

**THE REPUBLIC OF UGANDA**

IN THE HIGH COURT OF UGANDA AT GULU

**CIVIL SUIT NO.021 OF 2001**

KOMAKECH CHARLES ..... PLAINTIFF

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**VERSUS**

THE ATTORNEY GENERAL .....DEFENDANT

BEFORE HON. JUSTICE REMMY K. KASULE.

**JUDGMENT**

10 The plaintiff, a brother to the late Benson Ojok, now deceased, sued the  
defendant under the Law Reform (Miscellaneous Provisions) Act, claiming  
damages on his behalf and on behalf of the deceased's family.

15 On 22.09.05 at Ongako Internally Displace People's (IDP) Camp, Ongako  
Sub-County, Omoro County, Gulu District, the deceased, Benson Ojok,  
was unlawfully shot dead by No. RA 167451 Private Openytha Benson, of  
UPDF, attached to Ongako Military Detach. The shooting was apparently  
for hitherto no known reason, but was done, in the general course of the  
army protecting the civilian population against the Lord's Resistance  
Rebels of Joseph Kony.

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After the shooting of the deceased, the said Private Openytho Benson, ran away into hiding in the neighbourhood of Ongako, and on being found by the UPDF soldiers, he opened fire on them, who in turn also shot him dead.

25 The plaintiff asserts that the killing of the deceased, Benson Ojok, was unlawful and as such the Defendant is vicariously liable in damages to the plaintiff and the deceased's estate since Private Openytho Benson of the UPDF was in the course and within the scope of his employment as a UPDF Private when he caused the death.

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The defendant denied liability contending the suit was time barred and that all the allegations of the plaintiff were not being admitted.

At the hearing three issues were framed:

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- 1. Whether or not the suit is time barred.**
  - 2. Whether or not the defendant is vicariously responsible for the death of the deceased.**
  - 3. What remedies are available to the parties.**

To support the plaintiff's case, Kidega Michael, PW2 Adoch Mary, PW3  
40 Akello Margaret and PW4 Kilama Alphonse, respectively brother in-law, widows and friend of the deceased testified.

The deceased called no witnesses.

45 As to the first issue, the defendant submits that the suit is time barred because it was filed within 12 calendar months after the death of the deceased person that occurred on 22.09.05. The suit was filed on 28.05.07. This was contrary to section 6(3) of the Law Reform (Miscellaneous Provisions) Act, Cap.79.

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This court has already decided in ***H.C.C.S No.548 of 2001: Lydia Agnes Mujaju Vs Makerere University & Another***, that the period of limitation for such action is three (3) years under the proviso to section 3(1) of the Limitation Act, Cap. 80, where the action is not against the Government or  
55 scheduled corporation. Otherwise, if against Government or scheduled corporation, then the period within which the action must be instituted is a period of two(2) years from the date of the cause of action pursuant to section 3 of the Civil Procedure and Limitation (Miscellaneous Provisions) Act, cap.72.

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Both the Limitation Act, Cap.80, whose commencement date is 07.05.59, and the Civil Procedure and Limitation (Miscellaneous Provisions) Act, Cap.72, whose commencement date is 28.04.69, are later legislations than the Law Reform (Miscellaneous Provisions) Act, cap.79, with the  
65 commencement date of 03.12.53. As such, the stated later Acts are regarded as having repealed the earlier Act on this issue of limitation. It is

a legislative anomaly that section 6(3) of the Law Reform (Miscellaneous Provisions) Act, Cap.79, is to date not formally repealed. This court takes it as repealed, both by implication and inference by the said later acts. This  
70 court holds that the plaintiff's suit is not time barred.

With regard to the second issue, the evidence on record is that Private Openytho Benson was, at the material time, a military person with UPDF at Ongako Military detach, with the purpose of protecting civilians at the  
75 Ongako IDP Camp from the rebel activities of the Lord's Resistance Army of Joseph Kony. No credible evidence was adduced by the defence to contradict the evidence of the plaintiff's case that the deceased Ojok Benson met his death by being shot at by Private Openytho Benson, while in the course of and within the scope of his employment as an army person  
80 supposed to protect the civilians, including the deceased, Ojok Benson.

What Private Openytho did in shooting Ojok Benson dead, may not have been authorized by the UPDF, and was also wanton and criminal. However, it was done in the general course and scope of employment of  
85 Private Openytho of providing security to the civilian population at Ongako IDP Camp by the UPDF. It was a wrong manner of executing what Private Openytho was employed to do as part of the UPDF. The defendant is accordingly liable for the action of his servant: See: **MUWONGE VS ATTORNEY GENERAL [1967] EA 17**. The answer to the third issue is  
90 therefore in the affirmative.

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

Under sections 5 and 6 of the Law Reform (Miscellaneous Provisions) Act,  
95 members of the family of the deceased are entitled to damages from the  
defendant.

The evidence on record is to the effect that the deceased, Ojok Benson,  
was a farmer, also a businessman running a shop-cum-bar at Ongako  
100 Trading Centre, where the IDP camp was.

The evidence as to his age and his earnings was very sketchy. PW1's  
evidence was that the deceased was earning about Shs.50,000/= to  
70,000/= a day, while to PW2, his wife, the daily earning was  
105 Shs.100,000/= to Shs.150,000/= a day. To PW3, another, wife, the sum  
earned daily was Shs.120,000/= court finds that there is exaggeration in  
these figures. In the considered assessment of court, the deceased earned  
about Shs.20,000/= a day, thus about Shs.600,000/= a month.

110 No evidence was given as to the age of the plaintiff. But from the age of  
his two wives, 26 for Adoch Mary and 24 for Akello Margaret, as well as  
that of his children, the eldest being 11 years and the youngest about 4  
years, it is safe to conclude that the deceased was about 35 years of age.

115 Taking 55 as the average living age in Uganda, it follows that the deceased  
had a working life of about 20 years. Therefore during the 20 years, the  
deceased would have earned Shs.(600,000 x12 x 20) =  
Shs.144,000,000/=. Due to the vagaries of life, the fact that civil strife was  
going on in the area where the deceased lived, and giving due  
120 consideration to other vagaries of life, court reduces this sum to  
Shs.50,000,000/=. Accordingly this sum is awarded as damages for loss of  
dependency.

The following beneficiaries of the deceased were identified by court as they  
125 appeared in person:

1. Adoch Mary, aged 36 years, widow.
2. Akello Margaret - 24 years, widow.
3. Ajok Fiona – 11 years – daughter in primary 4.
4. Okello Stephen alia Ojok Stephen – 10 years – son – in primary 5
- 130 5. Odong Brian – 8 years
6. Anena Patricia – 6 years
7. Odong Ping Andrew – 4 years
8. Rubankene Daniel – 8 years – in primary 2
9. Adong Ping Sida – 7 years
- 135 10. Akello Leya – 75 years – mother of the deceased.

The law requires that the damages awarded be distributed to the beneficiaries. As all the children of the deceased are still of school going age and all are still minors, each one is to get an equal share of Shs.6,000,000/=. Each of the widows is also awarded Shs.500,000/=. The  
140 mother of the deceased, Akello Leya, is awarded Shs.500,000/= and the plaintiff is also awarded Shs.500,000/=.

As to funeral expenses, the evidence on record is that the UPDF provided the burial materials as well as some food provisions. The plaintiff adduced  
145 no evidence of any expenses incurred for the burial. No award is accordingly made in respect of funeral expenses.

In conclusion judgement is entered for the plaintiff against the defendant for:

- 150 **1. Shs.50,000,000/= general damages for loss of dependency.**
- 2. The sum awarded is to be distributed to the beneficiaries named in this judgement, each beneficiary being given the sum allotted to him/her in this judgement.**
- 3. The sums payable to the minor children, shall be paid jointly to one Kidega Michael (PW1) jointly with the mother of that minor  
155 child and for this purpose a bank account shall be opened jointly operated by Kidega Michael and the mother of the child and the money is to be used solely for the education and related upkeep of the particular minor child.**

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***4. The sums allotted to the adult beneficiaries shall be paid directly to them.***

***5. The sums herein awarded shall carry interest of 20% p.a. as from the date of this judgement till payment in full.***

***The plaintiff is awarded the costs of this suit.***

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Remmy. K. Kasule

**JUDGE**

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06.01.2011.