

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT GULU
HCT – 02 – CV – CS – 0008 – 2005

MARCELINO LADAA

Suing by Next Friend

IVAN OPOKA

:::::::::::::::::::::::::::::::::PLAINTIFF

VERSUS

THE ATTORNEY GENERAL:::::::::::::::::::::::::DEFENDANT

BEFORE: HON. JUSTICE REMMY KASULE

JUDGMENT

The plaintiff sued the defendant seeking damages in respect of injuries he sustained when, he asserts, he was negligently and wantonly shot at by UPDF soldiers on 10.04.2003 at Pato ward, Bobi Sub-county, Gulu District.

Plaintiff had to sue through a next friend, one Ivan Opoka his younger brother, as at the time of filing the suit, according to the next friend, plaintiff could not hear properly and was also not mentally stable due to the injuries he had sustained as a result of being shot at by the UPDF.

The defendant, in the written statement of defence, denied the plaintiff's claims, but in the alternative, admitted shooting the plaintiff in the left leg, as plaintiff at the material date time and place, fell into the ambush of UPDF, was ordered to stop, but refused to do so, thus prompting being shot at.

At conferencing two issues were framed:

1. Whether excessive force was used to subdue and arrest the plaintiff.
2. What are the remedies available to the parties?

Later, at request of defence counsel, acceded to by plaintiff's counsel and by court, a third issue: "whether the plaintiff was contributorily negligent" was added.

Three witnesses testified for the plaintiff. The defendant called no witnesses.

As to the first issue the evidence of PW1, Opoka Ivan, is that on 10.04.2003 at about 7.30 p.m., or soon thereafter, UPDF soldiers, went to the Local council authorities of the area of residence of the witness and the plaintiff and reported that they had shot at the plaintiff.

The local council authorities mobilized people and, together with the reporting UPDF soldiers, went to the scene of shooting where the plaintiff was.

From the scene of shooting the UPDF soldiers, the local council officials and the civilians, took the plaintiff to the witness's home.

The witness observed that the plaintiff had been shot in the left leg below the knee and on the left side of the buttocks. Plaintiff, aged about 70 years at time of accident, was in great pain.

The witness rushed plaintiff to Bobi Dispensary, from where, after some treatment, plaintiff was transferred to Gulu hospital. The witness was the one looking after the plaintiff at the hospital.

PW2, Sophia Owani, a neighbour of the plaintiff in Pato ward, stated that on 10.04.2003, she was coming from Minakulu returning home, when she by passed the plaintiff who was heading home in the same direction of hers. The plaintiff followed her behind. They were about twenty (20) metres apart.

The witness met some UPDF soldiers in front, about eight or ten of them; armed with guns.

Suddenly she heard many gun shots. She run ahead. Later she learnt it was the plaintiff who had been shot. She did not see or hear of any quarrelling or noise of any sort before the shooting.

PW3 Opira Walter: the LCI Chairman of the area where plaintiff resides, heard gun shots on 10.04.2003 at about 7.30 p.m. while at his home. Later on same day, UPDF soldiers went to him as LCI chairman and requested him to go and identify the person, the soldiers had shot, so that he, the victim, can be assisted to get medical treatment, if the LCI chairman knew him. The UPDF soldiers were from DELTA Battalion, deployed in Bobi Sub-county. The soldiers confessed to him that they had accidentally shot the victim.

As LCI chairman, PW3 mobilized civilians, who together with the soldiers, went to the scene of shooting, picked up the plaintiff and took him to hospital for medical treatment.

The witness saw that the left leg of the plaintiff had been injured. Later he saw it amputated.

On 11.04.2003, as LCI chairman, he reported the shooting to the LC III, and the incident was recorded in writing.

In cross-examination, witness explained that he knew by face the UPDF soldiers who shot the plaintiff, since they were always on patrol in Bobi Sub-county.

The defence called no evidence to rebut this evidence.

On the basis of the evidence of PW1, PW2 and PW3, court finds that the plaintiff was shot on 10.04.2003 at Pato, Bobi Sub-county by UPDF soldiers, who were on patrol, causing him injury in the left leg and on the buttocks. The defence has offered no evidence as to why the shooting was done.

The answer to the first issue therefore is that excessive force was used to subdue and arrest the plaintiff.

Though counsel for defendant applied and added the issue of contributory negligence on the part of the plaintiff, apart from the fact that there was no attempt to amend the written statement of defence so as to plead the issue, defendant did not at all adduce any evidence to prove the issue. Indeed defence counsel abandoned the issue in his written submissions. Court therefore holds that the issue of contributory negligence on the part of the plaintiff has not been proved at all against the plaintiff.

As to remedies, the injuries suffered by the plaintiff are an amputation of the left leg below the knee. The amputation had to be done because the shooting had caused a through wound on the mid left leg with much tissue loss and commuted fracture of the left tibia and fibula. The conservative management of the leg failed, with the patient finally developing gangrene, thus necessitating amputation. The plaintiff can now move only by use of axillary clutches. He also developed reduced hearing: see exhibit P1: the medical report of medical officer, Gulu Regional Hospital dated 16.03.04.

There was no credible evidence adduced that the plaintiff's alleged current state of unsound mind as at the time of the trial was the result of the injuries received in the accident.

In KIGGUNDU VS UTC SUPREME COURT OF UGANDA, CIVIL APPEAL NO. 7 OF 1993, the amputation was above the knee: permanent disability was of 60%. Shs 5m/=

was awarded by trial court, but Supreme Court raised the same to shs 10m/= general damages. The victim in the case was 45 years old.

The Supreme Court, Uganda, also awarded shs 10m/= general damages from shs. 4m/= to a 16 year old plaintiff in MUTYABA LEONARD SEMBATYA VS AG: SCCA 21/94: (1995) 1 KALR 134, for an amputation through the knee. He was to move on clutches through out his life and permanent incapacity was 65%.

General damages of shs 50m/= were awarded by High court and confirmed by Supreme Court to an American professional sea diver who was, while in Uganda, in a Kampala city suburb, negligently shot and severely injured by Uganda police personnel, who mistook him for a car thief. He sustained severe injuries from the gun shots. He was aged 25 years: see SCCA No. 8 OF 1999 ROBERT COUSSENS VS ATTORNEY GENERAL.

In the cases referred to above, the victims were far much younger than the plaintiff in this case, who was 70 years old, at the time of the accident. The cases are also relatively old and inflation has eaten into the value of the Uganda shilling since they were decided.

Taking into consideration all the relevant circumstances, this court awards shs. 15,000,000/= general damages to the plaintiff in respect of the injuries suffered.

As for loss of income, the evidence adduced is that the plaintiff, used to earn shs 300,000/= to shs 400,000/= income per month from his business of blacksmith. No records were availed to court to support this assertion. There was no evidence as to what was being produced by the plaintiff and who was buying the products and at what price. The evidence on this aspect is thus highly speculative in the considered view of court.

Court however accepts the evidence that the plaintiff carried on the work of a blacksmith. In the assessment of court, given the fact that the business of blacksmith was a one person business, using local resources, such as fire for heating, and being carried out in a rural area, the plaintiff is assessed to have been earning at least shs 100,000/= per month, that is shs 1,200,000/= a year.

But for the injuries sustained which have made plaintiff's movements very restricted and also impaired his hearing, the plaintiff would possibly have carried on the business for another five years. Taking into account the imponderables of life, court awards the plaintiff shs. 3,000,000/= being loss of income.

As to exemplary damages, the evidence adduced for the plaintiff of himself, points to the plaintiff having been shot inadvertently. The UPDF soldiers involved immediately reported the shooting to the local council authorities of the area, participated in mobilizing effort of the civilians, relatives of the plaintiff inclusive, to rush the victim to hospital so as to have medical treatment. They at once explained to the authorities that the shooting was through inadvertency.

Such conduct of the soldiers, though is in respect of a wrong, cannot be said to be callous, oppressive and/or malicious and uncaring.

This court, given the conduct of the UPDF soldiers, in the circumstances of the case, finds that this is not a case where exemplary damages should be awarded. None are awarded.

As to special damages, the evidence that the plaintiff was hospitalized is not rebutted. According to PW1 plaintiff was in hospital for two (2) months, that is from 11.04.2003 to 13.06.2003.

PW1 claimed spending shs 320,000/= per month, inviting court to award him twice that amount for two(2) months spent in the hospital. But the total sum pleaded in the plaint is shs. 382,500/= for food and transport. The plaintiff is bound by his pleadings. A sum of shs 382,500/= is thus awarded to plaintiff as special damages.

In conclusion judgment is entered for the plaintiff against the defendant for:-

- (a) Shs. 15,000,000/= general damages
- (b) shs. 3,000,000/= loss of earnings.
- (c) Shs. 382,500/= special damages.

The sums awarded shall carry interest at 15% p.a. from the date of judgment in respect of the sums in (a) and (b) and from the 11.04.2003 in respect of the sum in (c) till payment in full.

The plaintiff is awarded the costs of this suit.

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Remmy Kasule

Judge

29th August 2008.