposed battery. Also, the defendant is the manufacturer of the said drink, through her carelessness, permitted a storm to be inserted and left in the bottle and subsequently distributed and supplied to the shopkeeper who sold it to the plaintiff.

The notice was given to the defendant through demand notice, but she blatantly ignored the plaintiff's notice. The plaintiff reported the case to the police, where the bottle with decomposed substance was surrendered

and reported to Tanzania Bureau Standard TBS for further examination of Mirinda Fruity. Copies of the letter issued from TBS are attached and collectively marked "B," forming part of the plaint.

Following the alleged breach of duty of care toward the plaintiff, the plaintiff wrote a demand notice to the defendant to notify her breach of duty of care and the intended legal action in courts of law. Still, the defendant did not respond to the plaintiff's demand notice. A copy of the plaintiff's demand notice is attached and marked "c."

Other prayers sought by the plaintiff were for judgment and decree against the defendant on General damages as shall be assessed by the court, Interest on the decretal sum at the court rate of 18% per annum from the date of judgment to the date of full and final payment and Cost of the suit.

When served with the plaint, the defendant denied having acted negligently in manufacturing, packaging, supplying, or selling Mirinda's drink to the plaintiff as alleged. The defendant also disputed that the plaintiff consumed soft drinks manufactured and bottled by them and that she suffered any damages or injury. Therefore, she asserted that she was not entitled to any order of compensation.

The defendant disputed that the plaintiff purchased or ordered Mirinda fruity drink and contended that the Mirinda Fruity bottle is not opaque. Attached is a copy of the Mirinda Fruity beverage, and I marked it as S-1. It is asserted that even if it is established that the plaintiff consumed Mirinda Fruty's drink, the plaintiff was negligent because she could have discovered any foreign substance lodged in the drink for exercising inspection to the prior consumption.

Apart from that, the defendant averred that there was no decomposed substance in the drink due to the reason that rigorous sanitation, bottle washing, and hygienic procedures adopted by the defendant during the manufacturing and bottling of its products could not allow any foreign or decomposed substance to enter or remain in the soft drink bottle. It is strongly protested that the plaintiff suffered stomachache and vomiting due to consuming soft drink products from the defendant. They also disputed the veracity and integrity of PF3.

It is the defendant's averment that the fact that the decomposed bottle with decomposed substance was surrendered to Dodoma Central Police Station was not true because the plaintiff and the police did not share with the defendant any chemical or forensic report regarding the soda sample

taken. Further, the defendant denied that the plaintiff had undergone any medical examination or suffered internal damages because there was no scientific analysis.

The defendant stated that the TBS never inspected a sample of the soda beverage Mirinda Fruity which is the subject of the suit. Therefore, the defendant denied every allegation set out in the plaint about the defendant and consequently 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, five issues were framed for determination by the Court. Parties made their cases, and finally, the final submission was prepared and filed in Court. Throughout the trial, the plaintiff was represented by Mr. Rashidi Shabani, a learned advocate, while the defendant enjoyed the services of Jacktone Koyugi, also the learned counsel.

The issues which this Court is called to determine are as follows:

1. *Whether the defendant owed the duty of care*

2. *If the first issue is affirmative, whether the defendant breached the duty of care by negligently manufacturing, packaging, and marketing Mirinda Fruity drink.*
3. *Whether the plaintiff suffered any injury by consuming Mirinda Fruity drink manufactured by the defendant.*
4. *Whether the plaintiff was contributory negligently, thereby causing injury to herself.*
5. *To what relief are the parties entitled to?*

In civil cases, the duty and standard of proof is imposed under Section 110 and 3(2) of the Evidence Act, Cap. 6 [R.E 2022]. The relevant provision of section 3(2) provides that: -

> *"S.3 (2-) A fact is said to be proved when—*
>
> *(a) N/A*
>
> *(b)in civil matters, including matrimonial causes and matters, its existence is established by a preponderance of probability".*

Moreover, Section 110 of the same Act imposes the duty to prove. Consequently, it provides: -

> *"(1)Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.*

*(2)When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person".*

The above-stated principles were clearly articulated by the Court of Appeal in the case of **Paulina Samson Ndawavya Theresia Thomasi Madaha,** Civil Appeal No. 53 of 2017 when the court observed that: -

*"It is trite law and indeed elementary that he who alleges has a burden of proof as per section 110 of the Evidence Act, Cap. 6 [R.E 2002]. It is equally elementary that since the dispute was in a civil case, the standard of proof was on a balance of probabilities which simply means that the Court will sustain such evidence which is more credible than the other…"*

Similarly, in **Berelia Karangirangi Versus Asteria Nyalambwa,** Civil Appeal No. 237 of 2015[2019] TZCA on the burden and standard of proof in civil proceedings, the Court of Appeal had this to say:

*"We think it is pertinent to state the principle governing proof of cases in civil suits. The general rule is that he who alleges must prove….it is similar that in civil proceedings, the party with legal burden also bears the evidential burden and the standard in each case is on the balance of probabilities."*

However, this matter emanates from the tort of negligence, and before I analyze the issues above, I would like to expound on the meaning of negligence. This tort is made clear in what Baron Alderson said in **Blyth Versus Birmingham Waterworks,** 1856 [11 Ex 784], that;

> *"Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do."*

It was also defined in the case of **Twiga Bancorp (T) Ltd. Versus David Kanyika,** Lab. Rev. No. 346 of 2013, Dar es Salaam where Hon. Rweyemamu, J. (Rtd) stated that:

> *"a serious careless person is grossly negligent if he falls far below the ordinary standard of care that one can expect. It differs from ordinary negligence in terms of degree."*

It is settled law that, for tortious liability of negligence to be established, four conditions must be satisfied. **One**, the defendant had a duty of care towards the plaintiff. **Two,** that duty was breached. **Three,** the breach caused the plaintiff to suffer damage. **Four**, the defendant had no contribution to the said negligence. See the cases of **Donoghue Versus**

**Stevenson** (1932), AC 562, and **Said Sultani Ngalemwa Versus Isack Boaz Ng'iwanishi and 4 Others**, Civil Case No. 42 of 2016. The above elements were also elaborated in the case of **Tanzania Revenue Authority Versus Thabit Milimo and Another,** Labour Division Dar es Salaam, Revision No. 246 of 2014 (2015) LCCD 1 (191) and **Winfred Mkumbwa Versus SBC Tanzania Limited,** Civil Appeal No. 150 of 2018 (Unreported) page 9, the Court of Appeal of Tanzania**.**

Given the cited decisions, the plaintiff is duty-bound to establish to the court's satisfaction that the four conditions exist. In an attempt to discharge such principled duty, four witnesses were paraded; Lightness Mruma (PW1), who also tendered in Court PF3, which was admitted as exhibit PE1, letter dated 20th January 2021 accepted as Exhibit P2, Laboratory test report admitted as Exhibit P4, Receipts from Marie Stops admitted as Exhibit P5 and Letter dated 18th February 2021 revealed as Exhibit P6; D/CPL Zamda (PW2) who testified that she kept the said bottle with the decomposed substance; Hilda Shija Kulwa (PW3) who is the shopkeeper and the seller of the said soda and Dr. Mathew Elia Mushi (PW4) who conducted medication to the plaintiff.

On the adversary, two witnesses were called to disprove the plaintiffs' claim in which Michael Angolwisye Mafuenga, who testified as DW1, tendered in court the sample bottle drink of Soda Mirinda type admitted as Exhibit DE1 and Beatus Sostenes Ishengoma, who testified as DW2.

In this judgment, I wish not 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, the duty of care arises from the relationship between the parties rather than a reference to a specific act or damage. The first condition that needs to be established is whether the manufacturer/customer relationship exists.

I wish to address and determine them through framed issues which I am proposing to start with the first and second issues as to whether the defendant was negligent in taking care of the Plaintiff.

No one, in law, owes a duty to the whole world. However, as it was noted in the English leading case of **Donoughe Versus Stevenson**(supra), famously referred to as the "Snail in the Bottle" case; the question in the

House of Lords was to decide if a company has manufactured a drink and sold it to a distributor, was it under any legal duty to the ultimate purchaser or consumer to take reasonable care that the article was free from defect likely to cause injury to healthy.

In the end, the House of Lords held that the manufacturer owed a duty of care, which was breached because it was reasonably foreseeable that failure to ensure the product's safety would harm consumers. Importantly, it was also held that a sufficiently proximate relationship existed between consumers and product manufacturers.

In the present case, where the defendant manufactures soft drinks, including Mirinda type, which the plaintiff alleges to have drunk and caused her to suffer injuries, would sufficiently constitute a duty of care if there was an established nexus between the consumer (plaintiff) and the manufacturer, the defendant herein.

There is evidence that, on a fateful day, the plaintiff went to a retail shop owned by PW2, where she drank the Mirinda fruity soda manufactured by the defendant. After the drinks, the plaintiff and PW2, the soda seller, testified that she observed the soda with a decomposed substance and that the plaintiff suffered stomachache and vomiting immediately after

consuming the said drink. The counsel for the plaintiff, Mr. Rashid, submitted that the victim in the **Donoghue case** consumed the same drink containing a snail. Hence, considering the subject at hand, the cited case of **Donoghue Versus Stevenson (1932) AC 562** matches precisely the present case as Plaintiff herein finished the same drink with battery, and she attended the hospital for medical examination. According to him, the Shop seller and Doctor who attended her testified before this honorable court.

Nevertheless, the counsel for the defendant, Mr. Jacktone Koyugi, contended that there is no receipt to prove that the plaintiff bought the said product from the defendant, and PW2 never tendered anything to prove that she is the shop owner, the arguments to which I do subscribe. As I have pointed out, it is reasonable and equitable that relationships of duty between the manufacturer must exist. And the consumer of soda in this case, the plaintiff was duty-bound to prove that she bought the soda of Mirinda type, which the defendant manufactures, and she drank that soda.

The plaintiff's failure to tender the said bottle of soda with the battery inside alleged to be consumed necessitates the requirement of the receipt mandatory. Again, as contended by the learned counsel for the defendant,

nothing was brought to the court's attention through PW2 that she owned the shop and sold the product to the plaintiff.

Above all, the plaintiff never tendered to court a Tanzania Bureau Standards (TBS) analysis report or Chief Government Chemist report to prove that the soda, the defendant's product, contained hydroxide as alleged by her. Those would also be useful to establish the link between manufacturer and customer relationship, which is essential in the cases of negligence of torts.

In the premises, I join the argument of the defendant's counsel that it is impossible to establish whether the plaintiff consumed the defendant's beverage product as alleged. In the event, it is my thoughtful view that the first issue is answered negatively.

The second issue is whether there is a breach of duty of care. The plaintiff herein claims that on the 8th day of August 2019, she went to the shop and ordered a bottle of Mirinda Fruity contained in an opaque bottle, and she drank that Mirinda soda. Due to that act of consuming the said drink with the decomposed substance, it floated out of the bottle she suffered stomachache and vomiting. She was rushed to the hospital for medication and claimed to undergo miscarriage three times due to the soda she took.

From the evidence, the plaintiff, in corroboration of PW2 and PW3, testified that the said drink had a battery with rust; imaginably, it was the cause of his stomachache and vomiting. However, as I have stated earlier, the plaintiff never brought the said bottle with battery in court for proof nor to the Chief government chemist for the chemical test as to the chemical composition of that Mirinda Fruity drink. And her testimony testified that they once went to the SBC Dodoma branch with the PW2 and PW3, but they never showed the said bottle to that particular office. Also, PW3 being the one who is mentioned as keeping the said bottle of soda with battery inside at the police station, never brought the same to court to form part of evidence while on the part of the defendant tendered Mirinda soda (exhibit D1) with all relevant ingredients which distinguish the defendant's products. Again, certainly, Plaintiff needed to identify the unique features of the soda allegedly to be consumed.

Given the above, I'm afraid I have to disagree with Mr. Rashid, who cited the case of **Mbushuu** alias **Domonic Mnyaroje and Another Verus R [1995] TLR 97,** stating that the plaintiff's evidence is worthy of belief for being allegedly corroborated by other witnesses. Based on the principle stipulated above that the onus of proof lies on the party who alleges, I

profoundly believe that the plaintiff has failed to prove to the court's satisfaction that there was a breach of duty of care on the defendant's part.

Regarding the third issue, it is detected from the pleadings and the evidence where plaintiff tendered PF3 exhibit P1, Letter dated 20th January 2021, exhibit P2, Demand note exhibit P3, Laboratory last report exhibit P4, Receipt from Marie stopes exhibit P5 and a letter dated 18th February 2021. From the upset, the plaintiff tries to justify that she suffered injuries by taking the soda product of the defendant. It is discovered from the evidence of the plaintiff that on the fateful date, she suffered stomachache, vomiting, and diarrhea, and later, she underwent a miscarriage. However, PF3 and the evidence of PW4 explain that the plaintiff sustained stomachache, vomiting, and diarrhea. It is revealed from the evidence of PW4 that the suffering resulted from food poison. But it was not explicitly stated that the said Mirinda Fruity drink was the sole cause for the despair. There is no medical report to that effect. During cross-examination, PW4 noted that he was unsure what food she had taken, and she went to the hospital late. Apart from that, the plaintiff herself, on cross-examination, stated that before consumption of soda, she took tea and mandazi in the morning, and in the afternoon, she ate meat and rice.

Under the circumstances, it is challenging to state which food caused the plaintiff to suffer. Since there is no medical report brought to court to prove that the sickness of the plaintiff and the miscarriage were the result of the consumed Mirinda fruity drink, which contained hydroxide and noxious chemical content as alleged by the plaintiff, it is of the holding that, the plaintiff has failed to establish that there is a connection between her sickness and the said consumption Soda. Based on such evidence, Mr. Shabani cited the case of **Hemed Said Versus Mohamed Mbilu** (1984) TLR 113, stating that the plaintiff has adduced evidence heavier than the defendant. Therefore, she is entitled to win the case. In my view, it is not. The plaintiff has failed to prove if she suffered injuries. This issue is also answered in a negative as well.

They are grounding on the fourth issue as to whether the Plaintiff was contributorily negligent, thereby causing injury to herself. Mr. Shabani argued that the same has no leg to stand in the eye of the law because the defendant herein was strictly liable for the product she manufactured and presented for sale to the public. It was his submission that, during cross-examination, DW1 admitted some facts. This is not the first case Defendant faced regarding a breach of duty of care to the customers. **Two,** the

defendant acknowledged that many bottles have to be inspected by six (6) inspectors, and the inspector has to check one hundred and fifty (150) bottles per one (1) minute and that the exercise takes place twenty-four (24) hours. Hence, there is the possibility of bottles with dust passing on due process, considering that the inspectors are few compared to the number of bottles and the time they take to inspect the bottles. According to the counsel, the Defendant failed to bring even a single Inspector of bottles to appear before the court to testify on the assertion that the number of Inspectors of bottles is six (6), the time they spent inspecting the bottles, and the total number of bottles they insect per one minute. It was also his submission that DW1 admitted that no scanner could detect the bottles with dust at the end of manufacturing drinks and sanitation. Therefore, the defendant breached the duty of care toward their customers regarding that admission.

It is my view that, following the discussion above, it is discovered that the plaintiff has failed to establish three conditions of negligence, i.e., Duty of care on the part of the defendant, breach of duty of care, and damages resulting from the defendant's breach.

Therefore, it is immaterial to discuss this issue even if it is established that the plaintiff acted negligently. Since the three above negligence conditions have collapsed, it is irrelevant to determine whether the plaintiff was contributory negligence.

Conclusively, regarding what reliefs parties are entitled to, I opine that the plaintiff has prayed for compensation of Two billion Tanzania Shillings for mental torture. Nevertheless, the plaintiff never pleaded nor proved the financial loss claims of the tort of negligence, alleging that the defendant has wrongfully acted or omitted upon. As a matter of principle, specific damages must be pleaded and strictly proved. See the case of **Zuberi Augusstino Verus Anicet Mugabe** (1992) TLR 137 on Page 139, where the court stated that:

> *"It is trite law, and we need not cite any authority, that special damages must be specifically pleaded and proved."*

During the hearing stage, it was revealed that the plaintiff just stated that she suffered mental torture. However, there is no justification for the same.

Given that the plaintiff has failed to prove above stated elements of negligence to the satisfaction of the court, I am inclined to hold that the

plaintiff's claims were not proved to the required standard, which is on the balance of probability as stipulated in the case of **Berelia Karangirangi Versus Asteria Nyalambwa** (Supra).

In this event, the plaintiff is entitled to no relief. Under the circumstances, as a result of this, I entirely dismiss the suit. I was considering the nature of this case. Each party should bear its costs.

It is so ordered.

**H. R. MWANGA**

**JUDGE**

**04/08/2023**

**COURT:** Judgement delivered in the presence of learned Advocate Nsajigwa Bukuku for the Defendant, also holding the brief of Mr. Rashidi Shabani, also Advocate for the Plaintiff.


**H. R. MWANGA**

**JUDGE**

**04/08/2023**

**IN THE HIGH COURT OF TANZANIA**

**(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

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**VERSUS**

**SBC TANZANIA LIMITED..... DEFENDANT**

# DECREE

**WHEREFORE:** The plaintiff prays for Judgment and Decree against the defendant as follows:

1. That this honorable court be pleased to make an order compelling the defendant to pay to the plaintiff Tshs 2,000,000,000/= being the compensation for mental torture and serious inside effect suffered by plaintiff.
2. That this Honorable court be pleased to order payment of general damages as shall be assessed by the court.

3. That this Honorable court be pleased to order payment of interest on decretal sum at the court rate 18% per annum from the date of judgment to the date of full and full payment.
4. Costs of this suit.
5. Any relief(s) the Honorable Court may deem fit and just to grant.

**AND WHEREAS:** This suit is coming for judgment on the **4th** day of **July 2023,** before **Hon. H. R. MWANGA, Judge,** in the presence of Advocate Nsajigwa Bukuku for the Defendant, also holding brief of Advocate Shabani Rashid for the Plaintiff.

**THIS COURT DOTH HEREBY ORDER THAT**

i. The suit is dismissed.

ii. Each party should bear its costs

**BY THE COURT**

**GIVEN** under my **HAND** and **SEAL** of the court this **4th** day of **July 2023.**

**H. R. MWANGA**

**JUDGE**

Extracted on **.....** day of ……**, 2023**