

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASINDI
CIVIL SUIT NO. 31 OF 2020**

AKENA MARTIN:..... PLAINTIFF

VERSUS

ATTORNEY GENERAL :..... DEFENDANT

JUDGMENT

Before: Hon. Justice Byaruhanga Jesse Rugyema.

[1] The plaintiff **Akena Martin** brought this suit against the defendant Attorney General for being vicarious liable for the tortious acts of the defendant's servant/ agent/ employee, in the course of employment. The plaintiff thus, claims special damages, general damages, Punitive damages and costs of the suit resulting from the negligent acts of the defendant for its servant/ agent/ employee.

[2] The defendant never filed a written statement of defence and never appeared in court for hearing either by itself or through its lawyers. The suit proceeded ex parte after court was satisfied that the defendant was duly served with the summons to file a defence and hearing notices but opted not to appear, the case was accordingly set down for formal proof hearing.

Brief facts:

[3] The plaintiff's case is that, on **28th day of May 2020**, while at his work place (Butcher) at **Kichwabugingo Trading**

Centre in Kiryandongo District, the plaintiff was shot by the members of the Uganda Police Force attached to **Kiryandongo and Bweyale Police Stations** who had come to quell a protest as a result of an accident which claimed the life of child. As a result of the gunshot, the plaintiff sustained major injuries in the arm and ribs and was admitted at **Kiryandongo hospital** where he underwent surgery in the arm. The matter was reported at **Kiryandongo Police Station** but the Uganda Police deliberately declined to issue a police report. As a result of the injuries inflicted onto the plaintiff, he is unable to regain the full use of his arm. While at **Kiryandongo hospital** he was treated and incurred medical expenses and lost daily income he was averagely earning.

[4] At the hearing, **Mr. Kasangaki Simon of Kasangaki & Co. Advocates, Masindi** represented the plaintiff. The plaintiff adduced evidence of one witness to wit; himself as **PW1**. The plaintiff filed a sworn witness statement which was adopted by court as his respective evidence in chief. Counsel for the plaintiff also filed written submissions, which are on court record for consideration in the resolution of the issues.

The issues for determination are as follows;

1. Whether the plaintiff was negligently injured by the defendant's agents?

2. *Whether the defendant is vicariously liable?*

3. *What are the remedies available?*

Resolution of Issues:

Issue No1: Whether the plaintiff was negligently injured by the defendant's agents?

[5] For the tort of negligence to be properly established, it must be shown that the defendant owed a legal duty of care and that duty was breached thus causing injury to the plaintiff. The tort of negligence is well established in the case of *Donoghue vs. Stevenson (1932) AC Pg 562* in which the test as articulated by Lord. Atkin, ***is the duty to take care when relating with people who are so likely to be affected by the defendant's acts or omissions and breach of which duty gives rise to liability in negligence.***

[6] Counsel for the plaintiff submitted that the incident that resulted in the plaintiff's injury is not one that ordinarily happens without negligence and instrument that caused the harm, **"a gun"** was under the exclusive control of the police officer who ought to use proper care and that therefore, the accident arose from want of care. That if the shooting was to scare off the crowd, the police officer would have shot in the air and not directly into people where it was probable that a person like the plaintiff would be injured at his work. The police officer had an obligation

to behave in such a manner that would not harm the plaintiff.

- [7] In the case of **Kaggwa Vincent versus Attorney General HCCS NO. 391 OF 2014 Justice Ssekaana Musa** noted that;
- “Negligence is a person’s carelessness in breach of duty to others. As a tort, it is the breach of a legal duty to take care. It involves a person's breach of duty that is imposed upon him or her, to take care, resulting in damage to the complainant”.*

- [8] In the instant case, evidence adduced shows that the plaintiff was working at his butcher and a vehicle knocked a one **Mugisha Brian** who died on spot. The residents protested attracting police officers to disburse the angry mob where upon police started shooting bullets and tear gas at random. The defendant, an employer of the members of the Uganda Police Force was vicariously responsible/liable for the safety of the residents the plaintiff inclusive. The failure to observe that duty owed resulted in a breach of right of the plaintiff which gave rise to liability in negligence.

- [9] The plaintiff adduced evidence that on the **28th day of May 2020 at about 3.00p.m**, he was in his butcher when he was shot by one of the stray bullets on the right arm when the Police officers were disbursing an angry mob, causing him serious injuries. According to the plaintiff’s evidence, he

was admitted in hospital where he spent one month. The plaintiff tendered in evidence a medical Report as **Exhibit PE. 5**, which also corroborates the injuries he sustained as a result of the shooting. In the words of Justice Ssekana Musa in the case of **Akech Rose versus Attorney General HCCS NO. 368 OF 2018**;

“The act of shooting was contrary to the vision and mission of Uganda Police Force among which is to protect the life of citizens of Uganda and promote law and order in the country”.

[10] Therefore the police officers were under a duty to disburse the angry mob carefully and the plaintiff’s life, as a citizen had to be protected. The fact that the shooting happened and the plaintiff suffered injuries in the right arm and ribs is evidence enough that the police officers breached that duty. The police officers were thus negligent and reckless while shooting at the angry mob, they would have used tear gas only and not shooting at the residents. This was no doubt negligence on part of the police officers. Issue No. 1 is answered in the affirmative.

Issue 2: Whether the defendant is vicariously liable?

[11] Vicarious liability is defined as the liability that a supervisory party, such as an employer bears for the actionable conduct of a subordinate or associate, such as an employee, based on the relationship between

the two parties. Therefore, for a party to be vicariously liable for the acts of another, there should exist a relationship between the party and the person who did the negligent act, and the act ought to have been done in the course of the employment, and not when the person who did it was acting on his own; **Okupa versus AG and 13 others H.C.M.C No. 14 of 2005** [2018] UG HCCD. In *Paul Byekwaso vs. Attorney General, Civil Appeal No. 10 of 2002*, court held that

“A master is liable for tortuous acts committed by his/her servant in the course of the servant’s employment.”

[12] In the instant case, the plaintiff (**PW1**) adduced evidence that on **6/4/2022**, he was a resident of **Kicwabugingo TC Kiryandongo sub-county** in **Kiryandongo District** and he was working in his butcher where he was shot by one of the stray bullet on his right arm by a police man he could not identify. That the police officers attached to **Bweyale-Panyadoli** refugee camp and **Kiryandongo police station** came to disburse an angry mob, where they started shooting bullets at random. The evidence on record establishes that the time the police officers were disbursing the angry mob they were in course of duty, which renders the defendant vicariously liable for the acts of its employee. In the case of **Muwonge -Vs- Attorney General [1967]1 EA 17**

“an act may be done in the course of a servant’s 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 for his own benefit nevertheless if what he did is merely a manner to carrying out what he was employed to carry out, then his master is liable”.

[13] The act of the police shooting bullets at random was uncalled for and it was contrary to the vision and mission of the Uganda Police Force among which is to protect the life of citizens of Uganda and not injure them. Therefore the defendant is vicariously liable for actions of its employee. Issue 2 is answered in the affirmative

Issue No.3: what remedies are available?

[14] The plaintiff prayed for the award of special damages. The plaintiff in his affidavit evidence averred that he was admitted at **Kiryandongo Hospital** however some medicines were bought outside the hospital and he tendered in court receipts as evidence of the costs incurred. He tendered in court **Exhibit, “P.3”** and **“P4”**, respectively, the payment receipts, as proof of expenditure. He also testified that he was taken to **Bweyale Medical center** where he was admitted and he spent Ushs. 400,000/= (four hundred shillings only).

[15] The established general position of the law is that special damages must be pleaded and accordingly proved.

However, in *Vallabhudas Vithaldas & Sons Ltd Mawangala Estate vs. Francis Mateeka [2001-2 - 5] HCB 68*, it was held, inter alia, that;

“The law is that special damages must be specifically pleaded and strictly proved. However, this does not mean that they must be proved by documentary evidence in all cases. In the instant case, the Respondent and his attendant’s expenditure on food were found to be reasonable though no receipts were produced.”

[16] In this case however, though the plaintiff testified that he bought some medicines from Julko Pharmaceutical Uganda Limited worth **Ugx. 1, 091, 000/=**, the receipts he presented in court were for medicines worth **Ugx. 686,000/=**. The bill from Bweyale Medical Centre was **Ugx. 400,000/=**. He did not lead any evidence regarding his other expenditure. Premised on the above position of the law and the evidence adduced, the plaintiff satisfactorily proved his claim for special damages for the sum total of **Ugx. 686,0000 /= plus Ugx 400,000/=** totaling to **Ugx. 1, 086, 000/=** (One million eighty six thousand shillings) for which the defendant is found liable to pay.

[17] The plaintiff also prayed for general damages of **Ushs. 100,000,000/=**. The position is that the award of general damages is in the discretion of the court, and is always as the law will presume to be the natural and probable consequence of the defendant’s act or omission. In the

assessment of damages, the economic inconvenience that a party may have been put through, the nature and extent of the breach. A plaintiff who suffers damage due to the wrongful act of the defendant must be put in the position he or she would have been in had she or he not suffered the wrong; **Ronald Kasibante versus Shell (U) Ltd [2008] HCB 163**. See also *Bagenda Byabe Tommy vs. Pioneer Easy Bus Limited (supra)* where the court also held that;

“General damages are a monetary recovery in a lawsuit for injuries suffered such as pain, suffering, inability to perform certain functions for which there is no exact value which can be calculated. These damages are traceable to and are the probable and necessary result of the injury complained of or which are presumed by or implied in law to have resulted therefrom.”

[18] The plaintiff was self-employed, the extent of his lost earnings and loss of his business prospects owing to the gun shooting which left him with a permanent disability, time he was getting treatment and not working, and inconvenience, pain and suffering from the injuries, lost opportunities while under hospitalization and disability, and mental anguish caused due to the defendant's acts, are all factors taken into account. In the circumstances, court considers **Ushs. 50,000,000/=** as fair

and adequate and awards the same as general damages to the plaintiff.

[19] The plaintiff also prayed for Punitive damages. These represent a sum of money of a general nature in addition to the compensatory damages given for pecuniary loss and mental suffering. They are deterrent in nature and aimed at curbing the repeat of the offending act; **WSO Davis versus Mohanlal K. Shah (1957)1 EA 352**. The defendant should be able to curb its agents from repeating such offending acts. In the premises, since punitive damages are awarded to serve as a punishment to the defendant so that he does not repeat the same mistake, an award of **Ushs. 20,000,000/=** is appropriate as the circumstances of the shooting were unexplained and it was in a riotous atmosphere. The awarded sum of general and punitive damages, shall carry an interest rate of **15%** per annum from the date of the judgment until payment in full.

[20] On the issue of costs, the law under **Section 27(2) Civil Procedure Act Cap 71**, provides that;

“.... costs of any action, cause or other matter or issue shall follow the event, unless the court or judge shall for good reasons otherwise order”.

[21] In the instant case, the plaintiff has succeeded on all the issues, and there is no compelling and/or justifiable reason to deny him the costs. The plaintiff is accordingly awarded costs of this suit.

[22] In conclusion, judgment is given in favour of the plaintiff with the following orders:

- a) He is awarded special damages of **Ugx. 1, 086,000/=**
- b) He is awarded general damages of **Ugx. 50, 000,000/=** and punitive damages of **Ugx. 20,000,000/=**
- c) Interest on (a) and (b) at 15% p.a from the date of judgment till payment in full.
- d) Costs of the suit.

Dated at Masindi this **31st** day of **August, 2022**

Justice Byaruhanga Jesse Ruggyema

JUDGE