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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KABALE

CIVIL SUIT NO. 0066 OF 2022

TURINOMUHANGI ANDREW:::::::::::::::::::::::::PLAINTIFF

VERSUS

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1. CHONGUING INTERNATIONAL CONSTRUCTION

2. GA INSURANCE UGANDA LIMITED::::::::::::::::::::::::: DEFENDANTS

BEFORE HON. JUSTICE SAMUEL EMOKOR

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RULING

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The Plaintiff brings the instant suit against the Defendants jointly and severally for an order of compensation for the damaged motor vehicle, general damages, costs of the suit. When this matter came up before the Deputy Registrar for Summons for Directions, Counsel for the 1st Defendant intimated that he had a preliminary point of law to raise upon which this Court provided the parties with a schedule to file Written Submissions to which Counsel complied.

REPRESENTATION

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Messrs Bikangiso & Co. Advocates represented the Plaintiff while Messrs Munulo & Co. Advocates appeared for the 1st Defendant and Messrs Mangeni Law Chambers & Co. Advocates were for the 2nd Defendant.

5 **SUBMISSIONS**

It is the submissions of the 1st Defendant that the Plaintiff sued the Defendants for recovery of special and general damages allegedly arising from a road accident in which the Plaintiff's motor vehicle Reg No. UAE 450 D (Pickup) is said to have collided with the Defendant's motor vehicle (Semi trailer) Reg. No. UAY 812 Q/
10 UAY 023 R. The Accident having occurred on 3rd March 2022 and that the Plaintiff's vehicle was damaged or destroyed beyond repair.

It is the contention of Counsel for the 1st Defendant that apart from alleging under Paragraph 5 of the Complaint that the Defendants driver was at fault, the Plaintiff never pleaded negligence by the said driver and therefore never provided
15 particulars of negligence that led to the said accident and yet the purported fault can only occur as a result of negligence of some sort hence the Plaintiff's failure to plead negligence and provide particulars of negligence render the suit bad in law. To buttress his point, Counsel relied on the case in **Kebirungi Justine versus M/S Road Trainers Ltd & 2 others HCMA No. 285/2003** in which the Court
20 held that driving recklessly without due regard to other road users did not amount to particulars of negligence and that giving particulars of negligence is not a mere technicality but a substantial merit as it is from that the Defendant is able to know the allegations to meet and the type of defence to prepare.

It is therefore the submission of Counsel that the mere attachment of the Police
25 accident report and sketch plan to the complaint is not enough nor is the allegation that the Defendant's driver is at fault enough.

5 Counsel further submits that the Plaintiff did not attach a log book showing that the said motor vehicle is his property and that the log book attached to the Plaintiff indicates registered owners other than the Plaintiff who is therefore not the owner of the same.

Counsel for the 1st Defendant therefore prays that the instant suit is dismissed
10 with costs.

Counsel for the plaintiff in his Written Submissions in reply admits that whereas the Plaintiff provides for facts and documents alluding to negligence of the 1st Defendant's employee, the particulars of negligence have not been pleaded as required by law.

15 It is the contention of Counsel that the defect raised by the 1st defendant is one that can be cured by way of amendment as per **Order 6. Rule 19** of the **Civil Procedure Rules** and that it is important to take note that the Plaintiff has already filed an application before this honourable Court Vide **HCMA No. 006/2023** that Counsel argues is intended to determine the real questions in controversy, avoid
20 multiplicity of proceedings and costs. It is the argument of Counsel that the above scenario can all be avoided by way of amendment to cure the aforesaid defect.

To buttress his submission, Counsel relied on the case in **Okello Wilbert** versus **Obel Ronald HCMA No. 971/2020** in which the Advocate had left out material facts for determination of his client's case but the Court proceeded to allow the
25 Applicant to amend his pleadings.

On the 2nd preliminary objection in regard to the Plaintiff failing to attach proof of ownership of the motor vehicle it is the contention of Counsel that it is

5 incumbent on the Plaintiff to produce evidence of ownership thus failure to attach the log book to the plaint does not make the suit bad in law.

Counsel for the Plaintiff therefore prays that this Court differs its ruling until after the hearing of HCMA No. 006/2023.

Counsel for the 1st Defendant in rejoinder opposes the prayer that the preliminary
10 objection be deferred pending hearing of HCMA No. 006/2023 on the basis that such a procedure is not provided for under the law and the proper procedure is to hear the first application for dismissal of the main suit on points of law before HCMA No. 006/2023 is determined.

DETERMINATION

15 **Order 7 Rules 1 (e) of Civil Procedure Rules** provides that the Plaint shall contain particulars that include the facts constituting the cause of action and when it arose.

It is not in dispute that the Plaintiff did not in his Plaint provide the particulars of negligence that he alluded to under paragraph 4 of his Plaint. I will reproduce
20 paragraph 4(b) for clarity.

“That on the 3rd March, 2022, the 1st Defendant’s vehicle Reg. No. UAY 812 Q/ UAY 023 R Sino truck Sem Trailer knocked the plaintiff’s vehicle beyond repair out of the reckless driving of the Defendant’s driver. A copy of the Police Report is here to attached.”

25 Counsel for the first Defendant relied on the case in **Kebirungi Justine versus M/S Road Trainers Ltd & 2 others (Supra)** in which the Court held that:

5 “... I find that giving particulars of negligence is not a mere technicality but a
substantial merit as it is from it that the Defendant is able to know the allegations
to meet and type of defence to prepare. The sum total of the above is that the Court
will find it easy to frame issues and determine the suit without due delay. For the
above reason, I find that the Plaint (both original and amendment) does not
10 disclose any cause of action. The same is accordingly struck out with costs. The
Plaintiff can go back to the drawing board if she so wishes.”

Order 7 Rule 11 Civil Procedure Rules provides for the instances upon which a
Plaint may be rejected as follows:

- “a) Where it does not disclose a cause of action.
- 15 b) Where the relief claimed is undervalued and the Plaintiff, on being required by
the Court to correct the valuation within a time to be fixed by the Court fails to do
so.
- c) Where the relief claimed is properly valued but an insufficient fee has been paid
and the Plaintiff, on being required by the Court to pay the requisite fee within a
20 time to be fixed by the Court fails to do so.
- d) Where the suit appears from the statement in the Plaint to be barred by any
law.
- e) Where the suit is shown by the Plaint to be frivolous or vexatious.”

It would appear from my reading of the Ruling in **Kebirungi Justine** versus **M/S**
25 **Road Trainers Ltd (Supra)** that the learned Judge directly linked the failure to

5 provide the particulars of negligence to failure to disclose a cause of action so as to fit the same under the ambit of **Order 7 Rule 11 (a) Civil Procedure Rules**.

Justice Tsekooko (JSC) as he then was in his lead Judgement in **Tororo cement Co. Ltd** versus **Frokina International Ltd SCCA No. 02 of 2001** in an appeal in which the two grounds were that the learned Justices of Appeal erred in law by
10 holding that the Plaintiff disclosed a cause of action and failed to appreciate that once negligence was pleaded then the particulars of the alleged negligence had to be set out in the pleadings made the following observation:

*“It is common practice in cases of negligence for a party or his advocate who intends to rely on negligence to plead particulars of negligence either within a
15 paragraph of the pleadings or in more than one paragraph. Reliance on the three tests in the Motokov case (Supra) must be taken with care. That was not a case of negligence but a case of sale of goods. When at page 519, Spry V.P in his lead Judgement concluded that:*

*‘I would summarize the position as I see it by saying that if a Plaintiff shows that
20 the Plaintiff enjoyed a right, that the right has been violated and the Defendant is liable, then in my opinion, a cause of action has been disclosed and any omission or defect may be put right by amendment’*

*He clearly showed that where a Plaintiff discloses a cause of action but is deficient in particulars, the Plaintiff can be amended so as to include particulars, say of
25 negligence.”*

The other four Justices on the panel agreed with the same positions as being the law. In view of the provisions of **Order 7 Rule 11** of the **Civil Procedure Rules**, I

5 would not agree more with their Lordships. The facts of this case are that the Plaintiff claims ownership of motor vehicle Reg. No. UAE 450 D Nissan Datsun make and avers that on the 3rd March, 2022, the 1st Respondent's vehicle Reg. No. UAY 812Q/UAY 023R Sino truck sem trailer knocked the Plaintiffs vehicle beyond repair out of the reckless driving of the Defendant's driver and that the 1st Defendant's vehicle was insured by the 2nd Defendant and hence liable for the 1st Defendants loss occasioned to the Plaintiff.

I am sufficiently satisfied that the plaintiff discloses that the Plaintiff enjoyed a right, the same was violated and the Defendants are liable. It therefore follows that failure of the Plaintiff to provide particulars of the negligence of the 1st Defendant's driver in causing the traffic accident is not fatal to the Plaintiff's case but can be remedied by way of amendment.

On the 2nd preliminary point raised on the fact that the Plaintiff has not attached proof of ownership of the motor vehicle in issue. I find this not sufficient to warrant dismissal of the Plaintiff's case. The Plaintiff avers that he is the owner of the motor vehicle in issue. The Accident report in Police Form 37 annexed to the Plaint as "A" indicates that the owner of the motor vehicle is one Walusimbi Dalton Lawrence while the Plaintiff is listed as the insurance policy owner. Justice demands that the Plaintiff be given an opportunity to explain his claim to ownership of the motor vehicle that he has provided insurance.

25 The Plaintiff has expressed the desire of seeking leave to amend his Plaint and to this effect has filed HCMA No. 006/2023 that this Court ordered will only be determined after the preliminary points of law raised by the 1st Defendant have been determined. The arguments of Counsel in the preliminary points of law

5 raised deal squarely with the issues in HCMA No. 006/2023. To attempt to fix the
same for hearing will only lead to regurgitation of arguments and wastage of
valuable time. I however hold the firm view that the defendant should not be
made to incur expenses of filing amendments to their written statement of
defence as a result of the Plaintiffs short coming. It is only fair and just that the
10 defendants are shielded from this cost that has been forced upon them by the
plaintiff.

In the final result the following orders are hereby issued,

1. The preliminary objections raised by the 1st defendant are hereby
overruled.
- 15 2. The plaintiff is hereby granted leave to amend his plaint and the same shall
be filed within fifteen days of this ruling.
3. HCMA No.006/2023 is over taken by events and accordingly dismissed
with no orders as to costs

Before me,

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SAMUEL EMOKOR
JUDGE
28/02/2024