The Republic of Uganda

In The High Court Of Uganda Holden at Soroti

Civil Suit No.17 of 2017

Felina Lodia Vicky :: Plaintiff

Versus

Mercy Corps :: Defendant

Before; Hon. Justice Dr Henry Peter Adonyo

Judgment:

Background:

Felina Lodia Vicky was employed by Mercy Corps as Economic Development Officer and earned a monthly salary of UGX 2,056,824 /= (Two Million Fifty-Six Thousand, Eight Hundred Twenty-Four Uganda Shillings). On the 29th July 2015 she delivered her resignation letter by e-mail to Human Resource Manager of mercy Corps specifying that her last date of work would be on the 28th day of August 2015. It was a one month's notice of resignation written in accordance with the requirement of Mercy Corp's human resource manual.

On the 5th day of August 2015 at 2:00 p.m. while heading to her office from field work in Kotido District Felina Lodia Vicky was involved in a motorbike which she

was riding. The motorbike registration number UDX-112Z belonged to Mercy Corps.

As a result of the accident Felina Lodia Vicky suffered multiple bruises on her arms and knee including a tear to her anterior cruciate ligament and meniscuses of the right knee. Felina Lodia Vicky then sought medical help and was given. Thereafter through her lawyers Felina Lodia Vicky sought for compensation from Mercy Corps but her plea was ignored hence this suit in which she sought for special damages amounting to UGX 123, 409,440/=, punitive damages, general damages and the costs of this suit in addition to interest on special, general and punitive damages at a rate of 28% from the time of filing the case up to the time of judgment, 2% interest on costs, severance allowance and any remedy that the court would deem appropriate.

Representation:

Mr. Jospeh Otede and Mr. Naafi Kazinda of M/S Aogon & Co. Advocates appeared for Felina Lodia Vicky while Ms. Stella Twikirize appeared for Mercy Corps.

Mercy Corps denied Felina's claims and put her to task to prove the same averring that at the time of the accident Felina was no longer their employee.

Issues:

1. Whether the plaintiff at the time of the accident was an employee of the defendant.

2. What is exactly the total permanent incapacity of the plaintiff.

3. What remedies are available to the parties.

Resolution of Issues:

Issue 1: Whether the plaintiff at the time of the accident was an employee of the defendant:

In civil matters, the burden of proof lies on a plaintiff to prove his or her case on a balance of probability. This means that the burden of proof is the duty placed upon a party to prove or disprove a disputed fact. This is so as provided under section 100 (1) of the Evidence Act Cap. 6 and upheld in the case of ***Lukooya Mukome & Another vs The Editor in Chief of Bukedde Newspaper and 2 Others in High Court Civil Suit No. 351 of 2007.***

During the hearing of the instant matter, Counsel for Felina Lodia Vicky sought for a judgment on admission as against Mercy Corps pursuant to Order 13 rule 6 of the Civil Procedure Rules which allows a party to apply for a judgment upon an admission of facts arguing that on 13th June 2019 Counsel Joseph Ssevume

representing Mercy Corps had sought and had had dropped the issue of whether the plaintiff at the time of accident was an employee of the defendant. He relied on the holding in ***Suzana Haarbosch vs Mohammed Khalil Daher HCCS No. 310 2015***

In addition, Counsel for Felina Lodia Vicky pointed out that by an employment agreement dated 6th March 2013 which was renewed by an agreement dated 6th March 2015 (PEXH 2 as per its articles 1 (1.3) and 2.1, Felina Lodia Vicky continued to be an employee of Mercy Corps working as an Economic Development Officer who was earning UGX 2,056,824/= as was even referred to paragraphs 3, 4 and 5 of her witness statement where the plaintiff stated that she was.

Furthermore, in proof that Mercy Corps had strong attachment to Felina Lodia Vicky as its employee, Mercy Corps for a long time even after Felina Lodia Vicky had resigned continued to solicit donations using her name, image and story as its employee up to 2019 yet on 29th July 2015 Felina Lodia Vicky had sent her resignation letter to Mercy Corps officials stipulating that she would leave on the 28th August 2015as proved by Exhibits P6, P7, P8 which resignation was never approved by mercy Corps meaning that Mercy Corps continued to regard Felina Lodia Vicky as its employee and was responsible for her welfare including compensating her for the injuries suffered as a result of the accident which this court should find so and award her claims.

The above argument was panned by Counsel for Mercy Corps who asked court to find that Felina Lodia Vicky continued to be an employee of Mercy Corps only until 29th July 2015 when she officially resigned and as such at the time of the accident she was no longer an employee of Mercy Corps but had only returned to her former workplace to clear outstanding dues and obligations.

As to the application by counsel for Felina Lodia Vicky that judgment on admission counsel for Mercy Corps submitted that the certified record of proceedings of 13th June 2019 show that the court framed only two issues of the degree of the plaintiff's incapacity and how much compensation she is entitled to with no other framing of issues allowed thereafter meaning that the preliminary objection as a new issue framed by counsel for Felina Lodia Vicky contrary to what was agreed upon on 13th June 2019.

Nevertheless, counsel for Mercy Corps went on to submit this issue stating that it was pleaded unconditionally and unequivocally by Mercy Corps in its written statement of defence paragraph 4 (c) and page 2 of the joint scheduling memorandum that Felina Lodia was not its employee at the time of the accident and therefore she had to prove the contrary for under Order 13 rule (4) (5) & (6) of the Civil Procedure Rules the word 'shall' is used in Order 13 rule 5 connoting equivocality of the application of those rules as mandatory as was upheld ***Sussex Peerage (1844) 8 ER 1034 at 1057*** and ***Uganda Crop Industries Limited vs Uganda Revenue Authority***

Civil Suit N. 05 of 2009 with any noncompliance invalidating any act done in disobedience of the said provisions since an admission must be clear and equivocal as was held in ***Sietco vs Impreligo SARL JVC HCCS No. 980 of 1999.***

Given this position, counsel for Mercy Corps reiterated that the statement by counsel Joseph Ssevume who previously represented Mercy Corps that Felina Lodia Vicky continued to be an employee of Mercy Corps at the time of accident should not be read in isolation of the pleadings on record and should be considered by court as one made from the bar since he was neither authorised nor had instructions to make such statement since the defence pleadings was clear and unequivocal as was upheld in the case ***Opia Moses vs Chukia Lumago Roselyn & 5 Others Civil Suit No. 0022 of 2013*** where court pointed out that for an admission to be considered by court it must be clear and unequivocal, must be taken as a whole and therefore the requested judgment on admission should not be upheld without allowing for a remedy to the defendant as doing so would be giving a judgment without trial and so the preliminary objection ought to be dismissed accordingly.

My consideration and conclusions on this issue is premised on the following.

My take on the proposed judgment on admission which has been challenged is premised on the provisions of Order 13 rule 6 of the Civil Procedure Rules which

allows for a party to apply for a judgment on admission where an admission of facts has been made. The said provision is quoted below thus;

Order 13 rule 6 of the Civil Procedure Rules

Judgment on admissions.

Any party may at any stage of a suit, where an admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon the admission he or she may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon the application make such order, or give such judgment, as the court may think just.

Rule 4 and 5 of Order 13 which were relied upon by counsel for the defendant provide for the procedure by which an admission may be obtained after having been made, that is, through a notice to admit facts issued to the opposite party.

Rule 4 Notice to admit facts.

Any party may, by notice in writing, at any time not later than nine days before the day fixed for the hearing, call on any other party to admit, for the purposes of the suit only, any specific fact mentioned in the notice, and in case of refusal or neglect to admit the fact within six days after service of the notice, or within such further time as may be allowed by the court, the cost of providing the fact shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the

court otherwise directs; except that— (a) any admission made, in pursuance of the notice is to be deemed to be made only for the purposes of the particular suit, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice; and (b) the court may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

5. *Form of admission.*

A notice to admit facts shall be in Form 10 of Appendix B to these Rules, and an admission of facts shall be in Form 11 of Appendix B to these Rules, with such variations as circumstances may require.

Aside from the above, several cases have laid out the principles that govern judgments issued on admission. For instance, in ***Miraj Barot vs Salvation Army Civil Suit No. 713 of 2015,*** the court while relying on ***Messrs. Equator Touring Services Ltd Vs City Council of Kampala Misc. App 406 of 2013*** went on to hold that an admission of facts can be made either on pleadings or otherwise.

Also in ***John Peter Nazareth vs Barclays Bank International Ltd EACA 39 of 1976 (UR)*** the court found that for a judgment to be entered on admission such an admission must be explicit and not open to doubt.

Additionally, as was held in ***Suzana Haarbosch vs Mohammed Khalil Dagher High Court Civil Suit No. 310 of 2015*** the court while relying on the holding in ***Sietco vs Impreligo SARL JVC HCCS No. 980 of 1999*** held that an admission can be gleaned from the pleadings or otherwise and it must be clear and unequivocal.

Taking into account the above principles and considerations, the plaintiff herein seeks to rely on a statement made by Mr. Joseph Ssevume, then counsel for the defendant on 13th June 2019 when he stated that, ***"we apply to amend the issues. We drop Issue 1 of whether the plaintiff was an employee of the defendant company at the time of the accident. She was."***

According to the plaintiff this statement amounts to an admission by the defendant that the plaintiff was an employee at the time the accident occurred. I shall compare this with what is in the written statement of defence paragraph 4 (a). In that paragraph, it is stated thus that ***"the plaintiff was an employee of the defendant until 29th July 2015 when she personally resigned"***. Similarly, in the joint scheduling memorandum, at page 2, paragraph 4, under the heading 'Defendant's Brief Facts, it is stated that, ***"That the plaintiff was an employee of the defendant until 29th day of July 2015, when she personally resigned and after her resignation, the defendant employed another staff."***

When the pleadings are compared with the statement by the Mr. Ssevume it would appear that while the same could be said to be infected by the above provisions of the written statement of defence and the joint scheduling memorandum, I am satisfied that the admission is ambiguous and equivocal and I would find it oppressive to enter into a judgment on admission pursuant to Order 13 rule 6 of the Civil Procedure Rules. As such, I would decline to enter a judgment on admission as prayed by the plaintiff.

Lastly it should be noted that the plaintiff appears to have relied on inapplicable provisions of sections 55 and 57 of the Evidence Act Cap. 6 where it is provided that *" no fact need to be proved in any proceedings which the parties to the proceeding or their agents agree to admit at the hearing, or which, before any hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings; except that the court may, in its discretion, require the facts admitted by their pleadings; except that the court, may, in its discretion, require the facts admitted to be proved otherwise than by such admissions".*

Now I will then proceed to determine on merit the question of whether Felina Lodia Vicky was an employee of Mercy Corps at the time of the accident as this is contested issue.

Firstly, the principles that governing resignation from employment was enunciated by the Industrial Court of Uganda in ***Etuket Simon vs Kampala Pharmaceutical Industries Ltd [1999] Labour Dispute Claim No. 272 of 2014*** when it held that *"resignation is a method of terminating an employment at the instance of an employee. In organized enterprises resignation is always stipulated either in the contract or in the personnel management manual as a method of terminating an employee-employer relationship. The manual or the contract will normally provide the other various methods of termination and the various consequences/ benefits that arise out of the termination."*

Relating the above to the instant matter, it is the case of the plaintiff in her witness statement under paragraph 2 that she was first employed by the defendant on 6th March 2013 and her last employment agreement was renewed on 6th March 2015. The Employment Agreement is P Exhibit 2 which I have reviewed. I have also reviewed a copy of the plaintiff's pay slip and a copy of the plaintiff's identity card as an employee of the defendant.

I have also viewed a copy of the resignation letter, (P. Exhibit 7) in which she stated in paragraph 1 of the letter, *"I wish to formally notify you that am resigning from my position as Economic Development Officer with Mercy Corps effective from the above date and my last day of work will be 28th08. 2015 as per one-month notice that am obligated to issue as per terms and conditions of my employment."*

The above is restated in paragraphs 6 to 12 of the plaintiff's witness statement wherein it is stated that on the 29th July 2015 the plaintiff sent her resignation letter to the human resource manager called Ms. Kintu Racheal with a copy to one Mr. Ogwal Jacob. In the said resignation letter the plaintiff explains that she would leave within a month on the 28th August 2015.

Also a copy of the Human Resource Manual of the defendant (Mercy Corps) was attached to the plaintiff's witness statement as P. Exhibit 8. Paragraph 8.2 which is relevant on resignation is produced here below:

Paragraph 8.2

Resignation

Employees may resign from Mercy Corps Uganda by submitting a letter of resignation a minimum of thirty (30) days prior to their intended resignation date. The letter of resignation should be provided by the employee to their supervisor and the Country Director (or designee) Mercy Corps Uganda may decide to pay wages in lieu of notice for regular employees. Employees may elect, in lieu of notice, to pay to Mercy Corps Uganda, the sum of money equivalent to their wages for the days of the relevant notice.

The plaintiff testified in relations to the above provisions of the law in paragraphs 2 to 12 of her written statement as follows;

That on 5th August 2015 at 2:00 p.m. the plaintiff fell off a motorbike while she on her way back from the field. She was then taken for First Aid, at Calvary Health Care by one Martha Narika who is an employee of World Vision and that eventually Mercy Corps (The Defendant) sent a motor vehicle registration number UAP 268Q driven by one James Owera which took her to St. Kizito Matany Hospital. The plaintiff further testifies that at the time of the accident she was riding a motor cycle belonging to Mercy Corps registration number UDX 112Z and that she was in possession of a driving permit (P Exhibit 10) as well as a motorbike Certificate of Insurance which was also in the names of Mercy Corps issued on 12th March 2015 (See P. Exhibit 11). The details of the accident were also contained in the Vehicle Accident Report Form (P. Exhibit 9).

Counsel for the defendant did not cross-examine the plaintiff on her statements in paragraph 2 to 12 of the witness statement in relation to her employment status at the time of the accident.

In the circumstances and applying the decision above and the provisions of The Human resource manual of Mercy Corps, I would find that it is undisputable that the plaintiff was at the time of the accident an employee of the defendant given that she has ably demonstrated that she tendered in her resignation on 29th July 2015 to the Human Resource Manager and the Project Manager giving a notice of one month's period ending on 28th August 2015 as stipulated by Clause 8.2 of the Mercy Corps

Uganda National Team Handbook meaning that she acted as was required of her but the Defendant which already had this information continued to assign official work duties to her meaning that the defendant still recognized her as its employee and so on 5th August 2015 when the accident happened I would conclude that she was still an employee of the defendant.

On the issue of the defendant continuing to solicit donations using the plaintiff's images, name and story, I have considered this but find that no particular proof of this with the exception that the plaintiff was only an employee of the defendant beyond the intended period of resignation. This sub issue is thus not proved.

Overall the issue as to whether the plaintiff was still an employee of the defendant at the time the accident occurred is found in the positive and it, therefore, succeeds.

Issue 2: What exactly is the total permanent total incapacity of the plaintiff:

Dr. Luka Joshua (PW1) examined the plaintiff and treated her for a period of 4 months from 1st September 2016 to 4th December 2016 and upon his examination he found that the anterior cruciate ligament which controls the forward movement and stability in movement was torn. PW1 also conducted a McMurray test on the plaintiff and found that the plaintiff had a low walking capacity and he also detected a clicking sound after her leg was made to bend which was a sign of a tear. In addition, PW1 made further findings that any failure to carry out a surgical operation within

a period of six months would cause acute arthritis which could eventually lead to necrosis and eventual amputation of the leg. This witness thus concluded that according to his evaluation the plaintiff had experienced 55% permanent total incapacity.

PW1's medical report was, pursuant to sections, 55, 56 (1) (f) and 76 of the Evidence Act Cap. 6, admitted on record as a public document with substantial probative value attached to it as it had also been proved by oral evidence pursuant to section 58 and 59 (a) of the Evidence Act.

Another report that the plaintiff relied on was PExhibit17 which is a right knee ultrasound scan by one Dr. Iga Matovu, Senior Consultant Radiologist which is dated 23rd August 2016 showing that the plaintiff had suffered avulsion fracture of tibial tuberosity and it recommended MRI to confirm the tear of the cruciate ligament.

Also tendered was PEXH24 which is a right knee MRI scan report by one Dr. Geoffrey Erem and Dr. Nabawanuka Eva showing an examination of the plaintiff at Nsambya Hospital after a referral by Commissioner Occupational Health and Safety in the Ministry of Gender, Labour and Social Development for an independent assessment.

In that report it is stated that the plaintiff underwent an MRI scan on 23rd July 2020 which showed that there was disruption of the anterior cruciate ligament and partial tear of the lateral meniscus.

Another report cited was a medical report (P Exhibit 25) by Dr. Nadumba EK who is a senior consultant orthopedic surgeon who carried out on 17th November 2020. The report reveals that there was a disruption of the ACL and partial tear of the right lateral meniscus and recommended a surgical reconstruction of the right ACL, physiotherapy and placed permanent disability at 60%. These medical documents and that the original copy of the MRI scan made on 23rd July 2020 and that of Dr. Nadumba of 17th November 2020 were produced by the plaintiff in court as required under section 63 of the Evidence Act Cap. 6 as primary evidence.

The plaintiff, however, challenged the testimony of Dr. R.J Stockley (DW1) who testified presented his own medical report in respect of the incapacity suffered by the plaintiff and asked court to find it as being full of mistruths for he failed to explain how the cruciate ligament had clinically healed and even the state of the other four cruciate ligaments in addition to his report being inconclusive since he did not even refer to the Magnetic Resonance Imaging (MRI) Scan report but rather to an x-ray which could not detect injury on ligaments and which was never given to the plaintiff nor produced in court.

Counsel thus asked court to as provided under section 25 of the Workers Compensation Act Cap. 225, find that as per the medical reports, the plaintiff suffered from anklyosis or stiffness of the right knee joint which has created significant functional limitation in walking, climbing stairs and had now a permanent residual disability of stiffness and degenerative osteoarthritis which has resulted in100% permanent total incapacity.

The defence derided the plaintiff's analysis and recommendations and asked court to refer to sections 1 (t), 3 and 5 (1) of the Workers Compensation Act Cap. 225 on permanent total incapacity for according to it , the plaintiff had not produced in court any evidence her medical examination visits manifested through treatment notes, review notes, medical pay slips or proof of payment of consultation fees and had only relied only one medical report of PW1 dated 31st October 2016 wherein it is stated of the plaintiff reviews on 16th September 2016 and 3rd October 2016.

In addition to this, the defendant urged court to find that PW1 had not convincingly adduced proof as to why the MRI scan on which the medical report was based was not on the record and that from the testimonies it should be seen as being full of inconsistencies for while it noted that the plaintiff had a low walking capacity and a permanent total incapacity at 55% at the same time it states that the plaintiff had substantially recovered and was able to walk without clutches in addition to non

explanation of how the walking incapacity of 55 % was arrived at even though a surgical operation was recommended required.

According to the defendant since the plaintiff had not lost a limb and her limbs were still intact, except for the injury, therefore and as per the assessment under the second schedule of the Workers Compensation Act Cap. 225 her incapacity could not amount to 55% permanent total incapacity.

Regarding the testimony of the Dr. Richard Stockley (DW1) who also examined the plaintiff by carrying out an x-ray examination, it was the contention of the defence that the plaintiff's torn ligament had healed clinically as when she went to see DW1 she was not using crutches at all. That, as per his examination and assessment under the Worker's Compensation Act the plaintiff's permanent total incapacity was at 12%. He prayed that the court adopts the findings of DW1.

In relation to the finding, and reports of other doctors that were tendered in court, counsel for the defendant submitted those medical reports were inadmissible in court as they amounted to hearsay evidence and as such should not be considered by court.

I now, turn to determining of Issue 2. Pursuant to section 43 of the Evidence Act when the court has to form an opinion of that person who is especially skilled in that questions are relevant facts. Such persons are called experts. Also according section 55 of the Evidence Act a fact which the court will take judicial notice need not be

proved. In addition, Section 58 of the Evidence Act provides that all facts except the contents of documents may be proved by oral evidence must be direct with section 59 (a) requiring a fact which if seen must be the evidence of a witness who says he or she saw it.

Also according to section 63 of the Evidence Act documents must be proved by primary evidence except for certain cases and lastly under section 76 the certified copies of documents may be produced in proof of the contents or parts of the public documents of which they purport to be copies.

I now turn to examine the testimony of witnesses.

Dr. Luka Joshua (PW1) testified orally that he treated the plaintiff as well as examining the medical reports results from other hospitals. He eventually made a medical report which certified copy was produced in court pursuant to section 76 of the Evidence Act.

According to this witness the plaintiff came with an MRI scan from Nsambya Hospital which showed a tear of anterior cruciate ligament and right meniscus parts around the knee. He explained that these are parts around the knee and they control forward mobility and stability of the leg and once it tears, it does not grow back. His testimony was that a surgery may be done but some complications such as arthritis and osteonecrosis may arise.

He added that since there was no surgery, the patient developed chronic dysfunction of the ligament and even if it is repaired, the patient may not walk normally again, and that if there is arthritis, or degeneration of the bones, this would lead to amputation. However, that there was need to re-evaluate if necrosis had set in.

PW1 also explained to the court that the MRI scan showed that still a tear and no operation had been carried out. In arriving at the permanent total incapacity of 55%, PW1 explained that he easily detected it because there was a tear and injury to the ligaments and instability on the legs. He also said that he examined the patient and used physical exam and a walk by the patient for 2 minutes of 25 feet and that the background of the assessment was provided by the MRI scan.

During cross-examination, PW1 explained that he had the opportunity to examine the plaintiff on four occasions as part of gathering medical information and he became well acquainted with her medical history. He said that when the plaintiff came to him, she had an abscess on the knee, which he treated and gave painkillers. He later referred her to an orthopedic expert as he didn't capacity at the hospital. that, the plaintiff should have had surgery before she came to the hospital. That the McMurray Test showed that the knee clicked which was a positive sign that there was a tear in the lateral meniscus. PW1 explained that through the MRI scan report and physical examination, he arrived at the figure of 55 %. Lastly, that at that time, of the examination, the patient had substantially recovered.

The Medical Report (PEXH1) prepared by PW1 on 31st October 2016 noted that the physical examination was carried out by conducting McMurry test in which the patient's knee was made to bend, then straightened and rotated. This created tension on a torn meniscuses and a clicking sound was detected. Imaging test was done at a different imaging facility, through Magnetic Resonance Imaging Scan. This showed a more detailed evaluation of the knee cartilage. Both the red and the white zones were affected and pieces of meniscuses got loose and drifted away from the joint line causing a knee lock. She was treated in anti-inflammatory drugs; advil, mortrin were administered to ease the pain. Also a timed 25-foot walk and 2-minute walk tested on 3rd October revealed that the patient has a low walking capacity and as such her percentage of permanent total incapacity was assessed at 55 % with physiotherapy is still being carried at both hospital visits and home and the patient not fully recovered she has been an outdoor patient under review. The patient was reviewed on 16th/09/ 2016, and 3rd /10 /2016. She was found to have substantially recovered and is able to walk without clutches. She is returning on the 4th/12/2016 2016 for another review.

As toPW1's medical report, I find that the contents of documents produced in court was certified pursuant to sections 55 and 76 of the Evidence Act thus is a public document considering that PW1 himself came to court and testified on its contents. Therefore, there is no need for further proof.

Turning to the contents of the report, there are inconsistencies noted as to the state of the plaintiff's knee. While it is stated that the Mc Murray test detected a clicking sound on the plaintiff, a timed 25-foot walk and 2-minute walk revealed a low walking capacity and thus her permanent total incapacity was assessed at 55% yet PW1 physiotherapy was still being carried out.

In addition, the reviews carried out on 16th/09/2016 and 3rd/10/2016 found the patient to have substantially recovered and could walk without clutches.

PW1 also relied on a report from a Magnetic Resonance Imaging Scan which was brought to him the patient and on which he based his own evaluation and findings. However, the MRI scan report was never produced in court by either him or PW1. This makes it difficult to believe the assessment of the incapacity by the plaintiff for while PW1 assessed permanent total incapacity at 55%, the second schedule of the Workers Compensation Act Cap 225 calculates permanent total incapacity percentages as follows;

Loss of leg at or above knee 70

Loss of leg below knee 40

40

However, during his testimony in court PW1 stated that he read the MRI scan report and carried out a physical examination using the Mc Murray test and arrived at the conclusion that the permanent total incapacity of the plaintiff was at 55%.

In my assessment, PW1's conclusion is considered unreliable given that the MRI scan which formed the basis of his conclusion was never produced in court.

Felina Lodia Vicky (PW2) testified as to how she got involved an accident which resulted into her sustaining injuries to her knee, shoulder, ankle and hand. She also testified to the fact that she was subjected various medical examinations and treatments three of which she highlighted which included an ultra sound scan and report by Dr. Iga Matovu (P Exhibit 17 and 18), an MRI Scan and report by Dr. Geoffrey Erem and Dr. Nabawanuka Eva (P Exhibit 24) and a medical examination and report by Dr. Nadumba EK, a senior consultant Orthopaedic Surgeon.

She produced in court the original copies of the MRI Scan made on 23rd July 2020 by Dr. Erem as well as Dr. Nadumba's medical report which was written on 17th November 2020 and an original copy of the results of the Ultra sound scan by Dr. Iga Matovu.

According to the Evidence Act, documents must be proved by primary evidence as per sections 60, 61 and 63 of the Evidence Act. In this regard, the requirements of section 60 and 61 of the Evidence Act were met.

In the medical report (P Exhibit 17) prepared by Dr. Iga Matovu, an ultra sound scan on the plaintiff's knee was carried out with the conclusion that there were tear of the lateral meniscus and avulsion fracture of the tibial tuberosity. Tear of the anterior cruciate ligament was also highly suspected but could only be confirmed by MRI scan of the knee joint.

On 13th June 2019, this matter was referred by this Honourable court to the Commissioner Occupational Health and Safety in the Ministry of Gender, Labour and Social Development for an independent assessment on the incapacity of the plaintiff. A right knee MRI scan report was prepared by Dr. Geoffrey Erem and Dr. Nabawanuka Eva from Nsambya Hospital. This was attached to the witness statement of the plaintiff as PEXH24 and 25. According to the plaintiff at paragraph 40 of own witness statement, this report was taken report to the Ministry of Gender, Labour and Social Development but got lost even the duplicates. This report had indicated that right knee MRI scan conducted on 23rd July 2020 in keeping with the lateral menisceal tear and remote right anterior cruciate ligament injury.

Another report was also prepared by Dr. Nadumba EK, Senior Orthopaedic Consultant to do an independent assessment on 17th November 2020 in response to the court order of 13th June 2019 in a letter of the Assistant Registrar Soroti High Court dated 29th August 2019 and addressed to the Commissioner Health, Safety and Occupational Hazards in the Ministry of Gender, Labour and Social Development. The resultant

medical report was made accompanied by letter date 18th December 2020 and is exhibit PEXH26. Its conclusion and recommendation are as follows;

a. An injury involving her anterior cruciate ligament in the right knee
b. A lateral meniscus injury in the right knee
c. Wasting of the right quadriceps muscles, because of the knee injuries

Dr. Nadumba recommended surgical reconstruction of the right ACL and partial menisectomy to be followed with physiotherapy 3 times a week for 6 months, then be evaluated for maximum medial improvement (MMI). He noted that even after surgery, the plaintiff would remain with residual disability of stiffness in the knee and degenerative osteoarthritis. He placed the permanent disability of the plaintiff at 60%. According to the report, the plaintiff cannot ably climb stairs and she experiences pain, instability in her right knee, has chronic pain in the right knee when she travels seated in a bus for a long distance and finds it difficult to carry weight in the right hand because of pain in the knee and the disability. He noted that an MRI carried out on the right knee on 11th March 2020 confirms disruption of the anterior cruciate ligament (ACL) and partial tear of the right lateral meniscus.

On the other hand, Dr. R.J Stockley (DW1) who testified on behalf of the defence in paragraph 6 and 7 of his witness statement stated that he was requested by the Defendant in 2019 to assess the plaintiff in relation to her degree of incapacity and that after doing so his findings as highlighted in paragraphs 8 to 11 of his witness statement

confirmed the following; an avulsion fracture of the tibial tubercle, and upon further examination, an x-ray showed a displaced fragment of the tibial tuberosity and blunting of the pinnacles. She also displayed a disability from the displaced avulsed fragment. According to DW1, there was also a click on rotation of the knee but a normal stop from the anterior cruciate, which had clinically healed. He estimated disability at 12 % to the limited mobility.

The medical report which contained more detailed findings was attached to DW1's witness statement as DEXH1. In the report the following observations were made;

"She certainly had some disability from the displaced avulsed fragment, but some of her apparent inability to run for example, is due to fear. She believes in the torn cruciate, yet clinically, it has healed. Athletes with complete tears of the cruciate can still run. Disuse can cause disability and joints that are not used are more likely to become painful.

In my opinion some of her disability is due to believing she is disabled and exacerbated by disuse. Pain 'worse when it is cold' for example is not plausible; in Moroto temperatures seldom go below 18 degrees and half the world's population lives in places where that would be considered warm. The treatment for joint pain is exercise. I have therefore encouraged her to start running, squatting and doing all the things she believes she cannot do."

The witness also added that the plaintiff's injury has healed and she had minimal deformity and her injuries should not cause any significant disability. That the joint has full range of movement and any damaged ligaments have healed. He recommended self- physiotherapy which he said would result in major improvements.

During cross-examination, DW1 testified that the ultra sound scans are not conclusive but the MRI scan is. He explained that he carried out an x-ray examination but ligaments cannot be seen by the x-ray examination which only picks up bones. He also explained that ankyloses of the joint means that joint cannot move and that ligaments do not cause ankyloses.

According to DW1, in the present case, the plaintiff does not have this condition, and that if she had ankylosed, then the percentage of disability would be 25%. He told this court that the plaintiff's disability arose from disuse of the joint which became weaker because of the reduced mobility. That, a person with fractured ligament can still run.

My analysis of the findings of the medical reports on percentage of permanent total incapacity is as follows.

The second schedule of the Workers Compensation Act Cap 225 calculates permanent total incapacity percentages as follows;

Loss of leg at or above knee 70

Loss of leg below knee 40

Loss of foot 40

Additionally, the Workers Compensation Act also provides that total permanent loss of use of a member shall be treated as loss of member. The percentage of incapacity for ankylosis of any joint shall be reckoned as from 25 to 100 percent of the incapacity for loss of the part at that joint, according to whether the joint is ankylosed in a favourable or unfavourable position.

Section 1 (t) of the Workers Compensation Act defines total incapacity as incapacity, whether of a temporary or permanent nature which incapacitates a worker for any employment which he or she was capable of undertaking at the time when the accident occurred.

In relation to expert opinions, these are provided for under section 43 of the Evidence Act which was highlighted earlier within this judgment. Additionally, the court as expert of expert may make findings without relying on the expert opinions. ***See Goobi Rodney vs Christine Nabunya Civil Appeal No. 4 of 2007***

Turning to the evidence before this court, the plaintiff urged this court through her counsel to consider the results of the MRI scan contained in the report of Dr. Naddumba and to disregard Dr. Stockley's report because his examination was by x-ray which could not fully detect injury of the ligaments which only the MRI scan could pick up.

On the other hand, Dr. Stockley's report (DExhibit1) showed that the cruciate had healed and there was a minimal disability.

The plaintiff, relying on the report of Dr. Nadumba (P. Exhibit 26) insisted that there was disruption of the anterior cruciate ligament and partial tear of the lateral meniscus. The latter findings were also reflected in P. Exhibit 24. The plaintiff's case is that the tears and injuries reflected in P. Exhibit 26 had caused severe disability and that she was unable to walk for more than one kilometer or run or sit for long period of time.

My assessment of the report (D. Exhibit 1) by Dr. Stockley would have been more conclusive had he carried out an MRI scan for he admitted during cross-examination that indeed an x-ray scan could not show the state of the ligament but rather shows only bones. As such, I would find that his assessment of 12% permanent total incapacity on the basis of the x-ray scan unreliable.

P. Exhibit 26 was the report prepared by Dr. Nadumba and it assessed permanent incapacity at 60 %. He recommended surgical reconstruction of the plaintiff's right ACL and partial menisectomy to be followed with physiotherapy. Dr. Nadumba did not appear as witness and so was not be cross-examined on the findings of his report. As such little weight is attached to his findings.

An observation made by this court, however, is that all the reports of PW1 (PExhibit1), Dr. Nadumba's (P Exhibit 26) and Dr. Stockley (D Exhibit 1) highlighted the role of physiotherapy.

Although the plaintiff testified that she has been carrying out physiotherapy, there seems to be little evidence of that on the court record. This is because she indicated that she does not engage in physical activity but rather is assisted with most of the chores. In my considered view, the lack of physiotherapy also had a negative impact in delayed healing of the plaintiff's joint and injuries.

PW1 stated that he noted that through the plaintiff's visits to his hospital that the plaintiff had substantially healed at the time but she could no longer cook, dig, sweep the compound or carry water for bathing and had to be assisted to do so. (See paragraph 51 of the witness statement).

Black's Medical Dictionary 41st Edition, at page 42 defines ankyloses to mean a condition of a joint in which the movement are restricted by fibrous band or by malformation, by actual union of the bones.

Counsel for the plaintiff urged this court to find that the plaintiff experienced ankyloses in addition to suggesting ed to the court that *'residual disability of stiffness and degenerative osteoarthritis'* as indicated in PEXH26 which is Dr. Nadumba's report meant that the plaintiff had ankyloses. However, in my view there is

insufficient evidence to arrive at such a finding as no such examination or conclusion on ankyloses was made by any of the medical reports relied on by the plaintiff.

Therefore, having taken into consideration all the above exhibits, medical reports and testimony of the witnesses, I would assess permanent total incapacity of the plaintiff is at 35 %.

Issue 3: Remedies:

The plaintiff sought the compensation pursuant to section 3 (1), (4), (5) & (6) of the Workers Compensation Act, special damages of UGX 123,409,440/=, pursuant to section 5 (1) of the Workers Compensation Act Cap. 225, which allows for compensation equal to sixty months' earnings. In the alternative, the plaintiff asked court to rely on section 14 (3) of The Workers' Compensation Act, Cap. 225, the report issued by the Labour Officer of Kotido who recommended the amount of UGX 67, 875,192/- based on the report of Dr. Luka who found permanent incapacity at 55% (PEXH21) and PEXH29 which is another computation by the Labour Officer of Kotido based on the report of Dr. Naddumba EK who found permanent incapacity at 60% and recommended a payment of UGX 74,045,665/=.

In addition to this, the plaintiff urged court to award her the following;

a. General damages of UGX 30,000,000/= arising expenditures on consultation, imaging scans, x-ray as Exhibited in PEX18, PXH 18, PEXH25, PEXH27, PEXH28, PEXH33, PEXH34

b. Punitive damages amounting to UGX 30,000,000/-

c. Costs pursuant to section 27 (1) of the Civil Procedure Act Cap. 71

d. Interest on Costs pursuant to section 27 (3) of the Civil Procedure Act Cap. 71

e. Severance Allowance of UGX 10,000,000/= as provided for under section 87 (c) of the Employment Act, 2006, for failure to accept the plaintiff's resignation and continuing to use her story and name, as their employee

On the other hand, the Defendant strongly urged court not to award and any remedies to the plaintiff given the fact that she had ceased to be its an employee as she had legally resigned from her position and was therefore not entitled to any compensation and so the two computations made by the Labour Officer of Kotido should be disregarded by the court.

On general damages, the defendant through counsel submitted that the plaintiff had suffered only minor injuries as demonstrated in Dr. Stockley's report which placed permanent incapacity at 12 which was sufficient compensation as envisaged under the Workers Compensation Act.

On punitive damages, the defendant urged court to find that the plaintiff had not make out a case for an award for punitive damages since there was no proof of a reckless or punitive act.

In relation to the award of costs and interest on costs, the defendant urged court to dismiss this suit and award it costs and that since the plaintiff had been unable to prove an ascertainable loss which would in the circumstances allow the award of interest, then the same should also not be awarded.

This court, the court has already made a finding that the plaintiff was an employee of the defendant, at the time that the accident occurred. As a result, the defendant is liable to pay compensation in accordance with section 3 (1) of the Workers Compensation Act; Section 3 (1) of which provides for Employer's Liability since according to this section where personal injury by accident arises out of and in the course of a worker's employment, the injured worker's employer shall be liable to pay compensation in accordance with this Act.

Furthermore, Section 5 (1) of the Act provides that, *'Except where the terms and conditions of service provide for a higher compensation, where permanent total incapacity results from any injury, the amount of compensation shall be a sum equal to sixty months' earnings.'*

Having taken into account all the above considerations and having found the permanent incapacity of the plaintiff to be at 35%, this honourable court hereby uses its discretion to award the sum of UGX 50,000,000/= (Uganda shillings fifty million shillings) as compensation.

After awarding this sum, I see no need to delve into the claims by the labour officer of Kotido.

In regards to a claim for special damages the courts have also held that such a claim must be specifically pleaded and proved as was noted by the Court of Appeal in the case of ***Gapco (U) LTD vs A.S Transporters (U) Ltd CACA No. 18 of 2004*** where it went onto state that the specific pleading and proving of a special damage would in sum total represent a plaintiff's quantifiable financial loss which is basically arithmetic.

This means that any person who has a claim in court for special damages has to prove both the item lost and its value so that a court can award such loss as proved and where a plaintiff fails to prove an item of expenditure, the court will either not award it or will award such sum as it thinks would have been reasonable in the circumstances. (***See: The Uganda Civil Justice Bench Book, 1st Edition, January 2016 pp 206-207).***

In this respect the plaintiff adduced P. Exhibit 18, a receipt from Kampala Imaging Centre of UGX 90,000 (Uganda shillings Ninety thousand only; P. Exhibit 19, an invoice for consultation from Ultima Trauma and Orthopaedic Centre of UGX 60,000/= (Uganda shillings Sixty Thousand Only); P. Exhibit 25, a receipt for an MRI scan from St. Francis Nsambya date 23rd July for UGX 515, 000/= (Uganda shillings Five Hundred Fifteen Thousand Only); P. Exhibit 27, a receipt from Nakasero Hospital for UGX 60,000/= (Uganda shillings sixty thousand only); PExhibit28, a receipt from Nakasero Hospital for UGX 200,000/= (Two hundred thousand shillings only) and Exhibit 34, a receipt from Nakasero Hospital for UGX 60,000/= (Sixty Thousand shillings only). All these were proof of expenditures on medical consultations, imaging scans, and x-rays.

These expenses are proved at the sum of Uganda shillings Nine Hundred Eighty-Five Thousand Only (UGX 985,000/=).

The plaintiff also presented P. Exhibit 33 which is an invoice from Nakasero Hospital for UGX 13, 395,000/= (Uganda shillings thirteen million three hundred Ninety-Five thousand only) as well as P. Exhibit 20 which was an invoice from Dr. Abdul Majid Shiraz for UGX 4,700,000/=. However, these invoices as was rightly submitted by counsel for the defendant remained prospective expenses as was described by court in the case of ***Kaggwa Vincent vs AG HCCS No. 391 of 2014,***

and such no award special damages based on these exhibits can be made by this court.

As regard general damages, these has been held by courts to be a direct probable consequences of the fact complained of and include loss of use, loss of profit, physical inconvenience, mental distress, pain and suffering. ***See El Termewy vs Awdi & Others Civil Suit No. 95/2012.***

From the evidence adduced in court I am satisfied that the Plaintiff did face mental distress, pain and suffering. I would deem that the sum of Uganda shillings ten million UGX 10,000,000/= as appropriate.

For punitive damages, court may only consider to award this kind of damages where the defendant is guilty of any reckless act or where the defendant's conduct towards the plaintiff was calculated to make a profit for himself as was pointed out in ***Rookes vs Bernard [1964] AC 1131***.

In the present circumstances, I find no case made by the plaintiff for an award of punitive damages.

The plaintiff also sought for Severance Allowance pursuant to section 87 (c) of the Employment Act, 2006 which provides for the same which for avoidance of doubt I reproduce it below.

Section 87 (c):

When severance allowance is due

Subject to this Act, an employer shall pay severance allowance where an employee has been in his or her continuous service for a period of six months or more and where any of the following situations apply—

(c) the employee terminates his or her contract because of physical incapacity not occasioned by his or her own serious and willful misconduct.

Taking into account the circumstances of this case, it is clear to me that the plaintiff had 29th July 2015 sent her resignation letter which I have had the opportunity to view contained in (P. Exhibit 7) to the defendant in accordance with the defendant's Human Resource Manual which gave the required notice that she was to leave work within a month on the 28th August 2015.

Section 87 (c) of the Employment Act would thus be applicable in the present circumstances since the plaintiff was still an employee of the defendant till 28th August 2015 and yet the accident occurred on 5th day of August 2015 at 2:00 p.m. In the premises, this honourable court does award a severance allowance to the plaintiff to be calculated from the date of the accident of 5th day of August 2015 at 2:00 p.m. till the 28th of August, 2015 for she became physically incapacitated by acts not occasioned by her own serious and willful misconduct.

As to Costs of the suit, pursuant to Section 27 (1) of the Civil Procedure Act, costs follow the event and the award of costs is in the court's discretion. I find no reason not to award costs to the plaintiff for indeed she has certainly incurred costs in prosecuting this suit and is the successful party here. I award her the costs of this suit.

Section 26 (2) of the Civil Procedure Act, allows the court the power to award interest on courts. It provides that *"Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit."*

In the case of J.K Patel V Spear Motors Ltd SCCA No. 4 of 1991 court held that; *"The time when the amount claimed was due is the date from which interest should be awarded."*

In the instant case, after taking into account the circumstances of this case, the court hereby awards an interest as provided below

Conclusion:

In conclusion this this suit succeeds with judgment entered for the Plaintiff as follows;

i. Compensation of UGX 50,000,000 (Uganda shillings Fifty Million only)

ii. Special damages of sum of Uganda shillings Nine Hundred Eighty-Five Thousand Only (UGX 985,000/=)

iii. General damages amounting to Uganda shillings ten million UGX 10,000,000/=

iv. I make no as to punitive damages as none was proved.

v. I award a severance allowance to the plaintiff to be calculated from the date of the accident of 5th day of August 2015 at 2:00 p.m. till the 28th of August, 2015 for she became physically incapacitated by acts not occasioned by her own serious and willful misconduct.

vi. I award the plaintiff the costs of this suit.

vii. I award an interest of 18 % per annum on (i), (ii) and (v) above from the date of filing this suit till payment in full and on costs, from the date of filing until payment in full and an interest of 18 % per annum on (v) above from the date of this judgment till payment in full.

I so order.

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Hon. Dr. Justice Henry Peter Adonyo

Judge

2nd July 2021

Order:

This ruling is forwarded to the Registrar of this court to have it delivered online to parties in line with the Hon Chief Justice's directions on COVID-19 SOP's.

I so order

.....

Judge

2nd July 2021

23/7/021
Court: Judgment delivered via
Email. M/s Stella Byanukama Tibo
Advocates Counsel for defendant
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