

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION**

CIVIL SUIT NO.0413 OF 2016

NYANZI HAMIDU:.....PLAINTIFF

VERSUS

- 1. UGANDA REVENUE AUTHORITY**
- 2. HAMZA MENYA**
- 3. LIEUTENANT TEMBO:.....DEFENDANTS**

BEFORE: HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The plaintiff's claim against the defendants was for a declaration that he was unlawfully wounded by the 2nd and 3rd defendants and grievously harmed by reckless shooting; recovery of the motor vehicle registration number UAG 277L, for special damages, General damages for unlawful wounding.

On the 12th day of June ,2023 , the Plaintiff was intentionally shot at by the officials of the 1st defendant who had been following him in a vehicle registration number UAE 491B while traveling from Bugembe after visiting a sick friend upon suspecting him of carrying smuggled goods.

The plaintiff contended that he was shot at by the 2nd & 3rd respondent while in his car and the bullets hit and shattered his upper left limb and thus causing him grievous harm. The plaintiff's vehicle was knocked from the front and it was damaged beyond repair.

The 1st Defendant denied and contended that the 2nd and 3rd Defendants are not employed by it, the defendant's officer while in the course of duty had intelligence information that motor vehicle Toyota Prado UAS/T had smuggled polythene bags , the motor vehicle refused to stop

at the check point while directed by the 2nd and 3rd Defendants, another motor vehicle Toyota Corolla UAG 277L came driving behind the Toyota Prado at the same speed, the Defendant's officer reasonably believed that the driver of the Toyota Corolla aided the smuggler to escape from the customs enforcement team and the Plaintiff crashed his vehicle while avoiding arrest by the 1st Defendant.

The defendant's officer realized that the plaintiff was trying to obstruct the chase of the smuggler when he refused to give way and was deliberately obstructing them from catching the smuggling vehicle. The said vehicle was able to disappear.

The plaintiff filed a joint scheduling memorandum with no agreed facts but with issues which were adopted for courts determination.

Issues for determination.

1. *Whether the Plaintiff was shot by the officers/agents of Uganda Revenue Authority?*
2. *Whether the agents of Uganda Revenue Authority acted negligently, recklessly and unlawfully?*
3. *Whether the 1st Defendant is vicariously liable for the actions or conduct of the 2nd and 3rd Defendants that occasion severe harm and disability to the Plaintiff?*
4. *What are the remedies available to the parties?*

The Plaintiff was represented by Counsel Ogomba Issa while the 1st Defendant was represented by the Eseza Victoria Ssendege & Amanyamba Mishambi of Legal Services of Uganda Revenue Authority.

DETERMINATION

Whether the Plaintiff was shot by the officers/agents of Uganda Revenue Authority?

The Plaintiff's counsel submitted that it in the Defendant's defence under paragraph 8 of their witness statement of defense that the 1st defendant's officer under their course of duty encountered a motor vehicle Reg. No. UAG 277L and that it was obstructing the officers from pursuing a smuggler.

It's further testified under the Plaintiff's witness statements (PW1 &PW2) that the plaintiff and Kalema Farouq with whom they were in the motor vehicle, that the motor vehicle UAE 491B came from behind and started shooting at the vehicle they were in which made the Plaintiff to lose control that lead to collision with another vehicle that was coming from Kampala.

Counsel further submitted that the Uganda police medical report in the trial bundle indicated that the plaintiff sustained bullet wounds on the upper limb and was shot by an officer who was on URA guard therefore the plaintiff was shot by agents of the 1st Defendant in the course of their duty.

On the other hand, Defendant's counsel submitted that the plaintiff does not establish any facts that show that he was shot by the officers of the 1st Defendant. Counsel submitted that PW2 during cross examination alleged assailants were dressed in military uniform of Uganda People Defense Forces implying that the alleged assailants were officers of the UPDF not the 1st Defendant and therefore failed to discharge the burden of proof that he was shot by the 1st Defendant's officers.

Analysis

The 1st defendant denied any knowledge of the 2nd and 3rd defendants in this matter although they admit to part of the facts that they were chasing a smuggler and were obstructed by the plaintiff.

In *Ahmed Adel Abdallah v Sheikh Hamad Isa and Ali Khalifa (2019)EWHC 27*, the court laid down the guidance on how the court should approach acute conflicts of evidence among witnesses on the events that occurred. The Court noted in *para 20* that the guidance applied to both cases of fraud and cases where fraud is not alleged. Thus;

There were acute conflicts of evidence between the witnesses on numerous aspects of the events which occurred. It was common ground that the approach to be taken in resolving these conflicts was that commended by

Robert Goff LJ in *Armagas Ltd v Mundoga SA (The Ocean Frost)* (1985) 1 Lloyd's Report. 1.57:

Speaking from my own experience, I have found it essential in cases of fraud, when considering the credibility of witnesses always to test their veracity by reference to the objective facts proved independent of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities. It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents to the witnesses' motives and to the overall probabilities can be of very great assistance to a judge in ascertaining the truth.

It is clear that the evidence of the parties regarding the sequence of events differs or is conflicting. The better criterion of establishing the truth is to examine which of two versions best accords with the facts, according to the ordinary course of human affairs and usual habits of life. The probability or improbability of the transaction forms a most important consideration in ascertaining the truth of any version relied upon. *See Sakar's Law of Evidence, 14th ed.*

The plaintiff's evidence or version of shooting is more in consonance with the ordinary course of human affairs since the 1st defendant's Anti-Smuggling Unit is obviously armed with guns in order to be able to execute their duties of stopping smugglers who may sometimes equally be armed. The 1st defendant's staff or officers indeed shot at the plaintiff and caused him injury.

Whether the agents of Uganda Revenue Authority acted negligently, recklessly and unlawfully?

According to the facts at hand the plaintiff and his friend Kalema Farouq were driving from Jinja to Kampala, the motor vehicle registration number UAE 491B came from behind and started shooting at the vehicle they were in which made the plaintiff to lose control and lead to collision with another vehicle . A Police report states that the plaintiff was shot by an officer who was on URA guard and it was stated in (PW1

&PW2) that they were arrested and detained at Lugazi Police because the agents of the 1st Defendant a case of smuggling against them and that the people that shot at them had URA tags in their necks.

Analysis

Negligence implies absence of intention to cause the harm complained of. It means careless or unreasonable conduct. Therefore, the tort of negligence is, therefore. Complex and fluid because in determining liability in negligence, issues like duty, care, breach, causation and remoteness of damage are to be analyzed in any given case.

Black's law Dictionary 11th Edition 2019 defines Negligence as follows; The failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregarding of others' rights; the doing of what a reasonable and prudent person would not do under the particular circumstances, or the failure to do what such a person would do under the circumstances.

To succeed in an action for negligence, the plaintiff must prove;

- i) The defendant owed him or her a duty of care
- ii) That there was a breach of that duty of care
- iii) That damage which is not too remote resulted to him as a result of the breach.

The standard of care expected is that of a reasonable person. See *Omony v AG & Another HCCS No. 27 of 2002*.

A law enforcement officer may only use as much force as reasonable in the circumstances. A law enforcement officer's conduct lacks reasonable care where the burden to take precaution to mitigate is less than the probability of the harm occurring combined with the probable severity of the harm. Therefore, the 1st defendant's officer had a duty to take precautions to avoid injuring innocent civilians during the course of their actions.

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.

The degree of care required varies directly with the risk involved. The greater the risk, the greater the care. The enforcement officers in this case armed with a very dangerous weapon (gun) required greater skill and care than a person holding a baton. A person carrying a loaded gun is expected to take more precautions than a person carrying unloaded gun.

The third ingredient of negligence is that the plaintiff's damage must have been caused by the defendant's breach of duty and not due to any other cause. The plaintiff in this case indeed suffered damage when the bullet lodged in his upper body and he was accordingly injured.

The 1st respondent was indeed liable and responsible and only put up a general evasive denial that the 2nd & 3rd defendant are not its employees. It is not disputed that whole trend of events was about stopping alleged smugglers whom the 1st respondent's officers were chasing. It has been proved that the 1st defendant agents or servants were indeed negligent in their pursuit of smugglers by shooting in a negligent and reckless manner.

Whether the 1st Defendant is vicariously liable for the actions or conduct of the 2nd and 3rd Defendants that occasioned severe harm and disability to the Plaintiff?

The plaintiff's submitted that the plaintiff was shot and his car was knocked from behind by individuals in a pick-up truck leading to an accident. The same persons who were driving in the pick-up truck continued driving to Lugazi police station and reported that they had shot smugglers at Mabira forest. The plaintiff was later arrested as smugglers and they report to police as officers of the 1st defendant.

The 1st defendant submission is premised on their evasive defence that the 2nd & 3rd are not their officers. Therefore there is no vicarious liability on their part.

Analysis

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.

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*)

In the instant case, the 1st defendant enforcement officers shot at the plaintiff and also knocked his car which injured the plaintiff. This pointed towards wrongful or negligent use of the gun in performance of their duties in the course of his employment as a Tax Enforcement Officers.

On the other hand counsel for the defendant submitted and insists that the 2nd and 3rd defendants are not employed by it as it is further testified in PW2 that the assailants while wearing a military uniform that belonged to the Uganda people defense forces and therefore there is no employer employee relationship between the 1st defendant and the 2nd and 3rd defendants. This argument is totally flawed and defeats their own defence put out in the pleadings that they were chasing smugglers and the plaintiff blocked them in their enforcement attempts. The 2nd

and 3rd respondents reported to police as tax enforcement officers of the 1st defendant and indeed they were acting as agents of 1st defendant.

The tax enforcement officers have a duty to collect taxes and also stop persons evading to pay taxes. The power to collect taxes and enforce collection or payment of taxes is derived from the law and must be exercised in accordance with the law. But the exercise of tax enforcement power is legitimate only in so far as it is used for lawful purposes and not for reckless and negligent acts which injure innocent persons like the plaintiff.

Therefore, tax enforcement officers must orient themselves and always operate in a manner consistent with the Constitution and the laws of Uganda. This is premised in the fact that the tax enforcement officers serve the public and they are accountable to the public they serve.

The 1st defendant is vicariously liable for the actions of its agents-2nd & 3rd defendants.

What are the remedies available to the parties?

Special damages

The plaintiff sought special damages in the plaint; treatment on the day of shooting 4,000,000/=; Drugs prescribed 10,000,000/=; Value of the wasted car 15,000,000/=; Alternative transport at a rate of 60,000 a day till the day of filing 13,920,000; Loss while undergoing treatment 50,000 per day to date; Loss for the lack of use of impounded vehicle 100,000 per day from the day of the accident.

The plaintiff has lead any evidence to prove these claims for special damages but rather in a departure from his pleadings he sought lost vehicle worthy 15,000,000/=

*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 **Bendicto 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 said special damages have not been proved before this court. It is indeed trite that special damages must not only be specifically pleaded but they must also be strictly proved (*see Borham-Carter v. Hyde Park Hotel [1948] 64 TLR*).

The claim for special damages is disallowed.

General damages.

As far as damages are concerned, it is trite law that general damages are awarded in 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. It is the duty of the claimant to plead and prove that there were damages, losses or injuries suffered as a result of the defendant's actions.

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*

Counsel for the plaintiff has claimed general damages of 500,000,000/=.

The plaintiff has not given this court any guidance on how the claim for general damages should be awarded in that range. He only stated in his witness statement that since that incident he has continued spending money on medication and x-rays and he lost his vehicle worth 15,000,000/= and has continued to hire cars for his travel.

The plaintiff has not explained to this court how he lost the vehicle which he claims was worth 15,000,000/= and there is no evidence of ownership of the said vehicle which was tendered in court.

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 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

It is true the plaintiff is entitled to general damages but a modest sum should be awarded and not an exaggerated and inflated sum of 500,000,000/= which the plaintiff has claimed.

The plaintiff is awarded a sum of 40,000,000/= as general damages.

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 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”

General damages shall attract an interest of 15% from the date of judgment.

The plaintiff is awarded costs of the suit.

It is so ordered.

SSEKAANA MUSA

JUDGE

14th July 2023