THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

HCT-OO-CV-CS-0130-2008

WEKESA JOHN PATRICK:::::::::::::::::::::::::::::::::::::: PLAINTIF

VERSUS

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

BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE

RULING:

When this suit came up for a scheduling conference on 22/10/08, Mr. Bafilawala Elisha for the defendant raised two distinct points of law.
He argued:

1. ***That the suit is bad in law in that the plaintiff while instituting the suit never served the Attorney General with the Mandatory Statutory Notice.***

2. ***That the plaint does not disclose a cause of action.***

As regards the first objection, he contended that under paragraph 3 of the plaint, the plaintiff states that the claim against the defendant is for general and punitive damages as compensation for injuries sustained while in the course of employment and as a result of the negligence of the defendant whereas in the Statutory Notice, annexture E to the plaint, the plaintiff put the defendant on notice that he would only be seeking general and special damages arising out of disability caused while in the course of his employment. The implication is that the prayer for punitive damages and the averment as to negligence in the plaint are a departure from the Statutory Notice in the sense that the two are not mentioned therein.

Learned Counsel for the plaintiff, Mr. Wamukota, does not agree. According to him, the defendant was informed about the matter in a Notice dated 25/3/08. Under this Notice the plaintiff said that he would be praying for special and general damages in respect of injuries sustained by the plaintiff in the course of his employment. And this is what appears in paragraph 3 of the plaint. That the defendant by that notice was aware that the plaintiff sustained injuries resulting in the suit.

I have addressed my mind to the arguments of Counsel. The plaintiff is a Magistrate Grade I. As such, he is an employee of the Government of Uganda. From the pleadings, on 06/07/2007 he was attacked by a vicious litigant. He was visiting locus in quo of a land dispute in Pallisa District. As a result of the attack, he sustained injuries for which he now seeks compensation from the defendant.

I would agree with the submission of learned Counsel for the plaintiff that what was important in a case such as this was for the defendant to know that the plaintiff was his employee and that he was injured in the course of his employment. To this extent the defendant was informed. As to the particulars of the negligence, these appear in the plaint. Failure to particularize them in the Notice was in my view not fatal to the plaintiff's claim. I am saying so because if the purpose of the notice to the defendant is for him to investigate the claim, and I believe that to be the case, what is contained in the notice gave the defendant herein adequate notice as to what the plaintiff would be seeking. The notice could of course have been a little more detailed. However, failure to do so would not vitiate his claim. I would therefore think that since equity looks to the intent rather than the form, the objection lacks merit. It ought to be rejected and I do so.

As to the second objection, learned Counsel for the defendant contended that under paragraph 5 of the plaint, the plaintiff states that the deft is vicariously liable to compensate him under the Employment Act and in negligence for the disability he sustained following the attack. Counsel submitted that suits against the Attorney General must contain a statement indicating how the Attorney General is vicariously liable; that it is important to plead the capacity in which the Attorney General is being sued and state how the policemen were acting in the

course of employment.

I have also addressed my mind to this issue.

In paragraph 2 of the plaint, the plaintiff states that ***"The defendant is the Attorney General of Uganda with the capacity to sue or be sued."*** He does not state that he is being sued in his representative capacity. I am surprised that learned Counsel for the plaintiff does not see this omission in the plaint.

Be that as it may, in paragraph 3 of the plaint the plaintiff states the circumstances in which the suit is brought. He states that the compensation sought in the suit is ***"for injuries sustained while in the course of employment and as a result of negligence of the defendant."*** He then sets out the facts, the cause of action and how it arose and the particulars of negligence. Among them is that the defendant failed to provide adequate personnel to the plaintiff. I am of the view that this is adequate notice to the defendant that injury was as a result of inadequate security. Whether or not this renders the defendant liable is a matter to be determined on evidence.

It is trite that a cause of action means the fact or a combination of facts which gives rise to a right of action. ***Halsbury's Laws of England, 4th Edition*** (Re-issue). Vol. 37 at p. 24 explains ***'cause of action'*** in those words:

> ***"Cause of action. 'Cause of action'*** has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person. The phrase has been held from the earliest time to include every fact which is material to be proved to entitle the claimant to succeed, and every fact which the defendant would have a right to traverse. ***'cause of action'*** has also been taken to mean the particular act on the part of the defendant which gives the claimant his cause of complaint, or the subject matter or grievance founding the

claim, not merely the technical cause of action."

It is such an important aspect of our law that 0.6 r.1 (a) requires all pleadings, generally, to contain a brief statement of the material facts on which the party pleading relies for claim or defence. Under 0.7 r.1 (e), the plaint must contain the facts constituting the cause of action and when it arose. The consequences of non-compliance are grave. They are set out in 0.7 r.11. Under this Rule, a plaint which discloses no cause of action must be rejected by court.

It is, in my view, settled law that the question whether or not a plaint discloses a cause of action must be determined upon perusal of the plaint alone, together with anything attached as to form part of it, and upon the assumption that any express or implied allegations of fact in it are true: ***Jeraj Shariff & Co. vs. Chotal Fancy Stores f19607 EA 374 at 375.***

I have had a look at the plaint. In paragraph 4 thereof, the plaintiff states that he is an employee of Government in the capacity of a Magistrate; that while visiting locus in quo on 06/07/2007 and in the course of his employment, he was attacked by one of the parties who nearly killed him. As a result of that attack, he suffered and/or sustained serious injuries. He has set out in the plaint the alleged particulars of negligence to include failure to provide adequate security to the plaintiff while in the course of his employment and police personnel keeping a distance of 40 metres away while the plaintiff was being injured: and the refusal and failure to arrest and disarm the assailant by the police.

In ***Auto Garage & Others vs. Motokov (No. 3) (19711 EA 514,*** Spry V. P. summarized the test to be applied in determining whether or not a plaint has disclosed a cause of action.

He said:

> ***"I would summarise the position as I see it by saying that if a plaint shows that the plaintiff enjoyed a right, that the right has been violated and the defendant is liable,***

then, in my opinion, a cause of action has been disclosed and any omission or defect may be put right by amendment. If on the other hand, any of those essentials is missing, no cause of action has been shown and no amendment is permissible."

Now the contents of paragraph 4 of the plaint purport to show, in my opinion, that the plaintiff enjoyed a right. And what was that right? The right to be protected by the police in the performance of his duty. He has pleaded that the right was violated and that as a result of that violation he sustained injury. He attributes the violation to the servants of the defendant. The defendant denies it and says that the plaintiff consented to the injury. It is not necessary at this stage to consider whether the plaintiff would succeed. The plaintiff has only to present such facts as would satisfy court that the plaint discloses a reasonable cause of action. The points raised by Mr. Bafilawala respectfully relate to the merits of the defence. The decision as to merits can only be made after hearing the parties to the suit. Accordingly, the attacker may not have been an employee of the defendant but the policeman who allegedly stood by as the attacker caused harm to the plaintiff were in the view of the plaintiff acting in the course of their employment. He has demonstrated that he had a right, that the right was violated and the reasons for holding the defendant liable for the violation. The plaint in my view discloses a reasonable cause of action. Any omission or defeat may be put right by amendment, if the plaintiff so chooses.

I would also reject the second objection.

In the result, both objections are disallowed. The plaintiff will have seven (7) days from the delivery of this ruling to adjust his pleadings, should he desire to do so. The defendant shall also have the same amount of time after being served to do so, should he so desire. The case is fixed for a scheduling conference on 8/12/2008 at 10.00 a.m. Costs herein shall abide the outcome of the suit. Orders accordingly.

Yorokamu Bamwine
JUDGE

O5/11/O8

5/11/08

Mr. Kikwe Allan for plaintiff

Mr. Bafilawala for defendant

Plaintiff present.

Court:

Ruling delivered.

Yorokamu Bamwine **JUDGE**

5/11/08