

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

CIVIL SUIT NO. 0008 OF 2017

5 **RUHWEZA JOHNPLAINTIFF**

VERSUS

1. CHINA RAILWAYS SEVENTH GROUP

2. BK2 LTD

3. UMEME LTD

}
.....**DEFENDANTS**

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BEFORE: HIS LORDSHIP HON. MR WILSON MASALU MUSENE

Ruling:

M/s Shonubi, Musoke & Co. Advocates, Counsel for the 3rd Defendant raised a preliminary to the effect that the Plaintiff's suit was incompetent. That the Plaintiff did not in his
15 specifically/expressly state that the suit was brought under the provisions of the Law Reform (Miscellaneous Provisions) Act. Thus, the Plaintiff was defective and does not disclose a cause of action and the Plaintiff should therefore be rejected as per the provision of **Order 7 Rule 11 (a)** of the Civil Procedure Rules.

Counsel for the 3rd Defendant added that the Plaintiff does not disclose a cause of action
20 because at common law, when a human being dies of an accident, the cause of action also abates or terminates. Therefore, for one to recover damages arising from a fatal accident he or she can only do so under a statute and the relevant statute must be cited in the plaintiff, that is, the Law Reform (Miscellaneous provisions) Act in order to give rise to a cause of action.

Counsel cited the case of **Ali Mustafa versus Sango Bus Company, [1975] H.C.B 93,**
25 where it was held that;

“1. Order 7 Rule 11(a) of the Civil Procedure Rules requires a plaint to be rejected where it did not disclose a cause of action. Fatal accident claims could be based upon the Law Reform (Miscellaneous Provisions) Act and if that fact was not pleaded, the plaint disclosed no cause of action.

5 2. The deceased’s income had to be pleaded in fatal accident claims.

3. If no statute was referred to in the plaint, the presumption was that the tortious claim was brought under common laws as a result of which there would be no cause of action in the present instance. The plaint would be rejected with costs.”

That the above decision was approved and followed in the later case of **Twine Amos versus**
10 **Tamusuza James, Civil Revision No. 0011 of 2009**, where lady Justice Irene Mulyagonja Kakooza, held that a plaint that does not cite the Law Reform (Miscellaneous Provisions) Act ought to be rejected. She further held that proceedings based on a plaint that does not cite the said statute are illegal and a nullity.

Secondly, that the deceased’s income is not pleaded in the plaint. That even by consent
15 judgment dated 16th January 2018; this suit was fully settled and closed. In the same consent judgment, the 2nd Defendant admits negligence on its part and it fully paid the Plaintiff the sum of UGX 45,000,000/= which is over and above what the Plaintiff would be awarded by Court if he succeeded on a claim involving the death of a 42 year old. The claim against the
3rd Defendant is therefore intended to unjustly enrich the Plaintiff. Thus, the suit should be
20 dismissed with costs to the 3rd Defendant.

Counsel for the Plaintiff Ms. Angella Bahenzire in reply submitted that the issue of the suit being fully settled was resolved by Court on the 20th September 2018 and the preliminary objection was overruled by Court on the premise that settlement was between the Plaintiff, 1st and 2nd Defendants. That the said consent judgment also stipulated that the Plaintiff was at
25 liberty to pursue a further claim of compensation against the 3rd Defendant, UMEME Ltd.

Counsel for the Plaintiff went on to submit that for Court to determine if there was a cause of action it considers the pleadings and anything attached thereto. In the case of **Odong Cypriano versus Attorney General, HCCS No. 0015 of 2006**, it was held that;

“Mere absence of the motion of the fact that the Plaintiff’s claim is under the said Act, cannot
30 be so fatal as to amount to the plaint showing no cause of action.”

Counsel for the Plaintiff added that the averments by the Plaintiff without stating that the claim was brought under the Law Reform (Miscellaneous Provisions) Act, clearly indicate that the claim does fall under it particularly paragraph 4a, b, c, d, e, f and g. That the plaint clearly indicates that the claim arose as a result of the negligent acts of the Defendant.

5 Counsel for the Plaintiff concluded that the plaint does disclose a cause of action and thus, the preliminary objection was brought in bad faith with the intention of delaying justice and should thus, be dismissed with costs.

I have carefully considered the submissions of both sides. In the instant case the preliminary objection as raised by Counsel for the 3rd Defendant was mainly to the effect that the plaint
10 did not disclose a cause of action because it did not state the law under which the claim was brought.

Counsel for the Plaintiff on the other hand submitted that for Court to determine whether there is a cause of action, the Plaint ought to be read as a whole including its attachments. She went ahead and cited the case of **Odong Cypriano versus Attorney General, HCCS No.**
15 **0015 of 2006**, where the plaint did not state that it was being brought under the Law Reform (Miscellaneous Provisions) Act, but the trial judge found that the facts as lied out in the plaint clearly indicated that the claim did fall under the said act and thus, the pliant did disclose a cause of action.

In my humble, am inclined to concur with the submissions of Counsel for the Plaintiff and
20 the authority as cited and find that indeed the facts in the instant case did fall under the ambit of Law Reform (Miscellaneous Provisions) Act, and thus, there is a cause of action.

Secondly, the consent as alluded to by Counsel for the 3rd Defendant, as correctly stated by Counsel for the Plaintiff that this was between the 1st and 2nd Defendant with the Plaintiff. Court did determine that the Plaintiff was at liberty to make a claim against the 3rd Defendant
25 if they so desired to.

In the circumstances, I overrule the preliminary objection. Let the suit be heard on its merits. Costs in the cause.

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WILSON MASALU MUSENE

JUDGE

4/4/2019