

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
CIVIL SUIT NO. 202 OF 2009

- 1. MBABAZI ELDADI**
- 2. MBABAZI JANET**
- 3. NIMUSIIMA IRENE**
- 4. TEMURANZYE RAYMOND ::::::::::::::::::::::::::::::::::: PLAINTIFFS**

VERSUS

- 1. HAIF HARUNA**
- 2. GASO TRANSPORT SERVICES LTD ::::::::::::::::::::::::::::::::::: DEFENDANTS**

BEFORE: LADY JUSTICE LYDIA MUGAMBE

JUDGMENT

1. The Plaintiffs brought this suit for recovery of special and general damages and costs against the Defendants jointly and severally for the first Defendant's actions of negligently driving the second Defendant's bus and causing an accident that involved all the Plaintiffs.
2. On or about 4th May 2009 at around 8:00pm, all the Plaintiffs who are family members were travelling to Kanungu in a Prado Land Cruiser registration No. UAF 993L belonging to the first Plaintiff. While at Kabalungi near Mbirizi along Masaka- Mbarara road, they were involved in a head on collision with the second Defendant's bus registration No. UAG 402U. The car was being driven negligently and carelessly by the first Defendant from Mbarara to Kampala in his ordinary course of employment as the driver of the second Defendant.

3. As a result of the collision, the first Plaintiff's motor vehicle was extensively damaged and written off, each of the Plaintiffs suffered bodily injuries, have incurred costs and loss as direct consequences of the Defendants' actions and/or omissions. As a result, they claim special and general damages and costs of the suit. The Plaintiffs hold the second Defendant vicariously liable for the actions of the first Defendant who was its driver.
4. On 16th December 2009, an interlocutory judgment was entered against the Defendants. However on 9th May 2013 the Defendants filed Misc. application No. 197 of 2013 seeking to set aside the interlocutory judgment and be granted leave to file a defence. This application was granted on 13th May 2013 and the Defendants were ordered to file their defence within 14 days.
5. In their written statement of defence, the Defendants averred that there was contributory negligence by the Plaintiffs who allowed Lutalo Abdu to drive on a highway without a valid driving permit and/or when he is not licensed. Further that the Plaintiffs' car was being driven recklessly and negligently at a high speed on a highway at night. They also averred that the Plaintiffs voluntarily assumed risk by the Plaintiffs' vehicle being driven without a driving permit thus being in breach of the road traffic laws and knowingly travelling in a vehicle whose driver was illegally on the road. They thus contended that the Plaintiffs were not entitled to the reliefs sought and that the suit should be dismissed with costs.
6. In reply to the written statement of defence, the Plaintiffs averred that the late Lutalo Abdu who was driving the Plaintiff's vehicle was never the first Plaintiff's employee and only got to know him on the fateful day through Mr. Kamugisha Geoffrey who recommended him to the first Plaintiff as a reknown taxi driver with reasonable skill. Lutalo drove carefully with reasonable skill and did all that could be done by a competent driver to avoid the collision. At no point did Lutalo drive at a high speed in disregard of the safety of other road users and the accident was the foreseeable negligent act of the first Defendant for which the second Defendant is vicariously liable.
7. On 27th November 2018, after substituted service on the Defendants and they did not attend court, leave to proceed *ex parte* was granted to the Plaintiffs. All the Plaintiffs gave evidence

through witness statements which were all admitted in evidence and interlocutory judgment was entered on the same day.

8. In a joint scheduling memorandum filed on 24th February 2014, the issues agreed to be resolved are:
 - i. Whether the accident was caused by the Defendants.
 - ii. Whether the Plaintiffs are guilty of contributory negligence.
 - iii. Whether the Defendants are liable.
 - iv. What remedies are available to the parties.
9. In **Muwonge v. Attorney General [1967] EA 7** it was held that “once the acts were done by the servant in the course of his employment, it is immaterial whether he did it contrary to his master’s orders or deliberately, wantonly negligently or even criminally or did it for his (servant’s) own benefit, the master is vicariously liable so long as what the servant did was merely a manner of carrying out what he was employed to carry out.”
10. In **Kiga Lane Hotel Limited v. Uganda Electricity Distribution HCCS 557 of 2004**, negligence was defined as “the omission to do something which a reasonable man guided upon those considerations which ordinarily regulates the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.”
11. To establish negligence, the Plaintiff has to prove that (a) there existed a duty of care owed to the Plaintiff by the Defendant; (b) the Defendant had breached that duty and (c) The Plaintiff had suffered injury or damage as a result of the breach of duty. See **Donoghue v. Stevenson [1932] AC 362**.
12. Black’s Law Dictionary defines contributory negligence to mean “a Plaintiff’s own negligence that played a part in causing the Plaintiff’s injury.” In **Ntebekaine & Anor v.**

Umeme Ltd Civil Suit No. 258 of 2012, it was held that “as a general rule, the burden of proof lies on the defendant to prove that there was contributory negligence.”

13. I have read all the pleadings and submissions of the parties and I will resolve the issues together. At the formal proof hearing, all the Plaintiffs testified that the accident in issue occurred on 4th May 2009 at Kabarugi along Masaka – Mbarara high way when a gaso bus registration No. UAG 402U from Mbarara swerved from its lane and hit their car which was heading to Mbarara.. The bus was being driven negligently by the first Defendant who tried to overtake in a corner and in the process of dodging a pothole switched to the Plaintiff's lane. Their testimony is corroborated by the sketch plan marked P.4 in the Plaintiff's trial bundle, which shows where the accident occurred. This court believes the Plaintiffs account of events as correct and true. Accordingly issues 1, 2 and 3 are resolved in the affirmative.
14. Although the Defendants in their written statement of defence claimed contributory negligence on the Plaintiffs part, they led no evidence in this court to satisfactorily prove the same and as such this court has no basis to verify this claim and it is rejected.
15. Annexure P1 to the trial bundle demonstrates that the first Plaintiff bought the suit motor vehicle from Bwabale Ben at Ug. shs: 27,000,000/=. The same is awarded to the first Plaintiff as the purchase price of the vehicle. Basing on annexures P14 to P21, the Plaintiffs are awarded special damages of Ug. shs: 2,339,700/= as sums spent on treatment in various hospitals. The first Plaintiff is also awarded Ug. shs: 80,000/= paid for the traffic accident report basing on annexure P6 to the trial bundle.
16. Although the first Plaintiff claims loss of earnings as special damages, I am disinclined to consider the same because the Plaintiff has not adduced satisfactory evidence to prove this claim. However it is a factor that will be considered in the award of general damages. For the

loss incurred by the Plaintiffs, pain and suffering, each Plaintiff is awarded general damages of Ug. shs: 25,000,000/=. The Plaintiffs are also awarded costs of this suit.

17. Accordingly, the suit succeeds with the following orders:

- i. The first Plaintiff is awarded special damages of Ug. shs: 29,419,700/= being the determined cumulative value for the purchase price of the suit vehicle, hospital bills and money paid for the traffic accident report.
- ii. Each Plaintiff is awarded general damages of Ug. shs: 25,000,000/= (Uganda shillings twenty five million only).
- iii. Interest of 6% per annum on (i) and (ii) above from date of suing till payment in full.
- iv. The Plaintiffs are awarded costs of the suit.

I so order.

Lydia Mugambe.

Judge.

8th May 2019.