THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT GULU

CIVIL SUIT NO. 46 OF 2018

1. ARYEMO ROBINA

2. AKAKA SANTO==========PLAINTIFFS

-VERSUS-

1. ZONGMEI ENGINEERING GROUP LTD

2. KATENDE SHABAN==========DEFENDANTS

BEFORE: HON. MR. JUSTICE PHILLIP ODOKI

JUDGMENT

Introduction:

[1] The Plaintiffs instituted this suit, under sections 5 and 6 of the Law Reform (Miscellaneous Provision) Act, Cap 79 of the Laws of Uganda, for the benefit of the members of the family of the late Otto Patrick who died following a fetal accident that occurred at Dog Tochi Trading Centre along Gulu – Anaka road.

Plaintiffs' case:

[2] The 1st Plaintiff is the widow of the late Otto Patrick while the 2nd Plaintiff is the brother of the late Otto Patrick. Plaintiffs' case is that on the 12th of December 2017, Otto Patrick was a passenger on Motorcycle Registration Number UDX 844W (hereinafter referred to as 'the Motorcycle') which was being ridden by Ocen Jerome. They were traveling from Anaka Town Council to Gulu District. When they reached at around Dog Tochi Trading Centre, they were knocked from behind, while on the left-hand side of the road, by Motor Vehicle Registration Number UAW 625Z, a Sino truck, red in color (hereinafter referred to as 'the truck') belonging to the 1st Defendant. At the material time, the truck was being driven by 2nd Defendant. He failed to control the truck and knocked the deceased. As a result of the injuries sustained by Otto Patrick from the motor accident, he died on the 16th December 2017 from Mulago Hospital. The Plaintiffs contended that the death of Otto Patrick was caused by the negligence of the 2nd Defendant, who at the material time was in the course of his employment and therefore the 1st Defendant is vicariously liable for his actions. The Plaintiffs further contended that at the time of the death of Otto Patrick, he was aged 32 years and was earning UGX 25,000/= per day as a builder. He had a wife, 4 school going children and 5 dependents. The

Plaintiffs claimed for special damages; general damages for loss of dependency, loss of expectation of life; exemplary/ aggravated damages; interest; and costs of the suit.

Defendants' case:

[3] The Defendants denied any liability arising from the accident. Their case is that on the 12th December 2018 the 2nd Defendant was driving the truck belonging to 1st Defendant along Gulu - Anaka road. At all material times, he was driving at an average speed and with utmost care to ensure that he does not collide with any other road users. The rider of the motorcycle (Ocen Jerome) was riding at a terrific speed, with two passengers. The rider sharply swerved to the front of the 1st Defendant's vehicle. As a result, a collision occurred between the truck and the motorcycle. The Defendants contended that the accident was caused by the negligence of Ocen Jerome.

Issues:

[4] The issues for the determination of the court are;

1. Whether the accident was caused by the negligence of the 2nd Defendant.
2. Whether the 1st Defendant is vicariously liable for the actions of the 2nd Defendant.
3. What remedies are available to the parties.

Evidence presented:

[5] The 1st Plaintiff testified as P.W.2. They called Olam George who was the Chairperson Local Council 1 of Tochi Village and an eye witness. He testified as P.W.1. They also called Ayat Gloria who was the traffic police officer who visited the scene of the accident. She testified as P.W.3. In addition, the Plaintiffs adduced 9 documents which were admitted in evidence as PX1 – PX9. They were, the abstract of the particulars of the accident; sketch plan of the scene of the accident; Inspection Report for the motorcycle; Warrant of Arrest for the 2nd Defendant; Inspection report for the truck; Warrant of Arrest for Matete Aramanzani – surety for the 2nd Defendant; Post Mortem Report; authority to remove the body of the deceased from Mulaga Hospital Mortuary; and receipts for expenses incurred by the Plaintiffs. The Defendants called Juliet Nakazito who is the Senior Safety Officer with the 1st Defendant. She testified as D.W.1. I shall evaluate the evidence in the course of resolving the above stated issues.

Legal representation and submissions:

[6] At the hearing, the Plaintiffs were represented by Mr. Paul Layo and Douglas Odyek of M/s Kunihira & Co. Advocates. The Defendants were represented by Mr. Samuel Kakande of M/s Silicon Advocates. The court gave counsel directives to file written submissions, which directives were duly complied with. I have given the submissions of counsel the requisite consideration while determining each issue before the court.

Burden and standard of proof:

[7] The burden of proof in civil matters lies upon the person who asserts or alleges. Any person who, wishes the court to believe the existence of any particular fact or desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts, must prove that those facts exist. (***See section 101, 102 and 103 of the Evidence Act Cap 6 of the laws of Uganda***). The opposite part can only be called to dispute or rebut what has been proved by the other party (***See Sebuliba versus Co-operative Bank (1982) HCB 129).*** The standard of proof required is on the balance of probabilities. In ***Miller versus Minister of Pensions (1947)2 ALL ER 372*** Lord Denning stated;

> *"That the degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that the tribunal can say: 'we think it is more probable than not,' the burden of proof is discharged, if the probabilities are equal, it is not."*

Analysis and determination of the court:

Issue1: Whether the accident was caused by the negligence of the 2nd Defendant.

[8] Counsel for the Plaintiff argued that P.W.1, who was the only eye witness, proved that the driver of the truck drove the truck at a very high speed, failed to take due care of Otto Patrick who was a passenger on the motorcycle and caused the accident. According to counsel, the evidence of P.W.1 was corroborated by the evidence of P.W.3 who visited the scene. She did not find any skid marks showing that the 2nd Defendant made attempts to brake and yet the truck was in a good mechanical condition. Counsel further argued that the conduct of the 2nd Defendant of trying to run away after the accident until when he was restrained by the locals of the area and the fact that when he was granted bail in the criminal case but absconded clearly shows that he knew he was at fault. Counsel submitted that D.W.1 did not witness what

happened. She was only told by the 1st Defendant of what happened at the scene. Counsel invited the court to treat her evidence as hearsay evidence which is not admissible.

[9] Counsel for the Defendants on the other hand submitted that although the Plaintiff alleged that the truck was a Sino truck which was red in color, they failed to adduce evidence of the truck registration to prove that it was indeed a red Sino truck. According to counsel, as per DEX1, the truck is a Roller which is yellow in color. Counsel further submitted that P.W.1 and P.W.2 contradicted themselves. First, P.W.1 testified that the truck was red in color while P.W.3 testified that the truck was Maroon in color. Secondly, P.W.1 testified that the road was complete with two lanes and with markings while P.W.3 testified that the road was under construction and there were no markings. According to counsel, this were major contradictions and therefore the evidence of the two witnesses should not be believed. Furthermore, counsel argued that the Plaintiff failed to prove reckless or dangerous driving. According to counsel, there was no evidence that the 2nd Defendant failed to break or to avoid knocking the motorcycle. There was also no evidence of the speed at which the truck was being driven or any skid mark. In addition, counsel submitted that P.W.3 did not measure the distance between the points of impact vis – a – vis where the truck and motorcycle were after the accident. According to counsel the truck was a roller which by its nature cannot be driven at a high speed. In addition, counsel argued that P.W.3 confirmed that the rider of the motor cycle did not have a riding permit and therefore was not authorized to ride on the road. According to counsel, by choosing to be ridden by a person without a riding permit the deceased voluntarily assumed a risk and therefore the family cannot use the court to benefit from his own wrongs.

[10] I have carefully considered the submissions of counsel on this issue and the evidence which was adduced in court. In order for the Plaintiffs to succeed in this case which is founded on the tort of negligence, they must prove three elements. First, that the 2nd Defendant owed Otto Patrick a duty of care. Secondly, that the 2nd Defendant breached that duty of care. Thirdly, that Otto Patrick and his family have suffered damage as a result of the breach of duty care by the 2nd Defendant. I shall examine each of these elements separately.

Whether the 2nd Defendant owed Otto Patrick a duty of care.

[11] In the much-celebrated English case of ***Donoghue v Stevenson [1932] AC 562*** the House of Lords succinctly stated the duty of care required to be proved in the tort of negligence. At page 580, Lord Atkinson stated that:

> *"You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law, is my neighbour? The answer seems to be—persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question."*

[12] The duty of care expected of a person driving a motor vehicle along a road was well stated in the English case of ***Tart Vs Chitty & Co. (1931) ALL ER 826.*** At page 829, the court stated that:

> *"…it seems to me that when a man is driving a motor car along the road he is bound to anticipate that there may be things and people or animals in the way at any moment, and he is bound to go not faster than will permit of his stopping or deflecting his course at any time to avoid anything he sees after he sees it".*

[13] Failure to take precaution by a driver of the possibility of danger emerging is regarded as negligence. In ***Paul Kato versus Uganda Transport Corp. Ltd [1975] HCB 119*** it was held that:

> *"If the possibility of danger emerging is reasonably apparent then to take no precaution is negligence because a driver ought to guard against reasonable probability of danger arising from carelessness of other drivers."*

[14] In this case, it is common ground that the 2nd Defendant at the material time was driving the truck along Gulu – Anaka road. It is also common ground that Otto Patrick was, at the material time, a passenger on the motorcycle on the same road. The 2nd Defendant therefore owed Otto Patrick, who was using the same road, a duty of care not to do any act or not to fail to do any act, that he could reasonably foresee would cause injury to him. He owed Otto Patrick a duty of care not to drive at a speed that would prevent him (2nd Defendant) from stopping or deflecting his course at any time to avoid colliding with the motorcycle on which Otto Patrick was a passenger.

Whether the 2nd Defendant breached his duty of care to Otto Patrick.

[15] A breach of duty of care occurs when one party, who owes the other a duty of care, does something or fails to do something which he or she reasonably foresee would be likely to injure the other party. In order to be deemed as breaching the duty of care, the Defendant's actions must be proven to fall below the standard of care likely to be taken by a reasonable man having regard to all the circumstances of the case.

[16] In the instant case, P.W.1 testified that on the 12th of December 2017, at about 5.00pm - 6.00pm, while he was at Dog Tochi Trading Centre, he witnessed from a distance of about 15 meters, the vehicle, red in color, moving at a very high speed. It knocked, from behind, the motorcycle, which at the material time was being ridden slowly, at a normal speed, on the left side of the road. He testified that the accident took place in broad daylight, on a straight road when the weather was good. According to him, the driver of the truck was driving recklessly and dangerously without regard to other road users moreover in a trading Centre. He further testified that the driver truck failed to hoot or break to avoid knocking the motorcycle and its users.

[17] P.W.3 testified that she visited the scene the following day and made a sketch map. She described the scene as a straight road, tarmac, dry and without any skid marks. She also testified that the truck was inspected by the Inspector of Motor Vehicles and found to be in a good mechanical condition. According to her, the fact that there were no skid marks at the scene shows that the driver of the truck did not try to stop or slow down to avoid the collision. She testified that the driver of the truck should have slowed down or even stopped when he approached the motorcycle which was clearly ahead of him.

[18] D.W.1 testified that on the date of the accident, the 2nd Defendant was driving the truck in at an average speed with utmost care to ensure that he did not collide with other road users. According to her, it was the rider of the motorcycle who was riding at a terrific speed. He sharply swerved to the front of the truck and as a result, there was collision. She further testified that the truck was a roller, by its nature it could not be driven in a high speed and as such the 2nd Defendant could not have been reckless.

[19] I have examined the vehicle inspection report of the truck (PX4). The offside head lamp was found shattered after the accident. In my view, it confirms the evidence of P.W.1 that the

2nd Defendant who was the driver of the truck is the one who knocked the motorcycle from behind when the motorcycle was in front of him on the left-hand side of the road. The 2nd Defendant was under a duty to stop upon citing the motorcycle in front of him or to deflect his course to avoid colliding with the motorcycle, but he failed to do so. Although the Defendants pleaded that it was the rider of the motorcycle who sharply swerved to the front of the truck thereby causing the collision, they did not adduce any evidence to support that allegation. I agree with the submission of counsel for the Plaintiff that the evidence of D.W.1 regarding what took place at the scene was hearsay. She was not at the scene when the accident happened. She admitted that whatever she told the court of what happened on the date of the accident she was told by the 1st Defendant. Her evidence was therefore hearsay which is not admissible. The Defendants should have adduced the 2nd Defendant who was the driver of the truck and the only occupant in the truck to prove their allegation that the rider of the motorcycle swerved in front of the truck, but they failed to do so. No reason was given why he did not come to the court as a witness to explain the steps he took to avoid colliding with the motorcycle, moreover during day, in a straight dry tarmac road and at a trading center.

[20] I have not found any merit in the submissions of counsel for the Defendants on this issue. First, on the color of the truck, the plaintiffs pleaded that the truck was red in color. P.W.1 testified that the truck was red in color. P.W.3 testified and referred to the sketch map (PX2) wherein it was stated that the truck was maroon. The law on inconsistencies and discrepancies is now settled. Grave inconsistencies or contradictions unless satisfactorily explained or reconciled will usually but not necessarily result in the evidence of a witness being rejected. Minor inconsistencies and contradictions will normally not have that effect unless they point to deliberate untruthfulness. See: ***Uganda versus George William Simbwa S.CC.A No. 37 of 1995.*** In my view, the two colors mentioned by P.W.1 and P.W.3 are similar. I therefore find that the contradiction is minor and does not point to any deliberate untruthfulness. Although the color of the truck was indicated in the log book (DX1) to be yellow, it does not in any way mean that P.W.1 and P.W.3 were not telling the truth. The only logical explanation is that the 1st Defendant changed the color of the truck after its registration in violation of Section 18 of the ***Traffic and Road Safety Act, 1998***. In addition, the Defendants did not in their Written Statement of Defense plead that the truck was yellow in color to enable the Plaintiff to adduce the evidence such as photos to prove the color of the truck.

[21] Second, on the status of the road, P.W.1 testified that the road construction was complete with markings. P.W.3 testified that the scene was tarmacked although the road markings were not yet there. In my view this contradiction was minor, it does not in any way point to a deliberate intention to tell lies by the witnesses. P.W.1 was not taken through the type of markings being referred to and, in any case, he did not claim to be an expert on roads to know what kind of markings were required on the road.

[22] Third, on the description of the truck, the Plaintiffs pleaded that it was a Sino truck. Both P.W.1 and P.W.3 testified that the truck was a Sino truck. Their evidence was corroborated by the abstract of particulars of the accident (PX1) authored by the Officer in charge of Traffic, Omoro District and the Vehicle Inspection Report (PX4) authored by the Inspector of Motor Vehicles which also indicated that the truck was a Sino Truck. The Defendants did not, in their Written Statement of Defense, deny that the truck was a Sino truck which would have made it an issue for the determination of the court and Plaintiffs to produce evidence to prove that it was indeed a Sino truck. In addition, although in the log book (DX1) the body description of the truck was stated to be a roller, it does not change the fact that at the material time it was being driven by the 2nd Defendant, it caused the accident and it was subsequently inspected by the Inspector of Motor Vehicles. I have not found any merit in the evidence of D.W.1 that given that the truck was a roller, it could not be driven in a high speed and as such the 2nd Defendant could not have been reckless. The log book is very clear that the truck has 8 wheels. As I have already stated above, the truck was inspected and found with shattered offside head lamp after the accident, clearly showing that it knocked the motorcycle from behind.

[23] Fourth, on whether the Plaintiffs adduced evidence that the 2nd Defendant failed to break or to avoid knocking the motorcycle or any evidence of the speed at which the truck was being driven, the mere fact that the 2nd Defendant knocked the motorcycle from behind is clear evidence that he failed to break. The fact that P.W.3 did not measure the distances between the points of impact vis – a – vis where the truck and motorcycle were after the accident does not mean that the Plaintiffs did no prove that it was the 2nd Defendant who knocked the motorcycle from behind.

[24] Fifth, on whether the rider of the motorcycle had a riding permit, no evidence was adduced to prove that he did not have a riding permit. What P.W.3 stated was that she did not know if he had a riding permit. In any case, even if the rider did not have a riding permit, the 2nd

Defendant was still under a duty not to knock the rider and Otto Patrick. I therefore find that the 2nd Defendant breached the duty of care which he owed to Otto Patrick.

Whether the Plaintiff suffered any damage as a result of the breach of duty care by the 2nd Defendant.

[25] The Plaintiffs had to prove that as a result of the breach of duty of care by the 2nd Defendant, they suffered a damage and that the damage is not too remote a consequence of the breach of the duty of care.

[26] P.W.1 testified that as a result of the accident, Otto Patrick who was a passenger in the motorcycle fell down unconscious with blood oozing from his legs. He subsequently died from Mulago Hospital after three days. P.W.2 testified that she found her husband (Otto Patrick) at Gulu regional referral hospital with injuries on the lower right leg, upper back and head. He eventually died from Mulago National Referral Hospital. The cause of death was stated in the post mortem report to be blunt force trauma. As a result, the family has gone through tremendous mental anguish, psychological torture, loss of dependency and loss of expectation of life. D.W.1 testified that Otto Patrick died as a result of the accident. I therefore find that as a result of the breach of the duty of care of the 2nd Defendant, Otto Patrick suffered injuries and subsequently died. The Plaintiffs have proved all the elements of negligence against the 2nd Defendant, I find that the accident was caused by the negligence of the 2nd Defendant.

Issue 2: Whether the 1st Defendant is vicariously liable for the actions of the 2nd Defendant.

[27] Counsel for the Plaintiff submitted that the 1st Defendant is vicariously liable for the negligent act of the 2nd Defendant, given that he was the 1st Defendant's employee and at the material time he was driving the truck of the 1st Defendant in the course of his employment. Counsel for the Defendant argued that the 1st Defendant is not vicariously liable for the acts of the 2nd Defendant because the Plaintiffs failed to prove that 2nd Defendant was driving the truck which was a roller, yellow in color and that he was negligent.

[28] The doctrine of vicarious liability was clearly explained in the case of ***Muwonge V. Attorney General [1967]1EA 17,*** where Newbold P. stated 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 if the servant is acting deliberately, wantonly, negligently or criminally or*

for his own benefit never the less if what he did is merely a manner of carrying out what he was employed to carryout then his master is liable." Underlined for emphasis.

[29] In the resent case of ***Tusingwire Barahandika versus Attorney General and another CACA No. 210 of 2018*** the Court of Appeal held that;

"Vicarious liability is a situation in which one party is held partly responsible for the unlawful actions of a third party. It is also a legal doctrine where a person, himself blameless, is held liable for another person's conduct. The rule is justified by the Latin maxim "qui facit per alium facit per se meaning that he who acts through another, acts himself. Under the doctrine of vicarious liability, an employer is liable for the acts of his/her employees done in the scope of that employee's duty.

Case law has held that for the doctrine of vicarious liability to apply, there must be three essential ingredients;

- *There must be a relationship of employer and employee;*
- *The Tort must be committed by the employee;*
- *In the course of business."*

[30] In the instant case, P.W.1 testified that the driver of the truck identified himself as the 2nd Defendant and as a worker of the 1st Defendant. D.W.1 testified that at the time of the accident, the 1st Defendant was undertaking construction of Gulu - Anaka road. She further testified that the 2nd Defendant was the driver of the 1st Defendant designated to drive company vehicles and on the date of the accident, the truck was being driven by the 2nd Defendant while the 1st Defendant was undertaking the construction of Gulu - Anaka road. She admitted that at the time of the accident, the 2nd Defendant was in the course of his employment. I have already found in issue 1 above that the accident was caused by the negligence of the 2nd Defendant. Given that the 2nd Defendant was at the material time employed by the 1st Defendant and in the course of his employment. I therefore find that the 1st Defendant is vicariously liable for his negligent act.

Issue 3: What remedies are available to the parties.

[31] Under Section 5 and 6 of the Law Reform (Miscellaneous Provisions) Act, Cap 79 an action may be brought for damages for the benefit of members of the family of a deceased

person whose death was caused by any wrongful act, neglect or default of any person, and the act, neglect or default is such as would, if death had not ensued, have entitled the person injured by it to maintain an action and recover damages in respect of it. The purpose of the Act was well articulated in ***Uganda Electricity Board versus GW Musoke SCCA No. 30 of 1993*** where Odoki C.J., at p.5 stated that:

> *"It seems to me that the Purpose of the Act was to provide a new cause of action which would enable dependant of the deceased to claim compensation for the loss suffered as a result of his death. It is true that section 8 of the Act does not use the word "dependants", but "members of the family". In my view, however, the intention was to provide for members of the family who were dependants of the deceased and therefore who had suffered pecuniary loss as a result of his death. In each case the question to ask is what pecuniary loss the member of the family has suffered. He would claim to have suffered pecuniary loss if he had lost dependency on the deceased. Damages were not generally awarded as solitium for the bereavement of the family."*

[32] In this case, the Plaintiffs prayed for compensation for general damages for loss of expectation of life of Otto Patrick and loss of dependency; special, general and exemplary damages; interest; and costs of the suit. I shall deal with each head of claim separately.

Loss of dependency:

[33] The principles governing assessment of damages for loss of dependency are well settled by the courts in Uganda.

(a) The court starts by considering the last earning of the deceased. The court then assesses the portion of the earning which was regularly being spent on the dependents. Where evidence on this is not clear or available, the court may asses the last earning by taking the sum which the deceased spouse paid over to the surviving spouse and other dependents per month, less what the deceased spent on himself/herself. The net balance, on the annual basis constitute the net contribution of the deceased to the dependents.

(b) The court then determines the appropriate multiplier, that is, the number of years during which the dependency would have continued if the deceased had lived beyond the date of death and continued to earn. The multiplier is calculated basing on the age at which the deceased died and what his or her working life expectancy would have been had he or she not met his or her death. Allowance has to be made for the uncertainties of life

such as sicknesses, wars and accidents by reducing the number of years before arriving at the actual figure which is taken as the multiplier.

(c) The total lost dependency or benefit is obtained by multiplying the annual lost benefit by the multiplier. The court then considers whether there are any deductions to be made out of the sum. For instance, if the surviving spouse intends to remarry, a deduction can be made to reflect that fact.

(d) The lost dependency is then apportioned among the dependents. If the deceased was a husband, the widow is entitled to a more substantial share of the damages in recognition of the fact that her dependency upon her husband's support would ordinarily continue longer than that of the children. If the wife was the breadwinner in the family and she is the one who met her death, the surviving dependent husband would be treated in a similar manner. It is also a recognized principle that in apportioning the damages, court would award the younger children relatively larger portions in recognition of the fact that their dependency, upon the deceased, would have lasted longer than that of older children. See: ***Jane Gaffa versus Francis X.S.Hategа [1981] HCB 55***; ***Saulo Mawanda Sempa and 3 others versus Attorney General HCCS No. 1330, 1331, 1332 and 1294 of 1998***; and ***Agnes Mujaju versus Makerere University and another HCCS No. 548 of 2001.***

[34] In this case, P.W.2 testified that Otto Patrick was a building mason earning UGX 25,000/= per day. She stated that she did not have any proof that he was earning that amount every day. Although P.W.2 testified that she had a certificate as proof that Otto Patrick was a mason, the same was not adduced in court. In the Abstract of Particulars of the accident (PX1), which was adduced by the Plaintiffs, Otto Patrick was described as a peasant. P.W.3 testified that she was given the information that Otto Patrick was a peasant. No evidence was adduced regarding the portion of the earnings of Otto Patrick, if any, which was regularly being spent on the dependents or the sum he spent on himself. Based on the contradicting evidence regarding the occupation of Otto Patrick, the court is in doubt whether he was a mason or a peasant, how much he was earning in a year and the portion of his income, if any, which he was spending on his family and on himself. I therefore find that this claim was not proved. This claim is accordingly rejected.

Loss of expectation of life:

[35] Damages awarded for loss of expectation of life is awarded on the basis of loss of prospective happiness and bereavement. The award has to be moderate. In ***Uganda Electricity Board versus GW Musoke SCCA No. 30 of 1993*** Odoki C.J., at p.11, cited with approval the House of Lords decision in ***Benham V. Gambling (1941) 1 ALI.E.R.7.*** wherein the court stated that:

> *"1. Before damages are awarded in respect of the shortened life of a given individual, it is necessary for the court to be satisfied that the circumstances of the individual life were calculated to lead on balance, to a positive measure of happiness of which the victim has been deprived by the defendant's negligence. If the character or habits of the individual were calculated to lead him a future of unhappiness or despondency that would be a circumstance justifying a small award.*
>
> *2. In assessing damages for this purpose the question is not whether the deceased had the capacity or ability to appreciate that his future life on earth would bring happiness. The test is not subjective, and the right sum to award depends on an objective estimate of the kind of future on earth the victim might have enjoyed, whether he bad justly estimated that future or not. No regard must be to financial losses or gains during the period of which the victim has been deprived. The damages are in respect of loss of life, not of loss of future pecuniary prospects.*
>
> *3. The main reason why the appropriate figure of damages should be reduced in the case of a very young child is that there is necessarily so much uncertainity about the child's future that no confident estimate of prospective happiness can be made. When an individual has reached an age to hare settled prospects, having passed the risks and uncertainities of childhood and having in same degree attained an established character and firmer hopes, his or her future becomes more definite and the to which good fortune may probably attend him at any rate becomes less incalculable.*
>
> *4. Stripped of technicalities, the compensation is not being given to the person who was injured at all, for the person who was injured is dead. The truth is that in rutting a money value on the prospective balance of happiness in years that the deceased might have lived the judge is attempting to equate incommensurables. Damages which would*

be proper for a disabling injury may be much greater than for deprivation of life. These considerations lead to the conclusion that in assessing damages under this head, whether in the case of a child or an adult, a very moderate figure should be chosen." Underlined for emphasis.

[36] In the above cited case, Odoki C.J., at p.13 further held that:

"AS it is acknowledged in Winfield on Tort, 12th edn. page 625, the principal function of awarding damages for loss of expectation of life was to provide in an indirect way for damages for bereavement in certain cases, because under the common law and the fatal Accidents Acts, no claim for solutium or bereavement could be entertained. In England today, the claim for damages for bereavement has replaced a claim for loss of expectation of life, a reform introduced by amendments made to the Fatal Accident Act 1976 by the Administration of Justice Act 1982. A sum of £ 3,500 has been fixed by statute as damages for bereavement (see Winfield on Tort) (supra) page 625.

In Uganda, however, the law is still that damages are not awarded for bereavement. They are awarded for loss of expectation of life. I would for myself think that time has come to recognize that parents are bereaved by the loss of children whom they naturally love and value and for whom they sacrifice so much. I would think that damages for bereavement should now be recognised or at least taken into consideration when assessing damages for loss of expectation of life. A modest figure should be fixed for this head preferably not more than one million shillings." Underlined for emphasis.

[37] P.W.2 testified that as a result of the death of Otto Patrick, the family has gone through tremendous mental anguish, psychological torture. This evidence was not challenged in any way by the Defendants. Although a figure of one million shillings was proposed by the Supreme Court in 1993 in the case of ***Uganda Electricity Board*** (supra), Uganda Shillings has since suffered inflation. I consider that an award of UGX 50,000,000/= is reasonable for bereavement of the family members.

Special damages:

[38] Special damages are the actual pecuniary losses. They include earnings which have actually been lost or expenses which have actually been incurred. They have to be specifically

pleaded and proved. In ***Uganda Telecom Ltd Versus Tanzanite Corporation, [2005] 2 EA 341***, Oder, JSC at page 341 held that;

> *"'Special damage' is the damage in fact caused by wrong. It is trite law that this form of damages cannot be recovered unless it has been specifically claimed and proved or unless the best available particulars or details have before trial have been communicated to the party against whom it is claimed."*

[39] I have to add that the principles governing measurement of damages in cases of breach of contract and tort is that there should be *restitutio in integrum*. In ***Simon Mbalire vs. Moses Mukiibi High Court Civil Suit No. 85 of 1995*** Tinyinondi J. held that:

> "*The fundamental principle by which courts are guided in awarding damages is restitution integram. By this principle is meant that the law will endeavor so far as money can do it, to place the injured person in the same situation as if the contract had been performed or in the position he occupied before the occurrence of the tort both in case arising in contract and in tort, only such damages are recoverable as arises naturally and directly from the act complained of".*

[40] In this case, P.W.2 testified that the family incurred UGX 33,179,000/= in burial expenses. The receipts of the expenses were collectively admitted in evidence as PX 9. She however later changed her testimony and stated that the money mentioned in the receipts were contributed by the people at home and those from outside. According to her, it is only UGX 4,000,000/= which she picked from the house for burial. She further testified that the people who contributed money for burial are not demanding for their money. Therefore, although the Plaintiffs claimed UGX 33,179,000/= in burial expenses, the only amount which was actually spent by the family was UGX 4,000,000/=. I therefore find that the Plaintiffs only proved UGX 4,000,000/= as special damages which I accordingly award to them.

Exemplary/punitive damages:

[41] These are damages requested for and awarded when the defendant's willful acts were malicious, violent, oppressive, fraudulent, wanton, high handed or grossly reckless. The rationale is not to enrich the plaintiff, but to punish the defendant and deter him or her from repeating similar conduct **(**See ***Dorothy Tuma v. Elizabeth Muller & Anor C.S No. 229 of***

2011). The punishment imposed must not exceed what would be likely to have been imposed in criminal proceedings, if the conduct were criminal (See ***Obongo v. Municipal Council of Kisimu [1971] EA 91)*.** All circumstances of the case must be taken into account, including the behavior of the plaintiff and whether the defendant had been provoked. (*See* ***O'Connor v. Hewston [1979] Crim. LR 46 CA; Archer Brown [1985] QB 401.***

[42] In this case, no evidence was adduced to justify the award of exemplary/ punitive damages against the 1st Defendant. It is accordingly not awarded.

Interest:

[43] The principles applied by this court in the award of interest are clear and are set out in section 26 (2) of the Civil Procedure Act which provides that:

> *"Where the decree is for the payment of money, the court may in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit."*

[44] The above position of the law was reaffirmed in ***Lwanga vs. Centenary Bank [1999] EA 175*** wherein the Court of Appeal held that;

> *"Section 26(2) of the Civil Procedure Act empowers the court to award three types of interest; interest adjudged on the principal sum from any period prior to the institution of the suit, interest on the principal sum adjudged from the date of filing the suit to date of the decree, and interest on aggregate sum from the date of the decree to the date of payment in full."*

[45] On the interest rate to be awarded, in ***Mohanlal Kakubhai Radia vs Warid Telecom Ltd HCCS No. 234 of 2011*** the court stated that:

"Court should take into account the ever rising inflation and drastic depreciation of the currency. A plaintiff is entitled to such 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 further 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."

[46] In my view, interest of 15% per annum from the date of this judgement till payment in full is appropriate, in the event that the money is not paid promptly.

Costs:

[47] Section 27 of the Civil Procedure Act provides that:

*"**27. Costs***

(1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent those costs are to be paid, and to give all necessary directions for the purposes aforesaid.

(2) The fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of the powers in subsection (1); but the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.

(3) The court or judge may give interest on costs at any rate not exceeding 6 percent per year, and the interest shall be added to the costs and shall be recoverable as such."

[48] The general rule is therefore that costs should follow the events and a successful party should not be deprived of costs except for good cause. I have not found any good cause in this case why I should deny the Plaintiffs the costs in this matter.

Orders:

[49] In the end, after carefully considering the merits of this case, the following orders are hereby made.

1. The 1st Defendant shall pay the Plaintiffs UGX 50,000,000 (Uganda Shillings Fifty Million) as loss of expectation of life.
2. The 1st Defendant shall pay the Plaintiffs UGX 4,000,000 (Uganda Shillings Four Million) as special damages.
3. The 1st Defendant shall pay the Plaintiffs the amount in 1and 2 above with interest at 15% per annum from the date of this judgement till payment in full.
4. The 1st Defendant shall pay the Plaintiffs the costs of the suit.

I so order.

Dated and delivered by email this 8 day of April, 2024.

Phillip Odoki

JUDGE