IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 1173 OF 2006

MWAIWATHU PRIVATE HOSPITAL LTD ..... PLAINTIFF
AND-
ALINANE KAUKA ..... 1ST DEFENDANT
CHIPILIRO KAUKA ..... 2ND DEFENDANT

CORAM: HON. JUSTICE R. MBVUNDULA
Gulumba, Counsel for the Plaintiff
Gondwe & Kauka, Counsel for the Defendants
Moyo, Official Interpreter

RULING

The issue subject of this Ruling is whether the defendants are liable for certain private ward hospitalization costs at the plaintiff hospital.

The 2nd defendant was admitted to the plaintiff hospital, initially in a general ward, and was later moved to a private ward. The 2nd defendant was at the time covered under a medical scheme provided by Medical Aid Society of Malawi (MASM). The dispute as to liability for the cost of admission in the private ward relates to part of the period spent in the private ward prior to the hospital receiving from MASM an undertaking that they would meet 100% of the accommodation cost in the private ward. The plaintiff asserts that the defendants are liable for the bills incurred prior to the approval because up until that time the 2nd defendant was admitted in the private ward at the request of the 2nd defendant and/or her relatives. This assertion is denied by the defendants. The crucial question to be addressed is whether the transfer into the private ward was at the request of the patient or her proxy, in which case the defendants would be liable for the bills pertaining to the period prior to MASM approval that the patient be accommodated in the private ward, or that the said transfer, even prior to the approval, was at the behest of an agent of the hospital, in which case the defendants are not liable.

This Ruling arises out of the submission of the defendants that the evidence laid before this court on behalf of the plaintiff does not establish the plaintiff's case to warrant the defendants to lead evidence in their defence, and accordingly that this court should dismiss the case at this juncture.

The plaintiff called three witnesses, namely, the plaintiff's Finance Manager, the consulting doctor who treated the 2nd defendant and MASM's officer who attended to the defendants query regarding the bills.

The evidence shows that the patient was admitted into a general ward of the hospital on 8th October and discharged on 29th October. A few days into admission she was transferred to the private ward. On 17th October the doctor sought MASM's authorization for the private ward accommodation which MASM granted and this meant, according to the plaintiff's evidence, that MASM would, from that date shoulder 100% cost of the private ward accommodation. It is contended on behalf of the plaintiff, and disputed by the defendants, that the accommodation prior to that date, was sought by or on behalf of the patient and is therefore the responsibility of the defendants.

The burden lies on the plaintiff to prove on a balance of probabilities that what they assert is in fact the case.

The Finance Manager's evidence, in as far as the billing and the transfer of the patient from the general ward to the private ward are concerned, was drawn from the file records of the patient. Neither did he personally attend to the affairs of the patient nor indeed prepare or participate in the preparation of the records. Exhibit P4, which he tendered, is a form which he said was a request for a private room which could be used in three situations, namely, a request for private room, a request for a guardian's bed or a request for a private room due to medical reasons. It is a requirement on the form itself to tick the relevant request amongst the three, but no such tick appears against any of the three options. It is therefore not possible to conclusively state that this was a request by the patient or her representative to be moved to a private ward. One observes further that although the form refers to the 2nd defendant as the patient to whom it purportedly relates, it bears no endorsement (by way of signature or otherwise) by the patient or her representative, and that the only persons who appear to have signed it are the Unit Manager and the doctor. In short, on the face of it, one cannot unequivocally say that it is the patient's request to be moved to a private ward.

The Finance Manager claimed that the request for a private room was made "at the patient's and own relatives request" and that unlike at the doctor's recommendation this meant that the patient would be liable for the full cost until the 17th when the doctor overseeing the patient recommended that the patient be accommodated in the private room. During cross examination, however, this witness expressly stated that he did not know who moved the patient to the private ward, and that the request to move her was not made to him, in which case he is not competent to attest to the fact that the patient was moved at her own or her proxy's request. Further still, during re-examination he stated that ordinarily the decision to move a patient to a private room is made by the Unit Manager, who, usually is the nurse looking after the patient, although no such Unit Manager, available at the material time, testified. However, that the decision to transfer a patient is ordinarily made by the Unit manager seems in fact to be supported by the fact that Exhibit P4 was first signed by the Unit Manager on a part of the form dated 8th October and ultimately by the doctor on 17th October.

The other evidence directly material is that of the doctor who attended to the 2nd defendant. She informed the court that the 2nd defendant was admitted to the general ward where the doctor left her after treatment, but noted later that she had been moved to a private ward and that a few days later the 1st defendant expressed concern at the interim bill produced by the hospital. She said during her oral testimony that she did not know who authorised the transfer to the private room, but she recalled earlier on herself instructing a nurse to move the 2nd defendant to a particular private room once another patient in that room was discharged. She further said that such transfer was subject to the patient "doing her paperwork". Such "paperwork" is not in evidence.

The doctor stated further that when it became clear that the patient's continued stay in the private room was in her interest she wrote a letter of motivation dated 17th October to enable MASM carry the cost of her accommodation with effect from that date. Thus it is a fact that she was not involved in initially moving the patient to the private ward under the apparent arrangements of 8th October. The doctor disputed the fact pleaded in the Amended Reply to defence and Counterclaim that the 1st defendant specifically requested for a private room in order to install digital satellite television for his wife. She specifically said it was not true.

The other material evidence of the doctor related to the fact that the 1st defendant refused to sign Exhibit P4. She said that the form went to Administration a week before but was sent back by MASM requiring a letter of motivation. She said the defendant's refusal to sign contributed to "the delay", which delay was not elaborated.

The third witness, the MASM officer, was not at all involved with the hospital processes. Her involvement was with regards to clarifying and the settlement of invoices. Her evidence is therefore immaterial to the issue of admission in the private ward.

It is the view of this court that the plaintiff has failed to discharge the burden of proof, namely that it is more probable than not, which is what proof on a balance of probabilities entails, that the 2nd defendant was moved to the private room at her or her husband's request and therefore liable for invoices related thereto until the MASM approval. Firstly there is no evidence, written or oral, that the defendants requested or consented that the 2nd defendant be moved to the private ward. On the contrary there is evidence that the defendants refused to sign the form authorizing the transfer, which points to the fact that they were not agreeable to be exposed to the attendant expenses. As matters stand, in fact, the form was signed only by the Unit Manager and the doctor and bears no signature of either defendant. Secondly, both the Finance Manager and the doctor expressly stated that they were not involved in the decision to transfer the 2nd defendant, nor did they know who made it. Being ignorant of the decision-maker means that they do not know if it was the defendants or one of them who made it and cannot therefore attest to that fact. Thirdly, that such decisions are ordinarily made by the Unit Manager, and in this case the Unit Manager appears to have initiated Exhibit P4, strongly suggests that the decision was initiated by the Unit Manager and tilts strongly against the assertion that it is the defendants who sought to have the patient moved, particularly in view of the defendants' refusal to themselves sign that form.

In trying to buttress the plaintiff's position, counsel for the plaintiff argued that notwithstanding that Exhibit P4 was not signed by either defendant the 1st defendant should be held liable for the

amounts claimed in respect of the admission in the private ward on the terms of the Admission Agreement (comprised in Exhibits P2 and P3) which he signed on the admission of his wife, the 2nd defendant, which agreement provided that he would settle all financial obligations arising out of all the medical services that would be rendered to the 2nd defendant. Counsel submitted that it was unreasonable and unconscionable for the defendants to capitalize on their own misdemeanours, as it were, and insist that they should be discharged from liability. In response counsel for the defendants counter-argued that the Admission Agreement was in relation to the admission in the general ward and not the private ward and the defendants paid what was rightly due in that connection. Counsel for the defendants further argued that the contract comprised in the Admission Agreement must be distinguished from the second and additional proposed contract for hospitalization in the private ward which the defendants did not sign.

I am inclined to agree with the defendants' position because of the principle against unilateral variation of contractual terms. In my understanding of that principle the transfer of the 2nd defendant from the general ward to the private ward, having had financial implications on the defendants, ought to have been mutual. The defendants not having proved to have expressly or otherwise agreed to the said transfer could not be justifiably burdened with further financial obligations. It also seems to me that the fact that the plaintiff called upon the defendants to sign Exhibit P4 implies that the plaintiff was in fact aware that the defendants could not be bound to make extra payments on the basis of Exhibits P2 and P3 alone, which is why efforts were made to have them sign Exhibit P4. The argument therefore does not help the plaintiff's position.

In the result it is the finding of this court that the plaintiff has failed to raise a case justifying rebuttal by the defendants, in as far as the claim for private ward bill settlement is concerned and is accordingly dismissed, on two grounds, namely:

1. That no admissible evidence has been laid before this court establishing that the defendants requested or gave their consent that the 2nd defendant be transferred to the private ward, all evidence in that regard being inadmissible hearsay; and
2. That the Admission Agreement comprised in Exhibits P2 and P3 does not bind the defendants with regard to expenses other than those with respect to the 2nd defendant's admission in the general ward.

The defendants are awarded costs relating hereto.

Delivered at Blantyre this 8th day of July 2022.

R Mbvundula
JUDGE