THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA KAMPALA

(CIVIL DIVISION)

CIVIL SUIT NO. 412 OF 2016

MALE CHARLES----------PLAINTIFF

VERSUS

NTULUME AHMED----------DEFENDANT

BEFORE HON. JUSTICE SSEKAANA MUSA

JUDGMENT

Background

On the 4th day of May 2014, the plaintiff's vehicle-Toyota Hiace registration No. UAT 298T, was parked at the defendant's vehicle parking yard by his driver and it was destroyed beyond repair by a fire which occurred at the parking Yard.

The said vehicle was driven by one Kawuma Ronald who is an employee and or servant of the plaintiff who has always been using this parking yard by paying the requisite parking fees and the vehicle would be recorded in a book.

The defendant in his defence contended that he has never been a proprietor of a commercial parking yard at Nansana. The said parking is his private parking where he parks his own cars and does not charge any parking fees.

The defendant also contended that there has always been a disclaimer inform of a sign post at the parking yard reading that vehicles are parked at owners risk and had no control over peoples vehicles that are always parked in his absence and without his permission.

AGREED ISSUES.

1. Whether there was any contract between the plaintiff and the defendant?
2. Whether the defendant owns a commercial parking yard at Nansana?
3. Whether the plaintiff's car was burnt down as a result of the defendant's and/or his employee's negligence?
4. Whether the defendant is vicariously liable?
5. Whether the plaintiff is entitled to the relief sought from the defendant?

At the trial the plaintiff led 2 witnesses who testified through witness statements that was admitted as his evidence in chief and the defendant filed a witnesses statement and was cross-examined on the same.

ISSUE ONE & TWO

Whether there was any contract between the plaintiff and the defendant? &

Whether the defendant owns a commercial parking yard at Nansana?

These two issues shall be resolved together for better determination of the issues.

The defendant seems to deny owning any commercial parking at Nansana as per his pleadings and contends that it is a private parking for his cars.

The plaintiff witnesses testified that the said motor vehicle was being parked at the said parking every day upon payment of a fee. PWII stated that he parked the vehicle in the presence of the Askari at about 10;00 pm and it was registered in their register book. They attached a list of vehicles that were packed at the parking exhibit PE-4.

The defendant by his testimony stated that he has never been a proprietor of the parking yard at Nansana. "*That the parking was a non-commercial parking place where I, would park my own car and where even the neighbours would park theirs and those who had their personal arrangement with the person guarding at night*"

Determination.

The plaintiff has attached a list of cars that had parked at the said parking the previous nights as recorded by the askari exhibit PE4.

Secondly, the defendant went to police and report the fire at the parking at police not as the owner but as a witness of what happened.

The defendant deliberately failed to testify about the agreements that he had made with some car owners in his examination in chief/witness statement. But when he was cross-examined about the same he admitted authoring them."***I had hoped to help them but they later repaired their cars."***

It is really surprising that a person who is not an owner of a commercial parking executed agreements to repair the cars for which he was not responsible. It defeats common sense to think like that, in addition to reporting the fire to police.

The evidence of the defendant was crafted and coached in terms of the evidence of the plaintiff which was already on court record. It is merely an evasive and technical denial.

The evidence on record is contrary to what the defendant wants this could to believe. This was a commercial parking for which any other person including the plaintiff could park at a fee. The police report Exhibit P7 also confirmed as a finding that; "*it was established that the vehicle of the complainant was parked in the parking yard of Ntulume Ahmed"*.

Since this was a commercial parking, it directly reflects that the plaintiff upon being allowed to park the vehicle and later paying a fee, a contract was concluded between the plaintiff and the defendant through his agent-Askari.

Whether the plaintiff's car was burnt down as a result of the defendant's and/or his employee's negligence?

The plaintiff's counsel submitted that the defendant owned a parking car yard whereupon he employed a guard to take care of whatever cars were parked therein. That by virtue of that fact whoever paid to have his car parked at the

defendant's parking yard became a licensee to whom the defendant owed a duty of care.

According to counsel, when the defendant accepted to run a commercial car parking business, he implied constructively that he had undertaken to guarantee the safety of the vehicles that were parked in his yard and as such he owed a duty of care to the owners of the vehicles parked and registered breach of which makes him liable for any loss or damage occasioned thereof.

The plaintiff's vehicle was parked at the defendant's yard on the 4th day of May 2014, and that as a result of the smoldering heaps of firewood that were parked near the plaintiffs car, there was a fire outbreak that left many vehicles damaged including the plaintiff's.

Accordingly no reasonable man would heap or put smoldering pieces of firewood near vehicles for the resultant danger was obvious and foreseeable and therefore the defendant or his agent ought to have known that damage was likely to be caused to the vehicles in the parking as a result of the same.

It was his submission that, it was evidenced that the plaintiff's vehicle was burnt while it was in the car parking yard of the defendant, that the defendant or his agent were negligent and that as a result the plaintiff suffered loss and damage to which the defendant should held vicariously liable.

The defendant's counsel submitted that about vicarious liability and never alluded to any negligence. Since the defendant always denied liability since he was denying liability as the owner of the commercial parking area.

Determination

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 unreasonably 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

a) **The defendant owed to the injured man a duty to exercise due care**;
b) **The Defendant failed to exercise the due care and**
c) **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)*

STANDARD OF CARE

The standard is reasonableness. But in considering what a reasonable man would realize or do in a particular situation, we must have regard to human nature as we know it, and if one thinks that in a particular situation the great majority would have behaved in one way, it would not be right to say that a reasonable man would or should have behaved in a different way. A reasonable man does not mean a paragon of circumspection. The duty being a general duty to use reasonable care, reasonableness is the test of the steps to be taken

FORESEEABILITY OF DANGER

It is not enough that the event should be such as can reasonably be foreseen. There must be sufficient probability to lead a reasonable man to anticipate danger or injury. The existence of some risk is an ordinary incident of life, even when all due care has been, as it must be, taken

ANTICIPATION OF GRAVITY OF INJURY

In considering whether some precaution should be taken against a foreseeable risk, there is a duty to weigh on the one hand, the magnitude of the risk, the likelihood of an accident happening, and the possible seriousness of the consequences if an accident does happen, and on the other the difficulty and expense and any other disadvantage of taking the precaution.
The gravity of possible consequences is a major factor in considering precautions. The more serious the likely damage, the greater the precaution required and this is considered in determining the level of fulfillment of the duty of care. **- Paris –v- Stepney B.C. [1951] A.C. 367.**

STANDARD OF PROOF NEGLIGENCE

If the evidence in a civil case is such that the tribunal can say: We think it more probable than not, the burden is discharged, but if the probabilities are equal, it is not. Thus the standard of proof is on a balance of probabilities.

The defendant was negligent in operating a commercial car parking without having basic firefighting equipment which would have assisted in averting a fire. It is reasonably foreseeable that car are highly flammable objects due to the gasoline and that would have put the defendant on notice to take extra skill and care in conducting his business of commercial car parking.

The defendant or his agent-Askari should have been able to inspect the place and ensure that there is nothing that is likely is cause fire and be a danger to the cars being parked. It would be useless to try and rely on the alleged public notice; that cars are park at owner's risk. Any foreseeable danger ought to be stopped.

The defendant was negligent in conducting his business of commercial parking and failed to take all reasonable precautions and safety measures to protect the customers' motor vehicles.

Whether the defendant is vicariously liable?

The plaintiff has satisfied all the ingredients for negligence and the defendant is vicariously liable for the acts of the askari's failure to inspect the premises or place and to ensure that there were no suspicious things likely to cause danger to the cars.

Black's Law Dictionary 11th Edition (2019) defines vicarious liability as; Liability that a supervisory party (such as employer) bears for the actionable conduct of a subordinate or associate (such as an employee) based on the relationship between the two parties

According to **the *East African Cases on the Law of Tort* by E. Veitch (1972 Edition) at page 78,** an employer is in general liable for the acts of his employees or agents while in the course of the employers business or within the scope of employment. This liability arises whether the acts are for the benefit of the employer or for the benefit of the agent. In deciding whether the employer is vicariously liable or not, the questions to be determined are: whether or not the employee or agent was acting within the scope of his employment; whether or not the employee or agent was going about the business of his employer at the time the damage was done to the plaintiff. When the employee or agent goes out to perform his or her purely private business, the employer will not be liable for any tort committed while the agent or employee was a frolic of his or her own.

An act may be done in the course of employment so as to make his master liable even though it is done contrary to the orders of the master, and even if the servant is acting deliberately, wantonly, negligently, or criminally, or for his own behalf, nevertheless if what he did is merely a manner of carrying out what he was employed to carry out, then his master is liable **(see *Muwonge v. Attorney General [1967] EA 17*)**

The defendant is liable for the acts of the agent/ askari who was guarding the place. But the defendant as the owner of the commercial parking was equally liable for failure to have safety equipment like fire extinguishers to be used in case of fire.

Whether the plaintiff is entitled to the relief sought from the defendant?

1. The plaintiff is entitled to recovery of the value of his entire car which was burnt beyond repair. The value of the said was estimated to be at 30,000,000/=. Since this was last valued in 2014. The court would award a sum of 35,000,000/= as the value of the car.

2. The plaintiff sought loss of daily income of 200,000/= per day. The same was not proved specifically. Merely asserting a lump sum figure would not suffice in this regard. The court declines to award the special damages.

3. The plaintiff sought general damages. It is true the plaintiff suffered damage arising out of the none use of the motor vehicle. General damages are awarded at the discretion of court. Damages are awarded to compensate the aggrieved, fairly for the inconveniences accrued as a result of the actions of the defendant.

   In other words the whole process of assessing damages where they are "at large" is essentially a matter of impression and not addition. Per Lord Hailsham, LC in ***Cassell v Broome [1972] 1 All ER 801 at 825***
   Bearing the above principles in mind, this court awards the plaintiff a sum of 100,000,000/= as general damages.

4. The plaintiff sought punitive damages. They did not lay justification before court for the award of punitive damages.

5. The plaintiff is awarded interest at 15% from the date of Judgement until payment in full.

6. The plaintiff is awarded costs of the suit.

It is so ordered.

Dated, signed and delivered by email & WhatsApp at Kampala this 15th day of May 2020

SSEKAANA MUSA
JUDGE