

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

AT DAR ES SALAAM

CIVIL CASE NO. 124 OF 2022

RICHARD WAMBOGA.....PLAINTIFF

VERSUS

LANCET LABORATORIES1ST DEFENDANT

MANAGING DIRECTOR-LANCET LABORATORIES.....2ND DEFENDANT

Date of Last Order: 30.04.2024

Date of Judgement: 09.05.2024

JUDGEMENT

MAGOIGA, J.

The plaintiff, **RICHARD WAMBOGA** instituted the instant suit against the above-mentioned defendants, severally and jointly praying for judgement and decree on the following orders: -

- a) Immediately payment of Tshs.250,000,000/= as compensation due to defendants' negligence and unprofessional act;
- b) Public apology;
- c) General damages to the tune of Tshs. 300,000,000.00;
- d) Interest of the decretal amount at Court's rate from the date of judgment to the date of satisfying the decree;



e) Costs of this suit;

f) Any other relief(s) this honourable court may deem fit and just to grant.

Upon being served with the plaint, the defendants filed a joint written statement of defence disputing all the plaintiff's claims for compensation and denied to have acted unprofessionally nor caused any injury to the plaintiff as alleged. Consequently, the Defendants prayed this court be pleased to dismiss this suit with costs.


The facts pertaining to this legal dispute are not complicated. It was the plaintiff's story that, he intended to tie knot on 1st January, 2022 with his fiancée by the name of Evaline. As a way of preparation towards that, on 12th May, 2021 accompanied with his fiancée, he went to the defendants' laboratory for HIV test. Having paid for the services and samples taken, the duo opted to come for the results the following day. On 13.05.2021 the duo went back to the 1st defendant's laboratory to get their HIV status result. The story went on that 1st defendants' employee ("the receptionist") handed them the results in two different envelopes; Lab Ref 770212307, MRI No. ZT00495388, spec 0512: IH00090L. The laboratory reports revealed HIV



positive to both on rapid test and Elisa test against the plaintiff while his fiancée was HIV negative.

Shocked by the results, the plaintiff made a second test in the same laboratory and the results were the same. In the circumstances, the plaintiff decided to conduct more tests at different health laboratories including; IST hospital at Masaki Street, Regency Medical Hospital, Sali International hospital and Muhimbili National Hospital. All the reports from other institutions showed the plaintiff HIV status was negative. According to the plaintiff, after having the results from those institutions, on 20.06.2021 went back to conduct the same test to the 1st defendant's laboratory using a different name and the result indicated he was negative.

Under the circumstances, the plaintiff alleged that the 1st defendants acted negligently and unprofessionally and as a result caused him to lose his loved fiancée as their relationship immediately collapsed and wedding plans ended. Not only that but the plaintiff was allegedly traumatized, but also became stressful, suffered depressions, lost hope in life and caused lower performance at his work place. The plaintiff alleged that the wrong results lowered his status, image, self- esteem, manhood and suffered financially; hence, the instant suit for reliefs as contained in the plaint.



At all material time the plaintiff was enjoying the legal services of Mr. Ngusa Erasto, learned advocate from Nsendo Law Chambers, whereas the defendants were enjoying the legal services of Ms. Prisca Nchimbi, learned advocate from Locus Attorneys.

Before hearing started, the following issues were framed, agreed and recorded by this Court for the determination of this suit, namely:

- 1. Whether the procedure in testing and handing of the results were properly followed.*
- 2. Whether the defendants in the circumstances can be sued for medical negligence.*
- 3. Whether the plaintiff suffered damages and to what tune.*
- 4. To what reliefs are the parties entitled to?*

In proof of the plaintiff's case, two witness testified and tendered several exhibits. The defendant had one witness without any exhibit.

Mr. RICHARD WAMBOGA (to be referred in these proceedings as '**PW1**') was the first witness for the plaintiff. PW1 under oath told the court that on 12.05.2021 he and his lover went to test their health status on HIV at the defendants' office located at Morocco street in Dar es Salaam. According to

PW1, this test was the second attempt as they had already tested at Premier Care with the aim on knot ties with Evaline. PW1 told the court that he paid the costs for the test through his mobile (M-Pesa) and thereafter was directed by the receptionist to go to the laboratory to take samples. After taking their samples, the two were informed that the test reports will be ready after 45 minutes and decided to come for results the next day which was on 13.05.2021.

It was further evidence of PW1 that on the 13th May, 2021 they were welcomed by the receptionist who printed out their results and handed the same to them. PW1 testified that he was surprised to read the report that he was HIV positive. PW1 showed the same to his lover and she asked him why and started to disbelieve him. On the same material time, PW1 testified further that they went to see the laboratory attendant who was called Ms. Esovat Severe. According to PW1, they explained their concern and she went inside again but after 20 minutes came back and told them that, those were his results. PW1 continued to state that he left the place with his lover called Evaline. From that day, misunderstanding with his lover ensued as he was judged to be unfaithful and finally their relationship completely collapsed.



PW1 testified further that he disbelieved the defendants' results, and on 14.05.2021 went to make further check at Sali Hospital and the result indicated that he was negative. PW1 told this court that he proceeded to make several checkups at Hytech Hospital, Regency Hospital, IST hospital, Agha Kan hospital and Muhimbili National Hospital. The results in those hospitals also showed that he was HIV negative. PW1 further testified that after receiving the above results, he went again back to IST Hospital and get tested using PCR where he was found negative. PW1 told the court that IST hospital have no laboratory of their own but took the test samples to the 1st defendant and the results were negative. PW1 went on telling the court that he went back to the defendant using a different identity of David Ricardo and got tested where after testing the results showed again that he was HIV negative and this time he tested using ELISA and the result was negative. PW1 told the court that all tests from those hospitals shows that he was HIV negative.

PW1 tendered the HIV test result conducted at the defendants' office on 13.05.2021 which showed that he was HIV positive as **exhibit PE1**.

PW1 continued to testify that it was unusual and unprofessional to be attended by the receptionist alone and proceed to take samples for



laboratory tests without having being counselled. PW1 told the court that he had lived for more than 3 years with his fiancée with the aim of getting married.

PW1 told the court that their relationship was open to the relatives of both sides and their friends but it ended as his fiancée lost trust in him. PW1 also told the court that that, he was affected psychologically as he lost the person he loved and intended to make his wife and also lost the friends he had. PW1 told the court that the respect he held from his fellow church members turned low. On his working place, PW1 went on telling the court that he failed to work efficiently and as result he was demoted from the position of Branch Manager to a mere relationship officer at the headquarters. Further testimony was that by then he was using his brother's car and got an accident which also costed him much.

PW1 told the court that he was advised by his psychologist not to drive and he started using the urban "uber" going to office and back home. PW1 told the court that by losing his fiancée Evaline, he lost a valuable person because his lover was his financial adviser due to her backgrounds in accounts and they had established a joint project which collapsed as well. PW1 further testified that he suffered financial loss to the tune of TZS.12, 000,000/=




being costs incurred in using town hired car, (uber) which costed him TZS. 25,000/= per trip and per day TZS. 50,000/= times five months. PW1 also told the court that he was using a Mercedes Benz but he has forgotten its registration number.

PW1 further testified that he also suffered financially by paying cash in different hospitals when he was making further checkup for HIV tests. He also prayed to tender different test results from other hospitals; these were from Sali International dated 14.05.2021 the results were negative; Regency Hospital dated 03.06.2021 the results also were negative(who use the Lancet Laboratory); Dar es Salaam International Clinic dated 28.06.2021-the results were negative; IST Clinic dated 28.06.2021 the results were negative, Lancet Laboratories dated 28.06.2021 using the name of David Richardo the results were negative; High Tech hospital dated 13.12. 2021 the result were negative; Muhimbili National Hospital dated 22. 12. 2021 the result were negative and the Agha Kan hospital dated 22.01. 2022 the results were negative. These different HIV results from different hospitals were admitted in evidence as **exhibit PE-2(a-g)**.

PW1, when shown exhibit PE-2 (e) testified that he tested HIV at Muhimbili National Hospital using DNA-PCR which is the highest diagnosis of HIV in the

country. PW1 concluded by praying this Court to order the defendant to compensate him to the tune of TZS.550,000,000/= being costs which he incurred. He also prayed to be compensated for losing his lover, the psychological effect of being depressed, tortured and traumatized.

Under cross examination by Ms. Nchimbi, PW1 told the court he is a banker working with Azania Bank Ltd and told this court that it is the third bank since he joined the industry as before he used to work with Equity Bank. He further responded that on 14.05. 2021 after dropping Evaline he went to the hospital and it was beyond midnight hence another day. Probed with another question, PW1 responded that he went to Sali Hospital and tested for HIV and the result came out on the same day of 14.05.2021 and was negative. Shown exhibit PE 2(a), PW1 told the Court that the same was printed out at 2pm by Eva Itege. PW1 also admitted that he had no evidence from Premier which shows that he tested for HIV. He also said that when he went to the defendant, he knew that he was negative and that he went there for his own volition. PW1 still under cross examination, told the court that the first test was conducted on 12.05.2021 and the last examination was conducted on January, 2022.



PW1 told the court that the rest of the tests, he conducted alone without Evaline. PW1 told the court further that the results were handed to him from the defendant without an envelope but when asked to read at paragraph 3.3 which stated that the results were given in an envelope, PW1 had no answer and hence failed to answer the question as to how the results were handed to him.

PW1 continued to respond under cross examination that he used the Mercedes Benz and used TZS. 12,000,000/= to repair it after the accident but he had no receipt of that amount. PW1 testified that last time he saw his psychologist on May, 2023, however he admitted that he had no report from the psychologist. PW1 further responded that he claims 250 million being compensation for wrong results and Tshs.300 millions for loss suffered for losing his fiancé Evaline.

Under re-examination by Mr. Erasto, PW1 told the court that the dispute remains on the test results and not on whether the results were given in envelope or not. PW1 said that the results in exhibit PE-1 and PE-2 are all results of 3 different laboratories from 3 different hospitals. PW1 told the court that in this case he is suing the defendants Lancet Laboratories LTD and it's Managing Director for opposing that they gave him wrong results

which caused great hardships from his relationship and work. He concludes that he claims TZS. 550,000,000/= as for loss suffered after the wrong results.

Next witness for the plaintiff was **DANIEL PAUL MWANDU** to be referred herein as "**PW2**". Under oath PW2 told the court that he is an employee of Ileje District council as laboratory scientist as for now he is studying at Muhimbili National Hospital a master's degree in laboratory science specializing in microbiology and immunology. PW2 testified that he was a laboratory manager before coming to study. PW2 told the court that there are two types of laboratories; independent and attached laboratory. He clarified that independent laboratories are only for laboratory services and have no hospital within while attached laboratories are attached to a hospital.

PW2 told the court that when testing HIV, they use PITC and provide initial testing and counselling. PW2 further told the court that there is a guideline to guide the laboratory testing with National HIV testing algorithm after taking samples. PW2 stated that in the process, IST one is high reactive and can pick a patient with malaria or typhoid or syphilis or "kaswende", but IST



two is very specific for HIV and excludes all other diseases caused by other causes.

Further testimony of PW2 was that from the above, each testing has its operating standard and procedures from pre analytical to post analytical phase which all prepare the client. PW2 continued to testify that if a client complains on the results, they follow regulations to countercheck and make the retesting afresh to cure the defects by taking a new sample and follow the procedure. PW2 says that testing is for 20 minutes and the result can read positive. PW2 also testified that counselling is imperative for preparing the client to receive results. PW2 continued to state that when a client is found to have tested positive, he or she was supposed to be integrated with care and treatment management within 7 days after the results, including counselling within those 7 days.

When PW2 was shown exhibit PE-1, he said that, it shows that the patient tested positive. Further testimony was that according to exhibit PE1, the patient was HIV positive but is not conclusive but needs confirmation and added that Exhibit PE-2 (c) indicates that it was negative and the first one is dated on 12.05.2021 and 28.06.2021 and that there is a span of one month and few days. The results change may be affected by several factors. He



also stated that the HIV results may change as well but if it was positive and confirmed it cannot change.

Under cross-examination by Ms. Nchimbi, PW2 told the court that he was employed in 2018 as a laboratory scientist. He also stated that he was testifying before the court to explain the issue of testing in laboratory as said he was instructed by the chief technician to come and explain how HIV is tested. When further cross-examined, PW2 told the court that in the present case, the client (plaintiff) was wrongly tested and added that he has come to explain how HIV testing is done. He further told the Court that he knew the law which establishes private laboratories is of 1988 and its purpose is to register and regulate private laboratories in providing services to the general public.

PW2 after being shown exhibit PE-1 and PE-2(c) he responded that the two are different exhibits which shows different people who went for testing.

Under re-examination by Mr. Erasto, PW2 told the court that second test can be done by the same laboratory because laboratory technicians are well trained. PW2 added that in this case, the second testing was done after a month and some days and the results were different.



This marked the end of the plaintiff's case and it was marked closed.

The sole witness for the defence was **Mr. ALISTA OSIRO** (herein to be referred as "**DW1**"). Under oath, DW1 told the court that he is medical technologist working with the 1st defendant and is casted with duties to oversee laboratory's operations across the country and has been working at that capacity for 12 years in Tanzania. DW1 told the court that the defendant operates in 12 African countries including Tanzania where their offices are scattered in 8 regions. DW1 continued to tell that, Lancet Laboratories is an independent laboratory which deals with testing of human samples from other hospitals and private clients. DW1 went on testifying that they conduct all kinds of human tests which are about 4000 and they test cancer, hormonal tests, serology tests, and biopsy tests. DW1 further testified that the procedure in conducting HIV test which is serology is done when a patient comes in, they take samples and make analytical identification and take it to the laboratory for testing.

DW1 testified that when testing is complete, the qualified personnel verify the test and after that, the requesting patient is given the results. He also stated that in HIV tests, the requesting patient may be an individual or doctor from a hospital. On self-request test known as self-referral, the results are



given to that particular individual and that they are always in an envelope and the results in the envelope must be sealed. DW1 continued to testify that under those circumstances, the role of interpretation of the results is not theirs because the only duty they have is to test and channel the rest to the requesting parties. DW1 further testified that there is no requirement for counselling to be part of an independent laboratory.

DW1 continued to testify that, he is aware of the plaintiff's claims for compensation due the test results he received from Lancet laboratory. He continued to tell the court that the plaintiff's allegations are baseless because they conducted their duties professionally and with high due care. He further stated that they have 1st class services in laboratories locally and internationally. According to DW1, the claims of the plaintiff are ambiguous because negligence was not established and the claims are baseless. DW1 further testified that in his 12 years of working with the defendant he never came across with the incident like at hand. DW1 added that the complaint at hand, the plaintiff was supposed to channel from the junior staff to the management but told the court that they have never received any complaint. DW1 further evidence was that, they have internal surveys which lead them to know any complaints such as suggestion box, or real complaints and the



online platforms for receiving complaints. He told the court that under the case at hand they did not receive any particular complaint from the plaintiff and the instant case came to their knowledge when they received a demand letter. DW1 also testified that he was not aware who handled the plaintiff that day and he doesn't know who collected the results. He continued to testify that this is a first case to be sued on how the client was handled. DW1 also testified that the motive behind this case is money and that it is a framed case. The defendant prayed this case to be dismissed with costs.

Under cross-examination Mr. Erasto, DW1 repeatedly stated that the requesting party can order for retesting but in this case no retesting was done. He replied further that in this case the claimant is Richard Wamboga. He also admitted that in this case he had no proof of fabricated evidence. DW1 also responded that he never received a complaint on HIV test and this is a first case. He also responded that according to paragraph 3 of the WSD the plaintiff came to their laboratory. DW1 also responded that according to the complaint, the plaintiff went to their office for testing HIV. DW1 having shown exhibit PE-1 admitted that the results are positive and the client in that report is Richard Wamboga. DW1 also was shown exhibit PE-2 (c) and in response he said that the results therein indicate negative and the client



is Richard Wamboga and that exhibit PE-2 (c) was printed at Lancet Laboratory letter head but further responded that he cannot confirm that exhibit PE-2 (c) is from Lancet. He further responded that the way they give results is confidential through an envelope and that they have trained personnel.

Under re-examination by Ms. Nchimbi, DW1 responded that the plaintiff at first claimed at Lancet on 12.08.2021. He also responded that they attend more than 100 patients per day and admitted that he cannot remember or know each individual but they have set statistics. Lastly, DW1 prayed the court to dismiss this suit with costs.

This marked the end of the defence case and it was dully marked closed.

At the closure of the defence case, this court ordered both learned advocates to file their closing submissions before on 3rd May, 2024 with the limit of six pages. The plaintiff successfully submitted final submissions while the defendant did not.

In his final submissions, Mr. Erasto, learned advocate for the plaintiff submitted on the first issue that the defendants did not comply with the procedure for testing and handling the plaintiff results. According to Mr. Erasto, the defendants violated the National Guideline for Management of

HIV and AIDS, the 7th Edition of 2019 as the defendants did not make any counselling of the client (patient) before taking the samples and during the presentation of the test results to the client. It was his submission that, had the defendants acted professionally it would have not given the plaintiff the result which was contrary to the reality.

Having carefully gone through the pleadings, heard the parties' oral testimonies and the documentary exhibits admitted as evidence in this Court, the pertinent task at this point is to discuss the framed issues against the evidence on record. While doing this crucial job, it should be pointed from the outset of this judgment, that I will be guided by the long-standing principal of law which states that, **"he who alleges must prove"**, and in civil case like the one at hand, **"the standard of proof is only measured on balance of probability"**

For simplicity, the above guidance is in line with the decision of the Court of Appeal of Tanzania in the case of **Paulina Samson Ndawavya vs Theresia Thomasi Madaha (Civil Appeal 45 of 2017) [2019] TZCA 453 (11 December 2019)**, where the Court of Appeal of Tanzania at Mwanza at page 14 held categorically 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 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 on a particular fact to be proved".

[Emphasize added]

Squarely with the above settled principle of the Court, to prove a case before this court, it is also a settled law that parties are bound by their own pleadings and that any evidence produced by any of the parties which does not support the pleaded facts or is at variance with the pleaded facts must be ignored. This cardinal principle of pleadings was held in the Court of Appeal of Tanzania in **Barclays Bank (T) LTD Vs. Jacob Muro; Civil Appeal No. 357 of 2019** (*reported at Tanzlii*) where at page 11, the Court categorically held: -

"We feel compelled, at this point, to restate the time-honoured principle of law that **parties are bound by their own pleadings and that any evidence**

produced by any of the parties which does not support the pleaded facts or is at variance with the pleaded facts must be ignored". [Emphasize added]

Having laid down the above principles of law, I turn now to discuss the issues raised in this suit.

The first issue was couched that **"whether the procedure in testing and handing of the results were properly followed"**. The plaintiff's complaint as per the evidence of PW1 was that the 1st defendant (Lancet Laboratories Limited) acted unprofessionally and negligently for giving him wrong HIV test results showing him positive while he was negative after confirming the same through making checkups from different other health laboratories from different institutions. PW1 tendered exhibit PE-1 and PE-2 (a)-(g) in proof. According to PW1, if the first defendant followed all procedures of making the HIV tests and acted professionally, it would have not given the plaintiff wrong results. The plaintiff testified that he was not counselled together with his fiancée before taking the blood sample for test and even after receiving the test reports, they were not counselled by the 1st defendant. In his evidence he testified further that he and his lover



Evaline received the test results enclosed in the envelope from a receptionist while they were supposed to receive them from an expert who would counsel them before they are handed over the results. PW1 testified that the said procedure was contrary to the National Guidelines for the Management of HIV and Aids. The evidence of PW1, was also supported by the evidence of **DANIEL PAUL MWANDU(PW2)** who testified that, as a mandatory conditions to private and public health laboratories, counselling of the client in pre-testing and post testing for HIV is of essential importance and is also mandatory. PW2, testified that the plaintiff was poorly, unprofessionally, and unprocedural diagnosed by the 1st defendant as he has proved through PE-1 that he was HIV positive and latter through other "**exhibits PE-2 a-g**" as negative.

On the defence side, DW1 was of the evidence that there was no negligence committed by the defendant, it is obvious in practice for a testing sample in a reactive agent to indicate some features or suspect positive results for HIV test. That is why testing for HIV is conducted three times at different intervals. DW1 testified that the plaintiff was supposed to inform the defendant, and if any, to complain so that they make a re-test of the HIV. DW1 testified that, that was not done by the plaintiff. DW1 also told the

court that the results were confidential and that is why it was enclosed in the envelope.

Having dispassionately heard and considered the rivaling evidence on this issue, I am of the considered view that the plaintiff has not furnished any evidence to prove the procedure in testing and handing of the results were not properly followed. I will explain why I am taking that stance. **One**, the plaintiff was a self-referred patient and apart from showing that the results were negative from other laboratories but testified nothing as to why the defendant were unprofessional and negligent. Not only that but if I were to go by the testimony of PW2, independent laboratory has no duty to counsel as its main purposes is to test human samples for the use of either personal or by the requesting institution. **Two**, the plaintiff confuses counselling prior for testing HIV and scientific methods and procedures applied during the testing of HIV samples and handling the same in one laboratory apparatus to the release of the final reports. Of all other testing nowhere PW1 testified that he was counselled before. The negligence and unprofessional of the defendant therefore could arise if the results were due to mixing up the samples or that the person who tested was not qualified. In the absence of such evidence, I find no reason to fault and find that the positive results



were procured unprofessionally and negligently. **Three,** Further, it is my conclusion on this point that, counselling is another thing and has to be treated separately with testing procedures of HIV samples. While counselling of an intended client for testing HIV can be done by a psychologist, expert medical doctors and social welfare officers, testing procedures can only be done by specialist laboratorians technician and none of the above mentioned. **Four,** the plaintiff being a lay man failed to describe in his evidence, which testing procedures and handling of the alleged sampling tests were not followed by the 1st defendant. Not only that but PW2 also did not tell the court what went wrong in testing PW1 to amount to unprofessional conduct and negligence done by the defendant. The general allegations that the defendant acted unprofessionally and negligently was not enough to prove the first issue. I expected the plaintiff or PW2 to mention or to tell this court steps in handling procedures that were not followed by the defendant and as such caused the results to be negative but unfortunately this was not done. The allegations of unprofessional conduct and negligence remain unproved and general statements that the National Guidelines for the management of HIV and AIDS were not followed alone are not enough to prove negligence.



Five, PW1 told the court that on that very same day upon complaining, another test was done but no results of such second test was tendered which conduct creates doubt to the whole story of PW1. One would expect PW1 to bring forth two tests on the same day. This was not done and it raises doubt to the claims by the plaintiff.

Therefore, on the foregoing reasons, I find the first issue in the positive that testing and handling of the results were properly done.

This takes me to the second issue which was couched that "***whether the defendants in the circumstances can be sued for medical negligence?***" Mr. Erasto submitted that since the defendant is a limited liability company established under **the Companies Act [Cap.212 R. E. 2019]** to carry out its business in Tanzania as admitted by the defendants under paragraph 2 of their WSD that they can be sued on its legal capacity. According to Mr. Erasto, much as the defendant provides laboratory services, they can be found liable for medical negligence together with her directors. This issue will not detain this court's time because the evidence by both sides had no issue that the 1st defendant is laboratory service provider within the city of Dar es Salaam. Therefore, no doubt, the 1st defendant provides



laboratory services for testing of human samples as testified by the DW1, hence, health care provider as such, in my own opinion, can be held medically liable where negligence can be established that the health provider acted below the reasonable and acceptable standards.

But as to the 2nd defendant, I have no flicker of doubt that the same was wrongly sued in this suit.

That said and done, the second issue is hereby answered in the affirmative that in proper case the 1st defendant can be sued for medical negligence and not the 2nd defendant.

This trickles this suit to the third issues which was couched that **"whether the plaintiff suffered damages and to what tune?"** Submitting on the third issue, whether the plaintiff suffered any damage and to what tune, Mr. Erasto submitted that the plaintiff suffered as he lost her fiancée who they had lived for more than three years. Mr. Erasto further submitted that the plaintiff has shown that his lover was the major supporter in his day-to-day activities such as financial plans, companion, and receiving sexual desire satisfaction which led him to focus on work. In support of the above argument, the learned advocate referred this court to the decision in the



case of **Ester Awour Vs. Nairobi Bus Union Ltd; NBI HCCC No. 7354 PF 1984** as cited in the case of **Sisti Marishay (Suing as Next Friend of Emmanuel Didas Vs. The Board of Trustee Orthopaedic Institute (MOI), THE Secretary Welfare and Attorney General; Civil Case No. 129 of 2021 [HC-DSM Unreported]** which the defendants were found liable for medical negligence and were ordered to pay the compensation.

As to what tune did the plaintiff suffer, Mr. Erasto submitted that the plaintiff has suffered financially including; TZS. 929,820/= as payment for testing in different hospitals where he was found negative; TZS. 6,000,000/= being transport costs for the period of 5 months for uber taxes from his residence to work at the costs of TZS. 50,000/= per day; and TZS. 400,000/= cost paid for uber car to 8 different places for testing.


Having dispassionately heard the evidence by both sides and the documentary evidence tendered, I am constrained to find this issue in the negative. I will explain. One, the plaintiff at all material time testified that Evaline was his fiancé or couple but this material witness was not called to support the story of the plaintiff and no explanation was given why she was not to be called. It is trite law even without citing a case law that failure to call material witness is fatal, in this case to the plaintiff's case. **Two**, the



plaintiff testified as well that he was demoted from Branch Manager to liaison officer at head-quarters of his bank but tendered no evidence to prove that demotion. **Three**, the plaintiff generally alleged that he suffered because him and the ghost Evaline has established project but without mentioning what kind of project and how it relates to this suit. **Four**, as to what tune, the plaintiff alleged that he incurred costs as mentioned by Mr. Erasto in his submissions but tendered no receipts, these being specific claims; to substantiate such claims. In the case of **Anthony Ngoo and Davis Anthony Ngoo Vs. Kitinda Kimaro; Civil Appeal No. 25 of 2014**, Court of Appeal of Tanzania at Arusha on page 16 held as followed: -

"In relation to special damages, the law is settled. Special damages must be proved specifically and strictly".

In the same tone the Court of Appeal of Tanzania referred the decision in the case of **Stanbic Bank Tanzania Limited versus Abercrombie & Kent T. Limited**, Civil Appeal No. 21 of 2001 CAT (unreported). It was stated as under: -



"The law is that special damages must be proved specifically and strictly."

Again, in the case of **Zuberi Augustino vs Anicet Mugabe** (1992) TLR 137 at page 139 it was stated by the court of appeal that:

"It is trite law, and we need not cite any authority, that special damages must be specifically pleaded and proved." [Emphasize added]

Unfortunately, Mr. Erasto annexed in the submissions receipts that were not tendered in evidence, hence, have no evidential value in this suit and are ignored.

Five, as correctly testified by DW1, and rightly so in my opinion, the plaintiff if had issue with the defendant on the results would have raised with the management of the 1st defendant on that very day or next day but his conduct leaves a lot to be desired in this suit, he opted to test in various institutions and came to the defendant using a false name.

Six, the case cited by the learned advocate for the plaintiff to support that the plaintiff suffered and to what tune, is far distinguishable from the facts of this case at issue now.



On the foregoing reasons, this issue has to be answered and must be and is hereby answered in the negative that the plaintiff suffered no loss and if he suffered it was his own creation and not attributed by the defendants. As to what tune, nothing was tendered to support the amount of Tshs.250,000,000/= claimed which is specific in nature for want of proof.

This takes me to the last issue which was couched that ***"what reliefs parties are entitled to?"*** Based on my finding above in all issues, this issue will not detain me. I find that this suit was not proved to the required standard in civil case, that is on balance of probability and same is hereby dismissed with costs.

It is so ordered.

Dated at Dar es Salaam this 09th day of May, 2024.


S. M. MAGOIGA
JUDGE
09/05/2024



COURT: Judgment delivered under my hand and seal of this Court in Chambers this 9th day of May, 2024 in the presence of Mr. Ngusa Erasto, learned advocate for plaintiff and Mr. Daniel Yona, learned advocate for the defendant.



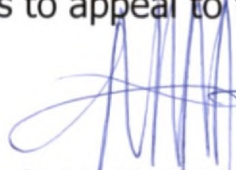
S. M. MAGOIGA

JUDGE

09/05/2024



COURT: Rights of the parties to appeal to the CAT fully explained.



S. M. MAGOIGA

JUDGE

09/05/2024.

