

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 1209 OF 1999

SSEKALO SAM DAN ::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

JOINT CLINICAL

RESEARCH CENTRE ::::::::::: DEFENDANT/2ND THIRD PARTY

BEFORE: HON. JUSTICE J.P.M TABARO

JUDGMENT

Sam Dan Ssekalo a passenger in Motor Vehicle Registration number 761 UDK on or about the 16th day of October 1998 on his way from Entebbe to Kampala. From the pleadings filed by the Plaintiff as well as the evidence adduced by him in support of the claim it is fairly clear that on the day in question at a place known as Kitinda some distance from Entebbe Municipality along the Entebbe – Kampala highway the vehicle named above got involved in an accident with another vehicle registration No. UE 1128 White in colour double cabin. It is the case for the Plaintiff that he was seated in the vehicle heading to Kampala when the double cabin truck knocked the vehicle in which he was travelling on the left side of the road along Entebbe – Kampala road.

From the record of proceedings it is amply clear that motor vehicle registration No.761 UDK is registered in the name of the Ministry of Education. At the scheduling conference a number of facts which are not contentious were admitted. Among the pieces of evidence admitted was the medical report showing the nature of injuries sustained by the Plaintiff consequent upon the accident. Also admitted were the date of the accident and ownership of the vehicle which was

moving from Kampala direction towards Entebbe, that motor vehicle registration No.UE 1128 that is the vehicle is the property of the Government of Uganda.

Initially it was not clear as to which party should be sued as the defendant. This was so because though registered in the name of the Ministry of Education the vehicle was attached to Makerere University, an Institution belonging to Uganda Government.

As a result originally the suit was filed against the Attorney General. Further search on fact revealed that the vehicle Reg. No. UE 1128 was under the control, possession and use of the Joint Clinical Research Centre, a body corporate, limited by guarantee. Consequently on 6-12-2001 an application was made to Court to have Joint Clinical Research Centre joined as a party by Third Party Notice, by the defendant. Earlier another application had been made to join Makerere University through Third Party Notice. Later on, on 14-12-2002 Counsel for Makerere University had asserted that the vehicle in question is under the ownership of Joint Clinical Research Centre. As already intimated the application was granted, and Joint Clinical Research Centre became a party to the suit. By consent of all parties the Third Party – JCRC was permitted to file the written statement of Defence out of time, after it had delayed, within 15 days from 11-11-2003. Hearing was fixed to resume on 30-3-2004. When the date of 30-3-2004 fell, JCRC had not filed any statement of defence (W.S.D). As a result an interlocutory judgment was entered against the defendant/Third Party (JCRC) in favour of the Plaintiff. Accordingly the suit was fixed for assessment of damages on 6-9-2004. The plaintiff claims both special and general damages.

From the notice of motion filed by third party/JCRC it would appear that it admitted liability for the accident at any rate annexures “A”, “B” and “C” indicated that some money was paid by JCRC to some of the victims of the accident. By consent of all the parties the suit was withdrawn as against Makerere University and the Attorney General of Uganda.

As trite that in Uganda vehicles move, on the left side of the road and courts take judicial notice of the fact. It is also a matter of principle now a precedent that vehicles normally do not collide or hit other objections unless there is some negligence on the part of one or more of the drivers,

even when driven at high speed **C. Kiwanuka Lwanyaga Vs. A.G. HCCS 69/82** before Byamugisha Ag. J. (as she then was). I am inclined to find that negligence is established against the driver of motor vehicle UE 1128. on a balance of probabilities by driving on the right side of the road which in fact was the correct side (left) for the vehicle travelling to Kampala from Entebbe he, the driver of Motor Vehicle UE 1128, was negligent. In absence of any evidence from the defendant/JCRC as hearing was ex parte after the defendant/JCRC failed to appear or adduce evidence there is nothing to suggest that the offending driver might have been acting outside the scope of his duties or employment. This finding leads to the question of damages available to the plaintiff.

Plaintiff testified as PWII and examined, through his Counsel, Mr. C. Ndogireho two other witnesses: Dr. Edward Ddumba, a medical officer, (PWI) and Florence Meme (PWIII) who appears to be a relative of the plaintiff. From the testimony of the plaintiff and Dr. Ddumba it is fairly clear that the plaintiff sustained extensive injuries. He lost consciousness, and regained it the following day. That is when he realised that he had sustained serious head injuries. Dr. Ddumba testified that the head injuries led to epilepsy which leads to a fall from time to time. He would appear to incontinent of urina while his left side of the body is weak and hence he cannot stand for a long time. He alleges that his sexual process has substantially diminished. He was once Primary School Mathematics and Science teacher but he cannot teach any more. He claims that he used to work as a clerk in Atlas Cargo Systems which is a Cargo clearing and forwarding company. Dr. Ddumba's opinion is that the plaintiff will need medication throughout his life. The disability is assessed, by Dr. Ddumba, at 30-40%. The amnesia resulting from the head injuries will improve and the plaintiff will eventually be free from it, with encouragement and medication.

As is well known damages are normally compensatory and hence the task of the court is to award damages that will put the plaintiff in the position he would have been in had the accident in question not occurred: as far as money can do it – **Visram & Karsan Vs. Bhall [1965] EA 789** Learned Counsel for the plaintiff quoted the well known case of **Robert Cousens Vs. Attorney General HCCS No. 467 of 1996** a High Court decision (before Onege J.) and submitted for the award of Shs.50,000,000/=. On appeal to the Court of Appeal of Uganda, and

the Supreme Court of Uganda, the award was upheld. The plaintiff in the case was a professional driver. He was shot by police resulting in serious injuries – his kidney was removed, the liver was extensively damaged, as was his right lung. A bullet entered through his back, damaging the lining of the right lung. After the attack the plaintiff in Cousens' case could not practise his profession any more. Needless to state there are no two cases which are identical. At best they can only be similar. The present plaintiff's injuries were not as extensive as those sustained by Cousens. In a case decided by this Court on 27-6-2008 the plaintiff sustained a head fracture of the left side and ulna bones, closed fracture of the right femur, fracture of the right tibia, abrasions of the right knee, and closed head injury. Plaintiff who was a veterinary surgeon was awarded shs.80,000,000/= general damages. His disability was assessed at 60%. The case is **Dr. Charles Mugenyi Kiiza Vs. Action Aid, High Court Civil Suit No.1312 of 1997** (unreported). In an earlier case, also decided by this Court, that is, **Nzaramba Ndambe Magnifique Vs. Happy Trails & Anor HCCS No.734 of 1997**, unreported, the plaintiff was an agricultural officer who lost the right arm in a motor accident. His capacity to perform the duties of an agricultural officer was greatly reduced. At the time of the accident he was aged 25 years. Court awarded shs.25,000,000/=. In evaluating the general damages awardable in this case I must take into account that since the decision in Cousens' case was made the purchasing power of the Uganda shilling was substantially diminished due to inflation. Taking these decisions into account for comparison and considering the injuries sustained by the present plaintiff and the resultant incapacity I am inclined to the view that 50,000,000/= (fifty million shillings) meet the ends of justice.

The plaintiff's claim for special damages concerns expenses on transport, medication, meals; he at the same time alleges that Florence Meme had entrusted him with shs.3,000,000/= (three million shillings). As I understand the principle, special damages must be strictly proved but there is no rule that documentary is the only way of proving them. The plaintiff was able to produce receipts to establish.

1,089,300/= medical expenses
3,000,000/= lost cash
35,000/= for a lost scientific calculator, and
92,000/= travel expenses.

The plaintiff received medical attention for several years and I therefore find the figure of 1,216,800/= reasonable and not exaggerated in any manner. The claim for 1,216,800/= special damages is therefore granted.

Florence Meme testified that the plaintiff is his maternal uncle and on the day in question she had gone to meet her mother who imports body oils, as a business, into the country. She had taken shs.3,000,000/= for purchase of body oils for her own business but when her mother failed to turn up at the airport, by air, that day she decided to give the money to her uncle for safe delivery home. When she arrived home she found that no such money had been delivered there because her uncle, the plaintiff had got involved in an accident. As a result she went to Mengo Hospital to find out what happened and in there the plaintiff was lying after hospitalisation due to the accident in question. On 17-10-1998 he had regained his consciousness and so she was able to talk to him. he explained that although he had put the money, shs.3,000,000/= in an envelope and next into a bag, he never saw again the bag or the envelope. They are presumed lost irretrievably. Paying attention to the tumour of the evidence, especially Florence Meme's explanation, I am inclined to believe the story could not have been fabricated. I believe it could not have been invented but is rather credible. Possibly the story might have been flavoured and embellished to make it a little higher but in absence of any evidence to rebut the account I am reluctant to discount of shs.3,000,000/= to replace what Florence Meme lost – the Plaintiff is entitled to claim it as he was in charge of it and was lost due to the negligence of the driver of the offending vehicle. In all the sum of shs.3,000,000/= plus shs.1.216,800/= totalling to shs.4,216,800/= special damages shall be awarded. There will be a decree for shs.54,216,800/= with costs. Interest is awarded till payment in full.

J.P.M Tabaro

Judge

27-8-2008

27-8-2008 Plaintiff present

Defendant not present

Mr. C. Ndozireho for Plaintiff

Judgment delivered

J.P.M Tabaro

Judge

27-8-2008