

# **THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CIVIL SUIT NO. 139 OF 2006**

**1. BETTY AWINO**

**2. JULIET NAKATE**

**3. ANDREW KIGGUNDU**

**4. LULE ROBERT ::::::::::::::::::::::::::::::::::::::**

**PLAINTIFFS**

**5. AINCA OKELLO**

**VERSUS**

**1. PASTOR GODFREY LUWAGA**

**t/a CITY OF THE LORD**

**CHURCH :::::::::::::::DEFENDANTS**

**2. GODFREY KAWALYA**

**BEFORE: THE HON JUSTICE V.F. MUSOKE-KIBUUKA**

## **JUDGMENT:-**

### **IntroductionPleadings**

The 8<sup>th</sup> day of March, 2006, was a day of awful tragedy. It was a catastrophe of significant magnitude to the residents of Kyenando, Nsooba Zone, Kaleerwe, in Kawempe Division, within the city of Kampala.

On that day, the “City Of The Lord Church,” a large structure, which had just opened it’s doors to believers for worshipping, collapsed killing some 29 persons and injuring scores of others. Among those killed was the late Margaret Mary Syuda, who was mother to the first to the fourth

plaintiffs and daughter to the fifth plaintiff. The plaintiffs sued the defendants for special and general damages arising out of alleged negligence on the part of the defendants. They all claimed to have lost support and dependency. Their suit is grounded into the provisions of the Law Reform (Miscellaneous Provisions) Act, Cap. 79.

The second to the fourth plaintiffs sued through the first plaintiff as next friend because they were not yet of the age of majority by the time.

The suit was filed against both defendants on 12<sup>th</sup> March, 2007. The second defendant did not file a defence. The case against him was subsequently withdrawn by the plaintiffs, in court, on 10<sup>th</sup> October, 2008.

In his defence, the first defendant, admitted that on the date and the place mentioned in the plaint, an accident occurred leading to loss of lives. He denies that the accident was caused by his negligence. He pleads that the accident was caused by an act of God.

**Agreed Facts:**

The following facts were agreed upon by both parties;

1. the fact that the City Of The Lord Church collapsed on 8<sup>th</sup> March, 2006;

2. the fact that when the city of the Lord Church collapsed several persons who were worshipping were injured and some died
3. the fact that Margaret Mary Syeunda was among the people who died when the City of the Lord Church collapsed.

### **ISSUES:-**

Similarly, the following issues were agreed upon for determination by court:-

1. whether the suit was time-barred
2. whether the defendant was, at the material time, the owner of the City of the Lord Church;
3. whether the late Margaret Mary Syeunda was an invitee in the City of the lord church when it collapsed'
4. whether the city of the lord church collapsed owing to the negligence of the defendant or his agents or due to an act of God, and
5. what remedies are available to the parties, if any?

### **Whether The Suit Is Time Barred.**

Under paragraph 8, of the plaint, the plaintiff gave notice of his intention to raise a point of law at the beginning of the hearing of the suit. The issue of limitation was raised by learned Counsel for the plaintiff, Mr. Omwony John Paul. However, court ordered that the preliminary objection be turned into the first issue.

Mr. Bamwite submitted that under section 6 of the Law Reform (miscellaneous provisions) Act, Cap 79, the time within which a suit of the kind ought to be filed in court was a period of twelve calendar months. Since the cause of action arose on 8<sup>th</sup> March, 2006 and the plaint was filed in court on 12<sup>th</sup> March, 2007, the suit was time-barred because the twelve calendar months expired on 9<sup>th</sup> March, 2007. So submitted learned counsel.

Learned counsel for the plaintiff, Mr. Omwony, gave two reasons why he submitted that the suit was not time-barred.

1. that the period of limitation under section 6 (3) of the Law Reform (Miscellaneous Provisions) Act was not a period of twelve calendar months but a period of three years; and
2. that the plaintiffs' plaint was ready for filing in court by 3<sup>rd</sup> March, 2007, however they were prevented from filing in time by the industrial action taken by court from 2<sup>nd</sup> to 9<sup>th</sup> March, 2007, whereby court protested it's invasion by the security agents.

Subsection (3), of section 6, of the Law Reform (Miscellaneous Provisions) Act provides as follows:-

**“ (3). Not more than one action shall lie for and in respect of the same subject matter of complaint and every such action shall be commenced within twelve calendar months after the death of such deceased person.”**

Court agrees with learned counsel Mr. Omwony that the actual position of the law regarding the period of limitation is not 12 calendar months but a period of three years. What appears at page 1486 of Volume IV of the Principal legislation, revised edition of the year 2000, is not the correct position. The mistake originated from Cap. 74, in the 1964 revised edition, whereby the amendment vide ordinance 46 of 1958 (section 36) was omitted during that revision. The error however, was corrected in a noter-up to that edition at P. 29. The same original mistake appears in the 2000 revised edition which has also been high lighted in the related noter-up. Upon that fact the first preliminary objection fails.

Secondly, court would also state that the objection would equally fail if the position had been actually the twelve calendar months erroneously mentioned in the revised edition under subsection (3) of section 6. The reason is because the tern "month" is defined under section 2, of the Interpretation Act to mean "**a month reckoned according to the Gregonian calendar.**" This, to court, would mean that a period of 12 calendar months would mean 12 full calendar months. Under that contex one can only reckon full calendar months. They are that only ones the can be reckoned according to the Gregorian Calendar. If the deceased died on 8<sup>th</sup> March, 2006, the first calendar month would not be March but April, 2006. The period of twelve calendar months would therefore, have expired not on 9<sup>th</sup>

March, 2007, as learned counsel, Mr. Bamwite argued, but on 30<sup>th</sup> March, 2007. In that case, the plaint would have been filed in court well in time having been filed on 12<sup>th</sup> March, 2007.

The preliminary objection can, therefore, not be sustained. It is rejected.

**Whether The Defendant Was At The Material Time The Owner Of The Church That Collapsed?**

The plaintiffs adduced evidence to the effect that the defendant was the owner of the City of the Lord Church that collapsed. PW1, Mr. Edward Mugabi, a building inspector with Kampala City Council, the controlling authority in the area where the structure was built, testified that, he knew Pastor Luwaga as the developer of the City of the Lord Church, which collapsed. Prior to the collapse of the building, he had visited the site and inquired in to the person in charge of its development. The builder told him that the developer was Pastor Luwaga; he was given his phone number he tried to contact him but Pastor Luwaga did not pick the call. The phone number is written on top of Ex. PE 2. the phone number was confirmed by DW1 to be for Godfrey Luwaga.

In his defence, the defendant denied liability stating that he was working for the City of the Lord Outreach Ministries which was registered as an NGO. He

produced Ex. 2, his appointment letter as a pastor of the church. He went on to produce certificates of registration of the NGO to prove that it was a community based organization of preaching the gospel of Jesus Christ and to establish projects of the local community. He asserted that, the church property did not belong to the pastor but to the community.

No documentary evidence was adduced as to the ownership of the land on which the building was constructed by either party. The plaintiffs, however endeavoured to prove that Pastor Luwaga was not only in charge of supervising the construction of the church with the help of Geoffrey Kawalya, but was also referred to as the developer, and therefore, the owner of the church. He was also the pastor in charge of the church or the occupier at the time the building fell killing the deceased.

As to whether the NGO or the pastor owned the church in question, the defendant admitted being the promoter and director of the city the lord Outreach ministries, the NGO. He was the founder and director. The only other director was his wife. He cannot divorce himself from the responsibilities arising there from. It is not in dispute that the defendant was the occupier of the said premises using it as a place of worship. He was the only known owner of the place of worship to the entire

community. As such he cannot hide behind the veil of the City of the Lord Outreach ministries, which was not a sueable entity at the time the Misfortune occurred.

Court accepts the evidence of both PW1 and PW3 both of whom were KCC supervisors of structures in the city that the defendant was the developer and occupier of the structure that collapsed. It is notable that as at 8<sup>th</sup> March, 2006, the company limited by guarantee and known as City of the Lord Outreach Ministries Ltd had not yet been registered. It was registered on 1<sup>st</sup> April, 2008. Before then, the owner and occupier and promoter, was the defendant. Accordingly, the first issue is answered in the affirmative.

**Whether Margaret Mary Syenda Was An Invitee In The Said Church At The Material Time.**

In court's opinion, it is immaterial whether the deceased was invitee or licensee. The deceased did come to a place of worship, which is a public place. She was not a trespasser. The church owners/occupiers owed a duty of care to the church users. They were universal invitees. Any member of the church or believer, is an invitee to the church at any time it is open. In addition, the evidence on record is that the deceased was a member of that church. The evidence of PW2 was that on the fateful occasion the deceased told him



that the defendant had invited her to the church. She was an invitee.

**Whether The City Of The Lord Church Collapsed Owing To The Negligence Of The Defendant Of His Agents Or Due To An Act Of God.**

PW1 testified that he visited the scene on the 9<sup>th</sup> March, 2006 a day after the church had collapsed and made a report exhibit P1. He said that he found the work to have been substandard. The materials used were also sub-standard. The church was built in a wetland. The construction was not preceded with an approved building plan. There was no approved structural plan either. PW3 further confirmed that there was no occupation permit issued yet the defendant's church was already being occupied by worshippers while it was still under construction. That evidence was never controverted. It stands unchallenged. In total that church was an illegal structure put up by the defendant and in a wet land.

In his defence the defendant testified that there was a storm due to heavy rains which caused the City of the Lord Church, together with some few other buildings in the area to collapse. He argued that it was an extraordinary act of God which could not have been anticipated by anybody. That argument cannot stand in light if the evidence regarding the construction

defects and the structure having been illegal and constructed in a wetland without any approved plans.

To establish occupier's liability, a plaintiff must prove that:-

- a) the defendant has occupation or control of the land or structure; and
- b) the defendant was negligent i.e duty, breach and damage.

Occupiers must take reasonable care and owe a common law duty of care to ensure that anyone (even trespassers) who comes onto those premises is not injured.

In the instant case, the plaintiff have, in court's view, proved upon the balance of probabilities, that the defendant was the occupier and developer of the church. He built the church in a wetland and without any building or structural plans. None were approved. The mixture of the materials was based upon wrong and unprofessional formulae. The Church was occupied without any occupation permit. All those factors rendered the church building potentially liable to sudden collapse. The building was a time bomb. The defendant had shunned the notes served upon him by KCC. If he had co-operated with the authorities, the defects would have been detected and preventive measures taken in time before the building collapsed.

**Buildings & Sons Ltd. Vs. Riden [1958] All E. R. 522.**

The defendant's defence of an act of God appears even at the face of it, to be untenable. Although it is true that there was some rain storm in the evening of 8<sup>th</sup> March, 2007, at about 5.30 -6.00 pm, when the church building collapsed and although some few other structures, in Kawempe Division, were also effected, that, per se, does not render the event an act of God. The defence of an act of God is of very limited application it imposes a heavy onus of proof upon the defendant the test is, could the harm have been prevented by any degree of human care? In the instant case, the answer would be a resounding yes! Hence, the in acceptability of that defence. It is rejected.

**What Reliefs Are Available To The Plaintiffs If Any?**

The plaintiffs brought this suit under sections 5 and 6 of the Law Reform (Miscellaneous Provisions) Act for special and general damages for loss of financial support dependency.

Learned counsel for the defendant has submitted that the plaintiffs have not proved their dependency upon the deceased. Court does not agree totally with that

submission. The evidence of PW2, Kiggundu Andrew and to some extent, that of PW4, Mageni Ronald, prove the element of dependency in this case. There is no dispute regarding the fact that the first four plaintiff's were biological children of the deceased, and the fifth was her aged father. The plaintiffs' court agrees constitute nuclear African family. The deceased had no husband and she was the sole bread earner. By 12<sup>th</sup> March, 2007, when the case was filed in court both the third and fourth plaintiffs were still minors. They sued through a next friend, the first plaintiff. The third plaintiff was still in school by the time he gave evidence in court. According to him, the fourth plaintiff was also in school out owing to lack of tuition fees following the death of her mother. The evidence on record is that the fifth plaintiff was the father of the deceased who was suffering from an enlarged prostate and was over eighty years old and was lying disperate at the deceased's home at Ntinda.

In court's view, there is no legal requirement that in order to prove dependency the evidence must be personal. Any credible evidence would be sufficient. Court finds the evidence of PW2 both credible and sufficient in that regard.

Court duly agrees with the submission by learned counsel, Mr. Omwany, that the principles upon which court must assess general damages for loss of dependency were well

laid down by the privy **Council in Gulbanu Rajabali Kampala Aerated Water Co. Ltd [1965] E.A. 587.**

Similarly, the decision by Odoki J, as he the decision as he then was in **Jane Gaffa Vs. Francis X.S. Natega, HC Civil Suit No. 1150 of 1975,** offers an extensive guide once in that important area.

These principles general require that:-

- the court takes the last earnings of the deceased person as the starting point. Out of those earnings is assessed the pecuniary benefit regularly accruing to the dependants;
- court then determines the appropriate multiplier. This is the number of years during which the benefit of the dependency would have continued to be available to the dependants if the deceased had lived beyond the date of death and continued making earnings;
- the determination of the multiplier is guided by the age at which the deceased died and what his or her working life expectancy would have been had he or she not met his or her demise in the fatal accident;
- the total lost dependency or benefit is obtained by multiplying the annual lost benefit by the multiplier;

- the total lost dependency benefit is then apportioned among the dependants. If the deceased was the husband, the widow is entitled to a more substantial share of the damages in recognition of the fact that her dependency upon her husband's support would ordinarily continue longer than that of the children. If the wife was the bread winner in the family and she is the one who met her death, the surviving dependant husband would be treated in a similar manner.
- in apportioning the damages court would award the younger children relatively larger portions in recognition of the fact that their dependency, upon the deceased, would have lasted longer than that of older children.

It is not in dispute that the deceased died at 45 years of age. PW2 evidence to that effect was not challenged in cross-examination. Court assures it was accepted.

The evidence of PW4 and PW2 shows that the deceased was not self-employed, owing site in Mpigi District. The boats were managed by one Kanini with PW4 as the deceased's overseer. The evidence is that by the time of the death of the deceased. She was earning Shs. 3,000,000/= a month from the three boats. PW4 used to deliver the money to her. However, considering probable imponderables and especially the now well known phenomenon of fish reduction

in lake Victoria, court would reduce the monthly income to Shs. 1,500,000/= per month.

The deceased was selfemployed. The 60 years compulsory retirement age would not be applicable to her. However, it is generally accepted that a person in Uganda would work up to 60 years. In that case the deceased who died at 45 would still have some 15 years of working. But since her source of income were the three boats which PW4 testified had already been operational for 12 years. It would not be realistic to expect those boats to generate income for another 15 years. Court would reduce their income earning ability to 5 more years. Thus the lost expected income of the deceased would be  $\text{Shs. } 1,500,000/= \times 12 \times 5 = 90,000,000/=$ .

Court agrees that with a family of 5 dependents, the deceased would probably spend 2/3 of that income upon her dependants. The amount would be  $\text{Shs. } 90,000,000 \times 2/3 = 60,000,000/=$ . Court would award Shs. 60,000,000/= to the plaintiffs as lost dependency.

Bearing in mind the principles set out earlier, court would apportion the Shs. 60,000,000/= to the plaintiffs as follows:-

Plaintiff No. 1. **Betty Awino:**

She was 24 years old. She was not residing with the deceased but at Katebo. She had a child. She was not

married and was unemployed and still depended to some extent upon support from her mother. Court would award Shs. 6,000,000/= to her for loss of dependency and financial support.

Plaintiff No. 2, **Juliet Nakate**

She had completed S.4 and wanted to undertake a vocational course. She could not for lack of financial support owing to the death of her mother. She depended entirely upon the deceased. Court would award Shs. 10,000,000/= to her.

Plaintiff No. 3, **Andrew Kiggundu**

He was still in secondary school in S.2 when the deceased died. He was still in school with plenty of difficulties with school fees when he testified in court. Court would apportion Shs. 14,000,000/= to him.

Plaintiff No. 4, **Lule Robert.**

He was the youngest of the deceased's dependants at 15 years of age and still in school depending entirely upon the deceased. Court would apportion Shs. 20,000,000/= to him.

Plaintiff No. 5

He was the father of the deceased. At 80 years of age and afflicted with prostate enlargement, he was residing at the deceased's home at Ntinda and entirely dependent upon her. Court could apportion Shs. 10,000,000/= to him.



Regarding the claim for special damages, court agrees that the plaintiffs did not strictly prove the claim of Shs. 1,500,000/= claimed in the plaint as funeral expenses. Secondly, during the final submissions they put up an inconsistent claim of Shs. 3,000,0000/= as special damages. That was an unacceptable departure from the pleadings.

**Interfreight Forwarders Uganda Ltd. Vs. East African Development Bank, SC Civil Appeal No. 13 of 1993.**

Court awards no special damages upon that account for none was strictly proved.

The award of Shs. 60,000,000/= shall carry interest at 8% per annum from the date of judgment to the date of payment in full.

The costs of the suit are awarded to the plaintiffs.

**V.F. Musoke-Kibuuka**

**(Judge)**

**30.04.12**