

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 37 OF 2017

GAKUMBA JOSSY:..... PLAINTIFF

VERSUS

MANDELA NATIONAL STADIUM LTD:..... DEFENDANT

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The plaintiff brought this suit to recover general damages and special damages, interest and costs for injuries/fractures caused as a result negligence of the defendant. The plaintiff alleges that on the 1st day of July, 2016, she attended a wedding of a one Mwebesa James at the defendant's premises and while exiting the reception, fell into a man hole in the parking area sustaining a leg fracture.

The defendant in its defence contended that it is not liable in negligence to the plaintiff alleging that plaintiff did not prove that she was at Mandela National Stadium or if at all she was there, that she was there legally for the to warrant protection from the defendant.

The plaintiff produced two witnesses- the Plaintiff; Gakumba Jossy and a one Eric Semakula whereas the defendant led one witness; the Managing Director of the defendant Jamil Sewanyana Mpagi (Hajj).

At the scheduling conference, the following issues were framed:

- 1. Whether there is a case of Negligence against the defendant**
- 2. Whether there are any remedies available to the parties**

Both parties filed final written submissions that were considered by this court. I shall now determine the first issue raised for this court's determination.

Issue 1; Whether there is a case of negligence against the defendant.

The action in this case is founded on negligence (Occupiers liability). Actionable negligence consists of a breach of duty of care and skill by the defendant towards a person to whom the defendant owes that duty; and the breach of duty has caused that other person, the plaintiff, without contributory negligence on his part, injury to his person or property. *Heaven -vs- Pender (1883) 11 QBD at 509.*

Negligence is essentially a question of fact and it must depend upon the circumstances of each case. The standard of care expected is that a reasonable person proving breach of a duty is usually achieved by adducing evidence of unreasonable conduct in light of foreseeable risks.

Negligence is the omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do. Before the liability of a Defendant to pay damages for the tort of negligence can be established, it must be proved that;

- 1. The defendant owed to the injured man a duty to exercise due care;**
- 2. The Defendant failed to exercise the due care and**
- 3. The defendant's failure was the cause of the injury or damage suffered by that man. (See *H.Kateralwire Vs Paul Lwanga [1989-90] HCB 56*)**

"Negligence is conduct, not state of mind- conduct which involves an unreasonably great risk of causing damage.....negligence is the omission to do something much a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing

something, which a prudent and reasonable man would not do". See *Salmond and Heuston on The Law of Torts (19th Edition)*

A person is neither expected to act like a super human nor like an insane or unreasonable or imprudent person. The law requires that standard and degree of care on the part of a person which should have been taken by a reasonable and prudent person in the like circumstances. Although the standard is uniform, the degree of care is not, it varies in different circumstances.

According to the plaintiff's evidence, the plaintiff was an invited guest to a wedding reception at Namboole National Stadium and while exiting, she fell in an uncovered manhole fracturing her right leg. She testified to that fact and also called PW2 who corroborated her evidence. The plaintiff attributed her injuries to the defendant's negligence.

The plaintiff stated the following as the particulars of the defendant's negligence;

- Uncovered dangerous manhole
- Non-functional security lights
- No warning signs

As a guest at that wedding, the defendant owed the plaintiff a duty of care to ensure the premises were safe. The least standard of care expected of the defendant in this case was put up warning signs notifying the guests of the uncovered manhole to avoid injuries like the one the plaintiff suffered or sustained.

Although the defendant stated in their written statement of defence and submissions that the plaintiff did not prove that she was an invited guest to the premises, this court finds the testimonies of PW1 and PW2 sufficient to prove that she indeed was a guest at the wedding reception at the defendant's premises. The witnesses were credible and their evidence with regard to this issue was found to be reliable.

The defendant was an occupier. In the case of *E.Wheat v Lacon and co.Ltd* [1966] 2 WLR 581 the meaning of the word Occupier was defined;

“It is simply a convenient word to denote to a person who had sufficient degree of control over premises/place to put him under a duty of care towards those that came lawfully on to the premises. In order to be an ‘occupier’ it is not necessary for a person to have entire control over the premises.....”

The second consideration is the determination of whether the plaintiff was an invitee, customer, licensee or trespasser. The duty of care is owed by an occupier to these persons varied in a descending order, the highest being owed by a person entering a contract and the lowest to a trespasser.

Nowadays invitee and licensee are both regarded as visitors. Therefore every person who enters the premises with the permission or invitation of the occupier is visitor.

In this case the plaintiff entered the premises with an implied permission as guest for a wedding at Mandela National Stadium-Namboole. She was therefore a visitor duly covered under the occupiers liability principle and fell in uncovered manhole in the parking area while she was set to leave the premises.

The defendant did not show any evidence to contradict the plaintiff’s evidence and in absence of the same I find it more probable than not that the plaintiff’s injuries were as a result of the defendant’s negligence (Occupier’s liability).

The common duty of care owed by an occupier to all his visitors is a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using premises for the purpose for which he is invited or permitted by the occupier to be there. In the case of *Tichener v British Railways Board* [1983] 3 All ER 770 the House of Lords held that *“the duty is not to ensure the visitors safety, but to take reasonable care. What is reasonable care will depend on the circumstances of the case”*.

It would be foreseeable that plaintiff would suffer injury if occupiers (defendant) do not use reasonable care to avoid danger in their premises. Physical proximity is clearly established between the occupier and the entrant as the latter is physically situated on the occupier's property. Further, for lawful entrants, circumstantial proximity would also be present. In the case of *Toh Siew Kee v Ho Ah Lam Ferrocement (Pte) Ltd* [2013] 3 SLR 284 court opined that:

[T]he hallmark of a lawful entrant's presence on an occupiers premises is consent to his presence on the part of the occupier; it is this consent, which grounds the occupier-lawful entrant relationship and justifies a legal finding that there is proximity between the occupier and the lawful entrant."

The plaintiff suffered personal injuries due to the conditions and activities of the occupiers of the premises the defendant when they failed to cover the manhole in the parking area or Uncovered dangerous manhole; Non-functional security lights and failure to put up Warning signs about the open manhole.

This issue is therefore resolved in the affirmative.

Issue 2; whether there are any remedies available to the parties.

The plaintiff sought awards of special damages of **Ushs.80,000,000** and General damages above **Ushs.100,000,000**, punitive damages, exemplary damages, costs and interest above 30%.

On special damages as submitted by the defendant's counsel, the law is that special damages must be specifically pleaded and strictly proved as was stated in the case *Estate of Shamji Visram Kurji Karsan versus Shaukesprasad Magaulal Bhatt and Anor. Civil Appeal No.25 of 19.64 reported in [1965] E.A 789*

The plaintiff exhibited in this court PE1 to PE6 to prove special damages. The court reviewed all the exhibits and found as follows;

- PE1-3 showed the amount of the medical expenses incurred by the plaintiff totaling to **UGX 7,784,100 (Seven million seven hundred eighty four thousand one hundred shillings only)**.
- PE4 were not sufficient to prove pecuniary loss suffered by the plaintiff.
- PE6 were not satisfactory evidence to the court to warrant grant thereof.

The plaintiff proved the special damages sought to that extent and is therefore awarded **UGX 7,784,000** as special damages. The rest of the claims for special damages are speculative and have not been proved to the satisfaction of court.

With general damages, they are awarded at the discretion of court. General damages are awarded to compensate the aggrieved, fairly for the inconveniences accrued as a result of the actions of the defendant.

The court should be mainly guided by the nature and extent of the injury suffered (See *Uganda Commercial bank v. Kigozi* [2002] 1 EA 305).

Furthermore, a plaintiff who suffers damage due to the wrongful act of the defendant must be put in the position he or she would have been if she or he had not suffered the wrong (See *Hadley v. Baxendale* (1894) 9 Exch 341; *Charles Acire v. M. Engola, H. C. Civil Suit No. 143 of 1993*).

In these circumstances, the plaintiff was temporarily incapacitated, hospitalized and required extra support to do her usual day to day activities. To that extent, I find the award of **UGX 3,500,000 (Three million Five Hundred thousand Uganda Shillings)** sufficient general damages.

The plaintiff is also awarded costs 60% of the costs since this matter ought to have been filed in Chief Magistrate's court. This court discourages forum shopping in the High Court even though it has unlimited original jurisdiction.

It is so ordered.

Dated, signed and delivered by email at Kampala this 28th day of September 2020

SSEKAANA MUSA
JUDGE
28th September 2020