

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
(CIVIL DIVISION)

CIVIL SUIT NO. 200 OF 2015

ABDUL LATIF-----PLAINTIFF

VERSUS

WARU CHARLES
T/A TWIN WAY TRANSPORTERS-----DEFENDANT

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The facts of the plaintiff's case are that on the 28th day of June 2015, the plaintiff's motor vehicle Registration no. UAE 979Y/461 UBJ laden with goods to wit; coca cola destine to South Sudan were driving along Migeera, Nakasongola District when the defendant's motor vehicle Registration Number CE978K/CE 980K operated by Bosco Bidas in the ordinary course of his employment recklessly and negligently struck the plaintiff's vehicle with the near side front of his vehicle hence causing the plaintiff's vehicles to overturn causing extensive damage to both the vehicles and the goods laden thereon.

The plaintiff contended that his motor vehicle upon inspection showed that they were in good mechanical condition before the accident occurred.

The defendant defence was that he is not the registered owner of Motor vehicle CE 978K/CE 980K and it was in good mechanical condition. The defendant denied that the plaintiff is liable for the compensation prayed for and he was not liable for the accident.

AGREED FACTS

- a) That there was an accident involving the plaintiffs motor vehicles UAE 979Y/461 UBJ and Motor vehicles CE 978K/CE 980K on the 28th day of June 2015.
- b) That both vehicles UAE 979Y /461 UBJ and CE 978K/ CE 980K were in sound mechanical condition at the time of the accident.

AGREED ISSUES.

- (1) Whether plaintiff is entitled to compensation by the defendant for the loss and damage occasioned to the plaintiff's motor vehicles and goods?
- (2) Whether the Plaintiff is entitled to the reliefs sought?

At the trial the plaintiff led 5 witnesses and the defendant led evidence of 3 witnesses in proof of their respective case and other evidence was by way of documentary evidence that were exhibited at trial.

Issue 1

Whether plaintiff is entitled to compensation or whether the defendant for the loss and damage occasioned to the plaintiffs motor vehicles and goods?

The plaintiff's PW 1 (Sgt Omonyokol Albert) testified that he found the trailer UAE 979Y/461 UBJ Scania—it was lying off the road on the left hand side. The container with Sudanese registered No. CE 978K was also lying on the side and that it had been left behind by a Sudanese trailer. He instructed the police at Kafu Police Station to impound the said trailer which had not stopped at the scene of accident.

The owner of CE 980K/CE 978K a Sudanese national came to the police station and requested to be allowed to have negotiations over the accident instead of prosecution and at that stage they had agreed to certain terms and the Sudanese national had accepted responsibility of the accident and was willing to pay the owner of UAE 979Y-Latif.

PW 3 (Latif Abdul) testified that he received information about the accident and he went at Migeera and found his truck lying on the left side of the road and trailer No. CE 978K was lying on the right side of the road. The defendant Waru Charles negotiated for a settlement of the case as the owner of the Sudanese truck with the plaintiff.

The plaintiff lead further evidence by Swamiti Juma who was the driver of the truck UAE 979Y and he testified how the accident happened. He stated that he was knocked by a motor vehicle with South Sudan number plate as it was overtaking. The truck driver of the South Sudan drove off as he was assisted by a bus which came to his rescue as they chased the Sudanese truck.

The defence led evidence through a one Shingiro Didas who testified on behalf of Waru Charles by way of a power of attorney which was undated but appears to have been registered on 29th June 2016. He testified that Charles Waru is the managing director of Twinway Logistics Company Limited which company was duly incorporated in South Sudan and later registered in Uganda. He claimed that they presented the log book of their vehicle although the police report stated that the log book was not availed.

The other two witnesses DW 2 and DW 3 testified that the plaintiffs truck knocked the behind container and it got detached and fell off. They also testified that the driver of the plaintiff's truck was drunk.

The circumstances of the case clearly show that there was an accident that was caused by an overtaking truck registration No. CE 980K/CE 978K. The driver of the said truck refused to stop at the scene of the accident and was apprehended ahead at Kafu when the police mounted a road block for the sole purpose of apprehending him.

The conduct of the driver of the Sudanese truck after the accident points to an element of guilt on his part and culpability in the cause of the accident. The non conviction in the traffic offence did not absolve him from being the cause of the accident but rather the prosecution failed to lead enough evidence to convict him of the traffic offence beyond reasonable doubt.

There is no negligence in overtaking another vehicle since it cannot be said that there should be no overtaking as long as it is safe to do so. In the circumstances of the present case, the defence contend that the driver on the Sudanese truck was overtaking at a spot which was dotted. PW contends that there was another car in front and he indicated but he did not realise that there was another car coming ahead of them. The said driver was found parking aside and he was drunk and could not leave the steering and he was helped from the vehicle and handcuffed.

This evidence according to court was never rebutted and it makes an inference that it is admitted as stated about the cause of the accident. In addition his failure to stop after the accident or report the accident to the nearest police station was contrary to *Section 125(1)(2) of the Road Traffic and Safety Act*.

Since the truck driver caused the accident to the next issue of determination is who is liable to compensate the plaintiff who has suffered damage as result of the said accident.

The driver is not denied as being the person authorised to driver the said vehicle in the course of his employment. His actions bind the employer since he was acting for the employer in the cause of his employment. The defence denied any existence of the employer-employee relationship. But the said driver did not testify in this matter even though he had made a witness statement that was filed on court record and the fact that he was driving this truck that was transporting cement, it would definitely imply that he was an employee in the course of his employment. See ***Muwonge vs Attorney General [1967] EA 67***

The defendant's defence as set out in the Defence and in the testimony of DW 1 is that the said motor vehicle is not registered in the names of the defendant. On the contrary it is in the names of the TWINWAY LOGISTICS COMPANY LIMITED duly incorporated in South Sudan and subsequently registered in Uganda.

According to the exhibits of court the owner of the vehicle was never disclosed at police and this was required or expected by the driver or persons who claimed the vehicle. i.e P.Exh 1. The abstract of Particulars of an Accident involving Motor Vehicle is blank. Exhibit P Exh 2 which is the Vehicle Inspection Report does not

indicate the owner of the vehicle-(NOT PROVEN)(REGISTRATION BOOK NOT PRODUCED AT INSPECTION)

It is apparently clear that the defendant refused to avail the evidence of ownership of the said vehicle to police and he is now trying to use his own failure as a defence.

According to Exhibit P.Exh 6 , the defendant was involved in the negotiations for settlement and signed on the agreement as a witness and he was furious when the plaintiff refused to sign it.

The defence witness DW 1 (Shingiro Didas) confirms that indeed the defendant is the managing director of the alleged owner of the company and there is a clear nexus between the defendant and the company and this explains why he refused to give the particulars of the said motor vehicle to Uganda Police.

Section 125(4) of the Road Traffic and Safety Act enjoins the driver to give particulars of the owner of the vehicle which in this case he failed to do and when the defendant as the Managing Director refused to do for reasons best known to himself.

This court cannot allow the defendant benefit from his own wrong or breach of the law by raising the defence of not being the registered owner of the said vehicle and yet he failed to inform police or produce the documents of title for the said motor vehicle. The defendant is estopped from denying liability after stepping in the shoes of the company in trying to settle the matter personally and made everyone believe that he is the owner of the vehicle.

This issue is resolved in the affirmative.

ISSUE 2

Whether the Plaintiff is entitled to the reliefs sought?

Special damages

According to the court record, the plaintiff agrees that he was paid all his salaries and gratuity. This would mean that the plaintiff is not entitled to any of the

alleged special damages since it arises out of the plaintiff's computation of his gratuity and salary arrears.

*Plaintiffs must understand that if they bring actions for damages, it is for them to prove their damage; it is not enough to write down particulars and so to speak, throw them at the head of the court, saying, "This is what I have lost, I ask you to give these damages" They have to prove it. See **Benedicto Musisi vs Attorney General HCCS No. 622 of 1989 [1996] 1 KALR 164 & Rosemary Nalwadda vs Uganda Aids Commission HCCS No.67 of 2011***

The plaintiff sought special damages of 95,950,000/= which was set out in the plaint and the documents Exhibits P5, P7, P9, P4 & P3. The court awards the plaintiff the following sums as proven by documentary evidence/exhibits, P5-\$ 12,948.50, P7, 270,000/=, 230,000/=, 2,300,000/= & 1,000,000/= P9 9,000,000/= as special damages.

The plaintiff sought compensation for the damage expenses to the motor vehicles UAE 979Y/ 461 UBJ. The court is satisfied to award the plaintiff the assessed damage to the said motor vehicles as per Exhibit P3 16,825,000/= & Exhibit P4 17,385,000/=.

General damages

General damages are such as the law will presume to be direct natural probable consequence of the act complained of. In quantification of damages, the court must bear in mind the fact that the plaintiff must be put in the position he would have been had he not suffered the wrong. The basic measure of damage is restitution. See **Dr. Denis Lwamafa vs Attorney General HCCS No. 79 of 1983 [1992] 1 KALR 21**

The character of the acts themselves, which produce the damage, the circumstances under which these acts are done, must regulate the degree of certainty and particularity with which the damage done ought to be stated and proved. As much certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable, having regard to the circumstance and

nature of the acts themselves by which the damage is done. See ***Ouma vs Nairobi City Council [1976] KLR 298.***

In the present case, the plaintiff has sought general damages. Considering the circumstances of the case, the plaintiff is awarded a sum of 15,500,000/= as damages for accident occasioned and general inconvenience.

Interest

Section 26 provides for an award of interest that is just and reasonable. In the case of ***Kakubhai Mohanlal vs Warid Telecom Uganda HCCS No. 224 of 2011,*** Court held that;

“ A just and reasonable interest rate, in my view, is one that would keep the awarded interest rate, in my view, is one that would keep the awarded amount cushioned against the ever rising inflation and drastic depreciation of the currency. A plaintiff ought to be entitled to such a rate of interest as would not neglect the prevailing economic value of money, but at the same time one which would insulate him or her against any economic vagaries and the inflation and depreciation of the currency in the event that the money awarded is not promptly paid when it falls due”

Special shall attract an interest of 10% from the date of the cause of action and General damages shall attract an interest of 15% from the date of judgment.

Costs

The plaintiff is awarded costs of the suit.

It is so ordered.

**SSEKAANA MUSA
JUDGE
5th/10/2018**