

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
CIVIL APPEAL NO. 0017 OF 2014
(Arising from Civil Suit No. 123 of 2011 before Her Worship Nanteza Zulaika
Magistrate Grade 1 at Chief Magistrate's Court of Fort Portal)

ALI MUGABIAPPELLANT

VERSUS

RUTH GANDAIRE.....RESPONDENT

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO. ANTHONY OJOK, JUDGE

Judgment

This is an Appeal against the judgment and orders of Her Worship Nanteza Zulaika Magistrate Grade 1 at Chief Magistrate's Court of Fort Portal in Civil Suit No. 123 of 2011.

Brief fact

The Respondent instituted a suit against the Appellant for orders that the Appellant pays her UGX 8,000,000/= as compensation for lost property, general damages, special damages and costs. The Respondent claimed that she hired the Appellant's lorry Fuso No. UAM 998h to, transport her cassava flour from Namutumba District to Kasese District. That, the said lorry, got involved in an accident. That due to the accident she made losses worth UGX 8,000,000/= of cassava flour. That the Respondent herself also sustained injuries and the matter was reported to police.

The Appellant on the other hand in his Written Statement of Defence denied all the contents of the plaint and stated that he will raise a preliminary objection to the effect that the plaint does not disclose a cause of action and the money and remedies claimed by the Respondent were misconceived and unmaintainable against the Appellant. The Appellant further denied ever hiring out his Lorry Fuso to the Respondent and that indeed his lorry got involved in accident but the cassava flour that got spoilt did not belong to the Respondent. That the Appellant was not negligent in the circumstances and did not owe any duty of care to the Respondent.

The trial Court held that the Respondent had a cause of action against the Appellant and ordered special damages of UGX 4,725,000/=-, general damages of UGX 2,000,000/=- exemplary damages of UGX 1,000,000/=-, interest of 26% on special damages from the date of judgment till payment in full and costs of the suit in favour of the Respondent.

The Appellant being dissatisfied with the decision of the trial Magistrate lodged this appeal whose grounds are;

1. That the learned trial Magistrate erred in law and fact when she failed to judiciously evaluate the whole evidence on record and consequently arrived at the wrong decision.
2. That the learned trial Magistrate erred both in law and fact when she directly held the Appellant vicariously liable, which facts were neither disclosed nor pleaded in the plaint.
3. That the learned trial Magistrate erred in law and fact when she failed to consider the testimony of the Appellant.

Counsel Ojuku Stephen appeared for the Appellant and Justice Centres Uganda were for the Respondent. Both parties agreed to file written submissions.

Counsel for the Appellant abandoned the third ground of appeal therefore only two grounds have been discussed.

Ground 1: That the learned trial Magistrate erred in law and fact when she failed to judiciously evaluate the whole evidence on record and consequently arrived at the wrong decision.

The duty of the first Appellant Court is to evaluate the evidence on record a fresh as a whole and draw its own conclusions bearing in mind that it neither saw nor heard the witnesses at trial. The guiding principle was well stated by Law J. A. (as he then was) in the case of **Karanja Kago vs Karioki Njenga and Edward James Mungai, Civil Appeal No. 1 of 1979 (K-CA)** held that;

“A first appeal is by way of re-trial and the Appellate Court is in as good a position as the Trial Judge to make findings of fact and to draw inferences from those facts but to bear in mind that it has neither seen nor heard the witnesses and should make due allowance of this fact.”

In as far as ground one is concerned, the ground is inconcise, too general, vague and devoid of merit as it offends **Order 43 Rules 1 and 2** of the Civil Procedure Rules S.1 71-1. Therefore, this ground should be struck out. (See: **Arajab Bossa Vs Bingi, HCT – 01 – LD – CA – 0015 of 2012 Pg. 2**)

Ground 2: That the learned trial Magistrate erred both in law and fact when she directly held the Appellant vicariously liable, which facts were neither disclosed nor pleaded in the plaint.

In the instant case the Appellant in his testimony admitted that his lorry had been involved in an accident and that his driver was the one driving it and which driver only operates under the Appellant’s instructions. The Appellant in his testimony also contradicted himself by first denying that there was no posho on his lorry and later told Court that the posho that was on the lorry was his. In my opinion the Appellant though having denied ever hiring his lorry to

the Respondent was lying to Court and that is why he was not able to even maintain a consistent testimony. The driver of the Appellant's lorry was therefore acting under the instructions of his boss (the Appellant).

Thus, in the instant case the Appellant was vicariously liable for the act of his driver even though these were not pleaded by the Respondent. The Respondent however, clearly testified that she had hired the Appellant's vehicle which was being driven by his driver and she sued the Appellant because he could not avail him for purposes of legal redress.

In the case of **Muwonge Vs A.G [1967] E.A at P. 17**, Justice New bold held that;

"An act may be done in the course of employment so as to make his master liable even though it is done contrary to the orders of the master; and even if the servant is acting deliberately, wantonly, negligently or criminally, or for his own benefit, nevertheless if what he did is merely a manner carrying out what he was employed to carryout then his master is liable."

And in the case of **Uganda Breweries Ltd Versus Uganda Railway Corporation (2002) 2 E.A 634**, it was held that;

"...the question for decision, under Ground 2(1) of the appeal appears to be whether the party complaining had a fair notice of the case he had to meet, whether the departure from pleadings caused a failure of justice to the party complaining; or whether the departure was a mere irregularity, not fatal to the case of the Respondent whose evidence departed from the pleadings."

In the interest of justice it is my considered opinion that the learned trial Magistrate did not err both in law and fact when she directly held the Appellant vicariously liable which facts were neither disclosed nor pleaded in the plaint and in the case of **RE: Christine Namatovu Tibaijjuka [1992-1993] HCB 85**, it was held that;

"The administration of justice should normally require that substance of disputes should be investigated and decided on the merits and that error and lapse should not necessarily debar a litigant from the pursuit of his rights."

This appeal therefore fails and is dismissed with costs.

Right of appeal explained.

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OYUKO. ANTHONY OJOK

JUDGE

18/10/2016

Delivered in the presence of:

1. The parties
2. Counsel for the Appellant
3. Counsel for the Respondent
4. Court clerk