

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI
CIVIL APPEAL NO.0039 OF 2016

NABWAMI WINFRED:..... APPELLANT

VERSUS

DR. BITAMAZIRE DENIS :..... RESPONDENT

JUDGMENT

Before: Hon. Justice Byaruhanga Jesse Rugyema

- [1] This is an appeal from the decision and orders of the **Uganda Medical and Dental Practitioners Council (UM&DPC)** at Kampala dated 22nd April, 2016. The Coram of UM&DPC consisted of prominent medical practitioners chaired by **Ass. Prof. Joel Okullo Odom** and other 6 members; **Dr. Margaret Mungherera, Dr. Ben Kiwanuka, Prof. Harriet K. Mayanja, Dr. Mugisha Rwenyonyi, Dr. Juliet Mwanga Amumpaire and Dr. Nathan Kenya Mugisha.**

Background

- [2] The proceedings were initiated by way of a complaint dated 4th/1/2013 lodged by the Appellant, **Nabwami Winfred** with the **Uganda Medical and Dental Practitioners' Council (UM&DPC)** herein referred to as the tribunal against the Respondent, **Dr. Bitamazire Denis** regarding her treatment and management while at Divine Medical Centre which was being operated by the Respondent.
- [3] It was the Appellant's case that on **28/5/2012** she was admitted with lower abdominal pain at Divine Medical Centre, Hoima and on the following day of **29/5/2012** a surgical operation was carried out by the Respondent on her and from that time, she ceased to experience her menstrual periods. She later found out as per the ultra sound scans done from other medical centres that her uterus had been removed. She held the Respondent responsible since he is the one who carried out the surgical operation upon her. That the Respondent had told her that she had an **intestinal obstruction** that needed an operation. That however, after the operation, she was not informed of what happened, she was never shown what was removed out from her body and yet her

Discharge Note dated 8/6/2012 indicated that a hysterectomy (A surgical operation to remove all or part of the uterus) had been performed which she had not consented to.

- [4] The Respondent on the other hand denied the allegations of any malpractice. In his response to the Appellant's complaint, the Respondent admitted that the Appellant was on 28/5/2012 admitted at **Divine Medical Centre** with a 2 day history of **abdominal pain or failure to pass stool**. That he consequently had a provisional diagnosis of **acute appendicitis** as the cause of the abdominal pain that she had, and a decision to explore/appendicectomy (surgical operation of the appendix) was reached and that this was explained to the Appellant, her relatives and friends. As a result, she consented to the operation. That an operation was carried out and although the appendix was inflamed and appendicectomy done, the main cause of the abdominal pain was obstruction on colon due to pressure and adhesions from one of the many **uterine fibroids** and that these were specifically enucleated (surgically removed) to relieve the obstruction.
- [5] However, that on 28/7/2012, the Appellant was re-admitted with an obstructed epigastric hernia whose surgery was also successfully done and she was discharged after 2 days.
- [6] The Respondent nevertheless concluded that whereas the Appellant was admitted twice and operated, this was done with her consent and was never done any **hysterectomy** as claimed. That though her uterus was found completely distorted, it was never removed.
- [7] The Medical and Dental Practitioners' Council is a body corporate established with a primary function to exercise general supervision and disciplinary control over medical and dental practitioners in Uganda. **S.2 (e) of the Uganda Medical and Dental Practitioners' Act** mandates the **UM&DPC** to investigate all reported cases of professional misconduct in her noble duty to protect the members of the public. Where patients, members of the public, institutions or groups of people observe or experience unprofessional treatment/conduct or unethical behaviours on the part of the practitioner or the institution, they are entitled to report such cases to **UM&DPC** by lodging a formal complaint.

- [8] Upon receipt of the Appellant's complaint, the **UM&DPC**, in accordance with **S.34 of the Medical and Dental Practitioners' Act, Cap 272**, conducted an inquiry following the allegations of mal practice made by the Appellant against the Respondent.
- [9] Upon evaluation of the evidence that was presented and analysis of the medical documents/exhibits that were presented before the tribunal in the course of the inquiry, the council tribunal found and concluded that:
1. **Dr. Bitamazire** (the Respondent operated on **Ms. Winifred Nabwami** (the Appellant) first on **29th May 2012** and the second operation was on **28th July 2012**.
 2. However, ultra sound scan on **3rd Aug.2012** at **Kampala Imaging Centre**, and another one done on **7th Dec. 2012** at **Naguru Medical laboratory (Namela) and Clinic** revealed that **Ms. Nabwami** (the Appellant) had a normal uterus and was on contraceptives in December 2012.
 3. Investigations done after **7th Dec.2012** by expert Radiologists revealed that **Ms. Nabwami** (the Appellant) had lost her uterus (subtotal hysterectomy) as evidenced by presence of a cervical stump and inability to visualize uterine fundus, and cervical canal.
- [10] In view of the above, the Tribunal found that **Nabwami's** (the Appellant) claim that **Dr. Bitamazire** had removed her uterus was false. The case against the Respondent regarding the removal of the Appellant's uterus was dismissed and the Respondent was exonerated from the accusations labelled against him.
- [11] Dissatisfied with the whole of the findings and decision by the Tribunal council, the Appellant filed this appeal on the following grounds as enumerated in her memorandum of appeal:
1. *The Honourable members of the council erred in law and fact when they found that the Respondent **Dr. Bitamazire Denis** was not guilty of professional misconduct.*
 2. *The Honourable members of the council erred in law and fact when they did not properly evaluate the evidence of the appellant before arriving at their final decision that the Respondent **Dr. Bitamazire Denis** was not guilty of professional misconduct.*

3. *The Honourable members of the Council erred in law and fact when they failed to address themselves as to the correct procedure to be followed during an inquiry under part vii of the **Medical and Dental Practitioners' Act Cap 272** thereby occasioning a miscarriage of justice.*

Counsel legal representation

- [12] On appeal, the Appellant was represented by **Counsel Simon Kasangaki** of **M/s Kasangaki & Co. Advocates, Masindi** while the Respondent was represented by **Counsel Willy Lubega** of **M/s Lubega, Babu & Co. Advocates Kampala**. Both Counsel filed their respective written submissions for consideration in the determination of the appeal.

The law governing first appeals

- [13] This is a first appeal from the decision and orders of the **Uganda Medical and Dental Practitioners' Council tribunal**. The duty of the 1st Appellate court is to review the record of evidence for itself in order to determine whether the decision of the trial court should stand. In so doing, court must bear in mind that an appellate court should not interfere with the discretion of the trial court unless it is satisfied that the trial court in exercise of its discretion misdirected itself in some matter and as a result, arrived at a wrong decision or unless it is manifest from the case as a whole that the court has been clearly wrong in the exercise of its discretion and that as a result, there has been a miscarriage of justice; **Stewards of Gospel Talents Ltd Vs Nelson Onyango H.C.C.A. See also NIC Vs Mugenyi [1987] HCB 28.**

- [14] This court is therefore in the premises, duty bound to evaluate the evidence adduced before the trial **Medical council tribunal** as a whole by giving it fresh and exhaustive scrutiny and then draw its own conclusion of fact and determine whether on evidence the decision of the trial court should stand.

Preliminary point of law

- [15] Counsel for the Respondent raised a preliminary point of law to the effect that the Appellant's appeal is incompetent for the reason that it was filed in court on 7/7/2016 after a period of over 5 months after the decision of the Medical council which was delivered on 22/4/2016. That the statutory period within which to file an appeal under **S.38 (1)**

Medical and Dental Practitioner's Act is **90 days** from the date of the decision of the Medical Council. That since no leave to appeal out of time was sought by the appellant, then this appeal is incompetent.

- [16] Counsel for the Appellant in rejoinder submitted that **SS.36 & 37 of the Medical and Dental Practitioners' Act Cap 282** provides for notification of decision to persons concerned within thirty days after the conclusion of an inquiry. That the Appellant herein was never availed in time the said decision and proceedings by the **Medical and Dental Practitioners' Council** to enable her file the instant appeal. That time stipulated in the Act starts to run from the date of delivery and/or notification to the party in writing of the decision of the Council.
- [17] The foregoing being a preliminary objection, it is incumbent upon this court to resolve it first. The Medical Council concluded the inquiries in question and delivered its decision on **22/4/2016**. The Registrar of the Medical Council had however written to the **Chief Executive Officer FIDA Uganda**, the counsel legal representative of the Appellant on record, NOTICE OF DECISION dated 14/4/2016, that the decision in the inquiry into allegations of mal practice made by the Appellant against the Respondent would be delivered on **22/4/2016**. Though there is no evidence as to whether and when FIDA received the notification, the Appellant wrote to the Registrar as per the letter on record dated 16/6/2016 acknowledging notification by phone on the very day the decision was to be delivered but because of the late notification, she failed to personally attend. That a copy of the Notice was handed to her at the FIDA office a few days after when she checked in to find out what had happened. She, in the premises requested to be supplied with a certified copy of the proceedings and ruling.
- [18] The proceedings were certified on **23/1/2017** while the decision was certified on **21/2/2017**. Counsel for the Appellant contended that the decision of the council and proceedings were availed to the Appellant through her counsel on record in the instant appeal, on the **22nd/2/2017**.
- [19] Since the Medical Council decision was certified on the 21/2/2017, it is logical that indeed, the appellant's counsel obtained the decision of the council and proceedings on 22/2/2017. As a result, I find that the time for the Appellant within which to appeal could only run from the date

the decision of the council and the proceedings were prepared, certified and availed to the Appellant, that is on the 22nd/2/2017. In **Buso Foundation Ltd Vs Bob Male Phillips H.C.C.A No.40/2009** it was held that time taken by court in preparing the record of appeal ought to be excluded in computing the time within which to appeal. See the provisions of **S.79 (2) of the CPA**.

[20] In the instant case, the Appellant having filed the memorandum of Appeal on **7/9/2016**, I find that since she was availed the record of the lower court on **22nd/2/2017**, she was well far within the time to appeal. The preliminary objection is in the premises devoid of merit and it is accordingly dismissed.

Determination of the grounds of appeal

[21] **Grounds 1 and 2** of the appeal appear similar for they both rotate around evaluation of evidence by the tribunal. I shall in the premises resolve them together and then **ground 3** separately.

Ground 1 and 2

[22] Counsel for the Appellant submitted that it is not disputed that the Appellant went for treatment at Divine Medical Centre with Abdominal pains and on 29/5/2012, she was operated by **Dr. Bitamazire Denis**, the Respondent and the operation resulted into her uterus being removed. That there was therefore a doctor/patient relationship and therefore, the Respondent owed a duty to the Appellant to provide treatment that is in line with the “medical standard care”

[23] 2ndly, that **Dr. Bitamazire**, the Respondent was guilty of professional misconduct or/ professional negligence given the way he conducted the operation on the Appellant thereby removing her uterus;

- i. He did not have the Appellant’s consent to remove her uterus.
- ii. He did not properly diagnose the Appellant for the operation he carried out and operated her without proper diagnosis.
- iii. He had neither a record of the diagnosis nor any report in relation to the operation he carried out.
- iv. He neither informed the parties of the extraction from the patient’s body nor refer or seek advice or support of a gynaecologist given the nature of the case and symptoms presented by the Appellant, and as a result, the Respondent

performed a hysterectomy as a general doctor that resulted into the Appellant losing her uterus.

- v. Classification of the Appellant's surgery as minor when the same was major.
- vi. Operating the Appellant in a place not fit for surgery.

[24] Counsel concluded that the foregoing were sufficient for the Medical Council to find the Respondent professionally negligent as a medical professional.

[25] Counsel for the Respondent on the other hand submitted that it is not in dispute that the Respondent did operate on the Appellant on 2 occasions on the **29/5/2012** and **28/7/2012** when the Appellant appeared at Divine Medical Centre when she presented with acute abdominal pain. That the examination and diagnosis revealed multiple fibroids and acute appendicitis. That the patient was prepared for operation and the purpose of the operation was explained to which she consented to. That what is in dispute is the Appellant's allegation that her uterus was removed by the Respondent during the operations.

[26] Counsel for the Respondent concluded that the Respondent did not remove the Appellant's uterus during the 2 operations he carried out on the Appellant as witnessed, testified to and revealed by the following;

1. That **Yonia Asukera**, a Senior Anesthetic officer who was present during the operation of the Appellant on the 29/5/2012 assisting the Respondent stated that he never saw the Respondent remove a uterus from the Appellant's body.
 2. That the medical reports of ultra-scan done on the Appellant after the operation by the Respondent revealed existing normal uterus.
- Counsel concluded that the foregoing reveal nothing else but that the Respondent did not remove the Appellant's uterus and therefore he is not guilty of any professional misconduct as alleged by the Appellant.

[27] Issues of whether the Respondent did a proper diagnosis of the Appellant's condition or whether he was negligent or not or whether he got the patient's consent to remove her uterus all rotate on whether or not the Respondent removed the Appellant's uterus during the surgical operation carried out on the Appellant on the 29/5/2012.

- [28] According to **Dr. Mwanje Haruna**, an Obstetrician-Urogyne Unit Mulago, at **page 15 of the proceedings** of the tribunal observed that General doctors like the Respondent used to carry out **Myomectomy** (a surgical procedure to remove uterine fibroids) but that now, there is a big challenge “ they may get problems” implying that during the **myomectomy** i.e surgical removal of the Appellant’s fibroids, the Respondent could have tempered with the uterus thus leading to the so called subtotal hysterectomy (a surgical operation to removing part of the uterus (womb) leaving the cervix (neck of the womb) in place); **<https://www.hopkinsmedicine>**, thus attempting to accuse the Respondent of incompetence or negligence. However, on his part, the Respondent denied carrying out any hysterectomy whether “total” or “subtotal” on the Appellant.
- [29] Going by **Dr. Mwanje’s** assumption, I would however find that this would be a mere error of judgment on the part of the Respondent. Not every error of judgment made by medical professionals constitute negligence; **Sarah Watsemwo & Anor Vs A.G, H.C.C.S No.675/2006**.
- [30] The conclusive issue for determination therefore, is **whether the Respondent carried out a surgical removal of the Appellant’s uterus during the period of 29/5/2012 and 28/7/2012 the Respondent operated on her.**
- [31] It is a trite principle of law that in civil cases, the burden of proof is on the plaintiff/complainant to prove his or her case on a balance of probabilities; **Nsubuga Vs Kavuma [1978] HCB 307. S.101 of the Evidence Act** also provides thus;
- “Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist.”*
- [32] In the instant case, the burden was on the Appellant to prove on the balance of probabilities that during the period of 29/5/2012 and 28/7/2012 when the Respondent carried out 2 operations on her, had her uterus removed.
- [33] In her bid to prove her case before the Medical Council, the Appellant through her legal counsel on record **FIDA Uganda Legal Aid Clinic**, furnished the medical council tribunal with all her medical documents

that pertained to the issue at hand. The documents form the Tribunal Exhibit Trial Bundle pages 1-72 and they are listed in the letter dated **14/8/2013 at p.31 of the bundle**. The documents are as follows;

1.Divine Medical Centre (Annex) Discharge Form dated 5/6/2012 (page 1 of the exhibit bundle). The discharge form is to the effect that the Appellant was admitted at **Divine Medical Centre (Annex)** on 28/5/2012 with **Abdominal pain** and **vomiting**. The examination of the patient and diagnosis carried out revealed fibroids with the associated complications but appeared consistent with the Respondent's response denying ever carrying out any surgical extraction of the uterus. It is however inconsistent with the Appellant's complaint lodged to the Medical Council in as far as she claimed that the **Discharge Note** indicated that the Respondent did perform on the Appellant **hysterectomy**. It was not true that the **Discharge Note** indicated that the Respondent performed on the Appellant a surgical operation removing the uterus whether partial or complete. The Appellant was discharged on 5/6/2012.

2.Divine Medical Centre (Annex) Discharge Form dated 29/7/2012 (page 3 of the exhibit bundle).

This refers to the 2nd surgical operation of the Appellant at Divine Medical Centre when she was diagnosed of epigastric hernia. It was successfully done and she was discharged with no reported challenge. This document has no significance to the issue at hand save for being evidence that the Respondent carried out a 2nd operation on the Appellant on **28/7/2012** and discharged her on the **29/7/2012**.

3.Divine Medical Centre Medical form dated 3/8/2012 (page 7 of the exhibit bundle).

It is an ultra-scan report of the Appellant which is to the effect that by **3/8/2012**, after the impugned surgical operation on the Appellant of **29/5/2012**, the Appellant had a normal uterus.

4.Naguru Medical Laboratory (Namala) and Clinic Ultra scan report dated 8/12/2012 (page 8 of the exhibit trial bundle)

This is an examination and diagnosis that was at the initiative of the Appellant after the impugned surgical operation by the Respondent on the Appellant of 29/5/2012. The report is to the effect that the Appellant's uterus is of normal size. In all its aspects, it is consistent

with the Divine Medical Centre Scan report dated 3/8/2012 already referred to.

5. Naguru Medical Laboratory prescription note dated 8/12/2012 (page 11 of the exhibit trial bundle)

The Appellant was apparently on “combined” oral contraceptives (C.O.C s-I cycle) yet her complaint was that when the Respondent carried out the surgical operation on her on the **29/5/2012** at **Divine Medical Centre**, thereafter, she ceased to have menstrual periods purportedly because her uterus had been unlawfully removed by the Respondent. Combined oral contraceptives are a combination of birth control pills that keep the female body ovaries from releasing an egg and also cause changes in the cervical mucus and the lining of the uterus(endometrium) to keep sperm from joining the egg; <https://www.mayoclinic.org>.

The Appellant did not explain as to why she could be on contraceptives yet over 6 months ago, according to her, she was not going into a her menstrual periods and she had suspected her uterus missing arising out of the surgery that took place on 29/5/2012 at Divine Medical Centre. None of the medical experts before the Medical Council gave a possible explanation of the role of birth control pills to a person who is complaining of having missed her menstrual periods.

Conclusion

[34] The ultra-scan reports referred to and evidence that the Appellant by **8/12/2012** was on contraceptives appear to me conclusive that the Appellant’s uterus was intact in its state as found and it could not have been in any way interfered with during the surgical operation of **29/5/2012** when there was a removal of fibroids. The Respondent’s failure to preserve the enucleated mass of the fibroids removed from the Appellant’s body for later disclosure to the Appellant was a mere lapse on the part of the Respondent, from adhering to the good practices to wit; to give the patient the tissue removed from her body when the patient desires it as observed by **Dr. Mwanje** during the tribunal proceedings. The Respondent’s lapse and omission to do so was nevertheless not proof that the Appellant’s uterus was missing and that it was unlawfully removed by the Respondent in view of the foregoing evidence on record that her uterus is not the one that had been removed.

[35] The existence and safety of the Appellant's uterus was confirmed by **Asekure Yonia**, the Senior Anaesthetic officer of Hoima Hospital who was with the Respondent during the Appellant's surgery and **Tom Isabirye**, a Theatre Assistant attendant Hoima hospital who prepared for the surgery of the Appellant. None of them saw a uterus removed from the Appellant's body. It is only the appendix that was found inflamed and multiple fibroids that were removed. It is **Tom Isabirye** who disposed off the tissues .

[36] **Kampala Imaging Centre (KIC) Scan-Dr. Iga Matovu report dated 27/12/2012 (page 14 of the exhibit trial bundle) and Mulago Hospital Dr. Jolly Beyeza report dated 12/3/2014.**

Both reports pointed to a most likely surgical operation involving a subtotal hysterectomy and together with **Dr. Rosemary Byanyima**, all concluded with an opinion that the uterus could have been removed. The above opinion was however contradicted by another intervening ultra-scan report dated **12/9/2013** from Mulago hospital (**page 35-33 of the exhibit bundle**) which was to the effect that the uterus is normal. The Medical Council tribunal found **Dr. Iga Matovu** and **Dr. Jolly Beyeza's** reports inconclusive.

[37] On the balance of probabilities, I find that generally the complainant did not prove her case that her uterus was unlawfully removed by the Respondent during the surgery he carried out on the Appellant at Divine Medical Centre on the **29/5/2012**. I am inclined to believe the Respondent's version of the story. The Appellant consented for surgery operation of generally approved appendectomy (surgical operation of the appendix) that was initially diagnosed but the findings at operation revealed among others multiple fibroids of which the Respondent would not close the body to seek for further consent but prudently enucleated the fibroid as well as the surgery of the infected **appendix**. No uterus was removed from the Appellant's body.

The inconclusive and contradictory reports regarding whether the Appellant's uterus was removed or not has to go in favour of the Respondent.

[38] There is no report or suggestion on the court record that the approach that was adopted by the Respondent to do an appendectomy and when findings at operation revealed among other things multiple

fibroids, his decision to remove the fibroids and their immediate disposal without revealing and showing them to the Appellant was conclusive of unskillfulness or incompetence and therefore, risked the life of the Appellant. In my view, despite of the Respondent's lapse to show the fibroids to the Appellant, he carried out a successful surgical operation, **Appendectomy** of the Appendix and **Myomectomy** of the fibroids. Her life was eventually saved.

[39] Secondly, there is no medical opinion on record that the Respondent's failure to consult or refer the Appellant to a Gynaecologist was a sign or evidence of incompetency and unprofessionalism on the part of the Respondent and therefore, risked the life of the patient.

[40] 3rdly, there is no report on record from the Medical Council or any other institution vested with supervisory powers over the medical practitioners that the Respondent's medical Centre in Hoima lacked the necessary facilities for or is unfit for use as a medical Centre and therefore, it was recommended for closure. It is apparent that the Respondent's Medical Centre has the mere basic requirements for its operation.

[41] The Medical Council tribunal found and decided that there was no evidence adduced before them to prove that **Dr. Bitamazire**, the Respondent unlawfully removed the Appellant's uterus. Upon evaluation of the evidence on record, I find that the Medical Council tribunal properly evaluated the evidence before it and arrived at the just and correct conclusion for which I find no ground to fault it. As a result, I find the 1st and 2nd **grounds** devoid of merit and the grounds accordingly fail.

Ground 3

1.Duration of the Inquiry and notification of the decision.

[42] **S.36 of the Medical and Dental Practitioners' Act** provides that;

"Within-thirty days after the conclusion of any inquiry, the Registrar shall notify the person concerned in writing of the decision of the Council."

The provision mandates the council to notify its decision to the parties within a period of 30 days from the conclusion of the inquiries.

[43] The Medical Council tribunal record show that the inquiry was still on going by the 5/8/2015 upon which 2 members of the tribunal, **Dr. Kenya Mugisha** and **Prof. Harriet Mayanja** were mandated to look through in detail the clinical notes and ultra sound scan done exhibited and submit a report to the Secretariat in 2 weeks. There is however no copy of the expected report on record of proceedings to help court ascertain exactly whether **Dr. Kenya Mugisha** and **Prof. Harriet Mayanja** complied and submitted the report in time and therefore enable court ascertain when the inquiry was concluded. The circumstances may have warranted a longer period of time. In the absence of evidence as to when the inquiry was concluded and in view of the fact that eventually a decision was made on 22/4/2016 and was duly communicated to the parties, I find that there wasn't any miscarriage of justice occasioned to the Appellant.

Attendance of the parties and legal representation

[44] The proceedings under the **Medical & Dental Practitioners' Act** are unique and therefore not as envisaged under the ordinary trial that is governed by the **Civil Procedure Rules** and the **Evidence Act**. It may simply be on 3 stages:

1.The inquiry stage;

Where factual information is gathered and expeditiously reviewed to determine if an investigation of the charge or complaint is warranted. It doesn't involve a formal hearing or a conclusive analysis of the allegation; it is a process to determine whether there is enough evidence of misconduct to have an investigation.

2. Conduct of the inquiry

Depending on the circumstances of the particular case, the panel of individuals who have the appropriate scientific, scholarly, or artistic expertise on the issues in question embark on the conduct of the inquiry which includes inquiry process and gathering of evidence which may be in form of a trial ie, review the physical evidence, take oral or written testimony as needed to determine whether there is sufficient evidence of possible misconduct.

3. Write the inquiry report or decision

The report/decision sufficiently details what evidence was reviewed and reasons for determination of the issues at hand.

- [45] In all the above 3 stages, there is no legal requirement that the complainant must be in attendance at every stage. **Section 34 of the Medical & Dental Practitioners Act** however requires “**the person whose conduct is the subject of inquiry**” to be notified of the date of the inquiry and shall be entitled to be present whether by himself/herself or by his or her advocate. He or she has a right to be notified of the dates of the council sittings so as to be able to attend the proceedings. The complainant on the other hand is only required to attend if more evidence or clarification other than the initial complaint is required by the council (as a witness to the inquiry under **S.34(8) of the Act**). It is akin to criminal proceedings where a complainant to a case is in attendance only as a witness and not as a party.
- [46] It therefore follows that in the instant case, as long as legal counsel for the Medical Council was present as prosecutor, that was sufficient legal representation of the complainant/Appellant and the **FIDA Uganda Legal Aid Clinic** as legal representative of the complainant/Appellant, was merely on watching brief. When complainant/Appellant appeared in the council on 13th August 2013, and was led by the Medical council legal counsel, **Mr. J.B.R Suuza**, questioned by the other council members and cross examined by the Respondent, that marked the end of the necessity of her presence.
- [47] In the premises, I find counsel for the Appellant’s complaints regarding the Appellant’s none attendance and none legal representation lacking merit.

Conclusion

- [48] There is a medical report from Mulago Hospital dated the **12th of September 2013** that confirmed that indeed, the Appellant had a normal uterus. Then there is another intervening treatment note dated **23/4/2014** also from Mulago hospital to the effect that the Appellant was operated once and is without a uterus having undergone a sub total hysterectomy-implying that the Appellant could not have lost her

uterus through any other operation other than one that was conducted by the Respondent.

[49] This report however contradicts the undisputed fact that the Appellant had undergone 2 surgical operations in Divine Medical Centre; the first one **Appendectomy** and **Myomectomy** that involved removal of appendix and fibroids dated **29/5/2012** and the 2nd one, **herniorrhaphy** that involved the epigastric hernia dated the **29/7/2012**. The **23/4/2014** report contradicted the earlier Mulago hospital medical report of **12/9/2013** which had confirmed that the Appellant had a normal uterus and there is no explanation as why the **23/4/2014** report refers to the Appellant having had only one operation yet there is overwhelming evidence including the admission of the Appellant herself that she had had 2 surgical operations irrespective of whether the hernia operation had the potential of removal of the uterus or not.

[50] The above contradictions and inconsistencies together with the earlier inconsistencies already referred to were not at all explained or reconciled by the medical experts invited by the medical council. The medical report on record dated **23/4/2014** which is to the effect that the Appellant was operated upon **once** cannot be relied on in the face of the undisputed evidence by both the Appellant and the Respondent that she the Appellant had 2 surgical operations dated **29/5/2012** and **29/7/2012**. It is such a grave inconsistency that goes to the root of the case. The Respondent on the other hand had been very consistent that the Appellant had her uterus present in its distorted form.

At **page 9 of the proceedings**, the Respondent firmly had this to say:

Counsel: What would you say if we discover later that the uterus was removed?

Bitamazire: I would accept any course of action that the Council may want to undertake.

In his written response to the complaint to the medical council, the Respondent had concluded thus;

“Note; Ms. Nabwami Winnie’s uterus was completely distorted but it’s there, I therefore challenge her to do investigations to prove that. Even mere physical examination can prove that.”

This was surely the extent of the Respondent’s firmness regarding the complaint.

The above referred to grave contradictions and inconsistencies being unexplained cannot be ignored and have therefore to be resolved in favour of the Respondent; **Oryem David Vs Omony Phillip H.C.C.S No.100/2018. See also Okecho Alfred Vs Uganda S.C.C.A No. 24/2001.**

[51] In the premises, I find that the appeal generally lacks merit. It is accordingly dismissed with costs to the Respondent.

Dated at Masindi this 26th day of **May, 2022.**

Byaruhanga Jesse Ruyema
JUDGE.