THE REPUBLIC OF FUGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT GULU

CIVIL SUIT NO. 21 OF 2020

APWOYORWOT PROMISE CLARE
(SUING THROUGH A NEXT FRIEND
OYELLA MONICA)::: PLAINTIFF

VERSUS

1. **ATTORNEY GENERAL**
2. **KAMUHANGIRE EDWARD EDWIN::::::::::::::::::::::::::::::::::::DEFENDANTS**

BEFORE: HON. MR JUSTICE GEORGE OKELLO

JUDGMENT

Introduction

The plaintiff, a female minor of now 5 years, brought this action through her mother, a next friend, in negligence and battery, due to injury suffered at the instance of the 2nd defendant, a nurse and a Police Officer (loosely, a Police nurse). The duties of the Officer were; diagnosis of patients, treatment and dispensing of medicine. On 17th April, 2019, the officer was on his routine duties at Gulu Police Health Center III situate within Gulu Police Barracks. He resided within the Barracks, and so was the Plaintiff and her mother. The plaintiff's

father who is a Police Officer, and apparently was working elsewhere, allowed the family to live there. The Plaintiff and the 2nd Defendant were neighbors. The Plaintiff was known to the Officer, and so was the plaintiff's mother, as neighbors. The plaintiff who was two years old at the time (April, 2019), was taken to the facility by her mother because she was unwell. Malaria was suspected. She was tested by a laboratory technician but the result was negative. The diagnosis, however, showed the plaintiff had upper respiratory tract infection (cough). Whilst within the health facility, and out of the mother's view, the officer pricked the Plaintiff on the left shoulder with a needle (syringe). The Plaintiff cried, and the mother intervened. The Plaintiff bled on the shoulder. The Officer admitted having pricked the Plaintiff. The reason for this act is, however, conflicting, as court shall explain. The Plaintiff's mother reported the matter to Gulu Central Police Station. The Officer was compelled to undertake an HIV test, which turned negative. It was feared he had injected the Plaintiff with infected blood. However, on medical advice by the in charge of the Health Facility, the Plaintiff was put on Post Exposure Prophylaxis (PEP) to prevent risk of any HIV infection. It is said the Plaintiff reacted to the treatment, and experienced hair loss on the scalp, and the stomach started swelling. The Officer was charged and prosecuted for assault occasioning actual bodily harm but was convicted of the minor and cognate offence of common assault, contrary to section 235 of the Penal Code Act by the Chief Magistrate Gulu. On 13th September, 2019, the Officer was convicted and sentenced to pay a fine of Ugx 2,000,000, or in default,

to serve one year imprisonment. He was also ordered to pay compensation of Ugx 2,000,000 to the plaintiff's mother. He satisfied the orders of the criminal court.

The Plaintiff commenced the present action on 7th July, 2020. She rests her cause of action on the tort of negligence and battery. She seeks general damages and compensation for unlawful injury and body pain; as well as special damages of Ugx 2,500,000 allegedly being expenses incurred on treatment and welfare at various health facilities. She also prays for punitive damages of Ugx 50,000,000; interests on court awards, and costs.

It is averred in the plaint that, the plaintiff was injected with unknown substances which caused injury. It was contended, the act amounted to medical negligence and battery which caused the plaintiff and her parents mental suffering. The particulars of negligence is pleaded. The Attorney General is impleaded as a defendant on the basis of the doctrine of vicarious liability for the acts of the Police Officer.

In their separate Defences, the Defendants deny the claim. The Attorney General contended in the alternative that, he is not liable for the acts of the second Defendant who acted maliciously. He further contended that, the second Defendant should be held personally liable. It was also averred that, the plaintiff is not entitled to any damages from the Attorney General since the second Defendant paid the plaintiff Ugx 2,000,000 pursuant to the criminal trial. On his part, the second defendant contended that the plaintiff has no cause of action,

having been fully compensated. The second Defendant also averred that the suit amounts to double jeopardy against him, and is bad in law. Both Defendants pray for the dismissal of the suit with costs.

Issues

The parties framed issues in the joint scheduling memorandum, which court adopted. They are;

1. **Whether the actions of the 2nd defendant amounted to assault/battery and medical/professional negligence?**
2. **Whether the 1st defendant is vicariously liable?**
3. **What remedies are available to the parties?**

Representation

Mr. Lobo Akera Stephen of M/s Nimungu Associated Advocates represented the Plaintiff, while Ms. Elizabeth Nyakwebara, a Senior State Attorney in the Attorney General's Chambers, Gulu, represented the Attorney General. The second Defendant represented himself.

At the close of the second Defendant's case on 10th July 2023, court directed the parties to file written submissions. None was filed and no reason is given.

Determination

Did the action of the second defendant constitute tort of battery, and medical negligence?

Whereas the first issue was framed to cover the aspect of assault, court noted that assault was not pleaded in the plaint as forming part of the plaintiff's cause of action. Accordingly, court finds the same is not in issue.

Regarding the tort of battery, court recognizes that, battery is one of the forms of tort of trespass to person. The other forms of tort of trespass to person are, assault, false imprisonment and malicious prosecution. Battery thus consists in touching another's person (body) in a violent, angry, rude or insolent manner against his/her will, however slightly. The touching may be direct or indirect. For example, a person who throws a mineral water bottle at another with hostile intent or pulls a chair from beneath another, commits battery, albeit indirectly as such acts need not involve touching of the person's body. There must thus be hostile intent, to constitute the tort of battery.

Although not in issue, but for completeness, the tort of assault constitute of an attempt or threat to apply force to the person of another, whereby that person is put in present fear of violence. It consists of putting the other person into a state of apprehension. However, as a crime, assault is differently treated under the Penal laws of Uganda. Thus section 235 of the Penal Code Act Cap. 120 (PCA) provides for the offence of common assault, while section 236 creates the offence of assault occasioning actual bodily harm. There is also section 219 of PCA which

in practical terms, is loosely regarded as a provision creating the offence of assault occasioning grievous bodily harm, although this offence is categorized not under part of the Act dealing with assault per se, but under the part providing for the offences concerned with endangering life or health.

In this case, the Plaintiff's learned counsel did not specify where his client's case falls. Counsel simply stopped at pleading 'battery' and slotted in the aspect of assault during scheduling conference, which I think, with respect, was designed to cast the plaintiff's net wider. Obviously, learned counsel was not sure about the exact cause of action on which to rest the client's claims. Be that as it may, it, however, seems to me, on the facts, that, the tort of battery is clearly supported by the evidence adduced for the Plaintiff. The second defendant's pricking of the plaintiff on her left shoulder (on the detoid muscle) yet he was not administering any authorized treatment, and immediately thereafter, throwing away the needle and the syringe, as evidence show, before the plaintiff's mother could intervene, was insolent. By his own admission in chief, the second Defendant stated, he wanted to scare and stop the plaintiff from following him around the health facility, as the baby was playing too much and was becoming a nuisance. Of course, as court will point out, the second Defendant's action was not reasonable at all. It was cruel, inhuman and degrading, to say the least. I find that, on the evidence, the second Defendant committed a tort of battery on the plaintiff.

Medical negligence

Regarding medical negligence, the law have been restated by courts. It has first of all been observed that, there exists a duty of care between a patient and the doctor, hospital or health provider, which relationship must be established. And once the relationship is established, the doctor/medical personnel has a duty. Thus, a party who holds himself or herself as ready to give medical advice or treatment impliedly undertakes that he/she is possessed of skills and knowledge for the purpose and such a person, whether he/she is a registered medical practitioner or not, once consulted by a patient, owes him/her certain duties, namely, a duty of care in deciding whether to undertake the case; a duty of care in deciding what treatment to give; and owes a duty of care in his/her administration of the treatment.

See: **Stanley Kamihanda Vs. Attorney General, HCCS No. 1201 of 1998, digested in KALR [2003] P.333**; **Kimmy Paul Semenye Vs. Aga KhanHospital & 2 others [2006] KLR.**

The above decisions were referenced by Justice Masalu Musene, J., (RIP in **Kabiito Telesphorus Vs. AG & 2 Others, HCT-01-CV-CS-026 of 2012**.

It is thus settled law that a Doctor (and in my view, any Medical personnel) can be liable for medical negligence only when he/she falls short of the standard of a reasonable medical care. A medical personnel, however, cannot be found

negligent merely because in a matter of opinion, he/she made and error of judgment. When there are genuinely two responsible schools of thought about management of a clinical condition, the court could do no greater disservice to the community or advancement of medical science than to place the hallmark of legality upon one form of treatment. **See: Watsemwa & another Vs. Attorney General, Civil Suit No. 675 of 2006 (Elizabeth Musoke, J.,** (as she then was), citing with approval a paper entitled "**A legal concept Paper on Medical Malpractice/ Negligence in Uganda; Current Trends and Solutions by Justice Geoffrey Kiryabwire.)**

The views expressed in **Watsemwa & another Vs. Attorney General, Civil Suit No. 675 of 2006** (supra) appears to be also supported by the persuasive case of **Bolam Vs. Fiern Hospital Management Committee [1957] 2 All ER 118**, where Mc Nair, J., expressed himself, while stating the tests applicable, inter alia, thus:

"The test is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not possess the highest expert skill of an ordinary competent man exercising that particular art. In the case of medical men, negligence means failure to act in accordance with the standards of reasonably competent men at the time. There may be one or more perfectly proper standards, and if he conforms to one of these proper standards, then he is not negligent."

In the case of **Milburga Atcero Vs. Women's Hospital International and Fertility Centre Ltd & 3 others, HCCS No. 298 of 2012**, Musa Ssekaana, J., also dealt with a case involving medical negligence. Court made an exposition of the general law of negligence before confining itself to the specific issue before it. Court opined that, for negligence to arise, there must have been a duty of care which must have been breached by the Defendant. The breach of the duty of care must have been the direct or proximate cause of the loss, injury or damage. By proximate, is meant, a cause which is a natural and continuous sequence, unbroken by any intervening event, produces injury and without which injury would not have occurred. With regard to medical negligence, court observed, thus:

"The breach of duty is one equal to the level of a reasonable and competent health worker. To show deviation from duty, one must prove that, (1) it was a usual and normal practice; (2) that a health worker has not adopted that practice; (3) that the health worker instead adopted a practice that no professional or ordinary skilled person would have taken."

Negligence, therefore, is the act of doing something or an omission by a reasonable man guided on considerations which regulate the conduct of human affairs. See: **Blyth Vs. Birmingham Co. [1856] 11 Exch. 781.**

The tests established by courts, therefore, cover the entire field of medical practice where liability could arise. As noted, the tests apply to liability in respect

of wrong diagnosis; treatment and the risk inherent in it; liability in respect of operating on or giving treatment involving physical force to a patient who is unable to give consent; among others. This court, however, thinks, the class of matters where liability could arise is not closed, as the discipline of medicine is wide. See: **Maynord Vs. West Midlands Regional Health Authority [1985] 1 All ER 635**; **Sida way Vs. Board of Governors of Bethlem Royal Hospital [1985] AC 871**; **F Vs. W.B Health Authority [1989] All ER 545**.

In order to establish negligence, there is, however, a need to establish causation. The test of causation is whether the plaintiff would have suffered harm if the defendant had not been negligent. If it be found that the Plaintiff would still have suffered harm notwithstanding that the defendant was negligent, it can be concluded that the defendant's negligence was not a 'but for' cause of the harm suffered by the plaintiff. The burden of proof in respect of 'but for' causation is on the plaintiff alleging negligence which is to be discharged on a balance of probabilities. There is no need for scientific precision in the evidence as a prerequisite for establishing 'but for' causation. See: **Bolitho Vs. City and Hackney Health Authority [1998] AC 232**, cited in **Milburga Atcero Vs. Women's Hospital International and Fertility Centre Ltd & 3 others** (supra).

The medical profession is, therefore, expected to exude a reasonable degree of care. Neither the very highest nor a very low degree of care and competence

judged in the light of the particular circumstances of each case is what the law requires. A medical practitioner would thus be liable only if his/her conduct fall below the standards of a reasonably competent practitioner in his/her field. Medical professionals, however, ought to be and are legally protected, so long as they perform their duties with reasonable skill and competence and in the best interest of their patients, which the law and medicine recognize, is paramount.

The standard of care in medical negligence, therefore, differs from that of ordinary cases of negligence. See **Kabiito Telesphorus Vs. AG & 2 Others, HCT-01-CV-CS-026 of 2012 (supra)**. Thus, if a professional man or woman possesses an art, he/she must reasonably be skilled in it/ and he/she must be careful. However, the standard of care which the law requires, is not insurance against accidental slips. As noted, it is such a degree of care as normally skillful member of the profession may reasonably be expected to exercise in the actual circumstances of the case.

A charge of professional negligence against a medical practitioner is grave and serious and stands on a different footing. This is unlike, for example, a charge of negligence against the driver of a motor care. The consequences of negligence against a professional is that, it affects his/her reputation. It could lead to revocation of a licence by the professional body to which the professional belong. It could as well lead to criminal charge and prosecution. Thus in medical negligence, the burden is on the plaintiff to prove that the damage was caused

by negligence and was not a question of misadventure (accident). The burden must be discharged on a preponderance of evidence. Thus in medical negligence cases, the fact that something has gone wrong is not in itself any evidence of negligence. That is why the test used to establish medical negligence is not the test of the man/woman aboard a taxi or on a boda boda, or a bicycle and the like, because these persons may not have such special skill in the discipline of medicine. I should of course not be misunderstood in any way to be referring to a medical personnel who sometimes would be users of these means of transport.

Having set out the law, the second defendant, for starters, was not purporting to treat the plaintiff when he pricked her. The plaintiff had already undergone laboratory tests by a laboratory technician. She was yet to be professionally attended to by the next officer in the line of duty. It was not yet clear to the plaintiff's mother that the second Defendant was that officer. Even if the second Defendant was the personnel to administer any treatment to the Plaintiff, the mother's consent had not yet been sought as no treatment had been recommended at the time. It has not been shown by the second Defendant that pricking the plaintiff was the recommended treatment. The plaintiff's mother was not consulted. The second Defendant did his act when the mother of the Plaintiff was not aware. Although medical consent need not be express, and consent could be by conduct, this depends on the circumstances of each case. A mother could, for example, consent to a child's injection, by allowing a part of the body to be injected to be sanitized prior to the injection, or by removing the infant's

cloth from the part to be injected, or by holding the child firmly for safe injection, among others.

In the instant matter, the second defendant merely injected the plaintiff on the shoulder. He made it seem like the plaintiff was there for immunization whereas not. In his own words, the second Defendant used the tetanus toxoid syringe. The Plaintiff's mother (PW1) agrees to this but adds that, the second Defendant admitted using a leftover of tetanus toxoid vaccine which had been used on a pregnant lady, to inject the plaintiff. This claim was, however, denied by the second Defendant. The evidence thus remains scanty as to whether any vaccine was administered to the plaintiff or not. No tests were done to confirm or rule out the possibility of vaccine administration. The second defendant discarded the needle and the syringe immediately. He explained that, he did so, for safety reasons. He also claims he was misunderstood by the plaintiff's mother on the claim that he had used a tetanus toxoid vaccine. He says, rather, he told the plaintiff's mother (PW1) that, he used a tetanus toxoid syringe, which PW1 mistook for a vaccine.

Be that as it may, since the second Defendant admitted in chief that what he did was wrong, for which he said he proffered an apology to the plaintiff's mother immediately, court sees no point in considering other pieces of evidence on record, which all confirm what transpired. The Second Defendant, however,

claimed the incident was accidental. He claimed the infant plaintiff had run towards him as he held the syringe. I find this explanation devoid of truth and an afterthought. This is so, because, the second Defendant admitted pricking the plaintiff to scare her, claiming she was following him everywhere, and was becoming a nuisance. In court's view, a reasonable professional nurse in the circumstances of the second defendant would not have behaved as the second defendant did. In my opinion, the statement that he wanted to scare the plaintiff, militates against the claim that the act was accidental. The second Defendant also claims the plaintiff ran towards him and got accidentally pricked. In my view, that was not possible. Court wonders why the second Defendant did not turn the syringe/ needle away from the plaintiff as she allegedly ran towards him. He did not act as a rational professional. He could have stopped the plaintiff from drawing closer.

In the circumstances of this matter, I find that the second Defendant was professionally negligent towards the plaintiff. His action was in the least, not an accident. It was on the contrary, a case of medical negligence and malpractice. No nurse exercising and professing to have special skills of a nurse would have acted as the second Defendant did. The second Defendant should have had the plaintiff in mind, as he went about his duties, knowing that, as an infant, the Plaintiff stood at the risk of being hurt, whilst within the medical facility. But as noted, the injury was intended. The first issue is according resolved in the affirmative.

Issue 2: Vicarious liability.

Black's Law Dictionary 11th Edition (2019) defines vicarious liability as; Liability that a supervisory party (such as employer) bears for the actionable conduct of a subordinate or associate (such as an employee) based on the relationship between the two parties.

According to **the *East African Cases on the Law of Tort* by E. Veitch (1972 Edition) at page 78,** an employer is in general liable for the acts of his employees or agents while in the course of the employer's business or within the scope of employment. Liability arises whether the acts are for the benefit of the employer or for the benefit of the agent.

In deciding whether the employer is vicariously liable or not, the questions to be determined are: whether or not the employee or agent was acting within the scope of his employment; whether or not the employee or agent was going about the business of his employer at the time the damage was done to the plaintiff.

When an employee or agent goes out to perform his or her purely private business, the employer will not be liable for any tort committed while the agent or employee was on a frolic of his or her own. In **Muwonge Vs. Attorney General [1967] 1 EA 17 (CAK), Newbold, P.**, observed that, 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, or for his own benefit, nevertheless if what he did is merely a manner of carrying out what he was employed to carry out then his master is liable.

In the case at hand, the evidence abundantly show that the second Defendant was a Police Officer serving as a nurse in a Government health facility. In his testimony, the second Defendant admitted that at the time of the incident he was one and half month old at Gulu Police Health Centre III. He admits the Plaintiff was at the facility, for treatment. This evidence was supported by the then supervisor of the second Defendant, a one Omara Jasper (DW1), a Senior Clinical Officer, who was a witness for the 1st Defendant (Attorney General). The Plaintiff's mother (PW1) testified to the same effect. Whereas the Attorney General, and DW1, disapproved of the conduct of the second Defendant, and fully supported his prosecution for the offence of assault occasioning actual bodily harm, that, in my opinion, does not alter the liability of the master. The second Defendant was the servant of Government in Public Service and was on duty at the material time. Of course he did what was not authorized. His act was unethical, wanton and criminal. He misused the tool entrusted to him by his employer. Accordingly, the first Defendant is bound by the acts and thus liable to the Plaintiff. The second issue is accordingly resolved.

Issue 3: remedies:

The plaintiff claims for special damages. Special damages, according to **Oxford Dictionary of Law 5th Ed, at page 217**, are given for losses that are not presumed but have been specifically proved. They are damages for losses that can be quantified such as out of pocket expenses or earnings lost during the period between the injury and the hearing of the action.

Words and Phrases Legally Defined Vol. 2, p.8 explains special damages as that which relate to past pecuniary loss calculated at the date of trial. It is distinguished from general damages which relates to all other items of damage whether pecuniary or non-pecuniary. Thus Special damages refers to past expenses and loss of earnings.

According to **Graham Stephenson, Source Book on Torts, 2nd Edition, at p. 582**, special damages are those losses which are capable of being calculated more or less precisely.

It is settled law that special damages must be pleaded and strictly proved although they need not be supported by documentary evidence in all cases as cogent verbal evidence can do. See: **Kyambadde Vs. Mpigi District Administration [1983] HCB 44**; **Kampala City Council Vs. Nakaye (1972) E.A 446; Gapco (U) Ltd Vs. A.S Transporters Ltd, Civil Appeal No. 07 of 2007 (SCU)**; **Uganda Telecom Ltd Vs. Tanzanite Corporation [2005] 2 E.A 331, at page 341; John Eletu Vs. Uganda Airlines Corporation [1984] HCB 44.**

Pleading special damages helps to avoid surprise claims at the trial. They must, therefore, be explicitly claimed in the pleadings and at the trial, it must be proved by evidence both that the loss was incurred and that it was the direct result of the defendant's conduct. Thus matters pertaining to hospitalization, treatment and management, the need for further medical care, the disabilities, and pecuniary losses are special damages which must be pleaded. **See: Musoke v. Departed Asians Custodian Board [1990-1994] EA 219; Mutekanga v. Equator Growers (U) Ltd [1995-1998] 2 EA 219; Uganda Breweries Ltd. v. Uganda Railways Corporation Supreme Court Civil Appeal No. 6 of 2001.**

In the instant case, special damages of Ushs. 2,500,000 is pleaded by the Plaintiff. In her testimony, the plaintiff's mother (Oyella Monica, PW1) testified that the plaintiff was examined from TASO, Gulu on 20th May, 2019 (PEX2). It is, however, not shown that she paid money there. The Plaintiff was also examined at Lacor Hospital, Gulu, on 24th June, 2019 (PEX 3 (a). It is also not indicated that some money was paid. The Plaintiff was also examined and Hematology Report OPD prepared (PEX 3 (b) on a date that is not clear. No amount is indicated on the faint and ineligible Report. The Plaintiff was further examined on 25th June, 2019 at Lacor Hospital, vide PEX 3 (c) and ultra sound scan done vide PEX (3) (d). She explained she paid **Ushs. 50,000** for this scan. Court believes her and allows the claim. The Plaintiff also attended Greenland Medical Centre, Gulu, on 20th May, 2020 where laboratory tests were done on

her (PEX 4 (a) and malaria and bacterial infection found and treatment done vide PEX 4 (b). The total bill was **Ushs. 43,000** which was paid in three installments. This amount is proved and thus allowed. Vide PEX 4 (c), the Plaintiff was examined, and treated at Greenland facility on 4th May, 2019 and a total of **Ushs. 15,000** was spent. This claim is proved and thus allowed.

Vide PEX 5 (a), dated 3rd June (unknown year), Ushs. 5000 was paid for an unknown purpose. This claim is rejected. On 20th October, 2021, Ushs. 2,000 was paid at Lacor Hospital vide PEX 5 (b) for consultation. This was two years after the incident and it is not clear whether it is connected to the tort. The claim fails. Vide PEX 5 (c) dated 10th May, 2019, **Ushs. 10,000** was paid at MBN Clinical laboratory. This claim is proved and allowed. Behind PEX 5 (c), it is indicated that Ushs. 2,600 was spent on some eats and mosquito sticks. It is not clear when this was spent. The claim is disallowed. On 24th June, 2019, it is shown that **Ushs. 3,000** was spent at Lacor Hospital, vide PEX 5 (d), and on 9th November, 2019, **Ushs. 25,000** was paid at the same facility, vide PEX 5 (e). These claims are allowed. The foregoing are the claims supported by documentary evidence.

The Plaintiff's mother testified that, the Plaintiff was admitted to Gulu Regional Referral Hospital and shs. 200,000 was spent on drugs purchased from an outside facility. There is no documentary proof of medical admission at the said Referral Hospital. In my view, proof of Medical admission should always be

supported by medical evidence as there is no admission without medical record to support it, unless something happened to the record. In this case, no explanation was proffered. There is no proof of purchase of drugs either. The claim is accordingly disallowed.

PW1 also stated that **Shs. 140,000** was spent on transport, and on food for the plaintiff, and other things required by medical personnel. This is believable and is awarded as the plaintiff had to move with her mother for medical tests and other treatment. Although there is no receipt, it is not expected that transport expenses especially by boda boda, as stated by PW1, which was her main transport means, especially for short movements, is usually documented given the informal nature of this public transport segment.

PW1 further claims for shs. 500,000 for further transport from Kitgum to Gulu, saying, at the time, the family had moved out of Gulu Police Barracks where they lived and yet PW1 needed to commute to Gulu to follow on the Plaintiff's medical examination. PW1 unfortunately did not state when they exited the premises at Gulu Police Barracks. However, it is apparent the family did not stay there forever as PW1's husband was not stationed at the Police Barracks. In the circumstances, I award **shs. 300,000** as reasonable amount for public transport incurred. The Plaintiff also claims transport for witnesses who attended the Chief Magistrates Court Gulu, for trial of the 2nd Defendant. She seeks for shs. 500,000 and shs.1, 000,000 for their alleged facilitation. I find this claim not proved and

extraneous. PW1 has not shown that, at the time, the witnesses had relocated and had to travel from far to attend the criminal trial. In any case, the court judgment was given only on 13th September, 2019, four months after the incident, implying the criminal case was not protracted. So, the alleged expenses is not proved, but also extraneous. In any case, it appears most witnesses were persons from within Gulu Police Barracks and Gulu City.

In conclusion on this head of damages, I, therefore, award total special damages of **Ushs. 586,000**. The award shall attract interest of 10% per annum from the date of this Judgment.

General damages

The Plaintiff also prayed for general damages. General damages at law are presumed to flow from the wrong complained of and need not be specifically pleaded though it should be averred in the plaint that the plaintiff has suffered damage. General damages are awarded at the discretion of the court. General damages is compensatory in nature and are intended to make good to the aggrieved party, as far as money can do, for the losses he or she has suffered as the natural result of the wrong done to him or her. See: **Robert Coussens Vs. Attorney General, Civil Appeal No. 8 of 1999**; **V.R Chande Vs. East African Railways Corporation (1964) E.A 78; Bank of Uganda Vs. F.W Masaba & Others, SCCA No. 3 of 1998.**

According to **Halsbury's Laws of England, 4th Ed. Vol. 12 (1) paragraph 812**, general damages are those losses, usually but not exclusively non- pecuniary, which are not

capable of precise quantification in monetary terms. They are presumed to be the natural or probable consequence of the wrong complained of, with the result that the plaintiff is only required to assert that such damage has been suffered.

Lord Greene MR in **Hall Brothers Steamship Company, Ltd. Vs. Young (1939) IKB 748, at P. 756 (CA)** defined the term 'damages' thus:

"Damages' to an English lawyer imports this idea that the sums payable by way of damages are sums which fall to be paid by reason of some breach of duty or obligation, whether that duty or obligation is imposed by contract, by the general law, or legislation."

However, in **Kibimba Rice Co. Ltd Vs. Umar Salim, SCCA No. 7 of 1988**, the Supreme Court held that evidence had to be led to prove claims for general damages for inconvenience, mental suffering and anguish.

Regarding the amount of general damages, it is in the discretion of the court based on the circumstances of each case. See: **Crown Beverages Ltd Vs. Sendu Edward, SCCA No. 1 of 2005.** In **Robert Coussens Vs. Attorney General (supra)**, it was held that the measure of general damages is that sum that will put the party who has been injured, or who has suffered, in the same position as he would have been if he had not sustained the wrong for which he is now getting his compensation or reparation. **See: Livingstone Vs. Ronoyard's Coal Co. (1880) 5. App. Cas 259** which was cited with approval by the Supreme Court of Uganda in Robert Coussens Vs. Attorney General *(Supra).*

In considering general damages court may take into account factors such as malice or arrogance on the part of the Defendant and the injury suffered by the Plaintiff for example, causing him stress. See: **Atto Filder Vs.Wibi Elija &Umeme Limited Civil Suit No. 26 of 2013**

General damages are thus awarded on the notion that there is no medium exchange of happiness. The award must, however, be fair and reasonable, fairness being gauged by earlier court decisions. Money cannot provide true restitution. It cannot undo whatever has happened, as in the case instant. There is no objective yardstick for translating non pecuniary losses such as pain and suffering, inter alia, into monetary terms.

The civil court should, in a matter where the Plaintiff was a victim of crime that has given rise to the civil action, and was paid compensation by the Defendant following conviction for the crime, take into account the compensation paid as a result of the criminal process. See: **B.J Odoki; A Guide to Civil Procedure in Uganda, 2nd Edition, p170-172. See** for example section 197 (4) of the Magistrates Courts Act Cap 16, and section 126 (3) of the Trial on Indictments Act Cap 23, Laws of Uganda, which support this principle propounded by the learned author.

In the case instant, the plaintiff's mother testified that the plaintiff suffered bad health resulting from the injury inflicted and associated side effects of being put on Post Exposure Prophylaxis (PEP). The treatment, according to PW1 caused loss of hair on the scalp, diarrhea, loss of appetite, swelling of the stomach, and retarded growth of the Plaintiff. Whereas the Plaintiff appears to have suffered

some side effects on being put on PEP, Court, however, finds the alleged side effect of retarded growth not proved. The medical expert who testified for the Plaintiff as PW3 (Dr. Onen Julius James Olwedo) ruled out the alleged side effect.

Court also observed the plaintiff during the trial and she looked well-nourished and growing normally. Dr. Onen also stated that the side effects of being put on PEP usually lasts for a month. Although he examined the plaintiff after six months and found that hair growth had normalized and the body rashes had disappeared, and the infant Plaintiff had regained appetite, it is not shown that the side effects lasted beyond one month from the time the plaintiff was put on PEP. According to PW3, the abdominal upsets were no more. Given that the good Doctor was not aware of any permanent side effects of PEP, court finds that the injury the plaintiff suffered was temporal and so were the effects of PEP. The injury of pricking was localized on the shoulder. It was classified as harm and not grievous harm, or dangerous harm, or maim, which are usually classified in medico legal sense, according to their level of severity. Although the acts of the 2nd Defendant was wrong, the injury the plaintiff suffered was not so grave as to require the kind of general damages sought in the matter in the sum of Ug. shs. 100,000,000.

Therefore, considering the pain and the inconveniences suffered by the plaintiff and the exposure to PEP, and the fact that the second Defendant almost reached a settlement with the Plaintiff's mother but for the Plaintiff's father, who refused the amount offered, and owing to the fact that the Plaintiff, through her mother,

received compensation of shs. 2,000,000 on conviction and sentencing of the 2nd Defendant by the Chief Magistrate of Gulu, I award the Plaintiff general damages of Ushs. 5,000,000. This amount shall attract interest of 10% per annum from the date of this judgment.

The claim for punitive damages was not pressed and accordingly, is declined. In any case, the second Defendant was already punished for the wrong by the criminal court. This matter has also rested more on medical negligence, and thus, I would still find it not a proper case for an award of punitive damages which is chiefly to punish for a criminal wrong.

I have considered the second Defendant's averment that he is being punished twice by the fact that damages is being sought against him by the plaintiff, yet he already paid compensation. That plea is relevant in as far as the award of general damages is concerned, which I have already taken into account. Of course, it could also be relevant in considering an award of exemplary/ punitive damages, in so far as the particular Defendant was fined by the criminal court, as in the case instant. I, however, think, being a lay person, the Second Defendant fashioned his plea of 'double jeopardy' not in the technical sense as lawyers understand it, but loosely to press the view that, he should not pay compensatory damages again. I do not think the Second Defendant sought to argue that, having been tried and convicted of the crime, he should not be sued in a civil court. Such a contention would not be sustainable, for, civil proceedings may sometimes emanate from the same facts that constituted a criminal offence.

It is also the law that, the mere fact that a Defendant was prosecuted for a crime is no bar to civil liability on account of the same facts. In other words, some tortuous acts are also crimes and both criminal and civil actions can be taken against the wrong doer. See: **Halsburys Laws of England, Fourth Ed, Reissue, Vol. 45 (2), para 301, at page 221**. See also the case of **Sarah Kulata Basangwa Vs. Uganda, SC Crim. Appeal No.3 of 2018**.

Turning to the issue of costs, it is true that, under section 27 of the Civil Procedure Act Cap. 71, costs follow the event, that is, the outcome of the case, unless court orders otherwise. In this case, given that the matter was almost settled between the plaintiff represented by her mother and the second Defendant, but for the indifference of the plaintiff's father who refused a settlement, I make no order as to costs.

In the final result, judgment is given for the plaintiff, against the Defendants, jointly and severally, in the following terms;

a) The plaintiff is awarded special damages of **Ushs. 586,000**
b) The plaintiff is awarded general damages of **Ushs. 5,000,000**
c) Both special damages and general damages shall attract interest of 10% per annum from the date of this judgment, being 6th October, 2023, till full payment.
d) There shall be no order as to costs.

e) The 2nd Defendant is free to fully pay up the above awards, as he intimated he does not wish to involve his employer in his mess. However, the second Defendant's wish does not change the fact that the 1st Defendant is equally liable with the second Defendant.

It is so ordered.

Delivered, dated and signed in Court this 06th day of October, 2023

George Okello
JUDGE HIGH COURT

Ruling read in Court

06th October, 2023

10: 00 am

Attendance

Mr. Calvin Kilma, holding brief for Lobo-Akera Stephen, counsel for the Plaintiff

Plaintiff and Next Friend, in court

Ms. Nyakwebara Elizabeth, Senior State Attorney, AG's Chambers, for the 1st Defendant, in court

2nd Defendant in court.

Mr. Ochan Stephen, Court Clerk

George Okello
JUDGE HIGH COURT