



Statement of Defence despite proof of service of the same. The matter proceeded ex-parte against it.

**Issues for determination are: -**

- 35 1. Whether the Plaintiff suffered the alleged injuries, and if so, whether the Defendants are liable.
2. Remedies.

**Issue 1: Whether the Plaintiff suffered the alleged injuries and if so, whether the Defendants are liable**

40 From the evidence on record and the submissions of Counsel for the parties, it is not in dispute that the Plaintiff suffered injuries.

What Court has to determine is whether the defendants are liable for the injuries that the Plaintiff sustained.

Counsel for the Plaintiff submitted that the 1<sup>st</sup> defendant is vicariously liable for the actions of the 2<sup>nd</sup> defendant because it is the 1<sup>st</sup> defendant who called the 2<sup>nd</sup> defendant to the scene when riots started. Counsel relied on the case of **Sam Ssemanda –v- The Attorney General CACA No. 22 of 2003** where Court noted that;

50 *“it is not in dispute that the principles of law governing liability of the Attorney General in respect of acts of a member of the Police are precisely the same as those relating to the position of a master’s liability for the acts of his servant. This being so, the legal position is quite clear and has been quite clear for some considerable time... A master is liable for the acts of his servant committed within the course of his employment, or to be more precise, in relation to a policeman, within the*

55 *exercise of his duty. The master remains liable whether the acts of the servant are negligent, or deliberate or wanton or criminal. The test is: were the acts done in the course of the policeman’s duty? They may be so done even though they are done contrary to the orders of the master. All that one can say, as I understand the law, is that even if the servant is acting deliberately, wantonly, negligently or criminally,*

60 *even if he is acting for his own benefit, nevertheless if what he did was merely a*

*manner of carrying out what he was employed to carry out, then his acts are the acts for which his master is liable.”*

Counsel also relied on the case of ***Deo Kigozi –v- Uganda Commercial Bank HCCS No. 12 of 1996*** where the issue for determination was whether the Defendant’s  
65 *Bank was vicariously liable for the actions of the police or whether it was the Attorney General to have been sued for the tortious acts of the police.*

Counsel submitted that the bank was found to be liable and explained that in this case, the 1<sup>st</sup> defendant having called the 2<sup>nd</sup> defendant to the scene to help in quelling the riot, the 1<sup>st</sup> defendant becomes liable for the actions of the 2<sup>nd</sup>  
70 defendant. He prayed that this court finds both defendants liable in negligence as they failed to use reasonable force and/or care while spraying tear gas and throwing water canisters to the rioters and for using live bullets to disperse the crowds.

In reply, Counsel for the 1<sup>st</sup> defendant submitted that the 1<sup>st</sup> defendant is not liable  
75 for the actions of the 2<sup>nd</sup> defendant. That the 1<sup>st</sup> defendant’s law enforcement officers had gone to carry out a demolition exercise at the Uganda Youth Aid Nursery and Primary School at Mbuya-Kinawataka when a riot ensued. That the law enforcement officers from the 1<sup>st</sup> defendant were overwhelmed by the rioters and decided to call Police for re- enforcement and that Police Officers from Jinja Road  
80 Police Station came to the scene and dispersed rioters using tear gas, unfortunately, the Plaintiff was injured in the process. Counsel relied on the cases of ***Bwogi Kastor –v-Orient Bank & AG CS No. 3 of 2014***, where Ssekana, J, noted that;

*“Police does not take directives from the complainants and once they have taken over the complaint they become wholly responsible for their actions. They are never  
85 agents of the complainants”*

Counsel also relied on the case of ***Mutyaba Leonard Ssembatya (A minor suing through Pantaleo Kagwa his father and next friend) –v- Attorney General SCCA No.21 of 1994***; where Tsekooko JSC, (as he then was), held that;

*“the eight or so soldiers were taken to the scene of incident under the charge of an  
90 officer. The mourners were asked to stand a side as soldiers had a ceremony to perform in honor of their dead colleague. It was in the course of that ceremony that*

95 *something went wrong. The duty was the ceremonial burial of their colleague...in this case the gun salute was incidental to the soldiers' main job of burying their colleague. The trial Judge was in my view wrong to hold that this was a private function. They were acting in the course of their duties with the Respondent"*

100 Counsel submitted that the 2<sup>nd</sup> Respondent was invited to exercise its independent Constitutional mandate and was therefore singularly liable for its mandate. He invited this court to find that the 1<sup>st</sup> defendant is not liable for the injuries suffered by the Plaintiff.

### **Analysis**

105 It is clear from the evidence on record that the injuries inflicted on the Plaintiff were caused by the police. What this court has to determine now, is whether the 1<sup>st</sup> defendant having called for Police intervention, is now liable for the actions of the Police in the exercise of its duties. Counsel for the Plaintiff has argued that the 1<sup>st</sup> defendant is vicariously liable for the actions of the Police because it called for police intervention. With respect, I find this argument misplaced and the cases relied on not applicable to the scenario in this case.

110 **In the case of *Okupa –v- Attorney General & 13 Ors MC No. 14 of 2005*** court noted that for the doctrine of vicarious liability to apply, there must be three essential ingredients;

- *There must be a relationship of employer and employee;*
- *The Tort must be committed by the employee;*
- *In the course of business.*

115 In this case, there is no relationship of employer and employee between the 1<sup>st</sup> and 2<sup>nd</sup> defendants. The 1<sup>st</sup> defendant only called in the 2<sup>nd</sup> defendant for re-enforcement when its law enforcement officers were overwhelmed by the rioters. By so doing the 1<sup>st</sup> defendant did not become employer of the Police officers who came to the scene. The Police was called in under S.4 (1) (d) of the Police Act which 120 mandates the Police to ensure that there is public safety and order in the Country. The 1<sup>st</sup> defendant cannot therefore be vicariously liable for action carried out by the Police under its legal obligations.

In ***Joseph Mukasa Balikudembe –v- Centenary Rural Development Bank Ltd & Attorney General HCCS No. 278 of 2014***, court noted that;

125 *“police does not take directives from the complainants and once they have taken over the complaint they become wholly responsible for their actions.”*

Similarly, in this case, once the 1<sup>st</sup> defendant called in the Police, it became entirely responsible for its actions at the scene while executing its legal mandate of calming down and stopping the riot to ensure that there is public safety and order. The 1<sup>st</sup> 130 defendant would have been held accountable if the injury caused to the plaintiff had come from one of its officers which is not the scenario in this case.

Under paragraph 5 (b) of the plaint, the plaintiff states that the eviction process was enforced by agents of the 2<sup>nd</sup> defendant, the Uganda Police Force. The Plaintiff further states in paragraph 5(d), that the Police opened live fire in the area to 135 disperse the rioters. He has relied on a copy of the Police report which is annexure “A” to the plaint, dated 10<sup>th</sup> /05/2017, addressed to the Human Rights Commission. The last paragraph to this report states in part that; *‘in the process of the classroom demolition, the angry parents protested the actions which led to Police firing teargas air and in due course, Olowo Gideon sustained injuries in his right palm.’*

140 The 2<sup>nd</sup> defendant did not file its Written Statement of Defence. On the 23<sup>rd</sup> January, 2020, Ms. Namara Elizabeth Deborah, acting for the Solicitor General wrote to the 1<sup>st</sup> defendant informing it that the Police was acting under the orders and supervision of the 1<sup>st</sup> defendant and that it was the Solicitor General’s opinion that it jointly or otherwise compensates the plaintiff. It is not clear whether this was intended to be 145 the 2<sup>nd</sup> defendant’s WSD. What is clear is that the 2<sup>nd</sup> defendant was aware that this matter was going on in court because it was served with the amended plaint on the 3<sup>rd</sup> February, 2021 and on the 22<sup>nd</sup> January, 2021, it was again served with a hearing notice.

In ***Sylvan Kakugu Tumwesigye -v- Trans Sahara International General Trading LLC HCCS No. 95 of 2005***, Geoffrey Kiryabwire, J, (as he then was), *while* 150 *following Agard Didi -v- James Namakaso HCCS No. 1230 of 1988 held that: -*

*"failure to file a defense raises a presumption of constructive admission to the claim made in the plaint and the story told by the Plaintiff in the absence of defense to contradict it must be accepted as the truth."*

155 I therefore find that the 2<sup>nd</sup> defendant admitted in effect that it is the Police that inflicted injury to the plaintiff.

### **Issue No. 2: Remedies.**

The plaintiff prayed for special damages of Ugshs. 40,000,000/= (Forty million  
160 Uganda shillings only) for treatment of the injuries that he suffered and transport costs of 3,000,000/= (Three Million Uganda shillings only) and a sum of Ugshs. 250,000,000/= (Two Hundred Fifty Million Uganda shillings only) as general damages for inconveniences and loss suffered for bodily injury and loss of earnings. The Plaintiff presented no receipts and/or documentary evidence to show the incurred  
165 costs. Counsel for the plaintiff prayed that this Court awards the plaintiff the above damages as claimed and submitted that not all special damages must be strictly proved. Counsel also prayed for punitive and exemplary damages and interest of 25% on each of the amount of damages prayed for above.

In reply, Counsel for the 1<sup>st</sup> defendant submitted that the Plaintiff did not adduce  
170 evidence that he was working. That no evidence was adduced at all in respect of the claims made. He relied on the case of ***Haji Asumani Mutekanga -v- Equator Growers (U) Ltd SCCA No.7 of 1995***, where court noted that the principle of law is that;

*"Special damages must be specifically pleaded and proved, but that strictly proving  
175 does not mean that proof must always be documentary evidence. Special damages can also be proved by direct evidence of a person who received or paid or testimonies of experts conversant with the matters."*

Counsel explained that the Plaintiff in the instant case claims that he underwent expensive treatment amounting to UGX, 43,000,000/= but he did not present any

180 receipts to prove the claim. That PW2 informed court that African Centre for Treatment and Rehabilitation of Torture Victims does not charge its patients. That the Plaintiff also failed to adduce evidence on how much he spent at Mulago Hospital and that as such he failed to strictly prove the special damages sought.

On the claim for general damages, Counsel submitted that these are awarded according to the discretion of Court and their basic measure is restitution as seen in 185 the case of ***Nabwami Grace -v- Attorney General HCCS No.223 of 2015.***

In regard to the punitive/exemplary damages, Counsel argued that the 1<sup>st</sup> defendant was exercising its legal mandate and there was no arbitrary act or high handedness on the part of the 1<sup>st</sup> defendant. He prayed that the Plaintiff having failed to prove 190 his case, it should be dismissed with costs.

#### **Analysis:**

#### **Special damages**

In the case of ***Haji Asuman Mutekanga -v- Equator Growers (U) Ltd SCCA No.7 of 1995***, Court noted that;

195 *"Special damages and loss of profit must be specifically pleaded, they must also be proved exactly, that is to say, on the balance of probability. This rule applies where a suit proceeds inter parties or ex-parte. It follows that even where the defendant neither enters appearance nor files a defence, the plaintiff bears the burden to prove his case to the required standard. The burden and standard of proof does not*  
200 *become any less"*

***It Livingstone –v- Rawyards Coal Co. [1880] 5 App Cases 25, 39 court noted that;***

*"Where the injury is to be compensated by damages, you are to consider what is the pecuniary consideration which will make good the sufferer as far as money can do so, the loss which he has suffered and the natural result of the wrong done to him."*

205 ***In Wekesa John Patrick –v- Attorney General HCCS No. 130 of 2008, Musota, J, (as he then was), noted that while considering the quantum of damages, the following should be taken into account;***

- a) *Pain and suffering.*
- b) *Disability and loss of amenities.*
- 210 c) *Loss of expectation of life.*
- d) *Loss of earnings*
- e) *Future expenses*
- f) *Loss of earning capacity.*

In this case, the plaintiff states that his first finger was amputated and it has a protruding bone that has signs of infections of the bone. This is also stated in a medical report from the African Center for Treatment and Rehabilitation of Torture Victims (ACRTV), which is annexure "B" to the plaint. PW2, Lubega Ronald, a Medical Officer from ACTV, informed court that when the Plaintiff went to the facility, he did not do laboratory tests. PW2 only observed him with his eyes and noticed that he had injury on the finger as stated in the report. That he then gave the Plaintiff antibiotics and pain relievers. The Plaintiff was not admitted at ACTV and that he did not pay any money at facility. The plaintiff has not presented any documentation to prove the costs he suffered as a result of the injury. He has not guided this court on how he arrived at the claim of 43,000,000/- as special damages. He does not state where he paid the money claimed, neither does he present any. Therefore, I find no basis to award the plaintiff the 43,000,000/- claimed as special damages.

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### **General damages**

The Court of Appeal in ***Uganda Revenue Authority -v- Wanume David Kitamirike CACA No. 43 of 2010, held that;***

230 *"... general damages mean compensation in money terms through a process of the law for the loss or injury sustained by the plaintiff at the instance of the defendant."*



235 ***In Dr. Denis Lwamafa -v- Attorney General HCCS No. 79 of 1983 [1992] 1 KALR 21*** court noted that in quantification of damages, the court must bear in mind the fact that the plaintiff must be put in the position he would have been had he not suffered the wrong. The basic measure of damage is restitution.

240 The African Centre for Treatment and Rehabilitation of Torture Victims assessed the Plaintiff's incapacity and permanent disability at 10%. The plaintiff made claims that he lost income due to the injury that he suffered, but he did not show court how or how much income he lost due to the injury. There is no proof of employment, termination of employment and/or lost business due to the injury sustained, presented to court. From the evidence on record, the plaintiff's body does not require external aid to function. In view of the above, I find an award of UGX 10,000,000/- (ten million shillings only) reasonable on account of general damages.

### **Punitive and Exemplary Damages**

245 In ***Rookes -v- Barnard & Others [1964] AC 1129***, court noted that punitive damages are intended to punish the defendant for the wrong done to the plaintiff and to deter such conduct. In ***Obongo -v- Municipal Council of Kisumu [1971] EA 91***, it was held that;

250 "It is well established that exemplary damages are completely outside the field of compensation and although the benefit goes to the person who was wronged, their object is entirely punitive".

The Plaintiff in this case was injured by a stray bullet which in my view was an accident. It would be improper to punish the 2<sup>nd</sup> defendant for an act that was not intended.

### **Costs**

*S.27 (2) of the Civil Procedure Act that: -*

*"...Costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order"*

In *Uganda Development Bank - v - Muganga Construction Co. Ltd [1981] HCB*  
260 **35** Manyindo, J, (as he then was), held that;

*"a successful party can only be denied costs if it is proved that but for his conduct, the action would not have been brought. The costs should follow the event where the party succeeds in the main purpose of the suit."*

I find no reason to deny the Plaintiff costs in this case.

265 Therefore, Judgment is entered for the Plaintiff in the following terms;

1. **The 2<sup>nd</sup> defendant pays the Plaintiff general damages of Ushs. 10,000,000/= (ten million shillings only)**
- 2.
3. **The Plaintiff is awarded costs of the suit.**

270 I so order

**Dated, signed and delivered by mail at Kampala this 28<sup>th</sup> day of February, 2022**

**Esta Nambayo**

**JUDGE**

275 **28<sup>th</sup>/02/2022**