

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MUKONO
CIVIL SUIT NO. 74 OF 2021

TENDOLYAMUKAMA JONATHAN :::::::::::::::::::: PLAINTIFF

VERSUS

MUFUWA STEPHEN

KYEYUNE RONALD :::::::::::::::::::: DEFENDANTS

BEFORE HONOURABLE JUSTICE DAVID MATOVU

RULING

Introduction

1. The plaintiff brought this suit on the 14th day of October, 2021 against the Defendants jointly and severally for recovery of special damages, general damages, interest thereon and costs, arising out of a motor vehicle accident which was largely and solely caused by the 2nd Defendant, an agent/ servant of the 1st Defendant, for which the latter is vicariously liable.

Background

2. The plaintiff contends that on the 22nd day of November, 2020 at about 08:00 hrs, the 1st Defendant's motor vehicle registration number UBD 049X Toyota Hiace, white in colour, while being driven by the 2nd Defendant was involved in an accident at Njeru along Kampala Jinja High way in Buikwe District when it knocked a Eucalyptus tree that was on the sidewalk of the road.

3. Consequently, the Plaintiff, who was a passenger in the said motor vehicle suffered serious injuries and was rushed to Mulago Hospital for medical examination and treatment.
4. The plaintiff contends that the accident was a result of the carelessness, recklessness and negligence of the 2nd Defendant as he failed to apply brakes hence knocking the eucalyptus tree which occasioned the accident.
5. For reasons whereof, the plaintiff prayed that judgement be entered against the defendants for: -
 - i. **Special damages**
 - ii. **Loss of expected earnings and dependency**
 - iii. **General damages**
 - iv. **Interest on the above and; -**
 - v. **Costs of the suit**
6. The 1st Defendant filed his written statement on the 10th day of November, 2021, wherein he denied the allegations stated in the plaint.
7. The 1st Defendant raised preliminary points of law to the effect that the plaint discloses no cause of action in negligence and vicarious liability against him.
8. Whereof he prayed that the same be dismissed with costs.

Representation

9. The Plaintiff was represented by Mr. Kiyaga Stephen whereas the 1st defendant was represented by Mr. Nyombi Denis.
10. When the suit came up for hearing on the 11th day of October, 2022, Counsel for the 1st Defendant raised a preliminary point of law to the effect that the plaint discloses no cause of action

in negligence and vicarious liability against 1st Defendant in law or at all.

11. Counsel relied on the authority of **Simon Lobia versus Mutwalib Mukungu CACA No. 36 of 1999.**
12. Counsel therefore prayed that the suit be dismissed with costs under Order 7 rule 11 of the Civil Procedure Rules.
13. By way of reply, Counsel for the Plaintiff submitted that in determining whether a Plaintiff discloses a cause of action, Court must look at the plaint and its annexures and nowhere else.
14. Counsel cited the authority of **Kapeka Coffee works Ltd versus NPART CACA No. 3 of 2000.**
15. Counsel further submitted that in order to prove that there is a cause of action, the plaintiff must show that the plaintiff enjoyed a right, the right has been violated and that the defendant is liable. Counsel cited **Tororo Cement Co. Ltd versus Frokina International Limited SCCA No. 2 of 2001.**
16. Counsel also further submitted on the basics of negligence as discussed in **Donoghue versus Stevenson (1931) AC 562.**
17. Counsel submitted that paragraphs 3 (a), (b), (C), and 5 of the plaint prove the fact of negligence and that paragraphs 2(a) and 4 prove the facts of vicarious liability attributed to the 1st defendant.
18. Counsel prayed that the preliminary point of law be overruled with costs to the plaintiff.

Issue

19. Whether the Plaintiff discloses a cause of action

Decision of Court

20. Order 7 rule 11(a) of the Civil procedure rules provides for rejection of a plaint where it does not disclose a cause of action.
21. Cause of action can simply be understood as **a set of facts which give rise to a claim enforceable in court**. It is a legally recognised wrong that creates the right to sue.
22. Each cause of action consists of points the plaintiff must prove and all of these elements must be satisfied in order to take court action.
23. A cause of action is defined as every fact which is material to be proved to enable the plaintiff succeed or every fact which if denied, the plaintiff must prove in order to obtain a judgment.
24. It is disclosed when it is shown that the plaintiff had a right, and that right was violated, resulting in damage and the defendant is liable. This position has been reiterated in the Supreme Court decision of ***Tororo Cement Co. Ltd v Frokina International Limited SCCA No.2 of 2001.***
25. The question of whether a plaint discloses a cause of action must be determined upon perusal of the plaint alone together with anything attached so as to form part of it. ***See; Kapeka Coffee Works Ltd v NPART CACA No. 3 of 2000.***
26. It is settled that a cause of action arises when a right of the plaintiff is affected by the defendant's acts or omissions.
27. In the instant case, the Plaintiff rightly states in paragraph 3(a) that it was the 1st Defendants motor vehicle being driven by his agent, the 2nd defendant, albeit negligently and carelessly when the said fatal accident occurred.

28. The fact that the 1st Defendant is the owner of the said motor vehicle is what puts him in the ambit of vicarious liability as espoused and discussed in various authorities.
29. The issue of whether the 2nd Defendant is/ was an authorised agent of the 1st defendant and whether he was driving the vehicle in the course of employment, are in my view triable matters, which would require the parties to adduce evidence during the trial.
30. I therefore agree with Counsel for the Plaintiff that the plaint discloses a cause of action.
31. In the final result, this preliminary objection fails and is over ruled as such.
32. Costs of the application shall be in the main cause.

Dated at Mukono this 25th day of October, 2022.



David Matovu
JUDGE