

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

CIVIL SUIT NO. 258 OF 1992

JANE KABUWO :::PLAINTIFF

V E R S U S

UGANDA RAILWAYS CORPORATION::::::::::::::::::::::::::::::::::::DEFENDANT

BEFORE: THE HONOURABLE MR. JUSTICE G. M. OKELLO

J U D G M E N T

The plaintiff brought this suit against the defendant in negligence claiming general damages for personal injuries she sustained in an accident involving the defendant's train, loss of future earnings and costs of the suit.

The history of the case is brief:- The plaintiff, a female vegetable trader aged 20, was at the time of the accident in her eight and a half months of pregnancy. On 25/11/91 she boarded the defendant's train from Mityana for Mianzi. At Mianzi, she was alighting from the train when she fell out and the train ran over her both legs cutting them at the middle. Both legs were later amputated below the knees. She also aborted, giving birth to a dead baby.

The plaintiff blamed the accident on the defendant alleging negligence on the part of the defendants Servants in the course of their duties; for:-

- (a) Moving the train when the passengers were still getting out of it;
- (b) leaving; the train gates open when the train was in motion and
- (c) driving or controlling the train without due care and attention.

In its W S B, the defendant denied liability claiming that, the plaintiff was not a lawful fare paying passenger on the defendant's train at the material time. That she was a trespasser on the train and that as such, the defendant owed no duty of care to her. Alternatively that the accident was caused by the plaintiff's sole negligence when she jumped or got off a moving train.

At the commencement of the hearing of the case, the following six issues were framed for determination:-

- (1) Whether the plaintiff was on the train at all.
- (2) Whether the plaintiff was a lawful fare paying passenger.
- (3) Whether the accident happened at all
- (4) Whether the defendant's servants were negligent.
- (5) Whether the plaintiff is guilty of any contributory negligence
- (6) What quantum of damages if any is the plaintiff entitled to.

The plaintiff called the evidence of six witnesses including herself.

The defendant on its part called the evidence of three witnesses all of who are employees of the defendant. Later counsels of both parties addressed me.

I shall now consider the evidence on record and the submissions of the counsels to answer each of the above issues.

On issue No 1 above - whether the plaintiff was on the train at all counsel for the defendant contended that the plaintiff was not on the train. That if she was there at all, she was not a lawful fare paying passenger but a trespasser to whom the defendant owed no duty of care. Counsel based her contention on failure of the plaintiff to produce fare ticket as evidence of her having paid the required fare. She rejected the evidence of payment given by the plaintiff. That the fare from Mityana to Mianza was shs. 750/= but not 400/= which the plaintiff claimed to have paid. In this assertion counsel relied on the evidence of DW2

David Kaziba, the defendant's travelling ticket examiner who was on the material train at the time. Counsel finally invited me to find that the plaintiff not on the train at the material time or that if she was on the train, then she was not a lawful fare paying passenger but a trespasser.

It was submitted for the plaintiff that the plaintiff was on the train at the material time having boarded it from Mityana after she had bought her fare ticket for 400/= from the office of the Railways station Master rat Mityana. That she was therefore a lawful fare paying passenger on the train at the material time.

For the above contention, counsel relied on the evidence of the plaintiff and that of PW3 both of whom he submitted gave their evidence in a straight forward manner. He invited me to find them truthful witnesses and therefore to believe them. That I should find that the plaintiff was on the defendant's train at the material time as a

lawful fare paying passage

On these issues Nos 1 and 2, the plaintiff gave evidence that she boarded the train on 25/11/91 from Mityana after purchasing her ticket from the office of the Railways Station Master at Mityana for shs. 400/=. When cross-examined on the whereabouts of the ticket, she explained that at Mianza she put her luggage - a travelling bag in which she had put her ticket on the door way of the train in order that when she got out, someone would assist her handing the luggage to her. But that the accident happened when she was alighting from the train and her luggage which contained the ticket went in the train. That she never saw the luggage again.

Sam Kirongozi PW3 testified that on 23/11/91 he was at Mianzi Railways Station having brought his friend to board the train for Kasese. That immediately the train had left, he heard a cry. That when he went to check who was crying, he found that it was the plaintiff. She was lying down with her both legs crushed on the rail. Apparently the train had run over them.

David Aggrey Kaziba (DW2) the defendant's travelling ticket examiner testified that on 25/11/91 he was on duty on the Kampala - Kasese bound train. That the fare from Mityana to Mianza at the material time was shs 750/=. He denied knowledge of the accident.

I have considered the above evidence and the submissions of both Counsels regarding the above two issues. First of all, I wish to point out that whether or not a train fare had been paid by a passenger was a question of fact. The ticket issued by the Railways Corporation after payment of the fare is a good evidence of such payment but it is by no means the only proof of such payment. In the absence of such ticket, a cogent credible oral evidence of payment can do.

In the instant case, the plaintiff told court in her evidence that she had used train for her transport in the course of her business before. That she used to buy her ticket in advance from the office of the Railways Station Master as she did on this occasion. I had the chance to observe the plaintiff as she testified before me. She was a simple, semi-literate young lady who gave her evidence forth rightly. She impressed me as a truthful witness. Her explanation of how she lost her luggage which contained her ticket was satisfactory to me. I believe that she bought a fare ticket from the booking office at Mityana Railways Station for 400/= .

The defence raised the issue of inadequacy of the fare paid by the plaintiff. DW2 testified that the fare from Mityana to Mianzi was at the material time shs 750/=. There was no other authentic evidence showing the fare charts from the URC. It remained the plaintiff evidence against that of DW2. The plaintiff testified to have bought her ticket from the booking office at the Railways Station Master's office in Mityana. As stated earlier, I do not doubt this. If the station Masters' office under charged her, she cannot be blamed for that. It is therefore my view that the plaintiff paid appropriate fare which she was charged. For that reason, I find that she had paid her fare.

On whether the plaintiff was on the train at the material time, the Plaintiff's evidence showed that she was on the train having boarded it from Mityana. Her evidence was corroborated by the evidence of Sam Kirongozi (PW3). He testified

that he was at Mianza Railways Station at the material time having brought his friend to board a train for Kasese. That immediately after the train had left the Station, he heard a cry. That when he went to check what had happened, he found that it was the plaintiff crying.

She was lying down with both legs crushed on the rail. They were apparently run over by the train. That he removed her from the rail and put her on the pavement. Later he took her to a nearby clinic.

This witness (PW3) too impressed me as being truthful. He gave his evidence in a straight forward manner and withstood cross-examination. His evidence together with that of the plaintiff lead to a strong inference that the plaintiff was on the train at the material time. From their evidence, I find as a fact that the plaintiff was on the defendant's train at the material time as a lawful fare paying passenger. This answers issues Nos 1 and 2 in the affirmative.

On issue No 3 - whether the accident happened at all, Counsel for the defendant contended that the accident did not at all happen as alleged by the plaintiff. For this contention, counsel relied on the evidence of DW1, DW2 and DW3. All these witnesses testified that they were members of the crew in the train at the material time. They denied knowledge of the accident. Counsel further doubted the occurrence of the accident because according to her it was not reported to the Police or authorities.

For the plaintiff it was contended that the accident happened on 25/11/91 at Mianza Railways Station while the Plaintiff was alighting from the train when she fell down and the train ran over her both legs cutting both. On this contention, counsel relied on the evidence of the plaintiff (PW1) and that of Sam Kirongozi (PW3). Kironrozi (PW3) testified that he was at Mianzi Railways station and found the plaintiff with both legs crushed on the rail immediately after the train had left that station. That he removed her from the rail and took her to a nearby clinic, and reported the matter to the local RCI- Secretary for defence

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There is ample evidence to show that the accident happened. The evidence of

PW1, and PW3 show that the accident happened. The evidence of PW4 DR. Noah Luke and that of Hellen Bura (pw5) all support that the accident happened. From these evidence, I find as a fact that the accident indeed happened.

As to whether the defendant's servant were negligent, Mrs'Kakoba contended for the defendant that the defendant's servants were not negligent at all. She relied on the evidence of DW1, DW2 and DW3 All, these witnesses testified and denied negligence. They testified that they were crew members of the train on the material day. That at Mianzi, the train stopped for only three minutes as was required by their regulation and moved off after due warning and proceed signals were given.

Mrs. Kakuba farther contended that the accident was caused by the sole negligence of the plaintiff. She argued that the plaintiff who had earlier passed her destination was so anxious to alight at Mianzi on this occasion that she jumped out from a moving train. That in doing so, she was solely responsible for the accident.

For the Plaintiff it was contended that the accident was caused by the sole negligence of the defendant's servants in that;—

(a) they moved the train when Passengers were still alighting from the train.

(b) they kept the gates (doors) of the train open when the train was in motion. .

(c) they drove and/or controlled the train without due care and attention.

For the above contention, Mr. Kityo relied on the evidence of the plaintiff (PW1) and that of Sam Kirongozi PW3. The plaintiff testified that the train started to move from Mianzi station when she was still alighting from it and without any usual warning. This was supported by the evidence of Sam Kirongozi (PW3). He testified that he was at Mianzi Railways station having brought a friend to board a train for Kasese. That at Mianzi the train stopped very briefly and moved without any warning.

Mr. Kityo submitted that starting to drive the train while passengers were still alighting from it was negligent just like driving the train when its gates (door) were open. He cited *Brookes vs London Passengers Transport Board (1947) I AER 506* where the plaintiff entered the carriage of the defendant's underground train. The train left the station with the door open. The plaintiff stood with his back to door way, holding on to a rail provided for the purpose. The train swayed on a curve. The

plaintiff thereby lost his balance and fell out of the train and was injured. It was held that the defendant Board was negligent in not ensuring that the train door was closed before the train started. There was no contributory negligence on the part of the plaintiff.

Counsel, pointed out that in the instant case, DW2 admitted, in his cross-examination that the doors of the train were kept open when the train was in motion. He submitted that that was negligent on the part of the defendant. That if the defendant ensured that the doors of the train were closed before it started to move, the plaintiff would not have fallen. He therefore invited me to find that the defendant's servants were negligent.

Counsel for the defendant argued that the plaintiff was negligent because she jumped from a moving train. There is no evidence to support that claim. However starting to move the train while the passengers are still alighting from it or keeping the door of the train open when it is in motion is clearly negligent. The train guard ought to have ensured that no passenger was alighting from the train and that 411 the doors of the train were closed before he gave a proceed signal to the train driver.

In the instant case, DW3 Charles Nkonte testified that he was the train guard on the train in question at the material time. That he was responsible for signaling the train driver when to move the train. He admitted that at Mianzi the place was dark. It was about 11.00 pm. That they had no torch. That because of the darkness, he could not see properly the passengers embarking or disembarking from the train. But that, he was always looking at his watch to determine the three minutes, time allowed for the train to remain at a halt like Mianzi to give the proceed-signal. That if he did not signal the train in time at the expiration of the three minutes, he would be blamed-: for delaying the train.

It is clear from the above evidence that the man who was responsible for the control of the train movement was more concerned about reading his time than, in ensuring that it was safe to signal the train to move. He was not mindful whether there were still passengers embarking or' disembarking the train before he gave the proceed signal. Moreover there was also no form of light by which he could see to ensure that there were no more, embarking or disembarking passengers before he gave the proceed signal. He simply gave the proceed signal when the three minutes period had expired regardless. This in my view constituted negligence.

DW2 - the travelling Ticket examiner admitted in cross-examination that he was on duty on the train in question at the material time. That the doors of the train were kept open when the train was in motion. That when the train driver hooted as he approached a station, he (DW2) advised passengers to move nearer to the door way in order to alight quickly particularly at a halt where the train stops only for three minutes.

The above is clearly evidence of negligence. Keeping the door of a train open when the train is in motion is negligence as was held in *Brookes v London passengers Transport Board* above.- Advising passengers to walk towards the open door when the train was in motion was even worse. In the, circumstances I find that the defendant's servants were negligent. This answers issues No.3 and 4 in affirmative.

This now brings me to issues No 5 which is whether the plaintiff is guilty of any contributory negligence.

Mrs. Kakuba pointed out that the plaintiff with whom the train had at one time passed her destination was on this occasion so anxious to alight at her destination that when the train reached at Mianzi she lumped out from a moving train and thereby caused the accident. The learned counsel submitted that in so doing, the plaintiff was solely responsible for the accident.

I must point out that there is no evidence to support the above preposition. Though the

plaintiff admitted in cross-examination that at one time the train in which she was passed her destination, there was no admission by the plaintiff that she jumped from, a moving, train
Contributory Negligence can only be proved by evidence. There was no such evidence, in this case.

The next issue is what quantum of damages if any is the plaintiff entitled to.

Mrs. Kakuba submitted that if the plaintiff was to be awarded general damages at all, it should be Shs. 1.5 million. She relied on the case of Matia Byabalema and others VS. UT (1975) C L.T.D — HCCS 504/91

In that case the 1st plaintiff got injured in an accident involving the defendant's vehicle. One of his legs was amputated above the knee. The defendant was found liable. The 1st plaintiff was a builder earning,

Shs. 2000/= per day. Ouma J. awarded him million shillings in general damages.

For the plaintiff Mr Kityo submitted that the plaintiff had been reduced by the accident into a total dependant. That she lost her both legs -all having been amputated below the knees. He prayed that she should be awarded substantial general damages. He cited a number of cases to bring home his point. I considered those cases.

In Stephen Sambadde VS UEB - KCCS 1/90 the plaintiff aged 10 years, suffered electrical burns which healed leaving ugly scare.

The Principal Judge (Ntabgoba) awarded him 9,000,000/= in general Damages.

In Barnabs Ntinuba VS UEB - SCU Appeal No.6/92 the plaintiff suffered serious electrical burns. From these he would be confined to a wheel chair for life. He also lost his sight of the right eye and his right hand was hardly weakened. He cannot write. The supreme Court his increased his general Damages award from 9,000,000/= to 18,000,000/=.

In Samuel Sengoba and Another Vs UTCU LTD (1980) HOB 158, the plaintiff aged 26 years sustained injuries on both legs which were amputated below the knees. He was later fitted with artificial limbs. His permanent disability was assessed at 80%. He was awarded Shs. 235,000/= in General Damages.

In Erisa Musamali VS UEB - HCCS No. MM 8/90 The plaintiff aged 11years got severe electrical burns and his both legs were amputated. Karokora J awarded him Shs.20,000,000/= (twenty million shillings) in general Damages.

In the instant case, the plaintiff had compound fractures, of both legs at the middle.

Both legs were amputated .below the knees. At the time of the hearing of this case, she was at Mulago Hospital undergoing training on how to use artificial limbs. Hopefully she will be fitted with such limbs. But at the time of the hearing of this case, she hadn't even a wheel chair. She was being carried in and out of court by relatives - a very pathetic sight indeed. She has been reduced to a total dependant. I am told, now she has to crawl or be carried whenever she was to go for nature's call.

This will have to go on for the rest of her life unless she will be fitted with artificial limbs. She is ages 20 years. Her permanent disability was assessed at 95%

Considering the persistent inflation, and her age I award the plaintiff 15,000,000/= (one million five hundred thousand).

Judgment is therefore entered for the plaintiff in the sum of shs. 16,500,000/= with cost.

G.M. OKELLO

JUDGE

28/5/93

Judgment delivered in the chamber in the presence of Mr. Kityo for the plaintiff, Mr. Komakech court clerk. No body for the Defendant was present.

G.M OKELLO

HUDGE

28/5/93.