

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT GULU
HCT – 02 – CV – CS – 0015 OF 2006**

ODONG CYPRIANO:::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::PLAINTIFF

VERSUS

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

BEFORE: HONOURABLE JUSTICE REMMY K. KASULE

JUDGMENT

The plaintiff sued the defendant for damages by reason of the death of his son, Okello Patrick Andrew, aged 15 years, by being shot with a gun by a soldier of UPDF on 17.08.2005 at Akor Primary School, Lira District.

The issues framed are:-

1. Whether or not the suit is competent in law.
2. Whether the deceased was killed on 17.08.2005 by shooting carried out by the servants or representatives of the defendant.
3. Whether plaintiff has suffered any damages, and if so, the quantum.
4. Remedies available to the parties.

In respect of the first issue, it is submitted for defendant that the plaintiff's suit is incompetent in law because there is no specific averment in the plaint that the suit was being brought under The Law Reform (Miscellaneous Provisions) Act, Cap.79 Laws of Uganda. As such the plaint discloses no cause of action. It ought to be struck out under Order 7 Rule 11(a) of the Civil Procedure Rules. Reliance for this submission is based upon the case law decisions of:

BAKER VS BOLTON 1801 ICAM P. 493 where **LORD ELLENDBROUGH** held that at common law **“In a Civil Court, death of a human being could not be complained of as an injury”**

To overcome the harshness of this decision, England had to pass the FATAL Accidents Act (Lord Campbell’s Act) in 1846, whose essential provisions are applied in Uganda under the Law Reform (Miscellaneous Provisions) Act, Cap. 79; and have been applied by Ugandan Courts as is exemplified by:-

ALI MUSTAFA VS SANGO BUS COMPANY (1975) HCB 93, where, Allen J, held that if it is not pleaded that the claim is based upon the Act, then such pleading shows no cause of action, and also

UGANDA ELECTRICITY BOARD VS G.W. MUSOKE (1997- 2000) HCB 23, where the Supreme Court (Uganda) explained that the purpose of the Act was to provide a new cause of action which would enable members of the family of deceased to claim compensation for loss suffered as a result of death. The Court expounded:

“The question in each case is what pecuniary loss the member of the family has suffered”

Though Court allowed the appeal by reducing the damages in the above case, all the same the Court held that the plaintiff, a father of the deceased aged 15 years, could maintain an action for loss of expectation of life on the basis that:

“the principal function of awarding damages for loss of expectation of life was to provide in an indirect way for damages for bereavement in certain cases because under the common law and the Fatal Accident Act, no claim for solitude or bereavement could be entertained. In Uganda the law is that damages are not awarded for bereavement. They are awarded for loss of expectation of life” Odoki JSC, as he then was, stated thought per curiam:

“I would for myself think that time has come to recognize that parents are bereaved by the loss of children whom they naturally love and value for whom they sacrifice so much. I would think that damages for bereavement should now be recognized or at least taken into consideration when assessing damages for loss of expectation of life”

This Court is enjoined by Article 126 (2)(e) of the Constitution to administer substantive justice without undue regard to technicalities.

In the plaint, the plaintiff stated he was the father of the deceased and that he was so suing the defendant. The plaint also averred that the foundation of the claim was the unlawful shooting by use of a gun by a UPDF soldier of the deceased at Akor Primary School, Lira District on 17.08.2005. Finally, plaint also clearly stated that plaintiff as father, suffered pain, mental anguish and financial loss and seeks damages by reason thereof.

This Court, on the basis of the above averments in the whole body of the plaint, finds that the essential facts that make the plaintiff's claim fall under the Law Reform (Miscellaneous Provisions) Act, Cap. 79, Laws of Uganda, are stated in the plaint. Therefore the mere absence of the mention of the fact that the plaintiff's claim is under the said Act, cannot be so fatal as to amount to the plaint showing no cause of action. This court, under the constitutional duty to administer substantive Justice, for the reasons given, holds that the plaint shows a cause of action.

The answer to the first issue is that the plaintiff's suit is properly before this court.

As to the second issue, the evidence of PW1: Acuma Denis, PW2: Ajok Dorcus, PW3 Odong Cypriano, and PW4 Dr. Okello Terence, which evidence was not rebutted by any defence evidence, for defence called no witness, established on a balance of probabilities that the deceased was killed by shooting by a gun by a soldier of UPDF on 17.08.2005 at Akor Primary School, Lira District.

The deceased on the fateful day, while with PW1 at about mid-day, while bicycling, stopped at Abim Army detach to see an alleged thief who had been arrested and taken to the detach.

At the army detach the two, and other members of public, were dispersed by UPDF soldiers. They bicycled away towards Akor Primary School. They were being chased by some UPDF soldiers. The tyre of their bicycle burst; so that they had to run while at the same time pulling their bicycle.

At Akor Primary School, one of the chasing UPDF soldiers loudly called upon the UPDF soldiers guarding the school that PW1 and the deceased, were rebels. On hearing this one of the UPDF soldiers, guarding the school, got a gun and shot the deceased. PW1 and PW2, then a cook at Akor Primary school, saw the shooting. PW2 used in vain her Kitengi” cloth to try to stop the bleeding from the deceased. Soon thereafter the deceased died. His father, PW3, was informed of the tragedy. He took the body to Lira Hospital for a post mortem examination and Report by PW4. He later buried the deceased, the burial being attended by senior UPDF officers as per the photographs. Exhibit P3. The officers regretted the death of deceased caused by their own UPDF soldier.

On the basis of the above uncontroverted evidence, this Court holds that the plaintiff has established, on a balance of probabilities, that the deceased was killed on 17.08.2005 as a result of shooting by servants/agents of defendant. The second issue is so answered.

The third issue is whether the plaintiff has suffered any damages, and if so, what is the quantum.

Special damages were pleaded by plaintiff and copies of available receipts were tendered in court: exhibit P2 showing expenses for some of the items bought and paid for in respect of deceased’s burial. For other expenses the receipts were not available. Court however believes plaintiff that he spent this money. The total sum claimed as special damages is shs 824, 500/=.

This amount is awarded to plaintiff.

As already stated earlier on in this judgment, the damages awardable to plaintiff are for loss of expectation of life of the deceased. These damages are awardable for the loss of the prospective happiness of the person whose life is gone.

In assessing damages of this nature, in case of a shortened life, of a minor like the deceased, Court has to be satisfied that the circumstances of the individual life were calculated to lead, on a balance, to a positive measure of happiness of which the victim has been deprived by the defendant’s unlawful act of causing death of the victim. If the character or habits of the

individual were calculated to lead him to a future of unhappiness or despondency, that would be a circumstance justifying a small award. The test is not whether the deceased had the capacity or ability to appreciate that his future life on earth would bring happiness. The test is not subjective, and the right sum to award depends of on an objective estimate of the kind of future on earth the victim may have enjoyed. No regard must be had to financial losses or gains during the period of which the victim has been deprived. The damages are in respect of loss of life, not of loss of future pecuniary prospects.

In case of a young person, these damages tend to be reduced because there is so much uncertainty about this young person's future that no confident estimate of prospective happiness can be made. A young person has as yet no settled prospects, has not yet passed the risks and uncertainties of childhood, and has, as yet, not acquired an established character and firmer hopes to make his/her future more definite. The extent to which good fortune may probably attend to him/her becomes less incalculable. The compensation is not being given to the person injured, for that person is dead. Thus damages which would be proper for a disabling injury tend to be greater than those for deprivation of life.

The principal function of awarding damages for loss of expectation of life is to provide an indirect way to award damages for bereavement particularly in the Uganda Context, because under the common law, no claim for solitude or bereavement could be entertained: **See Uganda Electricity Board vs. G.W. Musoke (1997) HCB 23** – a Uganda Supreme Court decision.

The deceased in this case came from a peasant farmer background. He stayed with his peasant parents at Anyer Parish, Adek okwok, Erute County, Lira District. He was aged 15 years. He was studying in Senior One at Nile High School. There is no evidence that he was to live an unhappy prospective life. He was happily living with his parents and the fact that at the age of 15 years, he was already in senior one, points to the possibility that deceased would have developed into a useful citizen as an adult, during the life expectancy in Uganda which varies between 42 and 55 years.

In the case of **Uganda Electricity Board vs. G.W. Musoke (Supra)**, the deceased was aged 14. He died as a result of stepping on a live electric wire negligently exposed on the ground by

defendant. Shs. 1,000,000/= was awarded by the Supreme Court as general damages for loss of expectation of life. This was 15 years ago. Since then inflation has eaten into the value of the shilling. Taking into consideration all relevant matters, this court awards shs. 8,000,000/= general damages to plaintiff for loss of expectation of life.

As to the claim for exemplary damages, court is not satisfied that this is one of the cases where such damages are recoverable by the plaintiff. None are therefore awarded.

As to remedies, the plaintiff is awarded the special damages of shs. 824,500/= and the general damages of shs 8,000,000/=.

Judgment is thus entered for the plaintiff against the defendant for

- a). shs 824,500/= special damages.
- b). shs 8,000,000/= general damages.
- c). Interest on (a) and (b) above, at the rate of 18% p.a. to run from 17.08.2005 in respect of the special damages in (a) and from the date of judgment in respect of the general damages in (b) above, till payment in full.

The plaintiff is also awarded the costs of the suit.

Remmy K. Kasule

Judge

30th April, 2009