

# PROTECTION OF CONSUMERS OF HEALTH SERVICES IN TANZANIA: AN EXPLORATION INTO THE LEGAL REGIME

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## ABSTRACT

This paper is centered on examining the legal framework protecting consumers of health services in Tanzania, as such it is therefore centered on examining and analyzing the role of consumer protection laws in protecting consumers of health services, provides for the tests on whether the laws which govern consumer protection are effective or otherwise and provides for the way forward. Thus, it provides for the introduction of consumer protection, tracing its root from international law. This paper will also look into the role of international law in protecting the rights of consumers in the world and how it affects the implementation and enactment of domestic law with regards to consumer protection.

The examination is also based on the jurisprudence behind the enactment of the consumer protection laws and how it is measured and regarded as one of the rights of the person with regards to the protection of the right to life of an individual. Legal challenges facing consumers of health services will also be discussed and finally concluded followed by recommendations on what has to be done in order to rectify the situation as far as protection of consumers in Tanzania is concerned.

## INTRODUCTION

Health sector is one of the most sensitive areas in any state in the world as it is connected to the life of individuals and thus it has acquired protection under international law. Thus, the justification of protection of the same in the domestic setup in individual states. Health services providers sell their services to their consumers of their services which must be in line with state policies on protection of the consumers, the regulatory initiatives are made via relevant state laws to ensure that consumers of health services are protected.

The term consumer is one of the complex terms and does not have a standing definition; different scholars have given their thought on the term.<sup>i</sup>

In international legal discourse consumer protection is guided and backed up by the United Nations Guidelines on Consumer protection.<sup>ii</sup> This international legal approach stands as a role model to consumer protection in member states including Tanzania in that particular respect. Health services regulation in the country therefore has a connection to this international legal discourse much as protection of consumers in health services provision and commercialization is concerned. It is the legal initiatives that have been adopted by many jurisdictions in that particular commercial context.<sup>iii</sup>

Basically, the term consumer may be defined by using different statements flowing in a legal aspect to mean any person who purchases or offers to purchase goods or services otherwise than for resale and that the same concept however does not include persons purchasing some goods or services for productive purposes or manufacturing of articles for sale.<sup>iv</sup> Looking at the above definitions therefore, a consumer is an ultimate consumer who is directly affected by using such products and technically excludes a person who offers product or service for business or resale.

It is obvious for example when a lay consumer asked about the concept of consuming, he actually create an image and no direct answer could be given out, this is because consumers are ignorant, unthinking and credulous<sup>v</sup>. In that regard the concept of consumer covers various fields in our normal life, this is much observed after being stated that “consumer protection envisaged as a vast field, much wider perhaps than is generally realized. Not only an examination of the consumer, civil rights in respect of the quality of goods and services but

also of a large number of statutes imposing criminal liability on producers and retailers for conduct detrimental to consumers.<sup>vi</sup>

Therefore, whatever man use is normally consuming and includes various categories as viewed by the court in case of *Aronberg et all v. Federal*<sup>viii</sup> in which the US Supreme Court held that “*When we eat, drink, read, travel, go shopping visiting theatre or rest on bed we are consuming and we are therefore consumers of goods or services*”

The relative definition to the above presented one may be traced to the West’s Encyclopedia of American Law<sup>viii</sup> which describes a consumer of either a natural person or corporate entity purchasing and using products in a different ways and purposes upon which the manufacturers do in regard to the products and services used in that given context. From these definitions therefore a distinctive feature of a consumer from other commercial actors is placed on the ways and purposes upon which the goods and services in a given context are used. This is because while the end results of the manufacturers and traders are reproduction of the goods and resale of goods consecutively this is not the same in a context of consumer in a given context. These definitions are also reflective of the statutory definition in a Tanzania jurisprudence.<sup>ix</sup>

Unlike the meaning of consumer, health services have been defined as services consisting of medical professionals, organizations, and ancillary health care workers who provide medical care to those in need. Health services serve patients, families, communities, and populations. They cover emergency, preventative, rehabilitative, long-term, hospital, diagnostic, primary, palliative, and home care. These services are centered around making health care accessible, high quality, and patient-centered. Many different types of care and providers are necessary in order to offer successful health services.<sup>x</sup>

Health service may be provided by public or private institutions through the legally fixed procedures reflecting national policies of countries and the governments. Provision of health services in each jurisdiction will always be effected through public medical infrastructure and services calculated to serve the citizenry as the government initiative relating to protect its citizens against diseases on the affordable cost which takes into account the economically available resource something which is held under the principle of progressive realization of social security right among the civilized states when it comes to the provision of social security

among the citizens of each particular individual state.<sup>xi</sup> Private provision of health services however will embed in themselves a need to serve people plus the commercial desire of making profit something which takes a balance of the two. It is for that reason that regulatory balancing of the two becomes something compelling to have it on a board.

## **HEALTH SERVICES AND CONSUMER PROTECTION**

### ***Introduction***

Health service has been turned into commercial services after its introduction at a liberal market force contributed to an influx of institutions and other commercial enterprises registered for the purpose of providing health services for commercial purposes. This fact is more justified by a rapid growth of science and technology which is considered as a significant tool in business promotion and stimulation including commercialization of health services in the same commercial context.<sup>xii</sup> It is from the same arrangement that the influx of the institutions and other enterprises that have specialized in the same health services commercialization need to be regulated at the interest of the consumers.<sup>xiii</sup> There is a need therefore to protect citizens against any damage or harm that may be caused by a regulatory weakness or ineffectiveness of the laws.

### ***International Legal Framework on the Protection of Health Services Consumers***

This aspect includes international legal instruments governing consumer's right in various commercial relations on the first hand and the laws protecting human rights, right to life in particular. They are therefore the laws governing human rights protection and consumer's right protection in the international perspectives and scope

On top of that, it is an area of international law whose purpose is the need to protect individuals lives, the same purpose upon which health services are so provided by public and health institutions within various jurisdictions including Tanzania. It is from the same idea that the human rights law at international level has their protective role in this respect. These international legal instruments include the *Universal Declaration of Human Rights* (UDHR)<sup>xiv</sup> and the *International Covenant on Economic Social and Cultural Rights* (ICESCR)<sup>xv</sup> which is the international legal basis of international social security initiatives. The fact that individuals

have right to life under the UDHR makes it correct to connect protection of the consumer's right to life in respect of access to their health services and the same right in respect of having appropriate and standard Medicare in that respect. States therefore have obligations to first make provide administrative measures to protect the lives of their citizenry<sup>xvi</sup> and the right to provide Medicare to the same citizens.<sup>xvii</sup>

The International Commercial Aspect on Health Services Consumer Protection comprises various United Nations rules and UNCTAD instruments relating to a pure commercial protection of the customers generally including that of health services related protection. These international commercial protective legal initiatives at international law are; *one*, The UN Guidelines For Consumer Protection, 2016, which are sets of international principles and guidelines designed to promote and protect the rights and interests of consumers worldwide. *Two*, the UN Conference on Trade and Development, 2018, which is the organ of the United Nations whose objective is to promote inclusive and sustainable development through international trade. And *three*, International Consumer Protection and Enforcement Network (ICPEN) which is the organization composed of consumer protection authorities from over 70 countries representing some 5 billion global citizen-consumers.<sup>xviii</sup> It aims at protecting consumers worldwide by encouraging and facilitating practical action among its members which includes information sharing on market development and regulatory best practices and coordination to tackle market problems.<sup>xix</sup>

### ***Regional Legal Framework Governing Health Services Consumers' Protection***

This area is connected to legislative initiatives to both protections of the individuals' lives through social security provision to the citizens and protection on the first instance plus the general protection of consumers' rights in various contexts of consumers' protection. The African Charter on human right and people's rights<sup>xx</sup> imposes obligation to the African state in regard with provision of social security relating to the legislative need of protecting individual's life within the African countries.

It is an obligation however which states need to carry on their shoulders subject to their economically available resources. It is in this highlight that the regional perspectives will be on the African region generally and the East African context on the second view of it.

### ***General Legal Framework on Health Service Consumer Protection in Africa***

Protection of consumers of health services in Africa was laid down by the *Banjul Charter*, which among other things imposes legal obligations to the state administrative and legislative legal initiative in a need to make sure that there is social protection guaranteed to the citizens in their jurisdiction. It is the legal obligation which states will be affecting through progressive realization within the administrative and legislative domains of their jurisdictions.

Under this legal trend therefore states will be required to provide social protection to their citizens in which health service provision relate in both schemes of public health guaranteed by the public institutions and the contributory health services provided by private health institutions and in a more affordable way by public health institutions.<sup>xxi</sup>

In regard with pure commercial protection of the consumers in a general commercial perspectives regional integration has grown to the point where effective supra national institutional (including regional courts and tribunals) have been established and community law has been developed, private parties (including legal persons) are granted locus standi and special remedies, as happens in the European Union. African regional integration has not developed to this level. African states are protective of their sovereignty and they do not litigate against each other over trade issues. It means the African government will not act on behalf of private parties (under their jurisdiction) to pursue claims against other state parties about unlawful trade measures.

Zimbabwe's violations over the last number of years of its obligation under the SADC and COMESA trade protocol are cases in point. The Zimbabwean surcharges and additional taxes on imported goods did not result in any dispute being declared by affected trading partners.

Some of the regional economic integrations (RECs) have established their courts or tribunal. In the East African Community and the common market for east and southern Africa (COMESA) the respective courts of justice have rendered ruling in applications brought by private parties; provided domestic remedies have been exhausted. These applications are mostly about complaints by officials working in regional secretariats and institutions, or private violations of basic human rights, or REC law.

### East African Community

In East Africa, consumers of health services are somehow protected under Part VIII of the EAC competition Act, 2006 which mandates the Authorities to investigate complaints related to false or misleading representation of goods and services, dangerous goods, poor safety standards and unsafe goods, and unconscionable conduct among others. The authority also investigates undertakings that fail to comply with prescribed consumer's product safety standards and prescribed product information standards.

## **DOMESTIC LEGAL FRAMEWORK ON HEALTH SERVICES CONSUMER PROTECTION**

### ***Introduction***

Tanzania, like other countries, is in line with international guidelines as far as protection of health services is concerned, as such, the government has formulated National Policies and enacted various laws that among others aim at a protection of the consumers in health services in the country. These instruments therefore includes state constitution; national policy; general commercial laws and the health related laws as they are presented in the following order of their presentation hereunder;

The Constitution of the United Republic of Tanzania, 1977 as amended time to time being the first law since it is a basic or fundamental law which prescribes how the state and its organs are established and interrelated, and the division of power between and among these organs. Thus, it has the superiority over other principles, rules or legislation. The constitution does not openly provide for the issue of consumer dispute settlement mechanism but as a mother law provides for the institutions of the state and government and allocates power to different organs of the state. The constitution recognized and protected rights of the people as provided under Article 12-24 of The Constitution of the United Republic of Tanzania.<sup>xxii</sup> However Article 30(3)<sup>xxiii</sup> It provides the right to access before the court of law for every person whose right is being or is likely to be violated.

By virtue of article 30(3) of the Constitution, all consumers in Tanzania have the right to lodge out complaints and be heard to competent authorities that are established if their rights are being or likely to be violated. Apart from that, the Constitution of the United Republic of

Tanzania also provides for the Alternative Dispute Resolution under Article 107A (2)(d) which requires dispute resolution among persons involved in the dispute. According to that, the Constitution indirectly protects consumers on the issue of dispute settlement mechanisms by promoting and enhancing ADR as the mechanism of resolving disputes among the parties.

The National Health Policy, 2007 is among of the formulated instrument to address the issue of protection of consumers of health services as it goes in line with the Government Development Vision 2025 goals, which requires the Ministry of Health shall strive to raise and improve the health status and life expectancy of the people of Tanzania by ensuring delivery of effective, efficient and quality curative, preventive, promotive and rehabilitative health services at all levels. The overall objective of the health policy in Tanzania is to improve the health and well-being of all Tanzanians, with a focus on those most at risk, and to encourage the health system to be more responsive to the needs of the people. The national policy therefore is a reflection of the constitutional position regarding health services provision and the government commitment to protect the citizens' lives. It is from the same national policy that different legal initiatives have been taken by the government as the important mechanism of meeting the national policy objectives.

The Public Health Act,<sup>xxiv</sup> is again an instrument of the state which provides for the promotion, preservation, maintenance of public health with a view to ensuring the provisions of comprehensive, functional and sustainable public health services to the general public and to provide for other related matters.<sup>xxv</sup> The Act under section 4 mandates the minister with the duties to regulate and administer the health services in Tanzania and again the Act under section 5 provides for safeguarding and promoting the health standards provided by the health care centers in Tanzania.<sup>xxvi</sup> This major law provides for many things including preventing occurrence of diseases, promote public health standards in its area through creation of awareness and educational campaigns, to carry out inspections for safety of the public and consumers of health services and to exercise the powers or perform duties in respect of the public health in accordance with the Act or any other written law.<sup>xxvii</sup>

The Tanzania Medical and Medical Devices Act,<sup>xxviii</sup> is among of the laws which was enacted to protect consumers of health services as it provides for the efficient and comprehensive regulation and control of medicines, medical devices, herbal drugs and poisons and to repeal



the Food (Control Quality) Act, 1978 The Pharmaceutical and Poisons Act, 1978 and to provide for the related matters. The Act under section 4 establishes the Tanzania Medicines and Medical Devices Authority (TMDA)<sup>xxxix</sup> which is mandated with the duties to protect the rights of consumers of health care services. The Act provides for the regulations of the Medicines, substances, herbal drugs and Medical devices which are imported, manufactured and used by the hospitals to treat their customers thus the consumers are protected through the inspections and licenses which are given to the manufacturers and users of those medicines and medical devices.<sup>xxx</sup> According to the TMDA report of 2018/2019 it provides that it has inspect and closed more than 67 medical care facilities which do not fulfill the requirement of the ensuring the protection measures of the consumers and it cancel the license of more than 34 medical centers which do not fulfill the standards of the Authority and these measures are aimed at protecting the rights of the consumers of healthcare services.<sup>xxxi</sup>

In addition to the above laws is the Medical Practitioners, Dentists and Allied Health Professionals Act,<sup>xxxii</sup> which governs medical and dental practitioners in Tanzania, it is the law which was enacted to provide for the registration of medical practitioners and dentists in the country as it provides the definition of a medical practitioner, the required qualifications, categories of medical practitioners, their regulation and discipline, and their core functions. Thus, for task shifting to evolve, the flexibility provided by the Medical Practitioners and Dentists Act must be utilized. The Act under Section 4 establishes the Medical Council of Tanganyika which is mandated with the duties to regulate and oversee the professional conducts and other standards and qualities of the medical practitioners in Tanzania.<sup>xxxiii</sup> The Act under Part VII provides for offences and penalties for illegal practices and unlicensed practices which aim at protecting the consumers of health care services in Tanzania and the Act provides for punishment for any infringement of the standards set in the Act.<sup>xxxiv</sup>

On top of that, the Nursing and Midwifery Act,<sup>xxxv</sup> contains provisions for protection, promotion and preservation of the public health, safety and welfare through regulation and control of nursing and midwifery education and practice. This Act governs the nurses and midwives in Tanzania and thus this law was enacted to provide for the education, training, registration, enrollment, and practice of nurses and midwives. For task shifting to progress, the adaptability provided by the Nurses and Midwives Registration Act must be utilized. The Act under section 4 establishes the Tanzania Nursing and Midwifery Council which is mandated to

register the nurses and midwives in Tanzania and to regulate the professional conducts and the mode of discipline for any misconducts. The Act of regulating the behavior of the nurses and their professional conducts which aimed at protecting the rights of consumers of health care services in Tanzania.

The Nurses and Midwives in Tanzania work under the guide called The Code of Ethics and Professional Conduct.<sup>xxxvi</sup> The said Code of Professional Conduct is established by Tanzania Nursing and Midwifery Act, 2010 (here in after ‘the law’) which came into force in July 2015. Under the Act, the Council is made an overseer of this profession.

The Council among other powers has the mandate to receive the complaint which relates to misconduct by nurses or midwives. The council has established the etiquettes which they are supposed to adhere to. The Nurses and Midwife are enrolled under section 15 of the Act.<sup>xxxvii</sup> The law has included the nursing practice, those individuals or groups of people who do as assistants in maintaining the basic health the whole time of the life process by conveying their health status, establishing nursing finding, evaluation responses for care and treatment and provision of nursing care among others.

The conducts which are regarded as disgraceful, dishonorably or unworthy as per the nursing or midwifery professional amount to Professional misconduct, thus under this ‘code of ethics’<sup>xxxviii</sup>, the Nurses or Midwifery pledges to the public to honor, abide and adhere to the professional conduct when offering services thus the pledge implies the commitment that he promises to the patient and the community at large.<sup>xxxix</sup>

In ensuring all angles responsible for provision of health service are protected, the Health Laboratory Practitioners Act<sup>xl</sup> was enacted to provide for the registration and regulation of Health Laboratory Practitioners and to provide for related matters. The Act governs health laboratory technologists in Tanzania as it was enacted to provide for the registration of health laboratory technologists and related matters. Thus, for task shifting to be adopted, the flexibility provided by the Health Laboratory Practitioners Act must be utilized. In reviewing these laws, the consultants paid particular attention to the criteria and systems used for the credentialing and admission to practice of health professionals, as well as the role played by regulatory institutions in administering medical and allied health services professions. This review responded to the need to establish to what extent the practice of task shifting currently is

accommodated by the existing legal and regulatory frameworks. It also sought to establish whether there is a room for further accommodation without the need for changing or amending this legislation.

Apart from the laws which were enacted to protect consumers of health service in one way or another, The Fair Competition Act was enacted. This is the principal competition and consumer protection law in Tanzania, it is an Act to protect and promote effective competition in trade and commerce, to protect consumers from unfair and misleading market conduct and to provide for other related matters.<sup>xlii</sup> The primary purpose of the Act is to enhance the welfare of the people of Tanzania as a whole by promoting and protecting effective competition in markets.

This is geared towards bringing about the following effects; Increase efficiency in production, distribution and supply of goods and services, Lower consumer prices and protect them, promote innovation and increase the rate of economic growth and maximize the efficient allocation of resources and protecting consumers.<sup>xliii</sup>

Furthermore, the Act has two sections namely encouraging competition and protecting consumers which put down mechanisms that enable consumers to take legal action to seek redress and ensuring consumers get their compensation when they get mistreated in the market.<sup>xliii</sup>

The law provided for Anti-competitive agreement as follows; agreements which are anti-competitive but can be allowed if they bring more benefit than the losses they cause to competition. However, the law further under the provision of section 8,<sup>xliv</sup> provide that a person shall not make or give effect to an agreement if the object, effect or likely effect of the agreement is to appreciably prevent, restrict or distort competition. These agreements are known as Vertical Agreements. They are basically agreements between undertakings that operate on different levels of the manufacture- distribution chain and do not compete with each other.<sup>xlv</sup> And for example it includes the manufacturer and its suppliers, customers or both.

A good example is the case of *Serengeti Breweries Ltd Vs Tanzania Breweries Limited*.<sup>xlvi</sup> In this case it was alleged that the respondent was entering into branding agreements with bar owners which excluded the complainant in the market. Such agreements fall within the category of vertical agreements since they are entered into between the manufacturer and

retailers. These agreements apply the rule of reasoning hence Fair Competition Commission held that, “From the provision of section 8(1) of the Fair Competition Act, 2003 it is clear that the branding agreements whether in writing or oral, which the respondent (TBL) has entered into with the bar owners had object the effect or likely effect of preventing, restricting and distorting competition in the Tanzania beer market. The agreements amount to exclusive dealing. The agreements in this case are restrictive vertical practices since they are agreements between parties who are in a vertical relation.”

According to section 60 of the Fair Competition Act,<sup>xlvii</sup> It requires the commission to impose a fine to a person not less than five percent of his annual turnover and not exceeding ten percent of his annual turnover. The section criminalizes cartels by imposing fines to those violators of the law who distort, prevent and restrict competition in the market. By the virtue of section 9(1) of the Fair Competition Act<sup>xlviii</sup> It provides agreements which are prohibited irrespective of their effect on competition and also this agreement can be referred as horizontal agreement or prohibition per se. Such agreement includes; Price fixing between competitors, a collective boycott by competitors, Collusive bidding or tendering.

The Fair Competition Act establishes the Fair Competition Commission (FCC) under section 62(1).<sup>xlix</sup> The FCC aims at promoting and protecting effective competition in trade and commerce and protecting consumers from unfair and misleading market conduct. The ultimate goal is to increase efficiency in the production, distribution and supply of goods and services. The establishment of the FCC is a significant step in Tanzania towards Tanzania’s market economy. The function of the FCC are provided for under section 65(2)<sup>l</sup>which included but not limited to; Control, manage and efficiency perform the function of the commission under the Act; Promote and enforce compliance with the Act; Promote public knowledge, awareness and understanding of the obligation, rights and remedies under the Act and the duties, functions and activities of the commission; Make available to consumer information and guidelines in relation to the obligations of persons under the Act and the rights and remedies available to consumer under the Act; Carry out inquires, studies and research into matters relating to competition and the protection of the interests of consumer; Study government policies, procedures and programs, legislation and proposals for legislation so as to assess their effects on competition and consumer welfare and publicize the results of such studies; Investigate the impediments to competition, including entry into and exit from the markets.

The Fair Competition Act<sup>li</sup> again establishes the Fair Competition Tribunal (FCT) under Section 83(1), which consists of seven members; the Chairman who is a High Court Judge appointed by the President after consultation with the Chief Justice and six other members appointed to serve on a part time basis by the President after consultation with the Attorney-General. These members must possess qualifications and experience in industry, commerce, economics, law or public administration. The Act provides for the establishment of a Nomination Committee charged with nominating members of the Tribunal save for the Chairman before forwarding a list of appointees to the President for appointing six out of the forwarded names. Membership to the Tribunal may extend for a period not exceeding ten years and reappointment is possible save for, among other circumstances, the President being satisfied that the given member's mental or physical infirmity or inability to attend at least three consecutive meetings of the Tribunal.

## **THE ROLE OF THE JUDICIARY IN PROTECTING THE RIGHTS OF THE CONSUMERS OF HEALTHCARE SERVICES**

### ***Introduction***

The judiciary in Tanzania has played a great role in ensuring the health services provision are carried out with diligence, professional manner and in accordance with the rules and ethics of their professional conducts without negligence or malpractice. Hereunder are some cases which demonstrates on the protection of consumers of health services;

The first one is the case *Theodelina Alphaxad Minor s/t next friend vs The Medical Officer I/C, Nkinga Hospital*<sup>lii</sup> in the High Court of Tanzania at Tabora. This case has set a precedent on medical negligence in Tanzania. The matter was instituted by claimant (the next friend of Theodelina Alphad, a minor of six years against the Medical Incharge of Nkinga Hospital claiming TShs. 5,000,000/= as a damage with interests, and costs of the suit, and such further relief as may be commensurate to the occasion, for the loss of the left fore-arm which was amputated, claimed and allegedly, because of faulty and negligent treatment of the professionals of the hospital. The court directed itself to the two important issues in respect of the case, the first issue was whether Nkinga hospital was negligent in the medical treatment of

Theodelina Alpha, which led to limb amputation and second What relief(s), if any, are the parties entitled to? In respect to the issues raised, Hon. Katiti J (as he then was) held that;

*“Where in a hospital, the doctor engaged, has seen him and the patient, established the doctor and patient relationship, by accepting him/her for treatment purposes, the said doctor has a duty of care, and has to exercise the same with skill attendant to modern medicine surgery, under permitting circumstances. Such general duty is not subject to dissection into a number of component parts, to which different duty of care apply, or combination of both, For example the investigation and, or treatment of the plaintiff was in accordance with current standards of medical practice, or, that, the plaintiff’s injuries were not caused by any negligence on behalf of defendants.”*

Therefore, the defendants were held liable and ordered to compensate the victim.

Another incidence witnessing the non-legal compliance is the presence of negligent medical cases that have been reported, initiated and prosecuted against medical practitioners and their relative medical institutions for the medical negligence made by the former against the patients who were consumers of health services in this context and content of the document. This incidence was a civil case hereunder;

*Mwamini Adam Ntengekaja & Another vs Urambo District Council & Another.*<sup>liiii</sup>The plaintiffs in this case Mrs. Mwamini Adam and Mr. Idrisa Jafar Nkubeko were a couple. The first plaintiff was an adult female aged 32 years old, a mother of three and a wife of the second plaintiff. The second plaintiff was an adult male aged 40 years old and a husband of the first plaintiff.

They instituted the suit against the first defendant in her capacity as an authority responsible for the running of Health centers and Hospitals in the District of Urambo, therefore vicarious liable for alleged medical negligence committed by the second defendant Dr. Jacob Kamanda who was her employee, by negligently leaving unwanted materials in the stomach of first defendant after surgical operation. They claimed damages allegedly suffered by them and arising from negligence of the doctor (s) and nursing staff on duty who were involved in an operation of the first plaintiff for a routine delivery, on 6th January 2011 done at Urambo District Hospital. The defendants were found negligent and ordered to compensate the victim.

Apart from the above cases which were successful, there also some other cases which fails due to pure prosecution and lack of education of the area of legal protection of consumers of health services as it can be seen in the case of **Magreth Leonard Mbagu and another vs Regency Medical Center Ltd**<sup>iv</sup> where the plaintiff lost the case for failure of the plaintiff's side to bring a witness who would connect the cause of death of their relative and negligence of the defendants.

The facts of the case were to the effect that on the 15th day of December, 2020, at about 08.00 hours one Daniel Siyame Sichone, a Government employee aged 58 years old (deceased), the husband and father to the 1st and 2nd plaintiffs respectively was received and attended at the defendant's emergency department by one Dr. Siraji Said Gugu and his medical team while in critical respiratory condition. After triage, the patient's condition was resuscitated after being introduced to oxygen mask and cannula for intravenous medication, vital signs or initial specimens were collected, whereby later on, it was established through chest x-ray that he had severe pneumonia. As the patient had a standard NHIF card which does not cover some of the investigation needed, the plaintiffs who were in company of the patient (deceased) were asked to deposit cash Tshs. 500,000/- to cover the medical treatment on that day and Tshs. 120,000/- for Covid-19 test which was to be performed outside the hospital in which they did. It is however contended the medical service rendered to the patient was unsatisfactory as up to 3.00 pm no useful treatment was accorded to him. It is asserted further by the plaintiffs that, later on, they were informed by Dr. Gugu of the decision made for them to be required to deposit up to Tshs. 2,000,000/- per day so that their patient could be admitted in an isolated room or else they transfer him to another hospital of their choice. Shocked with that information and unable to cover the said costs, it is claimed the plaintiffs asked for referral letter and ambulance car transfer services to Muhimbili National Hospital (MNH) as the only alternate and close medical facility to rescue their beloved life but the request was turned down as the patient had his oxygen mask and cannula removed before they were forced to use their private car to rush him to MNH. On reaching MNH and while at the emergency department undergoing treatments the plaintiffs' patient was declared no more, after which the burial permit (exh.PE1) was issued and the deceased body was collected for burial process. The court held *inter alia* that

*“under the circumstances of this case where the deceased was under oxygen supply from the time when he was received by the defendant staff (DW2) at emergency department up to the time when it was discontinued 20 soon before moving to MNH, it was expected of DW2 who professed to have possessed and exercised ordinary medical skills in handling the deceased (Daniel Siyame Sichone) to know or to have known that discontinuation of that oxygen supply to that patient would pose a high risk on his life, leave alone denial of issue of referral letter and ambulance car transfer services to MNH for allegedly want of payment of its costs. It is no doubt and I am convinced that, any reasonable medical officer possessing ordinary medical skills would not have so acted or taken that risk... In view of the above discussion, I am satisfied and DW2’s negligent acts rendered the defendant vicariously liable hence a finding that, the first issue is answered in affirmative, as the defendant hospital was negligent in taking care of the deceased while at her facility”*

Apart from such good findings of the Judge, finally the plaintiff loss the case where by the court had this to say;

*“The Court was not exposed to any evidence proving that there was a nexus between the deceased's death and the defendant's negligence. Plaintiffs were expected to bring evidence from the persons (paramedics) who attended the deceased at the MNH emergency department and so as to establish to the Court’s satisfaction as to what kind of medical services was rendered to the deceased when received there before he succumbed to death and that, had it not been for defendant’s negligence for termination of oxygen supply and denial of ambulance car service the deceased life would not have been lost, but they failed to so do. That evidence or any medical expert report in my view would have shed 24 some light to the Court’s doubt as to what exactly led to deceased death when received at MNH emergency department as the deceased body was never examined and the report issued to establish in detail his cause of death, apparent for none established reasons.”*

It is therefore clear from the foregoing that courts do protect consumers of health services where cases are well prosecuted by taking to court relevant witnesses whereas the contrary renders redress from negligence actions of health service providers.



## CONCLUSION

This study discussed the legal and institutional framework that protects the consumer in health services provision within Tanzania. In the analysis, the study came to find out that both legal and institutional frameworks are non exhaustive in protecting the consumers of health service in general to the extent that some legal reforms are required in order to have consumers of health services fully protected by law. The study has revealed that in ensuring that the public and especially consumers of health services are protected it has established different mechanisms or authorities which governs the welfare, quality, quantity, behaviour and professional conducts of the medical practitioners and health care services providers. These authorities include the Tanganyika Medical Council, TMDA, Tanzania Nursing and Midwifery Council, the Minister of Health and the Dentists Council which are mandated with the duties to oversee all the professional conducts and protection of consumers. Despite having all the laws and policies, still there is a need of having a single law which will deal with protection of consumers of health services unlike the current position whereby laws which are responsible for protection of consumers are started and regulatory authorities are centered.

## RECOMMENDATIONS

Having found the weakness of legal framework regime protecting the consumers of health service in Tanzania, set forth are the recommendations which will tackle the challenge;

Firstly, there must be Consolidation of scattered laws for the purpose of having a single and simplified comprehensive law on the consumer's protection in health services provision in Tanzania. This will minimize and perhaps avoid regulatory confusions and difficulties in that regulatory aspect.

Secondly, the regulatory framework must be proactive as opposed to reactive response in order to have effective health services by having a keen regulation on the contents and syllabus of the medical profession in Tanzania.

Thirdly, there should be an effective and appropriate implementation of the laws and compliance to legal and professional code of conduct by the medical personnel in order to have a proactive regulatory framework on the health service provision in the country.

Lastly, the government must take financial measures to assist private health providers as they assist in realization and provision of health services in the country. This can be done by creating national special funds from which financial support and credit may be given to these important health service provision stakeholders.



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## ENDNOTES

<sup>i</sup> Kikoyo, O.I., (2018) *The Dawn of Consumer Rights Protection in Tanzania*, E & D Vision Publishing Limited, Dar es Salaam, Tanzania, at page 33

<sup>ii</sup> The United Nations General Assembly Resolution Number No 39/248 OF 16<sup>th</sup> APRIL 1985

<sup>iii</sup> <https://unctad.org/system/files/com> accessed on 2<sup>st</sup> FEBRUARY 2023

<sup>iv</sup> Kikoyo O. I, *The Dawn of Consumer Rights Protection in Tanzania*, Dar es Salaam, E&D Vision Publishing Ltd, (2018) pg 36

<sup>v</sup> Nditi, N.N.N., (2015), *Competition and consumer protection in Tanzania: Challenges and opportunities with reference to strengthening the rule of law in Tanzania*, A Paper presented on Nation forum, Sea scape Hotel, Dar es salaam at p.13

<sup>vi</sup> Harvey, B.W., (1978) *The Law of Consumer Protection and Fair Trading*, London: Butterworth & Co Limited. stated at p.vii

<sup>vii</sup> (1943) 132 F.2d 165, US Court of Appeal, see also in Article of Nditi N.N.N entitled “Efficacy of Legal and institutional framework relating to consumer protection in Tanzania”, *East African Law Review*, vol.42, issue 1 at p.6

<sup>viii</sup> West’s *Encyclopedia of American Law*, 2<sup>nd</sup> edition, 2008 the Gale Group, Inc.

<sup>ix</sup> See Section 2 of the Fair Competition Act, 2003

<sup>x</sup> See <https://study.com/academy/lesson/health-services-definition-types-providers.html>

<sup>xi</sup> See the decision in the case of *Soobramoney v Minister of Health (Kwazulu-Natal)* [1997] ZACC 17

<sup>xii</sup> <https://www.digitalclassworld.com> accessed on 22<sup>nd</sup> February, 2023

<sup>xiii</sup> The Primary obligation of a state towards its citizens is its commitment to protect the lives of its people. This is the legal notion that is held under different legal principles including the socio theory contemplation.

<sup>xiv</sup> Of the 1948

<sup>xv</sup> Of 1966

<sup>xvi</sup> Article 3 *ibid*

<sup>xvii</sup> Article 22 *ibid*

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<sup>xviii</sup> ICPEN. (2016). *Memorandum on the establishment and operation of the international consumer protection and enforcement network*. Retrieved from [https://www.icpen.org/sites/default/files/2016-08/Memorandum\\_on\\_the\\_Establishment\\_and\\_Operation\\_of\\_ICPEN\\_2016.pdf](https://www.icpen.org/sites/default/files/2016-08/Memorandum_on_the_Establishment_and_Operation_of_ICPEN_2016.pdf). (accessed 28 July 2023).

<sup>xix</sup> Izaguerri Vila, Arnau. "International Consumer Protection at the United Nations: Towards Global Governance?." *Journal of Consumer Policy* 43.1 (2020): 91-103.

<sup>xx</sup> Of 1981

<sup>xxi</sup> Article 17 and 22 of the Charter *ibid*

<sup>xxii</sup> 1977 as amended time to time

<sup>xxiii</sup> The Constitution of the United Republic of Tanzania of 1977.

<sup>xxiv</sup> The Public Health Act, No. 1 of 2009

<sup>xxv</sup> *Ibid*

<sup>xxvi</sup> *Ibid*

<sup>xxvii</sup> *Ibid*

<sup>xxviii</sup> The Tanzania Medical and Medical Devices Act, Cap 219 R.E 2019

<sup>xxix</sup> *Ibid*

<sup>xxx</sup> *Ibid*, section 5

<sup>xxxi</sup> [www.tmda.go.tz/publications-report-2018/2019](http://www.tmda.go.tz/publications-report-2018/2019) visited on 12/06/20223

<sup>xxxii</sup> The Medical Practitioners, Dentists and Allied Health Professionals Act No. 11 of 2017

<sup>xxxiii</sup> *Ibid*, Section 4 and 5

<sup>xxxiv</sup> *Ibid*, section 52 and 53

<sup>xxxv</sup> The Nursing and Midwifery Act No. 1 of 2010

<sup>xxxvi</sup> Section 6(e) of Nursing and Midwifery Act, 2010 establishes the Tanzania Nursing and Midwifery Council

<sup>xxxvii</sup> The Code of Ethics and Conduct for nurses and midwives is a guide for nurses and midwives

<sup>xxxviii</sup> Code of Ethics and Professional Conduct for Nurses and Midwives in Tanzania—established by Tanzania Nursing

and Midwifery Council, 2015

<sup>xxxix</sup> *ibid*

<sup>xl</sup> Act No 22 of 2007

<sup>xli</sup> The Preamble to the Act.

<sup>xlii</sup> Section 3 of the Act.

<sup>xliiii</sup> Section 45 of the Act

<sup>xliv</sup> *Ibid*

<sup>xlv</sup> St. Augustine University Law Journal, vol 4 June 2022

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<sup>xlvi</sup> Complaint No. 2 of 2009, Fair Competition Commission

<sup>xlvii</sup> Act No 8 of 2003

<sup>xlviii</sup> Act No 8 of 2003

<sup>xlix</sup> The Fair competition Act, No 8 of 2003 FCA

<sup>1</sup> Act No 8 of 2003

<sup>li</sup> Act no 8 of 2003

<sup>lii</sup> [1992] TLR 235

<sup>liii</sup> Civil Case No 13 of 2013(<https://tanzlii.org/akn/tz/judgment/tzhc/2015/2303/eng@2015-04-09/source.pdf>)  
Accessed on November 22, 2023

<sup>liv</sup> (Civil case 50 of 2021) [2023] TZHC 19599

