

TANZANIA / JUDGMENT

# SAIFEE HOSPITAL NEW 11 1

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA DAR ES SALAAM SUB-  
REGISTRY AT DAR ES SALAAM CIVIL CASE NO.04819 OF 2024 SHAMIM ABUBAKAR  
.....PLAINTIFF Vs SAIFEE HOSPITAL TANZANIA  
.....1stDEFENDANT DR. AQEELA  
MUSTAFA..... 2nd DEFENDANT

## JUDGMENT

Date of last Order:11-12-2024 Date of Judgment:5-3-2025 B.K. PHILLIP, J The Plaintiff's case as stated in the plaint is as follows; On 18 th July 2022, the plaintiff successfully did an In Vitro Fertilization ("IVF") process at the IVF Spring Fertility Centre in Mumbai, India. She was advised to do a checkup after two to four weeks. On 13th August 2022, she took a blood test at Saiffee Hospital (the 1st defendant). The result confirmed that the IVF procedure was well done. The blood test result was shared with the doctors in India at IVF 1 Spring Fertility Centre and the Plaintiff was advised to see a gynecologist for further checkups. On 18th August 2022, the plaintiff visited Dr. Simbakalia at Premier Care, Masaki who advised her to do an ultrasound. The same was done successfully. She continued attending the normal clinics at Premier Care Hospital until her pregnancy reached 29 weeks. Since Premier Care is a day clinic and does not have facilities for handling pregnant women due to delivery, the plaintiff had to find another hospital. She decided to go to the 1st defendant. During her 1st visit to the 1st defendant, she was attended by Dr. Neema Ijani, a gynecologist. Throughout the subsequent visits for normal clinics, she was attended by Dr. Aqeela Mustafa, (hereinafter to be referred to as the "2nd defendant"), also a gynecologist. Between the 16th and the 20th March 2023, she was admitted to the 2nd defendant's hospital as an inpatient. On 18th March 2023, she delivered by caesarean section and was placed under observation until 20th March 2023. Thereafter was examined by the 2nd defendant and discharged. She was advised to return to the hospital after seven days for the removal of the stitches. On 27 th March 2023 she was attended by the 2nd defendant for removal of the stitches and wound dressing. She was further prescribed Silver Sulfadiazine and IV normal Saline medication. On 5th May 2023, she visited the 2nd defendant for checkup 2 because she had never stopped bleeding since 20th March 2023 when she was discharged. However, the 2nd defendant was on leave, thus, she was attended by Dr. Neema. A blood test and ultrasound were done, and some blood clots were revealed. She was prescribed some medicines which she took as per the prescription. On 20th May 2023, she visited the 2nd defendant for further checkup as she kept on

bleeding and continued to suffer from pain. She was given medicines, but despite taking the same, she did not get any relief. Further, the plaintiff alleged that on 25 th May 2023, she visited the 1st defendant's Hospital again and was advised by the 2nd defendant to do an Ultrasound. Later she did D & C (a procedure for checking the uterus) to know what was causing the continuous bleeding. The result showed that there were particles left in the uterus. She was advised to take medicines that could remove the remaining particles from her uterus. The 2 nd defendant told the plaintiff's husband, Mr. Imran, that they would do a biopsy check-up to establish the reasons for the endless bleeding. However, when Mr. Imran went to collect the results for biopsy, he was informed that the test had not been done. Moreover, it was alleged in the plaint that due to the poor treatment from the defendants, the plaintiff decided to attend other hospitals for proper medical 3 care and treatment. She went to Tiba Health Care and booked an appointment to meet Dr. Fatemazahra Amiji. Also, she was attended by Dr. Sarita Vali at Hitech Sai Health Centre. She attended Shree Hindu Mandal Hospital for a biopsy procedure in which she was advised and informed that the degree of negligence committed by the defendants might have caused cancer or death or a risk of removing her uterus. She was stressed and suffered from severe pains because of her poor health condition. Her baby was not able to enjoy breastfeeding. The plaintiff claims that the defendants were negligent in discharging their professional duties. Thus, prays for the following orders and reliefs: -

- i) Judgment against the defendants joint and severally for payment of Tanzania Shillings Five Billion (TZS 5,000,000,000/= ). ii) Interest at the rate of 12%. iii) Costs of the suit. iv) Any other order this honourable Court deemed fit to. In their joint written statement of defence, the defendants disputed the plaintiff's allegations that they were negligent. They stated that the facts in the plaint do not establish any ingredients of negligence. The plaintiff was well 4 attended according to standard treatment protocols. They refuted the plaintiff's allegations that she was bleeding continuously after delivery and that after going back to the 1st defendant's hospital for treatment she did not receive the right medication/treatment. The defendants maintained that the plaintiff visited the 1st defendant's hospital after being discharged complaining of brownish spotting, not bleeding. The D & C procedure was the correct treatment protocol required for post-delivery development. The defendants prayed for the dismissal of the plaintiff's case. The learned advocates Zacharia Daudi and Deogratias Ringia appeared for the plaintiff and defendants, respectively. During the first final pre-trial conference, the court framed the following issues for determination.
- i) Whether there was a breach of the duty of care by the defendants. ii) Whether the Plaintiff suffered damages. iii) To what reliefs are the parties entitled to. In proving her case, the plaintiff testified as PW1, and her testimony was supported by her husband, Mr. Imran Shaftiki Walli, who testified as PW2. On the other hand, the second defendant testified as DW 1. Her testimony was 5 supported by the testimonies of Dr. Abbasali Essajee, the first defendant's principal officer,( DW2) and Dr. Fatemazahra Amini ( DW3). At the closure of the hearing of the case, I allowed the learned Advocates to file closing

**submissions.**

Starting with the 1st issue, whether there was a breach of duty of care by the defendants, it is worth noting that the duty of care is placed onto professionals, like Doctors, Lawyers and Engineers and the like, when discharging their duty since they are expected to perform their works to the acceptable standard of their profession and subject to the circumstances of the case. Breach of duty of care attracts claims for professional negligence. In the case of Jacob Mathew Vs State of Punjab & Another Criminal Appeal No. 144-145 of 2024 cited by Mr. Ringia in his closing submission, the court held as follows; “Generally in the case of professional negligence, professionals such as lawyers, doctors, architects and others are included in the category of persons professing some special skills or as skilled persons generally. Any task, which is required to be performed with a special skill, would generally be admitted or undertaken to be performed only if the person possess requisite skills for performing that task. Any reasonable man entering into a profession which requires a particular level of learning to be called a professional of that branch, impliedly assures that person dealing with him that the skill which he professes to possess shall be exercised with reasonable degree of care and caution. He does not assure his client of the result. 6 (emphasis is mine).” I agree with the legal position stated by Mr. Ringia in his closing submission that professional negligence in matters involving medical practitioners, connotes that a doctor and/ or medical practitioner fails to act by the standard of reasonable medical personnel at the time, working on the same specialty whilst faced with a similar situation. [ see the case of Mwalu H. Dege Vs Kitonka Medical Hospital , Civil Case No. 134 of 2022 (unreported)]. Thus, the claim on professional negligence requires the plaintiff /complainant to prove that the defendant had a duty of care while attending to him/ her and failed to act by the standard reasonably expected of a doctor/medical practitioner under the circumstances, and thus, was wrongful. There are a plethora of authorities in support of what I have stated herein, for instance in the case of Mrs. Mwamini Adam Ntegakaja and Another Vs Urambo District Hospital and Another, Civil Case No.13 of 2011, (unreported) cited by Mr. Zacharia in his closing submission, this Court ( Hon. Mruma,J) had this to say on the issue of professional negligence: “In law, in order to establish liability in negligence it is necessary to prove that the defendants' act was wrongful being a conclusion of law that court can draw from the facts before it. The element of wrongfulness is distinct is requirements for negligence.....In broad terms conduct of the defendant is wrongful if it 7 infringes a legally recognized right of a plaintiff or constitutes a breach of a legal duty owed by the defendant to the plaintiff [See Law of South Africa: Second Edition Vol. 8 part 1 paragraphs 59 and 60]. The imposition of a legal duty depends on the particular circumstances of the case and the enquiry as to whether defendant has contravened that duty is objective” Having stated the position of the law, let me subject the facts of this case as narrated in the plaint and the evidence adduced by the parties to the abovestated legal position, and see if there was a breach of duty by the defendants. As pointed out earlier at the beginning of this judgment, the plaintiff testified as PW1. Her testimony was as follows: She was employed by I & M Bank in 2013, up to date. She is the assistant manager of customer services. She has three children. She had to undergo an IVF procedure at a Spring Fertility Clinic in India, on 25th July 2022. She tendered the embryo transfer Report ( Exhibit P1) in court, showing the successful IVF

Procedure. She returned to Dar es Salaam and started to attend clinics at Premier Care as she was already pregnant. Dr. Simbakalia, a gynecologist, attended her at Premier Care for 29 weeks and everything was fine. Thereafter, she shifted from Premier Care to the 1st defendant because Premier Care had no facilities for giving birth. At the 1st defendant's hospital, she was assigned to be attended by Dr. 8 Aqueela Mustafa ( 2nd defendant ), who was not around on the first visit, so she was attended by Dr. Neema. However, she asked for an appointment to meet Dr. Aqeela. She was attended at the 1 st defendant's hospital on the delivery date. She had delivered by cesarian section. The operation was successful, but she faced serious problems/challenges after delivery because she experienced prolonged bleeding. By the time she was discharged from the 1st defendant she was bleeding and feeling stomach pains. Bleeding persisted. She returned to the 1st defendant but 2nd defendant was not around. She was attended by Dr. Neema who prescribed medications for a week. Her problems were not resolved. So, she returned to the 1st defendant again, and met the 2nd defendant, Dr. Aqeela, who changed the medicine she was using and told her that the new ones were strong. Despite using the new medicines prescribed by Dr. Aqeela, there was no relief. She kept on going back to the 1st defendant for further treatment but there was no improvement. Finally, the 2nd defendant advised her to undergo D&C procedure to clean her uterus, but that was not helpful either. There was a time Dr. Aqueela advised her to do a biopsy, but later on she told her husband that there was no need to do that as it would be a waste of resources. Since her health was persistently deteriorating, she decided to go to Shree Hindu Mandal Hospital, where she 9 met Dr. Fatimazahra. She examined and gave her medications. She advised her to do Ultrasounds in different hospitals. She went to Hytech Hospital for the Ultrasound where she was told that there were serious infections in her uterus. She continued attending Shree Hindu Mandal Hospital and was advised to repeat the D & C procedure. Dr. Fatimazahra is the one who did it. She gave her medications and after three weeks, she recovered and managed to resume to her work. PW1 further testified that the 2nd D & C procedure was successfully done at Hindu Mandal Hospital. The prolonged bleeding was due to the dirt/ particles that were left in her uterus. The doctor told her that there were unwanted tissues /flesh in her uterus, which were causing continuous bleeding and the same were removed. She never experienced such a problem before. The problem she faced started after the Cesarean section during delivery at the 1 st defendant hospital. PW1 implored this court to grant the prayers in the plaint. In response to questions posed to her during cross-examination, PW1 told this court the following: Medical reports are showing that she bled for four months continuously. She did a biopsy test and the results did not indicate that she had cancer. Paragraphs 7.8 to 7.12 of the plaint contain details of 10 the negligence committed by the defendants. The 1st defendant admitted verbally before her husband that they could not remove some of the particles from her uterus. She gave birth to her three children by caesarian section. She has fibroids, and the doctor advised her not to remove them because they were very small. She did not take any report from the 1 st defendant. She neither asked Dr. Simbakalia nor Hindu Mandal Hospital and Hytech Sai Hospital to give her any medical report for the treatment she obtained from them. After giving birth, she went back to the 1st defendant's Hospital to remove stitches and visited the Hospital two times more because she was sick. She informed the doctor that she had pains. When she visited other hospitals, she was given painkillers and felt better. PW2 was the plaintiff's husband.

His testimony was similar to the plaintiff's testimony. He testified that he married the plaintiff on 27th December 2018. Their marriage is blessed with one child. The plaintiff had to go through the IVF process in India as she was not able to conceive in a normal way. After having IVF process successfully done in India, the plaintiff came back to Tanzania and started attending the clinic at Premium Care , Masaki for 29 weeks. After 29 weeks, she moved to 1st defendant Hospital (Saifee Hospital) 11 because Premier Care had no delivery services. The final operation for delivery was conducted at the 1st defendant. The baby came out safely, but thereafter the plaintiff faced problems/ challenges. She was bleeding continuously and experienced severe pains. Thus, she had to return to the defendant's hospital for more treatment. She accompanied the plaintiff to the hospital. The 1 st defendant advised the plaintiff to do D&C processes because he suspected that there were unwanted particles in the plaintiff's uterus. After the D& C process, the 1st defendant told him and the plaintiff that the results showed that there were particles in the plaintiff's uterus, which would be taken for a biopsy checkup for more investigation. The doctor told them that the result from the biopsy would be ready within two weeks. The plaintiff was given medicines but her condition did not improve. She continued bleeding. After two weeks, he went to the 1st defendant's hospital to collect the biopsy results. However, at the laboratory, he was informed that there were no results by the name of the Plaintiff. He was directed to go back to the 2 nd defendant who told him that the biopsy was not done because they noted that what was removed from the plaintiff's uterus were just tissues, so there was no need to do the biopsy, as it would be a wastage of resources. The aforesaid response from the 1st defendant disappointed him and the plaintiff. 12 They lost trust with the defendants. Thus, they decided to go to Shree Hindu Mandal Hospital, where the plaintiff met Dr. Fatemazahra, who examined her, and gave her a seven-day dose of medicine. After seven days, the plaintiff returned to Dr Fatemazahra who advised the plaintiff to repeat the D & C process. The treatment obtained from Dr. Fatemazahra was effective and the plaintiff recovered. In response to questions posed to him during cross-examination, PW2 told this court the following: They decided to go for the IVF process not because the plaintiff failed to conceive in the usual way. They spent more than USD 10,000/= to do the IVF process in India. The plaintiff informed him that she had two children (the 1st and the 2nd born). She delivered both by caesarian section. What is written in the doctor's notice as brown spotting means bleeding. If the doctor's report does not indicate that the plaintiff had pains, then the doctor did not write correctly what the plaintiff told him. He was not sure if the 2nd defendant gave the plaintiff painkillers. He did not know if a biopsy is a test for cancer. The 2nd defendant told him the biopsy test was a waste of resources. In other hospitals, the plaintiff underwent a biopsy test, which showed that the plaintiff was fine. The biopsy test was done after the second D&C process. The doctor in the other hospital told him and the plaintiff 13 that there was a possibility of the plaintiff getting cancer. They were given medical reports from other Hospitals, though they were not tendered in court as exhibits. On the other hand, DW1's testimony was as follows; she is a gynecologist, employed by the 1st defendant since November 2020. She graduated from Karachi, Pakistan, in 1996. Then, she took her graduate course, at Daw Medical College, Karachi, Pakistan. She took his studies as a specialist in gynecology in London, 2002. For 22 years, she has been working as a specialist and consultant gynecologist. She is registered in Tanzania with the Medical Council of Tanzania ( MCT). She admitted that she knows the plaintiff.

She attended the plaintiff at the 1st defendant's hospital when she came there for medical services. She had two previous caesarian sections. She prescribed her the necessary medication (supplements) for pregnant women. Also, she gave her iodine tablets for increasing her slightly low blood. Her blood increased before giving birth, from 11.3 to 11.6, hemoglobin. Usually when a patient comes, she listens to her/his complaint. The 1st defendant is a paperless hospital. Doctors take notice in the computers. The notices are called doctor's notices. The doctor's notice contains the patient's complaints/problems and the doctor's prescription. DW1 tendered in Court 14 the Doctor's Notice Dated 5/5/2023, 27/5/2023 and 26/01/2023 regarding the treatment administered to the plaintiff before and after giving birth (exhibit D1 collectively). Further, DW1 testified that she treated the plaintiff according to the standard treatment protocol, and medication was prescribed according to the acceptable standards. She followed all standard protocols that any other doctor would follow. She has never been negligent. The plaintiff gave birth by a caesarian section. She was admitted on 16th March 2023 with complaining of pain, and she was kept under observation for two days. On 18th March 2023, a cesarean section was conducted to remove the baby. Before the cesarian section she was informed what was going to be done to her. The Plaintiff signed a form (Exhibit D2) to accept the caesarian section procedure. There was no complaint from the plaintiff. The cesarean section involved cutting the uterus and removing the baby. In the plaintiff's case, the placenta did not come out after the operation, thus she had to remove it manually. She cleaned the uterus as required to ensure nothing was left behind and stitched it. Her colleagues helped her in the theater, according to the standard that two doctors should be there. The ones who assisted her were Dr. Philemon Mmari and Sister Schola. In treating the plaintiff, she complied with all the 15 procedures and steps that any other doctor would follow. After finishing the cesarian section, she went to the hospital system to document all that transpired in the theater. Document titled Elective Cesarean Section, dated 24th June 2024, was tendered in court by DW1 and admitted as Exhibit D3. Moreover, DW1 testified that the operation was successful. The plaintiff remained in the hospital until the 20th March 2023, when she was discharged. Both the plaintiff and her baby were in good condition. DW1 tendered in court the discharge summary dated 21st March 2023. (Exhibit DW4). She went on to testify that the plaintiff stayed at Saiffee Hospital for two days after the operation, which is a standard recovery period. She was directed to return to the hospital on 27th March 2023 for stitch removal. She returned to the hospital as directed. There was no complaint. Stitches were removed and she was directed to return after six weeks for a check-up only, that is, on 5th May 2023. On 25th May 2023, the plaintiff returned to the 1st defendant where her colleagues attended and gave her medication. She was complaining of brown discharge. She saw the plaintiff on the 27th March, 2023. At that time, she was in good health condition. She had no pains and was not bleeding, and if she were bleeding, her blood levels would have gone down. On the 20th of May 2023, she met the plaintiff in her clinic. It was a follow-up clinic on an 16 appointment. On that day, she complained of brown discharge again. She gave her medication as per protocols and asked her to return on the 25th of May,

2023. The plaintiff had no other complaint apart from the discharge of brownish spots. She was in good condition and could move from one place to another without assistance. She had an ultrasound, which showed some particles in the uterus. Since they had already given her medication to help the uterus to shrink and remove those particles, she asked her to undergo the D & C procedure, which is a minor procedure whereby they do not cut or stitch any part of the body. During the D&C procedure, she encountered resistance and could not remove that area. She only removed the clotting blood from the uterus. After that, she gave her medicine to clear the brownish discharge she was complaining of. The plaintiff did not complain of pain. After that, the plaintiff never returned to the 1st defendant's hospital. Blood clots happened after giving birth. Every woman, after giving birth, has brownish discharge for twelve weeks. They do not give any medication because it is normal. They gave the plaintiff medicines because she was complaining. Furthermore, DW1 testified that the complaint only narrates the plaintiff's entire pregnancy journey. It does not disclose any act of negligence committed by the defendants. The plaintiff has not brought treatment from other 17 hospitals to her attention. The plaintiff's claim is not true as she has never been negligent in her practice. She treated the plaintiff following the standard protocols. She prayed for the dismissal of this case with costs. DW2 testified that he is a medical doctor. Since October 2020, he has been the medical director of the 1st defendant. The 1st defendant hospital is a modern hospital with much innovation and equipment. The gynecology department is the oldest in the Hospital. It has 11 specialists; out of them,
- (4) are full-time specialists and seven (7) are part-time specialists. The Hospital follows all the standards provided by the Ministry of Health. Before being employed, every doctor undergoes a certification check. He knows the DW1, 1st defendant. She is the head of the department of gynecology. He knows Dr. Neema. She is a full-time gynecologist at the 1st defendant. She is licensed to practice as a doctor. The plaintiff's plaint does not show any negligent act committed by the defendants in this case. The treatment administered to the plaintiff was done according to the standard protocol. All information was confirmed. The 1st defendant has a standard operating system. The 1st defendant's system is fully digitalized starting from the doctor's notice. Doctor can edit their notices within 24 hrs, after that, there is no room to edit the doctor's notice. He knows Mr. Imran. He saw him in his 18 office at the end of June 2023, when he came to ask for a detailed report, and he gave him the same. Further, DW2 testified that the first defendant did not commit any negligence. The complaint does not have any particulars showing that the defendants were negligent. He prayed that this case be dismissed with costs. DW3's testimony was as follows: she is a gynecologist working as a visiting specialist at Shree Hindu Mandal Hospital and Tiba Health Care. She attended the plaintiff when she visited Tiba Health Care. She knows Dr. Aqeel Mustafa ( 2nd defendant), she is a gynecologist too. Upon being referred to paragraph 8 of the plaint in which the plaintiff stated that after doing a biopsy at another hospital DW3 informed her that the degree of negligence exhibited by the defendants when they were attending to her might have caused cancer or death or risk of removal of her uterus, she told

this court that she did not tell the plaintiff what is averred in paragraph 8 of the plaint. In response to questions posed to her during cross-examination, she told this court the following. She once attended the plaintiff at Shree Hindu Mandal Hospital. She advised her to take an ultrasound and other medical tests based on her complaint. She treated her with antibiotics for one week, thereafter she 19 took another Ultrasound. Since there were no changes, she had to undergo a D&C procedure. She prescribed medicines based on the ultrasound findings. She advised her to undergo D&C procedures because the ultrasound results showed that some areas in the uterus were thickened. During the D&C process, she cleaned the uterus by removing all unwanted particles. From the evidence adduced, it is common ground that the defendants had a duty of care when discharging their services to the plaintiff since the defendants' witness testified that the services given to the plaintiff were done to the standard protocol. This connotes that the defendants admit that they were duty-bound to treat the plaintiff to a certain acceptable standard, and thus had a duty of care to the plaintiff. In their testimonies, the plaintiff and PW2 testified that the plaintiff's health problems/sickness that occurred after giving birth were caused by the defendants' failure to discharge their professional responsibility diligently. In other words, they were negligent. Now the pertinent issue that I am required to ascertain is whether the medical services offered to the plaintiff by the defendants were not to the standard expected from doctor. In other words, whether or not the medical services provided unto the plaintiff by the defendants did not meet the expected 20 standard of a doctor/ medical practitioner or were completely wrong, the defendants breached the duty of care. It is a legal position that parties are bound by their pleadings and parties are duty bound to adduce evidence in line with their pleadings (See the case of Makori Wassaga Vs. Mwanakombo and Another [1987] T.L.R 88). In paragraph 8, the plaintiff alleged that she was informed by DW3 that the defendants were negligent, but DW3 denied having told the plaintiff such information. I agree with Mr. Ringia that DW3's testimony has weakened the plaintiff's case to a great extent since it shows that what has been pleaded by the plaintiff in establishing that the defendants were negligent is false. The above aside, the plaintiff and her husband (DW2), being nonmedical practitioners, are not better placed than DW1, DW2, and DW3 to tell this court what was the right treatment that was expected of a doctor / medical practitioner under the circumstances that faced the plaintiff. In this case, there are many pertinent questions this court has to consider and make findings to reach a sound legal decision. Just to mention a few, such questions are as follows: Was there any wrong committed by the defendants when attending to the plaintiff? Were the medications prescribed to the plaintiff, 21 steps taken by the defendants, and advice given to the plaintiff improper? and was the defendant's advice that biopsy was uncalled for wrong under the circumstances? For this court to properly determine and analyze the questions I have mentioned herein, the plaintiff was obliged to bring in court an experienced medical practitioner to prove that the defendant's medication and advice were wrong and substantiate the same by giving the right /standard action that were supposed to be taken by the defendant. It is worth noting that the burden of proof lies with the one who desires the court to give judgment on any legal right, dependent on the existence of facts that he asserts. ( See section 110 (1) and (2) of the Evidence Act). In his

defence DW1 explained in detail how he handled the plaintiff and services rendered to her. Exhibits D1 shows the doctor's notices, whereas Exhibits D3 show that the plaintiff consented to the caesarean section. Exhibit D2 shows the discharge form which indicates that the plaintiff was discharged in good condition. The plaintiff's complaints started after being discharged. She complained of continuously bleeding, but Exhibit P1 indicates that the plaintiff returned to the 1st defendant complaining of brownish spotting not bleeding. I have noted that the plaintiff did not bring in court any medical report from other hospitals she attended to prove that she was bleeding and 22 counter Exhibit P1, which indicates that the plaintiff was complaining of brownish spotting, which, according to DW1, is a normal condition that occurs after giving birth. In his closing submissions, Mr. Zacharia submitted that the testimonies of PW1, PW2, and DW1 proved that some particles remained in the plaintiff's uterus and he was of the view that the defendant's failure to clean the plaintiff's uterus properly amounted to a breach of duty of care hence, committed professional negligence. Moreover, Mr. Zacharia submitted that since DW1 testified that he removed the placenta by hand, it implies that she failed to clean the uterus properly. With due respect to Mr. Zacharia, since he is not a doctor/gynecologist, he has no authority to say that removing the placenta by hand led to the failure to clean the uterus properly. In my opinion, the plaintiff was supposed to bring in court an experienced medical practitioner to explain what was supposed to be done by the defendants in the circumstances where the placenta did not come out. In the absence of any contradicting evidence or explanations from a medical practitioner/ gynecologists, as between the plaintiff, who is a banker and DW1, who is gynecologist with twenty two years of experience, this court is supposed to rely on the testimony of DW1 that the way she removed the placenta under 23 the circumstances was not wrong. Similarly, whether or not the fact that the defendants opted to abandon the biopsy procedure was wrong can only be explained by a doctor and not otherwise. The case of Mrs. Mwamini Adam Ntegakaja (supra) cited by Mr. Zacharia in his closing submissions, is distinguishable from the facts of this case because in that case the evidence adduced by the plaintiff proved that the doctor who did the caesarean section left in the plaintiff's womb surgical swabs and the same were produced in court as exhibits. Most importantly, the plaintiff brought a qualified doctor who testified before the court and explained what happened to the plaintiff in comparison with the standard practice in caesarean operations, that is, the doctor and his/her assistance are supposed to count all surgical swabs before closing the patient's womb to make sure that no surgical swab is left in the womb. In the case at hand, no doctor testified to support the plaintiff's assertions. In the case of Silvester Sikare Vs Sanitas Hospital, Civil Case No.220 Of 2023 ( unreported) cited by Mr. Ringia in his closing submission I said that when it comes to interpretation of official documents/report related to a certain cadre, this court is constrained to rely on evidence given by the expert unless there are good reasons to ignore the same, which I do not find in the case at hand. So, the plaintiff's failure to bring in court a doctor/medical 24 practitioner to testify on the acceptable standard of treatment the defendants were expected to render to the plaintiff under the circumstances she was in, coupled with the lack of exhibits to prove that when the plaintiff attended other hospitals it was discovered that the medical services provided to the

plaintiff were not to the expected standard, is fatal. Thus, the first issue is answered negatively; the defendants did not breach their duty of care to the plaintiff. Moreover, it is worth noting that a doctor or medical practitioner does not assure his/ her client of the results of the medication that it would be 100% successful [ see the case of Bolam ( supra)]. What matters is that when discharging her/his duties, a doctor/ medical practitioner has to possess the required skill and give service to the acceptable standard under the circumstances in question. I wish to associate myself with the findings of the court in the case of The State of Punjab Vs Shiv Ram and others [2005] 7 SCC1, in which the Court, while dealing with the case of medical negligence said the following; "unless negligence of doctor is established, the primary liability cannot be fastened on the medical practitioner. A surgeon with shaky hands under fear of legal action cannot perform a successful 25 operation and a quivering physician cannot administer the end-dose of medicine to his patient. If the hands be trembling with the dangling fear of facing a prosecution in the event of failure for whatever reason-whether attributable to himself or not, neither can a surgeon successfully wield his life-saving scalpel to perform an essential surgery, nor can a physician successfully administer the life-saving dose of medicine. Discretion being the better part of valor, a medical professional would feel better advised to leave a terminal patient to his own fate, in the case of emergency where the chance of success may be 10% (or so), rather than taking the risk of making a last ditch effort towards saving the subject and facing a criminal prosecution if his effort fails. Such timidity forced upon a doctor would be a disservice to the society." From the foregoing, this court finds that the plaintiff failed to prove her case to the standard required by the law. Since I have answered the first issue negatively, I do not see any plausible reasons to determine the remaining issues. Whatever findings I make regarding the second issue will not change my findings herein that the defendants did not breach their duty of care to the plaintiff. Therefore, they 26 are not liable for any damages the plaintiff suffered. Thus, this case is hereby dismissed with costs. Dated at Dar es Salaam this 5th day of March 2025 B.K. PHILLIP JUDGE 27

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