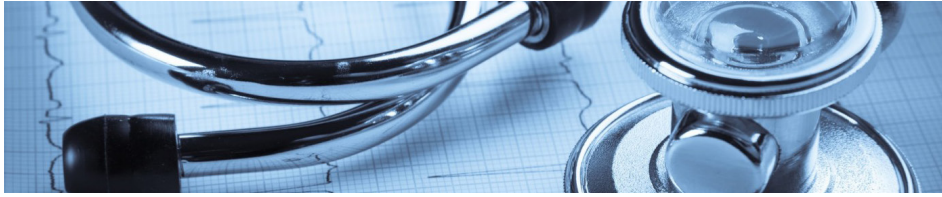


23 May 2018



High Court delivers landmark judgment on a much publicised medical negligence case

- Victim operated on head instead of leg as a result of mixing up of files
- Surgeon and nurses who performed the operations not included in the case
- Held that MOI medical practitioners flouted professional procedures
- Victim of personal injury entitled to both pecuniary and non-pecuniary damages
- Discussed factors to consider when assessing damages
- Applies Government salary scale to calculate loss of earnings
- Victim awarded TZS 100M+ in total damages

Background

1st November 2017 is a memorable day for all medical professionals in Tanzania as well as the general public. On this day, the Muhimbili Orthopedic Institute (MOI) was on the spotlight for a professional blunder committed by its employees. It was reported that the neurosurgeons at MOI, based on a mistaken identity, had operated on one patient (Emmanuel Didas) on his head instead of a swollen knee. Emmanuel Didas, was involved in road accident while riding a motorcycle and broke his leg. In this much publicized news, it was alleged that the nurses at MOI had mixed files of the victim with the name of another patient (Emmanuel Mgaya) whose first name was identical to that of the victim.

Following complaints from relatives of the victim, MOI formed a probe committee to investigate the circumstances leading to the mixed surgeries. However, the report of this committee did not provide sufficient explanation of what transpired.

Another probe Committee, chaired by Neurosurgeon from Bugando Hospital Prof. William Mahalu, was formed. The second committee came with the report that the MOI medical practitioners had flouted professional procedures while performing their duties in relation to the mixed surgeries.

In Dec 2007 the victim (Emmanuel Didas) was referred to Apollo Hospital in India for further treatment. After treatment in India, Emmanuel Didas' condition improved but he remained at MOI for administration of medicine and physiotherapy until 2009 when he was discharged.

Efforts to settle the matter failed and Sisti Marshay, as a next friend of Emmanuel Didas filed a civil case no. 129 of 2012 at the High Court of Tanzania. In this case the defendants were the Board of Trustee of MOI, the Permanent Secretary Ministry of Health and Social Welfare and the Attorney General. Surprisingly, the medical professionals who performed the surgery were not joined in the case.

The major issue for determination by the Court was whether there was professional negligence on the part of MOI (the first defendant). Second, whether the victim (Emmanuel Didas) suffered any injuries as a result of that negligence. Third, to what reliefs the victim is entitled to.

For further information on legal updates please contact:

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About FB Attorneys

FB Attorneys is an all service law firm based out of Dar es Salaam, Tanzania.

We cover all aspects of the law and specialise in all corporate and commercial matters including Mining, Oil & Gas, Tax, Litigation, Competition, Banking & Intellectual Property law.

FB Attorneys has been ranked as a tier 1 law firm by the IFLR 1000 in the Energy & Infrastructure and Financial & Corporate sectors, tier 1 by Legal 500 and band 2 by Chambers and Partners General Business Law.

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LEGAL UPDATE

FB ATTORNEYS

23 May 2018

The Judgment

In its judgment which has just been obtained by the FB Attorneys Legal Update team, the High Court through Muruke J, held that there was professional negligence on the part of the first defendant (MOI) officers who exchanged the files of the victim with another patient. The Court held that there was negligence on the part of MOI in the course of treating the victim. The Court further held that the victim had serious health problems as a result of the wrong and uncalled for operation on his head. The Court observed that the victim was speaking with difficulties, could not connect long sentences, could not speak fluently for more than 30 seconds, could not sit upright, his right side was paralyzed, left leg leaning due to delayed operation and he was in an unbalanced position. Consequently, the Court adjudged the victim to be entitled to both pecuniary and non-pecuniary damages.

In awarding damages, the Court considered several factors to wit that MOI incurred all medical costs, the victim's impaired health, victim's inability to do any work.

The award

- The Court used the salary scale of low earners as per Government Secular No. 2 of 2007 Ref C/AC.46/205/01/100 dated 9 July 2007 as a basis of computation and awarded TZS 1,076,620
- Since he cannot live on his own he is entitled to an assistant until his retirement age (minimum wage salary for domestic worker 265,000 for 40 years) amounting to TZS 10,600,000
- TZS 88,323,380 for pain and suffering
- Interest at 7% from the date of judgment till full satisfaction of the decree
- In case of dismissal or termination, for whatever reason, defendant to pay plaintiff salaries and related benefits for the remaining period of compulsory retirement

What this means

The ruling also creates a precedent for citizens who are victims of professional (medical) negligence and medical malpractices to seek remedies before Courts of law. It is high time now for victims of any medical negligence or malpractice to challenge such conducts in Courts of laws to bring better efficiencies in Tanzania's health care system.

For lawyers, the judgment demonstrates that the area of medical negligence and medical malpractices is unexplored. Also the non-joinder of doctors and nurses is a missed opportunity to examine and interrogate the duty of care and standard of care that should be imposed on medical professionals in Tanzania.

While the judgment reinforces the doctrine of vicarious liability, meaning that the damages will be paid by the employer, the non-joinder of doctors and nurses creates a window of opportunity for doctors/nurses to act as they please, although the judgment sends a clear message. To ensure professional agility, as is the case in other jurisdictions, some liability should have been borne personally by the professionals themselves.

To the medical fraternity in Tanzania, this is a wake-up call; the medical profession requires the highest degree of care one can think of. Doctors and nurses must adhere to the professional code of conduct or else could in the future be sued for professional negligence.

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