

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
CIVIL SUIT NO. 0048 OF 2022

1. **KEITA ZAID**
5 2. **TUMUSIIME MADIA**
3. **AHEBWA MUHAMMED ::::::::::::::::::::::::::::::::::::::: PLAINTIFFS**

VERSUS

1. **KITAGENDA DISTRICT LOCAL GOVERNMENT**
2. **DR. KARUNGI CHRISTINE**
10 3. **KYARIKUNDA DATIVA ::::::::::::::::::::::::::::::::::::::: DEFENDANTS**

BEFORE HON JUSTICE VINCENT WAGONA

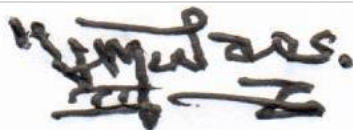
RULING

Introduction:

15 Mrs. Biryomumaiso Tracy died during child delivery in the night of 29th March 2022. The plaintiffs brought this suit under Section 5, 6 and 10 of the Law Reform (Miscellaneous Provisions) Act Cap. 79 against the defendants jointly and severally for negligently causing death of Mrs. Biryomumaiso Tracy; seeking a
20 declaration that the defendants were negligent in causing death; loss of life and loss of dependence; general, special and punitive damages and costs of the suit.

The Case of the Plaintiffs:

The late Biryomumaiso Tracy (the deceased) was a biological daughter to the 1st and 2nd plaintiffs and a brother to the 3rd plaintiff. The deceased used to receive



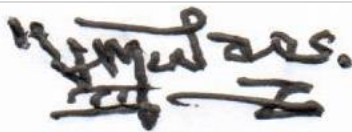
Antenatal services at Ntara Health Centre IV and her last visit at the Centre was on 17th March 2022 when she was due for delivery. On the 29th of March 2022 at 11am, the deceased was taken to Ntara Health Centre IV with labor pains; she was examined by the 3rd defendant who told her that her dilation was 5cm and she would give birth at 4-5pm. She was told that the doctor on duty, the 2nd defendant was not picking up her calls. By 4.00pm, the 2nd defendant who was on duty had not arrived and was not picking up her calls. Subsequently, the deceased grew weak and became unconscious by 10.00pm and by then, the 2nd defendant's phones were still off. Around midnight, the 3rd defendant prepared a referral note to Kagongo Hospital and the ambulance was called. She was put in the ambulance without any health worker for support and as the ambulance left, the deceased died due to excessive bleeding. The ambulance later took the body to Ntara Health Centre IV and there was no health worker to attend to the deceased to ensure the unborn baby is safe. That the 2nd defendant arrived at the health centre the following day and operated the deceased and removed the baby who had died by then. The plaintiff held the 1st defendants vicariously liable for the acts of the 2nd and 3rd defendants for medical negligence.

The Case of the Defendants:

The defendants denied the allegations by the plaintiff and contended that they acted in accordance with the set government standards and medical practice.

Preliminary objection on point of law

The 2nd defendant indicated that she would raise a point of law when the case is called for hearing. On 9th March 2023 when the case was cause listed for mention,

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Counsel Arinaitwe Rajab intimated to court that he had a point of law to raise and court gave parties a schedule to file written submissions and both complied with the timelines.

5 **Representation:**

Mr. Aruho Amon of M/s Mubiru & Aruho Associated Advocates appeared for the plaintiff while *Mr. Arinaitwe Rajab* of Mujurizi, Alinaitwe & Byamukama Advocates appeared for the 2nd defendant.

10 **Issues:**

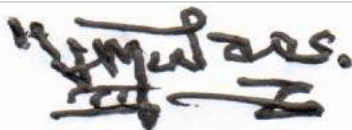
1. **Whether the plaintiffs have locus to bring the suit at hand against the 2nd defendant.**
2. **Whether the plaintiffs have a cause of action against the 2nd defendant.**

15 **Issue One: Whether the plaintiffs have locus to bring the suit at hand against the 2nd defendant.**

Submissions of the 2nd defendant:

20 The plaintiffs have no locus standi to bring the case in issue against the 2nd defendant. The 3rd plaintiff brought this suit in the capacity of a brother while the 1st and 2nd plaintiffs as father and mother respectively. Section 6 of the Law Reform (Misc. Provisions) Act (the Act) provides for persons who can bring an action under the Act. The Act uses the phrase beneficiaries and under Section 5, the suit should be brought for the benefit of the family of the deceased.

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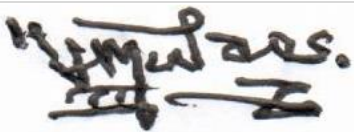
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The suit can thus be brought in the name of the executor or a family member of the deceased. Section 1(b) of the Act defines a family member as a member of the family. This is limited to a father, mother, son and daughter or adopted person. The Act does not include a brother and as such the 3rd plaintiff lacks locus to bring the
5 action. For the 1st and 2nd plaintiffs whereas they are father and mother, they do not meet the requirement under Section 6 of the Act since they are not executors or administrators of the estate of the deceased and the suit was not brought in name of all the family members.

10 It is difficult to ascertain from the pleadings whether the estate is under administration or whether the plaintiffs were beneficiaries under the estate of the deceased. The plaintiffs did not plead that they were under the care of the deceased or that the 3rd plaintiff was in school and the deceased was paying school fees or was receiving any form of support from the deceased.

15 Section 1(1) (c) of the Workers Compensation Act uses the word “**substantially dependant**” on the deceased. The plaintiffs did not satisfy this requirement since the only instances where a father or mother can bring an action under Act is if they are substantially dependent on the deceased and this requirement is not satisfied by
20 the plaintiff.

The 2nd defendant averred under paragraph 4 (v) of the Written Statement of Defense, that the deceased was living with her husband, Mr. Biryomumaiso Stephenson and the two were married for 20 years and 6 months and she was living
25 a humble life and this was not rebutted since there was no reply. Section 6 (1) and

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1 (b) of the Act excludes the plaintiffs from bringing the action against the 2nd defendant and thus and it should be dismissed with costs to the 2nd defendant.

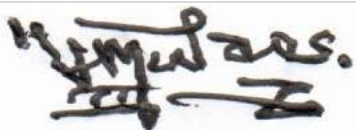
Submissions of the Plaintiff:

5 The points of law raised by the 2nd defendant do not fall within the precincts of a point of law. A point of law has to be pleaded or arise by implication from the pleadings (**Mukisa Biscuits Manufacturing Co. Ltd Vs. Western End Distributors Ltd (1969) E.A 696 and order 6 rule 28 of the Civil Procedure Rules**). The points of law raised by the 2nd defendant do not conform to what
10 constitutes a point of law capable of disposing of the entire suit.

Section 6(1) of the Act provides for the person to bring an action under the Act which includes an administrator or executor of the deceased or any member of the deceased's family. Section 1(b) of the Act refers to the Workers Compensation Act
15 as to a family member and this includes a father, mother, son or daughter of the deceased notwithstanding his relationship with the deceased being illegitimate.

The Workers Compensation Act defines a member of the family to include children and parents who were substantially depending on the earnings of the
20 worker until his death. The 1st and 2nd plaintiffs are biological parents of the deceased while the 3rd plaintiff is a biological brother and dependent on the deceased and this was pleaded under paragraph 10 of the plaint.

The law does not limit locus to only administrators and whereas the deceased had
25 been married, that did not extinguish her relationship with the 1st and 2nd plaintiffs



as biological mother and father. By virtue of that relationship, the plaintiffs have locus standi to bring the action at hand.

CONSIDERATION BY COURT:

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Section 5 of the Law Reform (Misc. Provisions) Act provides that:

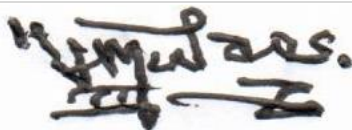
If the death of any person is caused by any wrongful act, neglect or default of any person, and the act, neglect or default is such as would, if death had not ensued, have entitled the person injured by it to maintain an action and recover damages in respect of it, the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death was caused under such circumstances as amount in law to a felony.

15 Section 6 (1) provides for the person who has locus to file a claim under the Act and it provides thus:

6. Beneficiaries of an action; person to bring it

(1)Every action brought under section 5 shall be for the benefit of the members of the family of the person whose death has been so caused, and shall be brought either by and in the name of the executor or administrator of the person deceased or by and in the name or names of all or any of the members (if more than one) of the family of the person deceased.

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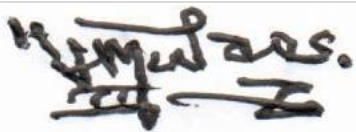
Section 1(b) defines “*member of the family*” thus:

5 “*member of the family*” has the same meaning as in the Workers
Compensation Act; but for the purposes of this Act, a person shall be
deemed to be the father or mother or son or daughter of a deceased person
notwithstanding that he or she was only related to the deceased person
illegitimately or in consequence of adoption; and, accordingly, in
deducing any relationship which is included in this Act within the
meaning of the expressions “father”, “mother”, “son” and “daughter”,
any illegitimate person and any adopted person shall be treated as being,
10 or as having been, the legitimate offspring of his or her mother and
reputed father or, as the case may be, of his or her adopters;

Section 1(q) of the Workers Compensation Act defines a “*member of the family*”
thus:

15 “*member of the family*” means the wife, husband, father, mother,
grandfather, grandmother, stepfather, stepmother, son, daughter,
grandson, granddaughter, stepson, stepdaughter, brother, sister, uncle,
aunt, niece, nephew, cousin or adopted child;

20 It is deducible from the above provisions that locus to bring an action under the
Act is vested in a member of the family. Section 1(b) of the Law Reform (Misc.
Provisions) Act refers to the definition under the Workers Compensation Act
which defines a member of the family to include, a wife, husband, father, mother,
grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, stepson,
25 stepdaughter, brother, sister, uncle, aunt, niece, nephew, cousin or adopted child.

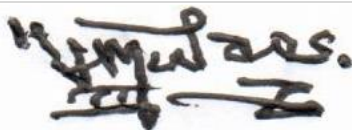


Section 1(b) of the Act further clarifies that the definition includes those related to the deceased whether legitimately or illegitimately.

Odoki JSC in **Uganda Electricity Board Vs. G.W Musoke, SCCA No. 30 of 1993** observed in relation to what constitutes a member of the family under the Act thus:

“It seems to me that the Purpose of the Act was to provide a new cause of action which would enable dependants of the deceased to claim compensation for the loss suffered as a result of his death. It is true that section 8 of the Act does not use the word “dependants”, but “members of the family”. In my view, however, the intention was to provide for members of the family who were dependants of the deceased and therefore who had suffered pecuniary loss as a result of his death. In each case the question to ask is what pecuniary loss the member of the family has suffered.”

It appears to me that worker’s compensation Act expanded the scope of what constitutes a family member to include the categorization above. However, the claimant or plaintiff must prove that he or she was dependant on the deceased in order to be entitled to damages for loss of life of a member of the family. The question whether or not one was a member of the family and dependant on the deceased is one of evidence which cannot be determined as a point of law. The claimant shoulders the burden to lead evidence on the balance of probabilities to demonstrate that he or she was a dependant on the deceased.



In this case the 1st plaintiff pleads that he is the father of the deceased, the 2nd plaintiff as a mother of the deceased and the 3rd plaintiff as a brother of the deceased and they all claim that they used to get maintenance and tuition respectively from the deceased. They claim to have been depending on the
5 deceased which is a question of evidence.

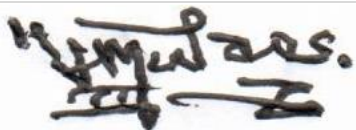
I therefore find no merit in the preliminary objection on a point raised that the plaintiffs have no locus standi to bring this action and the same is overruled.

10 **Issue two: Whether the plaintiffs have a cause of action against the 2nd defendant.**

Submissions of the 2nd defendant:

15 The ingredients that form the basis of a cause of action are (a) that the plaintiff enjoyed a right, (b) That the right was violated, (c) that the defendant is liable **(Auto Garage Vs. Motokov (No. 3) (1971) E.A 514).**

20 The plaintiffs enjoyed no right since they are not executors or administrators of the deceased and the suit was not brought on behalf of the beneficiaries and they did not plead or indicate the particulars of the persons on whose behalf the claim in issue was filed as required under section 8 of the Act.

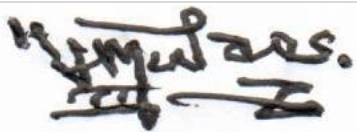


The suit was brought by the plaintiffs on their own behalf for loss of dependency and damages premised on the sole ground that the deceased was a daughter and sister.

5 The estate of the deceased is not under administration for court to ascertain the beneficiaries and neither was it pleaded that the deceased was employed in gainful employment and the name of the employer and the salary she was earning per month. It was stated that the deceased was a nurse and a mixed farmer earning 12,000,000/= from cattle and crop farming and no evidence of employment and
10 earnings was availed.

The 2nd defendant pleaded under paragraph 7 and 8 of the written statement of defense that the deceased was a senior three drop out aged 39 years, unemployed and a house wife married to Biryomumaiso Stephenson for the last 20 years with 6
15 children and largely a person of very humble means living a basic life of subsistence farming supporting herself and children and not the plaintiffs. This was not rebutted by the plaintiffs and thus taken to be admitted. That the 2nd defendant also contended under paragraph 5(x) of the defense that the known relatives of the deceased were the husband and biological children and not the plaintiff and that the
20 2nd defendant had reached a reconciliation agreement with them and that this was also not rebutted.

The plaintiffs claimed they depended on her for livelihood which relate to basic necessities of life which include education, food, shelter, clothing and medical care

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and but no evidence was adduced by the plaintiffs of their dependency on the deceased.

The plaintiffs enjoyed no right which was violated by the 2nd defendant.

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Submissions of the Plaintiff:

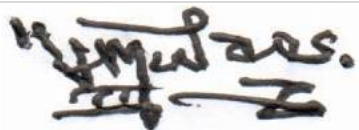
The 2nd point of law does not fall within the precincts of a point of law but a point of evidence (**Nabadda Ritah Vs. Nantaba Ida, Election Petition Appeal No. 22 of 2021**: *“Determining matters of evidence by way of preliminary points of law without a hearing where evidence is adduced occasions a miscarriage of justice, there is no way a petitioner/plaintiff should be condemned for not adducing proof without the petition/plaint being subjected to a trial”*).

The point of law at hand does not fall within the definition of a point of law since counsel mixed the same with facts. The plaintiffs were members and defendants of the deceased’s family and thus had capacity to bring the action at hand.

CONSIDERATION BY COURT:

For one to satisfy court that he or she has a cause of action he or she must show that he or she enjoyed a right; the right was violated and that the defendant is the one who violated it and as a result of the violation he or she suffered loss or damage (**Tororo Cement Co. Ltd vs Frokina International Ltd SCCA No. 2 of 2001**).

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A cause of action relates to 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 (**Cooke vs Gull LR 8E. P 116, Read v Brown 22 QBD P.31**).

- 5 In making an assessment whether a plaint discloses a cause of action or not, reference must be solely made to the plaint and the annexures thereto and nothing else (**See Kebirungi Vs. Road Trainers ltd & 2 others [2008] HCB 72**).

10 In this case the plaintiffs filed a case for recovery of damages resulting from negligently causing the death of Nancy Biryomumaiso by the defendants. The particulars of negligence were pleaded in paragraph 5 and 8 of the plaint. They further indicated under paragraph 10 that they were dependants of deceased who they leaned on for maintenance and school fees. I have already found that the plaintiffs had locus standi to bring the action.

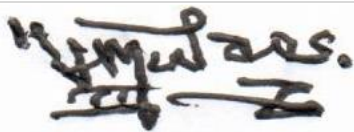
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It is thus my view that the pleadings disclose that the plaintiffs enjoyed a right being the support they received from the deceased, that the right was violated by the defendants who negligently caused the death; that the plaintiffs have suffered loss of the said support from the deceased, and the defendants are responsible including the 2nd defendant. At this stage court does not examine the merits of the parties' claim

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I therefore overrule both points of law for want of merit. The 2nd defendant shall pay to the plaintiffs the costs of this application.

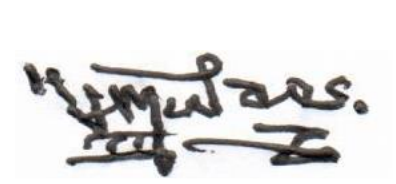
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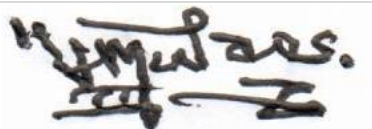
The case is fixed for mention on 30th June 2023 for further directions.

It is so ordered.

5 **Dated at High Court Fort-portal this 8th day of June 2023.**

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Vincent Wagona
High Court Judge
FORT-PORTAL

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