

IN THE HONORABLE SUPREME COURT OF THE REPUBLIC OF LIBERIA
SITTING IN ITS OCTOBER TERM, A.D. 2024

BEFORE HER HONOR: SIE-A-NYENE G. YUOHCHIEF JUSTICE
BEFORE HER HONOR: JAMESETTA H. WOLOKOLIE.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YUSSIF D. KABA.....ASSOCIATE JUSTICE
BEFORE HIS HONOR: YAMIE QUIQUI GBEISAY, SR.....ASSOCIATE JUSTICE
BEFORE HER HONOR: CEATNEH D. CLINTON JOHNSON.....ASSOCIATE JUSTICE

The Management of the John F. Kennedy Medical Center,)
Represented by its CEO Dr. Jerry F. Brown, and all authorized)
personnel of the City of Monrovia, Liberia.....Appellant)

Versus) APPEAL

Karen Gaydou Sehkehporh of the City of Paynesville,)
Montserrado County, Republic of Liberia.....Appellee)

GROWING OUT OF THE CASE:)

Kareen Gaydou Sehkehporh of the City of Paynesville,)
Montserrado County, Republic of Liberia.....Plaintiff)

Versus) DAMAGES FOR WRONG

The Management of the John F. Kennedy Medical Center,)
represented by its CEO Dr. Jerry F. Brown, and all authorized)
personnel of the City of Monrovia, Liberia.....Defendant)

HEARD: JANUARY 14, 2025

DECIDED: FEBRUARY 17, 2025

MR. JUSTICE GBEISAY DELIVERED THE OPINION OF THE COURT

In August 2020, Karen Gaydou Sehkehporh, appellee herein filed a twenty-two (22) count complaint action of damages for wrong in the Sixth Judicial Circuit Civil Law Court, Montserrado County, alleging that the John F. Kennedy Medical Center, appellant herein, had, thru its doctors, acted negligently in conducting a surgery on her person which led to multiple life threatening complications which forced her to undergo subsequent tests and multiple other surgeries at varying medical facilities which caused her huge financial constraints and caused her huge mental anguish and emotional distress and has left her in a state of mental and physical decline that would take years to reverse.

The appellee reported to the appellant's medical facility on May 30, 2019, based upon a recommendation by one Dr. Etienne Kazadii from Snapper Hill Medical Clinic when she reported to the Snapper Hill Medical Clinic after experiencing bleeding. After consultation with Dr. Kazadii from the Snapper Hill Clinic, she was told that she had fibroids and that she

needed surgery to have her condition addressed. Based upon this recommendation, she reported to the appellant's medical facility and after consultation with the appellant's doctors, they confirmed that she had fibroids and that they needed to perform Abdominal Hysterectomy Surgery and that her ovaries would be removed because of possible ovarian cancer.

The surgery was conducted by Doctor Enders on June 13, 2019, and she was thereafter discharged by the appellant's doctor on June 16, 2019, after being told that the surgery was successful and that she was going to fully recover. The appellee further alleged that during her first visit to JFK after the surgery, she was examined by Dr. Enders, and she was assured that she was doing well and that she would fully recover and that she should go back to work and continue doing her normal activities. Appellee said that she later started experiencing serious excruciating pains in her belly and legs and she immediately contacted Dr. Enders and kept in constant contact with him and regularly informed him of the challenges she was facing after the surgery; that she met Dr. Enders on multiple occasions and he repeatedly gave her or recommended prescription drugs which she usually purchased from Lucky Pharmacy but unfortunately she was non-responsive to the said treatment. The appellee further alleged that she persistently kept in touch with Dr. Enders and on one occasion, she told Dr. Enders that she was not okay and wanted to visit him but did not have any money but to her amazement, Dr. Enders told her *"you can come but you are saying you don't have money, so what should I do"?*

After a period spanning four (4) months in which her situation was deteriorating rapidly, her boss, Madam Willa Bruce Gooding got concerned and sent her to Jahmale Health Center for further check-up after she had earlier gone to Earlbert Medical Center for a culture test. After the test to Jahmale, she was instructed to go back to JFK for immediate medical attention but because of her experience with JFK, she was traumatized and decided to go to a different medical facility and as a result proceeded to Fidelity Health Center for further treatment.

The appellee alleged that upon inspection and multiple tests conducted at the Fidelity Health Center, her results showed that her case was very serious and needed medical attention. Dr. Dolo, who was the attending doctor at the Fidelity Health Center, performed an exploratory laparotomy to see what was the cause of her problems and the surgery revealed that the appellant doctors negligently left a gauze in her body with pieces of her internal body tissue stuck on the gauze which shows that the gauze was in her for a long time; thereafter, she was discharged but later she discovered a thread hanging out of her when she was bathing which prompted her to go back to the hospital and a second surgery was conducted during which

another gauze was removed from within her. The appellee further alleged that she informed the appellant JFK about all that was happening. Thereafter, the appellee was diagnosed with Fistula which the appellant contacted and paid another doctor to perform the surgery to correct the situation.

The appellee prayed to the court to hold the appellant liable to the appellee and awarded her:

1. Three Thousand One Hundred Seventy-Eight Dollars and Seventy-Six Cents as Specific Damages.
2. One Million United States Dollars (1,000,000.00) as general damages for the pain, suffering and emotional distress caused her.
3. An amount not less than Five Hundred Thousand (US\$500,000.00) as punitive damages for the reckless and negligent conduct of the appellant and the failure of the appellant to make any attempt to rectify such gross malpractice.
4. Such amount as shall be determined by the jury to be sufficient as general damages for the wrongful surgery, loss of income, pain and suffering, emotional distress and stress experienced because of appellant's action.
5. Interest of six percent (6%) annum on the entire judgment (both special and general damages) commencing from 2019 until settlement of the judgment is made as provided by law; and all cost against the appellant and other relief that may be deemed just and equitable.

The appellant filed its answer basically denying every major contention of the appellee and argued that the appellee was informed about the associated possible risk of the surgery that was to be performed; that the said surgery was performed under the supervision and advice of a qualified and experienced consultant, Dr. Billy Johnson along with Dr. Enders and that the surgery was successfully performed in accordance with standard procedures and she showed good signs of recovery during post operation examinations. The appellant further averred that the appellee was never in constant with Dr. Enders but that she contacted Dr. Enders regarding pains and he promptly responded by requesting or advising her to return to JFK, appellant's medical facility for examination; that the appellee was later put on post-operation examination and some drugs were ordered to be taken by her; that a blood culture was also ordered and appropriate antibiotics were ordered taken by her.

The appellant denied that Dr. Enders told the appellee that “*if she doesn’t have money, there is nothing he can do*”; that after the appellee’s test at the Jahmale Medical Center, she was advised to return to JFK for further treatment but she ignored the medical advice of Jahmale and proceeded to Fidelity and that she abandoned her treatment or follow-up for three months before visiting Jahmale and had the appellee not abandoned her treatment, she wouldn’t have gone through what she went through and that the appellant is not the proximate cause of her condition; that Dr. Dolo of the Fidelity Health Center acted below the standard of care and contributed to the appellant’s alleged injuries and that during the first surgery, Dr. Dolo did not find any gauze but found same after the second and third surgeries and that this infers liability on Dr. Dolo and Fidelity Health Center as it is very possible he could have left the gauze that he claimed he found in the appellant; that Dr. Dolo is an OBGYN Specialist and as such he is not qualified to perform the surgeries he performed and that the appellee’s situation worsened due to Dr. Dolo’s negligent and reckless conduct.

The appellant then argued that action for damages will not lie because it acted professionally and followed the standard procedure that is acceptable but for the appellee’s negligence and carelessness in failing to follow up with the post-operation care and going to a different facility was the cause of her pain and suffering and therefore damage will not lie against it.

The appellee filed her reply basically reiterating the averments contained in her complaint.

Upon the disposition of law issues, the case was ruled to trial. During the trial several motions were filed which were disposed of; thereafter, the jury returned a unanimous verdict of liable against the appellant, adjudging the appellant liable to the appellee and awarded the appellee One Million United States Dollars (US\$1,000,000.00) as general damages and Three Thousand One Hundred Seventy-Eight United States Dollars and Seventy-Six Cents (US\$3,178.76) as special damages.

The appellant filed a motion for a new trial contending that: the appellee failed to prove that it was negligent in the risk, care, skill or preparation of services provided the appellee during the surgery; that the appellee did not prove damages for wrong when she attempted to prove medical malpractice by the evidence presented during the trial; that neither damages for wrong or medical malpractice were established from the evidence adduced at trial; that the appellee failed to prove that the two gauzes found in her was it (appellant) fault and not Fidelity’s; that the jury overlooked the fact that the multiple surgeries that were done on the appellee were the cause of her developing fistula; that the jurors overlooked the fact that the

appellee testified that she refused to go back to JFK (appellant's medical facility) even though Jahmale had recommended that she go back.

The appellee filed her resistance arguing that: the weight of the evidence adduced at trial proving that the appellant is liable is overwhelming and that the appellant's said motion for new trial is baseless; that it was sufficiently proven at trial from the testimonies and evidence adduced that the appellant owed the appellee a duty of care and the said duty was breached and that the said breach led to the appellee's injury and that medical negligence was sufficiently proven during the course of the trial when it was established that the appellant violated the acceptable standards of care when it recklessly left gauzes inside the appellee, that the jurors properly regarded the judge's instructions and give weight and credibility to the evidence adduced at trial and the appellee vehemently argued that she proved her case during the trial with the testimonies and witnesses she presented and that the verdict of the jury is consistent with the evidence adduced at trial and the same should not be disturbed.

The trial judge heard arguments pro et con on the motion for new trial and ruled denying the motion on grounds that the appellee proved her case with the preponderance of the evidence and that the jury is the one responsible to determine the probative value of the evidence adduced at trial and the credibility thereof and except there is a clear showing that the jury verdict is contrary to the evidence adduced, the trial court will not disturb the said verdict.

The appellant excepted to the said verdict and ruling of the trial court and announced an appeal to the Honorable Supreme Court.

From the above narrated facts and circumstances, we will now commence a thorough review of the facts and evidence in this case to arrive at an informed decision.

The standard to prove damages in this jurisdiction is by the preponderance of the evidence. We must review the evidence to determine if the appellee proved her case by the preponderance of the evidence.

We find from the records exhibits and other evidence presented by the appellee to prove her case. The appellee has argued that she wouldn't have been in the condition that she is in currently if not for the negligence of the appellant. To establish negligence, the person alleging negligence must establish: the breach or non-performance of a legal duty, through neglect or carelessness, resulting in damage or injury to another. In other words, the essential elements are failure to exercise due care, injury, or damage, and proximate cause. *LEC v. Lewis et al.* 35 LLR 366 (1988).

We begin with the first step necessary to establish negligence. Did the appellant owe the appellee a duty of care? We answer in the affirmative. The records show that the appellee sought medical attention at the appellant's medical facility for the treatment of fibroid, a condition that was confirmed by the appellant after its doctors had conducted series of tests on the appellee to establish the cause of her condition for which she sought treatment at its facility. The appellant doctor informed the appellee that he needs to perform an abdominal hysterectomy surgery and also remove her ovaries because of a possible ovarian cancer to which surgery the appellee consented. The appellant owed the appellee a duty to exercise reasonable care in order to avoid subjecting the appellee to unreasonable risk of harm. A duty arises where there is a recognizable relationship in the law between two parties, namely, a plaintiff and defendant which requires the defendant to act in a certain manner.

A legal duty is a legal obligation that is owed or due to another and that needs to be satisfied; that which one is bound to do, and for which somebody else has a corresponding right. In the instance case, the appellant conducted a series of tests when the appellee arrived at its medical facility and informed her that she had a certain medical condition that required surgery. The appellant owed the appellee a duty of care to follow strict standard medical procedures in conducting the said surgery including using every reasonable accepted standard medical procedure to make sure that the surgery was successful and performed within acceptable medical standards.

We now move to the second part of our inquiry, did the appellant breach the said duty that was owed to the appellee?

To answer this question, we must turn to the records to make an informed inquiry to arrive at a logical conclusion. The records show that after the surgery was performed by the appellant, it informed the appellee that the surgery was successful, and the appellee was later discharged. The appellee later went for follow-up and the appellant again assured her that she was recovering well and that she should go ahead with her normal activities. Thereafter, the appellee stated that she started experiencing pain in her stomach and legs and promptly informed the appellant of this new development; the appellant later prescribed some antibiotics for the appellee to take in an attempt to remedy the situation. The records show that the appellee took the antibiotics as prescribed by the appellant, but her situation got worse, and she (appellee) started experiencing a discharge with a very offensive odor that became quite embarrassing for her.

Based on this new development, the appellee contacted the appellant who then prescribed more prescription drugs for her but never conducted any detailed test to see what could be the possible medical reason (s) for this lingering issue; notwithstanding, the said prescription drugs, though it came at a great cost did not help to remedy the situation and after four months thereabout, the appellant was constrained to seek a second opinion when her boss Madam Willa Bruce Gooding got concerned over her situation and asked her to go to seek attention at Jahmale Health Center.

The results from Jahmale Health Center revealed that the appellee had serious medical issues arising from complications of the surgery which was conducted by the appellant because at the time, the appellee had not undergone another surgery. Jahmale Health Center then advised her to go back to the appellant's medical facility (JFK) to address the situation. However, based upon her experiences with the appellant's medical facility (JFK), she decided to seek attention at another facility, the Fidelity Hospital, because she was already traumatized from the treatment she received at JFK. The appellant later underwent three surgeries to include surgery to treat the condition of fistula that was developed later due to the complications arising from the surgery.

The medical report from the Jahmale Medical Center shows that the appellee had developed serious problems from the surgery conducted by the appellant and the appellant was referred to JFK for further treatment. In fact, the records established that the appellee did not have the complications she was experiencing prior to the surgery; but that the said complications developed only after the surgery and despite the prescription drugs recommended by the appellant's doctor, the appellee's condition did not improve.

The appellant, in an attempt to escape liability has tried to convince this Court that the complications the appellee developed after the surgery were due to her failure to follow up with the post-surgery procedures with the appellant's facility. We are, however, not persuaded by this argument as the records say otherwise. An assessment of the records shows that the appellee visited the appellant's medical facility about six (6) different times after the surgery for post-operation follow-up and after some check-ups by the appellant's doctor, the appellee was informed that she was doing okay and that she could return to work and continue her regular normal activities. The records also show that the appellee, after she continued to experience the complications, continuously reported to the appellant's medical facility and continuously kept in constant communication with the appellant's doctor about the issues she was having and the appellant continuously recommended prescription antibiotics for her to take in an attempt to remedy the situation which was clearly getting out of control.

The appellant who conducted the surgery was obliged to make sure that every complication arising from the surgery would be properly and reasonably addressed within the accepted standards of medical practice as it relates to the said condition. The appellant as an experienced medical practitioner/facility should have conducted a detailed test and examination of the appellee after the appellee had continuously complained about the pains and other complications, she was experiencing post-surgery, especially after prescribing series of antibiotics that were not remedying the situation. But the records show that the appellant continuously prescribed antibiotics and other drugs for the appellee but never conducted a proper detailed examination to probe into other possible medical causes for the complications that the appellee was experiencing and find a way to address any situation that may have been the cause.

The appellant having failed to conduct a proper post-surgery examination of the appellee especially after the appellee had consistently complained about pain in her belly and legs and after she started experiencing a painful and foul smelling discharge, the appellee acted reasonably to seek a second medical opinion from another facility (Fidelity Hospital) who later confirmed after examination and subsequent surgeries that the appellee had two gauzes negligently left in her by the appellant during the surgery.

The appellant again argued that it was the Fidelity Hospital that left the gauzes in the appellee and not its doctors; again we disagree with this assertion of the appellant.

Firstly, the appellee started experiencing the pains she was experiencing right after the first surgery that was conducted by the appellant's facility and coupled with the appellant's failure to properly address and remedy the complications complained of by the appellee; the appellee was forced to seek a second opinion. The records show that Fidelity Hospital conducted a series of tests and then first decided to insert a tube to drain the excess pus and other liquids that had formed in her body and the appellee was put on treatment for a period of eleven (11) days after which there was no significant improvement. This prompted the Fidelity Hospital to conduct another test under which an ultrasound test was performed on the appellee and the results showed that there was still fluid collection inside of the appellee. The Fidelity Hospital advised that an (Exploratory Laparotomy) surgery was necessary in order to properly understand and discover what was wrong, to which advice, the appellee and her family consented.

The surgery was conducted and the doctor who performed the surgery (Dr. Obed W. Dolo) discovered a rolled-up gauze soaked with a greenish exudate in the appellee's body which

was then retrieved. The Fidelity Hospital immediately wrote a letter informing the appellant's medical facility, the JFK Hospital about what had been discovered and the outcome of the said surgery. We quote the said letter verbatim for clarity of this opinion:

"TO WHOM IT MAY CONCERN"

MEDICAL REPORT

Client Name: Karen G. Sehkeporh

Gender: Female

DOB: Nov. 14, 1968

Clinic #: FHC: 004036-19

History:

The above-named patient reported to this facility on October 18, 2019, with complaints of general malaise, abdominal pains and copious offensive vaginal discharge which according to her started after she was discharged from the JFK Medical Center following a Total Abdominal Hysterectomy in June this year. She claimed to have reported at JFK a couple of times for follow-up and was given series of antibiotics with no improvement. Her most recent visit to a health facility prior to coming to Fidelity was at Jahmale Medical Solution on October 16, 2019, where an impression of vaginal cuff dehiscence, intra-abdominal fluid collection DD Abscess, UTI and multi-resistant E. Coli in HVS was made. On physical examination at Fidelity she was ill looking, slightly pale with lower abdominal tenderness and healed Pfannenstiel scar and a very low transverse scar on the mons pubis.

Speculum exam of the vagina revealed gaped raw beefy vaginal cuff with thick yellowish offensive impression of cuff cellulitis/pelvic abscess was made with plan of conservative management since suspected pelvic infection was draining spontaneously. The patient was admitted on the same day and placed on IV antibiotics based on antibiogram of High Vaginal Swab Culture and Sensitivity. After many days of IV antibiotics (11days) the patient's condition did not improve and the lower abdomen became tender. Repeated ultrasound scan of the pelvis still suggested fluid collection. Exploratory Laparotomy was recommended, and patient and relatives consented. The procedure was carried out on November 1, 2019.

Findings at laparotomy: grossly normal looking bowels that were plastered to the pelvic floor. Vaginal stump could not be visualized as it was sealed up by the bowels, from exploration, a rolled-up gauze soaked with green exudate was retrieved from a narrow

space from below the matted bowels. Also, a small pocket of purulent fluid was identified in the same area from where the gauze was retrieved. The abdomen was lavage with normal saline and abdominal drain placed in.

The patient is still on admission and improving gradually. Recovery has been complicated by anemia and surgical site infections which have been treated. She is still experiencing menial purulent vagina discharge.

Thank you.

Dr. Obed W. Dolo, MD, MWACS, MGCS

Specialist Obstetrician/Gynecologist

The records are devoid of any response to the said letter quoted above by the appellant denying or refuting the claims made by Dr. Obed Dolo that he discovered a rolled-up gauze in the appellee's abdomen during the exploratory laparotomy surgery. Dr. Dolo's letter clearly indicted the appellant (JFK) for the said act (negligently leaving gauze in the appellee). The appellant made no counterclaim against the findings of Dr. Dolo prior to the filing of the suit but instead was very collaborative in finding a way to mitigate the situation to the extent of providing financial support.

The appellant has vehemently argued that the gauze found in the appellee's abdomen was left there by the Fidelity Hospital. To prove this, the appellant produced an expert witness, Dr. Onoji Kingsley, to testify on its behalf. During his testimony, Dr. Onoji Kingsley testified that if a gauze is left in a patient during surgery for over a month, the gauze will be clotted with lots of bowels and those parts of the bowels maybe also attached to the piece of gauze and other tissues. The witness was then asked the following question on the direct while the first gauze that was extracted from the appellee was displayed to him:

Q: Mr. Witness, giving the explanation to this court and jury, if you were to see images of different gauzes, will you still be able to identify those?

A: Yes, I will.

Q: Mr. Witness, with the permission of court, I pass to you these images please take a look at it and tell this court what you make of it?

A: The image I see, the one on the left now is stuck with some omentum and pus, pus is in the middle part of the gauze there splitting on the drop that was lay on wherever this piece of material was kept. But like I talked about inflammation that also involves forming part of a bowel. So, here we have part of the omentum and pus prudent on the pus there

and this shows that there was a delayed intervention, and it has taken some time before this intervention occurred in the first place and the place was already infected.

This testimony of the appellant's expert witness shows that the gauze that was extracted from the appellee during the first surgery had been in her body for over a long period of time which reasonably suggests that the gauze was left in the appellee's body by the appellant and not Fidelity Hospital as the appellant would have us believe. Moreover, the first gauze was discovered during the first surgery conducted by Dr. Dolo, how can one reasonably argue it was Dr. Dolo who left the gauze in the appellee when he discovered the gauze during the first exploratory laparotomy surgery and immediately reported the said findings to the appellant?

The appellee was discharged from the Fidelity Hospital but six days later, while she was having her bath, she noticed a thread hanging from her vagina which prompted her to again return to the hospital for yet another check-up which led to another surgery where the second gauze was found and retrieved. The appellant has tried to convince this Court that the second gauze that was found in the appellee was left there by Fidelity Hospital and not the appellant. Again, we are not persuaded by this assertion by the appellant. Firstly, there is no showing in the record that any of the nurses who participated in the surgery conducted by the appellant on the appellee testified to the record of count of the tools used during the surgery to confirm that they counted the tools before and after the surgery and that all the tools were accounted for; the records however show that the appellee started experiencing the said pains and complications after the initial surgery which was done by the appellant and not before the surgery. This was why the appellant had prescribed some drugs and antibiotics to remedy the situation, additionally, the appellant's expert witness was asked whether it is possible to open a patient for the first time when you are performing an exploratory laparotomy and find a gauze and then close the patient and after a couple of days you open and find another gauze and the appellant's expert witness answered it's possible and proceeded to give medical explanation on why and how it is possible. This goes to show that the appellant was negligent in conducting the surgery and was the one that left the two gauzes in the appellee.

The records also show that the appellee developed the condition of fistula due to the two surgeries that were done by the Fidelity Hospital to remove the foreign objects (gauzes) that were in the appellee's abdomen. The appellant initially requested that the appellee be transferred to its medical facility so that the surgery to repair the fistula can be conducted but the appellee blatantly refused. This refusal by the appellee led the appellant to hire a private doctor (Dr. Lawrence M. Sherman) to conduct the surgery at Fidelity Hospital. The surgery was conducted, and it was successful, and Dr. Sherman billed the appellant in the amount of

Four Thousand Seven Hundred Fifty United States Dollars (US\$4,750.00) which was paid by the appellant.

The appellant also paid or refunded in full the total amount spent by the appellee during her visits to Jahmale and the money paid by Mrs. Gooding on the appellee's behalf for the appellee's treatment. The appellant has argued that the reason it hired and paid a private doctor to perform surgery on the appellee to treat the fistula and subsequently refunded the money Mrs. Gooding spent on the appellee's treatment was purely out of compassion and to save her life and prevent further complications from arising, an explanation this Court is not inclined to believe, because, a thorough search of the records says otherwise. There is no showing in the record of any communication from the appellant stating its reservations that its action to hire a private doctor to cure the complications of fistula developed by the appellee after the surgeries done at Fidelity Hospital were done purely out of compassion and not because it (appellant) felt responsible for the complications that led to the appellee's condition. It is the law in this jurisdiction that he who is silent when he is supposed to speak, assents. *Knowlden v. Johnson et al.*, 39 LLR 345,361 (1999).

This Court and any reasonable person will wonder why would a medical facility that claimed as provided in the records to have a better referral facility and better doctors decide to pay for the appellee's surgery at a different facility and by a different doctor, after she was offered to have the surgery done at its facility and she refused or why the appellant would refund the money that was paid toward the appellee's treatment by Mrs. Gooding? This leaves us and any reasonable mind to wonder why would the appellant go this far to hire a private surgeon and pay him to perform the surgery to correct the fistula after the appellee refused to have the surgery conducted in the appellant's facility which is up to standard and had good doctors and surgeon who could perform the said surgery?

What is really mind boggling to this Court is why the appellant offered to hire a private doctor to perform a fistula repair surgery on the appellee, a condition that was obviously not caused directly by them but was caused by the two surgeries that were performed on the appellee by Fidelity Hospital?

This Court holds that this conduct of the appellant was not done out of compassion as this is not a standard practice of the appellant to hire and pay for its patients surgery when the said patient is receiving treatment at its facility let alone a different facility or to hire a private doctor to perform the surgery due to the appellee's disagreement to have the appellant's doctor perform the said surgery. This shows that the appellant felt it owed some favor to the appellee

because it (appellant) felt some degree of liability and that its negligence during the first surgery conducted on the appellee at its facility was the reasons for her complications and the proximate cause of her fistula condition.

If the appellant had exercised a reasonable amount of care after the appellee had consistently complained of pain, it would have discovered the root cause of the appellee's complications and treated it sooner which may have prevented further complications and pain. The appellant's failure to properly conduct the surgery and failure to conduct a detailed test even after the appellee had continuously complained to its doctors, including the doctor that conducted the surgery of pains and vagina discharge, and discomfort was a breach of the duty of care owed to the appellee.

A breach of duty of care is negligence that results in a foreseeable injury that would not have occurred but for the negligent person's actions. *Black's Law Dictionary*, Deluxe 11th Edition.

Having established that the appellant breached the duty it owed the appellee, we now move to the third inquiry, whether the said breach was the cause of the appellee's injury.

To establish cause of injury, the Court must establish proximate cause. Proximate cause is defined as "a cause that is legally sufficient to result in liability; an act or omission that is considered in law to result in a consequence, so that liability can be imposed on the actor; that is, a cause that directly produces an event and without which the event would not have occurred." *Black's Law Dictionary*, Deluxe 11th Edition.

The records reveal that the appellee was treated for fibroids by the appellant after the appellant conducted several tests on her and confirmed that she (appellee) had fibroids and recommended to the appellee that the surgery will include removing her ovaries to which professional recommendation the appellant consented; however, the records reveal that the appellee started experiencing the pains and the condition of which she complained, that is pain in her legs and stomach and the foul discharge coming out of her vagina after the initial surgery conducted by the appellant to treat the fibroids and remove her ovaries. This initial surgery conducted by the appellant was the reason she subsequently started experiencing the pains and the other conditions that developed; the records also show that the appellee complained to the appellant of the new conditions that had developed and the appellant in an effort to remedy the situation recommended series of antibiotics and other medications to address the issues complained of by the appellee and even recommended her to a different facility to do a culture test.

The appellee had not or was not experiencing these conditions prior to the initial surgery which was conducted by the appellant. It was after the conduct of the initial surgery before she had these issues and the appellant fully aware that it was the reason that the appellee had developed these subsequent complications tried to remedy the situation even though it was negligent in handling the subsequent complications that had arisen. It was because of the initial surgery conducted and the problems that arose therefrom and the appellant's negligence in handling the post-operation complications that led the appellee to seek treatment at a different facility and which led to three different surgeries which includes the surgery for the treatment of fistula. All these complications arose after the initial surgery was conducted on the appellee and by the appellant and the appellee situation only deteriorated further.

All these conditions that arose further are closely connected with result from the initial surgery which led to multiple other surgeries to be conducted on the appellee to correct the blunders from the initial surgery. We therefore hold that the appellant's breach of the duty of care owed to the appellee was the proximate cause of the appellee's injury.

Having established that the appellant was negligent in the discharge of its duty to the appellee and that said negligence led to the appellee's injury, we now proceed to review the damages awarded the appellee to see if it is conformity with the law in our jurisdiction.

The jury awarded and the trial court confirmed the verdict in the amount of One Million United States Dollars (1,000,000.00) in general damages and Three Thousand One Hundred and Seventy-Eight Dollars, Seventy-Six Cents (3,178.76) in specific damages to the appellee.

The principles controlling the disposition of action of damages are well established in this jurisdiction. The Supreme Court has held that it is not sufficient merely to allege an injury and claim damages therefor, but that the plaintiff seeking an award of damages must prove the injury complained of by the preponderance of the evidence, and that he has been damaged to a sum commensurate with the amount claimed as damages; that absent the best evidence being produced, even the best laid down action will be defeated. *Lonestar Cell Corporation v. Jimmy Wright*, Supreme Court of Liberia, March Term, 2014; *The Management of Comium/Nofavone v. Sumo Flomo*, Supreme Court Opinion, October Term, 2014; *Kwaplah International (Liberia) v. The Management of Ecobank (Liberia)*, Supreme Court Opinion, October Term, 2022.

Recourse to the records show that the appellee accused the appellant of being negligent in carrying out her surgical procedure and did not act prudently after she had complained of

complications arising after the surgery to conduct detailed tests to properly determine the reasons behind said complications but continuously prescribed antibiotics and other drugs, which were clearly not helping the situation and her situation continuously and rapidly deteriorated. That her situation worsened to the point where she had copious and very foul-smelling discharge coming out of her, severe pain and numbness in her back and legs, all of which conditions made it impossible for her to live normally as she had been doing before the surgery. The appellee provided evidence to prove all these assertions and surprisingly, the appellant has not denied the pain and suffering that the appellee had to endure and continues to endure up to this day because of the complications arising from the surgery. The appellee presented evidence to show that the injury and complications she suffered were the result of the appellant's unprofessionalism and negligence; moreover, the appellant's silence and subsequent payment of medical cost on behalf of the appellee speaks to the fact that the appellee acknowledged liability.

This Court is satisfied that the appellee proved with the preponderance of evidence she actually suffered the injury alleged in the complaint; however, it is evident from the records that the appellant upon realizing the extent of its negligence to the appellee in the conduct of the initial surgery immediately took measures to help mitigate the effects of the said negligence by paying or refunding most of the appellee's hospital bills and by even hiring and paying a private doctor to perform another surgery on the appellee in order to help remedy the situation, this Court views these actions of the appellant as being done in good faith and in an attempt to mitigate the damages arising from its negligence; additionally, this Court has held that in measuring the amount of damages for personal injury the most common factors to be considered are: loss of earnings or earning capacity, medical expenses, pain and suffering and any permanent effects of the injury sustained. Loss of enjoyment of life and shortening of the plaintiff's life expectancy are also important factors in any case where they apply. *Management of Firestone Liberia Inc., v. Emmanuel Kollie and George Gribsy*, Supreme Court Opinion, March Term, 2016.

Having considered the evidence and the appellee's current condition especially where it was testified to by herself and proven by the medical records that she is recovering and is not permanently impaired coupled with the appellant's efforts to mitigate the damages arising from its negligence, this Court finds it necessary to modify the general damages awarded the appellee from One Million United States Dollars (1,000,000.00) to Three Hundred and Fifty-Thousand United States Dollars (US\$350,000.00).

With regards to special damages, the Supreme Court has held that special damages are awarded through judicial determination with the intent of restoring a person who has suffered an injury to the state he was previously situated before the injury. And it is a requirement that

to sustain an award of special damages the injury must be measurable, and that the plaintiff must specifically plead and prove the damages suffered. *Firestone Liberia Inc. v. G. Galimah Kollie*, Supreme Court Opinion, March Term, 2012; *Firestone Liberia, Inc. v. MARDCO*, Supreme Court Opinion, March Term, 2016.

Our review of the records, including the testimonies and evidence adduced by the appellee at trial, leaves no dispute or doubt that the appellee did not experience the complications and pains for which she filed this suit until after the appellant had performed a surgery on her to remove her uterus and ovaries and that as a result of the negligent behavior of the appellant, appellee developed complications from the surgery which compelled her to seek help from another medical facility, especially after the appellant's lackadaisical behavior to her when she continuously complained of pain and other issues.

The records also show that the appellee spend a substantial amount of money at the Fidelity Hospital for two different surgeries that was conducted by the hospital and for the time spent at the facility, including payment for drugs and other necessities to aid her in her recovery. The appellee attached receipts detailing the money she spent on her treatment at Fidelity. The appellant has nowhere in the records challenged the authenticity of the said receipts or its validity; however, the records also reveal that the appellant paid or refunded every amount spent by the appellee to cover her hospital bills, and the appellee did not deny this claim and what is not challenged is deemed admitted.

Special damages are awarded through judicial determination with the intent to restore a person who has suffered an injury to the state he was previously situated before the injury; in the instant case, the appellee having been restored by the appellant to the state she was previously in by paying or refunding all the money she spent on her hospital bills, the special damages amount awarded by the jury is disallowed.

WHEREFORE AND IN VIEW OF THE FOREGOING, the final ruling of the lower court is affirmed, however, with the modification stated herein. The Clerk of this Court is ordered to send a mandate to the judge presiding in the court below to resume jurisdiction over the case and give effect to this Judgment.

WHEN THIS CASE WAS CALLED FOR HEARING, COUNSELLORS AUGUSTINE C. FAYIAH, SOLICITOR GENERAL OF THE OF THE REPUBLIC OF LIBERIA AND J. ADOLPHUS KARNUAH, II OF THE MINISTRY OF JUSTICE, AND COUNSELLOR BAAHJU BUKU COLLINS, II, IN-HOUSE COUNSEL FOR THE APPELLANT, APPEARED. FOR THE APPELLANT. COUNSELLORS F. JUAH LAWSON AND M. WILKINS WRIGHT, SR. APPEARED FOR THE RESPONDENT.

Judgment affirmed