

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
HIGH COURT CIVIL SUIT NO.969 of 2005

NANSUBUGA JOSEPHINE ::::::::::::::::::::::::::::::: PLAINTIFF

**Versus**

VISION FOR AFRICA ::::::::::::::::::::::::::::::: DEFENDANT

**BEFORE: HON. JUSTICE REMMY K. KASULE**

**JUDGMENT**

Plaintiff sued the defendant claiming damages for injuries and expenses incurred by her in a road traffic accident caused by the defendant's vehicle.

No issues were framed at the commencement of trial. Court thus frames the issues as hereunder the same arising from the pleadings and evidence given by the parties.

1. Whether an accident happened to the plaintiff involving the motor-vehicle stated in the plaint.
2. Whether there was negligence on the part of the defendant in causing the accident.
3. Whether the plaintiff suffered injuries in the accident.
4. Whether the defendant was absolved of liability by the plaintiff for the accident.
5. What are the remedies available to the plaintiff?

As to the first issue, the uncontroverted evidence on record, is that the accident happened on 7<sup>th</sup> March, 2005, between 2.00p.m, and 3.00p.m, at Dundu village, along Gayaza-Kalagi Road. The plaintiff was, at the time of the accident traveling in a taxi mini-bus Toyota Hiace Number UAG 219B, when the same was, while on its proper side of the road, knocked by the defendant's motor-vehicle ELF.CV registration Number 882Y; being driven by the Defendant's agent/authorized driver Hofer Thomas. The motor-vehicle in which the plaintiff was traveling was headed in the direction of Kayunga while that of defendant was being driven in the opposite

direction towards Kampala. Court on the basis of this evidence resolves the first issue in the affirmative.

The second issue is whether there was negligence on the part of the defendant in causing the accident. According to plaintiff's testimony, the driver of the defendant's motor-vehicle lost control, zig zagged in the road, crossed over to the opposite side and knocked the motor-vehicle in which she was traveling. PW3 and PW4, both of Uganda Police visited the scene of the accident, took measurements and drew a sketch plan of the scene, Exhibit P7. The testimony of these two witnesses is that the defendant's driver lost control of the motor-vehicle he was driving and knocked that one in which the plaintiff was, on the opposite side of the road. Their evidence is to the effect that the point of impact of the two vehicles was on the extreme side opposite that where the defendant's motor-vehicle was supposed to be driven.

The defendant did not adduce any evidence to rebut negligence on the part of the one who was driving their motor-vehicle and caused the accident.

Court therefore holds that the accident was as a result of the negligence of the defendant's authorized driver, one Thomas Hofer.

As to the third issue, the evidence adduced is that the Plaintiff suffered, as a result of the accident, very severe injuries in the nature of fracture of neck of the left femur, fracture of the right acetabulum, fracture of the interior right pubic, fracture of the left tibia plateau, comminuted fracture of the distal third of the right tibia and fracture of the medial malleolus, multiple fractures with the haemorrhagic shock, fracture of rectal femur, right fracture, dislocating right 1<sup>st</sup> metatarsal – phalangeal joint and post traumatic avascular necrosis of left femoral head and post traumatic osteoarthritis of the right hip joint. He was medically examined by Dr. Orwotho Norbert and later by Dr. Kalyemenya, PW2, who (PW2) classified her injuries as maim, and fixed her permanent disability at 80%. According to the Doctor, PW2, the plaintiff requires a second operation to replace another hip; the first hip being already replaced. It was unlikely that the plaintiff's health condition would improve. She is instead, likely to get worse.

The evidence as to injuries suffered by plaintiff was not rebutted by defendant. This court holds that the plaintiff suffered the stated injuries in the course of and as a result of the accident.

The fourth issue is whether the defendant was absolved by the plaintiff from any further liability for the accident. The defendant adduced evidence that, while receiving treatment at Mulago, the plaintiff was made to sign a document titled **“Release of all claims”** on 2<sup>nd</sup> July 2005, and pursuant to signing the document a sum of shs.1,000,000/= was paid by cheque in the names of the plaintiff and the same was banked on her account with a Micro Finance. The payment was made by the Defendant’s insurers, AIG (U) Ltd.

The document **“Release of all claims”**, exhibit D1, written in English provided that the recipient of the money, the plaintiff, in consideration of the sum received “Releases and forever discharges” the defendant, the driver and the insurers from liability for the accident.

It is the contention of the defendant that by signing, accepting and using this money, the plaintiff released and discharged the defendant from liability in respect of the accident. The plaintiff contends that the defendant is still liable to her in damages for the accident.

Plaintiff’s testimony as regards the money is that she only came to know of the payment of this money after the same had been deposited on her account, and that it is her brother-in-law, one Henry Katongole who, without her knowledge and consent negotiated and collected payment from the defendant. She herself never executed the agreement releasing and discharging the defendant from liability for the accident. When she was told money was on her account, she thought it was the loan money that she had applied for before the accident from a Micro Finance Institution with which she operated her account, that had been granted to her and deposited on her account.

For the defendant, DW1, Zachary Sebulime, an insurer with AIG (U) Ltd confirmed that the insurance company got one Henry Katongole, a relative of plaintiff to represent the plaintiff who was sick in the

hospital, in the negotiations that ultimately resulted in the payment of shs.1,000,000/=. The Plaintiff signed the “Release of all claims” document, Exhibit D1 while still undergoing treatment in the hospital. DW1 did not personally see her sign this document. He also never met the plaintiff at all through out the transaction.

DW2, Ms Kasoma Christine, then Assistant Claims Manager, with AIG (U) Ltd, the insurers, testified that she met plaintiff in Mulago Hospital, where she witnessed the plaintiff signing Exhibit D1, releasing the defendant of all claims for the accident on agreeing to be paid Shs.1,000,000/=.

In cross-examination this witness stated that the plaintiff “might have been weak due to injuries but she signed” and therefore absolved the defendant from liability for the accident.

Court notes that the plaintiff was never asked by the defence whether or not what appears to be her signature on Exhibit D1 was hers or not. There is nothing on the said Exhibit D1 to indicate that DW2 read to, explained and/or translated to the plaintiff in the language that the plaintiff understood the said Exhibit D1. All that Exhibit D1 shows is that DW2 signed as a witness. DW2 in her testimony to court offered no explanation as to why she did not indicate on the document that she read, explained and/or translated the document to plaintiff in a language of plaintiff’s choice that she, plaintiff, would understand well, that plaintiff understood the same and then signed after understanding the import and effect of the contents of Exhibit D1. It was also unexplained why plaintiff is stated to have signed twice and why there were two different witnesses both signing as such, namely Katongole Henry and DW2. Katongole Henry never testified to support the defendant’s version as to his (Katongole Henry) role in executing Exhibit D1. Defendant offered no explanation why Exhibit D1, had to be executed in Mulago Hospital where the plaintiff was receiving treatment for the injuries suffered, an environment of pain and suffering; and not one of peace and tranquility, and thus not one conducive to a free and voluntary execution of important agreements, like Exhibit D1. Defence Counsel never put it to the plaintiff that she voluntarily and freely executed Exhibit D1 after understanding its effect and import. She was not cross-examined as to the execution of Exhibit D1 or at all. She was never asked whether the signature on exhibit D1 was hers or not. It was never suggested to the plaintiff that she ever talked to DW2 at Mulago Hospital in connection with Exhibit D1 or at all. There was no expert evidence by a handwriting expert to prove that the signature on Exhibit D1 is that of the Plaintiff. Both DW1 and

DW2, in the observation of court of their respective demeanors, were witnesses who came for the purpose of absolving the Defendant of liability at any cost. DW1, had never met the plaintiff at all. Yet he vehemently insisted plaintiff had absolved the defendant of liability by executing Exhibit D1. DW2 failed to explain why the signing of Exhibit D1 had to be in hospital. This affected the truthfulness of their evidence.

This court, on appreciating the evidence adduced by both plaintiff and defendant, holds that, the defendant has not proved on a balance of probabilities, that the plaintiff executed Exhibit D1 “Release of all claims” or that if she did so, the plaintiff did so freely and voluntarily after understanding its import and effect. The answer to the fourth issue is that the defendant was not absolved by the plaintiff from liability for the accident.

The last issue is what remedies are available to the plaintiff.

The plaintiff is entitled to general damages for the injuries she suffered. The particulars of these injuries have already been stated. There was no contrary evidence, medical or otherwise to contradict or controvert the evidence of the injuries. PW2, Dr. Kalyemenya classified the injuries as maim, a very serious condition. The disability of plaintiff is 80%. There is no improvement in her health condition likely to occur; instead a worsening of plaintiff beyond 80% disability is likely. Another operation to replace the hip which is still there has to be undergone by plaintiff. Due to the injuries the plaintiff can no longer carry on with her profession as a nurse where she used to earn shs.150,000/= per month. She is a mother of four children, all school going, the eldest being 22 years and the youngest 8 years old. Plaintiff, a single parent and a widow, is herself of a young age of about 38 years old.

The principle governing the assessment of damages is that the injured party should be awarded such a sum of money as will put that party in the same position as the party would have been in if the party had not sustained the injuries: See: **Robert Coussens Vs. Attorney General: Civil Appeal No.8 of 1999: Uganda Supreme Court.**

In the case of **Sulait Kityo Vs. Uganda Consolidated Fund & Bossa Muhamad [1992-1993] HCB at p.199**, Shs.10,000,000/= was awarded as general damages where the injuries to the victim resulted in a permanent disability of 40%. This decision is about 16 years old now.

In **Robert Coussens Vs. Attorney General** : (Supra) decided on 03.03.00, the Uganda Supreme Court upheld an award of Shs.50,000,000/= general damages to an American national, a professional deep sea diver, shot in Uganda by Uganda Police who mistook him to be a car thief. He sustained very severe injuries from the gunshots resulting in considerable permanent disability. He could no longer work as a sea diver. He was aged 25 years at time of the incident. As a sea diver, he earned far much more than the plaintiff in this case.

As to loss of earnings of the plaintiff, an estimate of prospective loss is based on what the plaintiff has been actually earning at the time of injury, multiplied by the number of years during which the loss of earning power will last, and then the amount is subjected to the probability of an increase or decrease in the earnings and other contingencies such as taxation and inflation: See: **PARRY VS. CLEANER [1970] A.C 1, a House of Lords decision.**

The evidence is that the plaintiff was aged 35 years at the time of the accident, was earning shs.150,000/= per month. Though not working, as at the time of trial, she was still being paid her monthly salary as a nurse. She had been told that payment of salary was to be stopped. According to Section 12(1) of the Pensions Act, Cap.286 plaintiff would work up to the age of 60 years. She therefore had another 25 years of working. The amount expected to be earned would be subject to taxation and possible inflation and other contingencies such as sickness of plaintiff.

Bearing in mind the above considerations and the case law authorities referred to above, this court awards to the plaintiff Shs.35,000,000/= general damages for the injuries suffered by the plaintiff and shs.15,000,000/= for loss of earnings.

As to special damages plaintiff testified that Shs.500,000/= had been paid for her operation and that shs.3,000,000/= was required for purchase of a hip. She had also spent shs.2,000,000/= to secure medical services. She had spent shs.50,000/= to secure police report. In court the plaintiff tendered receipts totaling Shs.1,125,800/= being cost of medication and payment for transport and police Report. This sum is awarded to the Plaintiff. There was no evidence to support the sum of shs.3,000,000/= as the cost of the hip. This sum, like the other claims for special damages are disallowed as they are

exaggerated claims in the considered view of court, yet special damages must be specifically proved. Plaintiff is thus awarded special damages of shs.1,125,800/=.

It is not in dispute that the defendant's insurers paid shs.1,000,000/= in respect of this accident. This sum is to be deducted from the total sum of damages awarded to the plaintiff.

In conclusion judgment is entered for the plaintiff in the sum of

- (a) Shs.35,000,000/= general damages
- (b) Shs.15,000,000/= prospective loss of earnings
- (c) Shs.1,125,000/= special damages

Less shs.1,000,000/= paid by the defendant's insurers.

The sums awarded in (a) and (b) are to carry interest at court rate as from the date of Judgment till payment in full, while the special

damages are to carry interest at court rate from 07.03.05, the date of accident, till payment in full.

The plaintiff is awarded the costs of this suit.

**Remmy K. Kasule**

**Judge**

**5<sup>th</sup> February 2009**