THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

CIVIL REVISION NO. 0011 OF 2009

[Arising from Mukono Civil Suit No. 059 of 2008, formerly Nakawa & Jinja HCCS No. 162 of 2004]

TWINE AMOS :: APPLICANT

VERSUS

TAMUSUZA JAMES:: RESPONDENT

BEFORE: THE HON. LADY JUSTICE IRENE MULYAGONJA KAKOOZA

ORDER IN REVISION

The applicant brought this application under the provisions of s. 83 of the Civil Procedure Act (CPA). He sought for the revision of the proceedings in Mukono C/S 59 of 2008 and for an order setting aside the judgment of Ms Sarah Langa (Magistrate GI) where she ordered that he pay a total of shs 15,076,000/= being compensation, special and general damages for loss of life of the respondent's son, as well as costs of the suit.

The brief facts from which the suit arose where that the respondent (plaintiff in the suit) was the father of Tamusuza Kenneth (hereinafter sometimes referred to as "the deceased"), a boy who was 12 years old and a student in Senior One at Mukono Town Academy in Mukono District. The applicant (defendant in the suit) was the registered owner a Motor vehicle, Toyota Hiace Omnibus, Reg. No. UAE 858. On 14/12/2004, while he was riding a bicycle at Kigombya on Kampala-Jinja Highway, Kenneth was knocked down by the applicant's said motor vehicle. After he hit him, the driver of the m/v sped away from the scene without stopping. The respondent claimed that the driver was negligent and relied on the principle *res ipsa loquitur*. He sued the applicant as owner of the offending motor vehicle for allowing a person not known to him to drive it. He brought no suit against the driver whose identity was never established. In his suit, the respondent claimed special damages of up to shs 1,686,000/= being the cost of transporting the body of the deceased to Lugazi Hospital as well as funeral expenses. He also claimed general damages for losing his son who was at the time doing well in school, stating that he was a highly promising child.

Though summons to file a defence were served upon him personally, the applicant did not file a written statement of defence. As a result, an interlocutory judgment was entered against him and court proceeded to assess damages in the suit. Judgment was delivered on 6/01/2009 and eventually, execution issued against him for he failed to pay the decretal sum. He was arrested in execution and sent to civil prison. He brought this application for revision of the proceedings because in addition his other m/v was also attached and sold in execution.

The application for revision which was brought by notice of motion was supported by the affidavit deposed on behalf of the applicant on 29/05/2009 by Magambo Victor, an advocate. The advocate who was practicing with the firm of Muhanguzi, Muhwezi & Co., Advocates made the deposition because the applicant was still in prison. The grounds of the application were briefly that the suit was filed in the High Court at Nakawa as C/S No. 162 of 2004 and though summons to file a defence were served upon him on 12/11/2004 the applicant did not file a defence. He complained that the claim in the plaint was not liquidated but judgment in default was entered against him under Order 9 rule 6 of the Civil Procedure Rules (CPR). Further that though hearing notices were issued in the suit on 14/04/08, it was not proved to court that they were served on him before the suit was heard. He also complained that the court went on to hear the suit without notifying him that the suit had been transferred to another court and the serial number in the records changed.

The applicant further complained that in arriving at her decision, the trial magistrate relied on documents that had not yet been admitted in evidence as exhibits. Further that the trial magistrate relied on them in order to connect him to the motor vehicle that caused death of the respondent's son and hold him vicariously liable for the accident. He also complained that the trial magistrate awarded compensation for the death of the respondent's son which was manifestly excessive in the circumstances. Also that the compensation awarded was neither pleaded in the plaint nor specifically proved in court.

The applicant went on to state that after judgment was entered against him he was arrested and detained in civil prison for failing to pay the decretal amount. That in spite of this, the trial court issued a warrant for the attachment and sale of his property which was also effected. He finally averred that he was aggrieved by the manner in which the whole of the proceedings were conducted, as well as the execution. He thus sought revision of the proceedings in order to have them set aside as well as the judgment and orders of the trial magistrate.

The respondent filed an affidavit in reply to oppose the application. In the affidavit which was dated 14/09/2009, the respondent stated that by information from his advocates, he believed the application was incompetent. He charged that it did not show that the court exercised its jurisdiction illegally or with material irregularity. He further averred that the applicant filed an application to set aside the *ex parte* judgment and applied for extension of time within which to file a written statement of defence (WSD) but the same was dismissed. That the said application was dismissed because the applicant locked himself out of the proceedings when he failed to file a WSD. The respondent further averred that the applicant failed to appeal against the said decision and as a result his efforts to have the proceedings set aside in this application were an abuse of court process. The respondent further averred that the applicant still owed him shs 8,756,000/= as part of the decretal sum and costs which he had refused to pay. He therefore objected to this application.

The application was set down for hearing on 30/06/2009 but it did not take off because Mr Muhwezi who represented the applicant was absent. The matter was then adjourned to 15/09/2009. The application was not heard on that day because I was engaged in a criminal session at Mukono. In the presence of and by consent of both parties the application was adjourned to 9/12/2009. On that day, Mr. Muhwezi for the applicant turned up for the adjourned hearing with his client but the respondent did not. As a result, court allowed Mr. Muhwezi to proceed *ex parte* under Order 9 rule 20 CPR.

In his submissions, Mr. Muhwezi repeated the contents of the affidavit in support of the application. He added that the suit was filed as an ordinary suit yet it had to be filed under the provisions of the Law Reform (Miscellaneous Provisions) Act. He submitted that the suit was illegal for that reason. He further pointed out that the trial magistrate relied on documents that had not been admitted in evidence, i.e. the deceased's school reports and a statement made by the respondent at Mukono Police Station after the accident. He said that the two documents were brought on record and marked as identification items awaiting being produced by competent witnesses but that did not happen. He submitted that the trial magistrate's reliance on them was irregular.

Mr. Muhwezi also complained that the trial magistrate awarded special damages to the respondent but the amounts claimed were not specifically proved as is required by law. Further that she awarded compensation to the respondent which was neither pleaded nor proved. He contended that

the amount of shs 10m so awarded was manifestly excessive in the circumstances. In addition to the above, Mr. Muhwezi complained that after he failed to pay the decretal amount, the applicant was arrested and sent to a civil prison for a period of 6 months which he served. Further, that while he was still in prison, a warrant was issued for the attachment of his property and it was executed. He submitted that this was illegal because s. 38 of the CPA provides that each mode of execution in supposed to be independent but in this case two modes of execution were employed concurrently. Mr. Muhwezi expressed fear that due to the warrant of attachment, the applicant was still in danger of having execution levied against his property. He finally submitted that this is a proper case in which the proceedings should be revised and the judgment and orders therein set aside.

Although he did not attend the hearing of the application, s.83 of the CPA provides that before the court entertains a matter in revision, the parties thereto should be heard on the matter. Since he filed an affidavit to oppose the application, I considered the respondent's averments in that affidavit together with Mr. Muhwezi's submissions in the disposal of this application. Several issues arose from Mr. Muhwezi's submissions and the respondent's affidavit as follows: -

i) Whether the filing of this application was an abuse of the process of the court;
ii) Whether the failure to specify that the suit was filed under the Law Reform (Miscellaneous Provisions) Act rendered the whole proceeding before the trial court illegal and a nullity;
iii) Whether the trial court properly entertained the respondent's suit *ex parte*;
iv) Whether the trial magistrate's reliance on identification items as evidence was proper;
v) Whether there was sufficient evidence to prove that the applicant was vicariously liable for the death of the deceased.
vi) Whether special and general damages were properly and legally awarded to the respondent; and finally,
vii) Whether execution proceedings against the applicant issued in a legal and proper manner.

I now proceed to address the issues in the same order that they appear above.

With regard to the 1st issue, the respondent challenged the propriety of this application because according to his lawyers, then Murungi, Kairu & Co. Advocates, the applicant did not plead or show that the trial court exercised it jurisdiction illegally or acted with material irregularity.

Subsequent to filing his affidavit in reply to this application, the respondent withdrew his instructions from the said advocates and instead instructed M/s Tusasirwe & Co. Advocates who filed a notice of change of advocates in this court on 7/10/10. In spite of that, the latter sent no advocate to court on 10/02/2010 when the application proceeded *ex parte*. When they came to know that the matter proceeded ex parte, on 10/09/10, the respondent's former advocates, Murungi, Kairu & Co. wrote to the Assistant Registrar of this court to complain that the application was not properly before court for the same reasons stated in the respondent's affidavit in reply. They purported to "advise" court that Mr. Muhwezi's reference to "illegality" in the proceedings was a misconception because illegality was never referred to by the applicant in the notice of motion filed in court. They concluded that this court should find that the applicant did not satisfy the test for this court to exercise its powers in revision.

I ignored the fact that the respondent had withdrawn his instructions from M/s Murungi, Kairu & Co. Advocates and considered this point which they thought would dispose of the whole application. I would have considered it anyway because it was mentioned in the respondent's affidavit in reply. What is of interest in their belated submissions by letter is their view which seems to be that in order to qualify for consideration by this court an application for revision must regurgitate the wording of s.83 CPA, that the court *"acted in the exercise of its jurisdiction illegally or with material irregularity or injustice"*.

Black's Law Dictionary (9th Edition) defines revision as *"a re-examination or careful review for correction or improvement"* or *"an altered version of work."* In **Mabalanganya v. Sanga [2005] 2 E.A. 152**, the Court of Appeal of Tanzania held that in cases where it exercises its revisional jurisdiction under s.4 of the Appellate Jurisdiction Act of Tanzania, its duty entails examination by the Court of the record of any proceedings before the High Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision and the regularity of any proceedings before the High Court. I think that the parameters set by that court would properly apply to the High Court of Uganda in its revisional jurisdiction.

In **Hitila v. Uganda [1969] 1 E.A. 219**, the Court of Appeal of Uganda held that in exercising its power of revision the High Court could use its wide powers in any proceedings in which it appeared that an error material to ***the merits*** of the case or involving a miscarriage of justice had occurred. It was further held that the Court could do so in any proceedings where it appeared from

any record that had been called for by the Court, or which had been reported for orders, or in any proceedings which had otherwise been brought to its notice.

As I ruled in a recent decision in the case of **Munobwa Mohamed v. Uganda Muslim Supreme Council, Civil Revision No. 001 of 2006,** the powers of this court in revision are not limited. Though some courts in Uganda have followed decisions of the Indian Courts to come to the decision that decisions that can be appealed cannot be revised by this court, I am of a contrary view. The powers of this court in revision do not seem to be precluded in cases where an appeal could be preferred. I am fortified in this finding by the decision in **Charles Kasirye v. M. D. Patel [1972] ULR 106**, where Faud, J. ruled that unlike the position in India under s. 115 of the Indian Code of Civil Procedure the revisional power of the High Court was taken away where an appeal lay. Perusal of the Indian Code of Civil Procedure (1908, as amended) shows that s.115 (2) thereof provides as follows"

> **"(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto."**

The CPA in this jurisdiction has no such provision. Therefore this court *can* revise a decision under s.83 CPA even where an appeal would lie. Suffice it to add that ordinarily, when this court entertains an appeal, it often revises the proceedings of the lower court. I therefore find that the applicant's failure to appeal the decision refusing to set aside the interlocutory judgment in order that he may also have leave to file a WSD and defend the suit did not in any way bar him from bringing this application. The application was therefore properly before court under the provisions of s.83 CPA and was not an abuse of court process.

With regard to the 2nd issue, the plaint was an ordinary one following the provisions of Order 6 CPR and the plaintiff did not state that the action was brought under the provisions of the Law Reform (Miscellaneous Provisions) Act. In **Uganda Electricity Board v. G. W. Musoke [1997] HCB 23,** the Supreme Court of Uganda observed that the purpose of the Law Reform (Misc. Provisions) Act which incorporated the provisions of the Fatal Accidents Act (1846) of England (otherwise known as Lord Campbell's Act) was to provide for a new cause of action. This would enable the dependants of the deceased to claim compensation for the loss suffered as a result of his/her death. The Act provided exceptions to the common law position expressed in the case of

Baker v. Bolton & Others (1808) **1 Camp 493** (or **170 ER 1033)** that death could not give rise to a cause of action on other persons even if they were dependants of the deceased.

That being the common law position on actions for the death of another, which still is and has always been recognized by the law in Uganda, it had been held earlier in **Ali Mustafa v. Sango Bus Company [1975] HCB 91,** at p.92, that fatal accident claims could only be based upon the Law Reform (Misc. Provisions) Act. Further that if that fact was not pleaded the plaint disclosed no cause of action. Allen, J. went on to hold that if no statute was referred to in the plaint, the presumption would be that the tortuous claim was brought under the common law as a result of which there would be no cause of action established by the plaintiff. Allen, J. then rejected the plaint under Order 7 rule 11 (a) CPR.

Likewise, the plaint in this suit ought to have been rejected. I therefore find that the proceeded upon an incompetent plaint that raised no valid cause of action against the applicant. The resultant proceedings were therefore illegal and a nullity.

As to whether the trial court properly entertained the respondent's suit *ex parte*, the applicant's complaints were three: i) entering an interlocutory judgment against him in the suit under Order 9 rule 6 CPR in the absence of a liquidated demand in the plaint; ii) failure to notify him that the suit had been transferred from the High Court at Nakawa/Jinja to the Magistrates Court at Mukono, and iii) failure to serve notice of the hearing of the suit on him. I will address the three complaints in the same order.

Order 9 rule 6 CPR which counsel for the applicant argued was the was not the correct provision under judgment should have been entered in the suit provides as follows:

> **"Where the plaint is drawn claiming a *liquidated demand* and the defendant fails to file a defence, the court may, subject to rule 5 of this Order, pass judgment for any sum not exceeding the sum claimed in the plaint together with interest at the rate specified, if any, or if no rate is specified, at the rate of 8 percent per year to the date of judgment and costs."**
>
> {**My Emphasis**)

The operative phrase for entering judgment in the provision above is *"liquidated demand."* Osborn's Concise Law Dictionary (7th Edition, Sweet & Maxwell) defines "liquidated" as fixed or

ascertained. According to Black's Law Dictionary (6th Edition) a liquidated claim is an amount which has been agreed upon by parties to the action, or one that is fixed by operation of law. What then needs to be answered in this case is whether the plaint in this suit had any claim for a sum of money that had been agreed upon by the parties or which was fixed by the operation of law.

In paragraph 10 of the plaint, the respondent claimed special damages that arose out of the death of his son. He listed several items in the particulars of special damage with amounts claimed for each of them. However, it is still the law in this jurisdiction that special damages must not only be specifically pleaded but they must also be strictly proved. Therefore, the amount of shs 1,686,000/= that the respondent claimed could not be described as a liquidated demand.

On the other hand, Order 9 rule 7 CPR provides as follows:

> **"Where the plaint is drawn with a claim for *pecuniary damages only* or for detention of goods with or without a claim for pecuniary damages, and the defendant fails or all defendants, if more than one, fail to file a defence on or before the day fixed in the summons, the plaintiff may, subject to rule 5 of this Order, *enter an interlocutory judgment against the defendant or defendants and set down the suit for assessment by the court* of the value of the goods and damages or *the damages only,* as the case may be, in respect of the amount found to be due in the course of the assessment."**
>
> **{My emphasis}**

Given his claims in the plaint, I would say that the above was the correct provision for entering judgment against the applicant here. I therefore find that the D/Registrar entered the interlocutory judgment against him in contravention of provisions of the CPR. I would then add that although he entered judgment under the wrong provision, realising that the plaintiff's claim was not liquidated proposed to set down the suit for hearing, as would have been done had the interlocutory judgment been properly entered under order 9 rule 7 CPR. I therefore find that entering judgment under Order 9 rule 6 was only irregular and the irregularity was not a material one because thereafter the court followed the correct procedure when the suit was set down for assessment of damages.

With regard to the complaint that notice of the hearing was not served upon him, Order 9 rule 10 lays down the general rule where no defence is filed. It provides that in all suits that are not specifically provided for in Order 9, in case the defendant does not file a defence on or before the

day fixed, upon filing an affidavit of service of the summons upon the defendant, the suit may proceed as if that party had filed a defence.

The next step that should take place in the suit is setting it down for hearing, i.e. if no judgment could be entered on the whole claim without proof of it. In that regard Order 9 rule 11 (1) CPR provides as follows:

> (1) **At any time after the defence or, in a suit in which there is more than one defendant, the last of the defences has been filed, *the plaintiff may, upon giving notice to the defendant or defendants, as the case may be, set down the suit for hearing.***
>
> **{My emphasis}**

My understanding of the provision above is that notice of the hearing of the suit is to be served on a party who has filed a defence, not on one who failed to filed his/her defence as required by the summons issued to him/her. When he failed to file a defence, the defendant/applicant opened the door for the plaintiff to proceed *ex parte* in the suit which he did under the provisions of Order 9 rule 11(2) which provides as follows: -

> **"(2) Where the time allowed for filing a defence or, in a suit in which there is more than one defendant, the time allowed for filing the last of the defences has expired and the defendant or defendants, as the case may be, *has or have failed to file his or her or their defences, the plaintiff may set down the suit for hearing ex parte."***
>
> {**My emphasis**}

It is important to note that as opposed to rule 11(1) rule 11(2) of Order 9 does not require the plaintiff to give notice to a defendant who has failed to file a defence. The suit proceeds *ex parte*, that is in the absence of the other party, the defendant. I therefore cannot fault the respondent or the trial court for proceeding to hear the suit in the absence of the applicant. That being the position of the law on that point, it automatically follows that there was no obligation on the court or on the respondent to notify the applicant that the suit had been transferred to another court either.

Turning to the documentary evidence that the trial magistrate relied upon, the record of proceedings shows that the plaint had several documents annexed to it. During his testimony the

plaintiff sought to introduce some of them in evidence, for example the accident report, the statement of Twine Amos recorded at Mukono Police Station and the report cards of the deceased. At each point of introducing a document counsel for the plaintiff sought to have it taken in for identification and the trial magistrate granted his prayers. As a result, the accident report was recorded as tendered for identification and marked **I.D1**. Similarly, the statement of Amos Twine was marked **I.D2** while the report cards were marked **I.D3** and **I.D4**. As a result, there were only two documents, i.e. the receipt issued by Executive Tomb Finishers and another issued for the accident report, there were admitted in evidence and marked **Exh.P1** and **P2**, respectively.

In her judgment the trial magistrate found that the plaintiff proved that the motor vehicle in question belonged to the applicant and that he was vicariously liable for the accident and therefore the death of the respondent's son. It was contended for the applicant that she could not have arrived at this finding except by relying on **I.D2**, the statement that the applicant made at Mukono Police Station on 15/12/2003. That in view of the fact that it was only produced for identification by the respondent, it could not have been relied on as evidence.

I agree with counsel for the applicant that the trial magistrate could not properly come to the finding that the applicant was the owner of the accident vehicle without relying on **ID.2**, because it was in that he acknowledged ownership of the offending vehicle. Though she did not refer to the document in her judgment she must have relied on it since there was no other evidence to prove ownership except the applicant's own admission in that statement. That being the case, the trial magistrate relied on a document that had not yet been admitted in evidence. In **Des Raj Sharma v. R (1953) 20 EACA 310,** the Court of Appeal for Eastern Africa held that there is a distinction between exhibits and articles marked for identification. That the term 'exhibit' should be confined to articles which have been formally proved and admitted in evidence. The same was held by the Court of Appeal of Uganda in **Okwanga Anthony v. U [2001-2005] HCB 36.** I therefore find that the trial magistrate's reliance on the applicant's statement was not only improper but illegal. The statement first had to be proved by the police officer who recorded it before the court could be satisfied that it was indeed a statement made by the applicant.

As to whether there was sufficient evidence to prove that the applicant was vicariously liable for the death of the deceased, in order to prove vicarious liability, it must first be proved that the person who committed the offending act was acting in the course of his/her employment with the party charged. In **Muwonge v. Attorney General [1967]1 EA 17**, it was held that an act may be

done in the course of a servant's employment so as to make his master liable even though it is done contrary to the orders of the master. Further that even if the servant is acting deliberately, wantonly, negligently or criminally, or for his own benefit, nevertheless if what he did is merely a manner of carrying out what he was employed to carry out then his master is liable.

In the instant case, the driver of the offending motor vehicle was never identified. He was therefore never sued. Thought the applicant did not file a defence, it could not be assumed that the driver at the time of the accident who was stated to have ran away after the accident was the employee of the applicant. That fact not only had to be pleaded in the plaint but it had to be proved by evidence adduced in the suit. The police statement (**I.D2)** which was still an article for identification by the end of the proceedings could not be the basis for holding that the driver at the time was the applicant's employee because it never became evidence in the suit. I therefore find that there was insufficient evidence on the record to establish this crucial fact in the exposition of the principle of vicarious liability. Holding that whichever person drove the motor vehicle was an employee of the applicant could have occasioned a miscarriage of justice.

Turning to the complaint about the damages awarded to the respondent, the basic principle in the assessment and award of damages is *restitutio in integrum;* (**Simeey Tumusiime & 2 Others v. Henry Twinomugabe & Another [1997] HCB, 69**). If the plaintiff has suffered damage that is not too remote, he must, so far as money can do it, be restored to the position he would have been in had that particular damage not occurred. (John G. Flemming, *The Law of Torts*, 6th Edition; the Black Book Company, at page 222.) It is also the rule that where a party seeks special damages in a suit the same should not only be specifically pleaded but they should also be strictly proved. Failure to satisfy those two requirements of the law renders the whole claim bad in law. {**See Perusi Nanteza v. Sugar Corporation of Uganda & Another, [1997] HCB, 66**.}

In this case the respondent claimed special damages of shs 1,686,000/ only. In his testimony he produced two receipts towards the proof of this claim which both amounted to shs 350,000/=, only. Regardless of that the trial magistrate ruled:

> *"With regard to the third issue, during the hearing the plaintiff listed all the expenses incurred and some receipts Exh P1 and P2 were tendered in court. It was also understandable that for some items receipts were not given. However, court finds that*

the special damages were specifically proved and hence the plaintiff is entitled to the special damages prayed for."

In **NBC Holding Corporation v. Mrecha [2000] 1 EA 174**, the Court of Appeal of Tanzania considered a decision in which the trial judge awarded special damages on the basis of reasonableness of the expenses incurred by the plaintiff on a business trip that was in issue. The court ruled:

"We think reasonableness cannot be the basis for awarding what amounted to special damages, but strict proof thereof. The Respondent tendered no receipts to establish the claim but conceded that he had none."

For that and other reasons the court disallowed the claim. In the instant case the respondent proved only shs 350,000/= being the cost of finishing the grave and an accident report. For the items not proved strictly I would allow a total of shs 500,000/= because they were reasonable expenses that would be incurred on the burial of any deceased person and which would have been allowed under the provisions of s.10 of the Law Reform (miscellaneous Provisions) Act, had the suit been properly filed under that law. I therefore would have awarded a total of shs 850,000/= as special damages.

Regarding the general damages for loss of life of his infant son the trial magistrate awarded shs 3,000,000/=. She however did not show how she came to that award. All she did was observe in her judgment as follows: -

"What I must state is that there is no monetary value for life. However, court is mindful of the loss suffered by the parents of the deceased and for that loss general damages will be awarded. The driver had no remorse when he continued to drive with the deceased under the car."

She then awarded shs 3m as general damages as if to say that the applicant would be punished for those specific acts showing lack of remorse, but not due to any known principles for such awards.

The principles for the award of general damages for loss of a child in Uganda were clearly laid down in the case of **Suleimani Muwanga v Walji Bhimji Jiwani & Another [1964] EA 171.** In

that case the High Court of Uganda (Udo Udoma J., as he then was) held that courts should take judicial notice of the fact that African children are usually educated by their parents at great expense involving more often than not great personal sacrifice. Such children are naturally in turn expected to assist in domestic work while at school, and after school on gaining employment, to make contribution towards the maintenance of the family, the term family being used to refer to the extended family. The principles were also discussed by the Supreme Court in the case of **Uganda Electricity Board v. Musoke, S/C Civil Appeal No. 30 of 1993** where it was held that the sum of shs 1m, at the time, would be awarded for loss of a child. This court also had occasion to further discuss them in the case of **Frank Makumbi v. Kigezi African Bus Company Ltd. [1986] HCB 69,** where it was held (Okello, Ag. J, as he then was) that for a claim for loss of services to succeed the claimant must prove that the child was capable of rendering services to the parents. It is these principles that trial magistrate ought to have addressed her mind to before arriving at her decision.

Save for the principles upon which it was based, I have no quarrel with the award of shs 3m as general damages taking the standard of shs 1m that was established by the Supreme Court in **UEB v. G.W. Musoke** (supra). I would uphold the award had the whole claim been properly brought before court because the inflation rate in Uganda in 2008 when the judgment was delivered was 6.10% (consumer price index). However, in addition to the sum of shs 3m the trial magistrate also awarded shs 10m as compensation. I think that award in addition to the award of general damages, which are awarded as compensation for loss of life and amenities in a case of this nature, was not justifiable under any law. I would set it aside and replace it with nothing.

I finally turn to the issue whether execution proceedings against the applicant issued in a proper and legal manner. On 3/11/2008 the trial magistrate taxed the plaintiff's advocates bill of costs and allowed it at shs 1,080,000/=. Execution issued against the applicant for him to pay shs 15,756, 000/=, being compensation, special and general damages and the costs of the suit. After a notice to show cause why he should not be arrested in execution was issued, the applicant appeared before court on 6/01/2009. He gave no sufficient cause why he should not be arrested and imprisoned for failure to pay and he was sent to prison for 6 months till he pays or for the whole period if he failed to do so.

Before the expiry of the 6 months of his sentence, on 26/02/2009, M/s Murungi, Kairu & Co., the advocates of the respondent wrote to the trial court informing the magistrate that they had found

property of the applicant that could be attached in execution of the decree. It was a motor vehicle Toyota Hiace Omnibus, Reg. No. UAJ 051. As a result, on the 2/03/2009 the trial magistrate issued a warrant for the attachment and sale of the said motor vehicle to recover shs 15,756,000/=. Although there is no return of the warrant on file, in paragraph 10 of his affidavit in reply to this application, the respondent stated that the applicant still owes him shs 8,756,000/=. This would mean that the m/v was sold in execution of the decree and some money was paid to him. That would then imply that satisfaction of the decree was effected by two modes, by imprisonment of the applicant for 6 months and by sale of his motor vehicle. and for that the applicant claimed he was aggrieved.

The powers of the court to enforce execution are provided for by s.38 of the CPA which provides that the court may order execution of the decree by the methods stated therein. In this case, execution could have been levied under sub-sections (b), (c) and (d) of s. 38 CPA, i.e. by attachment and sale of property, attachment of debts and by arrest and detention of the judgment debtor. It is to be inferred from Order 22 rule 18 that execution may be simultaneous, i.e. by levying different modes of execution for the same decree because rule 18 provides as follows:-

> **“18. Simultaneous execution.**
> **The court may, in its discretion, refuse execution at the same time against the person and property of the judgment debtor.”**

I therefore find that it was within the discretion of the court to allow simultaneous execution to be levied for as long as the decree had not been satisfied.

But there is a limit to such execution if the judgment debtor is in detention. S. 42 of the CPA provides for detention and release from civil prison. It is there provided that every person detained in prison in execution of a decree shall be so detained, except that he or she shall be released from such detention before the expiration of the period of six months or six weeks, as the case may be, on the amount mentioned in the warrant for his or her detention being paid to the officer in charge of the prison. He/she may also be released with the leave of the court, on the decree against him or her being otherwise fully satisfied, or with the leave of the court, on the request of the person on whose application he or she has been so detained; or on the omission of the person, on whose application he or she has been so detained, to pay subsistence allowance.

Subsection 2 of s.42 CPA then goes on to provide that a judgment debtor released from detention under this section shall not merely by reason of the release be discharged from his or her debt, but he or she shall not be liable to be rearrested under the decree in execution of which he or she was detained in prison.

After the applicant was detained, there were efforts to recover the judgment debt by selling his m/v, but it seems not the whole amount claimed on the decree was recovered. That being the case, there was no leeway for him to be released because the debt had not been satisfied. He had to serve the whole of the 6 months that had been ordered by court. I could not fault the court for levying further execution against him when he was still in prison, had not the whole suit been improper. Had it been legal and proper, he would have only been lawfully discharged if the whole amount of the decree was satisfied; meaning that execution could still be levied against the judgment debtor upon the same decree, except by re-imprisonment.

But at it is in the circumstances of this case, the whole of the claim was bad because it was not brought under the provisions of the Law Reform (Miscellaneous Provisions) Act. The bulk of the amount awarded to the respondent, i.e. shs 10m, was also illegal.
In conclusion, the applicant satisfied the test in s.83 CPA. He proved that the trial magistrate exercised her jurisdiction in the case illegally and with material irregularity and injustice. The judgment and decree that were issued against the applicant are therefore hereby set aside. All execution to satisfy the decree arising therefrom is also hereby stayed and set aside. The respondent shall pay the applicant's costs for this application.

Irene Mulyagonja Kakooza
JUDGE
23/09/10