

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
AT GULU
CIVIL SUIT NO. 50 OF 1999**

OLOYA VINCENT:.....:PLAINTIFF

VERSUS

THE ATTORNEY GENERAL:.....:DEFENDANT

BEFORE: HONOURABLE JUSTICE REMMY K. KASULE

JUDGMENT

The plaintiff sued the defendant in the defendant's vicarious capacity in respect of a motor-vehicle accident involving the motor-vehicle of the plaintiff and that of the Uganda People's Defence Forces, the army of Uganda Government. In the accident, the plaintiff alleges, he suffered loss and he seeks damages from Government by reason thereof.

Three issues were framed:-

1. Whether or not the accident was caused by the negligence of the defendant's agent/employee.
2. Whether or not the defendant is liable for the damages caused.
3. What are the remedies available?

The plaintiff testified and called not witnesses. The defendant did not call any witness at all.

As to the first issue, the plaintiff's evidence is that on 30.01.1999 at 8.00 p.m. he was lawfully driving, but had parked on the proper side of the road, his motor-vehicle Isuzu pick-up registration number 162 UED, carrying 35 bags of maize floor. Plaintiff's said motor vehicle, which was stationary at the time, was then knocked by a Tata lorry registration Number DO 4DF 035 belonging and being driven by a UPDF soldier. As a result, the plaintiff's vehicle got

extensively damaged and his maize floor thereon got spoilt. The accident happened at Layibi Trading Centre, Kampala Gulu Road. The defendant's said motor-vehicle was being driven in the opposite direction to that of the plaintiff, and it first knocked a bus Isuzu, registration number 818 UAN before knocking that of the plaintiff. The bus was moving in front of and in the same direction the plaintiff's motor –vehicle was facing.

The plaintiff saw that the defendant's lorry causing the accident did not have lights at the material time, and that the driver of the same lost control of it, left his proper side of the road crossed to the opposite side where the plaintiff was lawfully parking his vehicle, and thus caused the accident. Plaintiff reported the accident to Gulu Police Station, police came and drew a sketch plan. The Police Report Form 37 and sketch plan were tendered evidence as exhibit P1 and P2 respectively.

A driver of a motor-vehicle is under a duty to take reasonable care for the safety of other traffic on the road to avoid a collision. This duty involves taking all measures to avoid collision. Once a possibility of danger emerging is reasonably apparent, and no precautions are taken by that driver, then the driver is negligent, notwithstanding that the other driver or road user is in breach of some traffic regulations or even negligent: see **PAULO KATO VS UGANDAN TRANSPORT CORPORATION (1975) HCB 120**.

Court has considered the testimony evidence of the plaintiff and also studied the sketch plan; and concludes that in driving from his side to the opposite side, where the plaintiff was lawfully parking and thus knocking the plaintiff's vehicle, the driver of the UPDF Tata lorry was negligent in causing the accident.

The second issue is whether or not the defendant is liable for the damages caused.

The evidence on record is to the effect that the UPDF vehicle was, after the accident towed to Gulu police station, and according to exhibit P3, the O.C. Traffic Gulu Police station, later released the same to Col. Oketta, who also invited the plaintiff to go and deal with the UPDF about the accident. Court infers in absence of defence evidence to the contrary, from this

conduct of the UPDF that the driver of the vehicle, causing the accident, was an authorized one, at the material time, and that he was acting in the course and within the scope of his such employment when the accident happened. The defendant is thus liable to the plaintiff for the damages caused: See **ASADI MUGUMUZA VS AGIP PETROL STATION (1975) HCB 288** As to the remedies available, plaintiff is entitled to damages, both special and general; the latter being awarded at the discretion of and after assessment by court, while the former have to be pleaded and strictly proved.

Plaintiff proved that his motor-vehicle was damaged and was repaired at a costs of shs. 3,756,000/=. He tendered exhibit P6 the receipt paid for the repairs. He also paid shs 200,000/= to tow the vehicle to Gulu police station, shs 300,000/= to obtain alternative transport to take the maize to Gulu. Following the accident, 17 bags of maize flour on the pickup got wasted; the cost of each bag being shs 50,000/= thus a total of shs (50,000 x 17)= 850,000/=. Court accepts the evidence of the plaintiff as regards the items stated. Defendant never rebutted the same. The amounts are awarded to the plaintiff.

As to lost income, plaintiff's assertion that he was earning shs 600,000/= per week and was claiming loss of income for nine years from 30.01.1999 to date, totaling shs 45,600,000/= is not supported by any credible evidence. Plaintiff produced no records, let alone tax returns to support this claim. The same is disallowed as not proved.

The accident however deprived the plaintiff of the use of his motor-vehicle, subjected him to inconvenience in repairing the vehicle and in following up the matters with police and the UPDF. Plaintiff is thus entitled to be awarded damages for such inconvenience suffered. Court awards plaintiff shs 3,000,000/= general damages, and being a business person, plaintiff is awarded interest on the sums awarded at the commercial rate of 20% p.a.

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

- a) Shs 3,756,000/= cost of repair.
- b) Shs. 850,000/= value of 17 bags of maize flour wasted.
- c) Shs. 500,000/= towing and transport expenses.

- d) Shs. 3,000,000/= general damages.
- e) Interest on the sums awarded the rate of 20% p.a. from 30.01.1999, the date of the accident till payment in full, except in respect of the general damages, in (d) above, the rate interest is to run from the date of this judgment to payment in full.

The plaintiff is also awarded the costs in this suit.

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Remmy K. Kasule

Judge

30th January, 2009