

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(CIVIL DIVISION)**

**CIVIL SUIT NO. 243 OF 2011**

**ABDALLA BYABASAIJA----- PLAINTIFF**

**VERSUS**

**ATTORNEY GENERAL..... DEFENDANTS**

**BEFORE HON. MR. JUSTICE SSEKAANA MUSA**

**JUDGMENT**

**BACKGROUND**

The fact as pleaded in the plaint are to the effect that on the 11<sup>th</sup> day of September 2009, the plaintiff's deceased wife on Stella Kabasinguzi, at the door step of their house in Kasubi, Kampala, at about 11:00 am was unlawfully and wantonly shot by a police officer in uniform who was in the course of his employment. The deceased was rushed to Mulago Hospital where she was pronounced dead within two hours of her shooting.

As a result of the killing of the late Kabasinguzi Stella, the plaintiff was occasioned loss and suffering plus the four issues of the marriage namely Tumusiime Abdul-Shakula, Kyomuhendo Shakila and Katusiime Aisha aged one year, four years and six years respectively at the time of filing of the suit.

The defendant filed a written statement of defence where he presented a general denial without specifically responding to each and every allegation in the plaint contrary to Order 8 Rule 3 of the Civil Procedure Rules S1 71-1.

In the interest of time court directed counsel for both parties to file written submissions however, the Defendant did not file their submissions.

## **ISSUES**

1. Whether the defendant is liable for the death of Stella Kabasinguzi?
2. What remedies are available to the parties or whether the plaintiff is entitled to the remedies sought?

## **DETERMINATION**

### **ISSUE 1**

#### **Whether the defendant is liable for the death of Stella Kabasinguzi?**

Counsel for the plaintiff submitted that he filed this suit for enforcement of his deceased wife's right to life, enshrined under Article 22(1) of the constitution of the Republic of Uganda 1995. The deceased's wife, the late Kabasinguzi Stella was wantonly and arbitrarily shot by police officer and she was pronounced dead within two hours of her shooting, in Mulago hospital. She was shot from her home.

He further submitted that the liability of the defendant herein is both direct and vicarious. It is direct in so far as the police officer was acting in exercise of state power and vicarious because police officers are employees and agents of the state.

Counsel for the plaintiff cited the case of *Jennifer Mutoni Njoroge & 10 ors vs Attorney General (2012) KLR*, the Kenyan high court (Kenyan court of human rights) held that:-

*“A claim for redress under the bill of rights for the violation of a fundamental human right or freedom is a claim against the state for what has been done in exercise of a power of a state”*

This authority entails that the state directly is liable for the actions of those who exercise state powers, police inclusive.

Section 3(1) of the Government proceedings Act Cap 77 provides that no proceedings may lie against government in respect of any act or omission of a servant or agent of the government “Unless the act or omission would, apart from the act, have given rise to a cause of action in tort against the servant or agent or his or her estate.

In the case of *Muwonge vs Attorney General [1967] EA 17*, Newbold, J stated inter alia that:-

*“An act may be done in the course of a servant’s employment so as to make his master liable, even though it is done contrary to the orders of the master and even though the servant acting deliberately, wantonly, negligently or criminally for his own benefit, if what he did is merely a manner of carrying out what he was employed to carry out, then his master is liable.”*

Article 119(4)(c) of the constitution of the Republic of Uganda, 1995 and section 10 of the government proceedings Act Cap 77 are to the effect that the Attorney

General is the representative of government. So clearly in this case, government of Uganda through the attorney is liable vicariously.

*Muwonge vs Attorney General (supra)* and the provisions of the law cited above embody the principle of vicarious liability making government through its representatives the Attorney General, liable for the actions of police.

Counsel for the plaintiff emphasized that the uncontroverted evidence of PW1 under paragraphs 5, 10 to 13, is that the late Kabasinguzi Stella was at her home on the 11<sup>th</sup> day of September, 2019 when she was shot by a police officer, upon which she was rushed to Mulago hospital, where he was pronounced dead due to Gunshot injuries, within two hours of her shooting. PW1's evidence as to the cause of his wife's death is corroborated by the post mortem report exhibited in court and marked PEX. 2, where DR. Moses Byaruhanga of Mulago hospital carried out a post-mortem revealing that the late kabasinguzi Stella died of haemorrhagic shock as consequence of gunshot injury. Clearly, this is consistent with the evidence of shooting alluded to by PW1.

Counsel further submitted that the evidence as to the liability of police for the shooting of Stella Kabasinguzi was further corroborated by the Kampala Metropolitan brief to the Hon. Minister of state for Internal Affairs dated 24<sup>th</sup> day of August, 2011 which was marked PEX1, that was made following an investigation by police vide OLD K'LA CRB 6294/09. In the said brief, evidence is to the effect that on the 11<sup>th</sup> day of September, 2009, the said Stella was shot at her door step in Kasubi, Kampala, by police officers who were attending to rioters during the 2009 Buganda Kingdom riots following the interception of the Prime

Minister of Buganda from proceedings to Kayunga district, a head of planned visit by the Kabaka. The action of the police officer of wantonly shooting the late Kabasinguzi and which shooting caused her death amounts to violation of her right to life enshrined under Article 22(1) of the constitution of the republic of Uganda 1995 and I invite court to so declare. Thus, the plaintiff is entitled to see redress and compensation in this court as provided under Article 50 Of the Constitution of the Republic of Uganda, 1995.

I agree with the submission of counsel for the plaintiff that the defendant is liable for the death of Stella Kabasinguzi. This is because they have adduced evidence to show that Stella was killed by a police officer during the Kabaka riots or Buganda riots

I therefore determine Issue 1 in the affirmative.

## ISSUE 2

**What remedies are available to the parties or whether the plaintiff is entitled to the remedies sought?**

Counsel for the plaintiff submitted that the plaintiff is entitled to the remedies sought. In the plaint, the plaintiff pleaded and prayed for an award of Ugx 6,000,000/= being the funeral expenses, punitive damages for the loss of pecuniary benefit, loss of maternal love, affection, care and spousal consortium, loss of expectation of life and bereavement, an award of costs and any other remedies court deems fit. **Art. 50(1) of the Constitution of the Republic of Uganda, 1995** entitles a person who claims that his/her fundamental rights have been violated to file an action in a competent court and also provides that court

may award redress to the applicant which may include compensation. Redress may include an award of general and punitive damages. General damages are awarded at court's discretion in light of the evidence adduced as to the suffering and pain that cannot be computed in monetary terms and pleaded specifically. The punitive damage are meant to punish the violators of the rights.

The essence of awarding damages was interrogated in *Jennifer Muthoni & 10 Ors vs AG Of Kenya [2012] KLR* Wherein court cited Pilkington, damages as a remedy or infringement of Canadian charter and freedoms [1984] 62 Canada Bar Review 517 thus-

*"it is said that the purpose of awarding damages in constitutional matters should not be limited to simple compensation. Such an award ought in proper cases to be made with a view of deterring a repetition of breach or punishing those responsible for it or even securing effective policing of the constitutionality enshrined rights by rewarding those who expose breach of them with substantial damages..."*

Compensatory damages may be assessed on the proved loss. But where the victim of the violation has also suffered assessable physical loss, but had also suffered loss of dignity, intrusion on his bodily integrity, shame and inhuman treatment, such are not the kind of loss compensation by assessable loss, and to deter further violation.

Lord Devlin in *Rookes Vs Barnard [1964] ALLER at 410, 411*, stated that punitive damages are granted where there has been oppressive, arbitrary or constitutional action by the servants of government.

In awarding general damages, i invite the court to take into account the age of the deceased at the time she was wantonly killed as to the loss of expectation of life, the number and particulars of the deceased's dependant's who lost dependency, the loss and bereavement occasioned to the plaintiff and other relatives of the deceased, the financial loss occasioned as a result of the deceased's death and manner in which the effect that the deceased was aged 22 years at the time of her killing and was working in a saloon where she earned an average of ugx 10,000/= daily. My lord this was way below the average life expectancy in Uganda. The deceased was too young to die and she did not die naturally but with agency of the defendant's employee. In *Solomon vs. Nsereko Anthony & Anor HCCS 275 Of 2014*, it was held that the life expectancy in Uganda is 60 years. In the case of *Benedicto Jjumba Vs Attorney General HCCS 117/13* Justice Lydia Mugambe awarded the plaintiff Ushs 135,000,000/= in respect to a relative who had been shot by police and died instantly, at the age of 23. In the case of *Benedicto Jjumba v Sgt. Katushabe & 2 Ors HCCS 01/2016*, Justice Margret Oguli awarded USH 140,000,000/= to the plaintiff whose son had been killed aged 22years by police in custody.

I have reviewed the evidence adduced and the submissions of the plaintiff and it's crystal clear that there was loss suffered.

I therefore grant general damages amounting to 70 million to compensate for the damage and loss of a spouse (wife)

## **PUNITIVE DAMAGES**

And since the punitive damages are awarded to serve as a punishment to the defendant so that he does not repeat the same mistake, an award of 2,000,000/= million is appropriate since the circumstances of the shooting were unexplained and it was a riotous atmosphere.

## **INTEREST**

I award interest at the rate of 12.5% on all the damages awards from the date of judgment until payment in full and costs of the suit are awarded to the plaintiff.

I so order.

***SSEKAANA MUSA***

***JUDGE***

***20<sup>th</sup> December 2019***