

**THE REPUBLIC OF UGANDA**  
**CIVIL APPEAL NO. 38 OF 2003**

Appeal from the judgment and orders of the High Court at JINJA

(Bamwine, J.) Dated August 14, 2002 in High Court Civil Suit No. 95 of 2000)

**COURT OF APPEAL (ENGWAU, TWINOMUJUNI AND KAVUMA,  
JJ.A)**

**NAKIRYA SSEKATABA AND ANOTHER;;;;;;;;;;;;;APPELLENT**

**VERSES**

**THE ATTORNEY GENERAL        ;;;;;;;;;;;;;; RESPONDENT**

*Civil Procedure—Pleadings—Parties to pleadings—Parties bound by their pleadings during trial*

*Civil Procedure—Pleadings—Statutory Notice—Service thereof—Effect of non-service of **Monitory** Notice*

The late captain Francis Mbaziira was trading under the name and style of Fanatex Enterprise. He had sued the Attorney General under the provisions of the Government proceedings Act for special and general damages for detinue and costs of the suit.

The brief facts of the case were that on or about March 4, 1999 at Bugoto landing beach in Iganga District, the late Mbaziira was unlawfully arrested by the Uganda

Police before being prosecuted. The case was dismissed for want of prosecution under Section 117 (1) of the Magistrate's Courts Act. At the time of the late Mbaziira's arrest, the police impounded his goods consisting of 100,000 kgms of a drink called "ndume" that was valued at US\$100,000. The police never returned the said goods to the late Mbaziira even after the dismissal of the criminal case. As a result, the late Mbaziira suffered and continued to suffer grave financial loss and held the respondent vicariously liable.

The respondent admitted arresting and charging the late Mbaziira, but denied liability on impounded goods contending that the police were justified in their conduct and that Mbaziira must have recovered his goods. The learned trial Judge awarded Mbaziira Ug. Shs 4,000,000/= as general damages for unlawful arrest, imprisonment and malicious prosecution. He was also awarded Ug Shs 560,000/- as special damages as the amount he spent for defending himself against the ill-fated criminal charges. Further, Mbaziira was awarded interest on the above awards at the rate of 8% per annum from the date of judgment till payment in full plus costs of the suit.

Before late Mbaziira could prosecute his appeal to the end, he had died in June, 2004. By consent order under rule 96 of the Rules of this Court, both parties allowed the appellants to be joined to this appeal in their representative capacity as the administrators of the estate of the deceased, the late Mbaziira

**HELD:**

It is the law that parties are bound by their pleadings during the trial. In this case, the respondent did not raise the question of Statutory Notice being wanting as a preliminary point of objection for determination before, during and after the trial. It was only after the Judge pointed out the alleged defect that the respondent supported himself in his submissions.

*'Appeal allowed with costs here and in lower Court*

*Dated this 8<sup>th</sup> day of September 2006*

*ENGWAU, JA*

*TWINOMUJUNI, JA*

*KAVUMA, JA*

**Legislation considered:**

Court of Appeal Rules Directions, rules 1 (3), 96, 97 (1)

Magistrate's Courts Act Cap 16, Section 117(1)

**Cases cited:**

David Kabunga Vs Leonin Karyeija and 2 Others, Civil Application No. 19 of 2991  
(unreported)

J.K. Patel Vs Spear Motors Ltd, Supreme Court Civil Appeal No. 4 of 1991 (unreported)

Jovelyn Barugahare Vs Attorney General, Supreme Court Civil Appeal No. 28 of 1993  
(unreported)

Kiboro Vs Posts and Telecommunicatons Corporation [1974] EA 155 Muller Vs Minister  
of Pensions [1947] 2 All ER 372