IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DAR-ES-SALAAM SUB-REGISTRY)
AT DAR ES SALAAM

CIVIL CASE NO. 134 OF 2022

MWALU H. DEGE ..... PLAINTIFF

VERSUS

KITONKA MEDICAL HOSPITAL ..... DEFENDANT

JUDGMENT

S.M. MAGHIMBI, J:

In this suit, the plaintiff claims against the defendant a sum of Tanzania Shillings Seven Hundred Million (TZS. 700,000,000/=) as damages for the medical negligence that was allegedly done by the employees of the defendant that has caused grievous harm and permanent disability to the plaintiff. In her detailed plaint, the plaintiff prayed for judgment and decree against the defendant as follows:

i. That Honourable Court be pleased to hold that the Defendant has committed Medical Negligence and has caused the plaintiff grievous harm and permanent disability due to the unnecessary operation that was carried out by the defendant to the Plaintiff.

ii. An order for payment of Tanzanian Shillings Seven Hundred Million (Tzs. 700,000,000/=) being aggravated, exemplary and punitive damages.

iii. 12% interest from 26th February 2022 till judgement.

iv. Costs of this suit.

v. Any other remedy this Honourable Court deems fit to grant.

On her part, in the filed Written Statement of Defence (WSD), the defendant refuted the claims on the ground that all what was done by the defendant was to make sure that the plaintiff's life was saved hence there was no act of negligence. She further claimed that all the medical procedures were done with high level of care to the effect that no grievous harm or permanent disability occurred. It was the defendant's prayer that the suit be dismissed with costs.

In order to capture the basis of the claim before me, it is pertinent that the brief background of the matter is narrated. It started on the 11th day of January, 2022, when the Plaintiff was tested positive in a pregnancy test taken at a in a health centre located in Gongo La Mboto Dar Es Salaam known as Bahari Gongo la Mboto Dispensary (EXP1). Subsequent to the test, on the 26th Day of February 2022, the Plaintiff noticed some abnormal bodily changes (including heavy vaginal bleeding)

when she was at her home and decided to go to the defendant for check-up and treatment. At the defendant's hospital, the plaintiff was admitted as a patient for treatment (file No. 90249) and was treated by the doctor on duty, one Dr. Ayubu Ngimbudzi (DW1) who is a certified medical doctor with registration number MCT6213. At the time, this doctor was a general practitioner with no specialisation.

In due course of the consultation, the plaintiff was directed for tests including an ultrasound. She was then informed by DW1 that she had ectopic Pregnancy as a mass outside her uterus. The doctor advised an immediate surgery on that very same night. The Plaintiff alleges that she and her husband pleaded to the Doctor for the surgery not to take place that same night because they want to get a second opinion to satisfy themselves with the results of the test in another Hospital. However, the Doctor (DW1) insisted that the surgery was urgent and necessary to save the plaintiff's life and she had to proceed with the surgery.

It would appear that even after the surgery, things did not get better. This is because although the purpose of the surgery was said to be removal of the mas to protect her life and stop the vaginal bleeding that she has been experiencing, the plaintiff was also informed that the pregnancy will not be impacted and, that was not the result of the surgery. Despite the surgery and the hospitalisation, the Plaintiff continued to

experience heavy vaginal bleeding and she was becoming more alarmed about this and decided to make an inquiry with the doctor. The Doctor informed her that although the tests proved that she had an ectopic pregnancy and a mass outside her uterus, during the surgery they did not find anything. The doctor explained further that due to the surgery, the uterus was disturbed hence they had to terminate the pregnancy. According to DW1, he and his team made that decision because they knew that the pregnancy will not survive. Pertinent is to note that, since that is one of the basis of the claim, the plaintiff alleges that the decision to terminate the pregnancy was done without prior consultation with the plaintiff or the plaintiff's husband.

Having the heavy vaginal bleeding continuing, the plaintiff requested a referral letter that will enable her to obtain treatment from another hospital. She was served with the letter on 24/03/2022 (EXP2) and referred to Muhimbili National Hospital ("MNH") whereat the test results and the medical report given to the Plaintiff by the Muhimbili National Hospital (EXP3) showed that even if it occurred that the Plaintiff truly had such problems (ectopic pregnancy), she was not supposed to be operated immediately and terminate her pregnancy without her consent. Owing to the letter from MNH, the plaintiff lodged this suit praying for judgment and decree as stated above.

When the matter came for final PTC on the 27th day of July, 2023, the following issues were framed for determination:

1. Whether there was professional negligence on the part of the defendant which caused the plaintiff to undergo unnecessary procedures.
2. If the first issue is answered in the affirmative, to what extent should the plaintiff be compensated.
3. To what reliefs are the parties entitled to

In order to prove her case, the plaintiff had two witnesses, herself as PW1 and a doctor from MNH who testified as PW2. On the other hand, in her defence the defendant called two witnesses, both doctors from the defendant hospital.

Starting with the first issue whether there was professional negligence on the part of the defendant which caused the plaintiff to undergo unnecessary procedures, the issue was framed following the plaintiff's claim that the defendant wrongly diagnosed her with an ectopic pregnancy subjecting her to an unnecessary surgery. On the hand, it was the defendant's defence that the procedure was necessary at the time because the ultra sound report indicated a pregnancy that was outside the uterus. It is important to note in due course of hearing, both parties' evidence indicated that the plaintiff did not have an ectopic pregnancy,

rather she had what all the three doctors (PW2, DW1 and DW2) identified as a rare shaped uterus which in the medical world is termed as binocular cervix.

Proving negligence is crucial if you are seeking to recover compensation for injuries related to your medical treatment. That being the case, the next stage is to define what medical negligence is so as to appreciate the meaning of it in relation to the evidence that was adduced so as to come to an informed decision on whether the evidence adduced established any negligence on the part of the defendant. Medical negligence involves a health care provider failing to follow the recognized standard of care and causing preventable harm to a patient. In an English case of **Bolam V. Friern Hospital Management Committee, (1957) 2 All ER 118,** McNair, J. summed up the law as the following:

> *"The test is the 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 if he exercises the ordinary skill of an ordinary competent man exercising that particular art. In the case of a medical man,* ***negligence means failure to act in accordance with the standards of reasonably competent***

***medical men at the time**. There may be one or more perfectly proper standards, and if he confirms with one of these proper standards, then he is not negligent."*

As from the holding of the court above, medical negligence means failure to act in accordance with the standards of reasonably competent medical men at the time. The issue is whether the evidence established that failure.

Starting with the plaintiff's evidence, PW1 testified that she went to hospital complaining of heavy vaginal bleeding after she was tested positive with pregnancy. She then went through tests which were interpreted by DW1 as ectopic pregnancy and she was advised to an immediate surgery. Although in her evidence, the plaintiff allege to have resisted the surgery, but in the end she yielded and was eventually operated.

On their part, it was the defendant's evidence that at the time from the diagnosis, the surgery was crucial to salvage what they thought was the terminal threat which threatened the life of the plaintiff. DW1 testified to have interpreted the results (EXD1) that the plaintiff had an ectopic pregnancy. On her part DW2 testified that he received a call from DW1 and they had a discussion and came to a professional conclusion to

conduct exploratory laparotomy. Therefore at this juncture, the decision was reached after discussions and consultations.

I have considered this issue. The complaint here is that the plaintiff was operated for no good reasons which resulted into unnecessary termination of her pregnancy. According to the defence, the operation was necessary, so as to save the plaintiffs life. On my part, I find it necessary that I first define what is a Bicornuate Uterus. It is not an easy task to define a medical term sitting from the judicial side of the table. But from my part I managed to visit the American National Library of Medicine, particularly the National Centre for Biotechnology Information, an online library which defined a bicornuate uterus to be a result of a partial fusion of Mullerian ducts resulting in a heart-shaped uterus instead of a pear shape one. In a simple language as per PW2, DW1 and DW2, the bicornuate uterus is the one with two sides instead of one chamber. In a case where a woman has a bicornuate uterus, it is an indication for increased surveillance of a pregnancy. Research has also shown that most women with a bicornuate uterus are able to have healthy pregnancies though an increased surveillance is required. According to EXP3, the plaintiff had a bicornuate uterus with common cervical canal.

In the case at hand, at para 10 of her plaint, the plaintiff alleges that she and her husband pleaded to the Doctor not to perform the

operation but the doctor insisted. Under para 6 of their WSD, the defendant pleaded that the doctor did not in any way force the plaintiff to undertake the surgery. The doctor only advised the plaintiff on the best possible option to save her life, that is why exploratory laparotomy was recommended. In his testimony DW1 testified that he had to operate after detecting threats of an ectopic pregnancy.

On the other hand, PW2, a Gynaecologist from MNH testified that he received the plaintiff from a private hospital called Kitonka and in her referral letter, it was informed that the patient had undergone an operation and that the operation was for a suspected ectopic pregnancy. However, the PW2 explained that at the time of surgery, it was realized that the pregnancy was not ectopic, but she had an abnormal uterus. Her uterus had two sides and it was because the pregnancy was not ectopic, then the uterus was returned to its normal position and the dissection on the patient closed. PW2 also admitted that the results from the MRI test (EXP3) revealed that the uterus was actual a bicornuate. There was however a common cervical canal in which the two uteruses shared the same cervix. In such cases the person can still get pregnant.

According to PW2, the observations and explanations on the radiology report (EXP2) did not match with the conclusion. That in the EXP2, the radiologist said it was ectopic pregnancy but to him (PW2) it

looked like a missed abortion. In defining the explanation on bullet No. 1 on the EXP2 which says *"uterus is gravid with single large patent elliptical gestation sack located at the middle of the upper uterine segment".* PW2 explained it to mean the pregnancy was inside the uterus while his conclusion says that sonographic features are suggesting on left tubal ectopic pregnancy. He pointed out that the two explanations do not match. PW2 went on explaining that as per the radiology report, the diagnosis should have been missed abortion and **the remedy was evacuation** unless the patient was having other symptoms which made the doctor decide as he did. That normally, the decision to do an operation depends on the clinical diagnosis which is reached depending on how the patient represents himself/herself to you. Admitting that he could not tell the extent of the severity of the pain that the patient had when she went to the hospital, his conclusion was that basing on these findings only, he would not have operated this patient unless there were other related clinical reasons.

In the cited case of **Bolam V. Friern Hospital Management Committee** above, the court emphasized that while assessing negligence from a medical practitioner, the analysis should focus on failure to act in accordance with the standards of reasonably competent medical men at the time. However, the court provided a reasonable defence that where

there may be one or more perfectly proper standards, if the medical practitioner confirms with one of these proper standards, then he is not negligent. Having that in mind, the catching issues in the testimony of PW2 are two, one is the fact that he admitted that from as per the radiology report, the diagnosis should have been missed abortion and **the remedy was evacuation.** Therefore, at this juncture, it was undisputed that whichever of the doctor's report was, whether ectopic pregnancy or missed abortion, which looks to me where the two main conclusions to be made from the report, the remedy thereto was evacuation of the pregnancy- hence the case of one or more standards. The issue here would be which mode of evacuation of the pregnancy that would have been used which according to PW2, he would not have used operation but DW1 thought, being a diagnosed ectopic pregnancy, evacuation should be by way of operation.

So, the main question in that issue would be, was DW1 wrong to have opted for operation in such a case where his interpretation of the report suggested ectopic pregnancy? This would now be answered by the evidence on record in relation to what was pleaded under para 6 that the exploratory laparotomy was recommended as the best way to save the plaintiff's life.

In his testimony, DW1 testified that the witness came to hospital while in terrible pain. In conducting physical examination, she was crying as she was in horrible pain and he then made a decision to conduct several examinations including blood test, pregnancy test through urine and ultra sound. Having had the results, he conducted a clinical correlation and observed that at the pelvis, there was observed on the right side of the pelvis an irregular aniconic vision which is a collection of flesh being a signal of pregnancy which is ectopic or a bicornuate uterus. There was also a suspicion of complex ovarian mass which is like a collection of flesh. Despite the results in the report, he had to compare the information in the report and the ones given by the patient and what the doctor found out upon examination of the patient.

After seeing the report, he also went through the pregnancy test and concluded that the patient was pregnant and from all the information of the heavy bleeding, pregnancy and the radiology report, he sat down with Mwalu and explained to her what the report meant. By taking what the patient told him and the test and what he has investigated, it showed that the patient needed to be examined by operating the stomach called exploratory laparotomy.

DW1 also testified that after seeing the results, he told the plaintiff that there is a possibility that she had an ectopic pregnancy and could

also be another problem that could not be seen by the tests they did but they could find out if they conduct a surgery. After telling her that DW1 asked for her consent to be operated and she agreed and signed a consent form. Although the plaintiff alleged that she was forced to do an operation, in her pleadings and testimony she admitted that she had agreed to the operation after the doctor persuaded them. The key word here is the fact she agreed for the operation and it was not forced on her.

From the evidence gathered, it can be concluded that the plaintiff consented to the said procedure. Whether it was necessary is what the rest of the evidence under this issue will determine. As said earlier, PW2 admitted that in both ways that the report could be interpreted, the remedy was to evacuate the pregnancy. He also testified that the plaintiff had a bicornuate uterus which is a rare kind of uterus and the pregnancy under such women need close surveillance. The definition from the American library also suggests the same and according to the evidence of the three doctors, one could mistake a bicornuate uterus with an ectopic pregnancy.

DW1 testified that because of a suspected ectopic pregnancy they had to operate her and during surgery they found out that it was not the problem. They then had to evacuate the pregnancy. Up until this point, am satisfied from all the testimonies that given the results and what was

suspected (the ectopic pregnancy) a surgery was necessary to what seemed at the time as saving the plaintiff's life. There is no need to blame the defendant to take that step because as indicated, a bicornuate uterus was a rare happening in women.

During re-examination by Mr. James, PW2 testified as such:

> *"An ectopic pregnancy can be in the tubes or in the ovaries which is called ovarian ectopic pregnancy. The laparotomy happening in ectopic pregnancy forces us to remove fallopian tubes and ovaries which may lead to permanent problems. In my report I observed that the ovaries were normal on both sides. There was also evacuation which includes suction of the uterus which may damage it. The MRI also tested the thickness of the endometrium which could have been damaged during evacuation. Heavy bleeding can be stopped from within the uterus therefore the proper cure for the bleeding was during the cleaning of cervix. The exploratory laparotomy (opening the stomach) did not cure the bleeding. The MRI observed no damage in the uterus."*

The testimony above defeats the claims that the defendant damaged the plaintiff's uterus because her witness admitted that the MRI conducted (EXP3) observed no damage in the uterus. The PW3 further admitted that the exploratory laparotomy (opening the stomach) did not cure the bleeding because the laparotomy happening in ectopic pregnancy forces doctors to remove fallopian tubes and ovaries which may lead to permanent problems and not to stop the bleeding. The evidence is sufficient to clear the defendant from the alleged negligence. Observations of the Indian National Commission in the case **of Dr. Subramanyam and Anr. *vs.* Dr. B. Krishna Rao and Anr., II (1996) CPJ 233 (NC)** on the question of medical negligence the Commission observed:

> *"The principles regarding medical negligence are well settled. A doctor can be held guilty of medical negligence only when he falls short of the standard of reasonable medical care.* ***A doctor cannot be found negligent merely because in a matter of opinion he made an error of judgment.*** *It is also well settled that when there are genuinely two responsible schools of thought about management of a clinical situation the court could do no greater disservice to the*

community or advancement of medical science than to place the hallmark of legality upon one form of treatment."

From the above analysis and finding, it is conclusive that there were genuinely two responsible schools of thought about management of the situation. PW2 was better placed to have made a better judgment because by then DW1 had already identified the actual problem after performing exploratory laparotomy. This is hence a clinical situation whereby I as a court could do no greater disservice to the community or advancement of medical science than to place the hallmark of legality upon one form of treatment which the defendant took in order to save the life of the plaintiff.

In that finding and conclusion, the first issue is answered in the negative and in favour of the defendant. There was no professional negligence on the part of the defendant which caused the plaintiff to undergo unnecessary procedures. The first issue having been answered in the negative, the second issue automatically dies because it was subject to the first issue being answered in the affirmative. The plaintiff is not entitled to any compensation.

The third issue is on the relief(s) that each party is entitled to. Since the first two issues were answered in favour of the defendant, the plaintiff case automatically crumbles. In her WSD, the defendant prayed for the

dismissal of the suit with costs. However, having analysed the situation, what kind of pain the plaintiff had to go through and the journey she had to go till this point, I only find it fair that costs are not awarded on her. That being the case, this suit is hereby dismissed with no order as to costs.

Dated at Dar-es-salaam this 21st day of February, 2024.

S.M. MAGHIMBI

JUDGE